

## GUINEA

### CCPR A/39/40 (1984)

136. The Committee considered the initial report of Guinea (CCPR/C/6/Add.5) at its 475<sup>th</sup>, 476<sup>th</sup>, 485<sup>th</sup> and 486<sup>th</sup> meetings, held on 2 and 9 November 1983 (CCPR/C/SR.475, 476, 485, and 486), in the absence of a representative from the State party. The decision to do so had been taken in accordance with recommendations made by a working group and after debate in the Committee (CCPR/C/SR.473).

137. It was recalled that at its nineteenth session the Committee had pointed out to the Government of Guinea, through the Secretary-General, that the consideration of its initial reports had been postponed on four occasions in the hope that the Government of Guinea would agree to its request that the report be examined in the presence of representatives of the Government with a view to conducting a useful and constructive dialogue on the promotion and implementation of the human rights guaranteed in the Covenant; and that in view of the brevity of the report, the Government had also been requested to provide supplementary information at the time when the report was considered in the interest of greater conformity with the Committee's guidelines.

138. The Committee regretted that no response to its request had been received from the Government of Guinea and that for the first time a State report would have to be examined in the absence of a representative from that country. It was stressed that it was the Committee's established principle that reports of the States parties should be discussed with the active support of government representatives in so far as such procedure was helpful both for the Committee itself and for the Government, because it facilitated mutual understanding and promoted fruitful co-operation; and that the initial report of Guinea was brief and incomplete since it contained inadequate information on legislation and practices and made no reference at all to many of the articles of the Covenant. Notwithstanding the foregoing considerations the view prevailed that under article 40 of the Covenant, it was the duty of the Committee to examine the report before it whether a representative from that country was present or not and it was decided to proceed with comments and questions in the hope that through the relevant summary records the Government of Guinea would understand the areas in which the Committee had expressed concern about the implementation of the Covenant and that the present procedure would lead to more active co-operation in the future.

139. The Committee noted that part I of the report contained statements of a general nature, inter alia, that "citizens of Guinea felt no need to invoke the Covenant because national legislation was at a more advanced stage"; that the State party guaranteed the application of the provisions of the Covenant; that according to article 35 of the Constitution "The President of the Republic shall be responsible for ensuring the independence of the judicial authority"; that "any important decision of a general character is always the subject of critical examination at all levels of the structure of the Party and the State ..."; that "a person who claims that any of his rights have been violated may lodge a complaint with the different levels of the Revolutionary Power or the different judicial bodies"; that part II of the report ( information relating to articles of the Covenant) briefly referred

to the right of self-determination, non-discrimination and the position of women and stated that “slavery, torture and arbitrary arrest were unknown” in the country; and that the report contained no information on articles 4, 6, 11 to 13, 17 to 22, 24 and 25 to 27 of the Covenant.

140. Referring to part I of the report, members noted that the report failed to give a full description of the judicial organization or the role of the Party; that the role of the judiciary should have been better presented so that the Committee could know what remedies were available to individuals alleging violation of their rights, in particular whether remedies existed in the event of violations of individual rights under the Covenant by Government officials, whether Party officials wielded public power which might affect the enjoyment by private citizens of the rights guaranteed under the Covenant and whether there were any remedies against actions of Party officials. It was concluded that the provisions of article 35 of the Constitution did not satisfy the requirements of article 2, subparagraphs 3 (a) and (b), of the Covenant.

141. Pointing to the statement in part I of the report that the Constitution of Guinea respected and guaranteed to all individuals within its territory the rights recognized by the Covenant without distinction of any kind, it was asked whether the Covenant had been ratified by enactment of a law and had accordingly become the law of the land so that its provisions might be invoked before the courts and administrative authorities.

142. Referring to part II of the report, one member pointed out that the report was too concise to provide the Committee with information on points concerning which Guinea had a reputation of having a satisfactory record, such as the right of self-determination, non-discrimination, the granting of equal privileges and the imposition of equal obligations for any African who established himself in the national territory, and equality between men and women with regard to all civil and political rights. In this connection, some members noted with appreciation that Guinea had ratified the Convention on the Elimination of All Forms of Discrimination against Women and that the People’s National Assembly included over 50 women out of 210 deputies. Further information was requested in this connection as to whether there are laws providing for equal remuneration of women and men for work of equal value, what was the rate of maternal illness and mortality, and what measures were being taken to reduce it.

143. Referring to the last sentence of part II, one member stressed that it would be interesting to know what measures had been taken to make it possible that slavery, torture and arbitrary arrest were unknown in the country, and that other States should be informed about Guinea’s experience, as required by article 40.

144. It was then suggested that the Government of Guinea should provide further information with regard to issues or problem areas of particular relevance to rights not permitting of derogation such as detention without trial, treatment of detainees and conditions of detention, death by execution or otherwise, disappearances and trials.

145. With regard to articles 6 and 7 of the Covenant, it was observed with concern that information from many sources indicated that a large number of executions had taken place in Guinea, some of them not even complying with the domestic law; that a number of persons in Guinea had died in prison as a result of torture or of the so-called “black diet”, which consisted in denying any food and

water to detainees; and that disappearances of persons had been reported, which also constituted a violation of article 17 in so far as the family of the disappeared was not informed of his whereabouts. It was also observed in this connection that article 6, paragraph 6, clearly looked towards the abolition of the death penalty and it was asked whether Guinea had thought to its abolition.

146. Referring to article 9 of the Covenant, one member asked whether there were any special legal enactments which would provide for the arrest and detention of political opponents, or whether the Head of State held discretionary powers not defined by laws. It was noted in this connection that a number of arbitrary arrests of persons with differing political opinion had been reported. Information was requested in this connection as to whether a state of emergency existed in Guinea in respect of political prisoners and, if so, whether the provisions of article 4, paragraph 3, of the Covenant had been complied with.

