

**REPORT
OF THE
HUMAN RIGHTS COMMITTEE**

GENERAL ASSEMBLY

OFFICIAL RECORDS: THIRTY-FIFTH SESSION

SUPPLEMENT No. 40 (A/35/40)



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New York, 1980

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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I. INTRODUCTION

A. States parties to the Covenant

1. On 1 August 1980, the closing date of the tenth session of the Human Rights Committee, there were 62 States parties to the International Covenant on Civil and Political Rights and 23 States parties to the Optional Protocol to the Covenant which were adopted by the General Assembly of the United Nations in resolution 2200 A (XXI) of 16 December 1966 and opened for signature and ratification in New York on 19 December 1966. Both instruments entered into force on 23 March 1976 in accordance with the provisions of their articles 49 and 9 respectively.

2. By the closing date of the tenth session of the Committee, 13 States had made the declaration envisaged under article 41, paragraph 1, of the Covenant which came into force on 28 March 1979. A list of States parties to the Covenant and to the Optional Protocol, with an indication of those which have made the declaration under article 41, paragraph 1, of the Covenant, is contained in annex I to the present report.

B. Sessions

3. The Human Rights Committee has held three sessions since the adoption of its last annual report: the eighth, ninth and tenth sessions were held at the United Nations Office at Geneva from 1st to 26 October 1979, from 17 March to 3 April 1980 and from 14 July to 1 August 1980, respectively.

C. Membership and attendance

4. The membership of the Committee remained the same as during 1979. A list of the members of the Committee is given in annex II below.

5. All the members, except Mr. Ganji and Mr. Uribe Vargas, attended the eighth and ninth sessions of the Committee. All the members, except Mr. Ganji and Mr. Kelani, attended the tenth session of the Committee.

D. Working groups and special rapporteurs

6. In accordance with rule 89 of its provisional rules of procedure, the Committee established working groups to meet before its eighth, ninth and tenth sessions in order to make recommendations to the Committee regarding communications under the Optional Protocol.

7. The Working Group of the eighth session was established by the Committee at its 174th meeting, on 15 August 1979, and it was composed of Messrs. Movchan, Opsahl,

Prado Vallejo and Sadi. It met at the United Nations Office at Geneva from 8 to 12 October 1979 and elected Mr. Opsahl as its Chairman/Rapporteur.

8. The Working Group of the ninth session was established by the Committee at its 190th meeting, on 24 October 1979, and it was composed of Sir Vincent Evans, Mr. Janca and Mr. Prado Vallejo. It met at Geneva from 10 to 14 March 1980. Sir Vincent Evans was elected Chairman/Rapporteur.

9. The Working Group of the tenth session was established by the Committee at its 219th meeting, on 3 April 1980, and it was composed of Messrs. Koulishév, Havrommatis, Prado Vallejo and Tarnopolsky. It met at Geneva from 7 to 11 July 1980 and elected Mr. Tarnopolsky as its Chairman/Rapporteur. Mr. Tomuschat, who was appointed as a Special Rapporteur by the Committee at its ninth session to study a certain communication, reported on that communication to the Committee at its tenth session.

E. Agenda

Eighth session

10. At its 177th meeting, held on 15 October 1979, the Committee adopted, with amendments, the provisional agenda, submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its eighth session, as follows:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 40 of the Covenant.
4. Consideration of reports submitted by States parties under article 40 of the Covenant.
5. Consideration of communications received in accordance with the provisions of the Optional Protocol of the Covenant.
6. Question of the co-operation between the Committee and the specialized agencies concerned.
7. Future meetings of the Committee.

Ninth session

11. At its 195th meeting, held on 17 March 1980, the Committee adopted the provisional agenda, submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its ninth session, as follows:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 40 of the Covenant.
4. Consideration of reports submitted by States parties under article 40 of the Covenant.
5. Consideration of communications received in accordance with the provisions of the Optional Protocol to the Covenant.
6. Future meetings of the Committee.

Tenth session

12. At its 220th meeting, held on 14 July 1980, the Committee adopted the provisional agenda, submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its tenth session, as follows:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 40 of the Covenant.
4. Consideration of reports submitted by States parties under article 40 of the Covenant.
5. Consideration of communications received in accordance with the provisions of the Optional Protocol to the Covenant.
6. Annual report of the Committee to the General Assembly through the Economic and Social Council under article 45 of the Covenant and article 6 of the Optional Protocol.

II. ORGANIZATIONAL AND OTHER MATTERS

A. Question of publicity for the work of the Committee

13. At its eighth session, the Committee began consideration of the question of publicity for its work in the context of the new guidelines for the content and format of the United Nations Yearbook on Human Rights as approved by Economic and Social Council resolution 1979/37.

14. Members of the Committee regretted not having been given the opportunity of commenting on the draft guidelines before their adoption. Noting that the guidelines envisaged the inclusion in the Yearbook of extracts from the reports submitted by States parties under the Covenant as well as reports made by the Committee on its work in any given year, they thought that selection of extracts was a delicate task, that it was unlikely to give a clear picture of the over-all human rights situation in a given country and to reflect the necessary links between the reports themselves and the questions raised by the Committee. Further, it was unlikely to meet the need for appropriate publicity on the Covenant as a separate instrument for the protection of human rights and for familiarizing the public throughout the world with the rights that the Covenant was designed to promote and protect.

15. Many members were of the opinion that the Committee should publish its own comprehensive yearbook. Other suggestions included publication of a booklet in as many languages as possible on the Committee's functions for the public at large; a comprehensive study on the Committee's work for the benefit of governments, lawyers and researchers; and making the official records of the Committee available in annual bound volumes - one volume to contain the summary records of public meetings of the Committee and a second volume to contain other public documents of the Committee, including States' reports under article 40 of the Covenant.

16. It was generally agreed that, pending the separate publication of the Committee's work, the portion of the Committee's work intended to be included in the United Nations Yearbook on Human Rights should be submitted to the Committee for approval. It was also generally agreed that the best publicity for the Covenant was for the Committee to continue improving its methods of work, to intensify its contacts with the media and to hold some of its sessions in developing countries.

17. Members of the Committee were unanimous in considering that the sole aim of publicity for the Committee's work was to encourage awareness of the Covenant and the promotion of human rights throughout the world. They agreed to keep the various suggestions on the agenda for further consideration. It was also agreed that the Chairman should, in the meantime, try, with the help of the Secretariat, to explore the possibility of giving effect to some of the ideas put forward.

18. At its ninth session the Director of the Division of Human Rights informed the Committee that at its thirty-sixth session the Commission on Human Rights had adopted and submitted to the Economic and Social Council for its approval a resolution (24 XXXVI) in which it had invited the Council, inter alia, "to request the Secretary-General in co-operation with UNESCO and ILO to draw up and implement

a world-wide programme for the dissemination of international instruments on human rights in as many languages as possible and to report on the implementation of this programme to the Commission at its thirty-seventh session"; and that the secretariat had, since 1 January 1980, been publishing a "Monthly Notice" which reproduced the agendas of the various session of the bodies concerned with human rights, including those of the Human Rights Committee and extracts from or summaries of important reports that had recently been published. The Human Rights Bulletin was now published every three months and changes had been made in its format and its contents which, inter alia, included extracts from the annual report of the Human Rights Committee. The secretariat would, however, need the assistance of the Committee for it often found it very difficult to select items of information and to decide, for instance, what parts of the Committee's annual report should be published. In this connexion, the Director stressed the importance of the press releases which not only gave an immediate, if brief, account of the discussions in the various bodies concerned with human rights, but included such conclusions reached by the Human Rights Committee in 1979 concerning a State party to the Optional Protocol. The Secretariat also envisaged speeding up the programme for the publication of the issues of the Yearbook which were in arrears, and the Yearbook for 1979 would give an account of the work of the Committee.

19. At its tenth session, after consultations with the appropriate secretariat services, the Human Rights Committee returned again to the proposal that its official records should be made available in annual bound volumes (see para. 15 above) and decided to request the secretariat to arrange for this to be done. The Committee agreed that this was necessary both for the effective exercise of the Committee's own continuing functions and in order to make the results of its work available in a convenient and permanent form to Governments, organizations, scholars and others concerned with the promotion of human rights.

B. Method of work in the consideration by the Committee of reports submitted by States parties under article 40 of the Covenant

20. The Committee discussed this matter at its 231st and 232nd meetings. An account of the discussions and decisions taken is given in chapter III, C, below, which deals with the consideration of reports to which this matter properly belongs.

C. Participation at the meeting of the Latin American Institute for Social Investigation

21. At its tenth session, the Committee was informed by its Chairman of an invitation that he had received from the Latin American Institute of Social Investigation extended to him to attend a meeting on human rights which will be held in Quito on 11, 12 and 13 August 1980.

22. The Chairman expressed his gratitude for this invitation and informed the Committee that, because of previous engagements, he would not be able to attend but that the Committee could designate any of its members for that purpose.

23. The Committee decided to designate its Vice-Chairman, Mr. Prado Vallejo, to represent it at the meeting.

III. REPORTS OF STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

A. Submission of reports

24. States parties have undertaken to submit reports in accordance with article 40 of the Covenant within one year of the entry into force of the Covenant for the States parties concerned and thereafter whenever the Committee so requests. In order to assist States parties in submitting the reports required under article 40 of the Covenant, the Committee, at its second session, approved general guidelines regarding the form and content of reports, the text of which appeared in annex IV to its first annual report submitted to the General Assembly at its thirty-second session. 1/

25. At its eighth session, the Committee was informed that, since the Committee's seventh session, Costa Rica, Kenya, Mali and the United Republic of Tanzania had submitted their initial reports under article 40 of the Covenant, thus bringing the number of initial reports submitted under that article to 38.

26. The Committee was also informed that the following five States parties whose initial reports were due in 1977 had not yet submitted them: Colombia, Jamaica, Lebanon, Rwanda and Uruguay; and that of the reports due in 1978, those of Guyana, Panama and Zaire had not yet been submitted. For the status of submission of reports, see annex III to this report.

27. The initial report submitted by Poland was considered by the Committee at its eighth session. At the same session the Committee also considered the supplementary report submitted by Sweden.

28. At its ninth session, the Committee was informed that since the eighth session, Colombia, Venezuela and Italy had submitted their initial reports under article 40 of the Covenant, thus bringing the number of initial reports submitted under that article to 41. In the same period, Denmark and Norway had submitted supplementary reports.

29. The Committee was also informed that, of the initial reports due in 1977, those of Jamaica, Lebanon, Rwanda and Uruguay had not yet been submitted; that, of the reports due in 1978, those of Guyana, Panama and Zaire had not yet been submitted; that, of the reports due in 1979, those of the Dominican Republic, Guinea, Portugal and Austria had not yet been submitted; and that the Libyan Arab Jamahiriya, the Federal Republic of Germany, Jordan, Madagascar, Mauritius and Yugoslavia had not yet submitted the additional information that they had promised during the consideration of their initial reports during the second, third, fourth and fifth sessions of the Committee.

30. The Committee was informed by the Chairman of the meetings he had had with officials from Jamaica and Rwanda in connexion with the initial reports of their

1/ Official Records of the General Assembly, Thirty-second Session Supplement No. 44 (A/32/44 and Corr.1), annex IV.

countries which were due in 1977 but not yet submitted to the Committee. He had not made any further approach in this respect to the Lebanese Government, for reasons which were well known.

31. Members of the Committee recalled that several reminders and an aide-mémoire had been sent to the four States parties, namely Jamaica, Lebanon, Rwanda and Uruguay which had not yet submitted their reports due in 1977. Several suggestions were made as to what further steps the Committee should adopt in ensuring compliance by these States with the terms of article 40 of the Covenant. Such suggestions included the transmission of further, but more strongly-worded reminders, further personal contacts with representatives of the State party concerned, the inclusion in the Committee's annual report of a statement to the effect that the States parties concerned had not fulfilled their obligations under article 40 of the Covenant and, lastly, the submission of the question to the next meeting of the States parties.

32. The Committee decided to send reminders to all the countries which should have already submitted their reports in 1977, 1978, and 1979 as also to Chile and Iran which had promised to submit additional or new reports.

33. The initial reports submitted by Canada, Iraq, Mongolia and Senegal were considered by the Committee at its ninth session.

34. At its tenth session, the Committee was informed that since the ninth session no new reports under article 40 of the Covenant had been received.

35. The Committee was also informed that in compliance with its decision adopted at its ninth session, reminders were sent to the following States parties: Jamaica, Rwanda and Uruguay (due in 1977); Guyana, Panama and Zaire (due in 1978); and the Dominican Republic, Guinea, Portugal and Austria (due in 1979). In conformity with the same decision, notes verbales were also sent to both Chile and Iran requesting them to submit the new reports promised by their representatives at the sixth session of the Committee. 2/ The Committee was also informed of the text of the reply received from Iran informing the Committee that given the necessity for the newly-elected Iranian Parliament to review the existing Iranian legislation regarding the enforcement of the rights recognized in the new Constitution, the Government of the Islamic Republic of Iran was not yet in a position to submit its report immediately to the Committee but that it would do so as soon as the necessary measures had been taken. 3/

36. The Committee decided that with regard to States parties whose reports had been due since 1977, given the fact that the four reminders and the aide-mémoire which had been sent to them since 1977 had been to no avail and given the fact that the Committee had already indicated in paragraph 57 of its last annual report (A/34/40) that the Committee would find it difficult to avoid mentioning in its ensuing annual report to the General Assembly the failure of the States concerned to comply with their reporting obligations, the Committee decided, in accordance with rule 69 of its provisional rules of procedure, to mention the names of the following States parties

2/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 40 (A/34/40), paras. 60, 66 and 109.

3/ For a discussion on the reply, see CCPR/C/SR.237.

as having failed to fulfil their reporting obligations under article 40 of the Covenant on Civil and Political Rights:

Jamaica

Rwanda

Uruguay

37. The Committee decided not to mention Lebanon in the foregoing list in view of the explanations of that Government regarding the special difficulties that prevented Lebanon from submitting its report at this stage.

38. The Committee also decided that the Chairman should address a letter to the Chairman of the Third Meeting of States parties to the Covenant on Civil and Political Rights, due to be held on 12 September 1980, expressing satisfaction at the fulfilment of the reporting obligations by the majority of States parties and drawing particular attention to the steps which had so far been taken in the case of the few States parties which had not yet complied with their reporting obligations (see annex IV).

39. The Committee decided that a note verbale should be addressed to the Governments of Jamaica, Rwanda and Uruguay informing them of the decision of the Committee to mention the names of their countries in the annual report of the Committee to the General Assembly as having failed to fulfil their reporting obligations under article 40 of the Covenant and to remind them once again of that obligation and of the Committee's request for their initial reports to be submitted without further delay.

40. The Committee decided that with regard to those States whose reports had been due since 1978, an aide-mémoire should be handed over by the Chairman to the Permanent Representatives to the United Nations of the States parties concerned.

41. The Committee also decided that with regard to States parties whose reports had been due since 1979, new reminders should be sent.

42. The initial reports submitted by Colombia, Costa Rica and Suriname were considered by the Committee at its tenth session. The supplementary report of Hungary was also considered at this session.

B. Consideration of reports

43. The following paragraphs are arranged on a country-by-country basis according to the sequence followed by the Committee at its eighth, ninth and tenth sessions in its consideration of the reports of States parties. Fuller information is contained in the initial and supplementary reports submitted by the States parties concerned and in the summary records of the meetings at which the reports were considered by the Committee.

Poland

44. The Committee considered the initial report (CCPR/C/4/Add.2) submitted by the Government of Poland at its 186th, 187th and 190th meetings held on 22 and 24 October 1979 (CCPR/C/SR.186, 187 and 190).

45. The report was introduced by the representative of Poland who stated that the report had been submitted in draft for comment to the Council of State, the competent parliamentary committees and other bodies such as the Juridical Sciences Committee of the Polish Academy of Science, the Association of Polish Jurists and the Legislative Council before its presentation to the Committee. She also pointed out that the Polish Parliament had amended the Constitution in 1976 on the basis of the provisions of the Covenant; on 26 May 1978, in order to give effect to the new provisions of the Constitution, Parliament had amended the People's Council Act on 14 July 1979, the Council of State, which ensured that laws were in conformity with the Constitution, had passed a resolution defining the manner in which it exercised its functions, in order to reinforce legality and render the laws more comprehensible; and that Parliament was undertaking measures to amend administrative procedures which involved the exercise of judicial control over administrative decisions and the recognition of the rights of a citizen to appeal to a court against any such decisions.

46. Members of the Committee associated themselves with the statement of principle contained in the introduction to the report concerning the connexion between the realization of human rights and economic and social development. The fact that the report quoted court decisions and provided specific examples illustrating how human rights were implemented in the Polish People's Republic was also commended. Some members expressed interest in the constitutional provision relating to the participation of all citizens in discussions and consultations on proposed basic laws and requested clarification on how that provision was implemented in practice.

47. Some members noted the omission in the Constitution of any specific provision prohibiting discrimination on the grounds of political opinion provided for under article 2 of the Covenant and stated that such omission assumed considerable importance in a country in which a specific ideology was enshrined in the Constitution. With reference to the statement in the report that the Covenant was applied not directly but through the medium of internal legislation and that the Polish domestic law was "basically" in harmony with the Covenant's provisions, it was asked whether there were aspects of Polish legislation which were not in harmony with the Covenant and whether a Polish citizen could invoke the Covenant before a judge or court and obtain a ruling which upheld its provisions. Stressing that there was a difference between availability of rights and their effective enjoyment, members requested additional information on the role played by the administrative and social bodies, referred to in the report, in protecting and promoting human rights; on whether the individual concerned was informed about the available remedy

as a matter of principle; and on whether or not the authority responsible for reviewing appeals was different from the one whose decision had been challenged. It was also asked whether the legal profession was open to everyone, what qualifications were required and how often people used its services. Noting that the Constitution conferred important powers on the Council of State, including the establishment of binding interpretation of laws, as well as the appointment and removal of judges and of the Public Prosecutor General, who was accountable to it, members asked whether such powers did not infringe the independence of the judiciary and whether institutional machinery existed to limit those powers.

48. As regards article 3 of the Covenant, interest was expressed in that part of the report which indicated how the development of economic and political rights promoted equality between men and women and the increased participation of the latter in public affairs. Questions were asked on the extent of such participation in Parliament, in the Council of Ministers, in the legal profession and in the Party organs.

49. In relation to article 6 of the Covenant, information was requested on the positive measures adopted by the State for the promotion of life as a social value as distinct from its protection by means of criminal sanctions. Referring to the crimes mentioned in the report to which the death penalty was applicable, questions were asked on which crimes against the economy were serious enough to warrant that penalty. Information was requested on the number of times the death penalty had been imposed during the period covered by the report and whether Poland was considering its abolition.

50. Regarding articles 7 and 10 of the Covenant, members of the Committee asked what supervision was maintained by the judicial or other independent authorities over the treatment of prisoners held in police custody; whether any measures were available to a detainee to ensure that a person guilty of extorting false evidence from him or of ill-treating him became answerable for his actions; whether persons in detention could be held incommunicado or in solitary confinement pending trial; how long they could be deprived of contact with their lawyers; and what provision was made to enable persons being detained or serving prison sentences to contact their families.

51. In connexion with article 9 of the Covenant, it was asked for what period of time a public prosecutor could order a person to be remanded in custody; whether there was any possibility for a detained person to apply for release during the custody period of 48 hours; whether a person could be remanded in custody for a number of successive 48-hour periods; whether a decision by the public prosecutor to place an individual in detention could be reversed by the courts; and what provision was made for the care of the minor dependents of persons remanded in custody.

52. As regards article 12 of the Covenant, one member wondered why the need to maintain law and order or to uphold the vital economic interests of the country should necessitate residence restrictions. Information was requested on the conditions under which a person was authorized to settle in Warsaw, the date when such conditions had been laid down and the remedies which were available to the individual who felt that his application had been unlawfully rejected. Noting that, after serving a term of imprisonment, a convicted person could be ordered by the courts to live in a specific area in order to prevent undesirable contacts with criminal circles, another member wondered whether it was not the responsibility of

the State to remove the criminal elements from the area rather than to prevent the individual in question from returning there. Clarification was requested on the statement in the report that a passport could be denied to a person who had harmed the good name of Poland or for "important reasons of State". In this connexion, one member sought an assurance from the representative of Poland that any application to leave the country made under article 12, paragraph 2 was respected as law-abiding conduct which would not be sanctioned as a criminal offence or, for instance, by dismissal from employment.

53. Commenting on article 14 of the Covenant, members of the Committee requested more information on the various judicial organs, including the collective boards, on their powers and composition, on whether they were elected, on the guarantees of good and independent justice and on the grounds on which a judge could be removed from office. Some members sought explanation of the reference in the report to the "participation of the social factor in the exercise of justice", the elements of the offences of the "hooligan" type and the guarantees for a fair trial, including the conditions for admission of evidence offered by the accused. Questions were asked concerning the exceptions to the rule that a hearing should be public and the grounds on which such exceptions were made, how often the court pronounced judgement in absentia, and whether such judgement could be revised if the convicted person appeared later. One member wondered whether the statement in the report to the effect that the Prosecutor, while authorizing the accused to confer with his lawyer could none the less reserve the right to be present at the meeting, was compatible with the provisions of article 14 (3) of the Covenant.

54. As regards article 18 of the Covenant, it was noted that neither the Constitution nor the report seemed specifically to mention freedom of thought. It was asked whether religious propaganda was authorized under certain conditions and whether atheistic propaganda existed and, if so, under what conditions it could be practised; whether children who attended schools were given the opportunity to receive religious teaching and, if so, whether parents took advantage of that possibility. Comments were made that the situation regarding freedom of conscience and religion, reflected in the report, was exemplified by the recent visit to that country of the present Roman Catholic Pope, himself of Polish origin, who had been entirely free to conduct what amounted to religious propaganda.

55. In connexion with article 19 of the Covenant, members of the Committee asked how far was it possible for a person to express dissent in regard to the country's political and social system in general; in which cases was the freedom of oral and written expression considered to be aimed at impairing this system; how much control was exerted over the mass media and to what extent control organs determined what the people could read. Reference was made to the statement in the report that Polish law prohibited the attribution to an institution of acts likely to bring it into disrepute, and the question was asked whether, in the event of such acts being attributed to the Council of State, for example, it was possible to obtain independent adjudication. More information was requested on how the youth of Poland was educated in the spirit of anti-fascism, peace and friendship. Satisfaction was expressed at the fact that Polish law contained provisions designed to protect society against moral degradation, the exaltation of violence and pornography.

56. As regards article 21 of the Covenant, reference was made to the statement in the report that consent to the holding of a meeting could be refused if the convening of the meeting was contrary to the "social interest". The concept of "social interest" was said to be broad and called for further explanation.

Questions were asked as to who was authorized to grant such consent; to what kinds of meetings the requirement applied; who was empowered to judge what was or was not in the social interest and, in the event of a dispute on the latter point, who decided the issue.

57. Commenting on article 22 of the Covenant, members of the Committee noted that the Constitution prohibited the setting up of, and participating in, associations whose objectives were incompatible with the socio-political system or the legal order of Poland, and asked who decided whether such incompatibility existed; what remedies were available to an individual whose right of association was restricted; what were the associations recognized as being of "higher public utility"; to which category associations such as the Society of Friends of the United Nations belonged and how could an old order of the President of the Polish Republic issued in 1932 be used at the present day to restrict the right of association. One member wondered whether there was only one association in each field of artistic activity, whether artists were allowed to set up their own associations or had to belong to one of the official associations and whether an artist would be able to publicize his work if he was not a member.

58. With respect to articles 23 and 24 of the Covenant, it was asked whether there were any restrictions on the marriage of Polish citizens with foreigners; whether there was any difference in treatment with regard to residence and nationality as between a Polish man or a Polish woman who married a foreigner and if any distinction was made as to the nationality of their children: to what extent the right of abortion was recognized in the Polish system; whether the conditions for married and unmarried women differed in that respect and whether a married woman would be free to have an abortion without her husband's consent. Information was requested on any special provisions made for the care of young children of the working mothers. As regards the statement in the report to the effect that there could be no divorce in certain circumstances where the interests of the children so required, it was observed that there appeared to be little justification for this as, on the one hand, Polish law provided equal rights both for legitimate children and for those born out of wedlock and, on the other hand, it might be against the interests of the children themselves to live in an atmosphere of mutual dislike between the parents.

59. In connexion with article 25 of the Covenant, it was pointed out that the reference in the Constitution to the Polish United Workers' Party as being the guiding political force of society in building socialism gave predominance to that party and to its members, and seemed incompatible with the Covenant. It was asked whether the trade unions could present candidates for elections and take part in the law-making process by proposing amendments to laws. Information was sought on the role of the social organizations in carrying out the tasks of socialist democracy and in the machinery of the State and on the function and operation of the residents' self-management committees and their role in the management of the economy. One member asked for clarifications about the electoral criteria applied in relation to article 25 of the Covenant and wished to know what steps were taken to ensure that a person could express himself freely in elections.

60. In relation to article 27 of the Covenant, information was requested on the status of the various minority groups and on the opportunities available to them to retain their identity, to publish books and newspapers in their own languages, and to use their own languages in schools and churches. It was asked why the people of

German culture and language had not been mentioned as a distinct group within the meaning of article 27 of the Covenant.

61. Commenting on the questions raised by members of the Committee, the representative of the State party stated that apart from the established practice for Parliament and the Government to ask associations of jurists for their opinion, the Polish people were consulted about the majority of legislative bills which concerned the rights of citizens and that in the case of legislation of lesser importance, only the social organizations concerned were consulted.

62. Replying to questions asked under article 2 of the Covenant, the representative pointed out that the Polish legislation contained no provision which departed from the principle of the equality of human rights on the grounds of opinion and that article 67, paragraph 2, of the Constitution should be considered in conjunction with article 83, paragraph 1, which explicitly guaranteed freedom of speech. She noted that, in ratifying the Covenant and publishing it in the Official Gazette and several other national publications, Poland had undertaken to respect it and to do all that was necessary to guarantee and protect in its entirety the rights embodied in it; that in practice, although Polish citizens were unable to invoke the Covenant as such in order to demonstrate that a specific rule of law was null and void because it ran counter to the Covenant, nevertheless the rights laid down in the Covenant were given effect to in Poland through the medium of domestic law; that the Public Prosecutor General had the right to challenge general legislative acts that were not in conformity with the law and to request local administrative bodies to take the necessary action in that respect; and that the social control committees were particularly important so far as protection of the rights of citizens were concerned. Referring to other comments, the representative pointed out that, in the intervals between sessions of Parliament, the Council of State was empowered to issue decrees having the force of law, but they subsequently had to receive parliamentary approval; that the judges were subject to the law and, subsequently, were not required to rule on the compatibility of the laws with the Constitution. However, they did have the right to determine whether executive and other judicial orders and laws were consonant with the Constitution and were able to refrain from giving effect to an order emanating from a body of lesser rank if it was not in accordance with the law.

63. Replying to questions on equality between men and women, the representative stated that Polish women often held responsible posts in enterprises, education, Parliament, the judiciary and local government bodies; that two members of each of the Council of State and the Council of Ministers were women; that women accounted for 17 per cent of the lawyers, 33 per cent of the prosecutors and about 49 per cent of the judges; and that many women occupied high positions in the hierarchy of the political parties.

64. As regards article 6 of the Covenant, the representative pointed out that the existence, in both urban and rural areas, of many consultation services for future mothers and of free medical and other care for pregnant women and infants had resulted in a decline in the infant mortality rate which, in 1978, was less than 23 per thousand; that the death penalty could be imposed on persons who organized or directed the seizure of goods of high value to the detriment of a unit of the socialized economy and provoked serious disturbances in the functioning of the national economy; and that since the Penal Code had come into force on 1 January 1970, the death penalty had never been imposed on those grounds. The

Polish Government did not plan, and had not found it necessary, to modify the Penal Code in force.

65. Replying to questions under articles 7 and 10 of the Covenant, she stated that penalties were carried out in a humane manner and with respect for human dignity; that the penitentiary judge and the Public Prosecutor were responsible for supervising the serving of the sentence; that heads of districts were required to visit prison establishments in order to inspect conditions of detention and, where necessary, they could take appropriate action; that convicted persons and detainees had the right to appeal should they be subjected to treatment contrary to the principles expressed in the Penal Code; that in the event of the death of a person in custody there was a very thorough inquest into the circumstances of the death and that a person sentenced to deprivation of liberty had the right to communicate with persons outside and, in particular, to maintain contact with his family by visits and correspondence.

66. In connexion with article 9 of the Covenant, the representative pointed out that the period during which someone could be remanded in custody by decision of the Public Prosecutor could not exceed three months. However, if the preparatory proceedings could not be completed within that period, the prosecutor had the right to extend the detention to six months and the court to a longer period, as required in order to complete enquiries.

67. Regarding article 12, she stressed that Polish law did not restrict the individual's freedom to choose his place of residence; that exceptions to that rule concerned military areas important for national defence or border areas; that the economic reasons mentioned in the report related to the allocation of experts to the various regions throughout the country in accordance with the needs of the economy; that any Polish citizen had the right to leave Poland; and that exceptions to that principle represented only 0.6 per cent of cases.

68. Replying to questions relating to article 14 of the Covenant, the representative stated that the courts acted with the participation of the people, through people's assessors elected by People's Councils; that the Councils elected the members of the boards, which dealt with less serious offences, from among the citizens living and working in a particular place who had full civic rights, were 24 years of age and were capable of acting in that capacity; that the boards' proceedings were public; and that the establishment of professional and social administrations was another special device for enabling society to participate in the activities of the courts. She gave a detailed account of the procedure for the appointment of judges and of the provisions guaranteeing their independence and pointed out that a judge could be removed from office if he no longer gave the necessary guarantees for the proper discharge of his duties, but that there had only been one case of dismissal in the past 10 years and no judge had been removed from office since 1977; that a judge could be relieved of his duties by the Minister of Justice for reasons which she enumerated or by a decision of the disciplinary court; and that during the past 10 years there had been only three such decisions. As to the procedure applicable to offences of the "hooligan" type, she stated that this concerned only persons caught in the act or immediately thereafter, that in the courts dealing with such cases there was a permanent legal service which provided to accused persons the services of a lawyer, and that the system of exemption from payment of costs was widely applied. Replying to other questions, she stated that secret hearings were the exception, and in such cases

two persons appointed by each of the parties, as well as persons admitted pursuant to a decision of the president of the court, were present; that the right of the accused to communicate directly with his counsel without other persons being present was limited only in exceptional cases during the initial stage of the investigation; that the verdict was pronounced in public, although the judge might make an exception to that principle in criminal cases where a State secret was involved; that judgement could be pronounced by default only in the instances specified by law and that, should the person concerned avail himself of the right to a new hearing, the judgement pronounced was not executed and the case was tried again.

69. In connexion with article 18 of the Covenant, the representative pointed out that it was prohibited in the Polish People's Republic either to compel someone to take part in religious ceremonies or to restrict participation in such ceremonies; that since 1961, religious education had been entirely the responsibility of the Church, acting under the supervision of the Minister of Education; that there were several religious publications put out by religious organizations; and that parents were free to decide on a religious education for their children.

70. Commenting on questions asked under article 19 of the Covenant, she stated that during the period 1977-1979 only four persons had been sentenced for the offence of insulting the Polish State or disseminating information injurious to its interests; that the Central Office for the Control of the Press, Publications and Public Entertainment granted newspaper publication permits and decided whether a particular publication would or would not be subject to control; that, under an order of the Council of Ministers, no blame was attached to a person acting in good faith within the limits of the law and on the basis of accurate information; that attempts to stifle criticism were inadmissible; and that persons failing to act within the spirit of the relevant provisions laid themselves open to severe disciplinary penalties.

71. Replying to a question under article 21 of the Covenant, the representative stated that no permission was required for meetings which did not involve disturbance of public order and which were held at the initiative of existing organizations.

72. As regards article 22 of the Covenant, she indicated that there were three categories of social organizations in Poland: simple associations, declared associations and associations of higher public utility; that each category of organization was subject to different rules; that the Polish Red Cross, the National Defence League and the Association of Polish Jurists were examples of organizations of higher public utility; and that nearly all artists belonged to an artistic association, whatever their political opinions.

73. In relation to article 23 of the Covenant, the representative stated that mixed marriages were not prohibited by Polish law and did not automatically involve a change of nationality; that a foreign woman who married a Polish national acquired Polish nationality if, in the three months following the date of her marriage, she made the necessary statement before a competent body and if that body decided to grant her request; and that the child born of a mixed marriage acquired Polish citizenship unless his parents decided otherwise. As regards the questions on abortion, she pointed out that a pregnancy could only be terminated on medical recommendation or when the living conditions of the pregnant woman were difficult

or if there was a well-founded presumption that the pregnancy was the consequence of an offence; and that the decision to terminate a pregnancy was that of the woman alone and the husband's consent was not required. In the case of a minor girl, permission was required from the parents, guardians or guardianship court. Explaining the facilities enjoyed by working mothers, she pointed out that the Polish system granted a mother the right to three years of unpaid leave to look after her young child, that a woman who availed herself of this right did not lose her social insurance and pension entitlements, that an employer was obliged to guarantee her return to work in the same post at the same establishment, but that she could use day nursery facilities and continue to work. Replying to comments concerning divorce, she stressed that in the socialist ethic, the interests of the child occupied a high place and that even at the judgement stage those interests must nearly always take precedence over those of the parents.

74. As regards article 25, the representative stressed that members of the Polish United Workers' Party did not have a more privileged social role to play than members of other parties, or citizens who did not belong to any party, but that the members' duties at the professional and socio-political levels were more important; that there were no restrictions in Poland on the recruitment of persons who held particular political opinions; that trade unions took part in the preparation of social and economic plans at all levels; that some of the social organizations played a very important role in running the economy through their extensive participation in the management of socialized enterprises; and that the residents' self-managing committees took decisions as regards the development of the region, exercised control over the quality and conditions of life and dealt with matters referred to them by the Municipal Council.

75. Commenting on questions raised under article 27 of the Covenant, she stated that instruction was provided in the mother tongue of the national minorities during primary and secondary education; that such instruction was arranged at the written request of the parents, provided that there were at least seven pupils; that two faculties had been created at the University of Warsaw to ensure the teaching of minority languages; that educational establishments provided the minorities with libraries and newspapers; and that there were radio and television programmes disseminating information on the cultural and social activity of the minorities.

Sweden

76. The Committee considered the supplementary report submitted by Sweden (CCPR/C/1/Add.42), containing replies to the questions raised during the consideration of the initial report (CCPR/C/1/Add.9 and Corr.1), 4/ at its 188th and 189th meetings, on 23 October 1979 (CCPR/C/SR.188 and 189).

77. The Committee began its consideration of the supplementary report with the question of the implementation of the Covenant in Sweden. Some members of the Committee agreed that reflecting the relevant provisions of the Covenant in

4/ The initial report of Sweden was considered by the Committee at its 52nd and 53rd meetings on 18 and 19 January 1978, see CCPR/C/SR.52 and 53 and Official Records of the General Assembly, Thirty-third Session, Supplement No. 40 (A/33/40), paras. 68-94.

domestic legislation, as Sweden did, was in keeping with the Covenant. Other members wondered whether, from the standpoint of the individual, it was not preferable for the provisions to be incorporated directly into domestic legislation. They asked whether there was any particular reason for not incorporating the Covenant directly into Swedish legislation and whether laws could be declared null and void if found by the courts to be in conflict with the Covenant. Noting that the setting up in Sweden of a Parliamentary Commission to consider the authority of courts to examine the constitutionality of laws suggested that there might be some doubt in the matter, one member wondered whether there was any foundation for this doubt and asked whether there had been cases in which a law had been declared unconstitutional by a Swedish court. It was also asked if the Ombudsman could give an opinion on whether the rights set forth in the Covenant were respected in the legislation and practice of the State and if Swedish legislation enabled an individual to appeal against an administrative decision in all circumstances.

78. The representative of Sweden replied that the choice to implement the Covenant by reflecting its relevant provisions in the legislation rather than by directly enacting the Covenant into a special law mirrored Swedish legal tradition regarding the relationship between treaties and domestic laws; that, although the system of direct implementation would make it possible to challenge the conformity of Swedish legislation with the Covenant and not merely with the Constitution, the present system made it easier for the courts and administrative authorities to apply domestic laws which gave effect to the provisions of the Covenant. If a provision of Swedish law was difficult to interpret, the court would interpret it in the manner most in keeping with the treaty which such a law reflected. He added that, to his knowledge, there had never been a case of direct conflict between a domestic law and the Covenant in Sweden; that should such a conflict arise, domestic law would prevail and hence it would be the task of the Government to bring domestic law into line with Swedish international undertakings. As to the right of the courts to examine the constitutionality of laws, he indicated that, according to Swedish legal theory, the courts had the right to refuse to apply a law considered to be manifestly in conflict with the Constitution but there had never been a case to that effect. However, the bill submitted to Parliament pursuant to the Parliamentary Commission's report, referred to in the discussion, would make specific provisions in this matter. Replying to another question, he stated that the Ombudsman was not competent to deal with violations of the Covenant as such since his duties were to supervise the implementation of Swedish legislation but that it was not impossible that, in his reports to Parliament, he might draw attention to the possible inconsistency of Swedish legislation with the Covenant or even adopt a definite position in that respect. As to the question of appeal to administrative courts, he indicated that the legislative texts provided that appeals should be made to a particular administrative court and that if there was no possibility of appeal, a superior administrative agency or the Government itself would settle the matter.

