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Chair: Ms. Jelić (Vice-Chair)

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In the absence of Mr. Iwasawa, Ms. Jelić (Vice-Chair) took the Chair.

The meeting was called to order at 10.15 a.m.

Organizational and other matters, including the adoption of the report of the Working Group on Communications

Draft general comment No. 36 on article 6 of the Covenant (*Right to life*) (CCPR/C/GC/R.36/Rev.7)

1. **The Chair** drew the attention of Committee members to the latest version of the draft general comment on article 6 of the Covenant (CCPR/C/GC/R.36/Rev.7). She recalled that to date, on second reading, paragraphs 1 to 8 and half of paragraph 9 had been adopted. She invited the Committee to resume its discussion of paragraph 9, on abortion.

Paragraph 9

2. **Mr. Ben Achour** said that certain comments that he had made on the subject of abortion during the discussion of the draft general comment at the meeting of 2 November 2017 (CCPR/C/SR.3439) had been misunderstood and that he wished to clarify his position.

3. His position on abortion could be summarized in three points: opposition to legislation that severely restricted the right to abortion; encouragement to States to decriminalize abortion and provide women with safe means of obtaining abortion; and allowing the mother or the parents the freedom to choose.

4. The right to abortion raised questions of a religious, philosophical, legal and ethical nature but in his view its acquisition had represented a major step forward for women inasmuch as they were no longer obliged to undergo pregnancies that were not welcome for any of a variety of reasons, such as rape, incest, fetal impairment, poverty or youth. Some legislative systems still penalized abortion or subjected it to very strict, some might say draconian, restrictions.

5. Like other members of the Committee, he was critical of legislation that endangered women's lives and compelled them to seek illegal, unsafe abortions or to have the procedure done abroad. The World Health Organization put the number of unsafe abortions carried out annually at 25 million, and they accounted for between 4.7 and 13.2 per cent of maternal deaths.

6. It was for those reasons that he called on States to decriminalize abortion and ensure that women had safe means of obtaining it, particularly where pregnancy resulted from rape or incest, or in cases of fetal impairment — and it was in the context of fetal impairment that he had cited in his comments the example of trisomy. He had the greatest respect for persons with trisomy and their families, and supported their struggle. He nevertheless wished to recall that the majority of pregnant women who learned of the presence of the syndrome opted for abortion.

7. At no point in his statement had he asserted, as some had maintained, that pre-emptive abortion of fetuses with particular conditions or impairments was to be encouraged. To do so would be to encourage eugenics, a heinous practice. The decision was one that could be taken only within the family, by the mother-to-be alone, or the parents, and it was their right to freely take that decision that he defended.

8. To his critics, he wished to say that he encouraged States first to decriminalize abortion and then to make adequate provision for safe procedures, taking into account criteria such as the stage of pregnancy. That position reflected nothing more than that expressed by the Committee in its concluding observations on the periodic reports of certain States and in its findings on relevant individual communications.

9. His statement had been exploited in the service of ideological propaganda that sought to create an emotional setting in which certain philosophical and religious beliefs would flourish. They were not beliefs that he shared, indeed he abhorred them precisely because the very principle on which they were based was at odds with the principle of human rights. Those who accused him and his colleagues of defending a "culture of death"

did not know what they were talking about. Theirs was an attitude that denied the benefits of prenatal detection and diagnosis of particular conditions and impairments.

10. For their own reasons such persons had taken part of what he had said out of context and given it an interpretation he had never intended. He regretted that such a misinterpretation should have hurt anyone's feelings and he apologized to them and their families for any pain he might have unintentionally caused them. That said, as a defender of human rights, and in the face of extremist proponents of God's rights, he wished to reassert his own right to defend the rights and autonomy of women.

11. **Mr. Shany** (Rapporteur for the general comment) proposed that the Committee should discuss, sentence by sentence, the three final sentences of draft paragraph 9. He read out the first sentence: "Nor should States parties introduce humiliating or unreasonably burdensome requirements on women seeking to undergo abortion."

12. Based on comments he had received from various third parties, including NGOs, he proposed a revised sentence that would read: "Nor should States parties introduce burdensome barriers on women and girls seeking to undergo legal abortion." Moreover, he proposed replacing the word "women" by the words "women and girls" throughout the paragraph.