147. With regard to article 10, reference was made to inhuman prison conditions, *inter alia*, that prisoners were held incommunicado in tiny cells. It was pointed out, with regard to the treatment of prisoners, that particular attention should be given by the State party - apart from article 10 - to article 7 and the general comments adopted by the committee. It was suggested that a copy of the Standard Minimum rules for the Treatment of Prisoners should be transmitted to the Government of Guinea which subsequently should provide information on the steps taken to comply with those requirements.

148. As regards article 12, one member asked whether emigration laws existed, how many persons had made use of them and whether people were prevented from leaving the country.

149. As regards article 14 of the Covenant, members noted that article 38 of the Constitution of Guinea stated only that the judicial organization of the Republic should be established by law and that article 35 of the Constitution provided, *inter alia*, that the President of the Republic should be responsible for ensuring the independence of the judiciary authority. They sought information on what courts existed, who the judges were, how judges were appointed, what were their qualifications and under what circumstances they may be dismissed, and whether there were genuine guarantees of the independence and impartiality of the judiciary in accordance with article 14 of the Covenant. Members were of the opinion that it was necessary to clarify the whole situation with regard to such trials, which apparently were not conducted by ordinary courts but by the Central Committee of the Party, the National Assembly and standing revolutionary committees.

150. Pointing out that according to the report every citizen could have the services of a lawyer free of charge for grave political crimes such as treason, information was sought as to whether no such right existed for persons charged with less serious offences; explanations were also requested about a provision in the Constitution, namely that the presence of a foreign lawyer who already shared the views of the accused person was not allowed; further questions were asked concerning the institutional aspect of assistance by legal counsel which according to the Covenant presupposed the existence of independent lawyers not acting under Government instructions but responsible only to the accused person; in this connection attention was drawn to some reports, that lawyers in Guinea were organized as public officials under the instructions of the Government.

151. Referring to the principle of presumption of innocence enshrined in article 14, information was

sought on the use of confessions, particularly whether confessions made before police authorities were accepted as such or had to be reviewed before the judge.

152. Members further asked how political rights in general were guaranteed in a one-party State such as Guinea, where some degree of political freedom would be necessary in order to ensure compliance with articles 19, 21, 22 and 25 of the Covenant and, more particularly, with the principles of political non-discrimination as set forth in article 2, paragraph 1, and article 26 of the Covenant. In this connection information was sought on whether a free independent press existed in the country.

153. Referring to article 27, one member drew attention to the information he had received to the effect that the Peul ethnic group suffered discrimination and persecution by the authorities in Guinea.

154. Referring, *inter alia*, to article 44 of the Guinean Constitution, a member asked to what extent public education was free and compulsory and what measures had been taken to ensure that young people received an education in accordance with the spirit of the Covenant.

155. After consideration of the report, the Committee learned that on 4 November 1983 three representatives of the Government of Guinea had visited the Human rights Liaison Office in New York and had conveyed the firm wish of their Government to fulfill its reporting obligations under the Covenant in future and had blamed lack of co-ordination for the Government's failure to respond to the various requests sent to it. They also indicated the need for specialized training in human rights matters for officials in charge of the preparation of the report. The Committee took note of this visit expressing appreciation at Guinea's reaction, though unofficial, to its consideration of the report.

156. In conclusion, members of the Committee decided to request a new report from the Government of Guinea not later than 30 September 1984, which should be prepared in accordance with the Committee's general guidelines as to the form and content of States reports under article 40 and most particularly should keep in view the questions and comments made by members of the Committee during the consideration of the first report.

157. The Committee considered that in the relevant letter of the Chairman to the Government of Guinea positive reference should be made to the unofficial contact by three representatives of the Government in New York. The Committee also declared its willingness to provide assistance to the Government in the discharge of its reporting obligations under the Covenant.

158. The Committee at its twenty-first session was informed orally by the representative of Guinea of the new Government's declaration of intent with regard to human rights and about the effected release of political prisoners in Guinea. The representative requested, on behalf of his Government, the Committee's assistance, by way of the Secretariat, in meeting its international obligations.

159. The Chairman of the Committee then invited the representative of Guinea to draw his Government's attention to the decision of the Committee adopted at its twentieth session when the initial report of Guinea had been considered *in absentia*.

160. At its twenty-second session, the Committee decided to authorize one of its members, Mr. Ndiaye, to make himself available for consultations with the Government of Guinea with a view to ascertaining the ways in which the government could be assisted in fulfilling its reporting obligations under the Covenant.

## CCPR A/43/40 (1988)

241. The Committee considered the initial report of Guinea (CCPR/C/6/Add.11) at its 788<sup>th</sup> and 792<sup>nd</sup> meetings, held in 22 and 24 March 1988 (CCPR/C/SR.788 and 792). This report was submitted by the Government of Guinea pursuant to the request made by the Human Rights Committee after considering the initial report of Guinea (CCPR/C/6/Add.5) in the absence of a representative of the State party at its twentieth session (CCPR/C/SR.475 and 476 and 485 and 486).

242. The report was introduced by the representative of the State party who emphasized his Government's willingness to implement gradually the provisions of the Covenant. He pointed out that the report of Guinea summarized the ways in which fundamental rights and freedom were being applied to his country and stressed that, in evaluating the progress made since 3 April 1984, it was necessary to keep in mind that the army, in taking power, had been imbued with the ideal of equal justice for all.