79. Members of the Committee asked several questions concerning the rights enjoyed by aliens in Sweden in the light of the principle of non-discrimination embodied in article 2, paragraph 1, of the Covenant. Questions were asked as to whether aliens enjoyed the rights enshrined in the Covenant to the same extent as Swedish nationals, including their rights before legal bodies without having to make deposits in the nature of the cautio judicatum solvi; why certain rights provided for in the Freedom of the Press Act were not recognized for aliens; what would be

the position of an alien whose right under article 12, paragraph 2, of the Covenant was violated; what was the situation regarding the right of an alien, expelled with immediate effect in pursuance of a decision, to have his case reviewed by the competent authority, as provided for in article 13 of the Covenant; whether an alien sentenced to one year's imprisonment could be expelled from Sweden despite having already been resident there for five years; whether an alien who married a Swedish national acquired Swedish nationality ipso facto; and whether, in the case of divorce, the naturalized Swedish spouse could be expelled.

80. Commenting on the questions summarized in the preceding paragraph, the representative stated that in accordance with the Constitution foreigners enjoyed fundamental rights on an equal footing with Swedish nationals and that this principle applied to nearly all human rights with the exception of the right to remain in Sweden and the right to vote; that only aliens resident outside Sweden had to deposit the cautio judicatum solvi, unless an agreement had been signed between their country and Sweden; that the rights laid down in the Freedom of the Press Act were guaranteed to nationals under the Constitution and applied to aliens under conditions of equality except that, in the latter case, they could be limited by legislative provision; that the right to leave Sweden was guaranteed to Swedes and that there was no reason why it should be refused to aliens; that expulsion decisions affecting aliens could always be the subject of an appeal which could go to the highest court, the lodging of the appeal having a suspensive effect; that, in practice, an alien could not be expelled even if he had committed a serious offence, provided that he had resided in Sweden for five years, except in certain specific cases and for very special reasons; that an alien could normally acquire Swedish nationality if he had been resident in the country for not less than five years but that the required period was reduced in the event of a marriage with a Swedish national; and that a person who had acquired Swedish nationality by marriage could not be deprived of it as a result of a divorce or otherwise and could in no case be expelled.

81. Referring to the equal rights of men and women provided for in article 3 of the Covenant, in conjunction with article 26 which required the adoption of positive measures to prevent discrimination, some members of the Committee asked if the new Act on equal treatment of men and women provided for affirmative action with respect to sexual equality, including social, economic and administrative measures and what budgetary resources were earmarked for the training of women.

82. The representative pointed out that the new Act had made it unlawful, on the ground of discrimination, to provide less favourable conditions of employment to one sex than to another in respect of the same or equal work; that the Act covered equality in employment, training and working conditions and provided a judicial remedy in case of complaint. He referred the Committee to the very full and detailed accounts of his Government's action contained in its reports submitted under the International Convention on the Elimination of All Forms of Racial Discrimination which required, as in the case of article 26 of the Covenant, positive action against discrimination.

83. With reference to articles 9, 10 and 14 of the Covenant, it was asked whether the Police Board mentioned in the supplementary report qualified, for the purposes of article 9, paragraph 4, as a tribunal with all the necessary guarantees as to its composition and procedures and, if not, whether its decisions could be subject to an appeal to a judicial body; how compensation for a person unlawfully arrested or

detained could be obtained and whether a foreigner held in custody on the basis of an expulsion order which was subsequently annulled would be entitled to compensation. Referring to the possibility of rejecting counsel for the accused, one member asked how often that rule was actually applied. The question was also asked as to what was the general trend of Swedish legislation with regard to the treatment of offenders.

84. The representative indicated that the Police Board's powers were confined to the taking of persons into provisional custody for a maximum of one or two days; that thereafter, it was for special bodies to take appropriate action, and that such action was subject to appeal to an administrative court or to another comparable body providing all the necessary guarantees as to its composition and procedure; that, under the Tort Act, the State was generally held responsible for wrongful acts committed by public bodies in Sweden and that the amount of compensation due in such cases was decided by a court; and that the correct procedure for a foreign victim of such a wrongful act would be to sue the State before an ordinary court, asking for compensation. As to the possibility of rejecting counsel for the accused, he stated that the relevant provision was applied only in very exceptional cases when the behaviour of counsel made it impossible to conduct proceedings in a reasonable way. He also pointed out that the objective of the Swedish penal system was primarily social rehabilitation in the spirit of article 10, paragraph 3, of the Covenant.

85. One member asked how restrictions to freedom of expression on the ground of the "economic well-being of the people" or of the "national economy", as mentioned in the supplementary report, could fall within the restrictions permissible under article 19, paragraph 3, of the Covenant.

86. The representative of Sweden stated that the term "in the interest of the national economy" was not an adequate translation of the Swedish term, whose exact meaning was "in order to provide for the needs of the people"; and that what the legislators had in mind was the eventuality of war or some other emergency situation, in which special measures had to be taken to provide for the basic economic needs of the people.

87. Concern was expressed regarding the Swedish act on anti-social behaviour and the possible harmful consequences in other countries if that act were taken as a model. It was suggested that since the act had apparently never been applied in practice its repeal should be considered. The representative of Sweden said that he would take the matter up with the appropriate authorities in his country.

Mongolia

88. The Committee considered the initial report (CCPR/C/1/Add.38) submitted by the Government of Mongolia at its 197th, 198th and 202nd meetings held on 19 and 21 March 1980 (CCPR/C/SR.197, 198 and 202).

89. The report was introduced by the representative of Mongolia who stated that civil and political rights recognized in the Covenant were enshrined in the Mongolian Constitution and in other laws; that the provisions of the Covenant were reflected in a number of legislative acts which were adopted following the ratification by his country of the Covenant; and that efforts were constantly being made to improve the legal basis of the central and local bodies, in particular, to strengthen the political, economic and legal guarantees of human rights and of the socialist democracy. He gave a detailed account of the achievements in his country following the 1921 revolution, particularly with regard to the rights of women and detained and accused persons.

90. Members of the Committee expressed appreciation for the valuable supplementary information provided by the representative of Mongolia in his introduction to the report. Some members, however, expressed the wish to have further information on the actual situation of human rights in Mongolia.

91. General questions were asked as to whether treaties ratified by Mongolia automatically received the force of law or whether it was necessary to incorporate them in the domestic law of Mongolia; whether the Covenant had been published in the Official Gazette and in the press or other information media; and whether copies of it were available in libraries or elsewhere in languages which the inhabitants of Mongolia could understand and study.

92. With reference to article 2 of the Covenant, members of the Committee asked whether the omission of reference to political opinion from the non-discrimination clause in the relevant article of the Mongolian Constitution meant that citizens did not enjoy equal rights in the expression of political opinions; why, in guaranteeing the equality of rights to all citizens, the Constitution made no mention of foreigners whose rights must also receive equal protection under the Covenant; what was the legal status of the Covenant within Mongolia's legal and administrative systems; what were the legislative or other measures adopted to give effect to the rights recognized in the Covenant; whether the Covenant could be invoked before the judicial and administrative bodies for alleged violations of its provisions; and what recourse was available to the individual whose rights had been infringed and whether he had access to a court or to the local Hural. In this connexion, more information was requested on the possibility of submitting complaints to the authorities provided for in the Constitution, on the right to appeal as a means of judicial remedy; on the role of the Procurator; and on the systems of popular and State control referred to in the introduction of the representative of Mongolia.

93. Commenting on article 6 of the Covenant, members thought that some of the expressions used in the report in this respect were vague and called for explanation and that the death penalty was rather an extreme penalty to apply to some of the fairly wide range of crimes listed in the report. A request was made for information on how frequently that penalty had been imposed in recent years and for what crimes and whether any reconsideration had been given to its abolition. Noting that the death penalty did not apply to women, some members expressed the hope that

men too would benefit from such a humanitarian exclusion and not be discriminated against.

94. With reference to articles 7 and 10 of the Covenant, questions were asked on what safeguards were provided against ill-treatment or harassment by the police or other authorities, whether there was any procedure for investigating complaints against such treatment, whether persons independent of the prison staff could visit prisons, inspect them and hear any complaints made by inmates, who was responsible for the supervision of penal establishments and to what extent the treatment of prisoners in Mongolia was designed to contribute to their reformation and social rehabilitation. An explanation was requested of the statement in the report to the effect that not only convicted persons but also persons under preliminary investigation could be placed in corrective labour institutions, a measure which, if practised, would be in contradiction with article 14, paragraph 2, of the Covenant.

95. In connexion with article 8 of the Covenant, reference was made to the statement in the report that Mongolia was party to international legal instruments prohibiting slavery and it was asked whether there were specific provisions in Mongolian legislation prohibiting slavery and forced labour and what practices, if any, did exist in that respect.

96. Regarding article 9 of the Covenant, it was noted that the report referred to arrest and detention in respect to criminal proceedings but that article 9 referred to all types of deprivation of liberty including the deprivation of liberty for reasons of physical and mental health and it was asked what laws there were in that respect and what guarantees existed to prevent arbitrary detention. Questions were also asked on whether, under Mongolian law, anyone who was arrested should be informed, at the time of arrest, of the reasons for his arrest and should be promptly informed of any charges against him; what was the extent of the Procurator's authority and in what cases a person might be detained for more than 24 hours; whether anyone who was deprived of his liberty by arrest or detention could apply to a court to have the lawfulness of his detention determined and his release ordered if the detention was not lawful; and whether anyone who was the victim of unlawful arrest or detention had a right to compensation and, if so, what form such compensation took and what limits were placed on it.

97. Information was requested on the law and practice governing the rights provided for in articles 12 and 13 of the Covenant concerning, inter alia, the right of everyone to leave any country, including his own and the right of aliens lawfully residing in the territory of a State party not to be arbitrarily expelled therefrom.

98. More information was requested on the implementation of article 14 of the Covenant in Mongolia, particularly on the guarantees by means of which the independence and impartiality of the judiciary was protected as well as on the guarantees to which everyone was entitled in the determination of any criminal charge against him. It was noted that there seemed to be some conflict in the Mongolian Constitution between the reference to "permanent" judges and the reference to two-year terms for judges and assessors. Questions were asked on how courts operated in Mongolia, what conditions were there for the nomination or election of judges, whether lawyers were accessible and whether their presence was required in all criminal and civil cases and whether the powers of the police

and of magistrates were separate. Noting that hearings in camera might be ordered to protect "State secrets", one member asked for an explanation of this term, what it covered and who decided whether any particular matter amounted to or involved a State secret.

99. In connexion with article 18 of the Covenant, it was asked what provisions guaranteed the freedom of thought and what recourse citizens had if they felt that their right to that freedom had been violated; whether the freedom of religion and of religious propaganda was protected; and whether there were specific provisions ensuring education of children in the light of article 18, paragraph 4.

100. With regard to the rights provided for in articles 19 and 21 of the Covenant, it was noted that the provision in the Mongolian Constitution, according to which the law guaranteed the freedom of speech, press and assembly to citizens of the Republic "in conformity with the interests of the working people and in order to strengthen the socialist State system of the Republic", could be interpreted and applied very restrictively in order to justify the imposition of serious limits to the exercise of those freedoms, particularly in the political fields. Questions were asked on what restrictions could be imposed in Mongolia on the exercise of those freedoms; to what extent a Mongolian citizen was free to canvass his opinions or ideas and to criticize the régime; and whether the Government exercised strict control over the dissemination of information through the mass media.

101. Commenting on a statement in the report, concerning article 20 of the Covenant, that the propagation of ideas of "chauvinism" and "nationalism" is prohibited by law, one member pointed out that in view of the vague character of these two terms, such prohibition might give rise to abuse and asked whether these two concepts were specifically defined and who had the authority in Mongolia to decide whether or not any particular remark or act amounted to propagation of ideas of "chauvinism" and "nationalism".

102. In connexion with articles 23 and 24 of the Covenant, the humane action of the Mongolian Government in granting an amnesty to delinquent minors, on the occasion of the Year of the Child, was noted with satisfaction. It was also noted that in Mongolia, women received special benefits during their pregnancy and until the child was six months old and it was asked whether Mongolian legislation enabled such assistance to be prolonged until the children were old enough to attend school; whether there were day nurseries where working mothers could leave their children; and whether in general the legal provisions in force ensured adequate protection for the family and children, without distinction between legitimate children and those born out of wedlock.

103. With reference to article 25 in conjunction with article 22 of the Covenant, it was asked what the procedure was for joining the Mongolian People's Revolutionary Party, how many members it had, what the Party's role was in relation to other State bodies, to what extent it controlled the decisions taken by other bodies and whether its members enjoyed any privileged position contrary to the provisions of article 2, paragraph 1, of the Covenant; and what economic and political role did trade unions play in Mongolia and whether they proposed laws or participated in any other way in the law-making process. In this connexion information was requested on the role of the Procurator of the Republic in the conduct of public affairs in Mongolia. The question was also asked how Mongolia had managed to eliminate illiteracy and give everybody a real possibility to participate in public life.

104. As regards article 27 of the Covenant, information was requested on the minorities living in Mongolia and the extent to which they enjoyed the rights provided for in that article.

105. Commenting on the questions raised by the members of the Committee, the representative of the State party pointed out that normally international treaties to which the Mongolian People's Republic was party were implemented not directly, but through legislation; that, in some instances, individual provisions of international agreements and treaties were directly reflected in the Mongolian Constitution; and that the Covenant had been translated into the Mongolian language and printed in the Official Bulletin of the Government and that copies of the translation were available in libraries.

106. Replying to questions raised under article 2 of the Covenant, he stated that there were no laws in his country which restricted the equality of citizens in economic, political, social or cultural life; that the general civil rights of foreigners permanently residing in Mongolia were no different from the rights afforded to Mongolian citizens and were not subject to any kind of discrimination; and that they were not entitled to participate in elections for State bodies or to be judges but that they were exempt from military service. He pointed out that citizens could refer to provisions of the Covenant in their complaints or statements to State bodies or courts; that the means for the protection of civil and political rights found full expression in all Mongolian Laws; that any citizen who considered that his rights had been infringed was fully entitled to submit a complaint to the judicial, prosecuting and other State bodies and to public organizations; that an official was obliged to provide a specific answer within one week or one month, depending on the complexity of the case, to any person who submitted a complaint or statement regarding a decision which that official had taken; and that the Procurator supervised compliance with and implementation of the laws in the field of the legal protection of citizens and thus to receive complaints against the officials who failed to reply in time to the complainants. In this connexion he stated that the criminal- and civil-procedural codes of Mongolia provided for the right of each individual involved in a court hearing to appeal against the court's decision to a higher court.

107. As regards article 6 of the Covenant, the representative explained the meaning of some of the expressions used in this context in the report which were considered by some members to be rather vague and stated that, under Mongolian law, the death penalty was an exceptional measure imposed for a number of particularly heinous crimes; that the imposition of this penalty was not obligatory for the courts; that in all cases provision was made for alternative punishment; that over the last 10 years, with the exception of certain cases of premeditated murder with aggravating circumstances and of large-scale misappropriation of socialist property, there had been no cases of the imposition of the death penalty; and that the number of times the death penalty was imposed amounted to an average of three a year. He pointed out that the exemption of women from the death penalty was made because women as mothers required particularly humane treatment and also because the exemption was a significant step towards its complete abolition and thus entailed no discrimination on the grounds of sex. A draft law to repeal the death penalty for theft and robbery had recently been submitted for consideration by the Presidium of the Great National Hural.

108. Replying to questions raised under articles 7 and 10 of the Covenant, the representative stated that torture was prohibited by law; that no cases had been

recorded of the submission of complaints by citizens of cruel treatment or the use of torture against them by individuals carrying out inquiries, preliminary investigations or court hearings; that the prosecuting bodies were responsible for ensuring legality in places of detention; that the administration of such places had to transmit to the Public Prosecutor within 24 hours any complaints addressed to him by a prisoner; that the Public Prosecutor, who had to visit these places regularly, was empowered, if he found any violation of the laws in the treatment of accused persons, to initiate criminal proceedings against the individuals responsible or take steps to subject them to disciplinary action; and that a supervisory commission consisting of representatives of public organizations was attached to the Executive Board of the local organ of power whose members had the right to visit places of detention without any restriction and to talk to the prisoners.

109. Responding to questions regarding article 8 of the Covenant, the representative reiterated the statement in the report concerning the ratification by his country of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery and stressed that slavery as such never existed in the history of Mongolia.

110. Commenting on article 9 of the Covenant, he stated that, according to the Criminal Code, arrests carried out by investigators without prior authorization by a court or by the Public Prosecutor were punishable by the deprivation of liberty for up to two years; that knowingly unjustified arrest carried out for mercenary or other personal motives was punishable by the deprivation of liberty for a period of between three and seven years; that an official was obliged to inform an arrested person immediately of the reason for his arrest; and that the law prohibited the prosecution or arrest of an individual on the grounds of political belief which did not involve any socially dangerous activity. In the event of unjustified or illegal arrest, any material damage had to be fully compensated. Compensation for moral damage was ensured by means of a public proclamation through the information media to the effect that the person who had been arrested was innocent.

111. Responding to requests for more information on the implementation of articles 12 and 13 of the Covenant, the representative stated that within his country there were no restrictions on freedom of movement or choice of residence but that because of the rapid development of urbanization, there was a system establishing certain guidelines for the rational distribution of the population in large towns; and that Mongolian citizens had the full right to travel abroad. The legal status of foreigners residing permanently within the territory of the Mongolian People's Republic was regulated by a decree of the Council of Ministers, while that of persons living temporarily within the territory was regulated on the basis of the relevant treaties.

112. As regards article 14 of the Covenant, the representative pointed out that there were three categories of courts in Mongolia: the peoples' courts, whose judges were elected by universal, direct and equal suffrage by secret ballot for a term of three years; the Aimak and city courts, whose judges were elected by the Aimak and city Hural of people's deputies; and the Supreme Court, whose judges were elected by the Great National Hural for a term of four years; and that any citizen who reached the age of 23 years and had completed higher legal education could become a judge. There was also a system of military courts as well as a special "Commission on Labour Disputes". Court hearings or trials were held in

camera only after the court had first established that the relevant case involved State secrets; that the accused was provided with an interpreter if he did not speak the Mongolian language; that he had the right to be informed of the nature and cause of the charge against him, to acquaint himself with all the documents of the case and to request the attendance of witnesses on his behalf; and that no one could be considered guilty of committing a crime and subject to criminal punishment other than by a court verdict.

113. Commenting on article 18 of the Covenant, he stated that believers and non-believers were equal under the Mongolian law; that the law placed no prohibition on religious propaganda; and that religion was separate from the State.

114. With regard to articles 19 and 21 of the Covenant, the representative stressed that Mongolian legislation did not provide for any limitations on one's right to hold or express any opinion or to seek, receive and disseminate any kind of information; but that the law did not allow the abuse of that freedom, the undermining of the reputation of other persons or the dissemination of ideas and concepts which were directed against State security, public order, or the health or morals of the population. Under Mongolian law there was no limitation or prohibition on the holding of peaceful meetings provided that they did not conflict with the interests of State security or with the maintenance of public order.

115. Replying to a question concerning article 20 of the Covenant, he stated that propaganda advocating nationalism and chauvinism was prohibited because such ideas were considered reactionary, since they incited hatred between peoples and races and attempted to justify nationalistic exclusiveness and domination.

116. As regards the rights of children under article 24 of the Covenant, he pointed out that the authorities had been generally successful in establishing a system of free education, child-care centres and nurseries. Children's rights were broadly protected by various laws.

117. In reply to questions raised under article 25 of the Covenant, the representative stated that, being the only party in Mongolia, the Mongolian People's Revolutionary Party was the motive power of society and the State; that any citizen could join it on condition that he accepted its programme and charter; that the current membership was almost 70,000; that Party members enjoyed no special privileges; that decisions taken by the Party did not have the force of law; and that its power lay in its authority, prestige and influence. The Procurator of the Republic was responsible for supervision of the strict execution of laws by Ministries, by State, regional and local bodies and enterprises and by individuals. The Great National Hural, by Constitutional amendment, had recently extended the right to initiate legislation to the Procurator of the Republic and also to the Central Council of Mongolian Trade Unions and the Central Committee of the Revolutionary Union of Mongolian Youth.

118. As regards article 27 of the Covenant, he stated that the Mongolian people were of a single ethnic origin; that there was a national minority of Kazakhs living in an administrative unit in one of the 18 Aimaks and constituted 0.2 per cent of the population; that, in their Aimak, they had newspapers in their own language and had their own radio station; that they maintained their traditions and way of life without any restriction and had equal rights in all spheres of public and political life; but that in all primary and secondary schools, teaching was in the national language.

Iraq

119. The Committee considered the initial report (CCPR/C/1/Add.45) submitted by the Government of Iraq at its 199th, 200th, 203rd and 204th meetings held on 20 and 24 March 1980 (CCPR/C/SR.199, 200, 203 and 204).

120. The report was introduced by the representative of the State party who stressed two particular points: firstly, that Iraq granted to the nationals of other Arab countries all the rights enjoyed by its own nationals, with very few exceptions; and secondly, that since the submission of its report, Iraq had adopted the law concerning the National Council and the law concerning the Legislative Council of the Autonomous Kurdistan Region, both of which had been promulgated on 16 March 1980, together with the amendment to the "Law of Personal Status". Another point of interest was the entry into force on 17 January 1980 of a new law on judicial organizations, which had replaced law No. 26 of 1963, referred to in the report. He pointed out that the establishment of a National Council, sharing legislative powers with the Revolutionary Command Council, was an important step towards the building of a democratic society. The texts of the Bills concerning the National Council and the Legislative Council had been officially submitted to the people for a period of 45 days, so that they could study, through the information media, the principles on which the Bills were based and the provisions they contained.

121. Members of the Committee expressed their appreciation for the exemplary way in which the report was prepared and for the additional documentation and information provided by the representative of the State party. In this connexion, it was asked whether the Government of Iraq would consider publishing the report for the benefit of its citizens, whether the Covenant had been published in languages that the people understood, whether its text was readily available in public libraries or elsewhere and whether the Government had any plans to organize meetings to enable administrators and judges to discuss its various provisions.

122. Commenting on part one of the report concerning the general legal framework for the protection of human rights in Iraq, members of the Committee asked whether a permanent instrument would be adopted soon to replace the existing "interim constitution", promulgated in 1970; since the provisions of the Covenant were part of international law and binding on Iraq, what was the status of the Covenant in relation to the Constitution; whether its provisions overrode other legislative provisions adopted either before or after the Covenant was incorporated into domestic law; and whether the courts had made any rulings in respect of differences of interpretation between the provisions of the Covenant and those of the Constitution and domestic legislation. It was also asked whether the "Law for the Reformation of the Legal System" would reform the system gradually or would give immediate effect to newly established rules and institutions. Reference was made to a statement in the report that the enjoyment of the rights proclaimed in the Covenant was subject, inter alia, to "the compatibility of such enjoyment with the ideological principles and foundations of the political system and its prevailing plans and programmes", and it was pointed out that that was not compatible with the Covenant and could be used to apply harsh measures in contradiction with its provisions.

123. With reference to the statement in part one of the report that the judicial system of Iraq was built on the principle of a single, rather than dual, jurisdiction, it was asked whether that meant that the administration normally

acted under the supervision of the courts. Additional information was requested on the competence of shari'a courts and the relationship between shari'a and general law.

124. With regard to article 1, paragraph 2, of the Covenant, reference was made to the commitment of Iraq, as reflected in the report, to the establishment of a new international economic order as well as to the adoption of measures, including nationalization, with a view to achieving sovereignty over and disposal of its natural wealth and resources and it was asked how Iraq envisaged the promotion of human rights on both the national and international levels through that commitment.

125. In connexion with article 2 of the Covenant, it was noted that the relevant article in the Iraqi Constitution made no mention of the fact that the rights had to be guaranteed without distinction of political opinion and the question was asked whether that Constitution allowed discrimination against individuals because of their political ideas. The fact that the Covenant had been incorporated in the Iraqi legal system invited many questions from the members of the Committee: Had the provisions of the Covenant been invoked before the courts and administrative bodies? Could they be invoked in preventive as well as in enforcement proceedings? What was the number of cases in which the courts had made specific pronouncement in proceedings involving the Covenant? Could the representative give some examples of such pronouncements or decisions? Referring to a statement in the report that the injured party was entitled to claim compensation for any harm caused to him by the person responsible for the violations of his human rights, one member asked whether the State would undertake to pay such compensation if the person responsible were one of its officials.

126. As regards article 3 of the Covenant, information was requested on the measures taken to ensure equal rights and duties for men and women in public office as well as on the political role of women, their percentage in the membership of the Ba'ath Party and on the kind of posts they could hold in the political, economic and social spheres.

127. With reference to article 4 of the Covenant, it was noted that no state of emergency had been declared in Iraq since the Covenant had entered into force in 1976, and it was asked whether any emergency measures, or measures which could now be classified as such, or legislation adopted before that date, were still being applied and whether a de facto state of emergency still existed in Iraq.

128. As regards article 6 of the Covenant, it was stressed that the right to life was an inherent right since creation and that it covered more than the deprivation of life by means of the death penalty. Information was requested on measures taken to increase the expectation of life and reduce the infant mortality rate. Noting that the report did not specify the "most serious crimes" punishable by death, some members of the Committee expressed their concern at the possible imposition, under the Penal Code, of the death penalty for certain non-violent offences, such as double membership in political parties, political activity in the army and the refusal of an individual to divulge his previous political activities, and asked whether, how and under what circumstances such activities had been so punished; how many people had been executed over the past two years and for what crimes; and which courts could impose the death penalty and how far their procedures conformed to the provisions of article 14 of the Covenant.

129. Commenting on articles 7 and 10 of the Covenant, members of the Committee noted that the Iraqi Constitution prohibited the exercise of any form of physical or psychological torture, but that the report did not specify what safeguards or mechanisms there were to ensure the respect of that prohibition by the police and security services. Questions were asked as to what authorities a prisoner could apply in cases of alleged torture or maltreatment, whether an enquiry was automatically carried out thereon, what procedures were used to investigate the matter and bring the offenders to justice, what punishment existed for an investigator who resorted to torture or to cruel and degrading treatment in the process of investigation, and whether Iraqi legislation prohibited reliance on evidence extorted by torture and other illegal means. In this connexion, reference was made to a statement in the report that, except for those who had committed criminal offences against the safety of the State, the rights of the people or the honour of allegiance to the Homeland, it was necessary to protect offenders from the cruelty of punishment, and it was pointed out that the exclusion of such offenders was incompatible with the requirements of the Covenant. It was also asked what was the precise nature of the special places of detention which were not covered by the provisions of the Prisons Administration Law referred to in the report; whether there were any provisions for the supervision of penal establishments to ensure that prisoners were treated humanely and whether independent persons or bodies were allowed to visit penal establishments from time to time to inspect them and to interview detained persons. Information was requested on the practical experience obtained in implementing the Iraqi policy of rehabilitation of ex-prisoners into society.

130. With reference to article 8, paragraph 3, of the Covenant, it was noted that Iraq had signed conventions prohibiting forced or compulsory labour and that the report spoke of work as a "sacred duty", and it was asked what precise legal duties flowed from that statement, whether the relevant section of the Penal Code making public service employees liable, under certain conditions, to imprisonment and forced labour if they stopped work, was applicable to judges and whether the youth training schemes involved forced labour.

131. As regards article 9 of the Covenant, information was requested on any administrative procedures and social institutions authorized by law to detain individuals on the grounds of mental illness, drug or alcohol intoxication or vagrancy, on the nature of the laws which applied in such cases and on the guarantees protecting the individuals concerned. It was also asked whether any persons were being detained without trial for political reasons and, if so, on what authority; what were the circumstances defined by law "in which a person could be arrested or detained without a warrant"; what authorities were empowered to order the arrest or detention of persons in those circumstances; what was the maximum length of detention pending trial; whether the detainee had the right to appeal for a reduction of the length of preventive detention and if his family was promptly notified of his detention; and whether the legal counsel of the accused was allowed to be present during interrogations to see that any confession was obtained by fair means.

132. Commenting on article 12 of the Covenant, one member asked what were the "cases defined by the law" in which an Iraqi citizen could be subject to restrictions imposed on his liberty of movement or on his freedom to choose his place of residence within the country. It was also asked in what circumstances might a passport or other travel document be refused and whether Iraqi legislation provided for the possibility of introducing an appeal before the courts by any citizen who had been prevented by the administration from leaving his country.

133. In connexion with article 14 of the Covenant, information was requested on the judicial system in Iraq, particularly on the types of disputes and criminal cases excluded from the jurisdiction of civil and criminal courts respectively; on the procedure and criteria followed for appointing judges, their terms of tenure and the disciplinary system which applied to them and on whether the judiciary was open to women; on the composition and competence of the Revolutionary Court and whether there were any other special courts established on an ad hoc or permanent basis; on the "cases specified by law" which the Revolutionary Court decided and the laws which served as the basis for sentences passed by this and other special courts and on the guarantees of their independence from the Executive and of their impartiality; on the remedies available for an individual who felt that a verdict of a special court was unjust and on whether the procedures of the special courts were in conformity with the provisions of the Covenant.

134. With regard to article 17 of the Covenant, it was noted that under the Iraqi Constitution persons were protected against arbitrary or unlawful interference in their privacy, family, home or correspondence, and it was asked what specific cases justified violation of that privacy "under the exigencies of justice and public security", as stated in the report, and what were the powers of the police and security services in this respect.

135. In relation to article 18 of the Covenant, it was asked whether there were any restrictions on freedom of thought and what impact, if any, emergency measures had on that freedom. Noting that, under the Constitution, Islam was the State religion, members asked for an explanation of the practical consequences of that provision, particularly, whether it implied that Islam had a privileged position over other religions, whether persons professing Islam had not only political but social privileges, what was the legal situation of other religions in Iraq and whether persons had been arrested and punished in recent years for participation in religious meetings and, if so, how the Iraqi Government could justify such measures in view of its obligations under the Covenant. The question was also asked whether individuals who did not wish to participate in religious education were obliged to do so.

136. In connexion with articles 19, 21 and 22 of the Covenant, it was noted that the right to freedom of opinion was an absolute and unqualified right which could not be restricted except within the terms of article 4 of the Covenant, and the question was asked whether the exercise of that right was subject to restrictions or reservations in Iraq. It was also noted that the right to freedom of expression and the rights of assembly and of association appeared to be subject to considerable restrictions, especially of a political nature, and it was asked what in fact were the rights of the individual in Iraq in that field, and to what extent was the dissemination of information through the media and the press subject to control. Referring to article 26 of the Constitution, under which the State endeavoured to provide the means required for practicing freedoms "which are compatible with the nationalist and progressive line of the Revolution", and noting that in the report of another socialist country the propagation of ideas of chauvinism and nationalism was prohibited by law, one member requested an explanation of the concept of "the nationalist line" in order to avoid any confusion in that regard. Noting that the report mentioned other political parties than the Ba'ath Party and that the Covenant not only provided for freedom of association but also set forth a general prohibition of discrimination, some members asked how many political parties existed in Iraq and what was their position vis-à-vis the "Leading Party".

Information was requested on the conditions required for forming trade unions and on their role in the management of enterprises and the political life of the country.

137. As regards articles 23 and 24 of the Covenant, it was noted that a wife was required to accompany her husband at home or in travel, and it was asked what was the reason for this requirement and whether a reverse provision existed and if the courts would be in a position to rule in favour of the Covenant if the Covenant was invoked against that provision. Information was requested on "marriages which took place outside the courts" referred to in the report; on whether men and women had the same rights to divorce; on the meaning of the statement in the report to the effect that, after the dissolution of marriage, a nursing mother should not be married to a man unrelated to the child; and on the legal status of an illegitimate child in Iraq.

138. In connexion with article 25 of the Covenant, information was requested on the Revolutionary Command Council, in particular on the way in which its membership was chosen, on its political structure, on the role it played in the Government and on its relation to the "Leading Party"; on the National and Progressive Front, its nature and role; on whether citizens were free to engage in political activity and to subscribe to varying political ideologies without being victims of some aspect of criminal law; on the composition and functions of the People's Councils; on popular organizations and their contribution to the establishment of direct democracy; on the conditions under which the election of the new National Council would take place and on its powers; on whether the condition of literacy for candidates to the Legislative Council of the Kurdish Region was applied to candidates for the National Council; and on whether the members of these Councils would be chosen solely from among the members of the National and Progressive Front or whether persons representing other political trends could be elected.

139. With regard to article 27 of the Covenant, it was noted that Iraq had embarked on a course of granting full autonomy to the Kurdistan Region and on recognizing the cultural rights of other ethnic minorities. Requests were made for additional information on the minorities existing in Iraq; on the Legislative Council to be established in Kurdistan; and on how and by whom judicial courts in the Kurdistan Region were constituted. It was also asked what were the effects on the social and cultural life of people of steps taken to modernize the regions where minorities were living and whether any particular difficulties had been encountered.

140. Commenting on questions raised by members of the Committee, the representative pointed out that, in accordance with a law promulgated in 1977 concerning ratification of treaties, the Covenant was published in the Official Gazette and in the official collection of treaties concluded by his country; that, like any other international instrument duly concluded and ratified by law, the Covenant became an integral part of the national legal system on the same footing as national laws, but that it could not acquire a status equal or superior to that of the Constitution. As to the "Law for the Reformation of the Legal System", he stated that the law laid down basic principles and proclaimed the objectives of legislative reforms and that it did not consist of rules which were immediately applicable but proclaimed a short-term, medium-term and long-term legislative programme.

141. The representative stated that, in Iraq, there was no administrative jurisdiction existing side by side with the "ordinary jurisdiction" and that the

competence of the courts extended to all natural or juridical persons, including public authorities; however, the President of the Republic, members of the Revolutionary Command Council and judges enjoyed immunity from the law unless the competent authorities ruled otherwise. "Shari'a", which meant, according to context, Islamic Code, was one of the sources of law to which the judge had to refer when the statutes in force were inadequate, in particular with respect to the laws concerning personal status, which must be in conformity with the "Shari'a".

142. Replying to questions raised under article 1, paragraph 2, of the Covenant, the representative gave a detailed description of his country's policies with regard to the establishment of a new international economic order as well as to the building of socialism in Iraq, with a view to promoting human rights on both the national and international levels.

143. In connexion with article 2 of the Covenant, he stressed that since the Covenant simply stated general principles and fundamental rights, its provisions could not suffice to guarantee these rights and remedy their violations, but had to be supplemented by other legal provisions specifying the procedure and sanctions relevant to its application, as was the case for the Constitution or any other law laying down general principles. Provisions of the Covenant could be invoked before a court; but the court could do no more than take notice of the fact and would not be able to hand down any civil or penal judgement, except on the basis of the country's Civil Code or Penal Code. He also pointed out that the courts were not competent to annul administrative acts or to declare a law illegal, their competence being limited to declining to apply it.

144. As regards questions raised under article 3 of the Covenant, the representative stated that the central thrust of his Government's policy with regard to women was to release them from the economic, social and legislative obstacles which prevented their participation equally with men in all spheres and activities and in carrying out the comprehensive national plans for economic and social development. Iraqi women had their General Union which enabled them to co-ordinate and organize women's activities so as to strengthen democratic progress in the country.

145. Replying to questions raised under article 6 of the Covenant, he pointed out that Iraq was making a determined effort to lower infant mortality and that the figure for infant mortality was now 69 deaths per thousand. He stressed that the only crimes for which the death penalty was imposed were spying, crimes against the security of the State, crimes relating to drug trafficking, crimes of homicide with aggravating circumstances and crimes against the national economy.

146. In relation to article 10 of the Covenant, he stated that the "place of detention", referred to in the report, was that part of the prison establishment, commissariat or any other place under police authority allocated to such purpose. As to the Iraqi policy of rehabilitation of ex-prisoners, he pointed out that any prisoner who had served his sentence had the right to resume the employment he had had before his imprisonment, but that if he was a civil servant, the State was not obliged to appoint him to the same post he had previously occupied. The Iraqi authorities had no difficulty in applying that policy because there was no unemployment in Iraq.

147. Replying to questions raised under article 14 of the Covenant, the representative referred to a new law enacted in 1979 the purpose of which was to

allow the establishment of a legal machinery capable of supervising respect for the law while taking into account revolutionary ideals, and in which the courts would be independent and subject to no power except that of the law. He stressed that personal status and labour courts could in no way be regarded as courts of exceptional jurisdiction but that they were ordinary courts having competence in particular spheres; and that the Revolutionary Court, which was competent to rule only in cases of state security, contraband, arms-dealing, and drug trafficking as well as on economic and fiscal violations, was not a truly exceptional court because it applied the Penal Code and followed the Code of Criminal Procedure. The Court differed from the ordinary court, however, in that its findings were final and not subject to appeal. There was no recourse except in the case of a death sentence which could be reviewed, on request, by the President of the Republic. The Revolutionary Court consisted of three members, two of whom had to be jurists and the Public Prosecutor, and its independence was safeguarded in the same way as that of the ordinary courts. As to the recruitment of judges, he stated that according to the law of 1976 establishing the Institute of Judges, only the graduates of this Institute could become judges; that admission to the Institute was open, inter alia, to holders of a law degree, who were married and who had worked in a legal capacity or had been practicing barristers for at least three years; that whereas in 1978 there had been no women among the first 40 graduates of the Institute, there were three women among the 110 judges who had graduated the following year; and that judges were appointed by presidential decrees. The Council of Justice could, inter alia, terminate the career of a judge or transfer him to another post. The Committee on the Judicature could impose disciplinary measures against judges who had committed errors. Both the Council of Justice and the Committee on the Judicature were bodies established by law within the Ministry of Justice.

148. As regards article 18 of the Covenant, the representative stated that Islam was "the religion of the State" because more than 90 per cent of the people were avowed Moslems. Islam governed not only the spiritual life of man but also his temporal existence, thus amounting to a kind of universal law covering all aspects of human, civil, economic and social relations; however, that did not mean that Moslems were in any way privileged as against non-Moslems, and the Constitution guaranteed equality before the law, "without discrimination as to religion". He also confirmed that religious instruction was obligatory in Iraq for everybody according to his own religion.

