

DEMOCRATIC REPUBLIC OF THE CONGO

CCPR A/42/40 (1987)

256. The Committee considered the initial report of Zaire (CCPR/C/4/Add.10) at its 734th, 735th, 738th and 739th meetings, on 8 and 10 July 1987 (CCPR/C/SR.734, 735, 738 and 739).

257. The report was introduced by the representative of the State party who said that Zaire had an extensive body of laws relating to human rights, which were being effectively implemented by the authorities, but that his country was striving to achieve an even higher level of protection of such rights. However, the country's size, its economic development problems, and the weight of custom, particularly in relation to the status of women, made progress in that area rather difficult. Despite such obstacles, there was a sound legal basis for the protection of fundamental rights and freedoms, comprising both a written Constitution, title II of which reflected almost all the rights covered in the Covenant, and a variety of laws.

258. The Constitution also envisaged the establishment of an appropriate institutional framework at various levels to protect individual rights, including a system of independent courts and tribunals, which had been progressively established. Recently, two new departments had been created - the Department of Women's and Family Affairs and the Department of Citizens' Rights and Freedoms, where all the various human rights related functions had now been concentrated. On 1 July 1987, the latter Department had established a committee, comprised of ministers, magistrates and lawyers, for the specific purpose of monitoring Zaire's compliance with its obligations under the International Covenants on Human Rights, preparing periodic reports required under the Covenants as well as responses to alleged violations and recommending measures to give effect to human rights instruments to which Zaire was a party. In addition to governmental organs, private organizations also participated in the protection of human rights in Zaire.

259. Members of the Committee expressed regret over the delays experienced in regard to the submission of Zaire's report and noted that the report, as submitted, contained a number of omissions, particularly with respect to the actual implementation of the Covenant. At the same time, they considered that the report reflected a genuine effort on the part of the authorities to provide information about the legal situation in Zaire and about the implementation of certain articles of the Covenant. They also welcomed the presentation of the report and the presence of the delegation as a demonstration of the State party's readiness to establish a constructive dialogue with the Committee.

260. With regard to article 2 of the Covenant, members requested clarification of the status of the Covenant in relation to domestic law. They asked whether the provisions of the Covenant in fact took precedence over domestic law, as noted in article 109, paragraph 5, of the Constitution and, if so, whether a legal provision contradicting a provision of the Covenant, such as article 8 of the Decree mentioned in paragraph 247 of the report, which clearly discriminated against women, could be challenged in court, whether there was a judicial body competent to deal with such contradictions and whether it was possible for a citizen to invoke a provision of the Covenant directly in court.

Referring to the statement in the report regarding the existence of customs which were contrary to some of the provisions of the Covenant, one member requested further information as to the customs that posed the greatest obstacles to progress in implementing the Covenant.

261. Members also requested further clarifications concerning non-discriminatory treatment and equality before the law regarding persons other than citizens of Zaire, noting in that connection that the provisions of articles 12 and 31 of the Constitution were somewhat ambiguous and did not seem to accord fully with article 2, paragraph 1, and article 26 of the Covenant. It was also asked why discrimination on the basis of political opinion, which was prohibited under those two articles of the Covenant, was not also prohibited under article 12 of the Constitution. Regarding remedies, covered under article 2, paragraph 3, of the Covenant, one member requested clarification of the procedure for challenging the constitutionality of a law before the Supreme Court of Justice, including the question of who was entitled to bring such action and the extent of the powers of the court. It was also asked, in connection with paragraphs 35 and 36 of the report, whether it was possible through recourse to administrative procedures to halt a violation or only to obtain compensation, and whether an individual could challenge an administrative act that had violated his rights. Additional information concerning the powers and role of the newly established Department of Citizens' Rights and Freedoms was also requested; it was asked whether citizens could lodge complaints with that Department, whether the Department could bring suit before the courts on behalf of citizens whose rights had allegedly been violated, how many and what kind of complaints had been filed with the Department and how they had been resolved.

262. Regarding article 3 of the Covenant, members of the Committee noted the State party's intention to eliminate all discrimination against women and requested full details concerning the progress being made to that end. They hoped, in particular, that the new Family Code would help remove some of the obstacles to the emancipation of women that were based on traditions and practices that had kept them in a position of inferiority to men. In that connection, they asked specifically whether the new Code would eliminate the discriminatory treatment of women in some cases. One member also wished to receive information concerning the proportion of women in schools, universities, the public service, the liberal professions and public life.

263. With regard to article 4 of the Covenant, members of the Committee wished to know whether any legislation relating to the proclamation of a state of siege or emergency existed in Zaire other than the constitutional provision empowering the President of the Republic to make such a proclamation. They also wished to know whether the legislature had the power to limit the duration of a state of siege or emergency. One member asked whether a state of emergency had been proclaimed in the past and whether the situation in Shaba, in particular, had led to such action recently. Several members expressed surprise that the right to life, guaranteed by article 6 of the Covenant, was not included under article 52 of the Constitution among the fundamental rights from which no derogation was permitted during a state of siege or emergency.

264. With regard to article 6 of the Covenant, members asked for information and statistical data covering the past five years concerning the number of death sentences that had been pronounced by the courts in Zaire, the reasons for such sentences and the number of executions, grants of amnesty, reprieves and commutations of sentence.

265. With reference to article 7 of the Covenant, members referred to reports alleging the use of torture, particularly at military detention centres and the premises of the national police (*gendarmerie nationale*) and the National Documentation Agency. They asked, in that connection, whether such places of detention were subject to supervision by higher authorities. One member requested a detailed explanation of the situation in Zaire with regard to the alleged practice of torture and wished to know whether such incidents were isolated or represented a systematic effort at repression. Noting from paragraph 95 of the report that members of a former military intelligence service had been prosecuted for having resorted to torture, another member wished to know whether that service had been definitively dissolved or merely replaced by a different intelligence service with analogous functions.