243. Referring to the period which followed Guinea's accession to independence, the representative stated that the régime of the Parti démocratique de Guinée (PDG), the single party then in power, was characterized by arbitrary arrests and detention, mutilation and the taking of life. Magistrates had been replaced by "people's judges" and defendants by "people's attorneys" who were political figures without legal training. Fundamental rights and freedoms were violated in many respects through the adoption of laws modifying the Criminal Code, the Code of Criminal Procedure and other codes.

244. The new Military Committee for National Recovery (CMRN) had set out to establish a liberal democracy and a state of law in Guinea, but a liberal democratic régime could not replace a totalitarian régime immediately. Nevertheless, the President had stated that the military's wish was all Guineans should be able to express themselves freely, and that the military would retain power until true social justice had been established. In that respect, the representative referred to numerous reforms carried out by the authorities, which were indicative of their willingness to ensure respect for human rights and fundamental freedoms, such as Ordinance No. 22/PRG/86 of January 1986, which depoliticized the civil service and Ordinance No. 009/PRG/84 of 18 August 1984, which had removed from the legislation any provisions contrary to the notions of private ownership, free enterprise and individual and collective rights and freedoms. Thus the 1965 Criminal Code and Code of Criminal Procedure, based on universal principles of criminal law, had been re-established.

245. Members of the Committee welcomed the report of Guinea, which demonstrated the efforts made by the Government in its attempt to comply entirely with the international system of human rights. They noted, however, that the report had not been compiled in accordance with the general guidelines regarding the form and contents of reports and stressed that fuller information on both the law and practice in Guinea was needed by the Committee if it was to carry out its tasks effectively.

246. Referring to article 2 of the Covenant, members of the Committee expressed their concern about the absence of a Constitution in Guinea. In that connection, they requested further information on the progress made in the drafting of the new Constitution, including the individuals involved, the

process itself and the projected time frame. They requested clarification on the exact status of the Covenant in the current context and asked how the Government actually guaranteed and protected all fundamental rights. They also asked what role the Government envisaged for the Covenant, whether it would be self-executing or incorporated into domestic law and whether its provisions would be invocable before Guinean courts. Clarification was also requested of the term “monistic approach”, referred to in section I. C. of the report, and of the legal basis, in the absence of any Constitution, for the laws, rules, decisions and communiqués issued by the Government since 1984. It was also asked to what extent the executive, legislative and judicial branches were separate in Guinea, what action had been taken against political opponents belonging to the previous régime or against those who were in opposition to the current authorities, whether the Covenant had been published in the Journal officiel and what new provisions had been enacted regarding discrimination.

247. Regarding article 3 of the Covenant, members of the Committee inquired about the status of women in Guinea and asked about the proportion of females in schools and in public life.

248. With regard to article 4 of the Covenant, one member observed that a number of rights were not fully guaranteed or were derogated from in Guinea and recalled that any derogation had to be in conformity with paragraph 2 of that article.

249. With reference to article 6 of the Covenant, members of the Committee wished to know how many persons had been subjected to the death penalty and executed during the period under consideration and how many of those sentences were related to the 1986 trials. Noting the prohibition against applying the death penalty to youngsters under the age of 13, members inquired whether children over that age but under 18 were subject to the death penalty, which would be in contradiction with the Covenant. Clarification was requested on cases of disappearances which remained unsolved and on the application of the death penalty in case of infanticide. It was also asked whether there were any limits on the use of firearms by the military and police force.

250. Referring to article 9 of the Covenant, members of the Committee requested further information on the procedures for keeping persons in preventive custody and time-limits before a case was taken to court; they also asked whether pre-trial proceedings were open to the public and for information on regulations relating to the right of defendants to retain a lawyer.

251. Regarding article 10 of the Covenant, members of the Committee wished to receive additional information on the situation, in law and in practice, with regard to incommunicado detention, in particular they asked whether detainees were allowed to see visitors and what time-limits were involved. They also inquired what action had been taken by the Government concerning the proper treatment of prisoners.

252. With reference to article 12 of the Covenant, members of the Committee requested additional information on the application of restrictions on freedom of movement in times of public emergency and on the law regarding travel documents.

253. With reference to article 14 of the Covenant, members of the Committee wished to know what guarantees existed to protect the independence of the judiciary. In that connection, they inquired how legal personnel were recruited, trained, appointed and removed, how the certification of

barristers by the Minister of Justice was carried out, whether a commission for the revision of the Code of Criminal Procedure existed, whether changes were contemplated with respect to sentences and punishments and how the judiciary was organized. Further information was requested on the nature and functions of the special courts, especially the State Security Court. In particular members asked about the planned duration of that court's jurisdiction, and inquired how many cases it had judged, what methods it used in applying penalties under the Criminal Code, how crimes and offences were referred to it and whether there were any special procedures to ensure that it respected the rights guaranteed under article 14 of the Covenant. Members also expressed concern over the use of in camera procedures and secret judgements by the State Security Court, and the impossibility of appeal against decisions, which did not seem to comply with article 14 of the Covenant. With regard to the 1986 trials, some members wondered whether there had been any formal charges, whether the names of the judges were known, why the trials had been held in camera and why the defendants had not appeared before the Court.

254. In relation to article 18 of the Covenant, members of the Committee asked how many religions existed in Guinea and how co-operation between them was promoted. Clarification was requested of the sentence appearing on page 16 of the report stating that "any disturbance caused by ministers of religion are bound to meet with a criminal sanction".

255. Regarding article 19 of the Covenant, members of the Committee asked what steps the Government was taking to guarantee the right to freedom of expression, how many political parties there were and what their basis of affiliation was, how many newspapers were published and in what languages, whether there were alternatives to the state-owned radio, television and press for freedom of expression, whether foreign books and periodicals were available and what the illiteracy rate was. It was also asked what the conditions were for establishing a newspaper, whether the Journalists Association had been dissolved and, if so, why, what the scope and functions of the national commission for film censorship were and whether any arrest or trial had resulted from the denunciation by the Government of the opposition pamphlets published in May 1987.

