REPORT

OF THE

HUMAN RIGHTS COMMITTEE

GENERAL ASSEMBLY

OFFICIAL RECORDS: THIRTY-SIXTH SESSION

SUPPLEMENT No. 40 (A/36/40)

UNITED NATIONS

REPORT

OF THE

HUMAN RIGHTS COMMITTEE

GENERAL ASSEMBLY

OFFICIAL RECORDS: THIRTY-SIXTH SESSION

SUPPLEMENT No. 40 (A/36/40)

UNITED NATIONS

New York, 1981

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.

/Original: English/French/
Russian/Spanish/

/29 September 1981/

CONTENTS

CONTENTS (continued)

CONTENTS (continued)

I. INTRODUCTION

A. States parties to the Covenant

1. On 31 July 1981, the closing date of the thirteenth session of the Human Rights Committee, there were 66 States parties to the International Covenant on Civil and Political Rights and 25 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. In addition, one other State acceded to the Covenant and to the Optional Protocol on 8 May 1981 (see annex I below). 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 thirteenth session of the Committee, 14 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.

3. Reservations and other declarations have been made by a number of States parties in respect of the Covenant or the Optional Protocol. These reservations and other declarations are set out verbatim in documents of the Committee (CCPR/C/2 and Add.1-4).

B. Sessions

4. The Human Rights Committee has held three sessions since the adoption of its last annual report: the eleventh session (247th to 262nd meetings) was held at the United Nations Office at Geneva from 20 to 31 October 1980; the twelfth session (263rd to 289th meetings) was held at United Nations Headquarters, New York, from 23 March to 10 April 1981; and the thirteenth session (290th to 316th meetings) was held at the United Nations Office at Geneva from 13 to 31 July 1981.

C. Membership and attendance

5. At the third meeting of States parties held at United Nations Headquarters, New York, on 12 September 1980, in accordance with articles 28 to 32 of the Covenant, nine members of the Committee were elected to replace those whose terms of office were to expire on 31 December 1980. The following four members were elected for the first time: Mr. Andrés Aguilar, Mr. Mohammed Al Douri, Mr. Felix Ermacora and Mr. Leonte Herdocia Ortega. Sir Vincent Evans and Messrs. Hanga, Mavrommatis, Movchan and Tarnopolsky, whose terms of office were to expire on 31 December 1980, were re-elected. A list of the members of the Committee is given in annex II below.

6. All the members, except Mr. Ganji, Mr. Kelani, Mr. Lallah, Mr. Movchan and Mr. Uribe Vargas, attended the eleventh session of the Committee. All the members except Mr. Movchan attended the twelfth session. The thirteenth session was attended by all the members.

D. Solemn declaration by new members of the Committee

7. At the twelfth session, before assuming their functions, the four newly elected members of the Committee made a solemn declaration in accordance with article 38 of the Covenant.

E. Election of Officers

8. At its 263rd meeting, held on 23 March 1981, the Committee elected the following officers for a term of two years in accordance with article 39, paragraph 1, of the Covenant:

Chairman:	Mr. Andreas V. Mavrommatis
Vice-Chairmen:	Mr. Bernhard Graefrath
	Mr. Julio Prado Vallejo
	Mr. Christian Tomuschat
Rapporteur:	Mr. Rajsoomer Lallah

F. Working groups and special rapporteurs

9. In accordance with rule 89 of its provisional rules of procedure, the Committee established working groups to meet before its eleventh, twelfth and thirteenth sessions in order to make recommendations to the Committee regarding communications under the Optional Protocol.

10. The Working Group of the eleventh session was established by the Committee at its 243rd meeting, on 31 July 1980 and it was composed of Messrs. Hanga, Lallah, Prado Vallejo, Sadi and Tomuschat. It met at the United Nations Office at Geneva from 13 to 17 October 1980 and elected Mr. Tomuschat as its Chairman/Rapporteur.

11. The Working Group of the twelfth session was established by the Committee at its 259th meeting, on 29 October 1980, and it was composed of Mr. Bouziri, Sir Vincent Evans, Mr. Janca, Mr. Mavrommatis and Mr. Prado Vallejo. It met at United Nations Headquarters, New York, from 16 to 20 March 1981. Sir Vincent Evans was elected Chairman/Rapporteur.

12. The Working Group of the thirteenth session was established by the Committee at its 287th meeting, on 9 April 1981, and it was composed of Messrs. Herdocia Ortega, Mavrommatis, Sadi and Tarnopolsky. It met at Geneva from 6 to 10 July 1981 and elected Mr. Tarnopolsky as its Chairman/Rapporteur.

13. At its eleventh, twelfth and thirteenth sessions, the Committee appointed Messrs. Dieye, Evans, Graefrath, Janca, Opsahl and Tomuschat as Special Rapporteurs

to study certain communications assigned to them respectively and to report thereon to the Committee.

14. Another working group was established for the eleventh session with a view to making recommendations on the duties and functions of the Committee under article 40 of the Covenant and related matters. This working group was composed of Messrs. Graefrath, Lallah and Opsahl and met from 13 to 17 October 1980. In the absence of Mr. Lallah, Mr. Mavrommatis formed part of the working group.

15. At its 287th meeting, held on 9 April 1981, the Committee also established a special working group of five of its members to meet for a period of one week prior to its thirteenth session in order to prepare for consideration by the Committee draft general comments, a draft decision on second periodic reports and recommendations concerning the list of questions most frequently asked by Committee members during the consideration of reports submitted by States parties under article 40 of the Covenant. The Group which was composed of Messrs. Bouziri, Graefrath, Lallah, Movchan and Opsahl met at Geneva from 6 to 10 July 1981 and elected Mr. Lallah as its Chairman/Rapporteur (see chap. III, sect. C, below).

G. Agenda

Eleventh session

16. At its 247th meeting, held on 20 October 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 eleventh 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

Twelfth session

17. At its 263rd meeting, held on 23 March 1981, 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 twelfth session, as follows:

1. Opening of the session by the representative of the Secretary-General

2. Solemn declarations by the newly elected members of the Committee in accordance with article 30 of the Covenant

3. Election of the Chairman and other Officers of the Committee

4. Adoption of the agenda

5. Organizational and other matters

6. Submission of reports by States parties under article 40 of the Covenant

7. Consideration of reports submitted by States parties under article 40 of the Covenant

8. Consideration of communications under the Optional Protocol to the Covenant.

Thirteenth session

18. At its 290th meeting, held on 13 July 1981, 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 thirteenth 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

19. In pursuance of the request of the Committee at its tenth session, 1/ the Committee was informed, at its eleventh session, of the approximate cost, as estimated by the competent services within the Secretariat, for the annual publication of two bound volumes, in the four working languages, one incorporating the summary records of the meetings of the Committee and the other incorporating the reports submitted by States parties under article 40 of the Covenant and other relevant documents of the Committee.

20. The Committee decided, for lack of time, to revert to the matter at a later stage.

21. At its twelfth session, the Committee was informed that the Division of Human Rights was in touch with the Department of Public Information with a view to exploring the possibility of having the Committee documents published outside the United Nations on a commercial basis, in the hope that that arrangement would reduce the financial implications, and that the Committee would be kept informed of any further developments.

22. At its thirteenth session, the Committee was informed by the Director of the Division of Human Rights of the detailed cost of publication of the bound volumes on a commercial basis, but that the United Nations Publications Board had indicated to the Division that it would not be willing to see funds committed for this purpose in the absence of a formal decision by the Committee requesting the Secretary-General to take the necessary steps to ensure the publication of the Committee's documentation. The Committee decided so to request the Secretary-General.

23. At its thirteenth session, the Committee also considered, firstly, the establishment by the Secretariat of a collection of precedents containing Committee decisions and views previously adopted under the Optional Protocol, as an internal working document for the better performance by members of their duties in the consideration of communications, and, secondly, the publication of selected decisions with a view to enabling States parties to the Optional Protocol, individuals in those States as well as scholars and other interested persons to have a better insight into the manner in which the Optional Protocol is applied in practice by the Committee.

24. As regards the collection of precedents for internal use, the Committee was informed of its availability to members and no other decision was required in this respect. As regards the publication of the selected decisions of the Committee, the Director of the Division of Human Rights informed the Committee that this had

---

1/ See Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 40 (A/35/40), para. 19.

certain financial implications which would require further investigation before the Committee could take a decision on the matter. The Committee, therefore, requested the Director to make the appropriate enquiries before taking a decision on the matter and to report to the Committee as soon as possible.

25. The Committee was informed that the final views adopted by the Committee under article 5, paragraph 4, of the Optional Protocol in eight communications had not been published by the Department of Public Information in press releases, on the ground that the views in the eight communications covered more than 45 pages.

26. At the thirteenth session, at the request of the Bureau, a press release was issued to the effect that the Committee had adopted views, in those eight communications and that copies could be obtained from the Division of Human Rights in Geneva.

27. The Committee further decided that all final views given under article 5 of the Optional Protocol in any given session should be published in the form of a press release after allowing a reasonable time for their communication to the interested parties, unless otherwise decided by the Committee.

B. Invitation extended to the Committee to meet in Bonn

28. At its twelfth session, the Committee was informed by its Chairman of a formal invitation addressed to it by the Minister for Foreign Affairs of the Federal Republic of Germany to hold its fourteenth session in Bonn, and of the assurances given by the Minister that the necessary accommodation and facilities would be available for that purpose.

29. The Committee welcomed this gesture on the part of the Federal Republic of Germany and decided to accept the invitation and to hold its fourteenth session in Bonn from 19 to 30 October 1981, and that the Working Group of Communications would meet as scheduled in Geneva during the preceding week, from 12 to 16 October 1981.

30. The representative of the Secretary-General welcomed the invitation, in particular since he took it that the Government of the Federal Republic of Germany was ready to cover the additional expenses incurred by the holding of a session away from Headquarters, and informed the Committee that the Secretariat would make the necessary arrangements with the Government of the Federal Republic.

31. At its thirteenth session, the Committee was informed by the representative of the Secretary-General of the steps so far taken for the holding of the fourteenth session in Bonn as from 19 to 30 October 1981. The Committee expressed its satisfaction at such steps and confirmed its previous decision to hold its fourteenth session in Bonn, with the Working Group on Communications meeting in Geneva from 12 to 16 October 1981. The Committee further decided, that with a view to making the work of the Committee better known to the public, its agenda would be such as to enable it to meet in open session, with very few sessions being devoted to the consideration of communications under the Optional Protocol, which take place in closed meetings. However, time would be given for the consideration of urgent communications.

III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

A. Submission of reports

32. 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. 2/

33. At its eleventh session, the Committee was informed of the status of submission of reports (see annex III to this report) and that, since its tenth session, Guinea, Jamaica and Portugal had submitted their initial reports under article 40 of the Covenant, thus bringing the number of initial reports submitted under that article to 44.

34. The Committee noted that a small number of States had not submitted reports which were overdue, some since 1977 and some since 1978. In addition, two other States parties had undertaken to submit new reports but had not done so. The Committee had taken a number of steps with a view to ensuring that the reports were submitted. These steps included an initial reminder followed by two other reminders and an aide-mémoire sent to these States parties. Further, the names of three States parties were, in accordance with rule 69 (2) of the provisional rules of procedure, mentioned in the annual report of the Committee as having failed to fulfil their reporting obligations under the Covenant and a letter was addressed by the Chairman of the Committee, on its behalf, to the Chairman of the Third Meeting of States parties to the Covenant 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. 3/

35. Since the steps taken by the Committee had been of no avail in a few cases, the Committee decided to hold an informal meeting with the States parties which had not submitted their reports already due in 1977 and 1978, namely, Guyana, Lebanon, Panama, Uruguay and Zaire, as well as the States which had undertaken at the sixth session of the Committee to submit new reports, namely, Chile and Iran. The purpose of the proposed meeting was to discuss the matter with them and the manner in which the Committee might be able to assist their Governments in fulfiling their reporting obligations under the Covenant.

36. At its twelfth session, the Committee was informed that all of the States parties invited at its eleventh session to meet with it had sent their representatives for that purpose, with the exception of Chile. The attention of

---

2/ Ibid., Thirty-second Session, Supplement No. 44 (A/32/44), annex IV.

3/ Ibid., Thirty-fifth Session, Supplement No. 40 (A/35/40), chap. III A.

the Committee was drawn to the statement by Chile at the thirty-fifth session of the General Assembly (A/35/PV.96) to the effect that it would withhold co-operation from the Committee, and to a communication addressed to the Chairman of the Committee, on 24 March 1981, in which the Permanent Mission of Chile reiterated the position of its Government as set forth in the letter addressed to the Chairman on 9 July 1979 by the Minister of Foreign Affairs. 4/

37. The representative of Guyana indicated to the Committee that the report of Guyana had just been submitted and the representatives of Panama and Zaire indicated that appropriate steps would be taken to submit their reports in the near future.

38. As regards Iran and Lebanon, the representatives referred to the well-known abnormal situation existing in their respective countries which made it difficult for their Governments to submit the reports in question. The representative of Uruguay also referred to the situation in his country but, as the other representatives, whom the Committee met at the informal meeting, indicated the willingness of his Government to co-operate with the Committee in its objective of furthering the promotion and protection of human rights in accordance with the obligations undertaken by States parties under the Covenant.

39. The Committee stressed that the Covenant was designed to apply both in normal and abnormal times and that article 4 as well as article 40 (2) of the Covenant contained appropriate provisions concerning particular situations. In difficult situations, therefore, the reports which States parties had undertaken to submit under article 40 became all the more important inasmuch as, even in times of emergency, derogations from certain fundamental rights were not permissible. The Committee, therefore, wished that the reports be submitted with some urgency indicating, where appropriate, the factors and difficulties affecting the enjoyment of the rights provided for in the Covenant and the extent to which particular rights, if any, had been derogated from within the purview of article 4 of the Covenant. The representatives undertook to make the wish of the Committee known to their respective States.

40. The Committee agreed, due to lack of time, to postpone its consideration of the question of co-operation by Chile with the Committee until a later date.

41. At the twelfth session the Committee was informed of the status of submission of reports (see annex III to this report) and that, since the eleventh session, Guyana, Iceland, Japan, Morocco, the Netherlands and Rwanda had submitted their initial reports under article 40 of the Covenant, thus bringing the number of initial reports submitted under that article to 50.

42. The Committee decided to postpone a decision on ways and means of dealing with the reports requested but not received from other States parties until the Committee's next session.

43. At its thirteenth session, the Committee was informed of the status of the submission of reports from States parties (see annex III). With regard to those

---

4/ For the text of the letter from the Minister of Foreign Affairs of Chile and the reply of the Chairman of the Committee thereto, see Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 40 (A/34/40), annex V.

States with whose representatives the Committee had had an informal meeting at the twelfth session, as indicated in paragraph 35-38 above, and which had not yet submitted their reports, members of the Committee had an exchange of views 5/ on the question whether a report should not be requested forthwith in view of the time that had elapsed since their reports were due, and on whether the request should not be extended to other States where a state of emergency prevails. For lack of time, consideration of the matter could not be completed and the Committee decided to resume consideration of the matter at its next session.

B. Consideration of reports

44. The following paragraphs are arranged on a country-by-country basis according to the sequence followed by the Committee at its eleventh, twelfth and thirteenth 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. 6/

Venezuela

45. The Committee considerd the initial report (CCPR/C/6/Add.3) submitted by the Government of Venezuela at its 248th, 249th and 252nd meetings on 21 and 23 October 1980 (CCPR/C/SR.248,249 and 252).

46. The report was introduced by the representative of the State party who assured the Committee of his Government's willingness to co-operate with it in every way and to answer any questions it might wish to ask regarding the report.

47. Members of the Committee expressed their appreciation for the willingness of the Government of Venezuela to co-operate with the Committee and praised the frankness of that Government in acknowledging that some legal provisions still in force were not in conformity with the Covenant. They noted, however, that Venezuela, like many other States parties, had confined its report largely to comparing provisions of the Venezuelan Constitution and legislation with those of the Covenant. That was not enough to give a full picture of the factors and difficulties met in the implementation of the Covenant and of the progress made in the enjoyment of human rights as stipulated under article 40 of the Covenant. It was further pointed out that constitutions everywhere guaranteed many of the rights and freedoms provided for in the Covenant, but that these rights and freedoms only

---

5/ See CCPR/C/SR.312, paras. 47-68

6/ At its twelfth session, the Committee, at the request of the Government of Peru, decided to postpone the consideration of that Government's report, originally scheduled for consideration at that session, pending a new report to be prepared for submission to the Committee within six months (see CCPR/C/SR.264).

At its thirteenth session, the Committee decided to postpone the consideration of the report of Guinea, originally scheduled for cosideration at that session, in view of the fact that no representative from that State party could be present (see CCPR/C/SR.298 and 299).

became a reality when implementing laws and administrative measures lent substance to them.

48. In connexion with article 1 of the Covenant, information was requested on the policy of Venezuela towards the promotion of the right of self-determination in other Latin American countries, South Africa, the Middle East and Asia.

48a. As regards article 2 of the Covenant, reference was made to the undertaking by States parties to respect and to ensure to all individuals within their territory the rights recognized in the Covenant without distinction of any kind and to certain articles of the Constitution of Venezuela regarding the rights enjoyed by foreigners and by naturalized citizens. Clarification was requested on the provision that foreigners had the same duties and rights as Venezuelans, with the limitations and exceptions established by the Constitution and the laws, and on the distinction embodied in the provision that any naturalized Venezuela citizens who had entered the country at the age of eight or later would not enjoy the same rights as those who had entered the country before they reached the age of seven. More information was also sought on the status of the Covenant in Venezuelan domestic law and on the status of special laws if the Covenant had been incorporated in a special law, on whether the Supreme Court of Justice wa empowered to prevent the implementation of laws and acts of any kind which might be contrary to the provisions of the Covenant; and on the proposed reforms that had been submitted to Cogress in 1979 with a view to bringing Venezuelan law into line with the provisions of the Covenant. Questions were asked as to the difference between the remedy of habeas corpus and the remedy of amparo, how was it possible, as stated in the report, that the remedy of amparo was available when the provisions governing its exercise were not yet in existence; whether there were any specialized administrative courts that had competence in areas in which individuals might claim to have been injured by arbitrary administrative acts; what action the Public Prosecutor had taken against the national executive and against the security forces, and on what occasions, to defend human rights in cases of reported abuses of authority, how his independence was ensured and in what circumstances could the Public Prosecutor be removed.

49. Commenting on article 3 of the Covenant, members of the Committee noted that the report recognized that a few discriminatory provisions against women still existed and stressed that the achievement of equality between men and women was not merely a legislative problem. Experience had shown that many States parties encountered difficulties in ensuring real equality between men and women before the law. Information was requested on the steps taken to remedy the legal situation in that respect and on the participation of women in the economic, political and cultural life of the country.

50. In connexion with article 4 of the Covenant, a concern was expressed at the fact that, under the Constitution, some guarantees could be suspended under wide conditions than those laid down in the Covenant and with less exceptions than stipulated therein and that, according to the report, the suspension or restriction of guarantees was considered to be one of the most effective means available to the National Executive to protect the institutions, order and peace of the Republic. The representative was asked whether at the present time there was any state of emergency or disorder in Venezuela which would warrant the restriction or suspension of the guarantees provided for in the Constitution.

51. Commenting on article 6 of the Covenant, members of the Committee commended Venezuela for having abolished the death penalty as early as 1864. In order to know how the right to life was guaranteed in practice, it was asked what legal régime governed the use of fire arms by the police forces. It was noted that the report referred only to the prohibition of capital punishment and that the right to life not only required the authorities to refrain from arbitrarily depriving an individual of life but to take positive steps to reduce infant mortality, illiteracy, unemployment and, for example, the risk of falling victim to a political or common law murder. Information was requested on the Government's efforts in those areas.

52. Regarding articles 7 and 10 of the Covenant, it was pointed out that it was not enough to quote the provisions of the Constitution and of the Criminal Code which prohibited torture. The report should indicate whether Venezuela observed the Standard Minimum Rules for the Treatment of Prisoners laid down by the United Nations and whether there were any bodies responsible for verifying the treatment to which prisoners were subjected, what steps were taken to investigate charges of ill-treatment at the hands of the police and security services, whether investigations were instituted promptly and, if so, what their outcome was. It was also asked whether there existed in Venezuela any express legislative provisions prohibiting medical or scientific experiments on people without their full consent; what laws or regulations governed non-voluntary confinement in psychiatric hospitals; and what the purpose was of the classification of detainees referred to in the Prisons Act and Regulations.