266. In connection with articles 8, 9 and 10 of the covenant, members noted that labour “voluntarily accepted by the community concerned” was not covered by the prohibition against forced labour under Act No. 67-130. They wished to know, in that regard, what was meant by the term “community concerned”, how such decisions concerning community labour were taken, and whether such decisions could be contested by an individual. Additional information was also requested concerning provisions designed to prevent arbitrary or prolonged detention, the maximum period of preventive custody and pre-trial detention, the basis for decisions relating to administrative detention, the detention of persons without trial on grounds of political opinion, and the functions of the joint control commission, mentioned in paragraph 106 of the report, which supervised the activities of the criminal police in respect of ordinary courts. Concerning the treatment of detainees, members wished to know whether the police and the armed forces as well as prison guards were informed about the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Code of Conduct for Law Enforcement Officials and the Standard Minimum Rules for the Treatment of Prisoners. They also wished to have further information concerning regulations governing visits to prisoners and detainees by family members and lawyers. One member wondered how often prison inspections were carried out, by whom and with what results.

267. In relation to article 12 of the Covenant, questions were raised by members as to the nature of banishment under Zairean law.

268. Members noted, in connection with article 14 of the Covenant, that under article 46 of the Constitution the President of the Republic was the guarantor of the independence of the judiciary, but they wished to know whether there were any objective guarantees in that regard, such as provisions relating to security of tenure and the judicial career system. Referring to the fact that, despite the prohibition of special tribunals under article 16 of the Constitution, there existed in Zaire both a State Security Court and special military tribunals, one member wished to know whether such tribunals were considered to have ordinary jurisdiction and whether they were competent to judge offences committed by civilians. With respect specifically to the State Security Court, another member asked for details about its composition, functions and practical operations and wished to know why the decisions of that Court could not be appealed. He also requested clarification as to why no provision had been made for compensating the victims of wrongful imprisonment, as provided in article 14, paragraph 6, of the Covenant. Members also sought information concerning the right to defence, including the right to the presumption of innocence, as provided in article 14, paragraph 2, of the Covenant, and asked whether accused persons were provided with legal

assistance if they could not afford to hire defence counsel.

269. With reference to article 17 of the Covenant, members asked whether article 22 of the Constitution guaranteed the inviolability of the home to Zairean citizens only or also to foreigners. One member considered that articles 136 and 150 (h) of the Penal Code might be used arbitrarily or only for the benefit of certain individuals. Another member, referring to article 75, paragraph 4, of Law No. 344, wondered how it was possible to determine whether sealed correspondence between detainees and their lawyers was actually for the addressees except by opening the letters and examining their contents. Such a practice, however, appeared to violate not only the right to secrecy of correspondence but the right to a fair trial and the right of defence.

270. Regarding article 18 of the Covenant, it was asked how churches or religious sects could obtain legal status. With reference to paragraph 211 of the report, clarification was requested of the term “under the authority” of the People’s Movement for the Revolution (MPR), which seemed to inhibit parents’ freedom to provide for their children’s religious education.

271. With reference to article 19 of the Covenant, members of the Committee noted that, under articles 32 and 33 of the Constitution, MPR was the only political movement in the country and that all citizens of Zaire were automatically its members, and expressed doubt as to whether such a provision was in conformity with articles 19 and 22 of the Covenant. In that same connection, members wondered whether it was possible within MPR to express different ideas or opposing views and how peaceful dissent from the MPR position was treated. Referring to paragraph 213 of the report, members asked for further information concerning restrictions on freedom of expression and asked whether the Constitution afforded any remedies in cases where the right to freedom of expression had been violated. It was also asked whether a person accused of disseminating false and harmful rumours, pursuant to article 199 of the Penal Code, could seek to defend himself on the grounds that he believed the information to have been correct. One member considered that article 191 of the Penal Code limited the possibility of communication between Zaireans and foreigners and asked for details concerning legal precedents in that regard, including examples of cases where that provision had actually been applied. It was asked whether articles 2 and 9 of the Penal Code, relating to the dissemination of harmful information from foreign sources, had been invoked in the recent past.

272. Concerning the Musical Censorship Commission, established by Decree of the State Commissioner for Justice in 1967, members wished to have examples and further clarifications as to the functions of that Commission as well as a justification of the necessity for the censorship of music.

273. Noting in connection with article 22 of the Covenant, that the parliamentarians representing the Union for Democracy and Social Progress (UDPS) had returned from banishment, members asked for information about the fate of the rank and file members of that party. It was also asked whether there were any legal provisions restricting the right to freedom of association of foreigners.

274. Concerning article 27 of the Covenant, members expressed the view that, even if, as stated in paragraph 306 of the report, there were no problems in Zaire relating to religious, linguistic or ethnic minorities, it was none the less necessary for the Committee to have additional information concerning the composition of the Zairean population and they asked that relevant data be provided

in that regard.

275. Finally, members noted that the Committee had examined a communication under the Optional Protocol to the Covenant involving Zairean nationals and in its final views ^{9/} had considered that a number of rights guaranteed under the Covenant had been violated. Further noting that the Government of Zaire had not extended its co-operation to the Committee at any stage of those proceedings, members expressed the hope that in the future it would be possible to count on co-operation in regard to such matters from the newly established Department of Citizens' Rights and Freedoms. They also hoped that the State party would be prepared to comment on the final views by the Committee and would be in a position to inform it of measures that might have been taken to give effect to the Committee's views in that case.

276. Responding to questions raised by members of the Committee under article 2 of the Covenant, the representative of the State party reaffirmed that the civil and political rights recognized in the Covenant were protected by the Constitution of Zaire. A document providing information on human rights was currently being prepared and would be circulated among the population. Competence for deciding the issue of constitutionality was vested in the Supreme Court of Justice. Although the Constitution was silent as to the procedures for bringing an action of unconstitutionality before that Court, in principle any interested party could do so. The legal system of Zaire reflected a combination of customary law, laws inherited from the colonial period and more recent legislative acts. At the base of the hierarchical structure were "peace tribunals" (tribunaux de paix) followed by the courts of first instance, courts of appeal and, finally, the Supreme Court of Justice. The latter consisted of 9 to 15 councillors, presided over by a First President. The court was divided into legal, administrative and legislative sections. In addition to its competence for reviewing the constitutionality of laws, the Court was empowered to hear appeals against decisions of the courts of appeal and lower courts and to judge high public officials such as ministers or state commissioners. Appeals against administrative decisions of local (regional) authorities could be brought before a court of appeal, but the effective enjoyment of that right was seriously hampered by the distance that often separated the potential victim from the court of appeal. The representative acknowledged that the Constitution, in guaranteeing certain rights, referred to Zairean citizens, but he pointed out that did not exclude foreigners from enjoying equal rights and equality before the law. In fact, article 31 of the Constitution specifically extended such protection to foreigners except for rights excluded by law, such as the right to stand for election to public office.