149. Replying to questions under articles 19 and 22 of the Covenant, he pointed out that freedom of opinion was guaranteed, but that should not be interpreted as meaning absolute freedom of opinion, in view of the requirements of public order, public morals and the freedom of others which must be protected, if necessary, by prohibiting certain activities. He stated that any group of at least 50 workers within a given province could form a union, if they belonged to one of the professions established under the law; that the law prescribed conditions for the establishment of trade unions; and that once the Ministry of Labour and Social Affairs had been informed and had given its approval, the new trade union was allowed to operate. Trade unions, he maintained, sought to develop the political, social, cultural and professional awareness of workers and were considered an important manifestation of the practical exercise and affirmation of popular democracy. The representative stressed that the freedom to establish political parties was guaranteed under the Constitution; that the official parties currently existing in Iraq were the Arab Ba'ath Socialist Party, the Communist Party, the

Kurdistan Democratic Party and the Kurdish Revolutionary Party, all of which were members of the National and Progress Front in which the Ba'ath Party played a guiding role.

150. In connexion with articles 23 and 24 of the Covenant, the representative stated, in reply to a question as to why a wife was required to accompany her husband, that one could not speak of an equality between men and women that went so far as to sanction the dissolution of the unity of the family. He confirmed that the right to divorce was in fact guaranteed to each of the spouses in the specific instances listed in his Government's report but that previously, through a false interpretation of the Shari'a, in most cases only the husband had had the right to divorce. The mother of an infant could, after the dissolution of her marriage, marry a man not related to the infant but in such a case she lost her right to custody.

151. Replying to questions under article 25 of the Covenant, the representative pointed out that according to new amendments to the Constitution, all members of the Regional Command of the Ba'ath Party became members of the Revolutionary Command Council. One of the principal duties of the Revolutionary Command Council was to elect a President who, as a result, became President of the Republic, its other duties being as defined in the Constitution. The law of the Leading Party had bound all institutions to observe the political report adopted by the Eighth Regional Congress and had given the report a legal character and the role of a basic law. He explained the functions and role of the People's Councils which performed economic, social and cultural functions and activities at the local levels. The popular organizations were the framework in which the various sectors of the population could group together to co-ordinate their activities. Both the Popular Councils and the Popular Organizations represented a form of popular democracy which enriched the democratic experience in Iraq. As to the National Council, he stated that its members were to be elected by direct universal suffrage and would represent the various political, economic and social sectors of the population; that any Iraqi citizen, male or female, of more than 25 years of age, of good character and able to read and write, was eligible for membership of the Council. He stressed that the criterion of literacy was applied to candidates for election to both the National Council and the Legislative Council of the Kurdistan Region. In this connexion, he drew attention to the fact that primary education was compulsory and that a national campaign for the elimination of illiteracy had been launched in 1978 with encouraging results.

152. As regards the questions raised concerning minorities in Iraq, the representative referred the members of the Committee to his Government's report (CERD/C/50/Add.1) submitted under the International Convention on the Elimination of All Forms of Racial Discrimination, which was made available to Committee members. Referring to the Legislative Council for the Autonomous Kurdistan Region, he pointed out that the Council, which would represent the whole population of Kurdistan, would have the power to legislate on any matter within the competence of the local authorities, such as education, housing, transport and communication, culture, youth or economic and social affairs. The judicial organization in the Region, however, fell within the competence of the central authority and was the same in Kurdistan as in the rest of Iraq.

153. The representative informed the Committee that his Government would reply in writing to certain questions raised under articles 2, 6 and 12 of the Covenant and would also be ready to supply the Committee with further information in writing as necessary.

The Committee considered the initial report (CCPR/C/L/Add.43 (vols. I and II)) presented by the Government of Canada at its 105th, 106th, 107th, 108th and 109th sessions, held on 12, 13 and 14 March 1960 (CCPR/C/SR.205, 206, 207, 208 and 209).

The report was introduced by the representative of the State party who stated that the relationship between the Committee and States parties was potentially one of the most important factors in the long-term development of international protection of human rights and that the Committee's questions and comments could have a significant impact and help to increase the understanding by the States parties of their obligations under the Covenant.

The representative pointed out that the Covenant as such was not part of the legal system of Canada, as a federal State, functioning on the basis of a complex system of relationships between the federal and provincial governments in most respects the structure applied but that the constitutional division of powers was not a factor in the international responsibility of Canada; that his country's responsibility under the Covenant must be examined in terms of legislation enacted in Canada, its courts and its procedural and judicial guarantees and practices which had shaped and the development of the Canadian legal system; that the debate and the development which had preceded Canada's accession to the Covenant and the subsequent process had made the Canadian authorities were conscious of the need for the protection of human rights and freedoms; and that the principles of the Covenant were reflected in the proliferation of laws, regulations, orders and decrees, and by the improvement of human rights legislation at both the federal and the provincial levels.

The representative stated that the detailed report before the Committee was available in French and English, and in both languages announcing its publication. The report was available in French and English in English or French; and that, in addition, copies of the report were being sent to all States parties to the Covenant in the country. He gave an account of the measures taken in the field of human rights, which had occurred since the submission of the report, including judicial decisions relating to the rights of the individual, the rights of the accused and the internal law of the Union and the provinces, and the measures taken to improve the legal system relating to human rights.

The representative stated that the Committee's participation at the comprehensive level of the Covenant in order to be able to do so and the number of judicial decisions taken since the publication of the report. The Committee's participation in the Covenant as well as the measures taken to implement its obligations under it. Some of the measures taken since the report had not provided more information on the implementation of the Covenant in practice and on the functions, powers and status of the various committees and commissions for the protection of human rights established in Canada. Questions were asked as to the measures taken to ensure that the Covenant was fully incorporated in the list of laws and regulations, and in the event of conflict between Federal law and provincial law, that would be the position of the federal government in relation to the Covenant and to implement it in Canada.

159. Commenting on article 1 of the Covenant, some members noted that the right to self-determination was not expressly guaranteed in any of the Canadian provinces and that it was not even mentioned in the laws of British Columbia and Quebec. More information was requested on any specific guarantees that may be in existence to ensure respect for that right and on the position of the Canadian Government regarding the right of secession, with special reference to the recent decision to hold a referendum in Quebec and the possibility for the Indians and Eskimos as well to hold such a referendum.

160. As regards article 2 of the Covenant, it was noted that political opinion, property, language and social origin were not among the prohibited grounds for discrimination mentioned in the Canadian Bill of Rights or in the Human Rights Act. It was asked why some acts and codes, that had been enacted after the Covenant had entered into force in respect of Canada, had such a narrow prohibition of discrimination. Referring to certain statements in the report, members asked whether the courts had already declared any law of Canada inoperative because its provisions were contrary to those of the Canadian Bill of Rights: whether the Minister of Justice had already had occasion to draw the attention of the House of Commons to the inconsistency of a Bill with the provisions of the Canadian Bill of Rights and how that system worked, at both the federal and provincial levels: which provisions took precedence in the event of contradiction between the provisions of the Covenant and those of provincial legislation: whether a practice contrary to the Covenant might be admissible: and whether there was in Canadian jurisprudence a general rule of presumption that normally the balance should be tipped in favour of the individual's freedoms. Questions were also asked on whether the Canadian Government could demonstrate that a person who simply claimed to have been the victim of a violation of the Covenant always had a remedy open to him; whether remedies available against officials were subject to procedural restrictions, such as time-limits: whether it was open to the Government to claim that an official had been acting outside the performance of his duties when the act complained of took place in the purported exercise of official functions: and whether, in the event of a public servant being insolvent, the plaintiff could appeal to administrative or judicial courts.

161. Commenting on article 3 of the Covenant, members of the Committee appreciated that considerable progress had been made in legislative instruments to ensure equality between men and women and requested information on the actual situation in this respect and on the role of women in political, economic, social and other spheres of life and on whether there was any policy of encouragement concerning feminist organizations. Referring to a statement in the section of the report concerning Saskatchewan and to relevant Acts of that Province, one member observed the existence of sexual distinction in favour of women and inquired what considerations had caused the Canadian authorities to enact provisions to that effect.

162. With regard to article 6 of the Covenant, members sought information on the efforts undertaken to reduce infant mortality, especially in rural areas; on the measures adopted to limit the use of firearms by police forces; on the extent to which a master was allowed to cause bodily harm to an apprentice or servant so as not to put his life in danger or to be likely to injure his health permanently, as mentioned in the report; and on any legislation in Canada concerning termination of pregnancy. It was noted with satisfaction that the death penalty had, in practice, been suspended in Canada.

163. In connexion with article 9 of the Covenant, it was asked whether the clause on due process of law, appearing in the Canadian Bill of Rights, was applicable in the case of deprivation of liberty for medical, psychiatric, educative or public security reasons; and how the right not to be unlawfully deprived of liberty was respected in practice. Reference was made to the question raised in the report as to whether Canadian law, which permitted a person arrested under a warrant to be arrested without informing him about the contents of the warrant, sufficiently complied with article 9, paragraph 2, of the Covenant. The opinion was expressed that this did not satisfy article 9, paragraph 2, which required that anyone who was arrested should be informed, not necessarily in detail but at least in substance, of the reasons for his arrest. It was noted that the right to stand trial within a reasonable time was not recognized in Canadian law and a request was made for an explanation of that omission and for information on Canadian jurisprudence in this respect. Information was also sought on the implementation in Canada of the right to compensation for the victims of unlawful arrest or detention.

164. Commenting on article 10 of the Covenant, members of the Committee asked how the chairmen of the disciplinary boards, referred to in the report, were appointed; whether a detainee condemned to solitary confinement, which was a special kind of imprisonment, could appeal against rulings given by the boards; whether there were specific monitoring or inspecting bodies which ensured respect for the relevant legislation by the prison authorities; and whether there was any law providing that a prisoner should serve his sentence in an establishment not too remote from his home.

165. With reference to article 13 of the Covenant, it was asked whether any protection was provided to an individual holding a residence permit issued by the Ministry of Employment and Immigration where that permit had expired or was cancelled.

166. As regards article 14 of the Covenant, more information was requested on how judges were appointed and their independence guaranteed; on the circumstances in which court proceedings were held in camera; and on the practical significance of the right of everyone to be presumed innocent until proved guilty according to Canadian law. Questions were asked on whether an accused person was entitled "to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him" if he spoke neither of the two official languages of Canada; whether there were any legislative provisions designed to ensure that the accused be tried without undue delay and, if so, whether these provisions applied equally to all categories of offences; how equality in the ability to obtain legal representation was ensured; whether it was necessary to have a lawyer in order to proceed or to have access to the courts; and whether evidence obtained by illegal methods, even if it was relevant, was admissible. It was noted that Canada provided only for ex gratia compensation in the event of a miscarriage of justice whereas compensation, according to the Covenant, was mandatory. Referring to a statement in the report that the rule "that a person may not be convicted twice for the same offence may, however, not apply if Parliament so provides" and to the possibility that under the Juvenile Delinquents Act, convicted juveniles in one court could be ordered to stand trial in another court, members asked to what extent that situation was consistent with article 14, paragraph 7, of the Covenant.

167. As regards article 15 of the Covenant, members of the Committee pointed out that the absence in Canadian law of any provision expressly prohibiting Parliament from enacting retroactive legislation made one conclude that such possibility could not be totally excluded and wondered whether any retroactive law had been enacted recently and whether legal prohibition was envisaged in this respect.

168. In connexion with article 17 of the Covenant, it was asked whether telephone tapping was strictly controlled, who could authorize the interception of telephone communications, whether such authorization could be for a specific period and, if so, what formalities were required. One member asked to what extent force could be exercised by the occupant of a dwelling to resist a search conducted by a police officer without a warrant.

169. Commenting on article 18 of the Covenant, members of the Committee asked whether atheist propaganda was authorized in Canada: whether the emphasis on the religious instead of the secular character of Sunday as well as the requirement imposed upon teachers in Nova Scotia and Ontario to inculcate in children the principles of Christianity or Judeo-Christian morality did not introduce a discriminatory element; whether there was any policy to promote harmony between the religions in Canada; and whether conscientious objectors were punished or bound by law to perform national service and, if so, what kind of service.

170. In respect of article 19 of the Covenant, more information was requested on the application in Canada of a national broadcasting policy which would determine not only who should have access to broadcasting but also the rights and obligations of those who had applied for and obtained broadcasting licences; on what constituted "blasphemous libel" under the Criminal Code and whether that term had received judicial interpretation; on whether any act conflicting with the interests of the State would be deemed to be seditious and on whether decisions concerning film censorship could be contested.

171. In connexion with article 20 of the Covenant, some members of the Committee pointed out that, according to the report, the Canadian Government's position did not seem to be in conformity with the Covenant since it was not possible to maintain that war propaganda was lawful for individuals and organizations but not for the Government and requested clarification of that position. They asked whether, in the absence of any law prohibiting such propaganda, there was any procedure to which a citizen could resort if he felt that the Government was disseminating propaganda in favour of war.

172. With reference to article 21 of the Covenant, it was noted that, in Canada, it was a punishable offence to participate in an "unlawful" assembly and questions were asked on whether that expression was defined by law: whether the right of assembly was a regulated right and, if so, whether it was necessary to obtain authorization before holding meetings; and whether the organizers of such a meeting could appeal against a refusal of permission to hold a meeting.

173. Commenting on articles 23 and 24 of the Covenant, members of the Committee expressed surprise at the fact that, in the Province of Quebec, the marriageable age had been established at 14 years for a man and 12 years for a woman. That age, they maintained, appeared to be rather low for genuine consent to be assumed, particularly on the part of the woman. It was asked whether that provision was adopted in the context of a population policy or was based on biological facts.

whether it was truly in the spirit of the Covenant; and whether it was not in contradiction with the prohibition by law of sexual relations before the age of 16 years. Information was requested on the status of adulterine children, on whether they could claim the protection of their parents, on the extent to which a child's right to a name was affected by the fact that he was an adulterine child and on the administrative and legal procedures for legitimizing natural children.

174. As regards article 25 of the Covenant, it was asked whether trade unions could play a political role in Canada, for example, by advocating amendments to existing laws or the adoption of new laws and whether any political parties were outlawed; what conditions had to be fulfilled by candidates for a seat in the Senate; whether all citizens had equal access to the Senate or to propose candidates for it, and whether the Governor General was empowered to remove a member of the Senate from office; and whether the conditions for authorizing Government employees to stand as candidates in the federal, provincial or territorial elections were compatible with the letter and spirit of the Covenant. Questions were also asked on why the prohibition of discrimination based on political opinion was not expressly provided for in the Public Service Employment Act and whether there had been instances of persons not being appointed to posts in the public service for reasons relating to their political opinions.

175. With reference to article 26 in conjunction with article 2 of the Covenant, it was noted that the interpretation of these two articles in the report seemed too limited, in that under the Covenant rights must not only be respected but ensured and all persons were entitled not only to equality before the law but to equal protection under the law. Considering the statement in the report that a person could not be discriminated against on any of the grounds, mentioned in the Covenant but not in the Canadian Bill of Rights unless such discrimination was permitted by statute, one member pointed out that inasmuch as there appeared to be the possibility of discrimination authorized by law, more information was needed about the application of this rule and on the extent to which it was consistent with the Covenant.

176. As regards article 27 in conjunction with article 2 of the Covenant, it was stressed that States parties undertook not only to apply the provisions of the Covenant but also to give effect to the rights recognized therein by taking other measures. Members of the Committee requested more information on general Canadian policy on indigenous inhabitants, particularly the Indians and Eskimos in Canada; on whether Canada sought to strengthen ethnic identity or to assimilate minorities into the general population; on the measures adopted and applied in securing their rights under the Covenant; on the solution reached, if any, to the threat posed to Indians and Eskimos by the spread of industrialization and modernization into the areas they had traditionally inhabited; how did the system of internal autonomy granted to the Indian tribes operate in practice; and whether there had been any exchange of information and experience between Canada and other countries which had Eskimo populations and whether any steps had been taken, concerning the preservation of their cultural identity and integration into society as a whole. In seeking that information, some members of the Committee observed that Indians were referred to in rather pejorative terms and cited what appeared to them as signs of distinction between Indians and Canadian citizens: what was the reason for the enactment of special legislation relating to Indians when no such legislation existed for the other ethnic minorities living in Canada and what were the principles on which the Indian Act was based; were the freedoms provided for in

article 12 of the Covenant enjoyed equally by Indians and other Canadian citizens; what would be the legal status of an Indian woman whose name had been struck off the Indian register and whom the Governor General in Council refused to enfranchise and whether there was any possibility of appeal against that decision; and why an Indian child who failed to attend school or had been either expelled or suspended was deemed to be a juvenile delinquent whereas other Canadian children were not deemed as such under similar circumstances. Questions were also asked concerning Canadian experience in absorbing into Canadian society immigrant groups of refugees whom she had admitted in considerable numbers.

177. Commenting on the questions raised by members of the Committee, the representative of Canada emphasized that even if at the present time some of the provisions of Canadian legislation were not entirely in conformity with those of the Covenant, he was confident that Canada had not only acceded to the Optional Protocol but was one of the few States parties to the Covenant to have made a declaration that it recognized the Committee's competence to receive and consider communications in which a State party claimed that another State party was not fulfilling its obligations under the Covenant.

178. The Canadian delegation had taken note of the observations made by various members of the Committee concerning a number of provisions in Canadian legislation relating to human rights. Some, for example, had noted that the prohibited grounds for discrimination set forth in various Canadian laws did not correspond exactly to those specified in articles 2 and 26 of the Covenant; others had stressed the fact that no Canadian law expressly prohibited propaganda for war. Others had said that, in their view, some provisions of the War Measures Act were contrary to article 4 of the Covenant, which dealt with measures that a State party might take at a time of public emergency which threatened the life of the nation; it had been said, too, that certain provincial laws governing education were not, perhaps, fully in conformity with article 18 of the Covenant, which guaranteed the right to freedom of religion, and that, in accordance with article 14, paragraph 6, of the Covenant, the Canadian authorities should establish a system of compensation for persons wrongly convicted. Some members of the Committee had thought it regrettable that Canadian law lacked any constitutional or statutory provision expressly prohibiting Parliament from enacting a retroactive law, since the principle of non-retroactivity of laws was set forth in article 15 of the Covenant; others, lastly, had considered that the fact that a person could be arrested without being informed of the reasons for the arrest was at variance with the requirements of article 9, paragraph 2, of the Covenant. All those observations would be brought to the attention of the appropriate Canadian authorities.

179. The representative explained the mechanisms which existed in Canada to provide for a co-ordinated approach to the implementation of the Covenant at the different levels of Government: namely, the vertical mechanisms within a ministry or department, whether at the federal or provincial level; and the horizontal mechanisms which existed between ministries or departments, particularly between the federal and the provincial governments. He indicated that each minister was responsible for administering his or her mandated area, subject to general administrative policy guidelines established by the Government, many of which were relevant to the Covenant and that a great many programmes set up by Government ministries and departments were designed specifically to promote the kind of objectives reflected in the Covenant, even though the programmes might not have been established as a direct result of the Covenant. Co-ordination was also

exercised through the Commissions on Human Rights, which were responsible at the Federal and the provincial level for enforcement of the Human Rights Acts or Codes and which were also responsible for promoting human rights in their respective areas of competence, handling complaints and encouraging research, publications, information and education of human rights. The purpose of the Interdepartmental Human Rights Committee, whose authority derived from the Cabinet, was to co-ordinate Federal policy on human rights matters and to review the way in which the various government departments were applying it. He stressed that co-ordination in a federal system might not be simple, but it was certainly an essential ingredient of successful implementation of policies and programmes on human rights.

180. The representative stated that since the Canadian Parliament and the provincial legislative assemblies had not yet amended the legislation in accordance with the provisions of the Covenant, the Canadian courts could not directly apply the provisions of that instrument which differed from existing Canadian law, but that when it was necessary to interpret domestic laws whose meaning was ambiguous, they could refer to the Covenant as part of international law.

181. Replying to questions raised under article 1 of the Covenant, the representative stated that while the Constitution made provision for the addition or creation of new territories and provinces, it made no provision for the severance of provinces, territories or peoples from Canada or for major variations in their constitutional status. Such changes would have to be the subject of constitutional amendment. Concerning the attitude of the Government of Canada with regard to the referendum in Quebec, he maintained that his Government considered that the "objectif indépendantiste" of the Government of Quebec but in question the political unity of Canada but that in conformity with international law, this was an internal matter which fell exclusively within the national competence of Canada.

182. As regards the comments made under article 2 of the Covenant, the representative pointed out that a number of provincial laws expressly prohibited discrimination on political grounds. He cited several judicial decisions in which the provisions of the Canadian Bill of Rights had taken precedence over those of other federal laws. As to the monitoring role of the Minister of Justice in determining whether bills and regulations were in conformity with the Canadian Bill of Rights, he cited the case of an amendment to a bill which had been put before the Senate without prior examination. The Minister and stated that the Minister had expressed the opinion that the amendment would conflict with the Bill of Rights in certain aspects and that it had subsequently been modified accordingly. He expressed that it was impossible to state categorically that a legal remedy would be available in Canada for every breach of the Covenant; and that, in cases involving wrongdoing by Government employees in the course of their employment, both the Government and the employee could be sued and it therefore did not matter to the employee was insolvent and that in such a case, the Government would have to pay any damages obtained.

183. Replying to questions raised under article 3 of the Covenant, the representative stated that special services had been set up to analyse the impact of legislation, policies and programmes on the status of men and women and that both federal and provincial governments were trying to foster equality of status within government service. He gave an account of the position of women in the federal, political and judicial systems and of their role in the economic and social

spheres of life and stated that the Federal Government and the provincial Governments encouraged women's organizations to achieve their objectives by contributing to the funding of research, seminars, conferences and studies and by granting financial aid to voluntary women's organizations. As regards the provisions of the relevant Acts of the Province of Saskatchewan, considered by some members to be discriminatory in favour of women, he stressed that these provisions had been enacted many years earlier to safeguard the economic position of women and that it did not seem that the time had come to rescind them.

184. In connexion with article 6 of the Covenant, the representative stated that a peace officer was liable by law for any excessive use of force and that his personal legal liability obliged him to restrict the use of firearms to the defence of his own life or that of another person; that the Criminal Code imposed a sentence of imprisonment for life on anyone procuring an abortion; and that a woman who procured, or tried to procure, an abortion for herself was liable to two years' imprisonment, unless the abortion had been authorized by a special Committee which had considered that the continuation of the pregnancy would endanger her life or her health.

185. In relation to article 9 of the Covenant, the representative explained that a peace officer could, without a warrant, arrest a person who had committed a criminal act or appeared to have committed one, who was in the course of committing a criminal act or who was liable to a warrant of arrest, provided that he had reason to believe that the public interest could not be otherwise safeguarded and that, if he did not arrest that person, the latter would not appear in court. The justice of the peace could, if he had reason to believe that it was necessary in the public interest to do so before summoning the party concerned to appear, issue a warrant for his arrest on information supplied by any person who had reason to believe that someone had committed a criminal act. The justice of the peace must not however sign an open warrant and the warrant must give the name or the description of the suspected person, state the offence and order that the person concerned should be arrested and brought before a justice of the peace. He pointed out that under federal law the accused was usually released pending trial; and that, both at the federal and at the provincial level, any person arrested or held in custody must be brought promptly before the competent court and if necessary could resort to habeas corpus if improperly deprived of his liberty.

186. As regards article 10 of the Covenant, the representative stressed the independent nature of the post of the chairman of the disciplinary board and stated that he was appointed from among the members of the legal profession. The Supreme Court of Canada had recognized that disciplinary boards were obliged to act fairly and had laid down that their decisions were subject to control by the judiciary in cases where such boards had failed to respect that principle.

187. Replying to a question raised under article 13 of the Covenant, he stated that the Minister of Employment and Immigration had full discretion to cancel permits for admission to Canada issued by his Ministry; that such permits were issued, mainly on humanitarian grounds, to persons who sought to enter the country without having qualified for admission or who could not qualify; that they were issued on a temporary basis so as to enable such persons to enter for a special purpose or to give them time to qualify for admission if they could; and that persons wishing to enter the country under such conditions were informed that without such permission their presence in Canada would be considered unlawful.

188. Regarding article 14 of the Covenant, the representative explained the procedure for the appointment of judges and pointed out that no person is eligible to be so appointed, neither at the federal nor provincial level, unless he was a barrister or advocate of at least 10 years standing at the bar of any province or territory; that legal ability and experience were two important factors in the appointment of judges, but that human qualities such as generosity, the ability to listen, integrity and an impeccable personal life were also taken into consideration. He stressed that, until proved guilty, an accused person remained innocent and that his reputation in the eyes of the law remained intact; that every accused person or witness had the right to the services of an interpreter; and that, following a Supreme Court decision, the courts could no longer rely upon the theory of abuse of process to suspend proceedings which might cause prejudice to an accused owing to undue delay in the conduct of the prosecution's case.

189. Replying to questions raised under article 17 of the Covenant, the representative stated that a judge other than a "magistrate" could, at the request of the Solicitor-General, at the federal level, or of the Attorney-General, at the provincial level, or of their agents, authorize the interception of private communications provided that he was sure that it would enable the administration of justice to be best served, that other methods of investigation had failed or had little chance of success and that the matter was so urgent that it would not be practicable to carry out the investigation using other methods only. The authorization had, inter alia, to show the offence necessitating the interception, the type of private communication which could be intercepted and the period for which it was valid. Illegal interception was a crime punishable with five years' imprisonment, but that evidence obtained therefrom did not for that reason become inadmissible, unless the judge or the presiding magistrate considered that to admit it would tarnish the image of justice. The Solicitor-General of Canada could issue a warrant authorizing the interception or seizure of any communication if he was convinced, on the basis of evidence given under oath, that such interception or seizure was necessary in order to forestall or divert subversive activity directed against Canada or prejudicial to Canadian security.

190. In connexion with article 18 of the Covenant, the representative stated that freedom of religion was guaranteed by law; that the advocacy of atheism could not be considered to be blasphemous libel if it was expressed in good faith and in decent language; that persons whose day of worship was other than Sunday could not be required to work on that day and their employers were obliged to observe that rule, unless they could prove that its application would cause undue hardship to their business; and that the problem of conscientious objection did not arise in practice since there was no compulsory military service in Canada.

191. As regards article 19 of the Covenant, the representative stated that freedom of expression was restricted only by the provisions of the Criminal Code which prohibits defamation and sedition, it being understood that sedition was confined to the advocacy of unlawful use of force to bring about a change of Government.

192. Replying to questions raised under articles 23 and 24 of the Covenant, the representative stated that, although marriageable age in Quebec was 14 for a man and 12 for a woman, the consent of the father or the mother was essential until the age of 18; and that, according to a bill currently under consideration by the National Assembly of Quebec, the minimum age for marriage would be raised to 18 for both sexes, but persons of at least 16 years of age could obtain permission from

the court if they applied for it. As to the status of natural children, he pointed out that they had the same rights as legitimate children, except in the case of ab intestat inheritances, which were handed over to the legitimate heirs in the order established by law, but that a parent could favour his illegitimate child in his will; that parents must support, provide for and bring up their natural children; and that natural children were made legitimate by the subsequent marriage of their father and mother and in that case they had the same rights as if they had been born of that marriage. If the draft reform under consideration was adopted, natural children would in future be placed on a completely equal footing with legitimate children.

193. As regards article 25 of the Covenant, the representative stated that trade unions could play a political role in Canada as they indeed did in the 1979 general federal election when the Canadian Labour Congress supported one of the political parties; that they could advocate new laws or changes in existing laws; and that their representatives met yearly with federal, provincial and municipal executives to present resolutions to put into effect the decisions taken at their annual meetings. He stressed that no political party was outlawed in Canada; that everyone was free to join any political party or none; and that with the exception of public servants who, in certain jurisdictions, might have to leave their employment for the purpose, any adult Canadian citizen could be a candidate for a public office.

194. Responding to comments made under article 26 in conjunction with article 2 of the Covenant, the representative pointed out that it was possible for Parliament to enact discriminatory legislation as in the case of pension schemes that made special provision for married pension-holders. The point which the Canadian Government had wished to make in its report, however, was that the laws must be applied equally to everyone unless Parliament deliberately and publicly provided for distinctions of that nature.

195. Replying to the questions and comments raised by members of the Committee under article 27 in conjunction with article 2 of the Covenant, the representative gave a brief history of the development of the status of Indians in Canada in the light of the special relationship that had existed between them and the Canadian authorities following the adoption of the Constitution of 1867 which brought them under the exclusive authority of the Parliament of Canada. Over the years, various bodies had been established to enable representatives of the Indians and representatives of the Government to exchange views on various aspects of Government policy and to review proposed changes to the Indian Act. Enfranchisement had been a simple formality confirming that Indians who left the reserve were no longer entitled to the various rights and privileges accorded to Indians in the reserve by the Indian Act but could now be registered on electoral lists. The present situation was that, as long as a person remained a registered Indian, he had most of the rights of non-Indians, in particular the right to vote, and was also entitled to tax exemptions. Under the Immigration Act of 1976, persons registered as Indians, whether holders of Canadian citizenship or not, had the same right of entry and residence in Canada as Canadian citizens. Indians were free to leave the reserve at all times. Reserves were created as territory over which Indians had exclusive rights and they were not places where Indians were obliged to live. The representative stressed that the Indians participated in the same social security system as the rest of the population; that the Government had financed Indian cultural and educational centres; that a number of programmes

had been established over the years to foster the social and economic development of Indian communities; and that with regard to Indian territorial claims, the Canadian Government had announced in 1973 that it would negotiate with all natives in areas where original title to land had not been extinguished.

196. The representative pointed out that there was no special act governing Eskimos in Canada and that, according to the Supreme Court of Canada, they came under federal jurisdiction. Unlike the Indians, the Eskimos of Canada had not pressed for special legislation governing their situation, but they had, together with Indians and Metis, recently been invited to participate in federal meetings to discuss possible constitutional changes for the better protection of native rights.

Senegal

197. The Committee considered the initial report (CCPR/C/6/Add.2) submitted by the Government of Senegal at its 213th, 214th and 217th meetings held on 31 March and 2 April 1980 (CCPR/C/SR.213, 214, 217).

198. The report was introduced by the representative of the State party who stated that Senegal applied the precepts set forth in the Covenant; that human rights were scrupulously respected in Senegal and the need to safeguard them was reflected in the Constitution, in positive law and in judicial decisions; that any restrictions imposed on those precepts were of an exceptional nature stipulated by law and could be regarded as safety measures in order to protect the established institutions with which Senegalese nationals and aliens were obliged to comply; that the judiciary was totally independent and was specially vigilant in matters concerning the respect and protection of individual freedoms; and that lawyers represented a valuable arm of justice in ensuring the protection of individuals in all matters and at all stages of proceedings. He also informed the Committee that associations led by jurists had been set up with a view to increasing public awareness of human rights by holding conferences, symposia and seminars, by publishing articles or by participating in radio or television broadcasts and that, by doing so, such associations were helping the population to achieve a better understanding of fundamental concepts relating to human rights.

199. Members of the Committee expressed their satisfaction at the comprehensiveness of the report and at the achievements of Senegal in the field of human rights and praised the legal system which was entrusted to protect them. Information was, however, requested on the actual progress made in the enjoyment of human rights in Senegal and on any factors and difficulties, if any, affecting the implementation of the Covenant as required by article 40 thereof.

200. With regard to article 1 of the Covenant, questions were asked as to whether Senegal had any provisions guaranteeing the right to self-determination of peoples within its own boundaries; whether, on the one hand, Senegal did not consider that intervention by the use of arms in the affairs of another State, so as to interfere with their right to self-determination, constituted a breach of the United Nations Charter and the spirit and letter of the Covenant; whether, on the other hand, being a party to the International Covenant on the Suppression and Punishment of the Crime of Apartheid, Senegal recognized that the existence of the apartheid régime was a serious threat to the right of self-determination of African peoples and whether Senegal took the view that economic, military and other assistance to the apartheid régime was likewise incompatible with the obligations arising under article 1 of the Covenant; and how Senegal perceived the link between the establishment of a new international economic order and the right of peoples to self-determination.

201. As regards article 2 of the Covenant, it was noted that the report specified fewer grounds on the basis of which discrimination in Senegal was prohibited than did the Covenant and it was asked whether there were any provisions prohibiting discrimination on such important grounds as language, political opinion, property and "other status"; and to what extent the application of the provisions of the Covenant was ensured to all those who lived in Senegal, including resident aliens. Noting that the provisions of the Covenant had not been incorporated into Senegalese domestic law, it was asked whether the Covenant had been ratified by law and, if so, whether the Covenant had been published in the different languages spoken in Senegal; whether its provisions had been, or could be, invoked before the judicial and administrative authorities; whether court decisions could be directly based on

the provisions of the Covenant and thus override, if need be, other domestic legislation; and whether any provisions of internal law had already been declared inapplicable on the grounds that it was incompatible with an international treaty. Members of the Committee also asked whether the Supreme Court had already had occasion to declare a provision of international law null and void on the grounds that it was in conflict with the Constitution. In this connexion, members wondered whether the general reservation appearing in the Constitution concerning the reciprocal application of treaties or agreements applied in the case of multilateral treaties, such as the Covenant. Referring to an article in the Constitution which mentioned "fundamental guarantees granted to civil and military officers in the service of the State", one member asked what those guarantees were, whether they afforded to civil and military officers any kind of immunity in regard to possible violations of the rights of private individuals and whether they were consistent with the provisions of article 2, paragraph 3 (a), of the Covenant. Information was requested on the administrative or legal procedures to which an individual could resort if he felt that his rights had been violated and on whether such an individual had to submit a case to the court before it could act.

202. In relation to article 3 of the Covenant, it was asked what specific measures had been taken in Senegal to ensure the equal right of men and women to the enjoyment of the rights set forth in the Covenant; what was the percentage of women in the Civil Service, the judiciary and the liberal professions, what role was played by them in the political and social life of the country; and what was the legal capacity of women, especially in respect of the conclusion of contracts.

203. Commenting on article 4 of the Covenant, one member asked whether there were differences of degree in such emergency situations as "state of siege", "state of emergency" and "period of political crisis" which were frequently mentioned in the report; what bodies were responsible in each case and whether the rights from which there could be no derogation, pursuant to article 4, paragraph 2, of the Covenant, were expressly guaranteed by the Constitution or by some other Senegalese legislative text.

204. In connexion with article 6 of the Covenant, information was requested on the results achieved by Senegal in its efforts to reduce infant mortality, fight epidemic diseases and improve the level of health and quality of life of the people. Explanations were also sought on the "particularly serious crimes" for which the death penalty could be imposed, of the number of times the death penalty had been pronounced over the last five years, of the crimes for which it had been pronounced and of the statement in the report that if a minor above the age of 13 incurred the death penalty, he would be sentenced from 10 to 20 years' imprisonment where the circumstances of the case and the personality of the offender so warranted. It was also asked whether the statement in the report that a pregnant woman sentenced to death did not suffer the penalty meant that she was sentenced but not executed and whether any consideration had been given to the abolition of the death penalty in Senegal.

205. In respect of articles 7 and 10 of the Covenant, some members of the Committee noted the absence in the Penal Code of any provisions for the punishment of torture and inhuman treatment. They asked what rules there were to ensure that individuals were not physically ill-treated by the police and what procedures existed for investigating complaints in this respect and for dealing with the persons responsible, whether the law authorized solitary confinement and corporal punishment and, if so, in what circumstances these penalties could be imposed and for what type

of crime or offence; and whether penalties laid down in the Penal Code for officials of the prison service who overstepped their rights had in recent years been imposed.

206. With regard to article 9 of the Covenant, information was requested on the nature of the "arrest in execution of an order to take into custody" and of the "deprivation of liberty in application of certain precautionary measures", mentioned in the report; on whether such arrests or measures included detention for political reasons; and on whether a person held by a penal police officer was informed of the reasons for his arrest. Questions were also asked as to what was the average and maximum length of detention in custody pending trial, whether there were guarantees against unlawful detention or against its unnecessary prolongation; and what procedure was applicable for the confinement of mentally deranged persons and what guarantees it afforded to the individual concerned. Some members expressed surprise at the doubling of the period for which a person could be held by the police "during a political crisis or during the execution of international undertakings" and sought clarification of such measures.

207. Commenting on article 12 of the Covenant, members of the Committee noted that the right to freedom of movement might be much more restricted in Senegal than the Covenant anticipated and asked in what way the repatriation deposit, that each Senegalese citizen leaving the country was required to pay into the Treasury, protected Senegalese workers, and whether this requirement did not give rise to inequality on the basis of wealth; whether citizens whose applications for passports or exit visas were rejected enjoyed any judicial protection; and what percentage of the population travelled abroad. Noting also that acquired nationality could be withdrawn within 15 years of its acquisition if the person concerned "behaved in a manner incompatible with Senegalese status", members asked for clarification of this provision and wondered whether that punishment was not tantamount to discrimination against naturalized Senegalese, in violation of article 2 of the Covenant, and whether the individuals whose nationality was withdrawn had any right to appeal and, if so, to what body.

208. In connexion with article 13 of the Covenant, it was asked what was meant by the "general conduct and actions" and by the "serious and evident interference" of an alien which justified his expulsion from Senegal; which judicial or administrative body was competent in reviewing the expulsion order; and whether all the provisions of article 13 of the Covenant were observed by Senegal.