13. **Mr. de Frouville** recalled the three principles guiding the Committee's work on the draft general comment, namely to avoid considerations of a general and philosophical nature, to interpret the Covenant as a living document and to draw on its own most recent jurisprudence as well as that of other human rights bodies, including United Nations treaty bodies. He said that he was not sure how the word "legal" was to be interpreted and he asked the Rapporteur to explain the thinking behind that addition. It was important to refer to "safe abortion" and, in the context of the elimination of barriers, to "effective access" to safe abortion, as the Committee had done in its concluding observations on Morocco and Colombia in 2016, for example.

14. With regard to barriers, he would like to see references to conscientious objection and to stigmatization. The former was a growing problem, to judge by recent State party reports, and it had been addressed by the Committee in its concluding observations on Poland in 2016 and Italy in 2017, for example. The Committee should also refer to the need for education and awareness-raising to combat stigmatization, as it had in recent concluding observations on Ghana and Pakistan.

15. He proposed restoring the illustrative footnotes, which had disappeared from the draft. Of particular interest were those referring to the Committee's last concluding observations on Zambia (2007), which had raised the question of how far into a pregnancy an abortion could be performed, and Panama (2008), which had dealt with the obligation to consult a doctor before obtaining an abortion.

16. **Mr. Fathalla** said that he agreed with the insertion of the word "legal". He proposed also including language to the effect that abortion should not endanger the pregnant woman's life.

17. **Ms. Cleveland**, supported by **Ms. Brands Kehris**, commended Mr. Ben Achour on his courageous and thoughtful statement. She said that the word "burdensome" was not one generally used by the Committee in referring to obstacles. She would prefer a reference to procedural barriers or legal and practical obstacles, for example. In any case, the use of the word "legal" would obviate the need for epithets such as "humiliating" or "burdensome".

18. The thrust of the sentence was to prohibit the introduction of barriers; no mention was made of existing barriers. She proposed reversing the emphasis by rewording the sentence to read: "States parties should also remove barriers that may hinder effective access to safe and legal abortion." She agreed with Mr. de Frouville: it would be important to find a way of referring to stigmatization; as to conscientious objection, wording could be lifted from the concluding observations on Poland, which referred to a "mechanism to ensure access to legal abortion in cases of conscientious objection by medical practitioners".

19. **Ms. Brands Kehris** said that the sentence should refer not only to the removal of barriers but also to the need not to introduce new barriers. The next sentence, on information and education, could be the place to mention stigmatization.

20. **Ms. Pazartzis** said that she supported the revisions proposed by the Rapporteur, but the Committee should beware of making the paragraph too long. Some of the proposals made by members were covered in the text already adopted. That was the case for the question of safe abortion, for example.

21. **Mr. Santos Pais** said that he supported the proposals made by Ms. Cleveland and Ms. Brands Kehris in respect of the text as revised by the Rapporteur.

22. **Mr. Shany** said that there was clearly a desire on the Committee's part to explicitly address the question of safety, and he agreed that the sentence as it stood did not address the question of removal of barriers. He proposed rewording the sentence to read: "States parties should not introduce new barriers and should remove existing barriers that deny effective access by women and girls to safe and legal abortion." He believed that the questions of stigmatization and conscientious objection were captured by that formulation, although the Committee might wish to go further. While it was clear that those were issues that States parties needed to address, his own inclination was to leave the sentence like that, given the length and complexity of the paragraph as it was. Moreover, the issue of conscientious objection raised its own complexities.

23. **Mr. de Frouville** said that he was not persuaded that the issues of conscientious objection and stigmatization had been captured in the paragraph as it stood. Stigmatization could certainly be dealt with in the following sentence, which dealt with education. Conscientious objection ought also to be addressed explicitly, however. The length of the paragraph should not be a factor: other issues in the general comment were covered at some length, even issues on which the Committee's praxis was not well developed. In the case of abortion, the Committee's approach was fairly firm and needed to be recorded. The Committee's position in its concluding observations was not to prevent conscientious objection to abortion, for religious reasons for example, but to recommend that States parties encourage medical practitioners to refer women to a doctor who was not a conscientious objector.