277. Regarding the role and functions of the newly established Department of Citizens' Rights and Freedoms, the representative explained that the Department was responsible for handling complaints

^{9/} See Official Records of the General Assembly, Forty-first Session, Supplement No. 40 (A/41/40), annex VIII A and D (communications Nos. 138/1983, Ngalula Mpandanjila et al v. Zaire, and 157/1983, André Alphonse Mpaka-Nsusu v. Zaire).

from citizens who alleged that they had been injured by judicial, administrative or other governmental decisions, including decisions taken by the Supreme Court. The Department comprised several specialized services, including those dealing with complaints of a legal, administrative, political or international character. At the community or district level, the Department had established offices headed by a principal delegate, who was not necessarily a

lawyer, assisted by two lawyers. Complaints that appeared to be well-founded were forwarded by the local offices to the Department, where a final decision was taken. Decisions taken in favour of a complainant had to be applied by the organs or individuals found to have been at fault, failing which the Department could bring the matter before the Permanent Disciplinary Commission established by the Central Committee of MPR or even directly to the President of the Republic. To date some 500 complaints have been received, but as yet few decisions had been taken since the Department was still in the process of organizing itself. The public had been amply informed about the role and functions of the Department.

278. With respect to the equality of sexes, the representative of the State party explained that it was not possible, unfortunately, to change discriminatory customs and traditions, which in the case of some tribes had an almost sacred character, by a stroke of the pen. The new Family Code would undoubtedly lead to some improvements but the force of custom was simply too strong to be ignored. It was also important to bear in mind that in urban areas women were more economically and socially advanced, whereas in the rural areas it was much more difficult to improve their status. Nevertheless, considerable progress had been made in educating women, who now held from 15 to 25 per cent of the 70,000 higher education diplomas in Zaire. A legal reform commission was currently reviewing both the penal and civil aspects of the rights of women, including such matters as conjugal obligations and the relationship between spouses.

279. Referring to questions concerning the state of emergency, the representative said that, despite severe political difficulties, Zaire had not once declared a state of siege or emergency since 1965.

280. Regarding article 7 of the Covenant, the representative stressed that torture, in the sense of the use of violence to extort information from a detainee, was not practised in his country, and if it had been used, the authorities had had no knowledge of it. The International Committee of the Red Cross had always had access to the places of detention where torture had allegedly been practised, but had found no proof of illegal practices. The non-governmental organization that had made a number of allegations in that regard had been invited several times to visit the country and to observe the situation with respect to the practice of torture, but had not yet done so. Clearly, the use of violence in places of detention was wrong and had to be prohibited. Those found guilty of mistreating detainees had already been severely punished and the representative expressed confidence that there were no places in Zaire where torture was practised systematically.

281. Referring to questions relating to article 8 of the Covenant, the representative noted that the Constitution prohibited forced labour. The only type of compulsory labour permitted, apart from that relating to military service or to criminal convictions, was occasional participation in public works activity ordered by the local authorities, resulting from the community's legal or civic obligations, or work associated with natural disasters, such as fires or floods.

282. Responding to questions concerning liberty and security of person and the treatment of detainees, the representative of the State party said that the maximum period of preventive custody (*garde à vue*), generally under the control of the criminal police who assisted the public prosecutor, was 24 hours.. Detention for a longer period was punishable as an abuse of power. Pre-trial detention, which could be ordered only by a magistrate, was for a maximum period of 15 days but the period could be extended at the judge's discretion. Such detention could be appealed. The Joint

Control Commission established in 1984 to monitor the activities of the criminal police was composed of six persons and had been experiencing some practical difficulties in carrying out its duties.

283. Regarding the questions raised with respect to article 14 of the Covenant, the representative noted that while the President was the guarantor of the independence of the judiciary, such independence was also ensured by the Code concerning the judiciary. The posting of judges depended on the needs of the service and transfers were not used as a means of exercising improper pressure on judicial decisions. In view of the severe shortages of judges in the country, transfers were frequent and much reliance was placed on itinerant judges. The State Security Court was responsible for dealing with cases relating to internal and external security and, until recently, with infractions involving precious materials, such as diamonds or cobalt. Members of that Court had to be of particularly high moral character and ability and had to possess degrees in law. Neither that Court nor the military tribunals were special tribunals. The latter were regular courts whose competence extended to military matters and to military personnel. However, they could also try civilians who were involved in an offence together with military personnel or if their offence related to the military, such as the theft of munitions.

284. Concerning the right to privacy, the representative stressed that the law provided strict punishment for all violations of the inviolability of the home. The law did not envisage any case in which violations of the secrecy of correspondence could be authorized and if anyone violated that right he was punished. That was also true of the right to secrecy of correspondence of detainees with their lawyers. However, in certain cases, such as when clandestine messages or communications between prisoners and lawyers were intercepted, the authorities had to act, even if the correspondence in question was addressed to a lawyer. Articles 136 and 150 (h) of the Penal Code reflected the tradition that elders and those in authority should be treated with respect.