256. In relation to articles 21 and 22 of the Covenant, members of the Committee requested further information on the norms governing freedom of association and the procedure for the recognition of new associations by the Government and asked whether any meetings had been prohibited on the grounds that they were likely to endanger national security.

257. With regard to article 23 of the Covenant, members wondered whether it was possible to obtain a divorce in Guinea and on what grounds, how property was divided and whether wives could retain their own property during marriage. Since polygamy was permitted with the wife's consent, it was asked what procedure was used to ascertain the genuine consent of the wife or wives. It was also observed that the institution of compulsory dowry did not seem compatible with article 3 of the Covenant.

258. Regarding article 25 of the Covenant, one member expressed a wish for early action to guarantee the rights embodied therein.

259. Responding to questions raised by members of the Committee under article 2 of the Covenant, the representative of the State party pointed out that the drafting of the Guinean Constitution by a



Commission of 40 experts was at an advanced stage. The slow pace of the drafting of fundamental legal instruments governing the enactment and execution of laws, regulations and decisions was explained by the extent of State intervention in various realms of activity. Moreover, there was a severe shortage of public funds, which were inadequate even for meeting the immediate needs of daily life. The representative also explained that his government was establishing a basic structure based on neighbourhood or village councils for which any citizen over 15 years of age was eligible to vote. After the Constitution had been drafted it would be referred to these councils for consideration and adoption. The fundamental rules to be included in the Constitution were those of a liberal and republican democracy founded on the principle of separation of powers. However, for the time being, the only source of legislation was the President of the republic.

260. With regard to the “monistic approach”, the representative noted that article 2 of the Civil Code placed international treaties before the Constitution and above the laws and the Civil Code and that there was no difficulty in invoking the Covenant before the Guinean courts. Lastly, he explained that, although the Covenant had not been published in the Journal officiel, it had been displayed on posters in public places and was taught in the courses of the law and social sciences faculties.

261. Referring to article 3 of the Covenant, the representative stated that in his country women had the same rights as men. Boys and girls had equal opportunities in schools, public education was free and the abilities and efforts of each pupil determined his or her level of education. Regarding employment policy and public affairs, women had equal access to all positions.

262. In connection with article 6 of the Covenant, the representative explained that the death penalty might be imposed for violations of State security and for murder and assassination and that the judge might recognize extenuating circumstances. He was unable to say whether there had been any summary executions with regard to the 1986 trials and he pointed out that there were no public executions in Guinea. Minors between the ages 13 and 20 years of age could not be sentenced to death, in accordance with Act 022/AL/77, which had amended the criminal code, but only made wards of court, placed under supervision or subjected to measures of assistance. With regard to infanticide, he said that, since the law was more severe towards the father, a special punishment had been provided for the mother. Regarding alleged disappearances, he could not furnish any data and requested the members of the Committee to provide him with any information that they might have so he might draw it to the attention of the competent authorities. Lastly, he said that the police and gendarmes seldom used their weapons and were controlled by the State prosecutor (procureurs). The use of weapons against a thief, for instance would entail very serious consequences.

263. With regard to article 9 of the Covenant, the representative drew attention to the fact that, under article 100 of the Criminal Code, preventive arrest and detention could not exceed 72 hours, after which time the accused must be brought before the courts. Severe sanctions against arbitrary and unlawful arrest and prolonged detention were provided by the Criminal Code.

264. Regarding article 10 of the Covenant, he pointed out that prisoners had the right to receive visitors and to send and receive correspondence.

265. With regard to article 12 of the Covenant, he explained that the restrictions on travel

documents were intended to ensure that citizens carried their identity documents.

266. Referring to article 14 of the Covenant, the representative of Guinea drew attention to Ordinance 1009/PRG/86 of 5 July 1986, which provided for the independence of the judiciary. Pending the promulgation of the Constitution, it had been deemed appropriate to ensure that the powers of the judiciary were not encroached upon by local administrative authorities. Thus, the registrars, who had formerly presided over the courts, had been replaced by serving judges with legal training. All judges, barristers and notaries would be required, in the future, to hold a law degree or an equivalent or higher degree. The method of recruitment had yet to be decided. A presidential decree had provided for the establishment of a national school of administration which would accept university graduates in order to provide them with practical training. The criteria for choosing judges would include certain moral qualities and would be strict in terms of recruitment.

267. The statutes of the judiciary stipulated strict conditions for the recall of judges who could only be removed for violation of the obligation of impartiality and integrity or for improper conduct, such as corruption or engaging in scandalous behaviour. The Magistrates' Disciplinary Council was responsible for such cases. Judges were appointed by the President, who was the guarantor of their independence and presided over the Council of the Judiciary, which was responsible for their discipline. Regarding barristers, the representative referred to Ordinance 111/PRG/86 of 10 July 1986 and pointed out that the power of the Minister of Justice to grant recognition and authorization to practise law was not discretionary.

268. Replying to other questions, the representative said that, under Ordinance 152/PRG/85 of 10 August 1985, which had amended article 136 of the Code of Criminal Procedure, the President of the State Security Court was a Supreme Court Judge and the four members of the Court consisted of two professional judges and two senior army officers. Referring to the 1985/1986 session of the State Security Court, he informed the Committee that the Court's members had been appointed by a decree of 5 August 1986, that the Court had examined the material evidence on the basis of the principle of the individuality of criminal responsibility and that the three counsels for the defence had had access to case files and had been heard. Since the trial had taken place at a particularly difficult time and had involved delicate political and racial issues, the court had met in camera in order to protect the accused from their victims and to ensure that the facts were considered objectively. Re-examination of the case had not been envisaged since the State Security Court's decisions were not subject to appeal. Nevertheless, since it had been claimed that the Court's procedures violated the Covenant, the relevant provision of the Ordinance would be reviewed during the redrafting of legal texts. Some of the persons sentenced had received a presidential pardon. The representative stressed that in its review of the legal system the Government would consider the appropriateness of retaining special courts.