24. **Ms. Brands Kehris** said she agreed that the two issues were not yet captured in the text. She would argue strongly for stigmatization to be dealt with explicitly. It had been raised increasingly frequently, not only in concluding observations but also in dialogues with States parties. It was clear that States parties were aware of stigmatization but they tended to perceive it more as a social phenomenon than as a barrier and did not feel that they had an obligation to act. It was therefore important to highlight the issue.

25. **Ms. Cleveland** said she agreed that conscientious objection and stigmatization were important issues, but they were not the only legal and practical barriers that the Committee had come across in the course of its work. What was meant by "barriers" could be clarified by including a footnote briefly summarizing concluding observations of the Committee that illustrated the various types of barrier. She was open to the idea of addressing the issue of stigmatization in the following sentence, in relation to education.

26. **Ms. Pazartzis** said she agreed that stigmatization could be addressed in the following sentence. She also agreed with Ms. Cleveland that any particular issues the Committee wished to bring up would be best addressed in a footnote referring to the relevant concluding observations. It was important to cite the relevant jurisprudence of the Committee where possible.

27. **Mr. Muhumuza** said that conscientious objection on the part of medical professionals should not be criminalized. On the contrary, the right to object for reasons of conscience should be protected. The issue arose too often to be relegated to a footnote and should be included in the body of the text.

28. **Mr. Koita** said that, by including conscientious objection in the body of the text, the Committee would demonstrate its tolerance in that regard and would foster some degree of consensus on a very controversial issue. The text would then be better understood by a much wider public.

29. **Mr. Politi**, noting that a reference to conscientious objection in the general comment did not constitute interference with the freedom of opinion of conscientious objectors, said that such a reference should be made in a footnote explaining exactly what the Committee meant when it used the word "barriers". He too was in favour of adding language to the effect that States parties should avoid the stigmatization of women and girls who underwent abortions.

30. **Mr. Shany** said that the Committee appeared to have reached agreement on the text, but it still had to decide where it wished to include the reference to conscientious objectors. While his preference was to include it in a footnote, perhaps language could be inserted in the body of the text to the effect that States parties should remove existing barriers that denied effective access by women and girls to safe and legal abortion caused as a result of the exercise by medical providers of the right to freedom of conscience.

31. **Mr. Muhumuza** said that he was in favour of including a reference to conscientious objection in the body of the text, with a footnote clarifying the Committee's position in that regard.

32. **Mr. de Frouville**, noting that the exercise of conscientious objection was protected under article 18 of the Covenant, said that, if reference was to be made to it in the text, the Committee should refrain from inventing new language and should instead track the language upon which it had already agreed in its jurisprudence on that subject. For example, the Committee had, in a number of its concluding observations, adopted recommendations to the effect that States parties should establish quick and effective referral mechanisms for women seeking to undertake an abortion. Inserting a footnote was an acceptable solution, but it would have to clarify what kind of barriers were being referred to in the paragraph and set out the gist of the relevant concluding observations. Readers should not be required to cross-reference the general comment with concluding observations in order to understand the Committee's position.

33. **Ms. Cleveland**, supported by **Mr. Heyns**, **Ms. Brands Kehris** and **Mr. Koita**, said she agreed that, when addressing a complex issue such as conscientious objection, it was appropriate that the Committee should adhere to language it had used before. The language that she had proposed on establishing an effective referral mechanism to ensure access to legal abortion in cases of conscientious objection by medical practitioners, did just that. If the Committee decided to address the topic directly, it was important to remember that it had only ever recognized the ability to accept conscientious objection on the part of individuals, not on the part of institutions or entire regions. States parties had a responsibility to ensure that access to abortion and other reproductive health-care services was readily available through a referral mechanism that was not burdensome for women. To better track the language that the Committee had used in its jurisprudence, perhaps the wording should be amended to recommend the removal of barriers caused as a result of the exercise of conscientious objection by individual medical providers.