285. With regard to questions relating to freedom of religion, the representative explained that a new religious sect could acquire legal status upon payment of a nominal fee and after furnishing proof that its doctrines were different from those of existing sects and that its leaders possessed appropriate theological credentials. The proliferation of religious groups in Zaire had reached such proportions by 1978 that the President of the Council of the Judiciary had found it necessary to order the dissolution of 400 such sects. Religious congregations were able to establish schools, pursuant to Act No. 86-005 of 22 September 1986, and parents were entirely free to decide how their children were to be educated. There was no religious discrimination in the schools, where only the content of the syllabus was subject to control and not the religion taught. The reference to the "authority" of MPR in that context meant only that schools operated by the various religious groups were under an obligation to follow the existing curriculum.

286. Responding to questions raised by members of the Committee in connection with article 19 of the Covenant, the representative of the State party explained that the people of Zaire had chosen the social and political organization of the country freely, in accordance with their right to self-determination. The concept of MPR was evidently different from that of the traditional concept of a "party", as understood either in the Western countries, where political pluralism was considered to be a pre-condition of democracy, or in the socialist countries, where the party was seen as an advance guard with a necessarily limited membership. Based on their own political experience, the

people of Zaire had decided that the best way to organize their society was to unite all elements of society within a single political institution. The rights guaranteed under the Covenant could be as effectively ensured and protected under such a system as under any other. The enjoyment of those rights was also fully compatible with “Mobutisme”, which had to be understood simply as the thoughts, actions and teachings of President Mobutu.

287. As to freedom of opinion and expression, the representative explained that publications which touched upon MPR ideology had to be approved by the Central Committee, whereas others could be published lawfully provided that they conformed to considerations relating to public order and public decency. Censorship of music was considered necessary, particularly in view of the great power of expression of musical lyrics, so as to prevent offences against public morals or religious convictions.

288. Regarding the fate of members of UDPS, about which a question had been raised in relation to article 22 of the Covenant, the representative stated that there were two categories of persons involved - refugees and exiles. Any exile, if he had been amnestied, was free to return to Zaire whenever he decided to do so.

289. With reference to questions raised in connection with article 27 of the Covenant, the representative recalled that there were some 200 different tribes in Zaire, often intermingled to a considerable extent. There was no question of the Government of Zaire interfering in the normal way of life of those tribes or imposing any particular language on them. They were free to use their own dialects except that only four local languages and French were used in the Schools. Entry into the public service was based entirely upon educational and professional qualifications. It was therefore difficult to speak of the existence of ethnic minorities in Zaire and those who did so were often acting for political reasons.

290. Responding to the comments made by members of the Committee concerning the Government's failure to co-operate with the Committee during its consideration of a complaint submitted under the Optional Protocol, the representative explained that the events in question had taken place in 1978 and 1979, at a time when his Government had been preoccupied with a number of urgent problems, including external aggression. He also considered that there were extenuating circumstances in respect of the delay in Zaire's appearance before the Committee. In conclusion, the representative reiterated his Government's resolve, despite various political difficulties, to increase respect for human rights in the country.

291. Members of the Committee thanked the delegation of the State party for its co-operation and congratulated the representative for seeking to respond to the questions raised as fully as possible. That had helped the Committee to understand the difficulties that had been and still were being faced by the authorities in implementing the provisions of the Covenant. It was clear that genuine efforts were being made by Zaire to improve the human rights situation, including such encouraging developments as the dissolution of the former military intelligence and action service that had been implicated in the use of torture, the creation of the new Department of Citizens' Rights and Freedoms, termination of the banishment of former parliamentarians, the invitation to non-governmental organizations to visit Zaire, President Mobutu's declaration in October 1986, in which he acknowledged the existence of certain human rights problems in Zaire, and the presence of a

Zairean delegation at the forty-third session of the Commission on Human Rights.

292. At the same time, members expressed continued concern about a number of areas where the laws and practice in Zaire did not seem to conform adequately to the provisions of the Covenant. In that regard they referred to freedom of movement, freedom of expression, arbitrary detention and executions, equality of the sexes, the practice of banishment, repeated extension of the 15-day pre-trial detention periods and the treatment of detainees. Members requested that supplementary information be provided, particularly with respect to the foregoing areas of concern, together with the State party's second periodic report. Several members expressed the hope that the comments made during the consideration of Zaire's report would be taken into account, particularly those concerning the need for clarification of the status of the Covenant in relation to domestic law and for greater efforts to disseminate information to the general public about the provisions of the Covenant and about human rights, the importance of improved training of law enforcement officials and of better supervision of the penitentiary system so as to reduce and discourage torture and maltreatment of detainees, the need for affirmative action to improve the status and condition of women, and the need to clarify existing legislation relating to the declaration of a state of siege or emergency in regard to article 6 of the Covenant. Several members stressed the importance of co-operation of States parties with the Committee and expressed the hope that the Government of Zaire would inform the Committee of its reactions to the recently adopted final views concerning two cases involving Zairean nationals and would co-operate with it during the further consideration of a case that was currently pending..

293. The Chairman thanked the representative of Zaire for his helpfulness in replying to the questions and concerns of members and expressed satisfaction that a fruitful dialogue had been established between the State party and the Committee. He said that the supplementary information that had been requested should be included in Zaire's second periodic report which, in accordance with the Committee's decision, should be submitted on 1 February 1989.

CCPR A/45/40 (1990)

538. The Committee considered the second periodic report of Zaire (CCPR/C/57/Add.1), together with additional information submitted subsequent to the consideration of the initial report (CCPR/C/4/Add.11), at its 993rd to 995th meetings, held on 17 and 18 July 1990 (CCPR/C/SR.993-SR.995).

539. The report was introduced by the representative of the State party, who explained that in view of the short time which had elapsed since the earlier submissions of his Government in 1987 and 1988, the second periodic report confined itself to providing information about recent changes in national legislation and about difficulties faced and progress achieved in protecting and promoting citizens' rights. Some major political changes had taken place in Zaire recently involving, in particular, the abandonment of the one-party system and the restoration of the multi-party system. This had been announced by the President in April 1990, when he indicated that three parties would henceforth participate in Zaire's political life. A transitional Government would be responsible for making the necessary institutional arrangements and a new Constitution would be drafted by an ad hoc commission. The current Constitution which had now been revised to reflect the new political pluralism was to remain in force until 30 April 1991. The holding of primary, legislative, and presidential elections in 1991 was also announced. In addition, the Zairean Family Code, which had come into force on 1 August 1988, introduced two important innovations: the right of a widow to succeed her deceased husband and the abolition of the concept of the natural child.