269. In connection with article 18 of the Covenant, the representative stated that there were three major religions in Guinea, namely Islam, Christianity and animism and that incitements to acts of violence or disturbances of the peace were offences which might lead to the punishment of ministers of religion.

270. Referring to articles 19 to 22 of the Covenant, the representative of the State party explained that there were no political parties pending the promulgation of the Constitution, but that the matter

would be addressed therein. There were no private newspapers, since no one had, perhaps for financial reasons, expressed the desire to establish one. Two companies shared the foreign press market in Guinea. A large number of humanitarian, commercial or professional associations were to be authorized in order to impede the formation of any association based on ethnic, tribal or racial considerations. The Executive Board of the Journalists' Association had been dissolved because of malfeasance and had been replaced by persons of higher integrity. The Government required the names of authors to appear in their published articles in order to prevent the circulation of anonymous publications, which in the past had led to the loss of life, and to encourage citizens to acknowledge their opinions.

271. With regard to article 23 of the Covenant, the representative of Guinea explained that in marriage, with the exception of the provisions of Civil Code stipulating that the husband was the head of the family, the role of women was equal to that of men. The division of property depended on a freely chosen matrimonial régime and women had their property and could control it freely. Either spouse participated in the moral and material supervision of the family in proportion to individual abilities. Men and women also had the same right to initiate divorce and decisions in that regard were based on the contract and the facts of the case. Responding to other questions, the representative explained that the dowry was a symbolic amount of 500 Francs, and was given to the woman to express the man's desire to share the burden and benefits of conjugal life. Its reduction had encountered strong resistance from all segments of the population and there was no way to prevent families from giving each other gifts. Lastly, he pointed out that the practice of polygamy required the consent of the existing spouse or spouses as certified by a civil status official at the time of the marriage.

272. Members of the Committee thanked the representative of Guinea for replying to most of their questions in a candid fashion, but nevertheless observed that some questions, including those concerning the special courts, in camera proceedings, fair and public trials, guarantees for the independence of judges and freedom of expression and association, had not been answered or needed a more detailed answer.

## CCPR A/48/40 (1993)

511. The Committee considered the second periodic report of Guinea (CCPR/C/57/Add.2) at its 1222<sup>nd</sup> to 1224<sup>th</sup> meetings, on 1 and 2 April 1993 (CCPR/C/SR.1222-1224). (For the composition of the delegation, see annex XI.)

512. The report was introduced by the representative of the State party, who explained that Guinea was involved in a democratization process. Twenty-six years of dictatorship under a single party system had shown that respect for human rights was the essential basis for peaceful conduct of political affairs. The Government believed that democracy could not exist without peaceful opposition and, accordingly, had based its constitutional structure on a multi-party system. The Basic Law, which had been adopted on 23 December 1990, was based on the Covenant and provided the basis for political competition within a context of equality, freedom of conscience, freedom of assembly and freedom of expression. Forty-two parties were competing for political power and Acts Nos. L/91/005 and L/91/006, of 23 December 1991, provided for the freedom to express divergent points of view. There were about 20 newspapers, several of which belonged to political parties, and a television station was in the planning stage. Other legal norms had been adopted to create the necessary conditions for the exercise of basic political freedoms.

513. Referring to the economic context prevailing in Guinea, the representative said that, on 3 April 1984, Guinea opted in favour of a free market economy. On 22 December 1985, with the assistance of the World Bank and the International Monetary Fund, a programme for financial and economic reform had been launched and an agreement with regard to the Enhanced Structural Adjustment Facility (ESAF) had been negotiated. The principle of political decentralization had also been put into practice through the establishment of urban and rural communes with elected councils.

Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination, equality of the sexes and protection of the family.

514. With regard to those issues, the Committee wished to receive information on the extent to which the Covenant had been taken into account in the process of drafting the Basic Law; on the composition, functions and activities of the National Transition Council; on any factors and difficulties affecting the implementation of the Covenant; on any cases where provisions of the Covenant had been directly invoked before the courts; on how contradictions between domestic legislation and the Covenant were being resolved; on safeguards and effective remedies available to individuals during a state of emergency; about the constitutional or statutory basis for ensuring conformity with article 4, paragraph 2, of the Covenant; on progress achieved in establishing a legal framework for national institutions in charge of promoting and protecting human rights; on the nature and activities of the human rights organizations mentioned in the report; on the participation of women in the political, economic, social and cultural life of the country; and on the impact of the cultures and traditions of Guinea on the implementation of human rights contained in the Covenant, particularly in its articles 3 and 26.

515. In addition, further information was sought on the extent to which the Basic Law had thus far been implemented; on the relationship between the three branches of Government and on their

respective role; on the limits placed upon presidential powers; on the circumstances under which Parliament could be dissolved; on the conditions for the holding of a referendum; on the role of the Supreme Court in cases of conflict between the National Assembly and the President; on the limits which could be set up under article 22 of the Basic Law to the exercise of the fundamental rights and freedoms; and about the restrictions on regionalism and tribalism in article 4 of the Basic Law.

516. It was also asked whether Guinea intended to maintain its reservation to article 48, paragraph 1, of the Covenant and accede to the Optional Protocol; what measures had been taken to disseminate information about the Covenant; whether non-governmental organizations had been consulted in the preparation of the report; whether the Covenant had been translated into the various national languages; whether there was any statutory prohibition of discrimination on grounds of political opinion, language, colour, national origin, property or birth; what groups of citizens could be deprived under the law of their civil and political rights; and how many legislative and constitutional referendums had been held since the adoption of the Basic Law.