34. **Mr. Santos Pais**, supported by **the Chair**, said that he was sympathetic to Mr. Shany's concern to avoid making the paragraph overly long. However, what the Committee meant by "barriers" should be made clear. Perhaps the best way to do that would be to insert a footnote on conscientious objection and other barriers that the Committee had come across, as well as referencing the relevant concluding observations.

35. **Mr. Shany** said that sometimes it was not possible to lift language directly from concluding observations, as the recommendations in them tended to be country-specific. His personal preference was to insert a footnote, but he could agree to insert the language proposed by Ms. Cleveland in the body of the text.

36. **Mr. Politi** said that his personal preference was to insert only a footnote. He would also prefer to see the issue of stigmatization addressed in the paragraph.

37. **Ms. Pazartzis** said she agreed that the recommendations made in concluding observations were country-specific, while general comments addressed a much wider audience. Including conscientious objection in the text while relegating other barriers to a footnote could be perceived as giving precedence to some issues over others. She therefore

thought that it would be best to take a cautious approach and insert only a footnote with references to the specific issues that Committee members wished to mention.

38. **Mr. Shany** said he took it that the Committee agreed with the proposal made by Ms. Cleveland. Ms. Pazartzis was right in suggesting that the Committee might be seen to be highlighting certain issues more than others. That was why it would be useful to have a footnote describing other barriers, showing that conscientious objection was just one of many. Summing up the discussion, he said that the amended sentence would read: "States parties should not introduce new barriers and should remove existing barriers that deny effective access by women and girls to safe and legal abortion, including barriers caused as a result of the exercise of conscientious objection by individual medical providers."

39. **Mr. de Frouville**, supported by **Ms. Pazartzis**, said that, according to its normal procedure, the Committee should receive a written copy of the draft general comment complete with footnotes. That was particularly important in the case at hand, given the need to clarify what the concluding observations in the proposed new footnote would refer to.

40. **Mr. Shany** said that a draft of the general comment, complete with footnotes, was available in English on the website of the Office of the United Nations High Commissioner for Human Rights. He would update that draft in the light of the Committee's discussion. Although the paragraph itself would be adopted at the present meeting, the Committee would have a chance to discuss the footnotes at a later stage.

41. After reading out the penultimate sentence of the paragraph — "The duty to protect the lives of women against the health risks associated with unsafe abortions requires States parties to ensure access for women and men, and, in particular, adolescents, to information and education about reproductive options, and to a wide range of contraceptive methods" — he drew attention to three amendments proposed by third parties. The first was to insert "adequate" before "information" and the second was to insert "effectively" before protect. The third proposal, submitted by Australia, was to redraft the sentence as follows: "States parties should ensure access for women and men, and, in particular, adolescents, to adequate information and education about reproductive options and to a wide range of contraceptive methods in order to effectively protect the lives of women against the health risks associated with unsafe abortions."

42. **Mr. Fathalla** proposed adding language to the effect that legal abortions should not endanger the lives of pregnant women.

43. **Ms. Cleveland** said that the issue of unsafe abortion was addressed in the sentences of the paragraph adopted by the Committee at its previous session. There were several references to not putting the life and health of women at risk and to the duty to ensure that women and girls did not have to undertake unsafe abortions. She supported the reformulation proposed by Australia, but preferred the term "quality and evidence-based information" to "adequate information", as views on what constituted adequate information might differ. Furthermore, it would be more consistent with the Committee's jurisprudence to talk about "sexual and reproductive health", rather than "reproductive options", and to clarify that contraceptive methods should be affordable. Lastly, reference should be made to protecting the lives not only of women, but also of girls.

44. **Ms. Brands Kehris** said that she supported the new wording proposed by Australia as amended by Ms. Cleveland. She proposed clarifying that the lives of women should be protected from "mental and physical" health risks and adding language to the effect that States parties should take measures to counter stigmatization through education and awareness-raising. Both proposals drew on the Committee's jurisprudence.