Constitutional and legal framework within which the Covenant is implemented

540. With reference to that issue, members of the Committee sought clarification as to the status of the Covenant within the Zairean legal system.. They asked, in particular, whether the Covenant could be directly invoked in court and, if so, whether there had been any instances where that had occurred and whether contradictions between domestic legislation and the Covenant had been resolved. They also wished to know why the number of authorized political parties had been limited to three under the new system; what the powers and functions of State Commissioners (Ministers) were, particularly those of the State Commissioner of the Ministry of Rights and Freedoms of the Citizen in respect of appeals from Supreme Court decisions; and what measures had been taken to promote greater public awareness of the provisions of the Covenant and the Optional Protocol, particularly through the mass media and educational programmes. With regard to the latter instrument, members of the Committee wished to know what follow-up had been given by the Zairean authorities to the Committee's views in respect of communications Nos. 138/1983, 241/1987 and 242/1987. Additionally, they requested comments concerning allegations that the authors of communications to the Committee under the Optional Protocol had been subjected to legal action in Zaire and that Zairean citizens had been subjected to torture and ill-treatment merely for being found in possession of documents such as the Covenant.

541. Further, members of the Committee observed that the second periodic report of Zaire did not conform sufficiently to the Committee's guidelines regarding the form and contents of reports, noting in particular that information responding to the Committee's earlier questions as well as about the difficulties experienced and progress achieved in implementing the Covenant was far too brief.

They also wished to know whether the legislature in Zaire was required to consult the Supreme Court before ratifying a treaty, or merely empowered to do so if it had doubts as to the constitutionality of the treaty; whether the Constitution had had to be amended as a result of the ratification of the Covenant; what were the membership and competence of the Judicial Council; what was the meaning and purpose of the “open days” organized under the chairmanship of the President of the Council; what the effect of a ruling of the Council was on court cases; and what the role was of State security courts in dispensing justice. Noting that the recent revisions of the Constitution did not include any changes in respect of civil and political rights, members also asked whether the Zairean Government considered that such rights had been adequately protected under the old Constitution and whether Zaire’s adherence to the African Charter on Human and Peoples’ Rights had had any influence on how the Constitution was interpreted in the Zairean courts.

542. Concerning the referendum recently held in Zaire to establish political pluralism, members asked whether that exercise was not, in effect, simply a plebiscite organized by the Government in support of the ruling party, which was the only one capable of organizing political campaign and putting forward political ideas. In that connection, they wished to know specifically what questions had been put in the referendum; how it had been conducted; whether prior consultations between political groupings had been allowed; on what basis the three parties chosen had been selected from among many others, and what the platforms were of the three proposed parties; and why the people of Zaire could not decide themselves how many political parties they wished to support.

543. With regard to the competence of the Ministry of Rights and Freedoms of the Citizens, members wished to know whether it had a consultative or an investigative role; what part the State Commissioner of the Ministry had played in the revision of the Zairean Constitution; and what role the Commissioner played in implementing the provisions of the Covenant. Concerning the powers of the Minister of Justice in respect of Supreme Court decisions, it was asked whether appeals to the Minister were resorted to systematically or only as a last resort and what steps the Minister of Justice could take in cases of wrongful conviction.

544. In his reply, the representative of the State party said that article 59 of the revised Constitution of 5 July 1990 provided that a treaty ratified by Zaire took precedence over its national law in the event of any conflict between them. The same article provided that if the Supreme Court of Justice, upon consultation by the President of the Republic or the National Assembly declared that a treaty before the legislature contained an article which conflicted with the Constitution, it should be ratified only after the Constitution had been appropriately amended. Difficulties in implementing the International Covenants on Human Rights in Zaire were mainly due to the lack of means and resources of the country. Notwithstanding those practical difficulties, the International Covenant on Civil and Political Rights enjoyed high status with respect to the Zairean Constitution.

545. The Judicial Council was an institution encompassing the totality of the country’s courts and tribunals, both civil and military, which functioned independently but which were supervised and co-ordinated by the President of the Council. The “open days” constituted an activity of the President of the Judicial Council in response to popular protests at the extremely protracted nature of judicial proceedings. Military courts predominate over civil courts and only handled cases involving members of the armed forces. Administratively, the two structures were capped by the Judicial Council which was now more currently referred to as the Ministry of Justice. The revisions

to the Constitution of 5 July 1990 were aimed primarily at political changes. No legal proceedings had ever been taken in Zaire against the authors of communications under the Optional Protocol.

546. With regard to political pluralism, the representative explained that more than 40 active political groups had been created since the end of April 1990. All would campaign in any process of consultation and, in 1991, those groups would present themselves before the people who would determine which three parties would be officially retained in the country's basic political structure. The limitation to three political parties had been chosen to avoid the repetition of the tragic experience of the years 1960-1965 when unrestricted multipartism caused serious difficulties and involved the death of more than half a million people. The three-party system should allow for the expression of left-wing and centrist opinions.

547. The Supreme Court of Justice represented the final court of appeal which could not be overruled even by the Minister for Rights and Freedoms of the Citizen. If the Minister considered that a Supreme Court decision contained a misjudgement, the only course of action open to him was to consult with the Minister of Justice to see whether the injustice could, in some way, be repaired. One such case was currently under consideration. The Ministry of Rights and Freedoms of the Citizen had three tasks: informing people, often illiterate, of their rights; educating citizens in the exercise of their rights; and supervising the application of the international instruments to which Zaire was a party. The Ministry had published a booklet which informed citizens about their rights in relation to security and the courts and a second volume would shortly be published which would deal with the rights of citizens in relation to the administrative authorities and would contain information about the provisions of the Covenant and the Optional Protocol. It also sponsored educational activities and weekly radio programmes on the rights and freedoms of the citizen which were broadcast in French and in Zaire's four main vernacular languages. The Minister of Rights and Freedoms of the Citizen had had no distinct role in the recent process of constitutional revision.