53. With reference to article 8 of the Covenant, it was asked whether express provisions existed which would prohibit forced labour and to what extent the "work colonies" referred to in the report could be justified under article 8 of the Covenant.

54. As regards article 9 of the Covenant, one member noted that, according to the Code of Criminal Procedure, an accused was not entitled to have a lawyer until the preliminary investigation had been concluded and he pointed out that that was not only a departure from the guarantees that should be afforded to the accused but was also in conflict with the Constitution of Venezuela which provided that defence was an inviolable right at every stage and level of trial. Questions were asked as to what was the maximum legally-fixed time limit within which an accused person had to be brought before the courts; what laws or regulations governed the conditions and length of detention when a person was held <u>incommunicado</u>; whether any persons were still detained because of their political views or activities and, if so, under what legal provisions they were being kept in detention, how many were they and whether they would be brought to trial; whether the security forces and armed forces always carried out their duties in liaison with the civilian government or whether they acted independently of it; and what moral or pecuniary compensation did criminal or civil law provide in the case of illegal arrest or detention.

55. In connexion with article 13 of the Covenant, members of the Committee noted that aliens who were legally on Venezuelan territory were expressly precluded by law from making any appeal against an expulsion order and pointed out that such a provision was not in conformity with the Covenantñ The statement in the report to the effect that the rule wsa in fact implicitly revoked by the provisions of article 13 of the Covenant was unconvincing, for the mere incorporation of the Covenant into the internal legal order wa not sufficient in itself to rectify such a situation because there could be no appeal unless there was express provision and

an established procedure for appeals. Information wa requested on the rights enjoyed by the many foreigners who entered Venezuela to seek asylum or take up work and on the treatment accorded to these foreigners particularly Colombians, by the police and customs officers.

56. Referring to article 14 of the Covenant, members sought information on the laws which ensured the independence of the judiciary particularly with regard to the appointment, removal and suspension of judges on the law which established the powers of the Council of the Judiciary and on the public authorities represented in this Council; on whether members of the Public Prosecutor's Department could be transferred or punished; on the guarantees enjoyed by anyone accused of a criminal charge as stipulated by article 14 of the Covenant; on the cases in which civilians might be tried by military courts and on the reasons for removing them from the jurisdiction of ordinary courts; on whethe the procedures of military courts satisfied the requirements of the Covenant and on whether a person convicted by a military court could appeal to a higher tribunal; and on the procedure applicable to minors, on the courts before which they could be brought and on the social rehabilitation measures available to these courts for the benefit of minors.

57. Commenting on article 18 of the Covenant, members asked which religions were practised in Venezuela, whether the State adopted a uniform attitude to them, and whether any one religion received State aid of any kind. Clarification was requested on the statements in the report that religious faith should be subject to the "supreme inspection of the National Executive in conformity with the law" and it was asked what precisely such inspection entailed and on what basis it was carried out. Quoting an article of the Constitution which provided, inter alia, that "since the Republic possesses the right of ecclesiastical patronage, this will be exercised according to law" one member asked how the right was implemented in practice and how it was compatible with the Covenant. Noting that the Constitution provided that military service was compulsory, some members asked whether conscientious objection was taken into account and whether other forms of service could replace it.

58. Regarding the freedom of expression provided for in article 19 of the Covenant, clarification was requested of the "statements which constitute offences" mentioned in the Constitution and it was asked how the courts conceived the protection of the national interest in matters relating to freedom of expression and whether there were any administrative measures which enabled all sections of the population to use the mass media such as radio and television.

59. Commenting on article 20 of the Covenant, some members commended the prohibition by the Constitution of propaganda for war in Venezuela, more so as an anti-war legislation was rare in Latin America. It was asked whether any violation of that provision entailed the application of penalties provided for by the Criminal Code and whether there existed a concurrent prohibition of any advocacy of national, racial or religious hatred, in conformity with article 20 of the Covenant.

60. In relation to articles 21 and 22 of the Covenant, questions were asked as to whether the law governing meetings in public places provided for in the Constitution had been promulgated and, if so, what were its provisions, and, in particular, whether any distinction was made between nationals and other persons regarding the enjoyment of the right of assembly and the right of peaceful, unarmed demonstration. The representative was also asked whether the legislation to guarantee the equality of political parties before the law, provided for in the

Constitution, actually existed; whether the right to form and join trade unions was subject to restrictions; and whether trade unions had a purely economic role or whether they also had a political role.

61. As regards article 23 of the Covenant, members noted that the legal age for marriage was 14 for males and 12 for females. They wondered whether persons of such age were capable of giving their free and full consent in conformity with the Covenant, whether any consideration had been given to changing the age at which marriage might be validly contracted and in what circumstances consent to marriage was vitiated. They also noted with concern the acknowledgement in the report that in Venezuela there was no equality of rights and responsibilities of spouses as to marriage and wondered what action the Government was proposing to take in order to bring its domestic law into line with the Covenant. Members also asked whether the State paid allowances for large families; what laws governed the property of a married couple given the predominant role of the husband; what attitude was adopted by the administrative authorities and judges in divorce proceedings, particularly in cases involving adultery, and whether that attitude was non-discriminatory in terms of sex or whether the man was treated more indulgently than the woman. Clarification was also requested on the statement in the report that "a petition for divorce or separation may be initiated only by the spouse who had not given grounds therefor" and of its application in practice.

62. Commenting on article 24 of the Covenant, members asked whether child labour was authorized or practised and, if so, to what extent and which provisions regulated it and what were the Government's plans to eliminate it; whether an illegitimate child could obtain recognition by his father through the courts and whether a distinction was made between legitimate and illegitimate children regarding inheritance.

63. With reference to article 25 in conjunction with article 26 of the Covenant, some members noted that only citizens born in Venezuela could hold high public office or be deputies or senators. Since the Constitution admitted the possibility of a person becoming a Venezuelan citizen by naturalization, they raised the question whether the provisions governing access to certain offices did not establish a discrimination based on national origin, or birth. Noting also that illiterate citizens were not eligible to hold public office, members inquired what measures were being taken to eliminate illiteracy and thus to promote equality in the enjoyment of the right to public office. The question was asked whether, since voting was compulsory by law, this was compatible with the Covenant; whether the law provided for penalties in the event of failure to comply with this obligation and what those penalties were. The question was also asked whether the provision in the Constitution that the right to vote in municipal elections could be extended to foreigners, subject to certain conditions, was in practice implemented.

64. In connexion with article 27 of the Covenant, information was requested on the special measures required for the protection of indigenous communities and their progressive incorporation in the life of the nation, on whether the Indian communities desired such incorporation and participated in the taking of decisions which affect them, on whether the provision for proportional representation of minorities in the Chamber of Deputies affected Indians, on the number of indigenous inhabitants and of the groups they were divided into, on their standard of living and level of education compared with that of the rest of the population, on the protection afforded them under the special measures or otherwise against the seizure of their traditional homelands for the purpose of agricultural or

industrial expansion and on the steps taken to guarantee to them the effective enjoyment of their rights under the Covenant. It was also asked how the special protection to be accorded to indigenous peoples was legally reconciled with the concepts or equality before the law and equal protecton by the law, whether that contradiction had been examined in the courts and in Congress and, if so, how the question had been settled.

65. Replying to questions raised by members of the Committee, the representative of Venezuela stressed that the replies given by him would be of a preliminary nature and that the official replies of his Government would be forwarded in due course by the competent official organs of his country.

66. In respect of article 1 of the Covenant, he stated that his country supported and voted in favour of self-determination in the various international forums.

67. As regards article 2 of the Covenant, the representative pointed out that, with the exception of political rights, aliens within his country enjoyed the same rights as Venezuelans; that aliens and naturalized Venezuelans had certain political rights in respect of public and municipal office and that it was only logical that a country of immigration like Venezuela should have certain rules to protect the rights of those who were Venezuelans by birth. He pointed out that in Venezuela, special laws were equated, especially in the case of international agreements, with the basic laws which governed such institutions as the Supreme Court, the Public Prosecutor's Department and the Office of the Controller-General. As for the difference between the remedies of habeas corpus and amparo, he stated that the latter protected all the individual rights laid down in the Constitution whereas the former, which was specifically designed to protect personal liberty, provided for a special procedure to ensure that no person could be imprisoned without a legal cause being assigned in the warrant of committal. Although the laws regulating those remedies had not yet been promulgated, it was perfectly possible to invoke them under the Constitution. The Public Prosecutor's Department was an autonomous body which ensured compliance with the Constitution and the law, was the surest guarantee of the constitutional order and the most effective safeguard of individual rights.

68. Replying to questions raised under article 3 of the Covenant, the representative referred to a Bill introduced by the Executive in 1980 for the partial reform of the Civil Code in matters pertaining to, inter alia, the legal situation of women. That measure constituted an important step towards improving the situation in 1979 of a Ministry of State for the Participation of Women in Development, which was headed by a woman. Many women were engaged in the diplomatic service and in the judiciary.

69. Regarding the concern expressed by members of the Committee in connexion with the provisions of article 4 of the Covenant, he stated that, in view of the conditions prevailing in Venezuela after long periods of dictatorship, it was not surprising that the legislator had assigned to the President the power necessary to protect democracy. He pointed out that nearly 16 years had elapsed since the last decision had been taken to declare a state of emergency and suspend guarantees. In the event that Venezuela was compelled to adopt a similar measure in the future, it would follow the reporting procedure set out in article 4 of the Covenant. He informed the Committee that the competent authorities in his country would carefully analyse any possible conflict that may exist between the Covenant and the Constitution concerning the suspension of rights guaranteed under the Covenant.

70. In reply to questions raised under articles 7, 9, 10 and 14 of the Covenant, the representative states that there were legal procedures to enable a person whose rights had been infringed, whether by third parties or by illegal acts of the public authorities, to lodge a complaint. The time-limits prescribed for each stage of the trial proceedings were to be found in the Codes of Criminal and Civil Procedure. The right of a person who did not speak Spanish to be supplied with an interpreter if he had to appear before the courts was embodied in the law. He informed the Committee that, in many cases, juvenile courts were presided over by women and that work was currently in progress on the partial amendment of the Code of Criminal Proceedings with a view to streamlining the criminal justice system and speeding up trials.

71. In respect of the questions put to him under article 13 of the Covenant, he stressed that all the persons who had found in Venezuela a land of asylum had become fully integrated into Venezuelan life and their children were fully-fledged Venezuelans. The problem of Colombians who did not have proper papers was, however, an extremely sensitive one which could best be dealt with by his Government in writing.

72. Responding to questions raised under article 18 of the Covenant, he pointed out that Venezuela tolerated all kinds of religion as well as various organizations and colonies of people belonging to sundry sects and having varied practices. The law did not provide for conscientious objection. Under a new law, however, there were several grounds on which a person could be excused from military service.

73. In connexion with article 19 of the Covenant, he stated that the law on the press, which was designed to prevent abuses, had still not been promulgated. Various problems had arisen because there were certain persons in control of newspaper corporations who conducted campaigns that were not conducive to the public good and might even undermine international relations.

74. As regards article 21 and 22 of the Covenant, he stated that certain municipal bye-laws had been enacted concerning the right of assembly but that there was normally complete freedom in the matter. Free trade unions were permitted and there were many organizations activein political life. Other types of organizations were also permitted but were regulated by law.

75. Replying to questions raised under article 23 and 24 of the Covenant, the representative pointed out that the age at which marriage could be contracted had been determined by reference to the age at which it was possible to procreate or conceive. However, by law, a woman under the age of 18 and a man under the age of 21 had to obtain their parents' permission to marry. He conceded, however, that the whole position required reconsideration. Matters pertaining to the family and the administration of the joint estate of husband and wife were included in a Bill introduced by the Executive in 1980 for the partial reform of the Civil Code. As matters stood, an illegitimate child could inherit only half as much as a legitimate child. A Bill was before Congress to make legitimate and illegitimate children equal in all respects, particularly with regard to succession. A Council for the Child existed in Venezuela to deal with all matters concerning Children and their problems in the family. Minors could institute proceedings to establish recognition of paternity.

76. Responding to questions put to him under article 27 of the Covenant, the representative stated that the Indian population of Venezuela occupied large tracts of sparsely populated land along the border with Colombia and in the federal territories. They had their own languages and the Government was carrying out a study of their communities. Any moves to integrate them into the national life were made solely for their own benefit.

77. The representative reiterated his earlier statement that the Government would be pleased to reply more fully in writing to the questions raised.

Denmark

78. The Committee considered the third part of the initial report of Denmark (CCPR/C/1/Add.51) covering articles 8 to 16 and 23 to 27 of the Covenant and containing further replies to questions raised by members of the Committee during the consideration of the first and second parts of the report, 7/ at its 250th, 251st and 253rd meetings on 22 and 23 October 1980 (CCPR/C/SR.250, 251 and 253).

79. Members of the Committee considered the implementation by Denmark of articles 8 to 16, then of articles 23 to 27 of the Covenant. They also raised questions relating to the first and second parts of the initial report. For convenience purposes, these latter questions and the answers thereto will be dealt with first in paragraphs 80 to 85.

80. Noting that the Covenant had not been incorporated into Danish domestic law, members asked whether, in Denmark, the Ombudsman had ever acted in a case where a citizen considered that the rights to which he was entitled under the Covenant had been violated and if not, whether the Government had considered broadening his powers with a view to increasing the effectiveness of the Covenant; whether such a citizen would have a remedy before a court or any other authority empowered to secure the implementation of the Covenant or to invoke it in support of a decision or opinion; whether the higher authorities had provided the subordinate authorities with detailed instructions to the effect that they were required to applyapply the Covenant in the exercise of their discretionary powers; whether the Danish Council on Equality of Status was a body designed to promote or protect equality and whether a person who considered that his equality of status had not been respected could lodge a complaint with the Council or with some other body; and whether the Danish Government was not under an obligation to set up administrative bodies to assume responsibility for instituting legal proceedings on behalf of the victim of discrimination.

81. In his reply, the representative of the State party pointed out that any individual who considered he had suffered a violation of the rights conferred on him by the Covenant could request the competent authorities to decide whether their application of domestic law was in keeping with the interpretation of the relevant

---

7/ The first part of the initial report (CCPR/C/1/Add.4), which concerned the general framework in which the rights covered by the Covenant were implemented and protected in Denmark, and the second part (CCPRC/C/1/Add.19), which related to the implementation in Denmark of arts. 1 to 7 and 17 to 22 of the Covenant, were considered by the Committee at its 54th meeting on 19 January 1978 (CCPR/C/SR.54). For a summary of this discussion, see Official Records of the General Assembly, Thirty-third Session, Supplement No. 40 (A/33/40), paras. 95-110.

provisions of the Covenant; that, in construing domestic law, international instruments to which Denmark was a party constituted one of the points of reference and were taken into account for the interpretation of domestic law; that his Government's official position was that the public authorities were legally bound to exercise the discretionary powers vested in them with due regard to the terms of the international instruments ratified by Denmark; that his country had never considered the possibility of providing the Ombudsman with special powers in that area; that although he himself did not recall any such case, it could be assumed that, under the Ombudsman Act, any incompatibility of which the Ombudsman had knowledge between domestic law and the international obligations entered into by Denmark could be taken up by him and notified to the competent authorities; that the Ombudsman was empowered to act even if no individual complaint had been submitted to him and that he could decide, on his own initiative, to inquire into any act or failure to act on the part of the administration; and that, in regard to the circulation of the text of the Covenant, he knew of no specific measures taken by the administrative authorities, but there had recently been information meetings, organized jointly with the Directorate of Human Rights of the Council of Europe, in which private organizations took part. He informed the Committee that his Government would reply later to the questions raised regarding equality of status in Denmark.

82. Citing several provisions from the Danish Constitution which, inter alia, sanctioned the Evangelical Lutheran Church as the established church which, as such, was supported by the State, members of the Committee wondered whether the pre-eminent status accorded to this church was accompanied by privileges and whether it was prejudicial to the rights of persons having other religious convictions; whether the existence of an official religion might not jeopardize the freedom of religion laid down in article 18 of the Covenant; whether those provisions did not mean that a person who professed another religion could be constrained to make a personal contribution to the established church; and how Denmark reconciled the right to freedom of religion with the Danish law which only excused a child from receiving instruction in religious knowledge when the party having custody of the child declared in writing that he would himself provide the child with such instruction.

83. The representative replied that the prevailing opinion in Denmark was that the State had primarily a negative obligation to refrain from infringing upon the various freedoms guaranteed; that it was not positively bound to grant privileges to all or to each; that Danish law provided that the established church was financed by a special tax for which only members of that church were liable and that no one shall be liable to make personal contributions to any denominations other than the one to which he adheres; and the fact that the State provided, in public schools, a moral or religious education based on the Christian religion could not be considered as discriminatory, provided that such education was not compulsory for the children of parents who adhered to different philosophies.

84. Members of the Committee wondered whether the Danish Constitutional Act did not restrict to "citizens" the rights provided for under articles 21 and 22 of the Covenant. Questions were asked as to what was meant by the term "unlawful purposes" which would warrant the dissolution of associations under that Act; what kind of association could be declared unlawful; and whether any association had been so declared.

85. The representative stated that the word "citizens" which appeared in the Constitution was to be understood and interpreted as referring to any person present in the national territory and, consequently, to foreigners; that an act deemed unlawful for an individual was likewise unlawful for an association but that the prevailing view in the jurisprudence of Denmark was that the legislature was sovereign and could decide that an object which might be freely pursued by an individual might not be so pursued by an association. However, in fact, since the beginning of the twentieth century, there had been only two cases in Denmark of an association having been prohibited by a judicial decision.

86. With regard to article 9 of the Covenant, it was pointed out that this article covered all forms of interference with personal liberty including that which ensued from administrative or judicial decisions taken on a variety of grounds, such as health, public order or military discipline. Information was requested on the legal safeguards available to persons deprived of their liberty, including those who fell outside the scope of criminal proceedings. Noting that, under Danish law, the police had to inform a person arrested "as soon as possible" of the charges against him, one member wondered whether this expression meant in fact "at the time of arrest" as was required by the Covenant. Questions were also asked as to whether it was possible for the person under arrest to call upon the services of a lawyer during the crucial early stages of his detention; whether a detainee placed in isolation was prevented from communicating with his lawyer; and whether there were any provisions for moral compensation, in addition to material compensation in cases of unlawful arrest or detention.

87. In connexion with article 10 of the Covenant, clarification was requested on what appeared to be a contradiction between one statement in the report that "a decision for isolation can be made only by a law court" and another statement that, if warranted by special circumstances, the principal of the relevant institution might decide that a prisoner should be temporarily subject to solitary confinement. Information was also sought on the length of time for which a person could be held in solitary confinement; on whether the practice had ever been questioned on the grounds that it constituted cruel or inhuman treatment or punishment; and on the remedies that were available to prisoners if the prison authorities violated prison regulations.

88. Commenting on article 13 of the Covenant, members of the Committee requested clarification on the provisions of the Danish law under which an alien could be expelled if he had engaged in "activities of a hostile character", had committed civil offences, did not have sufficient means to support himself, or if it was presumed that he intended on entry to commit criminal offences. It was also asked what rules of procedure were applied when an administrative act involving an order for expulsion was challenged and whether the individual concerned could have an oral hearing or could only make representations in writing; what formalities there were for the issue or renewal of work permits for aliens; and what formal instructions were given to security and police forces at Danish airports in connexion with the entry of aliens some of whom were faced with a discretionary refusal by the authorities to grant them entry. Information was also requested on the work of the Committee set up to revise the legislation relating to the admission of aliens into Denmark.

89. With reference to article 14 of the Covenant, information was requested on the measures designed to ensure independence of the judiciary, particularly on the rules regarding the appointment of judges, their tenure of office and disciplinary

measures during their term of office. Questions were asked as to whether the prosecuting authorities in Denmark were free to decide not to pursue a case before the courts for various reasons, even if they considered the person concerned to be guilty. Commenting on the right of a person to defend himself through legal representatives of his own choosing, members asked what experience had prompted the introduction of the rule that a defence counsel chosen by the accused could be rejected by the court, and whether a foreign lawyer would be permitted to plead in the Danish courts to defend a person accused of a criminal offence. Information was also requested on legal aid in Denmark and on whether there was a backlog of cases in the courts which might affect the right of the accused to be tried without undue delay and, if such were the case, what measures were envisaged to speed up proceedings.