45. **Mr. de Frouville** said that he supported Ms. Cleveland's proposal, especially her idea to refer to "quality and evidence-based information". In a number of its concluding observations, the Committee had addressed the fact that the information provided to pregnant women in some States parties could be biased and designed to discourage them from opting for abortion. Rather than sexual and reproductive health options, the sentence should make reference to sexual and reproductive health rights. He supported Ms. Brands Kehris's proposal to address the issue of stigmatization, which had been touched upon in a number of recent concluding observations. Although it was true that some concluding

observations were very country-specific, when considered together they revealed that certain problems were shared by several countries and deserved to be addressed in a more general manner.

46. **Mr. Ben Achour** said that he had no problem qualifying "information" as "appropriate" or "adequate". He agreed that reference should be made to girls as well as women. The introduction of the word "adolescents" might raise more problems than it solved, as it gave rise to questions regarding the definition of adolescence, on which the Committee might have diverging opinions. Even if the Committee agreed on a definition, adolescents did not need to be addressed specifically; perhaps it should avoid any mention of them so as to avoid an unnecessary debate.

47. **Ms. Waterval** said that she supported the sentence structure proposed by Australia, as amended orally by Ms. Cleveland.

48. **Mr. Fathalla** said that, as it was currently structured, the paragraph did not adequately address his concern, which related to the health risks associated with the abortion procedure itself, regardless of any legal restrictions placed on the practice. He would be in favour of retaining the word "adolescents".

49. **Mr. Santos Pais** said that he, too, supported the Australian proposal, as well as various Committee members' proposals to amend it so that it would read: "States parties should ensure access for women and men, and, in particular, adolescents, to quality and evidence-based information and education about sexual and reproductive health and to a wide range of affordable contraceptive methods in order to effectively protect the lives of women and girls against the mental and physical health risks associated with unsafe abortions."

50. **Mr. de Frouville** said that, according to the World Health Organization, over 20 million unsafe abortions took place each year, resulting in the deaths of over 45,000 women. Although legal abortion was not generally associated with health risks, the Committee should avoid establishing an obligation to ensure that legal abortions did not pose any health risks at all.

51. **Mr. Shany** said that there seemed to be general support within the Committee for the sentence structure proposed by Australia and for Committee members' proposals as just read out by Mr. Santos Pais. It seemed to him that the sentence already addressed Mr. Fathalla's concern, as it did not make the obligation to protect the lives of women and girls against the health risks associated with unsafe abortions dependent on the legal status of abortion in a particular jurisdiction. In his view, it would be preferable not to include a reference to sexual and reproductive "rights", as proposed by Mr. de Frouville, since its inclusion would doubtless give rise to lengthy debates within the Committee. He would appreciate further guidance regarding the proposals to replace or keep the word "adolescents" and the proposal to incorporate an obligation to prevent the stigmatization of women seeking abortion.

52. **Mr. Fathalla** said that, as it was currently structured, the paragraph established a link between the obligation to protect the lives of women and girls against the health risks associated with unsafe abortions and the obligation to ensure their access to information. His concern was that abortions, particularly those carried out at a late stage, posed intrinsic health risks that bore no relation to access to information.

53. **Mr. Politi** said that he was in favour of retaining the word "adolescents" and incorporating an obligation to prevent stigmatization.

54. **Mr. Ben Achour** said that "adolescents" should be replaced with a less ambiguous word. One possible alternative was the word "minors", which had a clear, age-dependent legal definition.

55. **Ms. Cleveland** proposed that the word "adolescents" should be replaced with "boys and girls", which was a formulation that the Committee often used and that made explicit that male children were included alongside female children. She supported the proposal to incorporate an obligation to prevent the stigmatization of women and girls seeking abortion. However, women and girls seeking illegal abortions should also be protected under that

obligation. In its concluding observations, the Committee did not usually draw a distinction between legal and illegal abortion in the context of the obligation to prevent stigmatization. The Committee's concluding observations on the initial report of Pakistan offered one such example.

56. **Mr. de Frouville** said that he would prefer to replace the word "adolescents" with "girls and boys". He supported the proposal to ensure that women and girls who sought illegal abortions were also protected under the obligation to prevent stigmatization. With regard to Mr. Fathalla's concern, he wished to note that, in jurisdictions in which late termination of pregnancy was permitted, it was generally permitted only on medical grounds with the aim of protecting the life of the mother.