209. As regards article 14 of the Covenant, it was pointed out that the separation of powers and the appointment of professional and irremovable judges were not in themselves sufficient guarantees for the establishment of an independent judiciary; that the irremovability of judges could be seen as a kind of discrimination and privilege vis-à-vis other professions on grounds of social status and could thus be dangerous to the establishment of a democratic society. It was asked what professional and moral criteria governed the appointment of judges in Senegal and whether a decision to transfer any judge would be taken by the administration or by some special body. Questions were also asked concerning the High Court of Justice referred to in Chapter VIII of the Constitution which had jurisdiction to try members of the Government or their accomplices for alleged offences. Since this Court, though presided over by a professional Judge, appeared to be composed largely of members of the National Assembly elected from among themselves, the question arose as to whether, because of its highly political character, it could not be a dangerous instrument for dealing with cases of this nature. It was asked

why it was considered desirable to take particular cases outside the jurisdiction of the ordinary courts; whether the procedures of the High Court complied in all respects with article 14 of the Covenant; and whether a person convicted by it had a right of appeal to a higher tribunal. It was also asked whether a Security Court still existed in Senegal and, if so, what was its composition and jurisdiction; whether its procedures complied with the requirement of the Covenant and how many cases it had considered during the period since the Covenant had entered into force for Senegal. Members also asked which bodies had the jurisdiction to judge labour disputes; whether there was administrative jurisdiction in Senegal; and whether the victim of a miscarriage of justice who had already suffered punishment was explicitly entitled to compensation in existing law.

210. With respect to article 17 of the Covenant, it was noted that measures affecting the inviolability of the home might be taken in order to "protect young people in danger" and clarification of this expression was requested. Members asked what were the legal provisions which restricted the principle of inviolability of correspondence and of postal and telegraphic communications and in what circumstances and cases they could be applied; what was meant by "insult and calumny" which were mentioned in the report as punishable offences and whether the "insult" was punishable if directed against an individual or only against a public official.

211. In relation to article 18 of the Covenant, it was asked whether the religion of the majority had been elevated to the status of the state religion and how far freedom of religion was effectively respected in connexion with government institutions and employment.

212. As regards article 19 of the Covenant, information was requested on the laws and regulations which limited the freedom of expression in Senegal; what controls existed, particularly with regard to publications and the press, and whether the powers enjoyed by the two press commissions established under the Press Act of 1979 were justified in terms of article 19, paragraph 3, of the Covenant.

213. In connexion with article 20 of the Covenant, it was asked whether there was a law which prohibited war propaganda, and whether someone engaging in such propaganda could be prosecuted. Some members, wondering about the nature of the acts which constituted the offence of "regionalist propaganda" and of uttering "seditious shouts or chants", doubted whether Senegal could invoke article 20 of the Covenant to penalize such acts which did not necessarily constitute an incitement to national, racial or religious hatred or a form of propaganda for war. One member also wondered whether such a provision was even consistent with articles 19 and 27 of the Covenant.

214. Commenting on article 22 of the Covenant, members asked whether the right to form associations in Senegal was conditional upon prior registration and if so, on what grounds such registration could be refused; whether there was any right of appeal to the Court from the decisions of the executive power in this respect; and whether the provision for the dissolution by the administrative authority of occupational organizations without previous submission to the courts, could not be seen as being in conflict with the Covenant. Noting with interest that the Constitution provided for the establishment of four political parties in Senegal, members asked what precise legislation governed the formation of political parties, how that four-party system worked in practice, and whether the other political groupings, including the Rassemblement national démocratique and the Coordination

de l'opposition sénégalaise unie, were considered illegal and, if so, on what grounds.

215. With regard to articles 23 and 24 of the Covenant, clarification was requested of the "serious reasons" for which the age limit of marriage could be waived by the President of the Republic and questions were asked as to the number of waivers on account of age granted in recent years; what was the meaning of the term "marriage property system" and whether there were different customs in different parts of the country in that matter; what was the legal meaning and implications of the provision that made the husband the head of the family and whether this was consistent with the principle of equality of rights and responsibilities of spouses set forth in the Covenant; whether Senegalese law provided for complete equality between men and women as far as the transfer of nationality to children was concerned; what was the legal status and the rights of children born out of wedlock; whether the concept of an adulterine child existed in Senegalese law and, if so, what was the legal status of such a child; and whether adoption existed in Senegal and, if so, whether adopted children had the same rights as legitimate children.

216. In connexion with article 25 of the Covenant, information was sought on the composition, competence and powers of the institutions conducting public affairs and on the professional and moral conditions which had to be met by candidates for public posts and what were the grounds covered by the prohibition of discrimination in the conditions of access to public service.

217. In relation to article 26 of the Covenant, it was asked what the Senegalese Government had done in practice to ensure that all persons were entitled without any discrimination to the equal protection of the law, in particular against acts of discrimination committed by private individuals.

218. As regards article 27 of the Covenant, it was asked what minorities existed in Senegal and what was their size, and what measures had been taken to ensure their development and to protect or promote their culture.

219. Commenting on questions raised by members of the Committee under article 1 of the Covenant, the representative of the State party stated that his country was dedicated to the principle of the right of the peoples to self-determination and that interference with the right of the people of any other State to self-determination constituted an inadmissible assault on the freedom of peoples and a serious violation of international law; that apartheid was a crime against humanity which ran counter to the right of peoples to self-determination; and that Senegal was sparing no efforts to achieve the elimination of that racist and colonialist system of government and would continue to give assistance to peoples suffering under that inhuman ideology. He stressed that there was a connexion between the new international economic order and the right of peoples to self-determination in that the present unjust international economic order was a consequence of the system of exploitation established by colonialism; and that it was therefore necessary to replace it by one which was more just and based on respect for the right of each State fully to exercise permanent sovereignty over its natural resources and freely to dispose of them and on respect for the right to development.

220. Replying to a question raised under article 2, paragraph 1, of the Covenant, the representative pointed out that aliens, to the extent that they had been

legally admitted to the territory of Senegal, had the right, on the same basis as Senegalese citizens, "freely to form associations or groupings", freely to travel and reside in any part of Senegal, that they were not subjected to any arbitrary action and had the benefit of many safeguards.

221. As regards the status of the Covenant in Senegal's internal law, he stated that, being an international treaty, the Covenant had been duly ratified by the Head of State by virtue of a law enacted by the National assembly; that it had been published in the official journal and that, accordingly, the Covenant prevailed over the other laws of the State; that any constitutional provision which was contrary to the Covenant led consequently to a revision of the Constitution; and that the person concerned would first have to consult Senegalese law and only if he failed to find appropriate provisions could he invoke the Covenant in the courts.

222. In relation to article 3 of the Covenant, the representative explained the flagrant injustices under which women in his country had lived for a long time and which, since independence, had been remedied. The general policy of his Government was based on the principle of absolute equality between men and women and the latter were now to be found active in all fields of economic, social and political life, including membership in the Cabinet of Ministers, the National Assembly, trade unions, the magistracy, public administration (one fifth of the total number of civil servants) and the diplomatic service. As to the legal capacity of women, he pointed out that a woman could exercise any profession but that if she was married she could not engage in commerce, which often entailed considerable responsibilities, if faced with her husband's objection. However, the Justice of the Peace could authorize a woman to override her husband's objection if his opposition was not justified by the interests of the family.

223. With regard to article 4 of the Covenant, the representative stated that the state of emergency was proclaimed in cases of danger arising from serious disturbances of public order or from events amounting to a public disaster and, in these cases, the competent agency was the civil authority; that a state of siege was proclaimed in the case of imminent danger to the internal or external security of the State and was within the competence of the military authorities; and that both situations were governed by the Constitution and by specific laws.

224. Replying to questions raised under article 6 of the Covenant, he pointed out that a great deal had been achieved in the domain of public health; that there was a sharp decrease in infant mortality and that certain laws in force made it possible to combat venereal disease, prostitution and drug abuse. As to the crimes punishable by death, he stated that, since the promulgation of the Penal Code, offences such as the misappropriation of public funds, assault and battery resulting in death, and rape had now become misdemeanours and thus referred to summary jurisdiction; that a few criminal cases were still brought before the Assize Court; that since the ratification of the Covenant, the death penalty had not been carried out in Senegal and that only two persons had been sentenced to death since 1963. Pregnant women sentenced to death could not be executed before giving birth. He also informed the Committee that Senegal did not envisage, for the time being, the abolition of the death penalty.

225. As regards articles 7 and 10 of the Covenant, the representative stressed that torture and inhuman treatment were absolutely prohibited in Senegal and that there was no exception to that rule. He informed the Committee that in 1964 a police inspector had been prosecuted for such violent acts and convicted.

226. In connexion with article 9 of the Covenant, he maintained that security measures involving deprivation of liberty were administrative measures intended to protect such individuals as dangerous alcoholics, lepers and drug addicts and that in any case there were no political prisoners in Senegal at the present time. He pointed out that an accused person under an arrest warrant could be held up to 48 hours; that custody pending trial ordered by the examining judge was not the rule and that normally the accused was released pending trial; that the magistrates' court received a complete list of persons in custody every three months and had to decide whether the proceedings should be expedited; and that the Chief State Counsel, too, had to be kept informed about the progress of proceedings concerning persons in custody.

227. In relation to article 12 of the Covenant, the representative stated that the repatriation deposit required for leaving the country was simply to ensure that a worker who went abroad would be able to return to his country in the event of difficulty; that such a deposit was not substantial and in no way involved discrimination on the basis of wealth; that it was not compulsory since an exit visa could be issued upon presentation of a return ticket; and that the purpose of the exit visas was basically one of administrative policy designed to serve the purpose of the deposit and that it was not to prevent some categories of citizens, and in particular political opponents, from leaving the country. He stressed that a naturalized citizen could not be stripped of Senegalese nationality except in exceptional cases or where he committed a very serious offence resulting in a sentence of more than five years' imprisonment and that since the withdrawal measure was taken by decree, there was the possibility of appeal.

228. Replying to questions raised under article 13 of the Covenant, the representative stressed that the Minister of the Interior could issue an expulsion order only in the case of aliens who had illegally entered Senegalese territory or who had manifestly interfered in Senegal's internal affairs; that the mere fact of an alien being sentenced by the Senegalese courts for a crime did not necessarily lead to expulsion; and that an alien who was the subject of an expulsion order was able to contest the order and take the case to the Supreme Court and could request the assistance of a lawyer for that purpose.

229. With regard to article 14 of the Covenant, he pointed out that the High Court of Justice tried members of the Government accused of offences; that the Court of State Security dealt with political offences; and that each of these special courts was presided over by a senior judge. He informed the Committee that the right of defence was guaranteed; that defence counsel was obligatory for minors and invalids as in the Assize Court; that legal assistance was available to persons without sufficient means; that in cases of miscarriage of justice, the Supreme Court may review the judgement at the request of either the victim or the Privy Seal according to the case; and that, once miscarriage of justice was established, damages could be awarded to the victim.

230. Replying to questions concerning article 17 of the Covenant, the representative stated that the inviolability of the home was a hallowed principle which could only be waived when the physical or moral safety of young people demanded it; that during a state of emergency the secrecy of correspondence could be suspended under conditions laid down in the Penal Code; that a judge could order the correspondence of an accused person to be opened if he considered it necessary in order to determine the truth; and that no restriction could be placed upon the inviolability of correspondence, telephonic and telegraphic communications, except

in accordance with the law. He stressed that "insult and calumny" were offences under the Penal Code and punishable in all cases without discrimination.

231. In connexion with article 18 of the Covenant, he stated that Senegal was a land of tolerance which had always upheld and defended the freedom of everyone to choose his religion and to practice it without hindrance.

232. As regards article 19 of the Covenant, he stressed that the restrictions imposed in Senegal on the freedom of expression were consistent with those stipulated in the Covenant; that the restrictions imposed on publications were designed basically to prevent some individuals from discrediting others; that the Press Act established a code of ethics for journalists; that the National Press Commission kept watch on the performance of the press; that the Control Commission was responsible for auditing the accounts; and that if a journalist had his press credentials revoked, he could appeal to the Supreme Court against the decision.

233. In relation to article 20 of the Covenant, the representative stated that the Penal Code contained provisions prohibiting propaganda in favour of war; that in the interests of national unity, all propaganda in favour of secession was strictly prohibited by the Constitution; that the "seditious" character of some associations could be determined only on the basis of the definitions given in the law and that it was for the courts to rule on specific cases; and that his country would scrupulously respect article 20 of the Covenant.

234. Replying to questions raised under article 22 of the Covenant, he stated that the freedom of association was guaranteed by the Constitution and that the Code of Civil and Commercial Obligations laid down the basic rules; that it was possible to form an association by making a prior declaration and registering with the Ministry of the Interior; that this Ministry could refuse registration only on statutory grounds; and that there was the possibility of appeal against the refusal before the Supreme Court. Trade unions could be formed freely according to the conditions laid down in the Labour Code and the only requirement was the depositing of the statute of the trade union concerned with the mayor, the labour inspector and the Chief State Counsel. The procedure for disbanding a trade union was governed by law and was a judicial procedure. As to political parties, he pointed out that the multi-party system was recognized by the Constitution and that political groupings that were not recognized, such as the RND, were also free to express their opinions, like the major political parties.

235. In connexion with articles 23 and 24 of the Covenant, the representative pointed out that the matrimonial system in Senegal was that of the separation of property. He maintained that that system seemed the most appropriate in a country where polygamy was still widely practised and the system of legal community of property could give rise to difficulties if some of the women in a household worked and others did not. Nevertheless, the spouses could opt for the system of community of property if they wished. He stressed that the fact that, under the Family Code, the husband was considered to be the head of the family in no way infringed the principle of equality between men and women; that it was essential that there should be a head of the family; and that if the husband was incapable of assuming his responsibilities, he could be deprived of that role as well as of paternal authority, and the authority could be vested in his wife. He also pointed out that there was no discrimination in the question of transfer of nationality to children and that children of persons holding Senegalese nationality, whether by affiliation, by marriage or by decision of the administrative authorities, had

Senegalese nationality. As to the questions concerning natural and adulterine children, he stated that if a natural child was acknowledged by his father, his status would be the same as that of a legitimate child. An adulterine child could be acknowledged by his father subject to the consent of the wife; and if so acknowledged, he would have the same status as a legitimate child. Adoption was governed by the Family Code according to which there must be good reasons to believe that it was for the benefit of the child in question. In the case of "full adoption" the child had the same status as the other children in the family, whereas in the case of "simple adoption" he had only inheritance rights.

236. Replying to questions under article 25 of the Covenant, the representative stressed that recruitment for employment in the civil service was carried out entirely according to objective criteria and that there was no discrimination based on sex, opinion or any other consideration and that vacant appointments at different levels of the public service were nearly always filled by examination or competition.

237. In connexion with a question raised under article 26 of the Covenant, he stated that all forms of discrimination were forbidden and no person could take advantage of his birth or any other factor in order to obtain privileges and that the principle of equality before the law was based on the need to protect human rights against any possible violations, whether by individuals or by the State.

238. As regards article 27 of the Covenant, he stated that there was complete national integration in Senegal and different ethnic groups lived in perfect harmony; that there were no problems of minorities in Senegal; that although 85 per cent of the population was Moslem, Senegal had a Christian Head of State; that there were several national languages but one of them was common to 85 per cent of the population; and that linguistic pluralism was not a cause of division or of discrimination.

Colombia

239. At its 221st, 222nd, 223rd and 226th meetings, on 15, 16 and 17 July 1980, the Committee considered the initial report (CCPR/C/1/Add.50) submitted by Colombia (CCPR/C/SR.221, 222, 223 and 226).

240. The report was introduced by the representative of the State party who stated that it was a source of satisfaction for him that civil and political rights as well as economic and social rights were guaranteed by Colombia's Constitution, codes and laws and that Colombia was doing its utmost to implement those rights in the context of the difficulties inherent in the conditions of a developing country. He pointed out that his country had a long legal tradition; that it recognized and defended the right to self-determination; and that equal rights for men and women in Colombia were guaranteed under the Constitution and other laws of Colombia.

241. The representative stressed that the recent enactment by his Government of a security statute (Estatuto de seguridad), following certain acts of terrorism, did not contain any "draconian measures of repression"; that it had a clear legal basis, since it was the responsibility of the State to protect and preserve law and public order; and that his Government had continued to safeguard all the rights enshrined in the Covenant within the strictest framework of legality. He recognized that the state-of-siege had been in force in his country for many years but that it had been modified on several occasions and was now fully regulated by law and governed by the Constitution; and that it was directed only against those who wanted to destroy democracy in Colombia by terrorism. He stated that, unlike martial law, the state-of-siege in Colombia was applied under strict controls and that it did not affect the functioning of the Congress nor the independence of the judiciary, nor did it prevent the holding of free elections. The press remained free, with censorship operating only in cases of irresponsible writings; strikes were permitted except when they were subversive; and the rights to fair trial and to freedom from torture and arbitrary arrest were ensured despite the fact that, under the security statute, the armed forces assumed certain functions on a temporary basis and that the penalties for certain offences had been increased. He admitted that certain abuses had occurred but that they were being rectified; that there had been some justified complaints regarding delays in judicial proceedings but that every effort was being made to speed up the administration of justice. He informed the Committee that, to indicate its voluntary submission to international opinion, his Government would invite observers from the Organization of American States to attend certain trials.

242. The representative informed the Committee that the state-of-siege would be lifted soon; that a bill introducing an amnesty would be presented to Congress in the next few days; and that judicial reforms would be adopted.

243. Members of the Committee expressed appreciation for the additional information provided by the representative of the State party in his introductory statement and welcomed the news that the Colombian Government intended to lift the state-of-siege in the near future. Members observed, however, that, as Colombia was living under a state-of-siege, this raised serious questions relevant to the implementation of the Covenant and in particular as regards the application of article 4.

244. With reference to article 1 of the Covenant and to the introductory statement by the representative of Colombia, it was pointed out that Colombia had maintained

a praiseworthy tradition in its support for the struggle of peoples against colonialism and for the right of peoples to self-determination. However, it was wondered how the establishment of Colombia's embassy in Jerusalem could be reconciled with this traditional support and with decisions of the United Nations with particular reference to the right of the Palestinian people to self-determination.

245. In connexion with article 2 of the Covenant, it was noted that the Covenant formed part of Colombian internal legislation and it was asked what its position was in relation to the Constitution and other laws; whether the provisions of the Covenant were ever invoked before the courts and, if so, whether examples could be provided; and whether there was any authority which could apply the provisions of the Covenant if internal legislation conflicted with it. Noting that one of the measures taken pursuant to the state-of-siege was the extension of military criminal jurisdiction, of which a usual feature was the meting out of summary justice which did not accord to the individual the normal guarantees of the due process of law, members of the Committee asked why the Government of Colombia considered that the ordinary courts could not deal satisfactorily with cases which had been transferred to the military courts, what were the special features of the procedure of the military courts, and how they were justified under the Covenant. The representative of Colombia was also asked what positive measures had been taken by the Colombian Government to prevent officials from committing breaches of human rights and secondly to ensure, as required under article 2 of the Covenant, that any person whose rights or freedoms had been violated, should have an effective remedy, notwithstanding that the violations had been committed by persons acting in an official capacity. It was also asked to what extent Colombia derogated from the provisions of article 2, paragraph 3 (a), and to what extent measures had been enacted to render military tribunals amenable to civilian control.

246. As regards article 3 of the Covenant, members of the Committee realized that legislative measures had been taken to ensure equal enjoyment of rights by men and women. However, equal rights for women were not achieved solely by legislation but by changes in social conditions and in social behaviour towards women. More information was sought on the participation of women in the political and social life in the country; on the percentage of their representation in Congress, the municipal councils, public administration, universities and schools; and on whether the principle "equal pay for equal work" applied equally to men and women. It was also asked whether a woman enjoyed the right to abortion without the permission of her husband; what effects marriage had on the nationality of a woman. Noting that the safeguarding of women's rights assumed increasing importance under a state-of-siege, and that article 23 of the Covenant provided that the family was entitled to protection by society and the State, questions were asked on the measures taken by the State to ensure that this fundamental group unit of society did not suffer harm, considering that the majority of detainees under the state-of-siege would be men who were traditionally the bread-winners of the family.

247. In connexion with article 4 of the Covenant, members of the Committee were not clear, from the report and the introductory statement, whether it was the claim of Colombia that it had derogated from any of the Covenant rights, particularly as a state-of-siege appeared to have existed in Colombia for more than 30 years in various forms. They recalled, however, that any State party availing itself of the right of derogation, was required to inform the other States parties of the provisions of the Covenant from which it had derogated, the extent of the derogations and the necessity

for the derogations, and requested explanations on why those requirements had not been complied with, since a number of measures, including particularly the disquieting extension of military jurisdiction, affecting a number of Covenant rights, appeared to have been taken.

248. With reference to article 6 of the Covenant, members commended Colombia for abolishing the death penalty but noted that certain legislation had been passed giving the security services immunity in respect of deaths arising from operations to suppress certain crimes. Such legislation appeared to remove the guarantee that a person should not be arbitrarily deprived of his life and it seemed difficult to reconcile this with article 6 of the Covenant and with the respect for life which Colombia appeared to be showing by the abolition of the death penalty. It was stressed that the question of infant mortality was closely connected with the right to life, as this right did not merely mean a chance not to be killed but the necessity for providing appropriate social and economic conditions for survival. Noting that infant mortality was a serious problem in most Latin American countries, it was asked what had been done to reduce it in Colombia and with what results.

249. As regards articles 7, 9 and 10 of the Covenant, information was requested on any provisions in force in Colombia which regulated medical or scientific experimentation. Noting that a person suspected of attempting to disturb the public peace in Colombia, in time of peace, could be held in preventive detention for up to ten days, members of the Committee wondered what justifications could be given for such detention and asked whether the guarantees set out in the report, including the right to habeas corpus, were still in force under the state-of-siege; how many persons had been detained during the last year under the wide powers of arrest and detention accorded to the security services and with what justification; whether there was any judicial control over the exercise of those powers; whether persons in preventive detention were allowed access to lawyers; whether their families were informed about their situation; how many people, if any, had died in such detention including how many had died from injuries which were self-inflicted or inflicted by others; and whether victims of unlawful arrest or detention had an enforceable right to compensation. It was also asked whether there were, in Colombia, safeguards against deprivation of liberty for other than criminal reasons, for instance, medical reasons. Referring to the possibility of arrested persons to be released on bail, one member wondered whether the application of the system of bail, in a country such as Colombia where there were many poor people, could give effect to the principle of equal justice for all as provided for in article 26 of the Covenant. The question was also asked under what conditions a prisoner could be kept in solitary confinement.

250. In connexion with article 12 of the Covenant, one member asked whether certain regions of the country were placed under a special régime of control and, if so, what restrictions were imposed on the right to liberty of movement and residence in those regions, on what grounds and whether the restrictions and their extent were specified by law.

251. As regards article 14 of the Covenant, members of the Committee expressed concern at the effect of the state-of-siege on the application of the principles and guarantees of fair trial embodied in that article. Noting that the military courts played a major role in the actual situation in Colombia, members asked how these courts were composed, how their independence and impartiality were guaranteed, whether their rules of procedure were the same as those applicable in ordinary courts, and whether the accused had enough time to prepare his defence and to be

effectively assisted by a lawyer of his choice. It was also asked why the law stipulated that a minor was not allowed to be present at court hearings concerning his case and whether that provision was compatible with article 14 of the Covenant. Stressing the principle that everyone charged with a criminal offence had the right to be presumed innocent until proved guilty according to law, one member wondered what justification there could be for requiring from a suspected criminal, against whom no evidence was established, to deposit a financial guarantee or else face preventive detention.

252. In relation to article 17 of the Covenant, it was noted that the Colombian Constitution allowed the interception by the competent authorities of personal mail and documents in certain circumstances and that the police were empowered to enter private residences by force by virtue of a warrant issued by the competent authorities. It was asked who, under the present situation in Colombia, supervised such measures and verified their legality and whether any person who was subjected to such measures had any recourse to legal remedies in case an abuse of authority was committed. It was also asked whether telephone tapping was authorized under Colombian law and, if so, under what circumstances and subject to what conditions.

253. In connexion with article 18 of the Covenant, it was noted that, under the Constitution, acts contrary to Christian morality or subversive of public order committed under the pretext of worship were punishable by law. It was pointed out that such a provision might turn out to be contrary to the Covenant inasmuch as Moslem, Jewish or other religions have rules that might be seen to be contrary to Christian morality. It was asked how activities which were "contrary to Christian morality" or subversive were defined. In this connexion it was also asked whether Colombian law recognized the right to conscientious objection.

254. Commenting on article 19 of the Covenant, members of the Committee noted that, under the Constitution, freedom of the press was guaranteed except for attacks against personal honour, the social order or the public peace. They pointed out, however, that this provision could be used to restrict public discussion of social and political issues and requested information on what in practice constituted "attacks against the social order or the public peace". Members also noted that, according to Colombian law, "subversive propaganda" was an offence punishable by up to five years' imprisonment. They requested clarification on the meaning of that term and whether any criticism of the Government could be construed as such. It was also asked whether, according to the Penal Code of Colombia, any person who by negligence had published or disseminated false information could be sentenced to up to six years in prison. Clarification was also sought on the term "sedition" used in the Penal Code and on whether actual violence, as distinct from incitement, was not a necessary element of the offence.

255. With reference to article 20 of the Covenant which requires that propaganda for war should be prohibited by law, it appeared from the report that no specific legal provisions existed in Colombia in this regard. Clarification was requested on the absence of these provisions in the light of another statement in the report to the effect that the Covenant was an integral part of internal legislation.

256. As regards articles 21 and 22 of the Covenant, questions were asked as to whether the right of peaceful assembly was in fact enjoyed under the present circumstances in Colombia. It was also asked whether people professing extremist or leftist ideologies could freely enjoy the right of peaceful assembly or establish trade unions or political and other organizations.

257. In relation to articles 23 and 24 of the Covenant, information was requested on whether the courts accorded equal treatment to demands for divorce by men and women; and why an adopted son was not free to marry without the consent of the adoptive father and mother before the age of 21 whereas other children over 18 were free to do so without such consent. Information was also sought on the measures taken by the Colombian authorities to alleviate the hardships suffered by, and to protect, the many homeless children generally reported to be roaming the streets of Bogotá.

258. As regards article 25 of the Covenant, it was noted that candidates for election particularly to the Senate, Presidency of the Republic and judges, were subject to many conditions. Information was requested on how those conditions, which might make it very difficult for ordinary people to aspire to such offices, could be reconciled with the right to equal access to public office as prescribed in the Covenant; on the legal elements of the political crimes referred to in the report in this connexion; and on the number of political parties in Colombia and on the legal conditions governing their formation. One member, referring to the fact that Colombian law recognized the possibility of acquiring Colombian nationality by adoption, asked whether there was not a contravention of articles 2 and 25 of the Covenant ("national origin" and "birth"), in that the Constitution required that a person be a "Colombian by birth" in order to qualify for election as a Senator (article 94), as President (article 115), or as State Councillor (article 139) or for appointment as a judge of the Supreme Court (article 150).

259. Commenting on article 27 of the Covenant, members of the Committee enquired why the indigenous groups, or Indians, referred to in the report could not be regarded as an ethnic minority when it was generally known that American Indians constituted a linguistic, ethnic and, sometimes, even a religious minority; why they did not have juridical personality and why they were represented by Government officials and not by representatives of their own choice. Information was requested on the situation of this community, on their participation in the life of the country, on the educational and medical facilities at their disposal, on whether they enjoyed the right to elect and to be elected to public office, on whether they were consulted on the question of drafting a national Indian Statute and under what conditions the Indians could enjoy the right to self-determination or the fundamental rights of minorities in accordance with articles 1 and 27 of the Covenant.

260. Replying to questions raised by members of the Committee, the representative of the State party observed that Colombia was putting great emphasis, in its economic and social programmes, on the poorest sector of the country and the largest proportion of the national budget was earmarked for social purposes aimed at ameliorating conditions in employment, housing, education, health and social security. Colombia's policy was one of respect for the self-determination of others and solidarity with peoples in their struggle against foreign domination.

261. As regards questions raised under article 2 of the Covenant, he pointed out that the Covenant was ratified by the Congress and incorporated by law in national legislation; that, according to Colombian constitutional law, all legal provisions emanated from the Constitution; and that all rights, obligations and guarantees provided for in the Covenant had their equivalent in the Constitution, with only some linguistic and other minor differences. Two eminent bodies, the Supreme Court of Justice and the State Council, were in charge of ensuring the conformity of all

decrees with the Constitution. Certain articles of the Security Statute had been declared unconstitutional by the Supreme Court and removed from the text of that Statute now in force. Some lawyers were instrumental in achieving this result when they invoked the Covenant before the Court in this respect. Any citizen had recourse to this Court against any law and the Court had the power to declare it null and void. The rights embodied in the Covenant were guaranteed by the fact that they had been incorporated in the internal legislation of Colombia and reflected in its Constitution. As to the military penal justice, he stressed that it was sanctioned by the Constitution as a means to deal with possible threats to the security of the State; and that it was permanent, not ad hoc. All rights of the accused under the military courts were guaranteed as they were in civil courts. Non-military cases were brought before the military courts because Colombia believed that "slow justice was no justice". The public outcry at the increase in crime and the inability of the regular courts to function adequately had led the Government to delegate prosecution of certain categories of crimes to the military courts. All cases submitted to these courts were reviewable and open to appeal to the Supreme Court. The Procurator General was in charge of supervising and, if need be, punishing officials in charge of public functions and an Ombudsman would soon undertake cases involving human rights violations.

262. With regard to equality between men and women, the representative explained that there were still inequalities between the sexes, and that women still had to struggle for equality despite the fact that laws guaranteed equality. Voluntary abortion was still punishable under the existing criminal code and public opinion in Colombia on this matter was divided.

263. As regards the questions raised under article 4 of the Covenant, he pointed out that in the democracy that exists in Colombia, the Government was, in general, responsible for its acts and not for those of its predecessor. He stressed, however, that the present Government did not violate any article of the Covenant; that both the Supreme Court and the Council of State were able to operate independently under the state-of-siege; that Congress was open and functioning normally; that political parties and trade unions remained authorized and active; that the state-of-siege today was not the same as 32 years ago; and that it was now legal, transitory and limited in scope.

264. Replying to questions raised under articles 7, 9 and 10 of the Covenant, the representative stressed that arbitrary arrest and detention were made impossible by virtue of an entire system of legal guarantees which were designed to eliminate such abnormal acts and to punish the perpetrators of such violations of the law. Unlike other countries, Colombia had no preventive state-of-siege. Whenever public order was thought to be threatened it was possible to detain suspects on Government orders and without judicial authorization, but this was only possible after prior consultation with the Council of State. Such persons could be detained incommunicado for up to ten days if the maintenance of public order so required. Preventive detention could be extended for up to 120 days by law which also provided penalties against officials responsible for arbitrary arrest or detention. The independence of administrative jurisdiction guaranteed all citizens the possibility of obtaining compensation when and if they were victims of an abuse of power. Release on bail was provided for in the interest of the accused and the amount of the deposit was always negligible and always fixed with due regard to the financial situation of the persons concerned. He stressed that he was not aware of any persons detained in psychological clinics in his country.

265. As regards article 12 of the Covenant, he indicated that no armed organizations existed in Colombia and therefore no restrictions were imposed on the right to liberty of movement or residence. However, a régime of safe-conduct existed in certain regions with the purpose of securing the protection of villagers who were sometimes subjected to reprisals from certain groups.

266. In connexion with article 14 of the Covenant, the representative pointed out that like civilian judges, members of the military courts were totally impartial; that minors were not allowed to attend the court hearings at which their cases were under consideration because of their incapacity to act except through their representatives who always attended such hearings, and that this measure was intended to defend minors against publicity harmful to their case; and that the law provided for compensation for people who were unlawfully imprisoned.

267. As regards article 17, he pointed out that the law guaranteed the right to privacy which was universally respected in Colombia. Interception of mail was strictly limited and was only resorted to for obtaining judicial evidence. Telephone tapping was totally prohibited.

268. Replying to questions raised under article 18 he stressed that the Constitution guaranteed freedom of conscience for all; that Colombia was a Catholic State inspired by the principles of Catholicism but that it respected the right to atheism and was not concerned with other religious convictions. He was not aware of any case of violation of Christian morality in his country or of any case in which the provisions concerning the violation of Christian morality had been invoked.

269. In relation to article 19 of the Covenant, the representative stated that, at the beginning of the state-of-siege, no censorship was imposed on the press. However, certain restrictions on the mass media and on the right of public meetings and demonstrations during the period which preceded the last elections were imposed in view of the fact that certain meetings and demonstrations had resulted in mass violence. Similar restrictions were imposed during the period that followed the taking of hostages at the embassy of the Dominican Republic with a view to limiting the exploitation of sensational aspects of the event and to protecting the lives of the diplomats concerned. "Subversive propaganda" had not been defined in Colombian legislation. As to "sedition", he pointed out that it involved not only criticism of the authorities, but also the taking up of arms against the authorities. There were no political crimes nor crimes of opinion in Colombia. Nobody could be sued for his ideology, conviction or opposition to the régime.

270. As regards article 20 of the Covenant, he indicated that his country had never known a state of war and that war was never a national preoccupation. Propaganda in favour of war or advocacy of national, racial or religious hatred was never practised in his country, but this did not mean that the requirements of article 20 of the Covenant should be overlooked.

271. As regards articles 21 and 22 of the Covenant, the representative pointed out that the law in force prohibited violent meetings and the competent authorities had accordingly no intention of allowing any meeting which was not likely to be peaceful. The right to freedom of association was guaranteed and several trade unions were active including one of Marxist tendencies. However, trade unions were not allowed to indulge in politics which was the natural field of political parties. No labour right was affected under the state-of-siege but subversive strikes as well as strikes in important services were forbidden as, in the view of

the Government, the general public interest of the majority should prevail over that of the minority.

272. In connexion with articles 23 and 24 of the Covenant, the representative indicated that there were no specific legal measures designed to protect the institution of the family. The reason why an adopted child was not free to marry until he was 21 was to protect him from any pressure that may be exerted by the adoptive family to marry sooner. The Colombian Government was taking steps to help the abandoned and helpless street children, a problem very common in the developing countries.

273. In relation to article 25 of the Covenant, the representative stressed that there was no restriction based on race, sex or religion for the enjoyment of the right of access to public office. However, it was only wise to require Colombian nationality acquired by birth as a condition for accession to the post of the President of the Republic or to the post of a judge. Naturalized Colombians were entitled to be members of Congress.

274. Replying to questions under article 27 of the Covenant, he admitted that the question of minorities was a complicated one for Colombia and that a good many of the Spanish institutions had been better and had offered the indigenous population better protection than did the independent Republican institutions. He gave a detailed historical and sociological account of the problem as it had existed since the colonial era. Out of 25 million inhabitants, 200,000 to 300,000 were indigenous population. These people were not considered to be a minority group. However, a juridical statute had been enacted with a view to strengthening the institutions in charge of preserving the cultural integrity of the indigenous population but which at the same time was designed to encourage their participation as an integral part of society. Colombia was aware of the various problems concerning the life of the indigenous population and was seeking to correct historical mistakes and to deal with land claims which date back to the conquest of the country.

Suriname

275. At its 223rd, 224th and 227th meetings, held on 16 and 18 July 1980 (CCPR/C/SR.223, 224 and 227), the Committee considered the initial report (CCPR/C/4/Add.4) submitted by the Government of Suriname.

276. The report was introduced by the representative of the State party who, after giving a historical account of his country's struggle against colonial rule and under-development, stated that a change in the political sphere had taken place in his country on 25 February 1980 as a result of a coup d'état on that day and the establishment of the National Military Council, which had completely taken over the political, civil and military power. On 15 March 1980 the President of the Republic had reassigned executive power to a civilian government, thus creating greater confidence in a better future among the majority of the population. However, the National Military Council continued to function alongside the civilian Government. At present the country was ruled by the Government inaugurated on 15 March 1980 and was strongly supported by the National Military Council which participated in the administration through two cabinet ministers.

277. The representative of Suriname pointed out that his Government recognized that it had not been formed in accordance with the rules laid down in the Constitution, which stipulated that a Government should be formed by means of elections. But, because of the present situation and the fact that national security still required an increased measure of alertness, the country had to be ruled in close consultation with the National Military Council. One of the first acts of the new Government was to extend the term of Parliament for one year in order to prepare the holding of national elections probably in October 1982, a date by which the Government expected to have laid solid grounds for a new democratic government. He stressed, however, that elections would be held only if the Government was completely convinced that it was absolutely impossible for the country to return to the conditions existing before the coup of February 1980. He quoted the Government declaration of 1 May 1980 in which details of national objectives and a programme of work were given. In this declaration the Government has declared that renewal of the political, social, economic and educational systems was required to ensure that the nation would be ruled according to the best democratic traditions; that a Committee would be appointed to study the amendments to be made to the present Constitution; that the electoral system would be revised; that the composition of Parliament would be based on the principle of proportional representation; and that the entire population of Suriname would have the opportunity of participating in public affairs.

278. The representative also indicated that on 3 July 1980 the Prime Minister of Suriname informed the former colonial power that it no longer valued her guardianship and that it wished to be recognized as an equal partner. Independence was finally achieving greater meaning for the country.

279. Members of the Committee expressed their appreciation for the additional information provided by the representative of the State party and expressed great interest in the resolution of Suriname, a country which had recently undergone major political changes, to plan an ambitious development programme in all walks of life with a view to enhancing the situation of human rights for its population. Members of the Committee also commended the readiness of Suriname, so soon after the recent fundamental political change, to engage in a fruitful dialogue with the Committee as shown by the presence of its representative at this session.

280. Members of the Committee noted that the report had been transmitted by a Government that had been repudiated and overthrown and that the report might not, in many respects, reflect the present situation in Suriname. Since it was not possible to predict what form the Constitution would take, members of the Committee thought that perhaps the role which the Committee might best play was to highlight some matters which the Committee set up to draft amendments to the Constitution might usefully consider with regard to the implementation of the provisions of the Covenant. The Government of Suriname was advised to consider the appointment of a special committee to examine the provisions of the Covenant with a view to enabling it to fulfil to the best of its ability the commitments entered into by Suriname under the Covenant. Since Suriname was in the throes of evolution, the Committee should be kept informed of any difficulties encountered in the course of building a new society and of the way in which it may have proved possible to solve them. They expressed the wish in this regard that a new report be submitted at a future date containing information on the measures taken to implement the rights provided for in the Covenant in the new political context.