90. As regards article 23 of the Covenant, one member pointed out that, as traditionally conceived, the family was based on marriage, and that, in some countries, however, it was becoming increasingly common and socially acceptable for persons who were not married to live together and to have children. He wondered whether such couples constituted families within the meaning of article 23 of the Covenant in the light of current experience in Denmark and, if so, whether they enjoyed the right "to protection by society and the State" recognized in respect of the family by this article, and whether they were so considered for the purposes of, inter alia, taxation. Questions were also asked as to whether Danish legislation expressly indicated that future spouses had to be of different sexes; whether church marriages, even if celebrated in a church other than the established church of Denmark, had the same legal status as civil marriages; whether in Denmark, the minimum age laid down for marriage was the same for both sexes; why, if young people wished to marry before the age of 18 years, they had to obtain permission from the chief administrative authority rather than just the consent of their parents; what appeal procedure was available to the parents in case such marriage was authorized against their wish; what was meant by "adultery or any other act comparable to adultery"; and what the circumstances were in which an administrative decree could dissolve a marriage and what remedies were available to either spouse against an administrative measure which could be prejudicial to their interests.

91. Commenting on article 24 of the Covenant, members asked whether the provision that young persons may not be employed for more than 10 hours per day was not only excessive but also contrary to international norms on the subject; whether illegitimate children could inherit from their natural father and what measures were being taken to ensure that they were placed on an equal footing with legitimate children; and what the legal position was in the case of children born of stateless parents having regard to article 24, paragraph 3, of the Covenant.

92. As regards article 25 of the Covenant, it was noted that any Danish subject had the right to vote provided that he had not been declared incapable of conducting his own affairs. Questions were asked as to whether such an incapacity was decided by a judicial body, whether it was an ad hoc decision or whether it arose from the fact that the person concerned was in tutelage or under guardianship; and whether voting was obligatory or not. It was also asked what authority decided that, in the eyes of the public, a certain act committed by a person made him unworthy to be a member of the Folketing and what criteria were applied; how military posts and assignments could be considered to be a part of the civil service and whether access to such posts and assignments was actually forbidden to women. A question was also asked as to how the fact that executive

power in Denmark was in the hands of a single family and the monarch could be invested with it only through inheritance and only if he or she was a member of the Evangelical Church could be considered compatible with articles 2 and 25 of the Covenant.

93. With reference to article 26 of the Covenant, it was noted from the report that equality before the law was considered to be an administrative rule, not a constitutional one. The representative was requested to clarify this point and to inform the Committee of cases in which the courts or administrative bodies had applied this principle. The question also arose as to whether the Legislature was bound to respect the principle of equality when promulgating laws and whether, in the views of Denmark, there was any distinction between "equality before the law" and "equal protection of the law".

94. Commenting on article 27 in conjunction with article 1 of the Covenant, members sought information on the indigenous peoples of Greenland, on the teaching of their languages in schools in Greenland, on their access to higher education, on whether all the electors to the popularly elected bodies in Greenland had been indigenous or whether some of them had been Danish by blood, on the nature of the referendum on home rule, particularly whether an effective choice between home rule and independence were put to the people on the progress that was being made in implementing the right of the population of Greenland to self-determination, including their right to accede to independence, if they so desired, and on the German minority in North Schleswig.

95. Replying to questions raised by members of the Committee concerning the third part of the report, the representative of Denmark first expressed his appreciation for the critical observations that had been made, since it was important to have a dialogue on those areas where the Danish authorities might be in some doubt as to how best the provisions of the Covenant should be reflected in domestic law.

96. With respect to article 9 of the Covenant, he informed the Committee that, when his country had ratified the Covenant, it had taken the view that article 9 related only to arrests and detentions within the framework of the Administration of Justice Act. He pointed out that whereas section 2 of Article 71 of the Constitution contained a general provision establishing that a person could be deprived of his liberty only by due process of law, sections 6 and 7 of that Article were concerned solely with deprivations of personal liberty outside the field of criminal proceedings; that the Constitution provided for a special Board to be set up by Parliament to supervise the treatment of persons deprived of their liberty outside criminal proceedings and to which those persons might apply; that such persons might also address themselves to the Ombudsman, if the institution in which they were confined were operated by the central Government authorities; that the law did not provide for specific time-limits within which a person was to be brought before the court and that it was primarily the responsibility of the court to make sure that the police investigation was not unduly protracted; that it was sufficient for the individual who had been deprived of his liberty to demand that his case be brought before the court and the administrative authority concerned was then constrained to bring the case to court within the very narrow time-limits laid down; that, according to the Administration of Justice Act, a person who had been arrested was entitled to call upon the services of a lawyer; that in all cases of partial or total isolation the prisoner had the right to communicate freely with his lawyer; and that Danish law awarded compensation for mental suffering as well as for material damage in cases of unlawful arrest or detention.

97. As to questions raised under article 10 of the Covenant, the representative stressed that there was no contradiction between two statements in the report concerning decisions on isolation of prisoners and pointed out that a brief period of solitary confinement might be prescribed by the prison authorities as a disciplinary measure in the event of a breach of prison discipline; that a law court could decide that a person detained on remand should be isolated for a more protracted period with a view to ensuring that he was unable to hinder an investigation; and that while there were no absolute time-limits on solitary confinement in those circumstances, the court was required to review each individual case every four weeks. Isolation in Denmark meant segregated treatment designed mainly to prevent the person concerned from taking part in the life of the prison community. He informed the Committee that there had recently been some discussion in Denmark as to whether solitary confinement in that sense was used too often and for excessively long periods and promised to transmit to the Committee some statistical information on the subject. He also stated that a person detained on remand might file a complaint about the treatment he had received with the officer in charge of the prison concerned or submit it to the central administrative authority in charge of prisons and that, if he had not received a positive reply or a final decision within two weeks after filing the complaint, he was entitled to file a further complaint with the local district court which then investigated the matter. There were no similar provisions for persons serving sentences, but they had the right to file a complaint with the administrative authority and also with the Ombudsman.

98. Regarding article 13 of the Covenant, the representative recalled that the report cited a large number of legislative provisions under which aliens could be expelled and noted that the article of the Covenant in question concerned only the procedure for expulsions and not the merits of a possible decision. He recognized that Danish law in that area was rather complicated and pointed out that it was being revised by a special committee established to look, particularly, into questions of competence in the matter of expulsion and of the monitoring of expulsion decisions. Denmark had no administrative tribunal as distinct from ordinary courts and the procedure was usually in writing. Nevertheless, an alien could request an oral hearing and had the option of presenting his case orally before a representative of the competent administration.

99. Concerning questions raised under article 14 of the Covenant, he indicated that all judges were appointed for life by the King on the recommendation of the Minister of Justice; that a judge could not be transferred or removed against his will except by a judicial decision; and that a Special Court of Revision, composed of three judges, was competent in the first and last instance in disciplinary matters. The Public Prosecutor's Office was entitled not to prosecute if it thought that there was insufficient evidence to obtain a verdict of guilty in court regardless of its own belief as to the person's guilt. The legislative provision allowing for the rejection of counsel chosen by an accused was based on the experience of the Federal Republic of Germany. A decision based on that provision could always be appealed to the Special Court of Revision and the single case hitherto involving that provision in Denmark ended in a decision not to reject the lawyer concerned. In every criminal case, all court costs including lawyers' fees were met out of public funds but the administration could try to recover the amount from the accused if he was convicted and the competent court would then establish what share of those costs should be borne by him. Free legal aid, including lawyers' fees, in civil cases could be granted on request, but if the beneficiary of the aid lost the case, he could be made liable for the lawyer's fees of the

opposing party. In all cases, the criteria for the decision were the apparent merits of the action undertaken and the economic position of the person concerned. With regard to delays in court proceedings, he stated that there might be a small backlog at the appeal level and that there were occasional backlogs in civil cases. He pointed out that, in the event of a failure to act on the part of an administrative authority or of excessive delay, practice authorized an appeal to a higher authority or referral to the Ombudsman.

100. In connexion with article 23 of the Covenant, he stated that the question of "common law marriages" had recently been studied in Denmark, though not in the context of the Covenant; that a committee had been instructed to examine the need to provide a legal status for couples who were not married; that the law had recently been amended to take account of the existence of such "marriages" in a number of situations; that it was an established rule in Denmark that marriage could be contracted only between persons of different sexes; that although church marriage and civil marriage were both recognized and had the same legal status, the civil authority was responsible for ascertaining that all the conditions required to contract marriage were fulfilled and for delivering a document to that effect to the future spouses; and that a church marriage could be celebrated by a member of the clergy of any religious denomination provided that he had been duly empowered to do so by the Ministry for Church Affairs. The administrative authority was responsible for granting permission to marry two persons under 18 yers of age as a requirement additional to parental consent or as a separate requirement in cases where parental consent was unjustifiably refused. Acts which might be considered as comparable to adultery would include sexual acts between persons of different sexes not amounting to full intercourse or similar acts between persons of the same sex. The representative explained the historical reasons for a marriage that could be dissolved by an administrative decree and stressed that for that to happen, the parties had to agree not only on the fact of desiring a separation or a divorce but also on the conditions thereof.

101. With respect to questions raised under article 25 of the Covenant, the representative stated that minors or persons who had been declared incapable by a judicial decision, for reasons of mental illness, for example, could not take part in elections to the Folketing; that it was the Folketing itself which decided that a person who had been convicted of an act which made him unworthy to be a member of the Folketing could not be elected; that in Denmark's opinion, a constitutional monarchy was not in contradiction with article 25 of the Covenant; and that the régime was essentially a parliamentary democracy and any decision by the King had to be countersigned by a Minister in accordance with the Constitution.

102. In connexion with article 26 of the Covenant, he stated that the principle of equality before the law was not a constitutional principle and that it, therefore, could not limit the power of the Legislature; that it was, nevertheless, considered a general principle of Danish law; and that there was, in actual fact, no example of a law violating that principle, that, if a bill violating it was tabled, it would not be adopted by Parliament.

103. As regards article 27 of the Covenant, the representative indicated that the principle on which home rule for Greenland was based, was the safeguard of the unity of the Kingdom of Denmark in accordance with the 1953 Constitution which provided that Greenland was an integral part of the Kingdom of Denmark - a provision that had never been challenged. The Greenland Home Rule Act had been approved by 70 per cent of those voting, representing approximately 27,000 out of

a total population of 45,000 persons (83 per cent of whom were Greenlanders, the rest being mainly Danes). Greenlandic was the principal language of Greenland and it was used for official purposes; cultural questions were within the competence of the Greenland authorities; Greenland had no university and the existing higher educational establishments were responsible for teacher training. There was no German minority problem in Denmark. An agreement had been concluded in that connexion with the Federal Republic of Germany, and the social and cultural activities of the German minorities enjoyed the support of the Danish State.

Italy

104. The Committee considered the initial report of Italy (CCPR/C/6/Add.4) at its 257th, 258th and 261st meetings held on 28 and 30 October 1980 (CCPR/C/SR.257, 258 and 261).

105. The report was introduced by the representative of the State party who supplemented the information contained in the report concerning the incorporation of the Covenant in the Italian legal system, and brought the report up to date by indicating the new developments which had occurred during the period since the report had been prepared.

106. The representative informed the Committee that the Covenants on Human Rights had been disseminated in 1980 on the initiative of the Presidency of the Council of Ministers by means of a publication entitled "The International Protection of Human Rights", the first chapter of which was devoted to the activities of the United Nations on this subject.

107. The representative stated that a number of referenda relating to civil rights had recently been proposed by political parties. The objectives were to abolish the penalty of life imprisonment, to repeal certain articles of the Penal Code regarded as restrictive of the freedom of opinion, to repeal a Government decree providing for urgent measures for the protection of the democratic order and public security, and to repeal a number of penal measures connected with certain cases of the voluntary interruption of pregnancy. He also stated that in view of the persistence of acts of terrorism, the Government had enacted law No. 15 of 16 February 1980 providing, inter alia, for increased penalties for crimes intended to subvert the democratic order and specific penalties for those who promoted or directed associations having that aim; that another preventive measure enabled officials and agents of public security, if duly authorized by the judicial authorities, to search houses and buildings when there was a well-founded suspicion that wanted persons or certain objects were hidden in them; that in connexion with article 7 of the Covenant, the Government had made a unilateral declaration on the right not to be subjected to torture or to other cruel, inhuman and degrading treatment; and that a bill introducing suppplementary regulations governing the status of aliens was under consideration in Parliament.

108. Members of the Committee expressed their appreciation for the comprehensive manner in which the report was prepared and for the additional information provided by the representative of the State party. They also commended the Italian initiative in setting up an Interministerial Committee on Human Rights which included not only Government representatives but also representatives of private organizations and scholars. They welcomed it as an admirable mechanism to carry out a systematic review of the legislative, administrative and other measures designed to fulfil Italy's international obligations in the field of human rights.

They noted that it also took account of experience gained abroad and in this connexion it was pointed out that the Human Rights Committee could provide a forum in which States parties could learn from each other's experience and they also suggested that the attention of States parties should be drawn to this institution, to its terms of reference and to its methods of work. Members also praised the wide publicity given to the Covenant and the reference in the report to court decisions in some important cases involving human rights.

109. With reference to the general remarks made in Part 1 of the report, questions were asked as to who was entitled to bring a matter before the Constitutional Court which was responsible for pronouncing on the constitutionality of laws; what was meant by the expressions "economic pluralism", "equal social dignity" and "equal social status"; what were "the economic and social obstacles which in practice hindered the full development of the human person by limiting the equality and freedom of citizens" and which the Constitution required the State to remove; and what particular measures the Italian authorities had undertaken in addition to legislative measures to ensure the enjoyment and protection of human rights. A question was also asked as to whether, in the view of the Government, the Covenant also imposed obligations on individuals or rather imposed the obligation on States to protect the individuals against the practices of other individuals.

110. Commenting on statements in the report, as complemented by the representative of the State party, concerning the position of the Covenant in the Italian legal system, members of the Committee noted that incorporation of the Covenant in domestic law was not enough to make it self-executing since other legislative measures were required, inter alia, to provide for remedies and to establish court competence; that incorporation of the Covenant into the law of the State did not remove its character as an international instrument which still required to be interpreted in conformity with the rules of the Vienna Convention on the Law of Treaties and that national courts and tribunals could derive assistance from the interpretation of provisions of the Covenant by the Committee since the latter had the advantage of bringing together the experience and interpretation emanating from States parties. They asked what the status of the Covenant was in the hierarchy of Italian legislation; which would prevail in case of conflict between a domestic law and the Covenant; what the actual effect was of the incorporation of the Covenant into Italian law and whether a person affected by such a law could, by invoking it, be secured the enjoyment of the rights provided for in the Covenant; whether there was a general ruling in Italy under which domestic legislation was to be interpreted in accordance with the international obligations contracted by Italy; whether the representative could give examples of the Covenant being invoked before the courts or before administrative authorities; what solution was adopted when a law proved to be in violation of the Covenant and whether the Constitutional Court was competent to declare it invalid and whether legal precedents existed.

111. In connexion with article 1 of the Covenant, members expressed their appreciation for the inclusion in the report of specific statements reflecting the position of Italy regarding the implementation of the right of peoples to self-determination. Clarification was requested as to what Italy's position was with respect to United Nations resolutions on relations with the racist régime of South Africa; what specific measures it had adopted to expedite, either within the United Nations or outside it, the democratization process in South Africa; whether the Government of Italy's belief in peaceful transition from South Africa's illegal occupation to Namibia's independence meant that Italy was in favour of imposing sanctions against South Africa and of ending the illegal occupation of Namibia;

whether Italy's avowed commitment to work towards overcoming the South African policy of apartheid meant that Italy prohibited Italian companies from rendering economic, financial or any other assistance to the apartheid régime and prohibited private investments in, and loans to, South Africa. Questions were also asked as to whether Italy recognized the right of the Palestinian people to self-determination and recognized the Palestine Liberation Organization as the legitimate representative of that people; what specific measures it had taken to support the legitimate aspirations of the Palestinian people to a free and independent homeland; and what Italy's position was with respect to the plans of UNDP to extend its aid to the Israeli-occupied territories.

112. In relation to article 2 of the Covenant, questions were asked as to whether, in the event that the administrative authority concerned failed to act, the author of a complaint would be entitled to apply to the courts or to a higher administrative authority to compel the authority concerned to take action; whether the Council of State exercised jurisdiction over administrative laws affecting the individual and whether there were regional, provincial or local administrative courts below it.

113. As regards article 3 of the Covenant, it was noted that, despite the considerable legislative progress that had been made in Italy in the past few years in promoting equality between men and women, a few professions such as the military and police forces were still barred to women and that women still played a modest role in the public life of the country. Regarding the statement in the report that some de facto discrimination existed against women, clarification was sought as to what specific problems Italy had encountered in that field, what measures were being envisaged to solve them and whether these included the setting up of any administrative or other body to assist women in overcoming the discriminatory treatment of which they were still victims in Italy.

114. With respect to statements in the report concerning article 4 of the Covenant, members referred to measures taken to combat kidnapping, terrorism, subversion and other political crimes as embodied in laws enacted in 1975, 1978 and 1980. They also noted that no derogation from the obligations under the Covenant was possible unless a public emergency threatened the life of the nation and was officially proclaimed and that the exceptions referred to in articles 12, 14, 18, 19, 21 and 22 of the Covenant were not derogations. They asked to what extent the laws adopted in 1975, 1978 and 1980 fell within those exceptions. It was also noted that the Constitution provided that, in the event of war or of the proclamation of public emergency, the exercise of the rights guaranteed in the Constitution apart from the right to life, could be temporarily suspended. The question was raised as to whether this provision was in keeping with article 4 of the Covenant which prohibited derogation from certain specific rights in all circumstances.

115. In relation to article 6 of the Covenant, it was asked what the Government had done to reduce infant mortality and to establish an effective public health system; whether there were any laws which prohibited the use of drugs for other than medical purposes; and whether the provisions governing the use of arms by public officials had been supplemented by instructions given to the police forces. Noting that capital punishment could still be applied to persons guilty of certain crimes under the military Code of War of 1941, members asked whether those crimes fell within the category of the "most serious crimes" for which article 6 of the Covenant authorized the possible imposition of the death penalty, and whether the

Government was prepared to reconsider those exceptions, especially since they were provided for in a law enacted by the previous Facist régime.

116. Commenting on articles 7 and 10 of the Covenant, members asked whether solitary confinement was authorized and, if so, in what circumstances, for how long and for what reasons; whether Italian penitentiary institutions had been improved recently; what procedures were available to investigate the case of a prisoner complaining of ill treatment in prison, who conducted the investigation and what the practical results were; and whether a person independent of the prison authorities was authorized to inspect prisons, receive complaints and take action.

117. In connexion with article 8 of the Covenant, it was pointed out that the Covenant did not allow persons to be subjected to forced labour because their "antisocial behaviour" was thought to be dangerous for the community, as mentioned in the report, the more so since "antisocial behaviour" could be widely interpreted. Information was requested on the circumstances under which persons could be assigned to a farm colony or a labour establishment, what the assignment entailed, how many persons there were in such colonies or establishments, and on the meaning of the "delinquent tendencies" of persons who could be assigned to such places.

118. With reference to article 9 of the Covenant, information was requested on the grounds, other than the criminal, which could lead to deprivation of liberty; on how the guarantees under this article were implemented by Italian law in areas such as those covered by the laws on mental health, border controls and vagrancy; on the extent to which the provisions of the special measures enacted in 1975 and 1980 could be applied not only to acts of terrorism but also to ordinary offences and on whether the guarantees afforded to a person deprived of his liberty had been reduced in a general way or solely in cases of terrorism. Noting the long periods of pre-trial detention mentioned in the report, members questioned the extent to which provisions regulating them were in conformity with article 14 of the Covenant which required that everyone charged with a criminal offence should have the right to be presumed innocent until proven guilty according to law and with article 9 which required that anyone arrested or detained on a criminal charge should be brought promptly before the judicial authorities and to be tried within a reasonable time; whether there were many cases of persons who had been released after a lengthy period in custody without there having been any trial, owing to lack of evidence, for example, whether the Italian authorities had taken measures and allocated the necessary funds to expedite the investigation in cases of terrorism; how the Italian Government could justify the non-recognition by law of the right to compensation for any unlawful arrest or detention as provided for in article 9 of the Covenant; and what progress had been made on the proposals for reform of the Penal Code and the Code of Penal Procedure mentioned in the report.