57. **Ms. Pazartzis** said that, with regard to the proposal to include an obligation to prevent stigmatization, she would prefer to see a text before giving her opinion.

58. **Mr. Shany** reminded the Committee that it had discussed a text on stigmatization earlier in the debate. He could agree to replace the word "adolescents" with "girls and boys". To address Mr. Fathalla's concern, he proposed that the sentence should be divided into two sentences, such that the protection of the lives of women and girls and access to information were dealt with separately. He would be in favour of specifying that only women and girls seeking legal abortion were covered by the obligation to prevent stigmatization. In the light of the various amendments proposed by Committee members, the new version of the penultimate sentence would read: "States parties should effectively protect the lives of women and girls against the mental and physical health risks associated with unsafe abortions. To this end, they should ensure access for women and men, and, in particular, girls and boys, to quality and evidence-based information and education about sexual and reproductive health, and to a wide range of affordable contraceptives, and prevent the stigmatization of women and girls seeking legal abortion."

59. **Mr. Fathalla** suggested that the words "To this end" should be deleted, as they preserved a link between the protection of the lives of women and girls and their access to information.

60. **Ms. Cleveland** proposed that, in order to bring the text into line with the Committee's recent concluding observations, the obligation to prevent the stigmatization of women and girls seeking abortion should not be made dependent on the legal status of abortion in a particular jurisdiction.

61. **Ms. Brands Kehris** supported Ms. Cleveland's proposal, adding that stigmatization was a social process and was independent of the legal status of abortion.

62. **Mr. de Frouville** said that, in its concluding observations on the initial report of Burkina Faso and the initial report of Ghana, the Committee had not restricted the obligation to prevent the stigmatization of women and girls seeking abortion to an obligation to protect only those seeking legal abortion. Language used in the Committee's recent concluding observations could usefully have been incorporated into the text of the draft general comment.

63. **Mr. Shany** said that Mr. Fathalla's concern could be addressed by replacing the words "To this end" with "In particular". He accepted the proposal not to limit the obligation to prevent the stigmatization of women and girls to those seeking legal abortion.

64. **Mr. Fathalla** said that the Rapporteur's proposed solution adequately addressed his concern.

The meeting was suspended at 11.55 a.m. and resumed at 12.10 p.m.

65. **Mr. Shany**, after reading out the last sentence of the paragraph — "States parties must also ensure the availability of adequate prenatal and post-abortion health care for pregnant women" — said that he had received only one proposed change, namely to delete the words "for pregnant women". He had no strong opinion on that proposal.

66. **Mr. de Frouville** said that, although the Committee's concluding observations were necessarily specific to the situation in a particular State party, they often contained language that reflected the Committee's general positions. He therefore proposed that the

sentence should include an obligation for States parties to ensure that women and girls had access to quality services for the management of complications arising from unsafe abortions and that they received immediate and unconditional treatment. The inclusion of such language would bring the sentence into line with the Committee's concluding observations on the initial report of Burkina Faso and the second periodic report of Namibia.

67. **Ms. Pazartzis** proposed replacing the word "must" with "should".

68. **Ms. Cleveland** said that prenatal and post-abortion health care should be available regardless of the legal status of abortion in a particular jurisdiction. She supported the additional language proposed by Mr. de Frouville, and proposed replacing the word "adequate" with "quality" and specifying that such health care should be universally available, in all circumstances.

69. **Ms. Brands Kehris** said that she supported Ms. Cleveland's proposal to replace the word "adequate" with "quality" and agreed with the proposal to delete the reference to pregnant women, as women in need of post-abortion health care were no longer pregnant. She proposed replacing the words "the availability of" with "effective access to".

70. **Mr. Santos Pais** said that he supported the proposals put forward by Ms. Cleveland and Ms. Brands Kehris. In addition, he proposed inserting the words "and girls" after "women".

71. **Mr. Shany** said that he would replace "the availability of" with "effective access to" and replace "adequate" with "quality". He suggested replacing "pregnant women" with "women and girls in all circumstances". With regard to the language from concluding observations that Mr. de Frouville proposed to introduce, he found it highly specific to the situation in Burkina Faso and Namibia. Moreover, it was not clear to him that such detailed language on the medical complications arising from unsafe abortions had any place in a general comment on the right to life.