517. In his reply, the representative of the State party provided detailed information on some of the provisions of the Basic Law and linked them to the corresponding provisions of the Covenant. Article 79 of the Basic Law provided for the supremacy of international law, in particular the Covenant, over domestic law and, when a discrepancy arose, the domestic law would be modified. He also drew the Committee's attention to the country's forthcoming accession to the Optional Protocol to the Covenant.

518. The National Transition Council was vested, under article 92 of the Basic Law, with legislative powers in order to prepare the organic laws that were required for the establishment of the main institutions of the Guinean State, particularly regarding the charter of political parties, the composition and function of the Economic and Social Council, the freedom of the press, and the attributes and functions of the Supreme Court and High Court of Justice. The Council would continue to function until the National Assembly was elected, at which time it would automatically cease to exist. The President of the Republic did not have absolute power and had to cooperate with the legislative and judicial powers. He was obliged to reply to oral and written questions from the National Assembly and, in turn, the Assembly was authorized under the Basic Law to establish commissions of inquiry. In cases where the legislative and executive branches might not agree on a specific issue, the President of the Republic either accepted the National Assembly's views or dissolved the Assembly. If the same Assembly was re-elected, the President was obliged to resign. Furthermore, the Supreme Court was responsible for monitoring the legality of acts of the executive branch.

519. Referring to factors and difficulties impeding the implementation of the Covenant, the representative explained that Guinea was suffering from a shortage of financial resources and was unable to provide the required minimum conditions under article 10 of the Covenant, such as the separation of juveniles and adults, or of accused and convicted persons. The prisons were in a state of total disrepair and certain standards could not be met. Similarly, difficulties affected the implementation of article 14, paragraph 3 (b), of the Covenant.

520. Organization Act No. L/96, concerning states of siege and states of emergency, specified that measures envisaged in the Act could be invoked only during grave disturbances of public order

where domestic security was endangered. Anyone subjected to those measures had the right to appeal to an advisory body presided over by a judge. Furthermore, no person could be subject to restrictive residence or local expulsion.

521. A proper legal framework was needed to guarantee the existence and operation of human rights organizations. However, due to delays in drawing up legislation, the President of the Republic had authorized the Ministry of Interior and Defence to grant recognition to properly constituted organizations. Decree No. 92/207 of the Ministry of the Interior and Defence, dated 11 May 1992, had thus authorized the establishment of the Guinean Association for Human Rights, an organization which was independent and apolitical.

522. Referring to the situation of women in Guinea, the representative explained that women held positions equal to those of men at all levels of national administration. Of the 17 members of the Government and the 7 members of the National Transition Council 3 members of each were women. There was a woman leader of a political party and a woman was public prosecutor for one of the two appellate courts in Guinea. An effort had been made to reduce the obligation to pay dowry to a symbolic level, but the question was a difficult one due to the fact that tradition and the authority of the family remained very powerful forces in Guinean society. Efforts were being made to modify those forces through education rather than legislation, not only with regard to the dowry system but also in other areas, such as those of female circumcision and polygamy.

523. All forms of discrimination were prohibited in Guinea. However, there had been a spontaneous emergence of ethnocentricity in Guinea as a result of the democratization process, and some of the new political parties reflected that fact.

#### Right to life, treatment of prisoners and other detainees and liberty and security of person

524. With respect to those issues, the Committee wished to know what offences were punishable by the death penalty; whether any consideration had been given to its abolition; how often and for what crimes it had been imposed and carried out since the consideration of the initial report; what were the rules and regulations 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; under what circumstances the deaths mentioned in paragraph 117 of the report had occurred; whether there had been any investigations undertaken regarding the cases of disappearances which had occurred on a widespread basis before 1988; whether there had been any complaints, during the period under review, of extrajudicial executions or torture and, if so, what specific measures had been taken to overcome difficulties faced in that regard, to investigate such cases, to punish those found guilty, and to prevent the recurrence of such acts; what the arrangements were for the supervision of places of detention and the procedures for receiving and investigating complaints; what the infant mortality rate was in Guinea and whether any progress had been made in that field since the consideration of the initial report; how quickly after arrest a person's family was informed; how soon after arrest a person could contact a lawyer; and what difficulties there were in keeping within the limits of the maximum legal period of detention in custody and of pre-trial detention.

525. Additionally, clarification was sought about measures taken to investigate 63 alleged cases of

disappearances and 24 alleged cases of mistreatment of persons deprived of their liberty by prison wardens; on measures taken to investigate the crimes committed under the dictatorship, to hold the perpetrators accountable and to compensate the victims; as to whether there were any political detainees in Guinea; of measures taken to close secret detention centres, if any, set up outside the control of the public authorities; of the implementation of article 10, paragraph 2 (b), of the Covenant; and of the extent to which United Nations principles regarding the prevention of crime and the treatment of offenders had been taken into account in the formulation of national policies in that area.

526. In his reply, the representative of the State party said that the death penalty was imposed for murder, crimes against the external security of the State, illegal use of armed force, fomenting civil war, looting, and the use of torture and other barbaric acts. Guinea was a country with a Muslim majority and no consideration was being given to the abolition of the death penalty. The maintenance of the death penalty was a deterrent to crimes which threatened the lives of others. Since the consideration of the initial report, only one death sentence had been handed down and none had been carried out.