119. In connexion with article 12 which deals with the right to liberty of movement and freedom to choose one's residence, reference was made to "persons prohibited from residing in one or more communes or compelled to reside in a determined commune", mentioned in the report, and it was asked what legal criteria formed the basis of a decision of that kind and whether such measures could be challenged and before which body. It was also asked whether, in the event that a person was refused a passport, forbidden to leave the country or deprived of his nationality, there was a remedy and, if so, what organ would adjudicate.

120. As regards article 13 of the Covenant, questions were asked on the nature of the "offence against the personality of the State" which could justify the expulsion of aliens; whether the decision of the Minister of the Interior to expel an alien on grounds of public security could be challenged before an administrative court or before the Council of State; how Italian law defined a political offence and whether, if Italy refused to extradite a person charged with murder for political reasons, that person would be tried in Italy; how did Italian authorities deal with foreigners who worked in the country without a permit; and whether the draft bill approved by the Council of Ministers which introduced supplementary regulations to govern the status of aliens was in conformity with article 13 of the Covenant.

121. In relation to article 14 of the Covenant, it was asked how the independence of judges was guaranteed in the context of a system of appointments which, at all levels, depended almost entirely on the Executive; and whether the statement in the report concerning the participation of lay persons directly in the administration of justice referred to some system of juries, arbitrators, lay magistrates or assessors.

122. In connexion with article 16 of the Covenant, it was asked whether, in the light of article 22 of the Constitution, there were non-political reasons for which a person could be deprived of his legal status, his citizenship or his name and, if so, what these reasons were and whether there were any cases where loss of nationality was prescribed as a penalty.

123. With reference to article 17 of the Covenant, questions were raised on the nature of the exceptions that could be made to the inviolability of the home and of correspondence, the circumstances in which telephone interception might be authorized and the extent to which provision, which required individuals who had a foreigner as a guest in their homes (which apparently applied even if the visit was for only one night) was in keeping with article 17 of the Covenant.

124. Commenting on article 18 of the Covenant, members asked for clarification of article 8 of the Constitution which, while laying down the fundamental principle that all religious faiths were equally free before the law, provided that "religions other than the Catholic religion have the right to organize according to their own statutes, in so far as they are not in contrast with Italian law"; whether proselytism was allowed; and whether propaganda in favour of atheism was permitted. Noting also that the law provided for a general tax to subsidize the Italian clergy, members wondered whether this tax benefited the clergy of all religions or only the Catholic clergy; and whether it was possible for a person professing no religion to be compelled to pay that tax. It was also asked how the law solved any difference that arose between parents regarding their freedom to ensure the religious and moral education of their children.

125. As regards article 19 of the Covenant, questions were asked on the extent to which freedom of expression with regard to slander of the Republic, the flag or other State emblems could be justified in the light of the provisions of this article and how such slander was defined by Italian jurisprudence; what were the cases of absolute urgency in which the press could be seized and in what circumstances; and whether there were any specific limitations on the freedom of opinion of foreigners.

126. In relation to article 20 of the Covenant, it was noted that repudiation of war by Italy, as declared in the Constitution, was not the same as the prohibition of war propaganda specifically required by article 20 of the Covenant which provided that propaganda for war, as well as any advocacy of national, racial or religious hatred, should be prohibited by law.

127. In connexion with articles 21 and 22 of the Covenant, it was asked what limitations on the right to peaceful assembly were authorized by Italian legislation and to what extent they were compatible with the Covenant; what associations were prohibited by law; whether trade unions played any part in the settlement of disputes that arose between management and labour, and whether there were any legal provisions to that effect; and whether aliens enjoyed the right of peaceful assembly and freedom of association under Italian legislation and, if so, on what conditions.

128. With regard to articles 23 and 24, reference was made to the statement in the report that "marriage is based on the moral and legal equality of husband and wife, within the limits laid down by the laws for ensuring family unity". Information was requested on these laws; on whether, on marriage, a couple could choose to take the surname of either the husband or the wife; or whether there was any difference in treatment with regard to nationality as between an Italian man or an Italian woman who married a foreigner and on whether any distinction was made as to the nationality of their children; on the measures adopted in Italy to help working mothers raise their children; on the position of children born out of wedlock who were not recognized by their parents, and in particular by their father; on the employment of children under 15; on whether the exploitation of child labour had been abolished and on whether the situation was identical in different parts of Italy.

129. Regarding article 25 of the Covenant, it was asked what "electoral offences" entailed loss of the right to participate in public affairs; why there was a difference between the voting age and the age of eligibility for election to either the Chamber of Deputies and the Senate; and why Molise had two senators and the Valle d'Aosta one only, whereas, according to the Constitution, no region could have less than seven senators.

130. In respect to article 27 of the Covenant, it was asked whether there were any laws, administrative practices or customs which ensured that the minorities were represented in Parliament; how many Albanians there were in Italy; whether they had schools where teaching was conducted in their own language, and whether their language was accepted as an official language.

131. Replying to the questions raised by members of the Committee regarding Part 1 of the report, the representative of the State party stated that the question of the constitutionality of a law could be raised only within the framework of a civil, criminal or administrative trial and that it was for the judge to decide the issue of the justification of, or the manifest lack of grounds for, a plea of repugnance to the constitution and, if he felt that the plea was justified, to submit the instruments in question to the Constitutional Court for a judgement as to their constitutionality. With regard to the question whether the Covenant also applied to relationships between individuals rather than imposed an obligation on States to protect individuals against others, the representative replied that the matter had not been settled by jurisprudence so far but that there was nothing in

the Italian legal system which prevented, in principle, some of the provisions of the Covenant from applying to relations between individuals.

132. The representative agreed that the incorporation of the Covenant in the Italian legal system did not change its nature as an international treaty and pointed out that such incorporation had established national provisions having the same contents as the Covenant which were directly applicable, could be invoked before any competent court by any person who thought that the provision concerned him and that an individual could request implementation of the corresponding provision of domestic law, either when there was no other applicable national provision or when the provision of the Covenant seemed more favourable to the applicant. He also stated that the Italian legal system accorded no primacy to international law; that the judge was free to avail himself of all relevant factors in forming his own conclusions and that, where it was a question of interpreting a provision of an international treaty, he was free to find out how the provision in question was interpreted internationally, and that was what he often did in practice. He pointed out, however, that the major problem of interpretation arose when there was a possible conflict of laws; that since the Covenant had been ratified by ordinary law, the conflict could arise only with other ordinary laws which were at the same level in the hierarchy of the Italian legal system; that this system contained no specific provisions for solving such conflicts between laws; that it was always left to the judiciary to decide which law applied in a particular case and that case law and legal literature had elaborated principles which could be applied in such cases. In this connexion, he stated that the Constitutional Court had no competence to pronounce upon the compatibility of the national law with the Covenant but only the constitutionality of the national law which derogated from the Covenant.

133. Commenting on questions raised under article 1 of the Covenant, the representative stated that the Italian Government wished to see a peaceful end to the illegal occupation of Namibia by South Africa; that it was persuaded that a policy facilitating a peaceful transformation was the best way to help the South African people to overcome the obstacles which prevented it from creating a free, democratic and multiracial society, that it did not favour, therefore, breaking off all relations with South Africa any more than it favoured the application of economic sanctions, although it observed the arms embargo imposed by the Security Council; and that it adopted a code of conduct for enterprises with branches in South Africa with a view to eliminating racial discrimination. The representative also pointed out that Italy recognized the legitimate rights of the Palestinian people; that the Palestinian people should enjoy fully its right to self-determination in accordance with an appropriate procedure which should be defined within the framework of a global peace settlement; that it supported the national liberation movements recognized by the regional organizations; and that it made sizeable contributions to United Nations agencies' programmes in favour of the developing countries, regardless of any political consideration.

134. As regards article 2 of the Covenant, he stated that in cases where a public authority failed to perform an administrative act which it was required to do or if it refrained from giving a verdict on an administrative appeal, the individual concerned could turn to the courts to protect his rights; that the administrative organs of jurisdiction were the Council of State, which judged in the second instance, and the regional administrative courts, which judged in the first instance.

135. In connexion with article 3 of the Covenant, the representative stressed that the Constitution established the principle of equality before the law without any distinction based on sex; that the law established the principle of equality of opportunity and career advancement for both sexes; that nevertheless, the law in question was relatively recent, which explained why most women still occupied unimportant posts in some careers; that the Ministry of Defence was studying the possibility of extending military service to women in appropriate forms; and that complete equality between men and women was sometimes frustrated by the survival of certain local traditions and personal habits. In the event of discrimination against them, women could avail themselves of the ordinary judicial means and where necessary, obtain the assistance of a trade union if the discriminatory treatment constituted a violation of the legislation in force or of an employment contract. If, on the other hand, the violation derived from the rules of the laws themselves, the only recourse for the victim was to appeal to the Constitutional Court. He also informed the Committee that there were some private associations which concerned themselves with the protection and defence of the rights of women at all levels.

136. Commenting on the remarks made by members of the Committee under article 4 of the Covenant, the representative stated that the decree-laws such as those of 1978 and 1979 had been published in application of the provisions of the Constitution which provided for such a possibility in exceptional cases of necessity and emergency and explained that, on the very day of their publication, decrees in that category must be submitted to Parliament, for conversion into laws and that those texts did not fall within the category of cases of declaration of a public emergency or a state of siege. As to the derogations from the application of the Covenant in the event of a state of war or emergency, referred to in the report, he pointed out that this was provided for in order to face an extreme threat facing the internal safety of the country, but that his Government had never resorted to those extreme means and that it had always preferred to resort to the provisions of the laws which (even in the case of special laws) had been adopted in accordance with normal legislative procedures.

137. Replying to a question raised under article 6 of the Covenant, he stated that the only texts regulating the use of arms by the national security forces were those contained in the Penal Code and that initiation into the handling of firearms was part of the normal training of the members of the police force and was subject to the rules governing the use of firearms.

138. As regards article 8 of the Covenant, the representative explained the security measures mentioned in the report under this article and stressed the fact that the measures were explicitly prescribed by the law, that they could be invoked only by a judge, and only when individuals dangerous to society were involved; and that the judge had to assess the social danger presented by the individual concerned, on the basis of criteria established by law. The measures were usually invoked against an individual who had already been sentenced for certain offences, and where there was reason to believe that he would commit others. In such a case, the measure took the form of a penalty additional to detention. He stressed that the decision of the judge could always be appealed from and the security measure could be terminated at the request of the party concerned, if it was established that the danger to society no longer existed. The assignment to a farm colony or a labour establishment was a matter simply of executing a security measure which left intact all the guarantees he had already mentioned. He explained the cases in

which such sentences could be pronounced as explicitly provided for in the Penal Code and pointed out that the individual concerned received the remuneration provided by law.

139. Commenting on questions raised under article 9 of the Covenant, the representative conceded that the measures contained in the laws and decrees referred to by members of the Committee, were not without risk, particularly with respect to the length of proceedings that, nevertheless, the peculiar seriousness of offences which justified their introduction must be borne in mind; and that the duration of proceedings could not be properly judged without taking into account the complexity of the case and the behaviour of the party concerned who himself often prolonged the proceedings through delaying tactics. He informed the Committee that as part of the current reform of the Code of Penal Procedure, efforts were being made to have simpler and more rapid penal proceedings which would eliminate the risk of excessively protracted proceedings. He further stated that, since the ratification of the Covenant, any person concerned was entitled to request compensation for unlawful detention by directly invoking the relevant provision of the Covenant. This perfectly fitted into the Italian legal system which itself recognized the general principle of compensation for damages.

140. Regarding article 10 of the Covenant, the representative stated that, according to the law of 1975 and the Rules of Application of 1976 relating to the new penitentiary system, a supervisory judge had been placed in each court and a supervisory section was established in certain courts of appeal with authority to check at any time the living conditions of detainees and the proper implementation of the law; that social welfare services had been attached to each penal establishment and showed particular concern for the re-education of detainees; and that each detainee could file an oral or written appeal to the director of the institute concerned, to the supervisory judge or to other competent authorities.

141. Replying to questions raised under article 13 of the Covenant, he pointed out that, whenever an alien was in the process of being expelled, he could appeal to the Ministry of the Interior or the regional administrative court, depending on the administrative organ taking the decision; that the Italian Penal Code made it possible to prosecute in Italy the perpetrator of a political offence, even if that offence had been committed abroad; and that the draft bill introducing supplementary regulations to govern the status of aliens was designed to reduce the bureaucratic complexity of certain administrative practices concerning the expulsion of aliens, but in no way infringed the guarantees granted to aliens.

142. In relation to article 14 of the Covenant, the representative stressed that the independence of judges was fully guaranteed by the Constitution; that they were appointed after public competition; that, although measures concerning the careers of judges were adopted by decrees of the President of the Republic, it was none the less true that the adoption of those measures was discussed within the Upper Council of the Bench; and that the careers of the judges proceeded in accordance with strict rules which the Executive had no power to change. As for the participation of citizens in the administration of justice, he explained that this was manifest in the fact that some of the judges of the Constitutional Court were elected by Parliament as well as in the fact that the assize courts were composed of citizens who were assigned the role of judges for a given period after a drawing of lots among the persons enjoying full legal capacity.

143. Replying to questions under article 18 of the Covenant, he stated that when ecclesiastical institutions had been suppressed, their property had been assigned to a special fund which was used to subsidize the churches and the clergy; that the subsidies financed "from tax revenue obtained from all citizens" were supplementary and exceptional in nature; and that it was possible for a church such as the Waldesian Church, if it so desired to negotiate the conclusion of an agreement with the Italian Government.

144. In connexion with questions raised under articles 19, 21 and 22 of the Covenant, the representative could only confirm that, in practice, no sharp distinction was drawn between citizens and aliens where the enjoyment of civil rights was concerned; that the Constitution contained a provision which stipulated that, provided there was reciprocity, aliens enjoyed on Italian territory all of the civil rights recognized in the Constitution; that the right to freedoms of expression, of peaceful assembly and of association were guaranteed to everyone, citizen or alien, by the Italian Constitution; but that the exercise of certain political rights set forth in the Constitution was reserved for citizens.

145. Commenting on questions raised under articles 23 and 24 of the Covenant, the representative pointed out that equality between husband and wife was limited only by the need to preserve family unity, that the law was designed to ensure the full application of that basic rule by proclaiming the essential principles of equal authority and of parental authority over the children, paternal authority having been abolished; that the woman was to take her husband's surname but that she could, at the same time, keep her own surname; that a foreign woman who married an Italian citizen acquired Italian nationality; that a foreigner who married an Italian woman did not ipso facto acquire Italian nationality but that he could obtain nationality after two years of residence in Italy; and that Italian nationality was acquired as of right by a child born to an Italian father or an Italian mother. He also stated that the law provided for maternity leave for salaried women; that the child acquired the nationality of the father, even if recognition by the father or the legal declaration of paternity took place after the recognition of the child by the mother, and that a minor who had been adopted acquired the father's nationality.

146. As to article 25 of the Covenant, he explained that electoral offences meant offences perpetrated during elections with a view to disturbing the normal course of elections but that such offences did not immediately involve the loss of the right to vote. This required a decision by a judge and hence a prior conviction; that the difference between the voting age and the age of eligibility for election to either the Chamber of Deputies and the Senate was simply a choice of legislative policy; that the fact that some seats in the Senate were reserved for certain small regions should be considered a privilege accorded to regions so small that, under the system of proportional representation which governed elections to the Senate, they might never be represented by a senator.

147. Replying to questions raised under article 27 of the Covenant, the representative stated that the Albanian minority was not the subject of any particular legal provisions, but that the Government made every effort, as it did in the case of all other minorities, to safeguard its cultural traditions and customs.

Barbados

148. The Committee considered the initial report (CCPR/C/1/Add.36) submitted by the Government of Barbados at its 264th, 265th and 267th meetings held on 24 and 26 March 1981 (CCPR/C/SR.264, 265 and 267).

149. The report was briefly introduced by the representative of the State Party who drew the Committee's attention to the general legal framework outlined in the report which served to place in its proper context the specific information in relation to particular articles of the Covenant.

150. Members of the Committee expressed their satisfaction at the achievements of Barbados in the field of human rights, noted the effectiveness of the legal system which was designed to protect them and commended the ratification by Barbados of the Optional Protocol. Noting that the enjoyment of human rights and the ability to monitor the observance of the Covenant by States parties required a well-informed citizenry, members requested information on the rate of literacy in Barbados and on whether publicity was being given to the Covenant itself, the report submitted to the Committee and its consideration at the current session.

151. With respect to article 1 of the Covenant, it was noted that the report did not deal with the subject matter of this article and information was requested on the position of Barbados regarding the right of self-determination of peoples enunciated in that article.

152. As regards article 2 of the Covenant, reference was made to the non-discrimination clause and information was requested on the omission in the Constitution of sex, language, national or social origin, property, birth or other status as grounds on which discrimination was prohibited. Information was also sought on the exceptions provided in the Constitution to the principle of non-discrimination in regard to non-citizens and to matters of personal law. Members noted that the Covenant was not directly incorporated in domestic legislation and that, although most of the Covenant rights dealt with were guaranteed in the Constitution, section 26 of the Constitution could be so interpreted as to give laws existing before the Constitution had come into force precedence over the Constitution itself and over its human rights provisions. Members of the Committee accordingly requested clarification of the meaning of section 26 of the Constitution and asked in what manner the provisions of the Covenant were given legal effect, how they were implemented and what legislative or other measures as might be necessary had been adopted to ensure to all individuals within Barbados the rights recognized in the Covenant. Reference was made to the statement in the report that the Covenant could not, per se, be invoked before or directly enforced by the courts, tribunals or administrative authorities of Barbados and it was asked what redress was available if a provision of the Covenant was not covered by domestic law or if a law contravened any such provision and whether any legal provision existed in Barbados to the effect that when national law conflicted with an international obligation, it was the latter which would prevail. In this connexion the representative was requested to clarify the statement in the report to the effect that appropriate remedies were available for interference with the personal liberty unless such interference was justified under some specific laws. He was also asked if he could give some examples of remedies given by the High Court since the Covenant had come into force.

153. As regards article 3 of the Covenant, members felt that more information should have been given. Questions were asked as to why, in the Constitution, women were not placed on equal footing with men; what the Government's attitude was to the principle of equality between the sexes and what action had it taken to achieve such equality; whether women's movements existed in Barbados and, if not, what the Government was doing to make women aware of their rights. Information was requested on the percentage of girls attending school as compared with boys and on women's participation in the social, political and economic life of the country, on the practice with regard to the award of the custody of children; on whether the principle of equal pay for equal work between men and women was respected in Barbados and on whether remedies were available for women who believed that their rights under this article were violated. The question was asked whether the provisions of the Constitution relating to the possibility of acquiring citizenship through marriage applied to men as well as to women.

154. With reference to article 4 of the Covenant, members wondered whether, under the Constitution, emergency provisions allowed for distinctions to be made on some prohibited grounds and for derogations from the articles enumerated in paragraph 2 of that article. Information was requested on whether, since the coming into force of the Covenant, any public emergency had been proclaimed in Barbados and, if so, whether implementation of provisions relating to it had been consistent with the provisions of the Covenant.

155. Commenting on the statement in the report to the effect that, since the Covenant was not per se part of the laws of Barbados, the question dealt with in article 5 of the Covenant did not arise, members questioned the validity of this argument. They pointed out that it did not matter whether the Covenant was part of domestic law; rather, it was important that the Covenant could not be interpreted as imposing greater restrictions than were permissible under it and that the Covenant could not be used as a pretext for restricting, or derogating from fundamental rights already existing in the State on the ground that the Covenant does not recognize these rights or recognized them to a lesser extent.

156. In connexion with article 6 of the Covenant, the view was expressed that the inherent right to life should be protected not only in relation to penal law but also in terms of social and humanitarian law. Information was requested on measures adopted with a view to enhancing public health and living standards and to reducing infant mortality and long-standing unemployment. Stressing that human life must have priority over all other consideration, members asked whether it was permissible under the laws of Barbados to kill thieves caught in flagrante delicto and whether the law expressly prohibited the imposition of the death penalty on persons below eighteen years of age and the execution of pregnant women, as stipulated in the Covenant, and, if not, whether the Government intended to take steps to ensure that the provisions of article 6 were incorporated in the domestic law. It was also asked how often the death sentence had been carried out in Barbados in recent years and for what crimes; whether the Government had considered the abolition of that penalty and, if so, what the state of public opinion on the subject was.