281. It was noted that Suriname was a very young country, having achieved independence only in 1975. By and large, colonial Powers left their colonies only reluctantly and tried to maintain their influence over their former colonies through various means. That fact had to be taken into consideration when examining the human rights situation in Suriname. However, members of the Committee expressed the hope that Suriname recognized that, though the enjoyment of a number of rights were bound to be affected by the degree of development or underdevelopment of a country, nevertheless most basic human rights recognized in the Covenant were required to be protected and ensured in all circumstances, particularly as derogations under article 4 of the Covenant were subject to strict and specific limitations.

282. With reference to the statements in the report to the effect that, under the legal system of Suriname, international agreements did not directly acquire force of law, that the Surinamese legislation in the field covered by a certain international agreement was brought into harmony with that agreement and that legal regulations would not be applicable if their application was incompatible with provisions of treaties adhered to by Suriname, members of the Committee asked what position the Covenant had in the present legal system, and whether any person who considered that his rights under the Covenant had been violated could invoke its provisions before the courts and, if that was not the case, what remedies were available for him in this respect. It was also asked whether the Constitutional Court referred to in the Constitution had ever existed and, if so, which cases it had been called upon to decide; whether there were any administrative tribunals still in existence and, if so, what powers they had; whether the judiciary had jurisdiction in disputes between individuals and the State in both civil and criminal matters; whether a judge trying a case would still have the right, stipulated in the Constitution, to declare illegal the application of a law which proved to be contrary to the provisions of article 1 of the Constitution; and what guarantees provided for in the Constitution were still available to citizens.

283. With reference to article 3 of the Covenant, members of the Committee expressed their appreciation for the new Government's commitment to the realization of full equality between men and women. The Constitution forbade discrimination on the basis of sex but that did not apparently reflect the true situation of women whose position in Suriname was still inferior to that of men. They expressed the

hope that Suriname would find it possible to take measures to ensure that women achieve equality with men.

284. In connexion with article 4 of the Covenant, members of the Committee asked whether the Surinamese parliament had pronounced on the continuation of the state of emergency recently declared in the country. Information was requested on the decree of 20 May 1980 which seemed to have conferred on the Government extraordinary legislative powers to derogate from the Constitution but according to which the Government was apparently not authorized to promulgate decrees or regulations that affected fundamental rights. The representative was requested specifically to confirm that that decree did not infringe any of the provisions of articles 6 to 27 of the Covenant with particular reference to the rights provided for in articles 18, 19, 21 and 22 of the Covenant. He was also requested to indicate which of the constitutional provisions had been suspended following the coup d'état.

285. As regards article 6, information was requested on the steps taken to put into effect the public health insurance scheme for civil servants and for the economically disadvantaged as promised in the Government declaration of 1 May 1980. Members of the Committee commended the fact that the death penalty had not been exercised for a very long time. However, it was asked whether Suriname had given any consideration to abolishing the death penalty. Clarification was requested concerning the "major crimes" which would warrant imposition of capital punishment. Since the law stated that a pregnant woman could not be executed, it was asked whether she could be executed once she had given birth.

286. As regards articles 7 and 10 of the Covenant, it was observed that the report made almost no reference to the machinery established to ensure respect for the provisions of the Covenant with regard to torture and other inhuman treatment as well as to the obligation to respect the inherent dignity of a person even when deprived of his liberty for any crime that he may have committed. It was asked what was the present position in that respect and whether action could be taken against members of the police or of prison administrations in the event that they abuse their authority.

287. Commenting on article 9 of the Covenant, members of the Committee expressed concern at the excessive length of the period of detention preceding an appearance before the courts as stated in the report and wondered what the present position was and whether there was any system of bail in Suriname.

288. In relation to article 14 in conjunction with article 2, paragraph 3, of the Covenant, members noted that, in its declaration of 1 May 1980, the Government was planning to set up special courts to try members of the previous administration charged with corruption and they enquired about the particular reasons which had prompted the Government to decide that the normal judicial process was not appropriate, whether the Government intended to entrust the same body with the task of investigation and trial and, if so, whether the guarantees of fair trial an accused person possesses in normal judicial proceedings would still be available to him. In this connexion, it was asked whether the measures envisaged for the special courts were in effect derogations under article 4 of the Covenant and, if so, whether the Government envisaged complying with the strict and specific requirements of article 4 of the Covenant. As regards the judiciary, it was asked who appointed the judges, on what conditions, what their qualifications were,

what the duration of their term was and how the Government guaranteed their independence. Referring to an article in the Constitution stipulating that everyone was entitled to legal aid, one member asked whether there was any specific law on that matter.

289. Commenting on article 19 of the Covenant, members requested clarification on the statement in the Government declaration of 1 May 1980 to the effect that the press and mass media would have an important role to play in the country's renewal process and that the Government considered it essential that a certain measure of organization in accordance with national standards should be effected within the Surinamese press. Was the Government planning to give all the social classes the opportunity to express themselves through the communication media? It was also asked whether censorship had been established for the mass communication media and, if so, for how long it was meant to continue.

290. As regards article 22 of the Covenant, information was requested on any measures that may have been adopted under the new Government concerning freedom of association, particularly trade union rights and freedoms.

291. In connexion with articles 23 and 24 of the Covenant, it was noted, according to the Government declaration of 1 May 1980, that previously a married woman did not enjoy the same rights as her husband who could easily repudiate her. Clarification was asked on the measures which the Government planned to take to remedy the situation. It was also asked who was considered to be the head of the family, the husband, the wife or the two parents equally. Could a woman, after bearing a certain number of children, terminate a subsequent pregnancy without committing a crime? Information was requested concerning the legal position of "natural" children as compared with that of children born in wedlock. Was it possible for a natural child to have his paternity recognized? Did he have inheritance rights and, if so, how did those rights differ from those of legitimate children? As the Constitution stated that children "acquired the nationality of their parents at birth", what happened in the case of a mixed marriage? Did the child acquire the nationality of the father alone, which would imply discrimination against the rights of the mother?

292. With reference to article 25 of the Covenant, clarification was requested on the statement of the representative in his introduction to the report regarding the Government's intention to hold elections only if it was "completely convinced" that it was absolutely impossible to return to the conditions that existed before 25 February 1980. It was pointed out that, since there could be no absolute guarantee of the fulfilment of such requirement, the only conclusion that could be drawn was the postponement of elections indefinitely. It was also observed that the Government intended to promulgate a new law on political parties and it was asked in what respects the new law was intended to restrict freedom to establish political parties in the country.

293. Commenting on article 27 of the Covenant, members of the Committee asked what the ethnic minorities were; whether they were protected pursuant to any particular law; what provisions the new Government intended to enact to enable minorities to preserve their own culture while participating on an equal footing with the rest of the population in the country's political life; and how land claims were being dealt with. As Suriname was made up of various entities drawn from different cultural backgrounds, it was hoped that the present Government would decide not to

allow itself to be swayed, when carrying out its policy, by any considerations of a racial kind, in keeping with the provisions of articles 26 and 27 of the Covenant.

294. Replying to questions raised by the members of the Committee, the representative gave further details on the legal situation in Suriname since the coup d'état of 25 February 1980. He indicated that, on 14 June 1980, the military council transferred to civilian jurisdiction all persons in its custody, including persons allegedly involved in a counter-coup. The civilian authorities had dealt leniently with those people who had been mistreated and in some cases even tortured by the military during their detention. Most of those persons had now been released. In the case of those persons who had been brought to trial, lighter sentences had been imposed on them in view of the punishment which they had already undergone. Under the Amnesty Act introduced by Parliament, it was not possible to bring military personnel to trial for acts committed during the period 25 February to 15 March 1980 when the military had held absolute power. It had been determined that the persons taken into custody by the military because of alleged corrupt practices had not been mistreated during their captivity and that the only injustice inflicted on them had been the arbitrary deprivation of freedom.

295. The representative stated that the constitutional court was not yet functioning and indicated that this was so because Parliament had failed to designate its representatives to sit on the court, although the other members had already been nominated some time previously. He stressed that there was still a procedure for verifying that legislation was consistent with section I of the Constitution. Before a law could be enforced, it had to be sent to the Attorney General for comments and in case the President did not approve of a law he could withhold assent without which the law could not be implemented. With regard to the right of an individual to invoke a conflict between a provision of the law and one or more provisions of section I of the Constitution, the judge could rule that the law concerned was inapplicable to the special case.

296. Replying to questions raised under article 3 of the Covenant, he stated that women in Suriname were entitled to hold any job and that there was already a female university rector in Suriname. There were of course low-paid jobs which were mostly held by women, but if a man wanted to do them he would be paid the same wages as a woman.

297. In connexion with article 4 of the Covenant, he pointed out that neither a state of emergency nor a state of siege had been proclaimed in Suriname, even though a de facto state of emergency had existed for one or two months after the coup. As to the statute of 20 May 1980, he stressed that it was a law in the formal sense as it had been approved and even amended by Parliament. The law enabled the Government to take extraordinary legislative measures with a view to carrying out the programme set forth in the Government Declaration of 1 May 1980. By that statute, the powers delegated to the Government were subject to certain restrictions under which the Government could not take any measures affecting the fundamental rights set forth in section I of the Constitution. The special powers would end on the day on which the new Parliament convened. He also stated that the powers conferred by the statute, which authorized the Government temporarily to amend or suspend existing laws by decree had not yet been used and Parliament could at any time revoke the powers thus delegated to the Government. He stressed that the sole purpose of the statute had been to enable the Government to fulfil an

enormous task under very difficult circumstances and that the statute had been approved unanimously by Parliament.

298. As regards article 6 of the Covenant, he stated that health care in Suriname was excellent, that the infant mortality rate was only 5 to 10 per thousand and that major diseases were under control. He reiterated the fact mentioned in the report that the death penalty had not been enforced in his country for more than 50 years and he doubted whether it would ever again be applied. The reason why a procedure for execution still existed in the Code of Criminal Procedure was that some members of Parliament had been unwilling to abolish the death penalty which was considered a deterrent. The death sentence could, according to the law, be imposed only for murder, first degree manslaughter and piracy.

299. Replying to questions raised under articles 7 and 10 he informed the Committee that the Attorney General and the Supreme Court took great care to ensure the humane treatment of the individual and that there had been cases in which police and prison officers had been dismissed and prosecuted for abuses inflicted upon persons under detention.

300. As regards article 9 of the Covenant, he pointed out that the basic purpose of the article covering detention in the Code of Criminal Procedure was to limit the time during which an individual could be held in custody. However, there were a number of built-in safeguards to prevent an individual from being held in custody for longer than was absolutely necessary for the investigation of his case. Detention for more than seven days could be ordered only by a judge and only if the Public Prosecutor adduced evidence pointing to the commission of an offence. All such detention decisions were subject to appeal. The guarantee of habeas corpus had been strengthened by article 21 of the Code of Criminal Procedure which prohibited use of any methods intended to force a suspect to confess.

301. In connexion with questions raised under article 14 of the Covenant, he stated that there had been no interference with the existing judiciary, that judges had begun to hold sessions three days after the coup had taken place, that the courts were competent to deal with administrative cases and that they frequently did so. The members of the Supreme Court, the ordinary judges and the Attorney General were appointed for life. Before a person could become a judge, five years of training were required. Moreover, candidates had to take a psychiatric test, to be of good behaviour, to be masters or doctors of law and to be at least thirty years of age. Judges were appointed by the President of the Republic on the advice of the Supreme Court.

302. Replying to questions concerning article 19 of the Covenant, he pointed out that some form of regulation seemed necessary since the press had a responsibility to individuals and to the community but that the reform was likely to be purely technical, that, except for the period extending approximately from 25 February to 15 May 1980, the press and mass media had not been censored and that the relevant provisions of the Constitution prohibiting restrictions of human rights and freedoms to a greater extent than was provided for therein remained valid and respected, since the tradition in Suriname was built on the assumption that human rights could be restricted only for reasons of public order and public morality.

303. As regards article 22 of the Covenant, the representative informed the Committee that the trade unions were now better organized, that they had their own regulations, that they held meetings and that they enjoyed all other trade union rights.

304. As to the questions put under articles 23 and 24, he stated that a provision of the Civil Code still in force denied married women the right to conduct their own business affairs but that, under the same code, a woman could apply to a judge for authorization to take over, partly or completely, the management of family affairs if her husband was profligate. The new Government had already prepared a bill with a view to ensuring uniformity of treatment for spouses. However, Hindu or Moslem children at the age of 12 in the case of girls and 14 in the case of boys were still able to marry, and that Moslem law enabling men to repudiate their wives was still in force in Suriname. Abortion was prohibited except when recommended on medical grounds. He also stated that since 1963 it had not been necessary for a child in Suriname to be recognized by his mother in order to inherit from her, but that a child would inherit from his father only if recognized by him. However, the Government planned to introduce a law eliminating unequal treatment of legitimate and illegitimate children in the law of inheritance.

305. In relation to article 25 of the Covenant, the representative referred to the concern expressed by some members concerning future elections for Parliament, following an earlier statement that he made while introducing the report of his country, and pointed out that the conditions that he mentioned in that respect were not impossible to meet, particularly considering the efforts his Government was undertaking to prepare the ground for a new society. Although the outcome would largely depend on the Government's assessment of the situation at the time, the next elections could not be considered to have been postponed indefinitely. The new Government's legislation had only one aim and that was to secure the implementation of the socio-economic system and to adapt the former laws to that system and to ensure protection and respect for human rights. As regards political parties the legislation envisaged for their organization had, as one of its aims, the abolition of the practice followed whereby political parties borrowed money before an election but refused to pay it back, or the practice whereby leaders of political parties could not be removed because of the lack of internal democracy within the party system.

306. Finally, the representative of Suriname pointed out that it would be useful for Committee members to visit the reporting State in order to obtain a broader view of the situation there, that he had noted the suggestions made by members of the Committee concerning his country's report, that he would convey them to his Government and that an additional report would be transmitted to the Committee when a measure of stability had been achieved in Suriname.

Hungary

307. The Committee considered the supplementary report submitted by Hungary (CCPR/C/1/Add.44), containing replies to questions raised during the consideration of the initial report, 5/ at its 225th and 228th meetings on 17 and 18 July 1980 (CCPR/C/SR.225 and 228). The issues were considered topic by topic.

5/ The initial report of Hungary (CCPR/C/1/Add.11) was considered by the Committee at its 32nd and 33rd meetings on 19 and 22 August 1977, see CCPR/C/SR.32 and 33 and Official Records of the General Assembly, Thirty-second Session, Supplement No. 44 (A/32/44), paras. 130-132.

308. The first topic related to the implementation of the Covenant in the legal system of Hungary. Some members of the Committee noted that the Covenant had the force of law in Hungary and that cases of conflict with the Constitution and other laws were settled by legislative action following the same process as in cases of conflicts between the Constitution and other national law. It therefore appeared that the Covenant formed part of the domestic law of Hungary and had a legal status equivalent to that of the Constitution; if there was any conflict between the Covenant and other legislation, presumably measures would be taken to bring that legislation into line with the Covenant. Members of the Committee asked for some additional information as to what advantages Hungary had seen in integrating the Covenant into its legal system; how often the Covenant had actually been invoked in practice and how cases of conflict between the Covenant and laws were settled by legislative action, particularly in cases relating to such matters as freedom of the press and freedom of expression. Other members wondered whether the substance of the Covenant was discussed through meetings and conferences of judges, assessors and administrators as they dealt with matters affecting the human rights and freedoms of individuals. Additional information was requested on the manner in which the Covenant had been promulgated and the publicity given to it, and in particular whether the Decree-Law referred to in the report contained the full text of the Covenant and what kind of distribution the Covenant had been given.

309. The representative of Hungary replied that, in addition to the provisions mentioned in the report, there was a decree of the Presidential Council - No. 24 of 1974 - which contained more detailed rules on the publication of laws. In any case all laws, decrees and Government decisions relating to the rights of citizens had to be published in the Official Gazette. The Covenant had been published in Official Gazette No. 32 on 22 April 1976 which was readily available through subscription, in public libraries and shops. A collection of international instruments of human rights, including some to which Hungary was not a party, had also been published. Special compilations of legislative texts, including international treaties, were published periodically. Thus international instruments, including the Covenant, were accessible to the public. The provisions of the Covenant could be invoked by everyone before the courts and other authorities, but it was difficult to state how many times the Covenant had been invoked before the courts. The representative pointed out that, if certain provisions of the Covenant conflicted with national laws, the latter would be brought into alignment with the Covenant, as the codification of the law was a continuing process in Hungary and legislation was reviewed periodically. In drawing up the new Criminal Code, a special ad hoc committee had been created to determine whether the provisions of Hungary's legal code were in keeping with the Covenant. The Covenant formed an integral part of the national law of Hungary. Compliance with the provisions of the Hungarian Constitution was ensured by articles 19 (3) (1), 30 (2) and 35 (3) of the Constitution. Any laws or measures which conflicted with the provisions of the Covenant would be repealed. Moreover, various bodies were entitled to draw attention to any inconsistency between internal legislation and the Covenant, including the Prosecutor's Office which not only indicted persons before the courts, but studied all bills of proposed legislation and pronounced on their conformity with existing laws and the Constitution. Article 64 of the Constitution guaranteed freedom of the press; while there were regulations governing the technical aspects of publications, which were reviewed periodically to see whether they ran counter to the provisions of the Covenant, there had never been an instance of any organization complaining that its publication had been forbidden by the State authorities. In case a

citizen considered that internal legislation was contrary to the provisions of the Covenant, he could invoke the Covenant through his member of Parliament or by recourse to the Presidential Council, the Council of Ministers or the Prosecutor's Office. That right had been confirmed by Act No. 1 of 1977, which had instituted a procedure entitling citizens to lodge complaints with the State authorities, which were obliged to study those complaints.

310. The next topic concerned freedom of political opinion and non-discrimination in this respect. Referring to articles 2 (3) and 3 of the Hungarian Constitution, which stated that the leading class of society was the working class and that the Marxist-Leninist party of the working class was the leading force of society, some members of the Committee asked why the working class was given such pre-eminence and why the establishment of other political parties had not been allowed. It was also asked how the Hungarian Government reconciled the establishment of a hierarchy of classes of society with the integration of the provisions of the Covenant into its national law.

311. The representative pointed out that the Hungarian Constitution was based on Hungary's own political philosophy and theories. Each State throughout the world had a governing class, chosen by more or less democratic methods and that class remained the dominant factor. What was enshrined in the Constitution was the leading role of the working class, which exercised power in alliance with the other classes. However, that did not mean that the other classes were discriminated against. There was today in Hungary one political party, the Socialist Workers' Party, and that was the leading political force in the country. Nevertheless, the political structure of Hungary was not restricted to the existence of one political party. A major role was played by the People's Patriotic Front, which was not a party as such but a widespread movement dealing with social and political issues. Every major piece of legislation was considered by groups organized by the Front, and the various strata of society, including the Church, were represented on it. Thus the People's Patriotic Front provided an opportunity for people of differing ideologies and creeds to meet for joint discussion with the aim of improving and perfecting the democratic principles of Hungarian society. Reverting to article 2 of the Constitution, he emphasized that no discrimination existed between the classes mentioned therein and hence that article of the Constitution did not run counter to the provisions of the Covenant. All classes and all strata of society were represented in the Hungarian Parliament and in fact, as a result of increased educational opportunities, the ratio of professional to working class members was higher than the corresponding ratio for the country as a whole.

312. The next topic concerned the question of whether different treatment was enjoyed by citizens as distinct from aliens lawfully or Hungarian territory. With reference to article 2 (1) of the Covenant and articles 17, 54 (3), 63 and 66 of the Hungarian Constitution, the question was asked as to how the provisions of article 2 (1) of the Covenant, which provided that the rights guaranteed by it should apply to "all individuals", was reconciled with the term "citizens" contained in the above-mentioned articles of the Constitution, and whether equal rights were granted to aliens lawfully in Hungarian territory. It was also wondered as to how the Hungarian Government reconciled the guarantee of the right to choose one's ideology, subject only to the restrictions mentioned in the Covenant, with article 54 (2) of the Hungarian Constitution, which stated that civic rights had to be exercised in harmony with the interests of socialist society. Did that latter article of the Constitution really accord equal rights to all?

313. The representative of Hungary stated that, in the Hungarian language, the word "citizen" was synonymous with "human being" or "individual" and that it was traditional to use the term in legal texts. The word "citizen" covered all individuals residing in Hungary, including stateless persons, and therefore did not preclude anyone from enjoying the rights and freedoms enshrined in the Constitution and other legal instruments. So far as non-nationals in the territory of Hungary were concerned, specific conditions governing their stay were laid down by Government decree, similar to the administrative provisions governing the residence of foreigners in other countries. In 1979, the Presidential Council had adopted Ordinance No. 13 on private international law, which set out the conditions governing the competence of a specific court and specified the circumstances in which a decision by a foreign court had the force of law in Hungary. There was in fact a whole series of legislative texts dealing with the rights of aliens living in Hungary and setting out the circumstances in which they could be brought before a Hungarian court. Commenting on articles 54 and 64 of the Constitution, the representative indicated that those articles were merely an expression of the fact that there was a socialist state structure in Hungary, and that the enjoyment of civil and political rights including the freedoms of speech, the press and assembly was guaranteed in accordance with the Constitution. It should be noted that, in Hungary's Constitution and legislation frequent mention was made of conformity with socialist legality. The sole reason for the use of the word "socialist" in that context was that the laws of his country served the interests of a socialist society.

314. As regards the topic of freedom of thought, religion and expression, one member referred to article 268 of the new Criminal Code which provided that whoever, before a large public, incited others to disobedience to laws and regulations or to measures by an administrative authority should be deemed to have committed an offence. He stated that in so far as such activities took place publicly, rather than as sly subversive acts, they were equivalent to the right to dissent. Referring to Government Decree No. 26/1959 concerning the press, and to article 4 of Decree No. 21/1957 on religious institutions, the member asked what was the position if authorization was not forthcoming for the publication and distribution of periodicals; how the provisions of Decree No. 26/1959 could be reconciled to the freedom of the press; and, if a parent wished his child to receive religious instruction other than that provided in schools, whether he would have to obtain permission from the State.

315. In reply to the question regarding article 268 of the new Criminal Code, the representative stated that a citizen did have the right to criticize or disagree with legislation and had the right of recourse to a legislative body if he considered particular legislative provisions to be unjust. However, since the entry into force of the new Criminal Code, there had not been a single case in which a citizen had been prosecuted for failure to agree with legislation. So far as freedom of the press was concerned, the publication of periodicals required prior authorization, but that did not imply the existence of censorship or run counter to the provisions of the Covenant. In Hungary there existed an exceptionally large and varied number of publications dealing with political questions and with the life of society. Moreover, authorization for publication was freely granted. With regard to freedom of religious instruction in Hungary, the churches and the authorities had signed certain agreements at the end of the 1950s which reflected the fact that the Government provided material aid to various churches. The State Office for Church Affairs was intended to ensure the

implementation of those agreements and not to monitor or control the activities of the churches, including the provision of religious education. Individuals qualified to impart religious instruction were appointed through the churches and the only control that the State Office exercised was to ensure that those persons did indeed possess the necessary qualifications.

316. On the topic concerning the independence of the judiciary, the liberty and security of the individual and the guarantees of fair trial, members referred to the statement in the report to the effect that the impartiality of the judiciary and the protection of civil rights in Hungary are guaranteed by the provisions of the Constitution, the Act on Courts and the Code of Criminal Procedure. Further information was requested to illustrate this statement. The representative of Hungary was asked vis-à-vis whom or which authorities were the judges independent in Hungary; how were the judges elected; in what manner was the Presidential Council responsible for the election of all the judges and whether they were elected in consultation with other professional or judicial organs.

317. Referring to article 48 of the Constitution which stated that the elected judges may be recalled for reasons determined by the Act of Parliament, one member asked what were the grounds on which a judge could be recalled and what use had been made of these circumstances to recall a judge.

318. In relation to the assessors in the judiciary, the representative of Hungary was asked who were entitled to be assessors in the Hungarian courts; what were their qualifications; if their election meant that they were employed full time in that capacity; and if there was a panel from which they were selected.

319. With reference to legal guarantees concerning the right to liberty and security of persons provided for under article 9 of the Covenant, and the right to equality before the courts and tribunals guaranteed under the Covenant, it was asked whether there was administrative detention in Hungary, including detention on the grounds of mental illness, vagrancy, juvenile delinquency which might be authorized under the law; how were the provisions of article 9 implemented in Hungary, in particular the provisions of paragraph 5 of that article which provided that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation; and whether free assistance of an interpreter was provided if a person charged with a criminal offence could not understand the language in court.

320. Replying to questions raised, the representative of Hungary explained that judges in Hungary were elected by the Presidential Council of the Hungarian People's Republic in a manner determined by a special Act of Parliament. He added that their independence was guaranteed by article 48 of the Constitution, that they had the right to give a normative interpretation of the law, that they could only be recalled by the Presidential Council if a disciplinary commission established by the Council determined that judges had violated the law, and that they had the right to appeal against any disciplinary action before the Supreme Court which was the highest judicial organ.

321. As regards the assessors, the representative stated that they were chosen by the local Councils. The Assessors could only spend one month in a judicial activity which could be extended if the Court believed that there was additional work to be done. As concerns their qualifications, he said that the assessors were

given full explanations on the law and they were required to understand the provisions of the law.

322. Referring to the questions raised in relation to administrative detention, in particular the detention of mentally ill persons and juveniles, the representative of Hungary said that these categories of persons could only be detained if they committed a crime. He added that there was a procedure in Hungary whereby the evidence of those detained in hospitals for mental illness could be heard by the court especially when they had a complaint to lodge. As regards the detention of minors, the legal procedure was carried out in the presence of their defence counsel who could make a request for the release of the minor. The Hungarian Penal Code provided sufficient guarantees against arbitrary arrest. When a person was arrested, he had to be informed of the reasons for his arrest and of the charges against him. The Code of Criminal Procedure provided for the expenses for legal assistance which were borne by the State, and the arrested person was given an interpreter if he did not understand the language used in the Hungarian courts.

323. On the topic of the prohibition of discrimination, members referred to paragraph 2 of article 61 of the Hungarian Constitution which stipulates that the law severely punishes any prejudicial discrimination of the citizens by reasons of sex, religious affiliation or nationality. A question was asked as to why discrimination on grounds of political opinion, which was mentioned in the Covenant, was not included in that clause of the Constitution, and what was meant by the term "prejudicial discrimination".

324. As regards the individual's duties to the community referred to in article 69 of the Constitution, the representative of the State party was asked why it was compulsory for Hungarian citizens to protect the property of the people, to consolidate social ownership and to increase the economic strength of the country. What sanctions were taken against them if they failed to do so?

325. With reference to articles 19, 21 and 25 of the Covenant, it was asked whether it was conceivable in Hungary that the people could freely advocate a change in the socialist orientation of the government or to criticize it, with a view to introducing a different, or a new, form of government; and whether freedom of speech meant exclusively what was provided for by the law or did it mean also what the law did not provide. Citing, as an example of freedom of expression, opposition to the deployment of weapons of mass destruction, the question was asked as to whether an individual who wished to protest against it and to campaign for its elimination could publish a pamphlet propagating his views on the matter or organize a meeting, demonstration or association to promote support for his opinion. As regards freedom of assembly, the question was asked as to whether it was necessary for every single association in Hungary to receive an official registration and on what grounds an association could be declared illegal.

326. Turning to the question of religious freedom, one member wondered whether the restrictions referred to on page 7 of the report were compatible with the provisions of the Covenant. Further information was requested on the meaning of the statement that the rigour of the law shall be applied against whoever exploits religious instruction for political goals against the State.

327. In reply to the questions raised in relation to article 61 of the Constitution, the representative of the State party explained that all forms of discrimination

were severely punished by the law in Hungary. The terms "prejudicial discrimination" contained in that article in fact "premeditated discrimination" which was a better translation of the meaning of that expression. He added that, after the amendment of the Constitution in 1972, there might still remain certain lacunae as the Constitution does not precisely mention racial discrimination; however, the Constitution, as interpreted in the light of its general principles which are designed to protect the civil and political rights of citizens, also prohibits all forms of discrimination.

328. Turning to the question raised under article 69 of the Constitution, the representative stated that the duties of citizens to the community were moral obligations that the individual had to comply with in order to protect public property, to consolidate social ownership and to increase the economic strength of the country. Failure to meet those moral obligations did not entail a punishment.

329. As regards the amendment of the Constitution, the representative of Hungary explained that there were possibilities to modify the Hungarian Constitution if this was required by the majority of the Parliament. However, the Hungarian people, so far, had not deemed it necessary to change the fundamental structure of its socialist system, though it still remained possible for citizens, through their deputies or representatives, to propose any change that they might wish.

330. Referring to questions under articles 19, 21 and 25 of the Covenant, the representative stated that the Constitution made provisions for any Hungarian citizen to participate freely in elections, to vote, or not to vote against any candidate; that the right of association in Hungary was regulated by Decree Law No. 35 of 1970 which provided that Hungarian associations should be established in conformity with the provisions of the Constitution and that like any other State, Hungary might prohibit the setting up of any association which it deemed anti-constitutional. The representative also stated that the Members of Parliament were required to conform to the law in the discharge of their functions, and that any political, economic or other activities or attitudes conflicting with the interests of the State were incompatible with their mandate. They had to respect and conform to socialist morality. As to freedom of speech, the right to hold opinions as well as the freedom of expression were guaranteed in Hungary. Every Hungarian citizen was free to do what is not restricted by the Constitution. The younger generation in Hungary was educated and they were encouraged to propagate and impart ideas in favour of peace and disarmament. As examples, the representative cited organizations such as the Hungarian Popular Patriotic Front and the Union of Hungarian Women which devoted the major part of their activities to propagating peace and disarmament and published articles in the Hungarian press disseminating ideas and information in favour of peace and disarmament. He stated that a Hungarian citizen could freely organize a meeting on these subjects without prior authorization.

331. In reply to questions concerning freedom of conscience and religion, the representative stated that these freedoms were guaranteed by the Constitution and that all religious denominations could freely practice their religions and enjoyed the same rights. Hungarian citizens were free to decide whether or not their children should receive religious instruction at school. In his view, the fact that 18 to 22 per cent of the followers of lutheranism practised their faith in Hungary was a concrete illustration of freedom of conscience and religious worship in that country.

332. A member of the Committee asked for information concerning the laws governing the liberal functions of an artist and scientific researcher, and whether an artist who wished to publish a book or publicize his work was required to have an authorization or belong to an association before being able to do so. He also wished to know if the Constitution of Hungary had been commented upon and whether those commentaries had ever been published.

333. The representative of the State party explained that the degree of development reached in Hungary had brought about a freedom of artistic expression; that in terms of publications, some forms of art were protected by the State but that there was no "official line" in that respect. Artists were free to express themselves, to choose and determine the form of their art. There were many organizations in Hungary which propagated Hungarian art and literature, even abroad. He cited the Hungarian Quarterly published in English which gave information abroad on Hungarian art, and stated that scientific research was protected and guaranteed by the law in his country. As regards the commentaries on the Constitution, he said that they were not formally published but were included in general in the reports prepared by the ministries to be submitted to Parliament.

Costa Rica

334. At its 235th, 236th and 240th meetings on 24 and 28 July 1980, the Committee considered the initial report (CCPR/C/1/Add.46) submitted by Costa Rica (CCPR/C/SR.235, 236 and 240).

335. The report was introduced by the representative of Costa Rica who gave a historical account of the social and economic factors which had given rise to the development and establishment of democracy in Costa Rica. His country's limited resources had led to the establishment of small subsistence farms and the development of a rural democracy, its people being homogenic, frugal and hard working and without class distinctions. He pointed out that his country possessed no army and that a police force preserved public order. Although Costa Rican society had been influenced by the Roman Catholic Church, the Church had never been allowed to interfere with State affairs. He stressed that in keeping with its legislation, Costa Rica has been able to live a history devoid of the phenomenon of violations of human rights.

336. The representative cited a number of fundamental provisions contained in the Constitution of Costa Rica relating to the structure of the State and drew the attention of the Committee to article 7 of the Constitution which had been amended in 1968 so as to make all treaties, international agreements and concordats duly ratified by the State prevail over domestic law. He referred to article 140 of the Constitution which, he stressed, was of special importance in that it provided that if the rights and guarantees referred to in the Constitution were suspended, the Assembly had to confirm the measure by a two-thirds majority vote of its entire membership, in default of which the guarantees had to be considered as re-established. He had no recollection of any time since 1949, when the present Constitution had been adopted, during the which the constitutional guarantees had been suspended.

337. Members of the Committee commended the Government of Costa Rica for its comprehensive report which complied with the general guidelines set up by the Committee. It was observed, however, that although the report gave a very detailed picture of the legal machinery that existed in Costa Rica to implement human rights, the report did not sufficiently give detailed information on the actual enjoyment of Covenant rights in Costa Rica. It was asked whether the report had been published and disseminated among the population and whether it was publicly debated and commented on. Members of the Committee recalled that Costa Rica had been the first State to ratify the Covenant and the Optional Protocol and had actively participated in international efforts to strengthen the machinery for the protection of human rights. They pointed out that Costa Rica's record in promoting human rights on the international scene was matched only by its record, one of few in Latin America, in its efforts to apply the rule of law under democratic institutions and it was wondered whether Costa Rica might not consider being the first country in that part of the world of taking up the challenge of making the declaration under article 41 of the Covenant. Members also noted that Costa Rica, which had no army and no military expenditure, was allocating most of its budget to public education and welfare and that a country like Costa Rica which was not totally developed was nevertheless capable of making noteworthy achievements in the field of human rights.

338. With reference to article 1 of the Covenant, it was observed in the report that Costa Rica had considered the right to self-determination as an indivisible

right which ought to be applied to all peoples. The representative was asked whether he agreed that article 1 of the Covenant required States parties to take concrete action to help all peoples in their struggle to achieve their right to self-determination; how his Government could explain the fact that its embassy in Israel had been established not in Tel-Aviv but in Jerusalem, contrary to United Nations resolutions under which it would not be considered permissible to recognize Jerusalem as the capital of Israel; and what his country's position was regarding the right of the Palestinian people to self-determination and to the establishment of their own independent and sovereign State.

339. As regards article 2 of the Covenant, members of the Committee noted that, in accordance with article 7 of the Constitution, as amended in 1968, the Covenant prevailed over domestic law; that it had direct applicability in the country; and that the Government of Costa Rica recognized that, in order to give effect to the rights recognized in the Covenant, it was not enough to have the Covenant integrated in domestic law but that supplementary legislative acts were required to achieve that end. It was asked whether the representative could inform the Committee of any such acts as may have been enacted in this respect; whether the courts have had the occasion to interpret the Covenant; and whether the provisions of the Covenant had, in practice, prevailed over domestic law. In this connexion, it was asked whether administrative remedies had existed alongside the judicial remedies; and what steps had been taken to ensure the wide publicity of the provisions of the Covenant among the people, including the national minorities and in the languages used by them.

340. In relation to article 3 of the Covenant, members of the Committee requested information on the extent to which the principle of equality between men and women had been respected and applied with regard to women's participation in the social, political and economic life of the country; on the extent to which the principle of equal pay for equal work was applied to women; and on their right to education at all levels.

341. In connexion with article 8 of the Covenant, reference was made to an article in the Constitution of Costa Rica stipulating that no one under the protection of its laws could be a slave and it was asked what that provision meant since, normally, all the inhabitants were supposed to be placed under the protection of the law without any distinction between them. Reference was also made to an article in the Penal Code giving a convicted person the option of paying off a fine imposed on him by working without remuneration for municipal authorities, the public administration and even private enterprise, and it was asked how this provision could be reconciled with article 8 (3) (a) which stated that no one shall be required to perform forced or compulsory labour, especially since it was difficult to establish the consent of the detainee under the circumstances.

342. Commenting on article 9 of the Covenant, it was asked what legislative and procedural measures applied to the deprivation of liberty in the case of persons other than those subjected to penal justice, such as internment for psychiatric reasons and detention of foreigners pending expulsion. Noting that abuse of power had often existed at the level of the police, members asked whether a person's right to be assisted by a lawyer of his choice could be exercised during the preliminary investigations; for how long a person could be detained before he was brought to trial; and whether anyone who had been the victim of unlawful arrest or detention had a right to compensation.

343. With regard to article 12 of the Covenant, information was sought on the restrictions imposed on the right to leave Costa Rica and on any legislation providing for the deprivation of nationality.

344. In connexion with article 13 of the Covenant, it was asked whether expulsion of foreigners was a matter totally left to the discretion of the Executive or, whether it was regulated by law as required by the Covenant and what remedies were available to a foreigner threatened with expulsion.

345. Commenting on article 14 of the Covenant, it was asked whether the independence of judges was ensured at all levels; what guarantees they had; and what concrete measures were available to the judiciary to ensure the application of its decisions, especially when made against the Executive. It was also asked whether court hearings were held in public; whether everyone's right to be presumed innocent until proved guilty according to law was applied only in criminal proceedings before a court of law or was a general principle observed by public authorities, whether judicial or non-judicial; and whether an accused had the free assistance of an interpreter if he could not understand or speak the language used in court. Noting from the report, that the Code of Criminal Procedure established some sentences against which there was no appeal, members of the Committee wondered how that provision could be reconciled with article 14, paragraph 5, of the Covenant, especially in the light of another statement in the report to the effect that the Covenant had been integrated in domestic law and prevailed over other Costa Rican legislation. Noting also that, according to the Code of Criminal Procedure, preventive measures for two or more years could be imposed when it was considered that serving the sentence had not been effective in rehabilitating convicted persons, members of the Committee wondered whether that meant that, if he had not been rehabilitated, the convicted person was liable to the imposition of a further sentence and, if so, how the provision could be reconciled with the provisions of article 14, paragraph 7, of the Covenant.