527. Although hundreds of thousands of persons had disappeared under the previous régime, it had not seemed appropriate to conduct investigations into disappearances since those responsible were now dead and it was thought unwise to reopen old wounds which might jeopardize the process of national reconciliation. Despite its lack of resources, the Government had provided some modest assistance to those who had suffered most, especially women and children and had returned all confiscated property to its rightful owners. The practice of torture persisted, unfortunately, because it was difficult to change habits acquired over a period of 26 years, particularly since the new Government had been obliged to retain some officials of the former régime. The situation was better in urban centres than in rural areas and, on the whole, torture was now the exception rather than the rule.

528. The use of firearms by the security forces was regulated by law and security officials were prohibited from using lethal ammunition in performing their duties. An inquiry had been conducted on a reported massacre by security forces, as a result of which a number of security officials had been tried and sentenced in accordance with the law. He added that, in another case, some of the students arrested in a recent protest had been found to be carrying military weapons.

529. In response to other questions, the representative said that, when an individual was arrested, the family was always informed immediately and the administrative authorities were required by law to inform local communities. Access to a lawyer was required only in the office of the examining magistrate who informed persons in custody of all their rights. Difficulties did arise in observing the maximum legal period of detention in custody, usually in remote rural areas due to the lack of communication infrastructures. A department for the administration of prisons consisting solely of magistrates had been set up within the Ministry of Justice and was responsible for ensuring that the relevant legal provisions were properly applied in prisons. Turning to the question of prison conditions, he explained that in certain prisons inmates were separated by sex, age or the nature of their offence, while in others such separation was not possible. Imprisonment was imposed on juvenile offenders between the age of 16 and 18 only if they posed a threat to public order. Otherwise, they were placed with foster families or in the care of teachers or representatives of

non-governmental organizations. Government policy aimed at their rehabilitation, but that was not always easy to achieve due to the lack of resources. Secret detention centres had existed under the previous régime. However, since 1988, there had been no detention in those centres and there were currently no political prisoners in Guinea. The Government was considering reopening one of the centres as a museum and a monument to those who had lost their lives there. The overall mortality rate and the maternity mortality rate had fallen sharply since 1984, while the number of primary health care centres had increased substantially.

#### Right to a fair trial

530. With regard to that issue, the Committee wished to receive information on the guarantees for the independence and impartiality of the judiciary; on the composition and jurisdiction of the State Security Court, the High Court of Justice and the military courts; on details concerning actual cases considered by those courts since the consideration of the initial report; and on the implementation in practice of the right to a public trial as provided for under article 14, paragraph 1, of the Covenant.

531. In addition, it was inquired whether, in view of the fact that the National Assembly had still not been established, members of the High Court of Justice had been appointed, on a provisional basis, by the National Transition Council.

532. In his reply, the representative of the State party explained that the independence and impartiality of the judiciary were guaranteed by articles 80 and 81 of the Basic Law and Act No. 91/011, which provided for the irremovability of judges and for a special body to supervise their appointment and recruitment. The State Security Court had been abolished and replaced by the High Court of Justice, which consisted of members elected by the National Assembly under the presidency of a judge. With the promulgation of the Basic Law, military courts had also ceased to exist. The Supreme Court functioned as a means of recourse against both executive and legislative acts as well as a court of appeal. All trials were open and accessible to the public and were held during legal working hours.

#### Freedom of movement and expulsion of aliens, right to privacy, freedom of opinion and expression, freedom of association and assembly, and rights of persons belonging to minorities

533. In connection with those issues, the Committee wished to know what legal provisions governed the expulsion of aliens; whether an appeal against an expulsion order had suspensive effect; what had been the result of the legal proceedings initiated in the cases of arbitrary interference with the privacy of individuals or families or with their correspondence, mentioned in paragraph 110 of the report; what laws or regulations governed the recognition of religions or religious sects by public authorities; what measures had been taken against the emergence of certain sects whose fundamentalist views appeared likely to threaten public order and social peace; what restrictions were imposed by articles 244 to 246 of the Penal Code on the freedom of opinion and expression; what measures had been adopted to ensure the plurality of press organs; what were the criteria and procedures for the registration of political parties and trade unions; what measures had been taken to facilitate the establishment of political parties and to secure political pluralism; what ethnic, religious or linguistic minorities existed in Guinea; what measures had been adopted to protect the rights of persons belonging to ethnic, religious or cultural minorities; and what had been



the events mentioned in the report which had affected the relations between ethnic groups.

534. In addition, further information was sought on the implementation of the principle of mandatory voting and on any related penalties; about measures taken to ensure the holding of legislative elections despite financial problems; on allegations that members of the "Rassemblement du Peuple Guinéen" had been denied the right to freedom of assembly and that some of its members had been arrested and detained; on restrictions, if any, to the right to strike; and on the situation of the 300,000 refugees living in Guinea.

535. In his reply, the representative of the State party said that appeals against an expulsion order were permissible and did have suspensive effect. Although there were no laws governing the recognition of religions or religious sects by the authorities, articles 174 to 177 of the Penal Code dealt with the possible threat to public order posed by the activities of ministers of religious sects. Freedom of the press was guaranteed by Act No. 91/005, the only restrictions imposed being those needed to protect the dignity of the person, ensure plurality of opinion and safeguard public order and national unity. Article 256 of the Penal Code prohibited publications whose aim was to incite to crime, while article 258 prohibited the publication of pornographic material. There was a flourishing press sector with some 20 different publications.