157. As regards article 7 of the Covenant, members commended the information on prison conditions and the rules governing the treatment of prisoners and asked how those rules were actually monitored and applied, whether there were independent and impartial procedures by which complaints about ill-treatment could be received and investigated, what the functions and powers of the Visiting Committees were, what

provisions were there for maintaining family contacts by persons deprived of liberty, what provisions governed solitary confinement and to what extent the after-care of prisoners, referred to in the report, had been successful in rehabilitating them.

158. Commenting on article 9 of the Covenant, members thought that the formulation of section 13 of the Constitution dealing with the restrictions on personal liberty was ambiguous and widely drawn. They requested clarification of the terms "reasonable suspicion", "reasonably suspected to be of unsound mind", "tried within a reasonable time" and "as soon as reasonably practicable" and wondered whether time limits could be more specific so as to demonstrate a willingness to give real meaning to the Covenant. In this connexion, reference was made to section 23 (1) of the Constitution which stipulated that no law shall make any provision that was discriminatory either of itself or in its effects and information was requested on the measures available in Barbados to ensure the supremacy of the Constitution in that respect. Questions were asked as to what legal safeguards there were to ensure that no person was detained on the ground of mental illness without good reasons and that those confined to mental institutions received adequate care; what the definition of "vagrants" was and how long they were deprived of liberty; whether the compensation for unlawful arrest was material or whether it would also entail a moral element and what rules applied if government officials were responsible for such an arrest.

159. In connexion with article 12 of the Covenant, it was noted that the Constitution provided for various restrictions on the movement or residence within and departure from Barbados of individuals, particularly non-citizens, as "reasonably required" in the interest, inter alia, of public safety and public order, and information was requested on the remedies available to persons whose freedom of movement was thus restricted.

160. With reference to article 14 of the Covenant, information was requested on the administration of justice, particularly on how the independence and impartiality of the judiciary were guaranteed, on how judges were appointed and whether they could be removed from office, whether labour courts existed and, if so, what their procedures and competence were; and on whether the Government planned to provide free legal assistance to the accused if he did not have sufficient means to pay for it, as required under article 14 of the Covenant.

161. As regards article 17 of the Covenant, it was noted that the report dealt only with the questions of searches and information was requested on the laws providing the protection of privacy, family and correspondence, particularly against wire-tapping and electronic surveillance.

162. In relation to article 18 of the Covenant, clarification was requested of the statement in the report to the effect that no person shall be hindered in the enjoyment of his freedom of thought and of religion except with his own consent. Questions were asked as to the age at which a child could choose his own religion, how a religious community was defined and how many such communities existed in Barbados.

163. Commenting on articles 19, 21 and 22, members requested information on the number of newspapers published in Barbados including those which were controlled by the Government and others which might be less disposed towards the Government; on the number of political parties active in the country and on whether new parties

could be formed and, if so, under what conditions; on whether the right to form trade-unions, to undertake collective bargaining and to strike, was recognized by law, and on whether there existed national human rights commissions in the country. Noting that the Constitution provided that, except with his own consent, no person should be hindered in the enjoyment of his freedoms of expression, assembly and association, one member wondered whether the limitation implied in such consent was legally correct, as it would seem that the rights involved were so fundamental that they could not be waived. Information was sought on laws protecting national security, particularly those covering sedition and sedition-related offences and criticism of the Government and its offficials.

164. With reference to article 20 of the Covenant, members noted the absence in the report of any information concerning the prohibition of war propaganda and of the advocacy of racial hatred and they wondered whether the laws of Barbados expressly provided for such prohibitions as required by the Covenant.

165. In connexion with articles 23 and 24 of the Covenant, explanation was requested of the statement in the report that the celebration of any marriage could not be enforced by reason of any promise or contract and questions were asked as to whether men and women under the age of 18 could marry and, if so, under what conditions; and what steps had been taken to ensure the equality of spouses in marriage. Information was also sought about the problems arising from the breakdown in the traditional concept of the family and from the economic necessity for mothers to work, about the extent to which child-care and children born out of wedlock were problems in Barbados, and about the measures taken to safeguard the rights and welfare of children, including the right to acquire a nationality.

166. As regards article 25 of the Covenant, it was asked why at least seven years of residence was required for election to the House of Assembly; whether voting districts were delimitated in such a way as to ensure that the principle of "one man, one vote" was effectively applied; and whether the electoral law provided for the possible recall of a deputy and, if so, under what conditions such recall could be effected.

167. In relation to article 27 of the Covenant, members inquired whether ethnic, linguistic or religious minorities existed in Barbados and, if so, what their number was, and what measures had been taken to ensure their rights and the preservation of their cultural heritage.

168. Replying to questions raised by members of the Committee, the representative of Barbados informed the Committee that since the submission of the report in 1978 his Government had enacted legislation which went toward implementing some further provisions of the Covenant; that it viewed the right to life as embracing notions such as freedom of conscience, of association, of movement and of expression and protection from discrimination, inhuman treatment and deprivation of property; and that its stated position being to improve the quality of life for all its citizens.

169. As regards article 1 of the Covenant, he pointed out that this Government had always supported and often co-sponsored United Nations resolutions on self-determination for Namibia and other colonies and Non-Self-Governing Territories and that his country was helping to train Namibians.

170. In connexion with questions raised under article 2 of the Covenant he stressed that treaty-making power was vested in the executive and that when Barbados became a party to a treaty, legislations still had to be enacted, in appropriate cases, to give effect to its provisions unless there existed a body of law which would ensure compliance.

171. Responding to questions raised under article 3 of the Covenant, the representative stated that his Government was committed to the attainment of equality of the sexes, that there were no longer any fields of activity which were the sole preserve of men, that equality of the sexes carried with it the right to equal pay for equal work and that the lead taken by the Government in that respect was being followed in the private sector. Moreover, the Government had established a Department of Women's Affairs and a Commission on the Status of Women. The Commission had submitted a comprehensive report, some recommendations of which had already been embodied in legislation. He also pointed out that the mother of a minor had the same rights to apply to the court in respect of any matter affecting the minor as were possessed by the father and that she could be awarded custody even if she was residing with the father. The term "spouse" had been introduced into the Succession Act, thereby creating equality between the sexes in that respect.

172. With reference to article 4 of the Covenant, he informed the Committee that no public emergency had been declared since 1937.

173. As to article 6 of the Covenant, he referred to the Sentence of Death (Expectant Mothers) Act which provided that, where a woman convicted of an offence punishable by death was found to be pregnant, the sentence passed on her should be life imprisonment instead of death.

174. With respect to article 9 of the Covenant, the representative pointed out that the law provided that a person taken into custody without a warrant should be released on his own recognizance if it would not be practicable to bring him before a magistrate within 24 hours and unless the offence appeared to be a serious one. Similar provision for release on recognizance was made even where a person under the age of 16 was apprehended with a warrant.

175. Replying to questions raised under article 14 of the Covenant, he stated that the Chief Justice and Puisne Judges were appointed by the Governor-General on the recommendation of the Prime Minister and after consultation with the Leader of the Opposition, and that a judge could only be removed from office for inability to discharge his functions or for misbehaviour. As to legal aid, he pointed out that it was available, including at the appeal stage, for a person charged with any capital offence such as manslaughter, infanticide, concealment of birth or rape, and that, at present, the Government was in the process of setting up a department with a view to widening the scope of legal aid.

176. In connexion with article 18 of the Covenant, he indicated that a very large number of denominations were represented in Barbados, that the Anglican Church had been disestablished and disendowed in 1969 and it therefore had no supremacy over other religious groups; and that the Government contributed to many religious organizations.

and bearing in mind a possible conflict between the primacy of law enforcement and the primacy of human rights, in particular, when the provisions of article 14, paragraph 2, of the Covenant were taken into account, members asked for clarification on the extent to which the taking of life under these circumstances was permissible, how often it occurred, on the legal provisions which limited the right of officials and others to take human life and on measures against abuse.

189. As regards articles 7 and 10 of the Covenant, it was noted that the Constitution, while expressly prohibiting torture and inhuman or degrading punishment or other treatment, had nevertheless set forth a general reservation which might depart from the stipulations of the Covenant which allowed for no restrictions on the prohibition of torture. Questions were asked as to whether the legal remedies mentioned in the report had ever been invoked by a victim of torture practised by law enforcement officials, whether any disciplinary action had ever been taken against such officials when they had abused their powers; whether the Kenyan penal system provided for standard minimum rules concerning prison conditions and, if so, whether they were applied; whether the Board of Review mentioned in the report actually examined individual sentences or merely reviewed the conduct of prisoners; whether detainees had the right to receive family visits, to have access to lawyers and to correspondence with people outside the prison.

190. In connexion with article 8 of the Covenant, information was sought on the circumstances and the extent to which forced labour might be imposed and on whether it was possible for the "chief" in certain circumstances to order forced labour.

191. In relation to articles 9 and 11 of the Covenant, it was noted that, in accordance with the Constitution, persons should be notified of the reasons for their arrest "as soon as reasonably practicable" whereas the Covenant required such persons to be "promptly informed". In this connexion information was requested on each category of the cases enumerated in the Constitution in which a person might be detained and it was asked whether persons could be deprived of their liberty up to the age of 18 years for the purpose of their education, or if they had not fulfilled a contractual obligation; and whether compensation for unlawful arrest or detention was made by the State or by the law enforcement official concerned.

192. As to article 12 of the Covenant, information was sought on the extent to which freedom of movement was enjoyed or restricted by foreigners, including Ugandan refugees, residing in Kenya.

193. With reference to article 14 of the Covenant, it was pointed out that an indication that human rights were respected in a given country was the existence of a judiciary which was independent of the Executive and the political organs. Questions were asked as to how the independence and impartiality of judges were ensured in Kenya and what measures the judiciary could take to enforce its judgements and decisions if a conflict arose with the administrative bodies. In this connexion it was asked whether accused persons were ensured a fair trial; how an individual could have a confession annulled on the ground that it had been obtained by violence or torture; whether persons tried for serious crimes were assigned legal counsel.

194. With respect to article 17 of the Covenant, it was noted that, in accordance with the corresponding sections of the Constitution, a person or his property could be searched in the interests of, inter alia, town and country planning and it was pointed out that this provision was much broader in scope than stipulated in the Covenant and thus called for clarification.

195. Commenting on the freedoms provided for in articles 18, 19, 21 and 22 of the Covenant, members of the Committee sought information on whether religion was separate from the State; on whether different religions were accorded equal treatment; on the role of the State in relation to the mass media; on the number of newspapers published and on whether they could criticize the Government on the extent to which freedom of expression in political matters was ensured, and on the laws and regulations governing the enjoyment of the freedom of assembly. Information was also requested on the extent to which the freedom of association, including the right to form trade unions might be limited, and on the extent to which executive action was subject to judicial review, considering for example the wide powers of the registrar of societies and of the competent Minister in refusing registration of societies or dissolving them. It was asked whether Kenya had a one-party system and, if so, what the impact of that system was on the implementation of articles 18, 19, 21 and 22 of the Covenant.

196. In connexion with article 20 of the Covenant, it was asked whether war propaganda was explicitly prohibited by law.

197. As regards articles 23 and 24 of the Covenant, information was requested on the implementation of these articles in Kenya, particularly on the steps taken to ensure equality of rights and responsibilities of spouses and on whether the respective rights of spouses could be upheld by the courts; on the existing arrangements for awarding custody of children to the mother and for the payment of alimony; on whether there were sanctions against adultery and, if so, whether they were stricter for women; on whether polygamy and concubinage were recognized and, if so, what their legal and financial effects were; and on the legal status and inheritance rights of adopted children and of children born out of wedlock.

198. With respect to article 25 of the Covenant, it was noted that the Constitution had made provisions for a strong executive presidency within a democracy and it was asked what checks and balances existed which might act as restraints on executive power and, in particular, how the system might affect compliance with the provisions of this article of the Covenant.

199. In connexion with article 27 of the Covenant, it was asked whether there were ethnic, religious or linguistic minorities in Kenya and, if so, whether the tribes which made up the wide diversity of peoples were considered to be ethnic groups and what provision was made in respect of their right to enjoy their own culture, practice their own religion and use their own language.

200. The Chairman of the Committee suggested that the representative of Kenya should communicate to his Government the fact that the Committee had considered its report but had observed that the report was too brief and incomplete and expressed the hope that a new report would be submitted within a period of six months and that it would include answers to the questions already raised by the Committee.

201. The representative of Kenya promised to communicate that information to his Government.

United Republic of Tanzania

202. The Committee considered the initial report (CCPR/C/1/Add.48) submitted by the Government of the United Republic of Tanzania at its 281st, 282nd and 288th meetings held on 7 and 9 April 1981 (CCPR/C/SR.281, 282 and 288).

203. The report was introduced by the representative of the State party who stressed her country's commitment, since independence, to establish a society based on respect for human rights and referred to various provisions of the Constitution to that effect. Contending that written constitutions and an independent judiciary alone could not guarantee the full protection of human rights, her Government had established a Permanent Commission of Enquiry as indicated in the report and had set up an "anti-corruption squad" in the President's office. Those found to be corrupt were taken to court and/or dismissed from service. There was also a Leadership Code Commission which set standards of leadership so as to promote just administration and to act as a check on the conduct of leaders. She also referred to the Marriage Act of 1970, the Civil Service Act of 1962 and the Civil Service Regulations all of which contained provisions designed to ensure the full enjoyment of a number of rights under the Covenant.

204. The representative explained the nature and extent of presidential powers under the Preventive Detention Act on which, she indicated there had been some misunderstanding in the past. This Act laid down procedures for detention in cases of threats to the security of the State including the conditions under which detention could be effected and established a National Committee whose function was to review each case periodically to determine whether there existed grounds for the continued detention of the individual or whether he should be released. She stressed that, up to now the President had used those powers sparingly.

205. Members of the Committee paid tribute to the role of Tanzania in the international arena as a member of the non-aligned movement, a founding member of the Organization of African Unity and a country dedicated to the principles of the United Nations, including the promotion of human rights. Although the report had the merit of recognizing the existence of shortcomings in the realization of all human rights in the country, it did not, they noted, explain the extent and nature of these shortcomings nor did it appear to do justice to all the measures Tanzania might have taken to give effect to the Covenant. It was also suggested that the report should have included information on changes which had taken place in the course of transition from colonial rule to independence, on the impact of those changes on the protection of human rights and on the degree of self-reliance achieved by the people, as well as about Zanzibar whose administration appeared to be quite separate from that of the mainland. In this respect, members observed that the Committee had a broader mandate than other international bodies to enquire fully into all aspects of human rights under the Covenant and that an important feature of the Committee's work was to bring the experience of individual States to the knowledge of other States, hence the need for the submission of comprehensive reports as required by article 40 of the Covenant and the guidelines drawn up by the Committee to that effect.

206. Members also wished to know whether the Covenant had been published in the different national languages and whether copies were readily available to individuals; what attitude Tanzania had adopted towards the efforts underway to create an African regional system for the promotion and protection of human rights and what measures of supervision or control it would be prepared to accept under

such a system; and whether the Government would be prepared to reply to requests for information from non-governmental organizations concerning the protection of human rights and to investigate any allegations made.

207. Commenting on article 1 of the Covenant, members referred to the record of tanzania in supporting the struggle for self-determination both inside and outside Africa, but noted the absence in the report of any information about this article. In this connexion, information was requested regarding Tanzania's position vis-à-vis Uganda as well as the new economic order and its impact on the implementation of civil and political rights.

208. As regards article 2 of the Covenant, it was noted that no reference was made in the Constitution to race or national origin in the list of grounds on which discrimination was prohibited, and that the provisions of the Covenant were not directly incorporated either in the Constitution or in other legislation and that there was no separate bill of rights. Precise information was therefore required on how the rights and freedoms defined in the Covenant were implemented in domestic law and practice; on the legislative, adminstrative and other measures adopted to give effect to the provisions of the Covenant; on the status of the Covenant in relation to the laws of the Republic and on whether the Covenant itself could be invoked before a Court. Members also noted the absence in the report of a detailed account of the effective remedies available to those who believed that their rights had been violated. Clarification was requested of the role of the Permanent Commission of Enquiry with particular reference to how it operated in practice, whether it was an autonomous or decentralized body with limited jurisdiction, whether it was composed of independent members appointed by the President or another body or only of senior civil servants; how active it was whether it was necessary to obtain the President's authorization before initiating an investigation into an alleged violation of human rights or an abuse of public office, the kind of cases the Commission had investigated and the action that had been taken on its reports. In this connexion questions were also asked on whether laws enacted by the legislature could be declared unconstituional and consequently invalidated and whether inconsistency with the preamble to the Constitution might be regarded as grounds for such invalidity and, if so, by whom. Noting that there existed in the country two Constitutions, one for the Republic itself and the other for the single political party, that the party organs could intervene directly to defend any rights under the Covenant owing to the doctrine of the supremacy of the party and that the party's competence embraced members and non-members, members asked whether conflicts could exist between the two Constitutions and, if so, how were they resolved; how interventon by the party occurred and by what mechanism; whether there was a procedure for individuals to raise complaints through the party and, if so, what the procedure was and whether it was available to non-members of the party; and what the citizen could do to defend his rights against arbitrary action by official organs.

209. With reference to article 3 of the Covenant, information was sought on the extent to which women were, in practice, enjoying civil and political rights on equal terms with men and particularly on their percentage in schools, in the administration and in the party, on whether Tanzanian women were permitted to marry foreigners and, if so, whether their husbands could acquire Tanzanian nationality. Clarification was requested concerning the reference in the report to "a historical background of discrimination based on sex" and it was asked whether the Government was experiencing any problems in that regard and, if so, what measures it was taking to solve them.

210. With respect to article 4 of the Covenant, attention was drawn to the fact that, under this article, it was possible to derogate from the relevant obligations only when the life of the nation was at stake and only to the extent strictly necessitated by the exigencies of the situation and it was asked whether, under the Tanzanian legal system, there was any difference between normal circumstances and officially proclaimed states of emergency; what limitations there were on the actions of the executive or of Parliament in an emergency; what laws could be suspended and what provisions of the Covenant could be affected by the proclamation of a state of emergency; and whether a public emergency had been proclaimed in Tanzania.

211. Commenting on article 6 of the Covenant, members sought information on the measures being taken, especially in the rural areas, to protect life by improving public health; on the crimes for which the death penalty could be imposed and on whether they included political offences; on the minimum age under Tanzanian law for the imposition of the death penalty; on the number of death sentences that had been commuted and on the number that had been carried out since the Covenant had entered into force. It was also asked whether abolition of the death penalty had been considered.

212. In connexion with articles 7 and 10 of the Covenant, it was asked what guarantees existed to prevent persons from being subjected to torture or to cruel, inhuman or degrading treatment or punishment, particularly those who had been deprived of their freedom; whether such guarantees included impartial procedures applying to enquiries into complaints and the taking of disciplinary action against guilty parties; what recourse was available to persons subjected to such treatment; how frequently detainees could receive visits from members of their family; and whether they could communicate with doctors or lawyers directly or by mail.

213. As regards article 9 of the Covenant, it was asked what guarantees existed to protect people from arbitrary arrest or detention; under what conditions they could be subjected to preventive detention; how the system of habeas corpus functioned; whether any Tanzanians were detained for purely political reasons and, if so, how many; whether, under the Preventive Detention Act, a person could be detained indefinitely without being formally charged or brought to trial; whether an order under that Act could be questioned in a court of law; whether, if persons were detained, their families were informed of the fact and of the places of detention; what consequences such detention had on the enjoyment of other rights when they were released, for example on the rights set forth in articles 12 (2) and 25 (c) of the Covenant; in what circumstances arrested persons could be freed on bail; and whether victims of unlawful arrest or detention could claim damages under Tanzanian law.

214. Commenting on article 12 of the Covenant, members inquired about the reasons justifying the temporary restrictions on foreign travel referred to in the report and about their duration; whether there were legal requirements for obtaining a passport and an exit visa; and what legal remedies were available in respect of all those restrictions. It was also asked whether refugees from Uganda enjoyed the rights guaranteed under articles 12 and 13 of the Covenant.