Self-determination

548. With regard to that issue, members of the Committee asked what Zaire's position was with regard to the struggle for self-determination of the South African and Palestinian people and whether the Zairean authorities had taken any concrete measures against the apartheid régime of South Africa. It was asked, in particular, what factors were involved in Zaire's opposition to the application of sanctions to South Africa.

549. In his reply, the representative of Zaire said that his Government had set up a national committee against apartheid to promote and co-ordinate all activities relating to the anti-apartheid struggle. The Government was supporting both sanctions and dialogue in respect of the South African régime. He also recalled that since 1975 the Government had authorized the Palestine Liberation Organization to have an office in Kinshasa and that his Government's position on the issue of Palestine was that the Palestinians should have their homeland and that there should be secure frontiers for all States in the region.

State of emergency

550. Regarding that issue, members of the Committee wished to know which provisions of law, if any, governed the imposition of a state of siege or emergency pursuant to article 52 of the Zairean Constitution and, in particular, whether in accordance with article 4, paragraph 2, of the Covenant the right to life was included among the fundamental rights that could not be derogated from.

551. The representative replied that after independence, Zaire had gone through a difficult period during which texts had been drafted relating to the declaration of a state of emergency. However, those texts had never been applied and the question of the right to life had therefore never arisen in that context.

Non-discrimination and equality of sexes

552. With reference to that issue, members of the Committee wished to know what measures were being considered in Zaire to eliminate discrimination stemming from certain provisions of the Civil, Family and Penal Codes in respect of the equality of the sexes; whether any additional measures were being contemplated to protect the right of women to equal opportunity to employment and to equal treatment in respect of remuneration; what were the number and proportion of women in Parliament and in other high public offices, such as the magistrature, the liberal professions, the senior ranks of the civil service and in private business; and in which respects, other than in the exercise of political rights, the rights of aliens were restricted as compared with those of citizens. Members also observed that legal provisions such as those which allowed a husband to oppose his wife's going to work appeared to be in contradiction with the Covenant.

553. In his reply, the representative pointed out that the legal provisions which allowed a husband to oppose his wife's employment had never been tested in court. In case of opposition, the wife generally preferred to stop working. The best approach to the question was perhaps to educate women to claim their rights through Parliament. However, the Government of Zaire thought it better to move cautiously since, although the provisions concerned could be suppressed, in practice the attitude of the husband would still exist and would still need to be changed. At present there were 10 women members of Parliament and it was up to them to take up the fight. In general, however, women in Zaire enjoyed all the rights under the Covenant and were represented in the Parliament, the Government, the public service and other professions. Aliens enjoyed the same rights as Zairean citizens other than the fact that they were not eligible to vote and could not have access to mining areas.

Right to life

554. With reference to that issue, members of the Committee wished to receive detailed information concerning the recent events in Lubumbashi indicating, in particular, whether any punitive measures had been taken against the regional authorities who allegedly were responsible for the killings that had occurred there. They also wished to know what the rules and regulations were governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; on how many occasions over the past five years had the courts in Zaire imposed the death penalty and how often such sentences had been carried out; how long did a person under sentence of death have to wait to know whether he was to be executed or whether his sentence was to be commuted and, in

that regard, what was the precise situation of persons sentenced to death who had been tried two years earlier and had still not been executed and what progress had been made in reducing infant mortality in the country in the period under review.

555. The members of the Committee expressed their deep concern to the representatives of the State party, in particular regarding the events at Lubumbashi. The incidents which had taken place in May 1990 had involved a number of serious abuses by public officials, which had been confirmed by eye-witnesses including students, college lecturers, members of the People's Movement for the Revolution and members of the clergy. Those same witnesses had also referred to the disappearance of 23 students, and further information was requested on the matter. The Committee also asked what the authorities intended to do to compensate for the wrong done to the victims and their families.

556. In his reply, the representative of Zaire described the situation in which the authorities had been confronted with violent revolts in the university and provided details on the serious incidents which had occurred at Lubumbashi on the night of 10 to 11 May and in which some 10 persons had been seriously injured, one of whom had subsequently died. A parliamentary commission of inquiry had been set up to determine responsibility, and all the civilian and military authorities in the Shaba region which had been involved in the affair had been relieved of their duties and brought before the courts. The case was being investigated by the Public Prosecutor of the Republic of Kinshasa and the public trial would be held shortly. No reports had thus far been received of student disappearances at Lubumbashi. In due course, any victims would be able to institute civil actions in order to claim damages. The list of all the authorities involved and recognized as responsible in the affair was at the Committee's disposal.

557. He then gave information on the regulations regarding the use of firearms by the police and security forces. Firearms could be used only at the request of the competent authority, and any violation of that regulation was punishable under the Criminal and Military Codes. Indeed, such punishments were not unusual. He also referred to the death sentences imposed, in accordance with the Criminal Code, on individuals tried for armed robbery and confirmed that the sentences had not been carried out. He also gave information on the procedures for appeal against death sentences and pointed out that the law did not establish any time-limit for the final decision. With regard to infant mortality, he said that a primary health care programme had been instituted by the Government of Zaire and the infant mortality rate had fallen significantly.

Treatment of prisoners and other detainees

558. Regarding that issue, members of the Committee noted that information had been received concerning many cases of police brutality and corruption of public officials and wished to know what legal or administrative procedures guaranteed prompt and impartial investigations of alleged violations of article 7 of the Covenant; whether there had been any such allegations during the period under review and, if so, whether they had been investigated and with what results; what arrangements existed for the supervision and inspection, on a systematic basis, of places of detention in Kinshasa as well as in the provinces; whether the Zairean Penal Code provided for banishment as a punishment for certain offences; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with; and whether these provisions had been made known to the concerned police, armed forces and prison personnel as well as, in general, to all persons

responsible for holding interrogations. Reference was made, in this connection, to information concerning many cases of police brutality and corruption of public officials. They also asked for clarification on the purpose of Legislative Ordinance No. 89-049 bis of 23 September 1989. In this connection, they wished to know whether any proceedings had been instituted by the Ministry of Rights and Freedoms of the Citizen pursuant to that law.