346. As regards article 17 of the Covenant, it was asked whether Costa Rican law authorized the tapping of telephone conversations by the police and, if so, under what conditions such a measure could be authorized. Information was requested on the provisions regulating the search of homes by police officers.

347. In connexion with article 18 in conjunction with article 2, of the Covenant, some members wondered whether the article in the Constitution providing that Catholicism was the official religion of the State had conceded a privileged position to the adherents of Catholicism in relation to the adherents of other religions, and thus contravening the letter and spirit of article 18, paragraph 1, and article 2, paragraph 1, of the Covenant. Questions were asked on what form State aid to the Church took; whether the right not to profess any religion was guaranteed by law and, if so, what oath an atheist was required to take upon his appointment as a public official, considering the constitution oath cited in article 194 of the Constitution. Noting that the Constitution guaranteed the free exercise of other worship that was not opposed to "universal morality or good customs", one member expressed concern at the possible abuse of such a vague term since morality was subjective by nature and universal morality could not be precisely defined.

348. In relation to articles 19, 21 and 22 of the Covenant, clarification was requested on the rules in the Electoral Code relating to the publication of political propaganda and on the limitation imposed on the freedom of expression,

including the prohibition imposed on the clergy not to get involved in political activities. Noting that aliens were prohibited from interfering in the political affairs of the country, one member indicated that this prohibition could be interpreted as a curtailment of the rights conferred under articles 21 and 22 of the Covenant and that although restrictions had to be placed on aliens with regard to many forms of political activity, they should have the right to express themselves in such cases as where an amendment to the aliens act was being discussed and to participate in union activities as a means of protecting their personal economic and social status in the country. Information was requested on the economic and political role of trade unions of both employers and employees and on the draft law concerning trade union rights of plantation workers which seemed to be opposed by the employers concerned.

349. With reference to article 20 of the Covenant, it was noted that the absence in the Costa Rican legislation of any penalty for the violation of the prohibition of war propoganda provided for in the Covenant rendered the Covenant inoperative in this respect, notwithstanding that it had been integrated into the legal system of the country.

350. In connexion with articles 23 and 24 of the Covenant, information was requested on the steps taken to provide protection and assistance to mothers of several children, on the rules and measures designed to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution, particularly with regard to property, paternal authority, heritage, divorce and alimony; and on the status of natural and adulterine children and on their inheritance rights as compared with those of children born in wedlock. Noting with satisfaction that the law had ensured to all Costa Ricans equality of the sexes regarding transference of nationality, one member asked what the law was in the case of a child born in Costa Rica of stateless parents.

351. As regards article 25 of the Covenant, it was asked whether the provisions of the Constitution stipulating that suffrage was a compulsory civil function, that, in order to be a deputy, a naturalized Costa Rican had to have acquired his nationality for at least 10 years and that political parties registered for national elections which had not received 5 per cent of the votes would have no right to a State contribution for the costs incurred during campaigns, did not involve a discriminatory element to the detriment of new political movements.

352. With reference to article 27 of the Covenant, information was sought on the national minorities existing in Costa Rica, particularly the Indians and on their numbers; whether they possessed an independent juridical status; on the steps taken to preserve their culture, language and land; on the guarantees for their representation as stipulated in the Constitution; and on the measures applied to ensure their active participation in public affairs. Questions were also asked on whether current legislation was effective in protecting lands belonging to the Indians and preventing those lands from being transferred to other people. In this connexion, reference was made to the China Kika reserve which the Indians had reportedly completely lost and to the reported sale by the ITCO (Instituto de tierras y colonización) of lands in the Boroca Reserve to other people.

353. The representative of the State party commented on the questions put to him by members of the Committee as summarized in the preceding paragraphs. He informed the Committee that the Covenant had been published in the official journal and disseminated nation-wide over the radio at the time when it was being considered by

the Legislative Assembly. The Covenant had not been translated into any indigenous language but everyone in Costa Rica spoke Spanish.

354. In connexion with comments made under article 1 of the Covenant, he pointed out that Costa Rica voted in favour of several resolutions as adopted by the United Nations in 1979 concerning the situation in Palestine and the Middle East and that Costa Rica exercised its sovereign rights in establishing diplomatic relations with Israel. That did not imply, however, any denial of the rights of any people to self-determination.

355. In relation to article 2 of the Covenant, the representative drew a comparison between the text of article 7 of the Costa Rican Constitution as amended in 1968 and the relevant articles contained in the constitutions of some other States with a view to stressing the clarity of the fact that the Covenant prevailed in his country over domestic law. He pointed out that supplementary legislative measures were enacted in his country in order to give effect to the provisions of the Covenant and promised to supply concrete information on the matter at a later date. He was not aware of any case where the Convention prevailed in practice over domestic law, since that was only possible in case of conflict between both laws, which, to his knowledge, had not yet occurred. He also informed the Committee that the report of his country will be published early in 1981 as a part of the annual report of the Legislative Assembly.

356. As regards article 3 of the Covenant, the representatives stressed that Costa Rican legislation had not established any distinction between the sexes with regard to the right of equal pay for equal work, access to public office, the legislative assembly or education; that several women held ministerial and ambassadorial posts and that many of them were deputies. The Committee will be provided at a future date with statistics concerning the percentage of women exercising functions at the executive, legislative and judicial level as well as on the percentage of enrolment in educational institutions.

357. As regards article 8 of the Covenant, he stated that the provision in the penal code, giving a convicted person the option of paying off a fine imposed on him by working without remuneration, inter alia, for private enterprise, was meant to help the person concerned in case he was unable to pay the fine imposed on him. There was no question that private enterprise was given free labour, since it was required to pay the corresponding wage as a partial payment of the fine.

358. In connexion with a question put to him under article 9 of the Covenant, the representative stated that the law defined the security measures applied to certain categories of persons who could be interned in psychiatric hospitals or establishments designed for special treatment or education, as well as in agricultural settlements or labour establishments in which those persons were subjected to a certain measure of supervision. He stressed that no one could be detained without evidence of his involvement in a crime and without the written order of a judge or any authorized person in charge of public order, unless in the case of escape or in connexion with a serious crime, but that such a detainee had to be brought before a competent judge within not more than 24 hours.

359. Replying to a question under article 12 of the Covenant, he stated that restrictions imposed on the right to leave Costa Rica applied to both Costa Ricans and foreigners and only where they had to pay alimony or where a conditional release by a court order was involved.

360. In relation to article 13 of the Covenant, the representative told the Committee that foreigners may be expelled from the country in accordance with the law. Foreigners residing legally in the country had the right to appeal to the courts against any expulsion orders.

361. As regards article 14 of the Covenant, the representative indicated that the Constitution and the laws in force provided for the election of judges, for the guarantees required for their independence and for the criminal and civil responsibility of public officials who failed within the prescribed time-limit to put into force judicial decisions taken against the State. The Costa Rican law did not provide for the mandatory assistance of interpreters at court hearings, but Costa Rican courts had established a practice in this respect. The details would be submitted to the Committee at a later date. Replying to another question, he stressed that judges had no power to impose a heavier penalty than had already been decided but that they could impose security measures if they felt that the penalty imposed had not helped in the rehabilitation of the convicted person. As to the question relating to those sentences against which, according to the Code of Criminal Procedure, there was no appeal, he stated that that was enacted in order not to overburden the courts but that more information would be forwarded on the matter. Anyone who was a victim of the miscarriage of justice was entitled to compensation provided that he was not responsible for the miscarriage.

362. As regards article 17, he stated that tapping telephone conversations and interference with the privacy of correspondence were prohibited by law which provided for penalties for any violation of the law or abuse of authority in this respect.

363. In connexion with article 18 of the Covenant, the representative pointed out that there was not really a separation between the State and the Church but that only a secular person could be elected as President of the Republic or as a Minister. As to the swearing of the oath by State officials who were non-believers, he stated that such cases were obviously not foreseen. As to the statement in the report concerning the norms of universal morality as recognized by civilized nations, he pointed out that, because of their vague character, they were usually left for the courts to interpret at the national or international levels. The State contributed to the Catholic Church without prejudice to the recognized rights of other confessions, the adherents of which could freely practise their religions provided that they did not offend public morals.

364. Replying to questions under articles 19, 21 and 22, the representative stated that freedom of expression was guaranteed for all. Foreigners enjoyed the same freedom provided that they did not interfere in the political affairs of the country. Political parties had the right to conduct electoral campaigns, but demonstrations were not allowed except during the two months preceding elections. As from the date of the convocation of elections, radio, television stations and publishing houses were required to register with the Supreme Electoral Court in order to be able to undertake electoral propaganda activities. He stressed that this measure was designed to prevent the dissemination of erroneous information during the period that preceded the elections. He pointed out that the Constitution prohibited foreigners from taking part only in the management of trade unions, but that they were free to join any trade union and maintained that the law in this respect was more liberal than the relevant provision in the Covenant which imposed certain restrictions on the right to the freedom of association. As to the question concerning the right of plantation workers to freedom of association, he indicated

that their rights were guaranteed but that certain practical difficulties were encountered when some of them intended to arrange their meetings at places which were considered under the Constitution to be inviolable property. In connexion with the relations between organizations of employers and of employees, he invited the Committee to consult the relevant ILO documents of the International Labour Organisation and pointed out that all trade unions of employers and employees were exclusively established for the purpose of improving and protecting their common economic and social interests.

365. As to the question concerning the prohibition of war propaganda under article 20 of the Covenant, the representative stated that Costa Rican law did not provide for such prohibition for the simple reason that war was unimaginable in his country. However, anyone who by conducting hostile acts or provoking the imminent danger of a declaration of war against the nation, exposed the inhabitants of the country to reprisals directed against their person or property or endangered the friendly relations of the Costa Rican Government with foreign Governments. would be subject to imprisonment for up to six years.

366. As regards articles 23 and 24 of the Covenant, the representative informed the Committee that his Government provided aid and protection to poor families as well as to mothers of numerous children. He stressed that, in Costa Rica, spouses had equal rights and responsibilities during marriage and at its dissolution. Court judgements were not influenced by the sex of the plaintiff in this respect. The law provided for no distinction between spouses as regards paternal authority, property, alimony or inheritance. Children born in Costa Rica to stateless persons were considered to be Costa Rican citizens if they were registered while minors or if they declared their desire to become citizens before the age of 25. Natural children had the same inheritance rights as those of their brothers and sisters born in wedlock provided that their parentage was proved or recognized.

367. Replying to questions under article 25 of the Covenant, the representative maintained that States parties were not prohibited from making obligatory by law a right that was provided for in the Covenant and that the provision of the Costa Rican Constitution that suffrage was a compulsory civil function did not contradict with the Covenant and that voting did not preclude the possibility of abstention. As to the question concerning the State contribution to political parties registered for national elections, he indicated that the rule was designed to protect democratic institutions from being corrupted by the proliferation of small political parties.

368. Replying to questions under article 27 of the Covenant, the representative gave an account of the ethnic minorities of his country and pointed out that their right to education was guaranteed and that in the regions where such minorities constituted a high percentage of the population education was given in Spanish and in the language of the minority concerned. Costa Rica applied no particular policy of assimilation of minorities. Various legislative measures and regulations were taken with a view to protecting the property of the indigenous population. Participation of minorities in public affairs was guaranteed in the same way as it was in relation to other Costa Ricans. There were no religious minorities in Costa Rica in the sense of article 27 although the majority of the population adhered to the Catholic Church.

369. The representative of the State party finally expressed his Government's readiness to submit further information and to reply to questions which could not be covered in his comments on the questions raised by members of the Committee.

C. Question of the reports and general comments of the Committee

370. At its 231st and 232nd meetings (CCPR/C/SR.231 and 232) the Committee recalled the discussions which it had had in the past concerning its method of work in the consideration of reports of States parties which it had so far examined. 6/ The Committee felt that, since a sufficient number of reports of States parties had now been initially examined, the time had come to consider further, firstly, the precise nature of its functions under article 40, paragraph 4, of the Covenant which requires the Committee to study the reports submitted by the States parties to the Covenant and to transmit its reports and such general comments, as it might consider appropriate, to the States parties; and, secondly, how best to discharge those functions.

371. Members felt that the method of work adopted as an initial step in the consideration of reports of States parties (that is to say the submission of reports by States in accordance with the guidelines evolved by the Committee, questions put to representatives of the States concerned and the answers of the representatives) had been successful in establishing a constructive dialogue with the States parties and in assisting States parties in their efforts to promote, and ensure the enjoyment of, human rights. Although the primary object of the initial examination of States reports had so far been to gather sufficient information to enable the Committee to study the reports, nevertheless members of the Committee had availed themselves of the valuable opportunities which this process offered of making observations and comments, in appropriate cases, on non-implementation or insufficient implementation and of suggesting possible measures of implementation. States parties had indeed indicated that the questions and observations of individual members had proved to be of great assistance to their Governments.

372. It was the view of many members that even the initial stage of the examination of reports of States parties could be improved in the light of experience gathered, particularly in the case of States which had provided additional written information on the basis of which a second round of examination had taken place. A number of members felt that in order to adopt a more systematic approach and to save valuable time, either a Secretariat analytical document could be prepared which would indicate, without involving any value judgement, all the questions that had been asked, for which answers had been provided, and those questions for which information still remained to be provided, or the Committee could meet, before the resumption of the examination of the reports of States parties concerned, in order to identify the issues or matters in relation to which further information was necessary, or else a working group could be appointed for the purpose. In the case of States whose initial reports had been examined and which had not provided additional written information on the basis of the questions asked, recourse could be had for instance to article 40 (1) (b) of the Covenant which empowers the Committee to ask for a fresh report or to rule 70 (2) of the provisional rules of procedure which empowers the Committee to request additional information.

373. Many members were of the view that, however valuable and effective the initial

6/ CCPR/C/SR.48, 49, 50, 55, 73, 219/Add.1 and Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 40 (A/34/40), paras. 15 to 20.

examination of the reports of States parties had been and whatever opportunities it had given to Committee members individually to gather information by their questions, to make observations and to study the reports of States parties, the Committee had not yet, collectively as a Committee, "studied" the reports submitted by States parties. Since States parties, by the submission of their reports under article 40 (1) and (2) of the Covenant, and the Secretary-General, by the transmission of those reports under article 40 (3) of the Covenant, had fulfilled their obligations, it was incumbent on the Committee to fulfil its obligations under article 40 (4) of the Covenant which requires the Committee as such to "study the reports" and "transmit its reports, and such general comments as it may consider appropriate, to the States parties". The Committee should, therefore, as a Committee and as distinct from its individual members, now continue and complete its work in relation to the reports of States parties which it had examined. Opinions differed, however, as to what the end result should be and as to how the Committee should proceed towards that end; whether the Committee should produce its own reports as a result of a study by the Committee of reports of States parties; whether it should make general comments, in what form its general comments should be made, in respect of what matters the comments should be made; and, lastly, whether reports and comments should be made to States parties individually or to all the States parties as a whole.

374. Members generally agreed that the nature of the functions of the Committee differed depending on whether those functions derived from article 40 which deals with the submission and consideration of reports, or article 41 which deals with the consideration of communications by one State party against another, or from the Optional Protocol to the Covenant which deals with communications from individuals against a State party. It was noted that, under the Optional Protocol, the functions of the Committee were investigatory and that under Article 41 of the Covenant, they were conciliatory whereas, under article 40 of the Covenant, the Committee was charged with the duty of studying the reports submitted by States parties. It was also noted that, in relation to article 41 of the Covenant and the Optional Protocol, the substance of the procedure was prescribed in the Covenant or the Optional Protocol themselves whereas in relation to article 40, the Committee has had to prescribe its own rules of procedure (CCPR/C/3/Rev.1, rules 66 to 71) in pursuance of powers conferred upon it under article 39 (2) of the Covenant.

375. Two main trends of opinion evolved in the course of the discussions. One trend of opinion, which was supported by most members, favoured the approach that the functions of the Committee under article 40 of the Covenant ought to be viewed in the context of the very objects of the Covenant as a whole instead of in the context of the terminological differences within particular provisions of the Covenant. The objects of the Covenant were to promote and ensure the observance of the civil and political rights recognized in the Covenant. The nature of the Committee's constitution under article 28 of the Covenant, the attributes which the Covenant required from the members of the Committee and the fact that members served in their personal capacity were of great significance: since, on the one hand, States parties had undertaken under the Covenant to submit reports on the measures they had adopted to give effect to the rights recognized in the Covenant, on the progress made in the enjoyment of those rights and on the factors and difficulties, if any, affecting the implementation of the Covenant; and since, on the other, the Covenant imposed a duty on the Committee to study those reports, there must inevitably be some purpose to that study. It was in the light of this

very purpose, that rule 70 (3) 7/ of the provisional rules of procedure was adopted.

376. According to that trend of opinion, the functions of the Committee under article 40 could be divided into three specific parts, each explicitly mentioned in its paragraph 4, that is to say, firstly the study proper, secondly the submission of reports by the Committee as a result of the study, and thirdly the adoption by the Committee of general comments, the last function being optional whereas the first two were obligatory.

377. As regards completing the first part of the Committee's functions - the study of reports of States parties by the Committee as such - members recognized that a number of practical difficulties would arise. Firstly, the Committee met at two regular sessions of three weeks each in the year usually preceded by a further week in which a working group on communications met. The Committee has had to meet, since the second year of its formation, for an additional session every year. It was recognized that the proper study of reports of States parties for the purpose of enabling the Committee to adopt its own reports, which might include general comments, might require additional sessions and members might not be able to attend given their other responsibilities. It was suggested that one solution might be to form several working groups which might each deal with a number of reports of States parties together with all the material that had been gathered as a result of oral or written answers.

378. The purpose of the study would be to ascertain whether the State party had reported as it should and, on that basis, whether it had implemented or was implementing the Covenant as it had undertaken to do. According to this trend of opinion the study should lead to the adoption of separate reports by the Committee on each State party's report. The exercise would, however, be conducted in such a way as not to turn the reporting procedure into contentious or inquisitory proceedings, but rather to provide valuable assistance to the State party concerned in the better implementation of the provisions of the Covenant. The reports to be adopted by the Committee as a result of its study of each individual State report should not be seen as identical with the annual report which the Committee is required to transmit to the General Assembly under article 45 of the Covenant and which relates to all the activities of the Committee, although they might be appended to the annual report. These reports on States reports would be flexible enough, where consensus could not be reached, to allow for shades of opinion of members to be expressed. These reports would be transmitted separately to each individual State party concerned and that State party would be entitled to submit to the Committee under article 40 (5), observations on any comments made by the Committee in its report.

379. As regards the general comments, these would be adopted as a result of an over-all study of reports of States parties which might highlight matters of common interest to the States parties, for example, possible amendments to the Covenant,

7/ "If, on the basis of its examination of the reports and information supplied by a State party, the Committee determines that some of the obligations of that State party under the Covenant have not been discharged, it may, in accordance with article 40, paragraph 4, of the Covenant, make such general comments as it may consider appropriate."

the general aspects of the reporting obligations of States parties, the length and content of reports, the nature of additional material, problems of implementation in federal systems, the status of the Covenant in the national law of States parties, the nature and scope of the rights set forth in the Covenant and methods of implementation.

380. A second trend of opinion held that the study which the Committee was required to undertake under paragraph 4 of article 40 was limited to the exchange of information, the promotion of co-operation among States, with the purpose of maintaining a steady dialogue and assisting States in overcoming difficulties, and that the study did not have in it any element of assessment or evaluation. An interpretation or practice to this effect would go far beyond the wording of the Covenant. It could not be justified by referring to rule 70 (3) of the provisional rules of procedure since these rules could not serve to confer upon the Committee a mandate which it did not enjoy under the Covenant. According to this opinion, the reports which the Committee was required to transmit under that paragraph were in fact the annual reports which the Committee was required to submit to the General Assembly of the United Nations through the Economic and Social Council under article 45 of the Covenant. Otherwise, the Covenant would have specified the contents of the reports and the parties for which they were intended, as it did in article 41 and 42. Furthermore, the general comments which the Committee was empowered to make under that paragraph were not in the nature of recommendations or suggestions but were intended to be of a general character and in respect of matters which were of common interest to all States parties and that those general comments could be addressed only to all the States parties collectively.

381. It was argued by those who favoured this trend of opinion that the primary functions of the Committee under article 40 of the Covenant were to assist States parties in the promotion of human rights, and not in pronouncing on whether the States parties were or were not implementing their undertaking under the Covenant and that the Committee was not empowered under the Covenant to interfere in this manner in the internal affairs of States parties. It was also the view of those members that a wide range of constructive opportunities presented themselves to the Committee to influence the promotion and protection of human rights in the States parties by the present method of examining the reports of States parties which had already enlisted the voluntary co-operation of States parties, although there might be room for the making of general comments on matters of general importance affecting the implementation of the Covenant or of the specific rights in the Covenant. Such general comments might include suggestions for studies to be undertaken on particular human rights topics deduced from the content of the reports of States parties.

382. It has become clear, as a result of the exchange of views, that there is a convergence of opinion on the need for the Committee, at the very least, to make general comments. It still remains to be determined, however, what the thrust of these general comments should be, though a number of useful suggestions from both trends of opinion have been made on possible topics. Given the importance of the question relating to the nature and purpose of the study of the reports of States parties, members of the Committee have felt that it would be useful to reflect further on the matter in the light of all the opinions expressed and the experience gathered so far, before deciding on further work in relation to reports which have already been examined by the Committee.

383. All members, however, were anxious that, since there had evolved a convergence

of views on the desirability of making general comments on the basis of experience gathered so far in the examination of reports of States parties, work should proceed expeditiously on the making of those general comments pending a decision on further work, if any, under article 40 of the Covenant. The Committee, therefore, agreed that a small working group be set up in the first place to formulate such general comments as were likely to gather the widest support from the Committee as a whole and secondly to examine, in the light of all the views expressed, what further work, if any, the Committee should undertake to give effect to its duties under article 40 of the Covenant. The members appointed to the working group were Mr. Graefrath, Mr. Lallah and Mr. Opsahl. The working group will meet one week before the eleventh session and will, as need be, work during the session itself.

IV. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

384. Under the Optional Protocol to the International Covenant on Civil and Political Rights individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit written communications to the Committee for consideration. At the time of the adoption of the present report on the Committee's eighth, ninth and tenth sessions, 23 of the 63 States which have acceded to or ratified the Covenant have accepted the competence of the Committee for dealing with individual complaints by ratifying or acceding to the Optional Protocol. These States are Barbados, Canada, Colombia, Costa Rica, Denmark, the Dominican Republic, Ecuador, Finland, Iceland, Italy, Jamaica, Madagascar, Mauritius, the Netherlands, Nicaragua, Norway, Panama, Senegal, Suriname, Sweden, Uruguay, Venezuela and Zaire. No communication can be received by the Committee if it concerns a State party to the Covenant which is not also a party to the Optional Protocol.

385. Consideration of communications submitted under the Optional Protocol by or on behalf of individuals who claim to be victims of violations of rights set forth in the Covenant started at the Committee's second session in 1977. Since then 72 communications have been received for consideration.

386. At its eighth session (15 to 26 October 1979) the Committee had before it 11 communications for resumed consideration as well as 5 communications which were brought before it for the first time. At its ninth session (17 March to 4 April 1980) the Committee had before it 28 communications for resumed consideration as well as 6 communications which were before it for the first time. At its tenth session (14 July to 1 August 1980) the Committee had before it 28 communications for resumed consideration and 8 communications which were before it for the first time.

387. Working groups of the Committee, established under rule 89 of its provisional rules of procedure, to make recommendations to the Committee regarding the fulfilment of the conditions of admissibility of communications, laid down in articles 1, 2, 3 and 5 (2) of the Optional Protocol, met for one week immediately prior to each Committee session. In order to complete their work, the working groups continued to meet during each Committee session.

388. Under rule 91 of the provisional rules of procedure the working groups established under rule 89 may request the State party concerned or the author of the communication to submit additional written information or observations relevant to the question of admissibility. Further, these working groups have been assigned the task, in accordance with rule 94 (1), of examining communications on the merits, with a view to assisting the Committee in formulating its final views under article 5 (4) of the Optional Protocol. With regard to certain communications, the Committee has also assigned this latter task to individual members of the Committee, acting as special rapporteurs for that purpose.

389. With regard to its work under the Optional Protocol at its eighth, ninth and tenth sessions, the Committee had before it the following basic

documents: (a) lists of communications with brief summaries of their contents, prepared under rule 79 of the Committee's provisional rules of procedure; (b) fact sheets, containing a detailed description of the contents of communications, as well as any information, observations, comments, explanations or statement submitted by the parties under the Committee's provisional rules of procedure or pursuant to article 4 (2) of the Optional Protocol; (c) recommendations from the Committee's working groups and, in one case, from a member of the Committee, acting as special rapporteur. In addition the Committee had access to the original text of all submissions from the States parties and from the authors of the communications. All these documents are confidential and are made available to the members of the Committee only.

390. The Committee's work under the Optional Protocol is divided into two main stages: (a) examination of communications with a view to determining whether they are admissible under the Optional Protocol or not (the Committee may also, at this stage, decide to discontinue consideration of a communication, without taking a decision as to its admissibility); (b) consideration of communications with a view to formulating the Committee's views on the merits of the case. Under article 5 (3) of the Optional Protocol, the Committee's work under the Protocol is conducted in closed meetings.

Issues arising at the admissibility stage

391. As in earlier years, the Committee's consideration of questions relevant to the admissibility of communications concerned mainly the following issues: firstly, the standing of the author of the communication when he does not claim to be a victim himself but purports to act on behalf of an alleged victim and, in particular, the circumstances in which an author may claim to be justified in acting on behalf of an alleged victim, even without that individual's prior knowledge or consent; secondly, issues that arise from the fact that the Covenant and the Optional Protocol became binding on the States parties concerned as from a certain date; thirdly, the provision of article 5 (2) (a) of the Optional Protocol which precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement; and fourthly, the provision of article 5 (2) (b) of the Optional Protocol, which precludes the Committee from considering a communication if domestic remedies have not been exhausted with regard to the alleged violations complained of, cf. article 2 of the Optional Protocol. In addition, the admissibility criteria set out in article 3 of the Optional Protocol (providing that a communication shall be declared inadmissible if it is anonymous; if it is to be regarded as an abuse of the right of submission; or if it is considered to be incompatible with the provisions of the Covenant) have also been relevant to the examination of a number of communications.

392. The decisions of the Committee at its eighth, ninth and tenth sessions continued to reflect the same approach to the issues involved, as that established in earlier years. This approach may be summarized as follows:

The standing of the author

393. Article 1 of the Optional Protocol provides that the Committee can receive communications from individuals who claim to be victims of violations of rights set forth in the Covenant. In the Committee's view this does not mean that the

individual must sign the communication himself. He may also act through a duly appointed representative and there may be other cases in which the author of the communication may be accepted as having the authority to act on behalf of the alleged victim. For these reasons, rule 90, paragraph (1) (b), of the Committee's provisional rules of procedure provides that although the communication should normally be submitted by the alleged victim himself or by his representative (for example, the alleged victim's lawyer), the Committee may also decide to consider a communication submitted on behalf of an alleged victim when it appears that he is unable to submit the communication himself. The Committee regards a close family connexion as a sufficient link to justify an author acting on behalf of an alleged victim. On the other hand, it has declined to consider communications where the authors have failed to establish any link between themselves and the alleged victims.

Considerations arising from the fact that the Covenant and the Optional Protocol became binding on the States parties as from a certain date

394. The Committee has declared communications inadmissible if the events complained about took place prior to the entry into force of the Covenant and the Optional Protocol for the State parties concerned. However, a reference to such events may be taken into consideration if the author claims that the alleged violations have continued after the date of entry into force of the Covenant and the Optional Protocol for the State party concerned, or that they have had effects which themselves constitute a violation after that date. Events which took place prior to the critical date may indeed be an essential element of the complaint resulting from alleged violations which occurred after that date.

The application of article 5, paragraph (2) (a), of the Optional Protocol

395. Article 5, paragraph (2) (a), of the Optional Protocol provides that the Committee shall not consider any communication from an individual "unless it has ascertained that the same matter is not being examined under another procedure of international investigation or settlement". 8/ The Committee has recognized in this connexion that cases considered by the Inter-American Commission on Human Rights under the instruments governing its functions were under examination in accordance with another procedure of international investigation or settlement within the meaning of article 5, paragraph (2) (a). On the other hand, the Committee has determined that the procedure set up under Economic and Social Council resolution 1503 (XLVIII) does not constitute a procedure of international investigation or settlement within the meaning of article 5, paragraph (2) (a) of

8/ In the course of its consideration of communications, the Committee became aware of a language discrepancy in the text of art. 5, para. (2) (a) of the Optional Protocol. The Chinese, English, French and Russian texts of the article provide that the Committee shall not consider any communication from an individual unless it has ascertained that the same matter is not being examined under another procedure of international investigation or settlement, whereas the Spanish text of the article employs the language meaning "has not been examined". The Committee has ascertained that this discrepancy stems from an editorial oversight in the preparation of the final version of the Spanish text of the Optional Protocol. Accordingly, the Committee has decided to base its work in respect of art. 5, para. (2) (a), of the Optional Protocol on the Chinese, English, French and Russian language versions.

the Optional Protocol, since it is concerned with the examination of situations which appear to reveal a consistent pattern of gross violations of human rights and a situation is not "the same matter" as an individual complaint. The Committee has also determined that article 5, paragraph (2) (a), of the Protocol can only relate to procedures implemented by inter-State or intergovernmental organizations on the basis of inter-State or intergovernmental agreements or arrangements. Procedures established by non-governmental organizations, as for example the procedure of the Inter-Parliamentary Council of the Inter-Parliamentary Union, cannot, therefore, bar the Committee from considering communications submitted to it under the Optional Protocol.

396. With regard to the application of article 5 (2) (a) of the Optional Protocol, the Committee has further concluded that a subsequent opening of a case submitted by an unrelated third party under another procedure of international investigation or settlement does not preclude the Committee from considering a communication submitted under the Optional Protocol by the alleged victim or his legal representative. The Committee has also determined that it is not precluded from considering a communication, although the same matter has been submitted under another procedure of international investigation or settlement, if it has been withdrawn from or is no longer being examined under the latter procedure at the time that the Committee reaches a decision on the admissibility of the communication submitted to it.

The application of article 5, paragraph (2) (b) of the Optional Protocol

397. Article 5, paragraph (2) (b), of the Optional Protocol provides that the Committee shall not consider any communication from an individual unless it has ascertained that all available domestic remedies have been exhausted. The Committee considers that this provision should be interpreted and applied in accordance with the generally accepted principles of international law with regard to the exhaustion of domestic remedies as applied in the field of human rights. If the State party concerned disputes the contention of the author of a communication that all available domestic remedies have been exhausted, the State party is required to give details of the effective remedies available to the alleged victim in the particular circumstances of his case. In this connexion, the Committee has deemed insufficient a general description of the rights available to accused persons under the law and a general description of the domestic remedies designed to protect and safeguard these rights.

Consideration of communications on the merits

398. The second main stage in the Committee's work under the Optional Protocol consists of the consideration of the merits of the claims that the facts complained of constitute breaches by the States parties concerned of the rights protected by the Covenant.

399. Once a communication has been declared admissible, the State party concerned is required, under article 4 (2) of the Optional Protocol, to submit to the Committee within six months written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it. Under rule 93 (3) of the Committee's provisional rules of procedure, the State party's submission under article 4 (2) of the Optional Protocol is forwarded to the author of the communication who may within such time limits as established by the Committee,

submit any additional written information or observations. Under article 5 (1) of the Optional Protocol, the Committee is, thereupon, called upon to consider the communication in the light of all written information furnished by both parties. The final views of the Committee are forwarded to the parties under article 5 (4) of the Optional Protocol.

400. The Committee for the first time adopted final views under the Optional Protocol at its seventh session in 1979. The views, relating to a communication concerning Uruguay (communication No. R.1/5), were annexed to the Committee's last annual report. 9/ At its eighth, ninth and tenth sessions, the Committee continued consideration of a number of communications, in respect of which the time-limits established by article 4 (2) of the Optional Protocol and rule 93 (3) of the Committee's provisional rules of procedure had expired.

401. At its eighth session, the Committee concluded its consideration of one communication (No. R.2/9), concerning Uruguay, by adopting its final views. It was the Committee's view that the communication in question revealed a violation by the State party of the provisions of the Covenant. An individual opinion submitted by a Committee member under rule 94 (3) of the Committee's provisional rules of procedure, and endorsed by several other Committee members, concluded that there had been further violations of the Covenant. The text of the Committee's views and of the individual opinion is reproduced in annex V to the present report.

402. At its ninth session the Committee concluded its consideration of one communication (No. R.2/8) 10/ concerning Uruguay, by adopting its final views. It was the Committee's view that the communication revealed a number of violations by the State party of the provisions of the Covenant. The text of the Committee's views is reproduced in annex VI to the present report.

403. In respect of another communication (No. R.7/31) concerning Uruguay, which was before the Committee at its ninth session, the Committee decided to discontinue its consideration, after taking note with satisfaction that the State party had taken appropriate steps to remedy the matter complained of. The text of the Committee's decision to discontinue consideration of the communication in question is reproduced in annex VII to the present report.

404. At its tenth session, the Committee adopted its final views in respect of three communications concerning Uruguay (communications Nos. R.1/4, R.1/6 and R.2/11). It was the Committee's view that all three communications revealed breaches by the State party of various provisions of the Covenant. An individual opinion was submitted by a member of the Committee concerning communication No. R.2/11. The text of the Committee's views on the communications in question, including the individual opinion concerning R.2/11, is reproduced in annexes VIII, IX and X to the present report.

9/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 40 (A/34/40), annex VII.

10/ A separate communication concerning the same matter had initially been placed before the Committee as communication No. R.11/48. Communication No. R.11/48 was at the Committee's seventh session merged with communication No. R.2/8 and regarded as part thereof.

Status of communications submitted to the Human Rights Committee
under the Optional Protocol

405. Since the Human Rights Committee began consideration of communications at its second session in 1977, 72 communications have been placed before it under the Optional Protocol. These communications relate to Canada (17), Colombia (4), Denmark (4), Finland (3), Iceland (1), Italy (1), Madagascar (1), Mauritius (1), Norway (2), Sweden (1), Uruguay (36) and Zaire (1).

406. Out of the 72 communications placed before the Committee so far, 33 are no longer under active consideration. Their consideration has been concluded as follows:

8 communications have been declared as suspended or discontinued.

17 communications (initially placed before the Committee as 18 communications) have been declared inadmissible.

6 communications (initially placed before the Committee as 7 communications) have been concluded by the adoption of views under article 5 (4) of the Optional Protocol.

407. The status of the remaining 39 communications which are pending before the Committee for further consideration is as follows:

12 communications are to be examined further prior to a decision as to their admissibility, in the light of information requested from the States parties and/or the authors under rule 91 of the Committee's provisional rules of procedure. These communications relate to Canada (2), Colombia (3), Iceland (1), Italy (1), Madagascar (1) and Uruguay (4).

27 communications have been declared admissible under the Optional Protocol for consideration on the merits. These communications relate to Canada (4), Colombia (1), Finland (2), Mauritius (1), Sweden (1), Uruguay (17) and Zaire (1).

408. Owing to lack of time the Human Rights Committee has been unable to conclude its consideration and adopt its views on a number of communications in respect of which the time-limits established by article 4 (2) of the Optional Protocol and laid down pursuant to rule 93 (3) of the Committee's provisional rules of procedure have expired. In several of these cases the States parties concerned have already submitted their explanations or statements under article 4 (2) of the Optional Protocol and the authors of the communications have furnished additional information or observations under rule 93 (3) of the Committee's rules of procedure.

409. As many as 14 of the 27 pending communications already declared admissible under the Optional Protocol would, by virtue of established time-limits, be before the Committee at its next session for consideration on the merits.

V. QUESTION OF CO-OPERATION BETWEEN THE COMMITTEE
AND THE SPECIALIZED AGENCIES CONCERNED

410. At its eighth session (see CCPR/C/SR.180 and 181), the Chairman recalled the decisions previously taken by the Committee on the question of its co-operation with the specialized agencies concerned as recorded in paragraphs 600, 605 and 606 of the report of the Committee to the General Assembly at its thirty-third session (A/33/40).

411. Speaking at the invitation of the Chairman, the representative of the International Labour Office informed the Committee of the forms of collaboration that existed between the International Labour Organization (ILO) on the one hand and the Committee on the Elimination of Racial Discrimination (CERD) and certain other specialized agencies on the other, in the implementation of several ILO conventions concerning matters that were also within the competence of both CERD and the agencies concerned. He pointed out that the ILO could communicate to the Committee the relevant information pertaining to the reports submitted by States parties and scheduled for consideration at any particular session. Such information could concern the ILO conventions ratified by the States in question and any comments made by the supervisory bodies of the ILO on the implementation of those conventions or on procedures specially provided for. The ILO could also provide the Committee with more general documentation on the interpretation of ILO standards relevant to the work of the Committee under the Covenant.

412. Speaking at the invitation of the Chairman, the representative of the United Nations Educational, Scientific and Cultural Organization (UNESCO) assured the Committee of the unreserved co-operation of his Organization in all areas. He thought that one type of co-operation would be the exchange of general information on a regular basis, including documents and reports on UNESCO's activities in areas relevant to the Committee and resolutions adopted to promote such activities. Another possible area of co-operation was the provision of information regarding specific subjects for which UNESCO had a special responsibility.

413. With reference to article 40, paragraph 3, of the Covenant, the Committee decided that extracts from the reports of States parties concerning articles of the Covenant which were of interest to the specialized agencies should be transmitted to them by the Secretary-General on a regular basis.