215. In connexion with article 14 of the Covenant, it was observed that one way of protecting human rights was to ensure the independence of the Judiciary from the Executive, from the legislature and from any outside pressure, and it was asked how that independence was ensured in Tanzanian, how judges were appointed, whether they

could be removed from office, and, if so, under what circumstances, whether there was any remedy against unjustified removal, whether judges hav any control over police actions and whether they were entitled to determine tha methods used by the police in their investigation were not consistent with the law or with the rights of the individual concerned. Questions were also asked as to whether there were special courts, including peoples courts, for certain types of crimes and what the appeal process was in such courts; whether there existed any offences of an economic nature and how such offences were legally defined; under what circumstances trials were held in camera; whether legal representation was guaranteed in Zanaibar in accordance with the Covenant and whether there were differences between penal proceedings in Zanzibar and the mainland.

216. With respect to the rights and freedoms provided for in articles 19, 21, 22 and 25 of the Covenant, it was observed that, although the Covenant di not contain any requirements concerning either a one-party or a multi-party system, the position of a one-party State vis-à-vis the requirements set forth in the above articles of the Covenant was of legitimate interest to the Committee. It was therefore asked to what extent the one-party system in the United Republic of Tanzania was compatible with the rights and freedoms provided for in those articles as read in conjunction with articles 2, paragraph 1, and 26 of the Covenant; whether given the political leadership enjoyed by the party in accordance with the Consitution a citizen who disagreed with the political programme of the party, could express his views publicly; whether the "lawfully established forums" mentioned in the Constitution were the only means available to citizens to express their opinions; and whether there was any possibility of recourse against discrimination in respect of freedom of expression and association. Information was requested on the implementation of those articles in the conditions which existed in Tanzania and on all the limitations to which those articles could be subjected; on the legal status of the press and on how free the press was to criticize the Government; on how trade unions operated and on the reasons for the non-ratification by the United Republic of Tanzania of the 1948 ILO Convention on Freedom of Association and Protection of the Right to Organize; on the form of direct democracy mentioned in the preamble to the Constitution, on the eligibility of candidates to Parliament and, in particular, on whether they must be approved by some executive body such as the Party and, if so, what criteria were applied; and on the percentage of the members of Parliament whose candidature was proposed by the Unions. The question was also asked whether Tanzania proposed to adopt a pluralistic approach in political representation now that its independence had been firmly established.

217. With reference to articles 23 and 24 of the Constitution, information was requested on the implementation in the United Republic of Tanzania of the provisions of these articles and, particularly, on the minimum legal age for marriage; on the law governing parental authority, child-care arrangements for working mothers, the status of children born out of wedlock, custody of children and property rights in case of divorce.

218. As regards article 27 of the Covenant, members sought precise information on the various ethnic, religious or linguistic minorities that may exist in the country, with particular reference to Zanzibar, and on the protection accorded to Tanzanians of Asian or other non-African origin; on the measures taken to enable the different minorities to develop their language, culture, traditions and representation in Parliament; and on whether the Covenant had been disseminated among them in their own language.

219. Replying to questions raised by members of the Committee, the representative of the State party stated that the United Republic of Tanzania was a young country and that its institutional arrangements were still in the making; that since 1964, the year when Zanzibar joined the Union, serious attempts had been made to reconcile areas of contradiction. Hence the adoption in 1977 of the Union Constitution. She explained that the Covenant was an area that came under the jurisdiction of the Union Government.

220. In connexion with questions raised under article 2 of the Covenant, the representative stated that members of the Permanent Commission of Enquiry were appointed by the President and were required to resign from any other posts held before appointment; that the Commission investigated cases as it saw fit, that everybody in the country had access to it, that complaints could refer to the actions of a private individual, the Party, Government leaders or any State organ and that only the President and the Vice-President were exempt from the Commission's investigations. She also stated that when complaints were received, the Commission initiated an investigation, that complaints could be submitted either verbally or in writing; that, after an investigation had been completed, the Commission tried to reconcile the parties concerned; that when an investigation revealed complaints of a criminal nature, the Commission took the parties to the Police for prosecution and that complaints of an administrative nature were referred to the relevant administrative organs for immediate redress. Reports of all investigations were submitted to the President periodically and were made public. In case of proven serious misconduct by public servants, the President had on a number of occasions dismissed the offenders. She informed the Committee that, in the course of its duties, the Commission travelled to villages to make its existence known to the villagers and to hear their complaints. However, all Commission hearings were conducted in camera so as to enable the complainants to speak freely, without fear or embarrassment. Replying to other questions raised under this article, she pointed out that her country had a carefully worked out system of co-ordination between the party and the Government; that the party's role was to lay down the broad policy guidelines under which the Government operated; that the guidelines included respect for the rights of the individual in accordance with the objectives of the Constitution; that the party's role also included ensuring that the Government and individuals functioned within accepted principles and norms.

221. With respect to article 3 of the Covenant, she informed the Committee that all girls had equal access to education which was free for everyone; that a guaranteed number of places in secondary schools were set aside for girls; that career openings were the same for men and women, as were salaries and working conditions; that, politically, women were just as active as men at the national, regional and local levels and within the Party; that the special organizations for women's rights, UNT, a party affiliate rcognized in the Constitution, had branches all over the country and that it was open to all Tanzanian women. She also stated that a Tanzanian woman was free to marry anyone, and that citizenship could be granted to foreigners married to Tanzanian women on the basis of certain necessary requirements.

222. Replying to questions raised under article 7 of the Covenant, the representative admitted that certain cases of torture had occurred in her country but that they were investigated as soon as they had been reported to the authorities. She cited certain cases where disciplinary and penal measures and sentences were imposed on all those held responsible.

223. Replying to a question raised under article 14 of the Covenant, she stated that, in her country, an independent judiciary existed and was still patterned on the British system; that there were primary courts, district courts, resident magistrate courts, a high court and the Court of Appeal; that judges were appointed by the President and could only be removed for misconduct on the recommendation of a commission specially established for the purpose.

224. Referring to questions raised about the position of a one-party state vis-à-vis the requirements set forth in articles 19, 21, 22 and 25 of the Covenant, the representative stated that human rights were not a prerogative of any particular ideology, system of government or of law, but rather an attitude of a people and their leadership. She stressed that anyone who violated human rights in her country was referred to the relevant branches of the Government for sanctions and that democracy in the one-party state in her country was in full operation.

225. In connexion with questions raised under articles 23 and 24, she stated that working mothers, whether or not they were married, had the same maternity leave entitlements; that, in case of divorce, all children below the age of seven were placed in their mother's custody unless she was unable to care for them; that the father was ordered by the court to pay for their upkeep if he was working; that property acquired during the marriage was divided between the two spouses or compensation was given to the wife; that women had equal inheritance rights with men; and that children born out of wedlock enjoyed the same inheritance rights to their mother's property as her other children and to their father's property provided he acknowledged paternity. As regards questions raised under article 27 she stated that by an accident of history, Asians had held privileged positions in Tanganyika before independence; that Tanzania was trying to create a socialist and classless society in which no one would be allowed to exploit others; that although the majority of the population was black, Tanzanians, regardless of colour, participated in all sectors of national life; that whites and Asians had been elected to Parliament by constituencies that were predominantly black; and that the individual's position in the country depended on his contribution to national development.

226. The representative of the State party stated that she had followed the Committee's deliberations with interest and assured the Committee that all relevant issues would be referred to her Government for study and for such action as might be necessary.

Mali

227. The Committee considered the initial report (CCPR/C/1/Add.49) submitted by the Government of Mali at its 283rd, 284th and 289th meetings held on 7 and 19 April 1981 (CCPR/C/SR.283, 284 and 289).

228. The report was introduced by the representative of the State party who stated that his country had a combination of a presidential system and a party system; that the single party system had been chosen because of Mali's colonial history and in order to avoid the kind of self-seeking practices engaged in by large and small parties both in Africa and elsewhere; that the Party's goal was to pursue the mobilization of the resources of all the people and to bring about a national planned economy for the benefit of all citizens; that since February 1981 the Party had been democratized to make it open to all citizens and all schools of thought; that the Party was the co-ordinating organ for the three branches of Government;

that despite the Constitutional provisions concerning exceptional powers, state of siege and state of emergency, the President's actions were limited by the Constitution and by the Party which prohibited the holding of multiple offices; that the Electoral Code had been revised to eliminate incompatabilities between certain offices and to enable citizens outside the country to vote; that Mali had a range of decision-making organs, including the administration, the Party, the army and popular monitoring organizations, including the National Union of Women, the National Union of Youth and the National Trade Union; and that soldiers were party workers who played an important role in development.

229. The representative also stated that all citizens enjoyed fundamental rights under the Constitution; that Islam, Christianity and Animism were equal before the law; that there were no political prisoners and no discrimination of any kind; that the death penalty was imposed only for offences under the ordinary law; and that a Judicial Council guaranteed the freedom and independence of the judges.

230. Members of the Committee expressed appreciation for the background provided by the representative of the State party. Noting the brevity of the report, they stressed that in order to satisfy the requirements of article 40 of the Covenant, States parties were required to include in their reports adequate information regarding implementation of the provisions of the Covenant, and to indicate the factors and difficulties affecting that implementation and the measures they had taken to overcome the difficulties. The view was expressed that the report of Mali could not be judged in absolute terms or on the same basis as a report from a developed country; that although the Committee must adopt an objective approach in seeking to ascertain whether a State party was safeguarding the rights set forth in the Covenant, it should bear in mind that civil and political rights on the one hand and economic, social and cultural rights on the other, were interdependent, that the economic circumstances of a Sahelian country like Mali could not be overlooked when considering its report; and that it was particularly important to understand the background and the conditions prevailing in the country concerned. It was further suggested that, since the Covenant represented a compromise between various approaches to the question of human rights, it could lend itself to different interpretations; and that it would have been useful for the State party to indicate its own approach to human rights and to indicate the attitude to the steps being taken by African countries to draw up a human rights charter within the framework of the Organization of Africa Unity.

231. It was pointed out, however, that although both categories of human rights, namely civil and political rights and economic, social and cultural rights, were admittedly interrelated and interdependent and that the concept of civil and political rights could be interpreted with some flexibility, there were nevertheless limits to latitude in interpretation, and the obligations under the Covenant on Economic, Social and Cultural Rights could not be used as a pretext for avoiding or ignoring obligations under the Covenant on Civil and Political Rights. It was also observed that, unless a State party could show why certain norms should not apply to it, it was bound by its international obligations; that, in interpreting the Covenant, the Committee could take account of factors and difficulties affecting the implementation of Covenant rights. In this connexion, it was observed that, in the case of Mali, a country that had enjoyed the right to self-determination provided for in article 1 of the Covenant and had thus achieved statehood, it would have been useful, for instance, to know how the two-fold burden of drought and inflation as well as the geographic situation of Mali had affected the exercise of civil and political rights provided for in the Covenant.

232. Commenting on article 2 of the Covenant, members asked whether, in the light of articles 62 and 64 of the Constitution, the Covenant had been ratified by special legislation and had primacy over other laws and whether its provisions had been directly incorporated in national law; whether an individual could invoke the provisions of the Covenant or initiate proceedings before the courts and administrative authorities if he considered that a law was not in conformity with the requirements of the Covenant or that his rights under the Covenant had been infringed; whether the Covenant had ever been invoked before the courts and whether complaints were remedied if the courts found that an individual's rights had in fact been infringed; how the Supreme Court operated to guarantee the protection of human rights; and what effective means of redress were available to an individual who felt that his rights under the Covenant had been violated by public officials. In this connexion it was asked whether the planned economy of Mali had any adverse impact on the enjoyment of civil and political rights by individuals; whether individuals, or their legal advisers, were aware of their rights under the Covenant; and whether the Covenant had been published and was available in the national languages of Mali.

233. As regards article 3 of the Covenant, information was requested on the implementation of equality between men and women in the enjoyment of all civil and political rights set forth in the Covenant, and particularly on the percentage of girls in school as compared to boys, the percentage of women in Parliament, in the administration and the judiciary; and on whether women were paid the same salary as their male counterparts with the same qualifications.

234. In connexion with article 4 of the Covenant, it was pointed out that the Covenant set out permissible limitations in given circumstances on certain rights and freedoms; that it allowed for no restrictions, however, on the subjects referred to in articles 6, 7, 8 (1), 8 (2), 11, 15, 16 and 18 even if a State party declared a state of emergency; and that the Committee needed to satisfy itself that, despite the often necessarily strong measures a Government felt bound to take in order to protect the State, the obligations it had assumed under the Covenant were being fulfilled. In this connexion, it was asked what the difference was between a state of emergency and a state of siege; whether any such state was currently in force and, if so, since what date; whether the Constitution was now being fully applied or was suspended in part; whether there had been any derogations from human rights and, if so, from which ones and for what reasons; and how the Constitution guaranteed observance of the rules laid down in article 4 of the Covenant concerning a state of emergency.

235. In relation to article 6 of the Covenant, it was asked what provisions the Government had enacted to improve public health; what specific crimes could be punished by the death penalty; whether the death penalty was still imposed in cases of conspiracy between civil servants and soldiers and of assault on civil servants and, if so, what constituted "conspiracy" and "assault", and why they were considered so serious as to warrant the death penalty. Information was requested on the kinds of offences to which the death penalty had been applied since the Covenant had come into force in 1976. Noting that the ultimate aim of the Covenant was to prevail upon countries to abandon the death penalty and that article 6, paragraph 5, prohibited the imposition of this penalty on persons below 18 years of age or carrying it out on pregnant women, members sought clarifications from the representative of Mali as to whether the death penalty could be imposed on a person below 18 years of age even if he acted with cognizance or could be carried out on

a woman even after confinement, account being taken of the needs of the infant. In this connexion, it was asked whether any consideration had been given in Mali to the abolition of the death penalty.

236. With reference to articles 7 and 10 of the Covenant, it was observed that, although certain measures were necessary to maintain public order, such measures had to be reasonable and proportionate to the circumstances. It was asked whether there were any laws, regulations or instructions to implement the provisions of article 7 of the Covenant; whether any official investigations had been made into any violation of that article by police or security officers against demonstrators or detainees and, if so, when, under what circumstances, what the results of the investigations were and whether any steps had been taken to ensure that police actions and measures conformed with the Covenant. It was also asked to what extent detention places and prisons, including the re-education centre in the Sahara, as well as the juvenile rehabilitation camp referred to in the report complied with the provisions of article 10 of the Covenant; and whether the Government applied the Standard Minimum Rules for the Treatment of Prisoners. Information was requested on solitary confinement and on whether detainees and prisoners were allowed to maintain contact with their families and lawyers and on the remedies available to persons who felt that their rights under articles 7 and 10 of the Covenant had been violated.

237. As regards article 9 of the Covenant, it was asked what laws existed in Mali governing deprivation of liberty, and the implementation of the requirements of this article, particularly, whether the 1966 laws on house arrest, banning and expulsion were still in effect, and, if so, to what extent they were consistent with the Covenant; whether there were political detainees and, if so, whether they were held incommunicado; what was the maximum period of time a person could be detained pending trial; and whether a person who had been illegally arrested or detained had the right to compensation and, if so, in what form compensation was made and subject to what limitation.

238. In connexion with article 14 of the Covenant, information was sought on the implemtnation of all the provisions of this article and it was asked particularly how the independence and impartiality of the judges were ensured, how they were appointed or elected, whether they could be removed, whether they were afforded immunity from prosecution as in the case of Party members; how the judiciary and the legal profession actually operated and what arrangements had been made to provide further legal education and to train judges; whether citizens had sufficient confidence in the judiciary to appear before a magistrate; and what guarantees of fair hearing were there in proceedings before the State Security Court.

239. Commenting on the rights and freedoms provided for in articles 18, 19, 21, 22 and 25 of the Covenant, members noted the existence in Mali of a political system in which supreme authority lay with a single party, the establishment of which had been considered necessary by the Malian authorities to achieve political stability, and they asked how under that system the rights and freedoms provided for in these articles were ensured. Noting as well the slogan "everything for the people and by the people", they asked what guarantees of protection against religious discrimination existed and whether they were legislative or customary in nature; what practical arrangements had been made to ensure freedom of expression and freedom to disseminate information and how access to the mass media was ensured for all the people, particularly for those who opposed the Party's policies or who held

different opinions; how the right to peaceful assembly and the freedom of association were guaranteed and protected and what remedies were available against the dissolution of students' and teachers' organizations; and whether Mali had ratified and various ILO Conventions on trade union rights, particularly the right to organize. It was also asked what "democratic centralism" meant in the Malian context; what qualifications were required for admission to public office; whether any political opposition or independent movement was allowed; whether there had been one or several lists of candidates for election to the Assembly; to what extent could citizens who were not members of the Party exercise freedom of choice; whether some members of the Assembly could be appointed and, if so, by whom; what conditions governed candidatures for the elections and what role trade unions and the Party played in the electoral process; whether any of the people holding key Government positions were not members of the Party; and whether the existence of a single party system might contribute to inequality to the extent that, in certain circumstances, some individuals might be above the law.

240. Regarding article 23 of the Covenant, it was asked what measures had been taken to implement this article with particular reference to forced marriages which might take place as a result of traditional or religious practices; whether law or custom recognized parental authority as the privilege of the father, the mother or both parents; and whether in the event of divorce there were guarantees for women.

241. As to article 27 of the Covenant, information was requested on the provisions in force for the protection of the rights of the various religious and ethnic groups in the country and on the steps taken to publicize the Covenant in their languages.

242. Replying to the questions raised by members of the Committee, the representative of Mali pointed out that the reason why his Government's report had been so brief was that his country had undergone economic, political and social difficulties since 1974 and had suffered a serious drought. In this connexion, he pointed out that there had been a temporary provision in the Constitution which came into force in 1974 under which certain parts had been suspended, particularly those relating to the President of the Republic, the Government and the National Assembly; that the army had retained power from 1974 to 1979 when elections were held and civilian institutions and government were established, and that the Constitution had, however, been in force continuously since 1974. He stressed that his Government would attempt to meet the reporting requirements of the Covenant and the Committee's guidelines.

243. As regards questions raised under article 2 of the Covenant, he explained that all international agreements were studied carefully by the Legal Division of the Ministry of Foreign Affairs, the Supreme Court, the Council of Ministers, the Secretary-General of the Party and the National Assembly and that, if all agreed, the President then issued a decree ratifying the instrument in question, that it was then disseminated by the news media in all the languages of the country and, finally, its provisions were incorporated in national law. Any citizen could invoke the international agreements to which Mali was a party. In connexion with questions on the Supreme Court, the representative explained that if, for instance, a person who felt that there had been Party influence in an election, he could bring the case to the Supreme Court.

244. In reply to questions raised under article 3 of the Covenant, the representative stated that all citizens were treated equally irrespective of sex, and it could be assumed that any reference to Malians included both men and women; that they all received equal pay for equal work; that women were working in many fields, including the diplomatic corps, the Government, the National Assembly and in both public and private sectors.

245. Regarding article 4 of the Covenant, he informed the Committee that a state of siege or emergency had never been declared in Mali, although the drought of 1975 had caused the Government to declare certain areas disaster areas.

246. Replying to questions raised under article 6 of the Covenant, he explained that medical treatment was available at various levels, ranging from the national and regional hospitals to the rural clinics and the traditional birth attendants and first-aid nurses who had become a feature of every village. He pointed out that the death penalty was implemented only in cases of serious crimes such as human sacrifices and genocide; and that it could be imposed, as indeed had been the case in a number of cases, on an official whose economic crimes exceeded the equivalent of $100,000, in accordance with legislation enacted in 1977 to deal with corrupton. He agreed that the death penalty imposed for attacks on Government officials, in accordance with a law enacted to deal with the uprising by the Tuareg tribes in the north of the country during the period 1964-1967, could now be revoked since the problem no longer existed. He also informed the Committee that persons under 18 years of age were given a maximum of 20 years' imprisonment and could not receive the death penalty; that neither pregnant women nor mothers were ever executed in his country; and that while there was no movement in the country to abolish the death penalty, it was an exceptional penalty and Mali would follow the decisions on the matter taken at the regional level in Africa.

247. Replying to questions raised under articles 7, 9 and 10 of the Covenant, the representative stated that he did not know of any proven cases of torture practiced against detainees; that the police were well trained in specific academies and, although they were not always gentle in dealing with offenders, their conduct remained nevertheless within the law; that there was no banishment as such, although prisoners considered dangerous were sent for up to three months at a time to camps, usually in the north, where the climate and regime were often rigorous; that such prisoners were often put to work in the salt mines or in the education of the northern tribes as part of an effort to integrate those tribes into the mainstream of the life of the country; that the right of visit was granted to political detainees at any time during the day and evening; that prisoners held in the north received visits from persons transported by special convoy; and that the new Bolé centre for juvenile delinquency was rehabilitating prisoners with a view to their employment after release.