72. **Mr. Ben Achour** said that he supported Ms. Cleveland's proposals. He agreed that the Committee's general comments should in some sense stand apart from the rest of its work. They were not simply compilations of paragraphs drawn from the Committee's recent concluding observations. Indeed, such an interpretation of the role of general comments could be detrimental to the Committee's work as a whole, as there was a risk of privileging the Committee's concluding observations over its Views on individual communications.

73. **Mr. Fathalla** said that he supported the proposal to replace the word "must" with "should". Some States were simply not economically capable of ensuring the availability of quality prenatal and post-abortion health care in all circumstances.

74. **Mr. de Frouville** said that the adoption of general comments gave the Committee an opportunity to codify its practice, as developed in both its concluding observations and its Views on individual communications. The Committee's general comments should be anchored in practice. Nothing prevented the Committee from taking advantage of the process of drafting a general comment to clarify its position on a particular issue. In his view, the Committee's general comments should reflect its most recent jurisprudence as far as possible. However, he would not insist on the inclusion of language drawn from the Committee's concluding observations on the initial report of Burkina Faso and the second periodic report of Namibia.

75. He wished to stress the need for confidentiality in the provision of prenatal and post-abortion health care for women and girls.

76. **Ms. Pazartzis** said that if her proposal to use "should" instead of "must" was accepted, she would not object to introducing the idea of "effective access", as proposed by Ms. Cleveland.

77. **Mr. Fathalla** said that he was opposed to replacing "availability" with "effective access" because that would presuppose the existence of the necessary facilities, whereas not all countries had such facilities. However, a reference to effective access could perhaps be inserted elsewhere in the text.

78. **Ms. Cleveland** said that general recommendations should be based on the obligations of the article under consideration, and not on the availability of resources in specific contexts. She therefore stood by her proposal. She agreed with Mr. de Frouville that there was a need for confidentiality in the provision of prenatal and post-abortion health care, as the associated services needed to be available regardless of their legality. Throughout the paragraph, "should" had been used in contexts considered to denote a legal obligation; the paragraph should thus not be understood as a parsing of the difference between "should" and "must". In the present case, she supported retaining "must" because that was the word used in the draft general comment submitted to States parties during the first reading.

79. **Mr. Politi** said he agreed with Mr. de Frouville that the Committee had a duty to ensure that general comments reflected developments in the Committee's jurisprudence. He also believed it was important to refer to health care in all circumstances, regardless of legality. The question of "must" versus "should" was an issue which came up regularly; in the case at hand, his preference was to retain "must".

80. **Mr. Santos Pais** said that, given the importance of confidentiality in the field of prenatal and post-abortion health care, he supported including a reference to it.

81. **Mr. Shany** said he agreed that developments in the Committee's jurisprudence needed to be reflected in the general comment, but there appeared to have been few such developments since the first draft of the text had been published. Introducing additional elements to the final sentence made it more difficult to use stronger language to describe the nature of the obligation involved. He thus recommended using "should" and proposed that the final sentence should read: "States parties should also ensure the availability of quality prenatal and post-abortion health care for women and girls in all circumstances on a confidential basis."

82. **Ms. Brands Kehris**, supported by **Mr. de Frouville**, said that if "should" replaced "must", the reference to "effective access" should be retained in order to compensate for the softening of the obligation.

83. **Ms. Pazartzis** said that, as she understood it, qualifying the health care available as "quality" resolved the issue raised by Ms. Brands Kehris; she thus supported the wording proposed by the Rapporteur.

84. **Mr. Koita** said that he wondered whether the debate on "should" versus "must" could be tempered by the consideration that the general comment served primarily as guidance on the preparation of State party reports.

85. **Mr. Santos Pais** said that he supported the wording proposed by the Rapporteur, since the specification "in all circumstances" resolved the problem entailed by the lack of a reference to effective access.

86. **Mr. Shany** said that Mr. Fathalla's concern about replacing "availability" with "effective access" could perhaps be addressed by retaining both concepts. In that light, and in view of other Committee members' comments, he proposed the following wording for the final sentence of paragraph 9: "States parties should also ensure the availability of, and effective access to, prenatal and post-abortion health care for women and girls in all circumstances on a confidential basis."