414. The Committee further agreed that: (i) the very fact that co-operation with the specialized agencies had become one of the more permanent items on the Committee's agenda showed the value the Committee attached to that co-operation and its desire to continue and improve it; (ii) the Committee was convinced of the need for all possible information from the specialized agencies that was relevant to its work, in a relationship of mutual co-operation with those agencies; accordingly, and to that end, the Committee agreed that information, mainly on the specialized agencies interpretation of, and practice in relation to, the corresponding provisions of their instruments, should be made available to members of the Committee on a regular basis, and that information of any other kind may be made available to them on request during meetings of the Committee which were

attended by representatives of the specialized agencies: (iii) with regard to the desirability of the specialized agencies submitting comments on the reports submitted to the Committee by States parties to the Covenant, it was agreed that the decision of the Committee as recorded in paragraph 605 of the Committee's report to the General Assembly at its thirty-third session (A/33/40) still remained valid, it being understood that the Committee could revert to the matter at a later stage and, in the light of the experience it had gained, seek ways of further strengthening its co-operation with the specialized agencies.

VI. FUTURE MEETINGS OF THE COMMITTEE

415. At its eighth session, the Committee was informed that the United Nations Conference on the Law of the Sea had decided to hold a ninth session in 1980, with the first part of the session being convened in New York from 3 March to 4 April 1980, and that the Committee on Conferences had, on the recommendation of the Division of Conferences and General Services, decided on 13 September 1979 to recommend to the General Assembly that the meetings, inter alia, of the Human Rights Committee, originally scheduled to be held in New York from 17 March to 4 April 1980, should take place at Geneva. In its recommendation to the General Assembly, the Committee on Conferences cited problems of space and technical difficulties at Headquarters as reasons why the session of the Conference on the Law of the Sea and that of the Committee could not be held simultaneously at New York and had referred to General Assembly resolution 3483 (XXX) of 12 December 1975 by which the Assembly had decided "to accord priority to the Conference in relation to other United Nations activities, except those of organs established by the Charter of the United Nations". The Committee was also informed that, with the Committee's spring session being held at Geneva, the summer session of the Committee and of its Working Group could be scheduled in New York between the dates now appearing in the Geneva calendar of meetings.

416. Members of the Committee expressed regret at the proposed change of the venue of the ninth session. They recalled that, as early as its first session, the Committee had decided to hold alternate sessions in Geneva and New York, that under the Covenant the Committee was normally to meet at the Headquarters of the United Nations or at the United Nations Office at Geneva and that the Secretary-General was to provide, inter alia, the facilities for the effective performance of the Committee's functions under the Covenant. They stressed the importance of holding one session in New York per year as most developing countries were represented by missions in New York, which was not the case in Geneva. Further, it would be more convenient for States on the other side of the Atlantic to have their reports considered at New York. They also expressed the wish that the Committee should hold some of its future sessions in developing countries provided that this did not involve too much expenditure for the host developing countries.

417. Since numerous members of the Committee expressed reservations at the holding of the tenth session in New York, the Committee agreed to hold its summer session as well at Geneva as originally scheduled.

418. Having been informed that the Government of the Federal Republic of Germany was considering the possibility of hosting one of the Committee's 1981 sessions, members of the Committee agreed to respond positively if the Government of that country decided to invite the Committee.

419. At its ninth session, the Committee decided that its tenth session would be held at Geneva from 14 July to 1 August 1980 and its eleventh session at Geneva from 20 to 31 October 1980; and that in each case the working group would meet one week beforehand or earlier. As to the calendar of meetings for 1981 and 1982, the Committee decided that its twelfth session would be held at United Nations Headquarters from 23 March to 10 April 1981, the thirteenth session at the

United Nations Office at Geneva from 13 to 31 July 1981, the fourteenth session at Geneva from 12 to 30 October 1981, the fifteenth session at Headquarters from 22 March to 9 April 1982, the sixteenth session at Geneva from 12 to 30 July 1982 and the seventeenth session at Geneva from 11 to 29 October 1982, and that in each case the working group would meet one week beforehand or earlier.

VII. ADOPTION OF THE REPORT

420. At its 244th, 245th and 246th meetings on 31 July and 1 August 1980, the Committee considered the draft of its fourth annual report covering the activities of the Committee at its eighth, ninth and tenth sessions, held in 1979 and 1980. The report, as amended in the course of the discussions, was adopted by the Committee unanimously.

ANNEX I

States parties to the International Covenant on Civil and Political Rights and to the Optional Protocol and States which have made the declaration under article 41 of the Covenant, as at 1 August 1980

A. States parties to the International Covenant on Civil and Political Rights a/

<u>State party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Austria	10 September 1978	10 December 1978
Barbados	5 January 1973 (a)	23 March 1976
Bulgaria	21 September 1970	23 March 1976
Byelorussian Soviet Socialist Republic	12 November 1973	23 March 1976
Canada	19 May 1976 (a)	19 August 1976
Chile	10 February 1972	23 March 1976
Colombia	29 October 1969	23 March 1976
Costa Rica	29 November 1968	23 March 1976
Cyprus	2 April 1969	23 March 1976
Czechoslovakia	23 December 1975	23 March 1976
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 (a)	4 April 1978
Ecuador	6 March 1969	23 March 1976
El Salvador	30 November 1979	29 February 1980
Finland	19 August 1975	23 March 1976
Gambia	22 March 1979 (a)	22 June 1979
German Democratic Republic	8 November 1973	23 March 1976
Germany, Federal Republic of	17 December 1973	23 March 1976
Guinea	24 January 1978	24 April 1978
Guyana	15 February 1977	15 May 1977

a/ Sri Lanka acceded to the Covenant on 11 June 1980 and the Covenant will enter into force for Sri Lanka on 11 September 1980.

<u>State party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Hungary	17 January 1974	23 March 1976
Iceland	22 August 1979	22 November 1979
India	10 April 1979 (a)	10 July 1979
Iran	24 June 1975	23 March 1976
Iraq	25 January 1971	23 March 1976
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Japan	21 June 1979	21 September 1979
Jordan	28 May 1975	23 March 1976
Kenya	1 May 1972 (a)	23 March 1976
Lebanon	3 November 1972 (a)	23 March 1976
Libyan Arab Jamahiriya	15 May 1970 (a)	23 March 1976
Madagascar	21 June 1971	23 March 1976
Mali	16 July 1974 (a)	23 March 1976
Mauritius	12 December 1973 (a)	23 March 1976
Mongolia	18 November 1974	23 March 1976
Morocco	3 May 1979	3 August 1979
Netherlands	11 December 1978	11 March 1979
New Zealand	28 December 1978	28 March 1979
Nicaragua	12 March 1980 (a)	12 June 1980
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	28 April 1978	28 July 1978
Poland	18 March 1977	18 June 1977
Portugal	15 June 1978	15 September 1978
Romania	9 December 1974	23 March 1976
Rwanda	16 April 1975 (a)	23 March 1976
Senegal	13 February 1978	13 May 1978
Spain	27 April 1977	27 July 1977
Suriname	28 December 1976 (a)	28 March 1977
Sweden	6 December 1971	23 March 1976
Syrian Arab Republic	21 April 1969 (a)	23 March 1976
Trinidad and Tobago	21 December 1978 (a)	21 March 1979

<u>State party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Tunisia	18 March 1969	23 March 1976
Ukrainian Soviet Socialist Republics	12 November 1973	23 March 1976
Union of Soviet Socialist Republics	16 October 1973	23 March 1976
United Kingdom of Great Britain and Northern Ireland	20 May 1976	20 August 1976
United Republic of Tanzania	11 June 1976 (a)	11 September 1976
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Yugoslavia	2 June 1971	23 March 1976
Zaire	1 November 1976 (a)	1 February 1977

B. States parties to the Optional Protocol

<u>State party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Barbados	5 January 1975 (a)	23 March 1976
Canada	19 May 1976 (a)	19 August 1976
Colombia	29 October 1969	23 March 1976
Costa Rica	29 November 1968	23 March 1976
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 (a)	4 April 1978
Ecuador	6 March 1969	23 March 1976
Finland	19 August 1975	23 March 1976
Iceland	22 August 1979 (a)	22 November 1979
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Madagascar	21 June 1971	23 March 1976
Mauritius	12 December 1973 (a)	23 March 1976
Netherlands	11 December 1978	11 March 1979
Nicaragua	12 March 1980 (a)	12 June 1980

<u>State party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Senegal	13 February 1978	15 May 1978
Suriname	28 December 1976 (a)	28 March 1977
Sweden	6 December 1971	23 March 1976
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Zaire	1 November 1976 (a)	1 February 1977

C. States which have made the declaration
under article 41 of the Covenant

Austria
Canada
Denmark
Finland
Germany, Federal Republic of
Iceland
Italy
Netherlands
New Zealand
Norway
Sri Lanka
Sweden
United Kingdom of Great Britain
and Northern Ireland

ANNEX II

Membership of the Human Rights Committee

<u>Name of member</u>	<u>Country of nationality</u>
Mr. Néjib Bouziri**	Tunisia
Mr. Abdoulaye Dieye**	Senegal
Sir Vincent Evans*	United Kingdom of Great Britain and Northern Ireland
Mr. Manouchehr Ganji*	Iran
Mr. Bernhard Graefrath**	German Democratic Republic
Mr. Vladimir Hanga*	Romania
Mr. Dejan Janča**	Yugoslavia
Mr. Haissam Kelani*	Syrian Arab Republic
Mr. Luben G. Koulishev*	Bulgaria
Mr. Rajsoomer Lallah**	Mauritius
Mr. Andreas V. Mavrommatis*	Cyprus
Mr. Anatoly Petrovich Movchan*	Union of Soviet Socialist Republics
Mr. Torkel Opsahl**	Norway
Mr. Julio Prado Vallejo**	Ecuador
Mr. Waleed Sadi**	Jordan
Mr. Walter Surma Tarnopolsky*	Canada
Mr. Christian Tomuschat**	Germany, Federal Republic of
Mr. Diego Uribe Vargas*	Colombia

* Term expires on 31 December 1980.

** Term expires on 31 December 1982.

ANNEX III

Submission of reports and additional information by States parties under article 40 of the Covenant during the period under review a/A. Initial reports

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of reminder(s) sent to States whose reports have not yet been submitted</u>
Austria	14 September 1979	NOT YET RECEIVED	(1) 25 April 1980
Colombia	22 March 1977	14 November 1979	
Dominican Republic	3 April 1979	NOT YET RECEIVED	(1) 25 April 1980
Gambia	21 June 1980	NOT YET RECEIVED	
Guinea	23 April 1979	NOT YET RECEIVED	(1) 25 April 1980
Guyana	14 May 1978	NOT YET RECEIVED	(1) 14 May 1979 (2) 23 April 1980
India	9 July 1980	NOT YET RECEIVED	
Italy	14 December 1979	26 February 1980	
Jamaica	22 March 1977	NOT YET RECEIVED	(1) 30 September 1977 (2) 22 February 1978 (3) 29 August 1978 (4) 17 April 1980
Kenya	22 March 1977	15 August 1979 b/	
Lebanon	22 March 1977	NOT YET RECEIVED	(1) 30 September 1977 (2) 22 February 1978 (3) 29 August 1978
Mali	22 March 1977	14 August 1979 b/	
Netherlands	10 March 1980	NOT YET RECEIVED	
New Zealand	27 March 1980	NOT YET RECEIVED	
Panama	7 June 1978	NOT YET RECEIVED	(1) 14 May 1979 (2) 23 April 1980
Portugal	14 September 1979	NOT YET RECEIVED	(1) 25 April 1980

a/ From 18 August 1979 to 1 August 1980 - end of seventh session to end of tenth session.

b/ These reports were received after the last annual report of the Committee (A/34/40) had been reproduced.

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of reminder(s) sent to States whose reports have not yet been submitted</u>
Rwanda	22 March 1977	NOT YET RECEIVED	(1) 30 September 1977 (2) 22 February 1978 (3) 29 August 1978 (4) 17 April 1980
Trinidad and Tobago	20 March 1980	NOT YET RECEIVED	
United Republic of Tanzania	10 September 1977	20 August 1979	
Uruguay	22 March 1977	NOT YET RECEIVED	(1) 30 September 1977 (2) 22 February 1978 (3) 29 August 1978 (4) 17 April 1980
Venezuela	9 August 1979	5 November 1979	
Zaire	31 January 1978	NOT YET RECEIVED	(1) 14 May 1979 (2) 23 April 1980

B. Additional information submitted subsequent to the examination of the initial reports by the Committee

<u>States parties</u>	<u>Date of submission</u>
Denmark	16 November 1979
Norway	23 November 1979

ANNEX IV

Letter dated 1 August 1980 from the Chairman of the Human Rights Committee to the Chairman of the Third Meeting of States parties to the International Covenant on Civil and Political Rights

At its 237th meeting, the Human Rights Committee requested me to draw the attention of the States parties, through you, to the reporting obligations of States parties under article 40 of the Covenant on Civil and Political Rights and the extent to which States parties had complied with those obligations.

Article 40 of the Covenant requires States parties to submit reports on the measures they have adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of these rights, within one year of the entry into force of the Covenant for the States parties concerned.

It has been a matter of satisfaction to the Committee that the great majority of States parties have fulfilled their reporting obligations under article 40 of the Covenant and have developed a constructive dialogue with the Committee. The Committee wishes to record its appreciation for the increasingly close co-operation which States parties have so generously afforded to the Committee.

A few States parties, however, have not yet submitted their reports in pursuance of their obligations under that article, some since 1977 and others since 1978. A list showing the status of the submission of reports is annexed. a/

The Committee took a number of steps with a view to providing timely opportunities for States parties to fulfil their reporting obligations. In the first instance, a reminder has been sent, followed in the ensuing two successive years by further reminders. The Permanent Representatives to the United Nations of those States parties whose reports were due since 1977 were also handed an aide-mémoire which indicated that, unless the reports of their States were received before the following session, the Committee would find it difficult to avoid mentioning, in its ensuing annual report to the General Assembly, the failure of the Governments concerned to comply with their reporting obligations. In this regard, rule 69 (2) of the Committee's provisional rules of procedure provides that, if after a reminder the State party still does not submit its report, the Committee shall so state in its annual report to the General Assembly. The Committee felt bound to specify in its annual report for 1980 the States which had failed to submit their reports which have been due since 1977.

In the case of the report of Lebanon which has been due since 1977, the representative of Lebanon to the United Nations expressed his Government's regret for the delay in submitting its report, and hoped that the Committee would understand the difficulties that Lebanon had been going through and which made it

a/ See annex III.

impossible for Lebanon to send its report at that stage. In these circumstances, the Committee decided not to include in the Committee's annual report for 1980 the name of Lebanon in the list of States which had failed to meet their reporting obligations under article 40.

It was the Committee's wish that the attention of the Third Meeting of States parties to the Covenant on Civil and Political Rights be drawn to the encouraging measure of compliance by States parties with their reporting obligations under article 40 of the Covenant and to the steps which had been taken with regard to those States parties which had not fulfilled their reporting obligations.

ANNEX V

Views of the Human Rights Committee under article 5 (4) of
the Optional Protocol to The International Covenant on
Civil and Political Rights

concerning

Communication No. R.2/9

Submitted by: Edgardo Dante Santullo Valcada

State party concerned: Uruguay

Date of communication: 20 February 1977

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights

- meeting on 26 October 1979;
- having concluded its consideration of communication No. R.2/9 submitted to the Committee by Edgardo Dante Santullo Valcada under the Optional Protocol to the International Covenant on Civil and Political Rights;
- having taken into account all written information made available to it by the author of the communication and by the State party concerned;

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of this communication dated 20 February 1977 is a Uruguayan national residing in Mexico. He submitted the communication on his own behalf.
2. The author states that on 8 September 1976 he was arrested in the streets of Montevideo by four police officers dressed in civilian clothing and taken to the headquarters of the Investigation and Intelligence Department. There he learned that he was accused of receiving the clandestine newspaper Carta. The author described what ensued as follows: "On denying this, I was hooded and forced to remain standing in an unnatural position (feet one metre apart, body and head very erect, arms stretched out and raised to shoulder level, in my underwear and barefoot on a pile of grit); this caused me intense muscular pain. If I was overcome by fatigue and lowered my arms or head or put my legs a little further together, I was beaten brutally. This treatment was accompanied by punches, kicks, insults and threats of torturing my wife and two children (aged six and eight)." He further alleges that he was not given any food and that this situation lasted for three days. The day after his arrest, on 9 September 1976, at 3 a.m., his house was

thoroughly searched allegedly without his permission and without any warrant. On 16 September 1976 he was transferred to the Central Prison where he remained imprisoned for a further 50 days in complete solitary confinement in a cell measuring 1.2 by 2 metres. He was only allowed to leave his cell 15 minutes in the mornings and 15 minutes in the afternoons. On 23 October 1976, he was brought before a military judge before whom he maintained what he has said previously. On 5 November 1976 he was again brought before the military court, where he was informed that, in the absence of any reasonable grounds for charging him with an offence, he could go free. The writer adds that at no time, during the 50 days of his detention, was he able to communicate with a defence counsel and that the recourse of habeas corpus was not applicable in his case because he was detained under the "prompt security measures". Finally he claims that he has not received any compensation for his imprisonment and for the resulting economic hardship suffered by his family.

3. On 25 August 1977, the Human Rights Committee decided to transmit the communication to the State party, under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility.

4. By letter dated 27 October 1977, the State party objected to the admissibility of the communication on the grounds that the alleged victim had not exhausted all available domestic remedies, and made the general observation that every person in the national territory has free access to the courts and public and administrative authorities and freedom to avail of all the administrative and legal remedies available to them under Uruguay's internal law.

5. On 1 February 1978, the Human Rights Committee:

(a) having ascertained that the case concerning the alleged victim has not been submitted to any other international body;

(b) being unable to conclude that, with regard to exhaustion of domestic remedies, on the basis of the information before it, there were any further remedies which the alleged victim should or could have pursued;

Therefore decided:

(a) that the communication was admissible;

(b) that the text of this decision be transmitted to the State party, together with the text of the relevant documents, and to the author;

(c) that, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it.

6. The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 3 September 1978. More than four months after expiry of the six-month time-limit, the State party submitted its explanations, dated 8 January 1979, which consisted of a "Review of the rights of the accused in cases before a military criminal tribunal, and domestic remedies available to him for

protecting and safeguarding his rights in the national courts of justice". It contained a reference to the remedy of habeas corpus under article 17 of the Constitution, but it did not mention the fact that under the Uruguayan legal system the remedy of habeas corpus is not applicable to persons arrested and detained under the régime of prompt security measures.

7. On 10 April 1979, the Committee decided that the submission of the State party dated 8 January 1979 was not sufficient to comply with the requirements of article 4 (2) of the Optional Protocol, since it contained no explanations on the merits of the case under consideration and requested the State party to supplement its submission by providing, not later than six weeks from the date of the transmittal of this decision to the State party, observations concerning the substance of the matter under consideration.

8. The Committee's decision of 18 April 1979 was transmitted to the State party on 18 May 1979. The six weeks referred to therein, therefore, expired on 2 July 1979. More than three months after that date, a response was received from the State party, dated 9 October 1979. The State party informed that Mr. Santullo Valcada was arrested on 9 September 1976 in connexion with the identification of persons acting as clandestine contacts for the proscribed Communist Party. During the inspection of his house, a great amount of subversive material was allegedly found and Mr. Santullo was detained under the prompt security measures. On 6 November 1976 he was released and a few days later, on 25 November, he obtained political asylum at the embassy of Mexico. It is maintained that, throughout the proceedings, all the provisions of the internal legal order were strictly complied with. The State party also referred in its submission to the régime of "prompt security measures" describing some of its characteristics. Under such régime, any person can be arrested on grounds of a grave and imminent danger to security and public order; the remedy of habeas corpus is not applicable. Furthermore the State party referred to the domestic legal provisions prohibiting any physical maltreatment in Uruguay. Without going into further details, the State party submitted that the author's allegations concerning violations of the Covenant were unfounded, irresponsible and unaccompanied by the least shred of evidence and that they accordingly did not deserve further comment.

9. The Committee has noted that the submissions by the Government of Uruguay of 9 October 1979 were received after the expiry of the time-limit imposed by article 4 (2) of the Optional Protocol, and even after the time-limit following the Committee's renewed request of 18 April 1979. The Committee considered the present communication in the light of all information made available to it by the parties as provided for in article 5 (1) of the Optional Protocol.

10. The Human Rights Committee therefore decides to base its views on the following facts which have either been essentially confirmed by the State party or are unreputed or uncontested except for denials of a general character offering no particular information or explanations: Edgardo Dante Santullo Valcada was arrested on 8 or 9 September 1976. He was brought before a military judge on 25 October 1976 and again on 5 or 6 November 1976 when he was released. During his detention he did not have access to legal counsel. He had no possibility to apply for habeas corpus. Nor was there any decision against him which could be the subject of an appeal.

11. As regards the allegations of ill-treatment, the Committee noted that in his communication the author named the senior officers responsible for the ill-treatment

which he alleged that he received. The State party has adduced no evidence that his allegations of ill-treatment have been duly investigated in accordance with the laws to which it drew attention in its submission of 9 October 1979. A refutation of these allegations in general terms is not enough. The State party should investigate the allegations in accordance with its laws.

12. The Human Rights Committee acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights is of the view that these facts, having arisen after 23 March 1976, disclose violations of the International Covenant on Civil and Political Rights, in particular:

- .. of article 9 (4) because, habeas corpus being inapplicable in his case, Santullo Valcada was denied an effective remedy to challenge his arrest and detention.

As regards article 7 of the Covenant the Committee cannot find that there has not been any violation of this provision. In this respect the Committee notes that the State party has failed to show that it had ensured to the person concerned the protection required by article 2 of the Covenant.

13. The Committee, accordingly, is of the view that the State party is under an obligation to take immediate steps to ensure strict observance of the provisions of the Covenant and to provide effective remedies to the victim, including compensation in accordance with article 9 (5) of the Covenant.

APPENDIX

Individual opinion submitted by a member of the Human Rights Committee under rule 94 (3) of the Committee's provisional rules of procedure

Communication No. R.2/9

Individual opinion appended to the Committee's views at the request of Mr. Walter Surma Tarnopolsky:

Although I agree with the view of the Committee that it could not find that there has not been any violation of article 7 of the Covenant, I also conclude, for the reasons set out in paragraph 11 of the Committee's views, that there has been a violation of article 7 of the Covenant.

The following members of the Committee associated themselves with the individual opinion submitted by Mr. Tarnopolsky: Mr. Néjib Bouziri, Mr. Abdoulaye Diéye, Mr. Bernhard Graefrath, Mr. Dejan Janča, Mr. Waleed Sadi.

ANNEX VI

Views of the Human Rights Committee under article 5 (4) of
the Optional Protocol to the International Covenant on
Civil and Political Rights

concerning

Communication No. R.2/8

Submitted by: Initially submitted by Ana María García Lanza de Netto on behalf of her aunt Beatriz Weismann Lanza and her uncle Alcides Lanza Perdomo, who later joined as submitting parties

State party concerned: Uruguay

Date of communication: 20 February 1977 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights

- meeting on 3 April 1980;
- having concluded its consideration of communication No. R.2/8 initially submitted to the Committee by Ana María García Lanza de Netto under the Optional Protocol to the International Covenant on Civil and Political Rights;
- having taken into account all written information made available to it by the initial author of the communication, the alleged victims and by the State party concerned;

Adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The initial author of this communication, Ana María García Lanza de Netto (initial letter dated 20 February 1977) is a Uruguayan national, residing in Mexico. She submitted the communication on behalf of her aunt, Beatriz Weismann de Lanza, a 35-year-old Uruguayan citizen, and her uncle, Alcides Lanza Perdomo, a 60-year-old Uruguayan citizen and a former trade union leader, alleging that both had been arbitrarily arrested and detained in Uruguay.

2. Ana María García Lanza de Netto claimed that her uncle had been arrested early in February 1976 in the streets of Montevideo by the occupants of an army vehicle and that until the end of September 1976 his family was unable to locate him. She alleged that Alcides Lanza Perdomo was detained at various places, including the naval air base at Laguna del Sauce in the Department of Maldonado and that during this period of initial detention he had to be admitted to the Central Hospital of the

Armed Forces four times, on one occasion almost completely suffocated. She further alleged that there are two months about which her uncle remembers absolutely nothing and that he supposes having been unconscious all that time. She claimed that as a consequence of the mistreatment received, her uncle's hearing was seriously impaired and that he had difficulties moving about because of injuries which were caused to one hip, probably a fracture.

It is submitted that Alcides Lanza Perdomo was later held in the army barracks of the School of Weapons and Services, 14 kilometres along Camino Maldonado, where he was allegedly housed in a railway wagon together with 16 other prisoners and that he was forced to work in the fields.

In respect of her aunt, Beatriz Weismann de Lanza, the initial author submitted that she had been arrested shortly after her husband by army personnel entering her home early one morning and taking her away together with her two small sons, who were handed over some hours later to their grandmother. The author claimed that her aunt's family and friends were unaware of her place of detention until late in 1976. She claimed that her aunt had been in good health until her disappearance in February 1976 but that due to torture inflicted upon her, she had no feeling from the waist downwards and could not move without the help of two female prisoners. She stated that Beatriz Weismann de Lanza had nevertheless been obliged to work.

Finally, Ana María García Lanza de Netto submitted that proceedings had been initiated with regard to her uncle before a military court, but that it was not clear whether her aunt had appeared before a court.

These submissions have later been supplemented by the alleged victims, as set out in paragraphs 9, 10 and 11 below.

3. On 26 August 1977, the Human Rights Committee decided to transmit the communication to the State party under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility. By that same decision the Committee requested Ana María García Lanza de Netto to furnish detailed information on the grounds and circumstances justifying her acting on behalf of the alleged victims.

4. By letter dated 21 October 1977 the initial author explained that the alleged victims were unable to act on their own behalf and that she was acting on their behalf as their close relative, believing, on the basis of her personal acquaintance with them, that the alleged victims would agree to lodging a complaint.

5. By letter dated 27 October 1977 the State party objected to the admissibility of the communication on two grounds:

(a) that the same matter was already being examined by the Inter-American Commission on Human Rights;

(b) that the alleged victims had not exhausted all available domestic remedies.

6. On 1 February 1978, the Human Rights Committee,

(a) having ascertained that the case concerning Beatriz Weismann de Lanza,

which had been before the Inter-American Commission on Human Rights, had been withdrawn and was no longer under active consideration by that body;

(b) having further ascertained that the cases concerning Alcides Lanza Perdomo were submitted to the Inter-American Commission on Human Rights in November 1974 and February 1976 respectively;

(c) concluding that these two cases cannot relate to events alleged to have taken place on or after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay);

(d) further concluding that, with regard to exhaustion of domestic remedies, on the basis of the information before it, there were no further remedies which the alleged victims should or could have pursued;

Therefore decided:

(a) That the author of the communication was justified by reason of close family connexion in acting on behalf of the alleged victims;

(b) That the communication was admissible;

(c) That the text of this decision be transmitted to the State party together with the text of the relevant documents and to the author;

(d) That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any that may have been taken by it.

With regard to the exhaustion of domestic remedies the Committee said that its decision "may be reviewed in the light of any further explanations which the State party may submit giving details of any domestic remedies which it claims to have been available to the alleged victims in the circumstances of their cases, together with evidence that there would be a reasonable prospect that such remedies would be effective".

7. By its decision of 18 April 1979, the Committee:

(a) Informed the State party of the Committee's concern that the State party had failed to fulfil its obligation to submit written explanations or statements under article 4 (2) of the Optional Protocol;

(b) Requested the State party, although the six-months' time-limit, established by article 4 (2) of the Optional Protocol, had expired on 3 September 1978, that a submission from the State party pursuant to that article should be made without further delay and should, in any event, reach the Human Rights Committee not later than six weeks from the date of the transmittal of the decision.

8. The time-limit set by the Committee in its decision of 18 April expired on 2 July 1979, at which time no further submission had yet been received. However, in a note dated 8 October 1979 the Government submitted, in the first place, that the Committee should review its decision regarding the admissibility of the

communication, because domestic remedies had not been exhausted. It attached a summary of available remedies, noting that the authors had not indicated that they had actually applied for any remedies; furthermore, the Government stated that the effectiveness of the remedies was not for the Government to prove and that it could not be argued hypothetically that they were ineffective. Notwithstanding these contentions, however, the Government gave the following information:

"Mr. Alcides Lanza was arrested for investigation on 2 February 1976 and detained under the prompt security measures. Subsequently, on 21 September 1976, he was charged by the military examining judge of fifth sitting with the offence of 'subversive association' referred to in article 60 (VI) of the Military Penal Code.

On 26 October 1977 he was sentenced to three years' severe imprisonment less the period spent in custody pending trial. On completion of his sentence, he was granted unconditional release on 2 February 1979 and left Uruguay for Sweden on 1 July 1979.

It should be noted that the appropriate legal assistance was available to Mr. Lanza at all times, his defence counsel being Dr. Juan Barbé.

Mrs. Weismann de Lanza was arrested for investigation on 17 February 1976 and detained under the prompt security measures. Subsequently, on 28 September 1976, she was charged by the military examining judge of first sitting with the offence of 'assistance to association' referred to in article 60 (VI) of the Military Penal Code.

She was sentenced on 4 April 1978. Her offence was deemed to have been purged by the period spent in custody pending trial, and she was released. She left Uruguay for Sweden on 11 February 1979".

It stated that it was clearly demonstrated by the plain statement of facts given above that the accusations of violations of the Covenant were "fallacious". "Although such accusations, being groundless, irresponsible and unaccompanied by the least shred of evidence, are not worthy of any further comment" some were referred to by way of example:

"It is obvious that both of these persons were afforded all guarantees of due process, for they were brought before a competent judge in public proceedings, had the appropriate legal assistance from their defence counsel and were presumed innocent until proved guilty (article 14, paragraph 1, paragraphs 3 (b) and 3 (e) and paragraph 2).

The charges of alleged ill-treatment and torture suffered by the detainees are mere figments of the author's imagination; she is apparently unaware of Uruguay's long tradition in the matter, which has, throughout its history, earned it the recognition of the international community. Only someone who is completely ignorant of the facts or is acting in obvious bad faith can conceivably accuse Uruguay of violating articles 7 and 10 (1) of the Covenant and article 5 of the Universal Declaration of Human Rights. Detainees are not subjected to any kind of torture or physical coercion in any detention establishment.

The Government of Uruguay trusts that the foregoing explanations will provide a sufficient basis for the Committee, on this occasion, to reject once and for all the communication under consideration, which is merely another instance of the campaign of defamation conducted against our country with the intention of discrediting its image abroad; none the less, it remains at the disposal of the Committee for any further clarification it may require."

9. Meanwhile, one of the alleged victims, Beatriz Weismann de Lanza, after arriving in Sweden, had submitted a communication (received on 28 February 1979 and first registered as R.11/48) on behalf of the other alleged victim, her husband Alcides Lanza Perdomo, containing further and detailed particulars about his case. In a further letter (of 30 April 1979) including a detailed statement of her own case, she requested to be regarded as co-sponsor and co-author of the present communication, and that her own communication (R.11/48) be regarded as part thereof and added thereto as further information.

She stated, inter alia, that her husband had been kept in different military quarters and prisons, held incommunicado for nine months and subjected to torture, such as electric shocks, hanging from his hands, immersion of his head in dirty water, near to asphyxia, "submarino seco". She stated that her husband suffered from several serious health problems (hypertension, permanent trembling in his right arm and sometimes in his whole body and loss of memory due to brain damage) due to the treatment he was subjected to. He was tried on 21 September 1976 and sentenced to three years imprisonment by a military court, and she claimed that he continued to be kept in detention in spite of having served his sentence. With regard to herself she described in detail her experience from the date of her arrest on 17 February 1976 until her release and departure from Uruguay in 1979. She said that after her arrest she was first detained in the barracks of unit No. 13 of the Armed Forces, called "El infierno" by prisoners. Almost constantly kept blindfolded and with her hands tied, she allegedly was subjected to various forms of torture, such as "caballete", "submarino seco", "picano" and "plantón", which she describes in detail. On 29 July 1976, she was transferred to the barracks of the 6th Cavalry Unit where she was kept in a dirty cell in miserable hygienic conditions and without adequate clothes to protect her against the cold, still blindfolded most of the time. She states that in those barracks the preliminary investigation took place on 26 August 1976. When she complained to the military judge about the torture which she had been subjected to, he advised her not to pursue her denunciation which could not be proven because otherwise she would probably end up again in "El infierno". On 25 September 1976 she was transferred to the barracks of Infantry Unit No. 1 on Camino Maldonado where she was at first confined to an individual cell measuring 2 x 1.5 m. During the day, prisoners were forced to remain seated without being allowed to speak to each other. She received the first visit by a member of her family on 30 October 1976. Shortly afterwards, on 3 November 1976, she was transferred to the prison of Punta de Rieles where she was kept together with eleven other female prisoners in a cell designed for four prisoners only. Even female prisoners were forced to perform hard work in the fields suitable only for men. She stated that she was charged on 15 October 1976 with "assisting a subversive association", that in April 1977 the prosecutor asked for a sentence of 32 months, that one year later, in April 1978, a judge pronounced a sentence of 24 months, taking into account the time of her detention, and ordered her release, but that nevertheless her detention continued under the prompt security measures until she was released early in 1979.

10. The Committee decided to regard the information referred to in paragraph 9 above as relating to the present communication as requested by the author and therefore to discontinue its consideration of communication No. R.11/48 as a separate communication. This information was transmitted to the Government on 18 September 1979, as noted in the Government's submission dated 8 October 1979 (quoted above, para. 8).

By a further letter dated 28 September 1979, Beatriz Weismann informed the Committee that her husband had been expelled from Uruguay and that he obtained political asylum in Sweden on 2 July 1979.

11. In response to further inquiries from the Committee, Beatriz Weismann and Alcides Lanza, in a letter dated 15 February 1980, submitted the following additional information and observations:

(a) They stated that they had no legal assistance prior to their trial, at which time they were afforded the possibility to choose either a private lawyer or an officially appointed lawyer for their defence. Beatriz Weismann stated that she opted for a private lawyer, but that she never saw him, was never able to communicate with him and that she was never informed of her rights, possible remedies or recourses. Alcides Lanza stated that he opted for an officially appointed lawyer and that Dr. Antonio Seluja, whom he saw on that occasion, but was never able to speak with, was assigned as his defence lawyer. Alcides Lanza further stated that his defence counsel was later succeeded by Dr. Pereda and Dr. Juan Barbé, neither of whom he could ever communicate with. As they had no contact with lawyers, they were unable to appeal because they did not know what their rights were and had no one to assist them in exercising them.

(b) Beatriz Weismann was kept in detention until 11 February 1979, although her release had been ordered on 14 April 1978, at which time she was requested to place her signature on the release order. Alcides Lanza, having served his sentence on 2 February 1979, was nevertheless kept detained at various places of detention (the names of the places of detention are specified), until he was released on 1 July 1979.

(c) They confirmed, as true, the information previously submitted with regard to their treatment while in detention, including the various forms of physical and mental torture to which they were allegedly subjected. They stated that due to the treatment which he had received, Alcides Lanza's state of health was still poor and, as evidence of this, they submitted a medical report dated 19 February 1980, from a doctor in Stockholm, together with copies of hospital and laboratory records relating thereto. They also enclosed several photographs showing scars on Alcides Lanza's legs, allegedly caused by cigarette burnings as a means of torture. The doctor's report shows that Alcides Lanza continues to suffer from auditive disturbances, a tremor of his right hand and inability to use it properly and symptoms of mental depression.

12. The Committee has noted that the submissions of the Government of 8 October 1979 were received after the expiry of the time-limit imposed by article 4 (2) of the Optional Protocol and even after the time-limit following the Committee's renewed request of 18 April 1979. Nevertheless the Committee has considered the present communication in the light of all information made available to it by the parties, as provided for in article 5 (1) of the Optional Protocol.

13. With regard to the exhaustion of domestic remedies, the Committee notes that the submissions and explanations of the Government still do not show in any way that in the particular circumstances of the two individuals concerned at the time of the events complained of, there were remedies available which they should have pursued. The Committee has been informed by the Government in another case (R.2/9) that the remedy of habeas corpus is not applicable to persons arrested under prompt security measures. Moreover, Beatriz Weismann and Alcides Lanza have explained that they had no effective contact with lawyers to advise them of their rights or to assist them in exercising them.

14. The Committee therefore decides to base its views on the following considerations:

- (i) Alcides Lanza Perdomo was arrested for investigation on 2 February 1976 and detained under the prompt security measures as stated by the Government. He was kept incommunicado for many months. It is not in dispute that he was kept in detention for nearly eight months without charges, and later for another 13 months, on the charge of "subversive association" apparently on no other basis than his political views and connexions. Then, after nearly 21 months in detention, he was sentenced for that offence by a military judge to three years severe imprisonment, less the period already spent in detention. Throughout his period of detention and during his trial he had no effective access to legal assistance. Although he had served his sentence on 2 February 1979, he was not released until 1 July 1979. His present state of physical and mental ill-health for which no other explanation has been offered by the Uruguayan Government, confirms the allegations of ill-treatment which he suffered while under detention.
- (ii) Beatriz Weismann de Lanza was arrested for investigation on 17 February 1976 and detained under the prompt security measures, as stated by the Government. She was kept incommunicado for many months. It is not in dispute that she was kept in detention for more than seven months without charges, and later, according to the information provided by the Government, she was kept in detention for over 18 months (28 September 1976 to April 1978) on the charge of "assisting a subversive association", apparently on similar grounds to those in the case of her husband. She was tried and sentenced in April 1978 by a military judge, at which time her offence was deemed to be purged by the period spent in custody pending trial. She was, however, kept in detention until 11 February 1979. Throughout her period of detention and during her trial she had no effective access to legal assistance. With regard to her allegations that during her detention she was subjected to ill-treatment and to physical and mental torture, she states that she complained to the military judge, but there is no evidence that her complaints have been investigated.