536. The registration of political parties was governed by Act No. 91/002, which contained no limitations on or obstacles to the establishment of political parties. Appeals against a refusal by the administrative authorities to register a party could be lodged with the Supreme Court. There were now 42 parties in existence in Guinea. The legislative elections, which had been scheduled to be held at the beginning of 1991, had been delayed because of a disagreement about how the printing of ballots was to be financed. They would be held as soon as the matter was finally resolved. Under the Basic Law, it was the duty of all citizens to participate in elections, the only restrictions being those relating to age and those resulting from conviction for an offence involving the loss of civil rights. With regard to the arrest of 22 members of the "Rassemblement du Peuple Guinéen", the leaders of that political grouping had been told to await the promulgation of the Basic Law before organizing their public meeting. They had, however, openly flouted the authorities' instructions and its meetings had thus violated public order. Its members had been arrested and tried by due process of law, which included the right to a proper defence. The right to strike was recognized in both the Basic Law and the Labour Code and three major labour unions operated throughout the country.

537. While there were many different ethnic groups in Guinea, extensive intermarriage had made the country a melting pot where no minority feared for its survival. For that reason, there was little need to provide for protective measures and article 8 of the Basic Law was deemed to be sufficient for that purpose. Some problems had occurred in the past when the crimes of the former régime had been attributed to the Malinké group, because the former President had been of that origin. For similar reasons, the Susu group tended to be blamed for the real or alleged failings of the current authorities. However, ethnic rivalry was giving way to national sentiment.

538. The representative added that the situation in Liberia had had a major impact on Guinea, which had given shelter to 485,000 refugees in 1992. Since the refugees generally belonged to the same ethnic group as their hosts, no cultural problems had arisen, but the situation with regard to sanitation, nutrition, health and the environment was becoming increasingly serious.

### Concluding observations by individual members

539. Members of the Committee thanked the representative of the State party for his cooperation in presenting the second periodic report of Guinea and for having engaged in a fruitful dialogue with the Committee. They welcomed the positive steps taken in Guinea towards democracy in which human rights would be a fundamental element of State policy. They also expressed appreciation for the adoption of the Basic Law, the abolition of the State Security Court and the country's forthcoming accession to the Optional Protocol. They noted, however, that the authorities still had to deal with the legacy of the past.

540. At the same time, it was noted that some of the concerns expressed by members of the Committee had not been fully allayed. Deep concern was expressed over the fact that there were still cases of torture and ill-treatment in Guinea. Concern was also expressed regarding persisting discrimination of women in certain areas; the conditions of detention of persons deprived of their liberty; the excessively long period of pre-trial detention; the absence of monitoring of places of detention; the lack of compliance with the rules and regulations governing the use of firearms by members of the security forces; and regarding the implementation of article 27 of the Covenant. Members underlined the importance of ensuring that the Covenant was widely publicized so that the general public and law enforcement officials concerned were made adequately aware of the rights recognized in those instruments.

541. The representative of the State party welcomed the Committee's cooperation in helping his country achieve its human rights goal and announced that Guinea would seek the assistance of the Centre for Human Rights in organizing a seminar in Guinea to enhance awareness of the provisions of the Covenant and to support government initiatives in that area.

542. In concluding the consideration of the second periodic report of Guinea, the Chairman thanked the delegation of Guinea for having engaged in a positive dialogue with the Committee.

### Comments of the Committee

543. At its 1229th meeting (forty-seventh session), held on 6 April 1993, the Committee adopted the following comments.

#### Introduction

544. The Committee thanks the Government of the State party for its frank and detailed report. However, the latter focuses more on legislation than on the effective implementation of the provisions of the Covenant and contains little information concerning factors and difficulties that impede implementation of the Covenant. In replying to questions asked by members of the Committee, the delegation of Guinea sought to supplement the written report, thereby enabling the Committee to understand better the human rights situation in Guinea.

#### Positive aspects

545. Since the consideration of the initial report, it should be pointed out that Guinea has adopted

a basic law which has the value of a constitution and contains a title concerning fundamental rights and freedoms; the Law was adopted by referendum on 23 December 1990. The military courts and the State Security Court have been discontinued. The delegation announced that Guinea would soon accede to the Optional Protocol.

#### Factors and difficulties that impede implementation of the Covenant

546. According to the representative of Guinea, the legacy of the former régime, which was responsible for torturing several thousand people and for mass disappearances, has left marks and bad habits in the Administration. Instances of violations (irregular arrests and ill-treatment) are not reported because the victims are resigned. The force of tradition and custom is an obstacle to the exercise of the rights of the Covenant concerning, more particularly, customs and the family.

#### Main grounds for concern

547. The Committee expressed concern at the general character of the provisions of article 22 of the Basic Law which permit it to limit the rights and freedoms of the individual for reasons relating to public order. It fears that implementation of these provisions might lead Guinea to enact laws instituting restrictions on rights and freedoms that go beyond those permitted by the Covenant. The Committee expressed concern at the establishment under the Basic Law of the Supreme Court of Justice which does not seem to it to comply with the requirements of article 14 of the Covenant. Several cases of ill-treatment and torture have been reported and have remained unpunished. There have been arrests and detentions for reasons of a political nature during the period covered by the report. Peaceful demonstrations have ended in bloodshed owing to excessive use of firearms by the police. The Committee is also concerned regarding the implementation of article 27 of the Covenant.

#### Suggestions and recommendations

548. The Committee recommended that, during this period of major legislative change, the Government of the Republic of Guinea take account of the provisions of the Covenant with a view to introducing them into its internal legislation. It suggested, in particular, that the Government adopt detailed regulations governing firearms to enable it to respect article 6 of the Covenant and also rules applicable to police custody and detention consistent with article 9 of the Covenant. Investigations should be ordered systematically when a violation is reported. An appropriate penalty should be imposed on the guilty when they are identified. Measures should also be taken to fully implement the guarantees provided for in article 27 of the Covenant.

549. The Committee emphasized the need to develop programmes of education concerning human rights and specific programmes to be used in training law enforcement officers with the assistance, where necessary, of the Centre for Human Rights.

550. The Government was invited to promote the development of organizations specializing in the promotion and protection of human rights.