248. With respect to questions raised under article 14 of the Covenant, he indicated that candidates for the judiciary were selected only on the basis of moral and technical competence; that judges acted according to established penal and civil procedures; that a citizen had the right to appeal within 14 days; that all officials working in the legal profession were highly trained, initially at the National School of Administration followed by training inside Mali and abroad.

249. Replying to questions raised in connexion with the rights and freedoms provided for in articles 18, 19, 21, 22 and 25 of the Covenant, the representative stated that every citizen was free to practise his or her religion and that there was never any problem about either Christians or Animists attending their respective religious or family ceremonies; that the mass media were State-owned, but access to them was available to all citizens; and that the Government made wide use of radio programmes to keep the public abreast of its policies, both national and international. He maintained that, within the single party system, individuals were necessarily given all political freedoms with no discrimination of any sort; that the Party was the channel for all communications; that a person must first address himself to his local committee, and that such expressions of political will were passed upwards through the political infrastructure to reach the highest levels. He indicated that, under the terms of its Constitution, Mali did not need to ratify the ILO Convention on trade union freedom; that the whole political system was based on "democratic centralism" and the President seized every opportunity to make clear that the Party was not just one person, but, rather, the people as a whole; that any citizen had the right to become President, so long as he or she was of sufficiently high moral character and had the necessary qualifications; and that there was no discrimination on the ground of sex or otherwise concerning access to the civil service, the standard criteria with respect to qualifications, moral character and health.

250. Responding to questions raised under article 23 of the Covenant, the representative stated that for marriage purposes the age of majority was 21, but a girl of at least 16 years of age or a boy of at least 18 could marry with her or his parents' consent, if that consent was proclaimed before a civil authority; that the husband was always the head of the family and no woman would think of contesting that fact; that children were increasingly contesting parental authority although that was less common in those areas where there had been least penetration of European civilization; that in the raising of their children and with respect to property there was equality between husband and wife. He informed the Committee that, in Mali, a man was entitled to have up to four wives, but the taking of more than one wife depended on the consent of those he already had, that this arrangement had to be acceptable to the families concerned and sometimes even the neighbours and that the man had to prove that he had sufficient income to support all his wives.

251. In connexion with questions raised under article 27 of the Covenant, he stated that Malian nationality was the overriding criterion for equality of rights without discrimination.

252. The representative of Mali regretted that he had not been able to answer all the questions but assured the Committee that his Government would send a detailed supplementary report to deal with all the points raised in the Committee.

Jamaica

253. The Committee considered the initial report (CCPR/C/1/Add.53) submitted by the Government of Jamaica at its 291st, 292nd and 296th meetings held on 14 and 16 July 1981 (CCPR/C/SR.291, 292 and 296).

254. The report was introduced by the representative of the State party who stated that his Government gave the strongest support to the promotion of human rights both at the international and local levels; that the protection of individuals from

the abuse of their rights by others was enshrined in the Constitution which was the supreme law of the country and that the purpose of the restrictions imposed on some civil and political rights was to protect the rights of others and the public interest.

255. Members of the Committee, while regretting that the report which had been due since 1977 was submitted only in 1980, commended Jamaica for the detailed character of the report, its consistency with the guidelines of the Committee and the seriousness with which it had been prepared. The report also had the merit of including a number of provisions from different internal laws designed to give effect to the general constitutional norms of Jamaica, particularly since the Covenant could not be directly invoked before the national courts and since domestic legislation was, therefore, necessary. In this connexion, reference was made to a statement in the report to the effect that certain rules of customary international law were automatically applied in Jamaica and it was asked to which rules of customary international law the report had referred and whether such rules were regional in scope, such as the rights of territorial asylum recognized in America. Information was also requested on the actual progress made in the enjoyment of human rights in Jamaica and on any factors and difficulties, if any, affecting the implementation of the Covenant as stipulated in article 40, paragraph 2, thereof.

256. In connexion with article 1 of the Covenant, it was asked what repercussions the establishment of a new international economic order might have in Jamaica on the civil and political rights set forth in the Covenant. Noting the reference in the report to agreements concluded by Jamaica with multinational corporations, information was sought on the extent to which the practices of such co-operation had an adverse impact on the right to self-determination itself and on the right of a people to maintain effective control over its natural resources; and on whether Jamaica had provided material assistance to other peoples striving to achieve their right to self-determination in accordance with the relevant General Assembly resolutions. Information was also requested on the institution of Governor-General as head of the Executive and on the compatibility of such an institution with self-determination.

257. With regard to article 2 of the Covenant, members of the Committee noted that the provisions of this article contained a general prohibition of discrimination. However, the Jamaican Constitution specified fewer grounds on the basis of which discrimination in Jamaica was prohibited than did the Covenant and it was asked whether there were any other legislative provisions prohibiting discrimination on such important grounds as sex, language, national or social origin, property, birth or other status; and to what extent the provisions of the Covenant ensured to all those who lived in Jamaica the enjoyments of Covenant rights on an equal basis. Some members expressed concern over certain provisions in Section 24 of the Constitution which permitted restrictions of a discriminatory character contrary to article 2 with regard to the rights of privacy, freedom of movement, expression, association and of assembly, and asked for assurances that appropriate attention would be given to the specific obligations undertaken by Jamaica under the Covenant when applying these provisions of the Covenant.

258. Noting that the Covenant had not been directly incorporated into Jamaican domestic law, members asked what publicity the Covenant and the Optional Protocol had been given in Jamaica; whether national institutions for the promotion of human rights had been established; whether any thorough legal inquiry had been undertaken

in Jamaica with a view to eliminating any inconsistencies between the domestic law and the Covenant; whether a citizen who claimed that his rights had been violated could invoke the provisions of the Covenant directly in court and the extent to which courts would give weight to those provisions as opposed to existing jurisprudence; whether the Supreme Court or the Court of Appeal could hold a Jamaican Act of Parliament invalid as contrary to the Constitution; whether any ruling of that kind had ever been made, and whether the provisions of the Constitution had ever been used by the courts to grant remedies to persons affected by unconstitutional legislations, and if so, what remedies were there and how often people resorted to them. Information was also sought on the status, functions and activities of the Jamaican Council for Human Rights; on the discretionary powers of the Ombudsman to ensure respect for civil and political rights; and on the relationship between the Ombudsman and the Supreme Court.

259. With regard to article 3 of the Covenant, members of the Committee noted that no mention had been made of practical measures, in addition to purely legislative measures, that had been taken to implement equal rights between men and women. Information was sought on whether, in Jamaica, a woman could voluntarily terminate her pregnancy and if so, in what circumstances, on the number of women lawyers in Jamaica, on the percentage of female students in schools and universities, on the percentage of women Members of Parliament and on the percentage of women in the diplomatic corps.

260. Commenting on article 4 of the Covenant, members asked what guidance was given to the Governor General in proclaiming a state of emergency between June 1976 and June 1977; who was responsible for determining the existence of a "threat to the life of the nation"; which rights had been derogated from during the state of emergency and for what reasons; whether the Government had informed the other States parties of such derogations, as stipulated in article 4, paragraph 3, of the Covenant. Some members pointed out that section 24 (4) and (6) of the Constitution, when read together could be so interpreted as to permit discrimination contrary to the provisions of article 4 of the Covenant. In this connexion it was asked whether section 3 (2) (a) of the Emergency Powers Act related to Jamaican citizens or to foreigners, since that provision referred only to "persons".

261. With regard to article 6 of the Covenant, it was noted that the Governor General was empowered under the Constitution to exercise the prerogative of mercy. Questions were asked as to whether the prerogative could be exercised in the case of a person who had been sentenced to death and to some other sentence; whether the death penalty had ever been imposed for high treason or other serious crimes; and whether the examination of the abolition of capital punishment by a Committee of Parliament in Jamaica was still in its initial stages or whether some progress had already been made. Stressing that the right to life required the control of the use of fire arms by the police, some members asked whether the principle of proportionality was applied by the authorities and whether the courts of Jamaica had had the occasion to apply that principle in cases of that kind.

262. In connexion with article 7, information was requested on the implementation of the prohibition of torture and other degrading treatment, on whether it was open to the courts to review a legislatively fixed sentence with a view to determining whether, in the circumstances of the case, the sentence amounted to cruel, inhuman or degrading treatment, particularly in legislation relating to public order; on the forms of corporal punishment which were still practiced in Jamaica and on the

existing rules applicable to solitary confinement. Noting that infringement of the prohibition of medical or scientific experimentation without the free consent of the person concerned was considered to be an offence at common law, it was asked whether Jamaica did not have any more up-to-date legislation to ensure compliance with the provisions of this article.

263. With regard to article 8 of the Covenant, one member referred to ILO Convention 105 concerning the abolition of forced labour, ratified by Jamaica in 1962, and recalled that a United Kingdom statute of 1894, incorporated into Jamaican legislation, provided that seamen of the merchant navy could be brought back by force on board their ships and it was asked whether such provisions were still in force.

264. With respect to article 9 of the Covenant, it was asked whether a citizen could be expelled from Jamaica; and what justification was there for the possible deprivation of personal liberty under section 15 of the Constitution in "the case of a person who had not attained the age of 21 years, for the purpose of his education or of his welfare". Questions were also asked on the nature and the burden of proof that lay on a person seeking redress for breach of his fundamental right to liberty. Misgivings were expressed regarding the deprivation, under the same section, of the liberty of vagrants and it was asked how that term was interpreted and in what circumstances a person of that description could be deemed a menace to society. Information was requested on the exact nature of preventive detention, its duration and the circumstances in which it was ordered and on whether a person arrested without legally valid grounds was entitled to bring an action against that person and, in the event of the insolvency of the person originally responsible for the arrest or detention, against the State.

265. As regards article 10 of the Covenant, members commended the Rules for Prison Officers, which stated that "Every prison officer ... shall treat prisoners with kindness and humanity". They stated, however, that prisoners should have the possibility of bringing complaints to persons independent of the police authorities, who listened to them and whose duty it was to ensure that their complaints were properly investigated and that action was taken on them. Another vulnerable class of detainees were persons detained in mental institutions to whom reference was made in section 15, paragraph 1, of the Constitution. It was increasingly realized that more adequate safeguards were necessary to ensure that those persons are not detained without proper cause and that they would receive proper treatment while detained. Members asked what prison rules existed in Jamaica regarding family visits to prisoners, in particular, their frequency and what were the rules governing correspondence and contacts between a prisoner and his family. One member was disturbed to note that, under Jamaican law, it appeared to be possible to sentence a child of 14 to spend the rest of his life in prison.

266. As regards articles 12 and 13 of the Covenant, reference was made to the apparent conflict between the provisions of the Immigration Restriction (Commonwealth Citizens) Act, the Aliens Act mentioned in the report, and the general rule whereby an alien had no right to enter Jamaica. In this connexion it was noted that the term "alien" in the Covenant was intended to cover anyone not a citizen of the country concerned and would therefore apply to a Commonwealth citizen; that the Immigration Registration Act indicated that the procedural safeguards required by article 13 of the Covenant would appear to apply only to persons ordinarily resident in Jamaica continuously for a period of five years whereas article 13 was designed to apply to any alien lawfully in the territory of

a State party. Similarly, the Aliens Act, which referred to aliens who were not Commonwealth citizens, did not appear to comply sufficiently with the requirements of article 13 concerning the review of the case and the opportunity for a person to submit his reasons against expulsion. It was suggested that the provisions of the two Acts be reviewed with the view to amending them to give full effect to the provisions of article 13 of the Covenant.

267. Clarification was requested on the implementation of various provisions of article 14 of the Covenant. Questions were specifically asked on how the independence of the judiciary was ensured in Jamaica; on the appointment, transfer and promotion of judges; on whether, in Jamaica, there were emergency courts and courts with non-professional judges; and on how legal assistance was provided in practice. Regarding a reference in the report to the Gun Court Act, which had established a special court and special procedures to deal with cases of possession of fire arms, questions were asked as to whether the requirements of due process as laid down in article 14 were met in the Gun Court and whether there was a right of appeal as required by article 14, paragraph 5, of the Covenant. Members also inquired whether any of the rights set forth in the Constitution relating to fair trial had been held by a court to have been infringed and, if so, what remedies had been granted.

268. With regard to article 17 of the Covenant, it was noted that interference could be arbitrary, even though it was lawful, and that was true where a law was formulated in unduly broad terms conferring broadly defined powers without adequate control, as in the case of police interference. Questions were asked as to what exceptions the Suppression of Crime Act had permitted to the general rule as laid down in the Constitution which provided that, except with his own consent, no person shall be subject to the search of his person or of his property or the entry by others on his premises; whether interference with correspondence was prohibited in Jamaica; and whether there was any law in Jamaica protecting individuals from electronic surveillance and eavesdropping.

269. In relation to articles 18 and 19 of the Covenant, it was noted from the report that the restrictions permissible under the Jamaican Constitution appeared wider than those allowed under the Covenant which provided for the possible imposition of certain restrictions upon the exercise of the right, but not upon the right itself and it was asked how the relevant provisions of the Constitution were implemented in practice since they concerned basic human rights, inter alia, freedom of thought, conscience or religion, freedom of expression. Members also requested information on the existing relationship between the press and the Government and on the age at which a child could choose his belief or religion.

270. In connexion with article 20 of the Covenant, it was pointed out that the information given in the report was mainly concerned with internal armed conflict, insurrection and the creation of discontent, dissatisfaction and ill-will, whereas article 20 of the Covenant was concerned with the prohibition of propaganda for war in general, and of any advocacy of national, racial or religious hatred. Members asked whether a person might be punishable under the provision of section 3 of the Treason Felony Act of Jamaica mentioned in the report without having done any act on the grounds that his thoughts constituted a threat to State security.

271. With regard to article 22 of the Covenant, it was asked whether the forming of political parties was covered by legislation, and if so which authority or body decided whether a particular political party complied with the provisions of the law; how many trade unions there were and whether they could conclude collective bargaining agreements; and whether foreign residents could join trade unions. It was also asked whether the regulations under the Emergency Powers Act of Jamaica had been considered in connexion with the ILO instruments on the freedom of trade unions; whether the ratification by Jamaica of ILO Conventions had created any particular problems for Jamaica and, if so, what the Government had done to solve those problems.

272. With regard to articles 23 and 24 of the Covenant, clarification was requested on the system of marriage contracts and questions were asked as to what the legal system was regarding the family estate; who was considered to be the head of the family; whether Jamaica had ratified the Convention on the nationality of married women and what were the implications of marriage between a Jamaican national and a person of foreign nationality; whether grounds for divorce were the same for men and women; at what age young people could marry; whether the age of marriage corresponded to the age at which sexual relations were not a criminal offense and whether widowers and widows were in a position of equality where inheritance was concerned. It was noted that according to the report the Status of Children Act had removed the status of illegitimacy. However, some provisions of this Act bore evidence that children were not treated with absolute equality. Members asked whether legal action taken by the mother of an illegitimate child could lead to legitimization of that child.

273. With reference to article 25 of the Covenant, it was asked how the political parties existing in Jamaica were formed, who was entitled to form them; whether the constitution of a political party was subject to certain conditions and whether a party based on a fascist or anarchist ideology could legally be formed; whether Jamaica applied the one man one vote rule whether the voting districts were divided, so as to give all persons equal political rights irrespective of where they lived; what legal provisions ensured the fairness of elections and at what age one was eligible to vote.

274. With reference to article 26 of the Covenant, it was pointed out that what was required was not merely equality before the law but also equal protection of the law; that Section 24 of the Constitution furnished some possible grounds for discrimination beyond what was permissible under the Covenant since the prohibition of discrimination did not apply for example with respect to the imposition of taxation or appropriation of revenue nor, for that matter regarding qualifications for service as a public officer, police officer or member of the defence force. It was also asked whether, since article 26 required that the law should prohibit discrimination, special legislation had been enacted in Jamaica particularly, since Jamaica was a multireligious and multiracial community.

275. In relation to article 27 of the Covenant it was noted that the Constitution had not entirely covered the provisions of this article. Information was requested on the composition of the Jamaican population, on how ethnic minorities were treated and protected; on measures taken to defend their culture and ensure the representation of ethnic minorities in Parliament.

276. The representative of the State party replied to a number of questions put to him by members of the Committee as summarized in the preceding paragraphs.

277. With regard to questions concerning the application of rules of customary international law in Jamaica, he stated that the Jamaican courts would apply the applicable criteria to determine whether a rule was a generally recognized one in international law, and the Jamaican courts would then recognize that rule as part of Jamiacan jurisprudence. He also informed the Committee that the Government would include information on any factors and difficulties encountered in implementing the covenant when it submitted written answers, pursuant to article 40 of the Covenant.

278. Replying to questions raised under article 2 of the Covenant, the representative stated that the fundamental rights and freedoms of individuals were guaranteed in chapter III of the Constitution. The limitations which were permissible were designed to ensure that the enjoyment of those rights and freedoms did not prejudice the enjoyment of the rights of others or the public interest. When a person appeared before tribunals and administrative authorities, he enjoyed the protection of the Constitution and other laws of Jamaica. Any alleged infringement of his fundamental rights and freedoms could be brought before the Supreme Court under section 25 of the Constitution for redress, without prejudice to any other course of action which was available. Section 25, paragraph 2, of the Constitution in fact was couched in the broadest terms and therefore afforded very extensive remedies. As regards the jurisdiction of the Courts, he stated that section 25 of the Constitution contained a clear and express reference to the power of judicial review with respect to chapter III. No lack of clarity had been detected by the Jamaican courts and there had been cases brought under provisions similar to section 25 in West Indian jurisprudence. The Supreme Court had in fact on many occasions considered the constitutionality of legislation and made pronouncements thereon. One such instance concerned the Gun Court Act where, on appeal, the Judicial Committee of the Privy Council had declared certain provisions of that Act to be unconstitutional.

279. Discriminatory legislation was prohibited under section 24, paragraphs 1 and 2 of the Constitution. The protection afforded by the Constitution over ordinary legislation was entrenched under section 49 and strengthened by section 2, whose provisions, taken together, gave supreme force to the Constitution and therefore provided the citizen with greater protection. As regards the status and activities of the Jamaican Council for Human Rights, the representative assured the Committee that those remarks would be brought to the attention of the proper authorities in Jamaica.

280. With regard to questions raised in respect of article 3 of the Covenant, the representative stated that his Government was fully aware of its obligations to promote and protect civil and political rights on the basis of equality as between the sexes and to create conditions for equality by affirmative action. Much was being done to promote and protect equal rights for women and, to that end, a Government unit with that specific responsibility had been established in Jamaica. There were many women in the Jamaican diplomatic service, including several of ambassadorial rank, and in all spheres of public affairs.

281. Concerning the role of the Governor-General in connexion with the provisions of article 4 of the Covenant, the representative stated that the Governor-General's office had been established under the Constitution, which required him to act in accordance with the advice of the Cabinet, except in certain defined areas. Her Majesty in the person the Governor-General was the titular head of the State and the Constitution was clear on where effective executive power lay.

282. In connexion with article 6 of the Covenant, the representative stated that under the provisions of section 90 of the Constitution the Governor-General was given the power to exercise the prerogative of mercy for all offences, including that of murder. In the case of a conviction for murder, the Judge sent a report to the Jamaican Privy Council which after considering the report, advised the Governor-General as to whether the prerogative should be exercised. There had been instances of that discretion being used in murder cases. On the matter of capital punishment, debate was current in Jamaica and was being actively considered by a bi-partisan parliamentary committee. That committee had asked for more time to make appropriate recommendations to Parliament. Replying to a question relating to proportionality with respect to the use of fire arms by the police, he explained that proportionality was one of the major factors to be considered by the Courts under the ambit of the phrase "reasonably justifiable". It would be quite open to the Courts to find that a killing to protect oneself from serious harm was not an infringement of the right to life while a killing to resist a minor theft was such an infringement. The terms used in the Constitution were clearly open to interpretation by the Courts.

283. Replying to a question raised under article 9 of the Covenant, he said that a citizen of Jamaica could not be expelled from his own country. Section 16 of the Constitution concerning the protection of freedom of movement, made the expulsion of a Jamaican citizen unconstitutional.