15. The Human Rights Committee has considered whether acts and treatment, which are prima facie not in conformity with the Covenant, could for any reasons be justified under the Covenant in the circumstances. The Government has referred to provisions of Uruguayan law, in particular the Prompt Security Measures. However, the Covenant (art. 4) does not allow national measures derogating from any of its provisions except in strictly defined circumstances, and the Government has not made any submissions of fact or law to justify such derogation. Moreover, some of the facts referred to above raise issues under provisions from which the Covenant does not allow any derogation under any circumstances.

As regards the observations of the Government quoted above (para. 8) it appears from the above findings of the Committee (para. 14) that various guarantees of due process have not been effectively observed, and that a number of quite specific allegations of ill-treatment and torture have only been deemed by the Government "not worthy of any further comment". In its decision of 26 October 1979 concerning case No. R.2/9, the Committee has emphasized that denials of a general character do not suffice. Specific responses and pertinent evidence (including copies of the relevant decisions of the courts and findings of any investigations which have taken place into the validity of the complaints made) in reply to the contentions of the author of a communication are required. The Government did not furnish the Committee with such information. Consequently, the Committee cannot but draw appropriate conclusions on the basis of the information before it.

16. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts set out above (para. 14), in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay), disclose, for the reasons set out above (para. 15) violations of the International Covenant on Civil and Political Rights, in particular:

with respect to both Alcides Lanza Perdomo and Beatriz Weismann de Lanza;

of article 7 and article 10 (1), because of the treatment which they received during their detention;

of article 9 (3) both because they were not upon their arrest brought promptly before a judicial officer and because they were not brought to trial within a reasonable time;

of article 9 (4) because they were unable effectively to challenge their arrest and detention;

of article 14 (1), (2) and (3) because they had no effective access to legal assistance, they were not brought to trial within a reasonable time, and further because they were tried in circumstances in which irrespective of the legislative provisions they could not effectively enjoy the safeguards of fair trial;

of article 9 (1) because they were not released, in the case of Alcides Lanza Perdomo, for five months and, in the case of Beatriz Weismann de Lanza, for 10 months, after their sentences of imprisonment had been fully served.

Article 19 of the Covenant provides that everyone shall have the right to hold opinions without interference and that the freedom of expression set forth in paragraph 2 of that article shall be subject only to such restrictions as are necessary (a) for respect of the rights and reputations of others and (b) for the protection of national security or of public order (ordre public), or of public health or morals. The Government of Uruguay has submitted no evidence regarding the nature of the political activities in which Beatriz Weismann and Alcides Lanza were alleged to have been engaged and which led to their arrest, detention and trial. Information that they were charged with subversive association is not in

itself sufficient. The Committee is therefore unable to conclude on the information before it that the arrest, detention and trial of Beatriz Weismann and Alcides Lanza were justified on any of the grounds mentioned in article 19 (3) of the Covenant.

17. Accordingly, while the Committee notes with satisfaction that Beatriz Weismann and Alcides Lanza have now been released, it is nevertheless of the view that the State party is under an obligation to provide them with effective remedies, including compensation, for the violations which they have suffered and to take steps to ensure that similar violations do not occur in the future.

ANNEX VII

Decision of the Human Rights Committee to
discontinue consideration of

Communication No. R.7/31

Submitted by: Guillermo Waksman

State party concerned: Uruguay

Date of present decision: 28 March 1980

The author of the communication (dated 25 May 1978), Guillermo Waksman, is a Uruguayan citizen, journalist and translator, who for a number of years has lived outside Uruguay.

On 27 September 1977, upon expiry of his Uruguayan passport, he submitted an application for renewal of his passport at the Uruguayan Consulate in the city where he lived. He was subsequently informed that, after consultation with the Uruguayan Government, the Consulate was not authorized to renew his passport.

He maintained that this constituted a violation of articles 12 (2) and 19 of the International Covenant on Civil and Political Rights.

By a decision of 24 April 1979 the Human Rights Committee declared the communication to be admissible under the Optional Protocol to the International Covenant on Civil and Political Rights and, in accordance with article 4 (2) of the Protocol, requested the State party to submit to the Committee, within six months of the transmittal to it of the decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it.

In response to this decision, the State party informed the Committee that it had, on 16 August 1979, instructed its Consulate in the district where the author was at that time living, to renew his passport. This information was later confirmed by the author, who advised the Committee that he had received a new Uruguayan passport on 4 October 1979.

The Committee notes with satisfaction that the State party has taken appropriate steps to remedy the matter complained of.

The Human Rights Committee therefore decides:

1. To discontinue consideration of the communication;
2. That this decision be communicated to the State party and the author of the communication.

ANNEX VIII

Views of the Human Rights Committee under article 5 (4)
of the Optional Protocol to the International Covenant
on Civil and Political Rights

concerning

Communication No. R.1/4

Submitted by: William Torres Ramírez

State party concerned: Uruguay

Date of communication: 13 February 1977

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights

- meeting on 23 July 1980
- having concluded its consideration of communication No. R.1/4 submitted to the Committee by William Torres Ramírez under the Optional Protocol to the International Covenant on Civil and Political Rights;
- having taken into account all written information made available to it by the author of the communication and by the State party concerned;

adopts the following:

VIEWES UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of this communication (initial letter dated 13 February 1977 and further letters dated 22 October 1977, 5 April 1978 and 20 May 1978) is a Uruguayan national, residing in Mexico. He submitted the communication on his own behalf.
2. The author claims that on 6 December 1975 he was arrested in his house in Montevideo by four men in civilian clothes and that he was brought to the "Batallón de Infantería No. 13", also called "La Maquina". He describes various forms of torture to which detainees were allegedly subjected and, in particular, in his own case the use of submarino (suffocation in water), plantón (he was forced to remain standing for four days), hanging (by his arms, which were tied together, for about 36 hours) and blows (on one occasion he was allegedly beaten with such brutality that he had to be transferred to the military hospital). After being detained for almost one month, he was forced to sign a written declaration stating that he had not been mistreated during his detention and he had to answer a questionnaire about his activities as member of the Communist Party. On 31 December 1975, he was transferred to the "Regimiento de Artillería No. 1" in La Paloma, Cezzo. He states that the conditions of detention

there were, to begin with, a little bit better than in "La Maquina", but after February 1976 they worsened. He alleges that detainees were continuously kept blindfolded, that they were subjected to ill-treatment (lack of food and clothing) and torture (beatings, "plantones") and that over a period of six months they were allowed to leave their cells for 15 minutes of recreation only eight times. In La Paloma he was again forced to sign a written declaration that he had not been mistreated and subjected to torture.

The author states that in February 1976 he was brought before a military judge for interrogation and in June 1976 he was again brought before the same judge who ordered his release subject to appearance at a later stage. He was, however, still kept in detention. He claims that he never had any legal assistance, that he was never tried as no charges were brought against him, and that he was informed by the court that, if he made any change to his previous written statements, he would be tried for perjury which was an offence punishable by imprisonment for a period of from three months to eight years.

He further alleges that on 1 July 1976 he was transferred to disciplinary block "B" in another sector of La Paloma where there were nine cells, the largest measuring 1.2 by 2 metres with two prisoners in each cell.

He states that on 6 August 1976 he was released and one month later he obtained political asylum in Mexico.

Mr. Torres Ramírez claims that the way he was treated during his detention virtually excluded any possibility of his having recourse to a legal counsel. With regard to the exhaustion of domestic remedies he comments that the only decision which the court made in his case was the one ordering his release; consequently he states that recourse to habeas corpus was not applicable to his case, since he was detained under the "Prompt Security Measures".

Finally, Mr. Torres Ramírez states that he did not receive any compensation after his release.

He submits, therefore, that he was a victim of violations of articles 7, 9 (1, 3 and 5), 10 (1 and 3), 14 (3 (b), (c), (d), (e) and (g)), 18 (1 and 2) and 19 of the International Covenant on Civil and Political Rights.

3. On 26 August 1977, the Human Rights Committee decided to transmit the communication to the State party, under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility.

4. By letter dated 27 October 1977 the State party objected to the admissibility of the communication on two grounds:

(a) the same matter was already being examined by the Inter-American Commission on Human Rights;

(b) the alleged victim had not exhausted all available domestic remedies.

5. On 26 January 1978, the Human Rights Committee informed the State party that, in the absence of more specific information concerning the domestic remedies

said to be available to the author of this communication, and the effectiveness of those remedies as enforced by the competent authorities in Uruguay, the Committee was unable to accept that he had failed to exhaust such remedies and the communication would therefore not be considered inadmissible in so far as exhaustion of domestic remedies was concerned, unless the State party gave details of the remedies which it submitted had been available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective.

6. By letter dated 5 April 1978 Mr. Torres Ramírez informed the Committee that his case had been withdrawn from consideration by the Inter-American Commission on Human Rights.

7. By letter dated 14 April 1978 the State party submitted information which consisted of a general description of the rights available to accused persons in the military criminal tribunals and of the domestic remedies at their disposal as means of protecting and safeguarding their rights under the Uruguayan judicial system. However, it did not specify which remedies were available to the author in the particular circumstances of his case.

8. By letter dated 20 May 1978 Mr. Torres Ramírez submitted that the remedies listed by the State party were not applicable in his case because he had not been put on trial and he was barred from recourse to habeas corpus because he was detained under the "Prompt Security Measures". He pointed out that none of the other remedies listed by the State party could have been utilized in the situation.

9. On 25 July 1978, the Human Rights Committee:

(a) having concluded that article 5 (2) (a) of the Protocol did not preclude it from declaring the communication admissible, although the same matter had been submitted to another procedure of international investigation or settlement, if the matter had been withdrawn from and was no longer under active consideration in the other body at the time of the Committee's decision on admissibility;

(b) having concluded that article 5 (2) (b) of the Protocol did not preclude it from considering a communication received under the Protocol where the allegations themselves raise issues concerning the availability or effectiveness of domestic remedies and the State party, when expressly requested to do so by the Committee, did not provide details on the availability and effectiveness of domestic remedies in the particular case under consideration;

Therefore decided:

(a) that the communication was admissible;

(b) that the text of this decision be transmitted to the State party, together with the text of the relevant documents, and to the author;

(c) that, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it.

10. On 18 April 1979, the Committee decided to remind the State party that the six-months time limit for the submission of its explanations or statements under article 4 (2) of the Optional Protocol had expired on 28 March 1979 and requested the State party to submit, not later than six weeks from the date of the transmittal of this decision to the State party, observations concerning the substance of the matter under consideration, including copies of any court orders on decisions of relevance to the matter under consideration.

11. The Committee's decision of 18 April 1979 was transmitted to the State party on 18 May 1979. The six weeks referred to therein therefore expired on 2 July 1979. More than three months after that date a further submission, dated 11 October 1979, was received from the State party.

12. In its further submission of 11 October 1979 the State party while repeating the views expressed in its submission of 14 April 1978, namely that the question of admissibility should be reviewed by the Committee in the light of the explanations given by the State party on domestic procedures available to the accused and reaffirming its conviction that its reply of 14 April 1978 should have been sufficient to settle the matter once and for all, added the following explanations:

Mr. Ramírez was arrested on 6 December 1975 and detained under the "Prompt Security Measures" for presumed connexion with subversive activities. The case was taken over by the Military Presiding Judge of first sitting.

On 24 June 1976, an order was issued for his release subject to appearance at a later date, and on 3 August 1976 the proceedings relating to his case were closed.

On 21 October 1976, he took refuge in the Mexican embassy, and left for that country one week later.

As to the accusations of supposed violations of the Covenant, the State party claimed those to be groundless, irresponsible and entirely unproved and, by way of example, submitted the following information as an invalidation of the falsehoods:

(i) In Uruguay, physical coercion is expressly prohibited by article 26 of the Constitution and article 7 of Act No. 14,068 and any official who exceeds his powers and assaults a human being is criminally and civilly liable as well as incurring administrative responsibility and being subject to dismissal;

(ii) In Uruguay, there are no crimes of opinion and no persons are arrested for their ideas, but a person who invokes a philosophy or ideology which is revolutionary or disruptive of the social order freely established by the overwhelming majority of the people is and remains a common criminal. This means that the references to articles 18 and 19 of the Covenant are totally inappropriate;

(iii) Administrative detention under the "Prompt Security Measures" does not require the existence of an offence, but simply serious and imminent danger to security and public order;

(iv) Act No. 14,068 on the security of the State of 10 July 1972 places under

the jurisdiction of the military courts persons who commit military offences, even if they are civilians, and this clearly explains why Mr. Torres Ramírez, who was arrested for presumed subversive activities, was placed under their jurisdiction;

(v) The body of provisions which constitute the military codes (Military Penal Code, Code on the Organization of the Military Courts and Code of Military Penal Procedure) define in detail the scope of action of the various organs of the military courts in such a way that the exercise of the jurisdictional function is hedged about by complete guarantees.

13. The Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol.

14. With regard to the exhaustion of domestic remedies, the Committee has been informed by the Government of Uruguay in another case (R.2/9) that the remedy of habeas corpus is not applicable to persons arrested under the "Prompt Security Measures". Mr. Torres Ramírez stated that he could not avail himself of any other judicial remedy because he was never put on trial. There is no evidence from which the Committee can conclude that there was any other domestic remedy available to him which he should have exhausted.

15. The Committee therefore decides to base its views on the following facts which have either been essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation: William Torres Ramírez was arrested on 6 December 1975. He was brought before a military judge in February 1976 and again on 24 June 1976 when an order was issued for his release subject to appearance at a later date. He was however kept in detention until 6 August 1976. During his detention he did not have access to legal counsel. He had no legal possibility to apply for habeas corpus.

16. As regards the allegations of ill-treatment the Committee notes that in his communication of 13 February 1977, the author named the senior officer responsible for the ill-treatment which he alleged that he received from January 1976 to June 1976. The State party has adduced no evidence that these allegations have been duly investigated in accordance with the laws to which it drew attention in its submission of 11 October 1979. A refutation of these allegations in general terms is not sufficient. The State party should have investigated the allegations in accordance with its laws and its obligations under the Covenant and the Optional Protocol.

17. The Human Rights Committee has considered whether acts and treatment, which are prima facie not in conformity with the Covenant, could for any reasons be justified under the Covenant in the circumstances. The Government has referred to provisions of Uruguayan law, including the Prompt Security Measures. However, the Covenant (article 4) does not allow national measures derogating from any of its provisions except in strictly defined circumstances, and the Government has not made any submissions of fact or law to justify such derogation. Moreover, some of the facts referred to above raise issues under provisions from which the Covenant does not allow any derogation under any circumstances.

18. The Human Rights Committee acting under article 5 (4) of the Optional Protocol

to the International Covenant on Civil and Political Rights is of the view that these facts, in so far as they continued or have occurred after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay), disclose violations of the Covenant, in particular:

of articles 7 and 10 (1) because of the treatment he received up to June 1976;

of article 9 (1) because he was not released for six weeks after his release was ordered by the military judge;

of article 9 (4) because recourse to habeas corpus was not applicable in his case;

of article 14 (3) because he did not have access to legal assistance.

19. The Committee, accordingly, is of the view that the State party is under an obligation to provide the victim with effective remedies, including compensation, for the violations which he has suffered and to take steps to ensure that similar violations do not occur in the future.

ANNEX IX

Views of the Human Rights Committee under article 5 (4)
of the Optional Protocol to the International Covenant
on Civil and Political Rights

concerning

Communication No. R.1/6

Submitted by: Miguel Angel Millán Sequeira

Alleged victim: the author of the communication

State party concerned: Uruguay

Date of communication: 16 February 1977

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights

- meeting on 29 July 1980
- having concluded its consideration of communication No. R.1/6 submitted to the Committee by Miguel Angel Millán Sequeira under the Optional Protocol to the International Covenant on Civil and Political Rights;
- having taken into account all written information made available to it by the author of the communication and by the State party concerned; adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of this communication (initial letter dated 16 February 1977 and further letters dated 20 October 1977 and 4 April and 18 May 1978) is a Uruguayan national, residing in Mexico. He was twenty years old at the time of the submission of the communication in 1977.

2. The author states that he was arrested in Uruguay in April and released in May 1975 and that he was then rearrested on 18 September 1975 and detained until he escaped from custody on 4 June 1976. On both occasions, those apprehending him indicated that the reason for his arrests was that he was suspected of being a militant communist, which he denied. He alleges that he was subjected to torture during the first period of detention and again during the first 15 days after he was rearrested. He describes the alleged torture methods in some detail and named several officers responsible for the treatment. The author alleges that after he was rearrested he was initially kept incommunicado for 65 days and thereafter transferred to El Cilindro sports stadium in Montevideo which he claims was used for low-security political detainees and where he remained for six months.

He states that he was brought before a military judge on three occasions (23 October and 12 December 1975 and on 2 June 1976) but that no steps were taken to commit him for trial or to release him. On 4 June 1976 the author claims that he gained his freedom by escaping. The author claims that the following provisions of the International Covenant on Civil and Political Rights have been violated by the Uruguayan authorities: articles 7, 9, 10, 14 (1) (2) (3), 18 (1) (2), 19 (1) (2).

3. The author maintains that in practice there are no domestic remedies available in Uruguay because when applicable they are subjected to a very restrictive interpretation by the authorities concerned. He further states that the right of habeas corpus is denied to persons detained under "prompt security measures" (Medidas prontas de seguridad), which, he claims, constitutes an abusive interpretation of article 168 (17) of the Constitution. In addition, guarantees set forth in that article are allegedly never observed. He claims that he had no access to legal assistance while he was kept in detention, since the right to defence is not recognized by the authorities until a prosecution has been initiated. He states that he has not submitted his case to any other international organization.

4. On 26 August 1977, the Human Rights Committee decided to transmit the communication to the State party, under rule 31 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility.

5. By letter dated 27 October 1977, the State party objected to the admissibility of the communication on two grounds:

(a) the same matter had already been examined by the Inter-American Commission on Human Rights under cases Nos. 1968 and 2109;

(b) the alleged victim had not exhausted all available domestic remedies.

6. On 26 January 1978, the Human Rights Committee,

(a) decided that case No. 1968 submitted to the Inter-American Commission on Human Rights on 26 July 1975, could not relate to events alleged to have taken place on or after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay and, therefore, did not preclude the Committee, under article 5 (2) (a) of the Optional Protocol, from consideration of the communication submitted to it on 16 February 1977;

(b) requested clarification from the author of the communication about the other case allegedly concerning him before the Inter-American Commission on Human Rights (case No. 2109, October 1976); and

(c) informed the State party that "unless the State party gives details of the remedies which it submits have been available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective", the communication will "not be considered inadmissible in so far as exhaustion of domestic remedies is concerned".

7. In response, the author informed the Committee that the only possible

reference to him in case No. 2109 before the Inter-American Commission on Human Rights is a two-line statement in a list of several hundred persons allegedly arbitrarily arrested. The State party furnished a general description of the rights available to accused persons before the military criminal tribunals and the domestic remedies designed to protect and safeguard the right of the accused under the Uruguayan judicial system. It also quoted article 17 of the Uruguayan Constitution concerning the remedy of habeas corpus. However, the State party did not specify which remedies have been available to the author in the particular circumstances of his case.

8. Commenting on the information concerning domestic remedies submitted by the State party, the author contended that the remedies listed by the State party were not applicable in his case, because he was not put to trial, and that he was barred from recourse to habeas corpus, as the authorities do not recognize the right to habeas corpus for those who are detained under the régime of "security measures".

9. In a decision adopted on 25 July 1978, the Human Rights Committee concluded:

(a) that the two-line reference to Millán Sequeira in case No. 2109 before the Inter-American Commission on Human Rights - which case lists in a similar manner the names of hundreds of other persons allegedly detained in Uruguay - did not constitute the same matter as that described in detail by the author in his communication to the Human Rights Committee. Accordingly, the communication was not inadmissible under article 5 (2) (a) of the Optional Protocol. In arriving at this conclusion the Committee, however, indicated that it might be subject to review "in the light of further explanations relevant to this question which the State party may submit under article 4 (2) of the Optional Protocol";

(b) that article 5 (2) (b) of the Protocol did not preclude the Committee from considering a communication received under the Protocol, where the allegations themselves raised issues concerning the availability or effectiveness of domestic remedies and the State party, when expressly requested to do so by the Committee, did not provide details on the availability and effectiveness of domestic remedies in the particular case under consideration.

The Committee, therefore, decided:

(a) that the communication was admissible;

(b) that the text of this decision be transmitted to the State party and to the author;

(c) that in accordance with article 4 of the Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

(d) that any explanations or statements received from the State party be communicated to the author under rule 93 (3) of the provisional rules of procedure of the Committee.

10. Having received no submissions from the State party under article 4 (2) of the Optional Protocol, the Human Rights Committee decided on 18 April 1979:

1. That the State party be reminded that the six months' time limit for the submission of its explanation or statements under article 4 (2) of the Optional Protocol expired on 28 March 1979;

2. That the State party be requested to fulfil its obligations under article 4 (2) of the Optional Protocol without further delay and that its submission should reach the Committee in care of the Division of Human Rights, United Nations Office at Geneva, not later than six weeks from the date of the transmittal of this decision to the State party, to afford adequate time for the author of the communication to submit, before the next session of the Committee, additional information or observations, as provided in rule 93 (3) of the provisional rules of procedure of the Committee;

3. That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must primarily relate to the substance of the matter under consideration, and in particular the specific violations alleged to have occurred and included copies of any court orders or decisions of relevance to the matter under consideration.

11. The six week time limit referred to in the Committee's decision expired over one year ago, on 2 July 1979. By notes dated 23 November 1979 and 13 February 1980, the State party requested the Committee to accord a reasonable extension of time for the submission of its explanations or statements under article 4 (2) of the Optional Protocol. The only submission received to date from the State party consists of a brief note, dated 10 July 1980, in which the State party requests the Committee to review its decision of 25 July 1978, by which the communication was declared admissible, arguing that although the reference to Millán Sequeira in case No. 2109 before the Inter-American Commission on Human Rights is only very brief, the mere fact that the issue was brought before the Inter-American Commission on Human Rights precluded the Human Rights Committee from considering the matter, in accordance with article 5 (2) (a) of the Optional Protocol. The Committee can see no justification for reviewing its decision on admissibility on this basis, for the reasons already set out in paragraph 9 (a) above.

12. The Human Rights Committee:

(a) considering that this communication was received over three years ago;

(b) considering that this communication was declared admissible two years ago and that the six month time period established by article 4 (2) of the Optional Protocol expired on 28 March 1979;

(c) considering that the State party has not complied with the requirements of article 4 (2) of the Optional Protocol;

(d) considering that there has been no response on the merits of the case from the State party even after further extensions of time;

(e) considering that the Committee has the obligation, under article 5 (1) of the Optional Protocol, to consider this communication in the light of all written information made available to it by the author and the State party;

hereby decides to base its views on the following facts, which have not been contradicted by the State party:

Miguel Angel Millán Sequeira, 20 years old at the time of the submission of the communication in 1977, was arrested in April and released in May 1975. He was rearrested on 18 September 1975 and detained until he escaped from custody on 4 June 1976. On both occasions he was told that the reason for his arrest was that he was suspected of being "a militant communist". Although brought before a military judge on three occasions, no steps were taken to commit him for trial or to order his release. He did not have access to legal assistance and was not afforded an opportunity to challenge his arrest and detention.

13. The Human Rights Committee has been informed by the Government of Uruguay in another case (R.2/9), that the remedy of habeas corpus is not applicable to persons arrested under the Prompt Security Measures.

14. The Human Rights Committee has considered whether acts, which are prima facie not in conformity with the Covenant, could for any reasons be justified under the Covenant in the circumstances. The Covenant (article 4) does not allow national measures derogating from any of its provisions except in strictly defined circumstances, and the Government has not made any submissions of fact or law to justify such derogation.

15. As to the allegations of ill-treatment and torture, the Committee notes that they relate to events said to have occurred prior to 23 March 1976 (the entry into force of the Covenant and the Optional Protocol for Uruguay).

16. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights is of the view that these facts, in so far as they have occurred on or after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay) or continued or had effects which themselves constitute a violation after that date, disclose violations of the Covenant, in particular:

of article 9 (3) because Mr. Millán Sequeira was not brought to trial within a reasonable time;

of article 9 (4) because recourse to habeas corpus was not available to him;

of article 14 (1) and (3) because he had no access to legal assistance, was not brought to trial without undue delay, and was not afforded other guarantees of due process of law.

17. The Committee, accordingly, is of the view that the State party is under an obligation to provide effective remedies to Millán Sequeira, including compensation, for the violations which he has suffered and to take steps to ensure that similar violations do not occur in the future.

ANNEX X

Views of the Human Rights Committee under article 5 (4)
of the Optional Protocol to the International Covenant
on Civil and Political Rights

concerning

Communication No. R.2/11

Submitted by: Alberto Grille Motta on his own behalf as well as on behalf of other persons

State party concerned: Uruguay

Date of communication: 25 April 1977

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights

- meeting on 29 July 1980
- having concluded its consideration of communication No. R.2/11 submitted to the Committee by Alberto Grille Motta under the Optional Protocol to the International Covenant on Civil and Political Rights;
- having taken into account all written information made available to it by the author of the communication and by the State party concerned;

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of this communication (initial letter dated 25 April 1977 and further letter dated 12 December 1978) is a Uruguayan national, residing in Mexico. He submitted the communication on his own behalf as well as on behalf of other persons who allegedly were not in a position to submit a communication on their own.

2. The author claims that on 7 February 1976 he was arrested by a group of Montevideo policemen at the house of a woman friend, Ofelia Fernández. They were both brought to Department 5 of the National Directorate of Information and Intelligence (commanded by a superintendent named by the author), where after several hours of ill-treatment he was interrogated for the purpose of obtaining an admission that he held an important position in the Communist Party and in order to induce him to identify fellow detainees as active members of the Communist Youth.

The author further alleges that over a period of approximately 50 days, he

and his fellow detainees were subjected to severe torture; he cites in his case, inter alia, the application of electric shocks, the use of the "submarino" (putting the detainee's hooded head into foul water), insertion of bottles or barrels of automatic rifles into his anus and forcing him to remain standing, hooded and handcuffed and with a piece of wood thrust into his mouth, for several days and nights. Mr. Grille Motta specifically names several alleged torturers and interrogators.

The author states that he was brought before a military judge without having any opportunity to see a lawyer beforehand and after having been totally isolated from the outside world; after making a statement before the Military Court he was transferred to the "Cilindro Municipal", a sports stadium that had been turned into a prison some years ago, where he remained for approximately another two months.

Mr. Alberto Grille Motta claims that on 20 May 1976 he was tried by a military judge on charges carrying sentences of from 8 to 24 years' imprisonment.

On 3 June 1976 the author and three of his fellow prisoners escaped to the Venezuelan embassy where they were granted "diplomatic" asylum.

Mr. Alberto Grille Motta claims that he has not submitted this case to any other international instance and that he has exhausted all possible domestic remedies, citing in this connexion the dismissal by the Supreme Court of Justice of Uruguay of his appeal against certain decisions of the Military Court.

3. On 26 August 1977, the Human Rights Committee decided to transmit the communication to the State party, under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility. The Committee also decided to request the author to furnish further information on the grounds and circumstances justifying his acting on behalf of the other alleged victims mentioned in the communication. No reply was received from the author in this regard.

4. By letter dated 27 October 1977, the State party objected to the admissibility of the communication on two grounds:

- (a) the same had already been examined by the Inter-American Commission on Human Rights (IACHR);
- (b) the alleged victims had not exhausted all available domestic remedies.

5. On 1 February 1978 the Human Rights Committee:

(a) having ascertained that the case concerning the author of the communication which was before IACHR could not concern the same matter as it was submitted to IACHR on 10 March 1976 (prior to the entry into force of the International Covenant on Civil and Political Rights and the Optional Protocol for Uruguay);

(b) being unable to conclude on the basis of the information before it that, with regard to the exhaustion of domestic remedies, there were any remedies which the alleged victim should or could have pursued; and

(c) being unable because of the lack of relevant additional information from the author, to consider the communication in so far as it related to other alleged victims;

Therefore decided:

(a) that the communication was admissible in so far as it related to the author, but inadmissible in so far as it related to other alleged victims;

(b) that the text of the decision be transmitted to the State party, together with the text of the relevant documents, and to the author;

(c) that, in accordance with article 4 of the Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of the decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it.

With regard to the exhaustion of domestic remedies, the Committee said that its decision "may be reviewed in the light of any further explanations which the State party may submit giving details of any domestic remedies which it claims to have been available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective".

6. After expiry of the six-month time limit the State party submitted its explanations, dated 6 November 1978, which consisted of a "Description of the rights available to the accused in the military criminal tribunals and of the domestic remedies at his disposal as a means of protecting and safeguarding his rights under the Uruguayan judicial system".

7. In a letter dated 12 December 1978 and submitted under rule 93 (3) of the provisional rules of procedure the author reaffirmed his previous assertions that he has exhausted all domestic remedies available to him in practice. He pointed out that the remedy of habeas corpus was not applicable in his case and that his appeal against the only ruling by the military court which could be appealed against in his case was dismissed by the Supreme Court of Justice after his escape. He submitted that the Committee should declare that a serious violation has occurred of articles 3, 6, 7, 8, 9, 10, 14, 15, 17, 18 and 19 of the International Covenant on Civil and Political Rights.

8. On 18 April 1979, the Committee decided that the submission of the State party, dated 6 November 1978, was not sufficient to comply with the requirements of article 4 (2) of the Optional Protocol, since it contained no explanations on the merits of the case under consideration and requested the State party to supplement its submission by providing, not later than six weeks from the date of the transmittal of this decision to the State party, observations concerning the substance of the matter under consideration, including copies of any court orders or decisions of relevance to the matter under consideration.

9. The Committee's decision of 18 April 1979 was transmitted to the State party on 18 May 1979. The six weeks referred to therein therefore expired on 2 July 1979. More than three months after that date a further submission dated 5 October 1979 was received from the State party.

10. In its further submission of 5 October 1979 the State party, while repeating the views expressed in its submission of 6 November 1978, namely that the question of admissibility should be reviewed by the Committee in the light of the explanations given by the State party on domestic procedures available to the accused and reaffirming its conviction that its reply of 6 November 1978 should have been sufficient to settle the matter once and for all, added the following explanations:

Mr. Alberto Grille Motta, who had already been detained in 1967 for causing a disturbance on the premises of the Central Office of the Department of Montevideo, was again arrested on 7 February 1976 under prompt security measures for his alleged subversive activities from within the clandestine organization of the prescribed Communist Party.

He was placed at the disposal of the military courts which, by decision of 17 May 1976, ordered him to be tried on charges of subversive association and attempt to undermine the morale of the armed forces, under articles 60 (V) and 58 (3) respectively of the Military Penal Code.

At that time, contrary to what is stated in Mr. Grille Motta's communication, he appointed Dr. Susana Andreassen as his defence counsel.

On 3 June 1976, Mr. Grille Motta and three other detainees escaped from their place of detention, thus thwarting the course of justice.

The allegations that the author of the communication was subjected to ill-treatment and torture were nothing but a figment of the imagination of the author; they were nothing more than a further example of the campaign of defamation being waged against Uruguay with the object of discrediting its image abroad.

11. The Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol.

12. With regard to the exhaustion of domestic remedies, the Committee has been informed by the Government of Uruguay in another case (R.2/9) that the remedy of habeas corpus is not applicable to persons arrested under prompt security measures. Mr. Grille Motta states that he did in fact appeal to the Supreme Court of Uruguay against a ruling of the military court and that his appeal was dismissed. There is no evidence from which the Committee can conclude that there was any other domestic remedy available to him which he should have exhausted.

13. The Committee therefore decides to base its views on the following facts which have either been essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation: Alberto Grille Motta was arrested on 7 February 1976. About one month later, he was brought before a military judge without having any opportunity to consult a lawyer beforehand and after having been held completely incomunicado with the outside world. On 17 May 1976 he was ordered to be tried on charges of subversive association and attempt to undermine the morale of the armed forces under articles 60 (V) and 58 (3) respectively of the Military Penal Code. The remedy of habeas corpus was not available to him. He was arrested, charged and committed for trial on the grounds of his political views, associations and activities.

14. As regards the serious allegations of ill-treatment and torture claimed by Mr. Grille Motta to have continued for about 50 days after his arrest on 7 February 1976, the Committee notes that it follows from this account that such treatment continued after 23 March 1976 (the date of the entry into force of the Covenant and the Optional Protocol for Uruguay). Furthermore, in his communication of 25 April 1977, which was transmitted by the Committee to the Uruguayan Government, Mr. Grille Motta named some of the officers of the Uruguayan Police whom he stated were responsible. The State party has adduced no evidence that these allegations have been duly investigated in accordance with the laws to which it drew attention in its submission of 9 October 1979 in case R.2/9. A refutation of these allegations in general terms is not sufficient. The State party should have investigated the allegations in accordance with its laws and its obligations under the Covenant and the Optional Protocol and brought to justice those found to be responsible.

15. The Human Rights Committee has considered whether acts and treatment, which are prima facie not in conformity with the Covenant, could for any reasons be justified under the Covenant in the circumstances. The Government has referred to provisions of Uruguayan law, including the Prompt Security Measures. However, the Covenant (art. 4) does not allow national measures derogating from any of its provisions except in strictly defined circumstances, and the Government has not made any submissions of fact or law to justify such derogation. Moreover, some of the facts referred to above raise issues under provisions from which the Covenant does not allow any derogation under any circumstances.

16. The Human Rights Committee acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights is of the view that these facts, in so far as they have occurred after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay), disclose violations of the Covenant, in particular:

of articles 7 and 10 (1) on the basis of evidence of torture and inhuman treatment, which has not been duly investigated by the Uruguayan Government and which is therefore unrefuted;

of article 9 (3) because Mr. Grille Motta was not brought promptly before a judge or other officer authorized by law to exercise judicial power;

of article 9 (4) because recourse to habeas corpus was not available to him.

17. As regards article 19, the Covenant provides that everyone shall have the right to hold opinions without interference and that the freedom of expression set forth in paragraph 2 of that article shall be subject only to such restrictions as are necessary (a) for respect of the rights and reputations of others or (b) for the protection of national security or of public order (ordre public), or of public health or morals. The Government of Uruguay has submitted no evidence regarding the nature of the political activities in which Grille Motta was alleged to have been engaged and which led to his arrest, detention and committal for trial. Bare information from the State party that he was charged with subversive association and an attempt to undermine the morale of the armed forces is not in itself sufficient, without details of the alleged charges and copies of the court proceedings. The Committee is therefore unable to conclude on the information before it that the arrest, detention and trial of Grille Motta was justified on any of the grounds mentioned in article 19 (3) of the Covenant.

18. The Committee, accordingly, is of the view that the State party is under an obligation to provide the victim with effective remedies, including compensation, for the violations which he has suffered and to take steps to ensure that similar violations do not occur in the future.

APPENDIX

Individual opinion submitted by a member of the Human Rights Committee
under rule 94 (3) of the Committee's provisional rules of procedure

Communication No. R.2/11

Individual opinion appended to the Committee's views on the request of
Mr. Christian Tomuschat:

I can see no justification for a discussion of article 19 of the Covenant in relation to the last sentence of paragraph 13. To be sure, the petitioner has complained of a violation of article 19. But he has not furnished the Human Rights Committee with the necessary facts in support of his contention. The only concrete allegation is that, while detained, he was interrogated as to whether he held a position of responsibility in the outlawed Communist Youth. No further information has been provided by him concerning his political views, association and activities. Since the petitioner himself did not substantiate his charge of a violation of article 19, the State party concerned was not bound to give specific and detailed replies. General explanations and statements are not sufficient. This basic procedural rule applies to both sides. A petitioner has to state his case plainly. Only on this basis can the defendant Government be expected to answer the charges brought against it. Eventually, the Human Rights Committee may have to ask the petitioner to supplement his submission, which in the present case it has not done.

ANNEX XI

List of Committee documents issued

A. Eighth session

Documents issued in the general series

CCPR/C/1/Add.46	Initial report of Costa Rica
CCPR/C/1/Add.47	Initial report of Kenya
CCPR/C/1/Add.48	Initial report of the United Republic of Tanzania
CCPR/C/1/Add.49	Initial report of Mali
CCPR/C/6/Add.2	Initial report of Senegal
CCPR/C/9	Provisional agenda and annotations - Eighth session
CCPR/C/SR.177-194 and corrigendum	Summary records of the eighth session

B. Ninth session

Documents issued in the general series

CCPR/C/1/Add.50	Initial report of Colombia
CCPR/C/1/Add.51	Supplementary report of Denmark
CCPR/C/1/Add.52	Supplementary report of Norway
CCPR/C/2/Add.3	Reservations, declarations, notifications and communications relating to the International Covenant on Civil and Political Rights and the Optional Protocol thereto
CCPR/C/3/Rev.1	Provisional rules of procedure adopted by the Committee at its first and second sessions (embodying amendments and additions adopted by the Committee at its third and seventh sessions)
CCPR/C/6/Add.5	Initial report of Venezuela

CCPR/C/10

Consideration of reports submitted by States parties under article 40 of the Covenant - Initial reports of States parties due in 1980: Note by the Secretary-General

CCPR/C/11

Provisional agenda and annotations - Ninth session

CCPR/C/SR.195-219/Add.1
and corrigendum

Summary records of the ninth session

C. Tenth session

CCPR/C/6/Add.4

Initial report of Italy

CCPR/C/12

Provisional agenda and annotations - Tenth session

CCPR/C/SR.220-246
and corrigendum

Summary records of the tenth session

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