559. Questions were asked, in particular, regarding the announcement that the National Security Council's detention centres in Zaire were to be closed and taken over by the police. Members asked what were the regulations governing the activities and operations of such centres; who would be authorized to inspect them; whether the Ministry of Rights and Freedoms of the Citizen would retain responsibility for all the centres placed under police authority; how prison inspections were actually carried out; under what conditions detention in custody and pre-trial detention could be extended; and under what conditions prisoners were held in military prisons.

560. In his reply, the representative of the State party referred to a number of laws governing deprivation of freedom and, in particular, to articles 76 and 80 of the Decree-Law concerning the duties of the judicial police which guaranteed the right of persons held in custody to have themselves examined by a doctor and to have the detention premises inspected in order to ascertain the conditions of detention. Although abuses had indeed been committed by police officers in detention centres, the Government of Zaire was endeavouring to put an end to them by, among other things, introducing measures for the proper training and education of police officers.

561. He went on to say that, under Decree-Law No. 89-049 bis of 23 September 1989, the Ministry of Rights and Freedoms of the Citizen had been empowered to bring automatically before the courts any case of torture brought to its attention. However, as the Ministry of Justice had considered that the existing guarantees were adequate to enable persons regarding themselves as victims of torture to assert their rights, the Decree-Law had been revoked in 1990. Nevertheless, the Ministry of Rights and Freedoms of the Citizen intended to resubmit its draft.

562. The representative of the State party also stated that banishment, or "relegation" as it was known in Zaire, was an administrative measure which could be taken by the Ministry of the Interior. However, as part of the current political reforms in Zaire, a draft Decree-Law had been prepared by the Ministry of Rights and Freedoms of the Citizen with a view to abolishing the measure. He pointed out that all the measures for the abolition of banishment and administrative internment announced by the National Security Council on 22 May 1990 would be embodied in legislation.

563. He also referred to the provisions under which the Public Prosecutor was obliged to inspect all places of detention. The Ministry of Rights and Freedoms of the Citizen was responsible for inspecting places of detention at least once a month, or as often as it deemed necessary. Families who did not know where one of their members was being held in detention could apply to the Ministry, which would order an investigation. He said that the United Nations Standard Minimum Rules for the Treatment of Prisoners were applied in Zaire and, in that connection, provided information on the legal training given to members of the security forces, under the supervision of the Public Prosecutor.

Liberty and security of the person

564. With regard to that issue, members of the Committee referred to problems relating to “forced labour”, discussed in paragraphs 49 to 53 of the supplementary report of Zaire, and requested information concerning corrective measures that might have been adopted by the Departments of Justice, Regional Administration and Agriculture. They also asked whether there was any maximum limit on the length of pre-trial detention resulting from renewal orders by the examining judge and, if there were no such prescribed limits, what the actual practice of the courts was and how it was ensured that pre-trial detention was not extended indefinitely; how soon after arrest a person could contact a lawyer; and how quickly after arrest a person’s family was informed.

565. In his reply, the representative of Zaire said that there was no forced labour in his country. Under the law, the urban unemployed were encouraged to look for work in rural areas and provision was made for work in the public interest in the event of natural disasters, for example. In addition, the legislation channelling young people into the study of certain subjects at university had been repealed by a presidential order in 1987. He then pointed out that a police officer had 48 hours to decide whether to release a detainee or to bring him before the Public Prosecutor. That regulation also applied in detention centres under the responsibility of the security services. The fact that the 48-hour time-limit was sometimes exceeded was due to communication problems in the areas furthest from the capital. The examining magistrate had five days in which to decide what was to be done with a prisoner, and the judge 25 days, which could be extended under certain circumstances. The prisoner could contact a lawyer immediately after the custody period. The police must immediately inform the prisoner’s family of his arrest.

Right to a fair trial

566. With regard to that issue, members of the Committee wished to know what progress had been achieved in Zaire since the consideration of the initial report in the recruitment and training of judges, particularly with respect to their independence from the executive; whether there was in Zaire a legal aid or advisory scheme and, if so, how it operated; what was the composition and jurisdiction of the Court of State Security; and whether any cases had been considered by that court since the consideration of the initial report.

567. In his reply, the representative of Zaire provided information on the training of judges in Zaire and said that free legal aid was available to prisoners lacking the means to pay for such services. The Judicial Council co-ordinated the work of the civil and military courts and tribunals. Judges were independent both during their training and in the performance of their duties. Their independence was guaranteed by article 101 of the Constitution and by the act on the status of the judiciary. They were not removable. However, there existed in Zaire “itinerant” courts, and judges were called on to travel to various regions, without their independence being in any way compromised. The judges selected by the Ministry of Justice were appointed by presidential order. The Higher Council of the Judiciary was the only body authorized to impose sanctions on them. The Court of State Security was an ordinary court with regard to both composition and procedure.

Freedom of movement and expulsion of aliens

568. Regarding that issue, members of the Committee requested additional information about the application of article 12, paragraph 1, of the Covenant, particularly in respect of restrictions on

freedom of movement and on the settlement of aliens. They also asked what special provisions and regulations, if any, pertained to the expulsion of aliens other than those holding refugee status. In addition, information was requested on the situation of refugees from Angola.

569. In his reply, the representative of the State party confirmed that, in Zaire, aliens enjoyed full rights, with the exception of political rights, and that the freedom of movement of aliens was limited only in mining areas. Zairean law nevertheless was applicable to aliens presenting a threat to the security of the State. With regard to Angolan refugees, he said that some of them had been more or less assimilated into the Zairean population and that there were no refugee camps as such in the country. Furthermore, in 1989, with the assistance of the United Nations High Commissioner for Refugees, a large number of Angolans had been voluntarily repatriated.