87. *Paragraph 9, as amended, was adopted.*

Paragraph 10

88. **Mr. Shany** said it was commonly understood that the existence of a right entailed the freedom not to exercise it; the first sentence of the paragraph thus served to explain why suicide was included in a text on the right to life. The apparent contradiction between the right to life and the regulation of suicide had generated much discussion among Committee members; however, there had been very limited resistance to the first sentence among stakeholders. Australia had emphasized that international law imposed no positive duty on States to prevent suicide; he believed that the State party's concern was adequately

addressed in the second sentence, which recommended that States should take adequate measures "without violating their other Covenant obligations".

89. Amnesty International wished to reintroduce the phrase "limiting access by suicidal individuals to firearms", which had been included in a Rapporteur's draft of the text but which had been subsequently deleted. The Committee could reinsert the phrase if it wished, but he preferred not to do so, as it was too specific for a general text. In a similar vein, various stakeholders had submitted proposals dealing with assisted decision-making for individuals, which was also too complex an issue for a general comment.

90. The United Kingdom had proposed a number of minor language changes which he was inclined to accept, although he was reluctant to accept its suggestion to replace "adults" with "patients", as that would raise the question of assisted suicide of minors. He also supported a proposal to describe the mediation of medical professionals in the termination of life as assistance rather than facilitation, and to qualify physical or mental pain and suffering as "unbearable" rather than "severe".

91. Although there had been much criticism of the reference to facilitating the termination of life, that did not mean that the third sentence had to be omitted entirely. He agreed with the majority of stakeholders that "may allow", in that sentence, was a better choice of words than "should not prevent", in reference to the provision of medical treatment to facilitate the termination of life.

92. Switzerland had proposed deleting the word "catastrophically" before "afflicted adults" in the third sentence. He did not support that proposal. To delete the word would convey the message that certain lives were not worth living, an idea which persons with disabilities and other stakeholders found troubling.

93. **Mr. Fathalla**, supported by **Ms. Pazartzis**, said that, in paragraph 10, the only sentence dealing with the right to life was the second one. As the topic at hand was the right to life and not the right to die, the context was not appropriate for a discussion of the latter.

94. **Mr. Heyns** said that the structure whereby the first sentence provided an explanation for the inclusion of the second sentence was not one used anywhere else in the draft general comment. For that reason, he would not insist that the first sentence should be retained.

95. **Mr. Ben Achour** said that a discussion of life necessarily entailed discussing the negation of life. The Committee was defending the right to a life of dignity, and he thus supported retaining the part of the first sentence which acknowledged the central importance to human dignity of personal autonomy. He also supported the substance of the remainder of that sentence, but it could perhaps be modified, particularly in the French version of the text, to ensure its meaning was clear.

96. **Mr. de Frouville**, supported by **Ms. Pazartzis**, said that he was absolutely against making any philosophical pronouncements; the Committee's role was to set out guidance on legal matters. He was in favour of deleting any reference to assisted suicide because the Committee had no experience in that area.

97. **Ms. Cleveland** said that even though the Committee did not normally provide explanatory introductions such as the one in the first sentence, she supported that atypical approach in the case at hand. She also agreed with the points made by Mr. Ben Achour.

98. **Mr. Santos Pais** said that he, too, agreed with Mr. Ben Achour. He would also retain the first part of the first sentence because it was vital to the understanding of the rest of the paragraph.

99. **Mr. Ben Achour**, speaking on a point of order, said that, at previous sessions, he had asked for copies of draft general comments to be distributed in both French and English to all Committee members; he would like to reiterate that request.

100. **The Chair** said she hoped that, for the next session, the secretariat would ensure that the Committee was provided with paper copies in English and French of the draft provisionally adopted on first reading, as well as paper copies of the text as amended at the current session, also in English and French as a minimum.

101. **Mr. Fathalla** said that he wished it to be noted that he did not support the inclusion in the paragraph of a sentence beginning with the words “For example”. General comments should not include examples.

The meeting rose at 1.05 p.m.