Freedom of expression

570. With reference to this issue, members of the Committee wished to know whether the recently announced liberalization of the Zairean political system had had any effect on laws and regulations relating to freedom of expression, particularly with regard to easing censorship. Information was requested, in particular, on the status of journalists and on pressures which might be brought to bear by the authorities to limit their freedom, since radio and television were State monopolies. In that connection, members of the Committee wished to know how the Government of Zaire intended to guarantee the freedom of expression of journalists; whether any journalists were being held for political offences; whether the press was subject to censorship and of what kind; whether the political reforms in Zaire provided for access to the media and criticism of Government policy; what were the regulations to be observed in holding a peaceful demonstration; and whether there were cases of publications having been seized.

571. In his reply, the representative of the State party said that journalists had indeed been arrested for criticizing the Government, but that had been prior to 24 April 1990. With the announcement of the abolition of the single party and the political reforms, a growing number of newspapers had recently been published in Zaire. Furthermore, television and radio could only be operated by the State, since private individuals did not have the means to set up that type of enterprise. Censorship existed in Zaire to protect public morals and traditional values, and also for political reasons. However, the situation was changing. In addition, the right of peaceful assembly was recognized in Zaire, but in order to hold a peaceful assembly, an authorization had to be requested from the authorities for security reasons.

Freedom of association

572. With regard to that issue, members of the Committee requested additional information concerning the recently announced introduction of multipartism in Zaire and asked how this would affect the organization and powers of the People's Movement for the Revolution. Members of the Committee also wished to know what were the criteria to be used in placing the three new parties in Zaire in the national political spectrum; whether the formation of associations was subject to compulsory registration; what was the procedure to be followed; how associations devoted to the promotion of human rights would be treated; whether restrictions on the right to form associations existed with regard to aliens; and what were the practical consequences of the decisions taken in

May 1990 with regard to the freedom of assembly and association.

573. In his reply, the representative said that pursuant to an Act of 1965, anyone in Zaire could set up an association, which would be free to operate under its own system of management pending an order by the President of the Republic granting it civil personality. At present, the Zairean National Human Rights League was awaiting formal recognition by the President. Political assemblies under the new system could be held in the normal way subject to the regulations in force under which prior authorization was required. The organization of political parties was addressed in a bill that was before Parliament. The only criteria applicable to the three new parties would be the will of the people, who would choose between the various alternatives offered.

Protection of the family and children

574. In this regard, members of the Committee asked for information on the protection afforded under Zairean law to children working before reaching the authorized age, and for clarifications on the various conceptions of the family in Zaire, on a number of legal provisions governing marriage and on the exclusion of the concept of “natural child” from the Zairean Family Code.

575. In his reply, the representative of Zaire explained that the whole concept of the natural child had been rejected by the Zairean legislature on the basis of the principle that a man who fathered a child, whether in or out of wedlock, should be made legally responsible for it. Both the concepts of “nuclear family” and “extended family” had been taken into account in drafting Zairean legislation. Schooling was obligatory up to 14 years of age but some children, particularly girls, dropped out.

Right to participate in the conduct of public affairs

576. With reference to that issue, members of the Committee asked what the consequences were of the reform of the Zairean Constitution in so far as the participation of citizens in the conduct of public affairs was concerned.

577. In his reply, the representative of Zaire said that under the new political system of the country citizens would enjoy much greater freedom than under the one-party system.

General observations

578. Members of the Committee expressed appreciation to the representative of the State party for providing the Committee with substantive information on the implementation of the provisions of the covenant in his country. By doing so, he had demonstrated the willingness of the Zairean Government to co-operate with the Committee and had made up, in part, for the lack of information in the report. The dialogue had been fruitful even though not all questions asked had received a reply.

579. With reference to the recent political evolution in Zaire, members of the Committee welcomed the constitutional reform abolishing the one-party system in the country and the other political changes. Those reforms constituted a step forward in the democratic process and in the promotion

of human rights. At the same time, members of the Committee felt that they had not been fully enlightened with regard to the implementation of the Covenant in Zaire's legal system or concerning its real influence on the enjoyment of civil and political rights at the national level. A series of features in contradiction with various provisions of the Covenant appeared to exist in the country and raised some major concerns.

580. In the foregoing connection, members of the Committee observed that, despite the reforms that had been introduced in Zaire, it was clear that further improvements would be needed if certain forms of discrimination, notably against married women, were to be eliminated. In addition, measures were needed to abrogate the decree on banishment; to accelerate the procedure for taking final decisions on death penalties; to strengthen judicial controls and rules concerning conditions of custody, pre-trial detention and the treatment of detainees; to reinforce the independence of the judiciary; and to prevent brutality and abuses by the police and security forces in flagrant violation of the law. In the latter regard, members stressed that the adoption of positive measures was all the more necessary if a repetition of such serious events as those that occurred in Lubumbashi in May 1990 was to be prevented. Steps would also need to be taken to encourage freedom of the press; free access to the media and to generally guarantee freedom of expression. The transition from a single-party to a three-party system should be considered only as a first step towards the institution of genuine political pluralism.

581. Members of the Committee expressed concern at the continuing absence of a reply by the Zairean authorities in connection with communications submitted by Zairean citizens under the Optional Protocol. It was vital that Zaire should co-operate with the Committee by supplying the information requested and by respecting the Committee's findings. They also stressed that in no case should the exercise by a Zairean citizen of his right to address a communication to the Committee expose him to reprisals.

582. The representative of the State party said that Zaire would take account of the comments made, with a view to complying with its obligations under the Covenant. He assured the Committee that all those implicated in the Lubumbashi affair would have to answer to justice and that in spite of material difficulties and constraints, human rights were of the greatest concern to the people of Zaire. Regarding the communications submitted by Zairean citizens under the Optional Protocol, a reply had been sent to the Commission on Human Rights and not to the Committee. If the interested parties thought that they had suffered injury, they were entitled to institute proceedings before the courts to obtain redress.

583. In concluding the consideration of the second periodic report of Zaire, the Chairman again thanked the Zairean representatives for their participation in the dialogue which had been constructive and fruitful and expressed the hope that the dialogue would continue on the occasion of the submission of Zaire's next periodic report.