284. As regards article 10 of the Covenant the representative stated that the fundamental rights and freedoms of the individual were a subject which formed part of the training of police and security forces who were thus made aware not only of their power but of the rights and freedoms of all persons in Jamaica.

285. Regarding article 14 of the Covenant, the representative pointed out that all successive Governments of Jamaica had recognized the independence of the judiciary as being one of the fundamental requirements of the Constitution, in particular having regard to the entrenched constitutional provisions guaranteeing the fundamental rights and freedoms of the individual. The independence of the judiciary was secured in chapter VI, section 49 of the Constitution, and its main characteristics were security of tenure, security of remuneration, and protection from removal from office. Sections 100 and 106 of the Constitution concerning the Supreme Court and Court of Appeals laid down an elaborate procedure governing the removal of judges from office. He also stated that there were only two grounds for removal, "inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause)" or "misbehaviour". As a first condition, the Governor-General was required to appoint a tribunal of persons holding or who had held high judicial office to inquire into the question of whether the matter should be referred to the Judicial Committee of Her Majesty's Privy Council. The Judicial Committee must then advise whether the Judge concerned ought to be removed from office.

286. The representative commented that there were no non-professional judges in Jamaica and that judges were not elected. All matters relating to the enforcement of the fundamental rights and freedoms affirmed in chapter III of the Constitution were heard by the Supreme Court or, on appeal, by the Court of Appeal or the Judicial Committee of the Privy Council. All the courts in Jamaica were staffed by professional judges whose independence was secured by the provisions of the Constitution. Nevertheless, for certain purposes administrative tribunals had had to be set up to hear specific issues; they were staffed by persons who were not

members of the judiciary but who had particular skills in the area of the competence. For instance, the Labour Relations and Industrial Disputes Act, which established the Industrial Disputes Tribunal contained provisions requiring that the Tribunal should consist of a Chairman and two Deputy Chairmen appointed by the Minister, with sufficient knowledge of, or experience in, labour relations, and of not less than two members appointed by the Minister from a panel supplied by organizations representing employers and an equal number of members appointed by him from a panel supplied by organizations representing workers.

287. With regard to the burden of proof under section 15 of the Constitution, he said that a distinction had to be made between civil and criminal proceedings. A person applying to the Supreme Court for redress regarding an alleged infringement of his right to personal liberty under section 15 would merely have to establish that he had in fact been deprived of his liberty. The burden of proof did not involve adducing negative evidence to exclude the operation of the exceptions. Once the complainant had established the deprivation of his liberty, it would then be for the authority concerned to establish, on the evidence, that it was entitled to claim the operation of an exception.

288. As regards article 19 of the Covenant, the representative stated that in Jamaica the press was free, effective and not controlled by the Government. Relations were based on mutual respect and the common desire to see Jamaica advance as a free and progressive society. In fact, the history, tradition and practices of the country ensured and required a free press.

289. Replying to the questions concerning article 25 of the Covenant, he pointed out that the Constitution contained certain provisions on the electoral system such as voting. It had been amended twice, once to lower the voting age to 18 and then to remove certain disabilities affecting senators. An impartial Electoral Commission had recently been established on which representatives of both major parties were equally represented. The national election of 1980 and the local elections of 1981 had both been administered by the Commission and had served to inspire confidence in it in Jamaica and elsewhere.

290. Finally, the representative of Jamaica informed the Committee that the questions and comments of members would be brought to the attention of the appropriate authorities and that the most serious consideration would be given to all views expressed. His Government would provide to the Committee written replies to the points not adequately covered and additional information where necessary.

Portugal

291. The Committee considered the initial report (CCPR/C/6/Add.6) submitted by Portugal at its 293rd, 294th and 298th meetings on 15 and 17 July 1981 (CCPR/C/SR.293, 294 and 298).

292. The report was introduced by the representative of the State party. He referred to the provisions of the new Portuguese Constitution which entered into force on 25 April 1976 and, in particular, to those contained in Part 3 of the Constitution dealing with the fundamental rights and duties of citizens. He referred also to the political, legislative and administrative measures taken by the Parliament and the Government of Portugal, after the coup d'état of 25 April 1974, introducing reforms in the various sectors of national life.

He pointed out that Portugal was a party to several international instruments in the field of human rights and had accepted, in particular, the competence of the European Commission of Human Rights to receive petitions in accordance with article 25 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

293. Members of the Committee commended the Portuguese Government for its complete and informative report drafted in accordance with the Committee's guidelines. They observed, however, that although the report gave exhaustive information on the legal framework governing human rights, there was little information about the factual promotion and promotion of human rights. Members sought more information on the factors and difficulties encountered by Portugal in implementing the Covenant taking into account specially the problems that the country had to face during the period which followed the coup d'état of April 1974. In this connexion, information was requested on the reforms envisaged in the country in order to complete the democratization process, the revision of the 1976 Constitution undertaken by the Parliament, the number and nature of the political parties existing in Portugal and the process of nationalization of property. Information was also requested on the application of article 309 of the Constitution concerning the indictment and trial of officers and personnel of the secret police of the previous régime (PIDE/DGS) and article 310 concerning the screening of civil servants.

294. In respect to article 1 of the Covenant, tribute was paid to Portugal for its efforts in securing the independence of its former colonies. Clarification was, however, asked on the future position of the territory of Macao which, according to the Portuguese Constitution, was still under Portuguese administration. It was noted that Portugal, according to its Constitution, "recognizes the right of peoples to revolt against all forms of oppression ..." and the question was asked whether Portugal shared the view that peoples suffering from oppression or colonialism, such as the Palestinians and the people of Namibia, had the right to revolt, and what was the position of Portugal with regard to the ratification of the international instruments for the elimination of racism and colonialism.

295. In connexion with article 2 of the Covenant, information was requested on how Portugal guarantees in its legislation the implementation on the provisions of the Covenant with regard, in particular, to non-discrimination. It was noted that article 2 of the Portuguese Constitution expressly laid down as its object the transition to socialism by creating the conditions for democratic exercise of power by the working classes and it was asked what was meant by the term "working class" and whether this term did not imply discrimination between the "working classes" and other classes. It was noted also that certain provisions of the Constitution, such as those contain d in its articles 12, 15 paragraph 2, 26, 31, 34, 44 and 46, referred to rights exclusively reserved to Portuguese citizens and clarification was requested on those constitutional provisions which made a distinction between citizens and others and which did not appear to be in conformity with the principles laid down in the Covenant. Moreover, the view was expressed that, since the report stated that various sovereign organs had been made responsible under the Constitution for safeguarding the true equality of citizens with regard to their economic, cultural and social status, it would be useful for the Committee to know what had been done to create economic conditions which would enable all people in Portugal, whether in urban or rural areas, to enjoy their rights under the Constitution. In this connexion, it was observed that, though the report dealt with the protection of human rights, it did not refer specifically to the promotion of human rights. Attention was drawn in this respect to the national and local

institutions, recommended in General Assembly resolution 33/46 for the promotion and protection of human rights and it was asked whether any such institutions had been set up in Portugal. With reference, in particular, to article 22 of the Constitution concerning the right of asylum, it was observed that grounds on which such a right could be granted in Portugal seemed to be somewhat restrictive. In addition, it was asked whether the law defining the status of political refugees had already been enacted in accordance with article 22, paragraph 2 of the Constitution and whether the right of asylum was considered in Portugal as a subjective right or an objective guarantee. Commenting on article 8 of the Constitution which provides that duly ratified international conventions are applicable in the municipal law of Portugal, members of the Committee observed that it was not clear from that provision what was the precise status of the Covenant within the legal system of the country, whether it took precedence over previously existing or subsequently enacted municipal laws and over the Constitution itself and if there were a conflict between the Covenant and the Constitution which one had priority. Information was also requested on whether the Covenant had been translated into Portuguese, suitably publicized and made known to those who wished to know what their rights were. As regards the administration of justice, members of the Committee asked whether the institution of the Ombudsman as well as the tribunals referred to in the report were already functioning, whether the Ombudsman had already been appointed and whether he was a judge or a member of the Parliament. It was asked also whether the draft-law concerning the organization of administrative courts had been adopted and whether the members of the Council of the Revolution were technically qualified to examine the constitutionality of laws. With reference to article 269 of the Constitution concerning the right of access to the courts in order to question the legality of any act of the public administrative authorities and it was asked whether the courts referred to were administrative courts and if such courts had not yet been established, whether the ordinary courts could exercise jurisdiction under article 269 in the meantime.

296. In relation to article 3 of the Covenant, members of the Committee wished to know when the draft legislation designed to prevent discrimination against women in work and employment is likely to come into force, what was the proportion of women active in the public sector professions, and the private sector, whether consideration was being given to granting to women the right to decide freely whether to have a child or not and how far the resolutions on the status of women, adopted by the General Assembly in 1975, were reflected in the daily life of the country.

297. With regard to article 4 of the Covenant, members of the Committee noted that article 19 of the Portuguese Constitution concerning suspension of rights in case of a state of siege or emergency and the report itself did not state clearly which rights could be derogated from and to what extent.

298. In connexion with article 5 of the Covenant, it was asked whether the Covenant was directly applicable in Portugal as the European Convention for the Protection of Human Rights and Fundamental Freedoms. It was also noted that Portugal recognized the competence of the European Court and it was asked whether problems might not arise as a result of cases relating to human rights being laid before two different jurisdictions.

299. Regarding article 6 of the Covenant, clarification was asked on whether according to the Constitution, the death penalty in Portugal had been abolished or whether, if it existed in principle, it has ceased to apply and, if so, what were the consequences of that step, in particular, on the crime rate. Some information was also requested on the rules prohibiting drug abuse.

300. As regards article 7 of the Covenant, information was requested on practical measures taken in Portugal to give effect to the prohibition of torture, on whether complaints of torture had been made during the last two years, in particular, by political activists, whether there was any investigation in those complaints and what was the result, if any. In this connexion, clarification was requested on the language used in article 306 of the Penal Code, which forbade the ill-treatment of prisoners or the use of insulting language or violence against them except in the event of resistance, escape or attempted escape. With regard, in particular, to the question of medical transplants, it was asked what definition of the moment of death had been adopted in the Portuguese regulations dealing with that question.

301. With reference to article 9 of the Covenant, some members of the Committee wished to know which were the guarantees available against arbitrary detention and, in particular, what safeguards were provided under the law to ensure that persons were not wrongfully detained in mental institutions and that those who required to be detained were treated with humanity. Other members wished to know whether the principle of habeas corpus had become a remedy open to all, and not restricted to citizens and, considering that recourse to the remedy being probably the exception rather than the rule, what were the conditions governing detention in the normal case.

302. In connexion with article 10 of the Covenant, information was requested on the supervision of prisons and the availability of a complaints mechanism for prisoners and on whether any system of independent prison visitors to hear complaints existed.

303. In connexion with article 12 of the Covenant, one member wished to know what were the conditions to be fulfilled by immigrants into Portugal.

304. With regard to article 13 of the Covenant, information was requested on procedural safeguards available to aliens, lawfully present in Portugal, who might be expelled therefrom and on the application of the legislation concerning extradition especially in the light of the provisions of the International Convention on the Suppression and Punishment of the Crime of Apartheid dealing with extradition for crime of apartheid.

305. In connexion with article 14 of the Covenant, it was asked whether the Special Penal Code applicable to the armed forces was still in force and, in that case, whether it created inequality among citizens, whether hearsay evidence was admissible in criminal proceedings in as much as article 14, paragraph 3 (e) required that an accused party be given the right to cross examine witnesses against him, how long was the delay between the determination of the charge and the trial and between trials and appeals, and whether the court of appeal could reverse a finding of fact made by an inferior court. Furthermore, information was requested on whether there had been any prosecution recently against political activists for "moral complicity", what were the elements of that offence and whether it was a mere crime of intent or it should be accompanied by some overt act of participation, whether consideration was being given in Portugal to applying

the laws of amnesty in the case of political activists whose convictions of common law offences were based on evidence which was perhaps technically receivable but factually doubtful, and whether legislation against terrorism had recently been adopted in the country and what were its provisions. In addition, it was asked whether judges were irremovable and what conditions, in addition to legal requirements, had to be satisfied by judges, whether there were in Portugal special financial, social and juvenile courts and whether any changes had been made in the judiciary since 1974 or whether the same judges who were in office before 1974 were still responsible for the implementation of human rights legislation.

306. In connexion with article 16 of the Covenant, clarification was requested on the text of article 66 of the Portuguese Civil Code, according to which recognition as a person before the law was acquired at the time of a complete and live birth.

307. In connexion with article 17 of the Covenant, reference was made to article 33 of the Portuguese Constitution concerning the right to identity, a good name and privacy, and it was asked how the provisions of that article applied to members of the secret police of the régime existing in Portugal before April 1974 especially to those who committed criminal acts in the African territories which were under Portuguese administration at that time. With reference to the safeguards against the wrongful use of information concerning persons and families contained in article 33, paragraph 2 of the Constitution, it was asked whether victims could ask for compensation for purely moral damages. With reference to article 34 of the Constitution providing guarantees for the inviolability of home and correspondence more specific details were asked as to the particular cases referred to in paragraph 4 of that article which allowed investigators to interfere with correspondence.

308. Regarding article 18 of the Covenant, one member wished to know whether the Portuguese Government had recognized and ratified various international conventions concerning copyright.

309. With regard to article 19 of the Covenant, clarification was requested on the constitutional provisions protecting the press against economic power and prohibiting private ownership of television in Portugal. It was asked, in particular, whether there was any regulation on that matter and whether concrete measures had been taken to ensure that the press was not owned by wealthy persons and used for the furtherance of their interests. It was also asked what ordinary laws had been established to implement the constitutional provision which provided that the State should promote the democratization of culture and, in particular, what were the practical means securing the implementation of article 76 of the Constitution which provided that admission to the university should be based on the needs of the country in qualified staff and that the admission of workers and young people from the working classes should be encouraged.

310. In respect to article 20 of the Covenant, detailed information was requested on the extent to which the Portuguese authorities prohibited war propaganda and incitement to racial hatred or discrimination since the Portuguese Penal Code had not yet been completed. It was also asked whether the Portuguese Government recognized that the right to freedom of expression covered by article 19 of the Covenant could be limited, for example, by the prohibition of war propaganda provided for by article 20 of the Covenant and the prohibition against racism or discrimination and what measures had been taken in Portugal to limit freedom of

expression when used to that end. Moreover, it was asked how effectively crimes against humanity had been prosecuted and what had been done in practice to eradicate and prevent threats to human rights.

311. As regards article 21 of the Covenant, one member wished to know whether foreign workers could form trade unions or associations and had the right to meet peacefully. Another member observed that there seemed to be a contradiction between the Portuguese legal provisions providing for the recognition of the right of all citizens to demonstrate and those establishing that counter-demonstrations would be liable to penalties.

312. In relation to article 22 of the Covenant, reference was made to the abrogation of Decree-Law No. 215-B/1975 and it was asked what were the defects which had been found in that Decree-Law, in particular, whether a considerably high membership was still required for the establishment of workers' and employers' organizations, whether the law still required that a particular region should have only one union for a particular category or class of workers and to what extent these special exigencies were in conformity with the freedom of association which article 22 of the Covenant recognized. Questions were also asked concerning the political role of trade unions in the country and the meaning of the principles of "democratic management" governing trade unions. It was also asked whether ratification of ILO Conventions 98, 105 and 107 had raised problems for the Portuguese Government and what had been done to resolve them. With reference to article 46 of the Constitution prohibiting organizations which adopted fascist ideology, it was asked what were the criteria used to define fascism in that provision.

313. Noting that the report stated that political parties must observe the principles relating to direct association and single membership, members sought clarification on those terms. Information was also requested on whether there was any appeal or other remedy against a judicial decision concerning the dissolution of political parties.

314. In respect to article 23 of the Covenant, members of the Committee asked what was the marriageable age in Portugal, which was the matrimonial system in the country, whether there was one obligatory system or whether spouses had a choice as to a régime of community of property or separation of property or some other régime and how the spouses' right to pursue an activity without the consent of the other was reconciled with their duties of co-operation, whether legislation ensured equality between children born out of wedlock and legitimate children and whether the study entitled "Affiliation in the reform of the Portuguese Civil Code of 25 November 1977", published by the Ministry of Justice, was merely a treatise or had been transformed into law. With respect to divorce, it was asked whether the criteria were the same for both men and women and what was the practical role of judges in divorce cases and whether judges could intervene to reconcile spouses. One member observed that Portugal's attitude to divorce seemed to be quite restrictive.

315. In connexion with article 24 of the Covenant, information was requested on measures adopted in Portugal to give effect to the provisions of that article and in particular to enable parents to ensure the protection of their children and to enable children to enjoy the rights to which minors were entitled. It was also asked whether adoption took place in Portugal by contract or by judicial decision, in what way the child's interests were taken into account, whether there were

several types of adoption in the country and what were the consequences with respect to the child's nationality. In this connexion, it was observed that the provisions governing Portuguese nationality seemed to discriminate on the basis of sex, since nationality was acquired only through the father except where the father was unknown, in which case nationality could be obtained through the mother.

316. In connexion with article 25 of the Covenant further information was requested on the implementation of all aspects of the provisions of that article. Reference was made to article 48 of the Portuguese Constitution and it was asked whether the system of direct democracy, through social organizations, workers', women's, professionals' groups or other groups existed in Portugal and whether there were administrative provisions or directives implementing the provision concerning the right of citizens to objective information about the activities of the State and on the management of public affairs. Clarification was also requested on article 125 of the Constitution which provided that only those who were "Portuguese by origin" had the right to vote.

317. Replying to questions raised by members of the Committee, the representative of Portugal gave information on all the political parties existing in his country including those not represented in Parliament and, in connexion with article 1 of the Covenant, he explained that the status of the territory of Macao was governed by Law No. 1/76 of 17 February 1976 and was maintained in force by article 306 of the Constitution. He also stated that Portugal strongly condemned the system of apartheid, but it had not yet ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid mainly because the Convention raised several problems of a legal nature; however, Portugal's accession to the International Convention on the Elimination of Racial Discrimination was in progress. As regards the right of peoples to revolt which was recognized in article 7 (3) of the Protuguese Constitution, this was a right which was itself subject to the principle of non-interference in the domestic affairs of other States. In this connexion, Portugal recognized the legitimate rights of the Palestinian people including its right freely to determine its political future and supported the Namibian people's right to self-determination and independence, recognizing SWAPO as its legitimate representative.

318. With regard to article 2 of the Convenant, the representative explained that the concept of "working classes" should not be understood in a limited sense but in the broad sense referred to in article 51 of the Constitution; work was as much as a duty for all the Portuguese people and that, though the Constitution frequently referred to "citizens", article 15 nevertheless provided that foreigners residing in Protugal enjoyed the same rights as Portuguese citizens, except for political rights. He gave information on organizations or associations in Portugal concerned with the defence of human rights. With regard to the right of asylum, he stated that it was granted to foreigners who had been subjected to persecution as a result of their political activities or involvement towards social and national freedom, peace between peoples and the defence of human rights. The right of asylum in Portugal was guaranteed by objective safeguards. Proceedings in connexion with an application for asylum were governed by the provisions of the Universal Declaration of Human Rights, the Geneva Convention of 25 January 1951 and its Additional Protocol of 31 January 1967. With regard to the status of the Convenant within the legal system of Portugal, opinion was divided in Portugal as to whether the Covenenant was of equal or greater validity than national law, subordinate only to the Constitution itself, but the possibility of conflict with the Constitution was highly unlikely. The representative also provided information on the publication

of the Convenant in his country and stated that the judicial system provided for by the Constitution was fully functional. In addition to the courts, Portuguese law laid down a system of preventive proceedings exercised by the Attorney General and the Ombudsman who, in accordance with article 24 of the Constitution, was selected by the Assemly of the Republic and frequently made legal determinations independently of the courts. Administrative courts were separate from the ordinary courts and like the fiscal courts, they were being reorganized with a view to making them more efficient. Special courts for the armed forces had been reorganized and tried only essentially military and related crimes. The system of control of constitutionality was preventive as well as a posteriori: the latter was provided by the Council of the Revolution upon the advice of the Constitutional Commission and in a broad way by the courts. However the majority of the parties in the Assembly had agreed to abolish the Council of the Revolution and distribute its functions among the President of the Republic, the Assembly and a Constitutional Court. As regards the implementation of article 269 of the Constitution, a draft administrative procedure code of extremely wide scope had been prepared to govern the right of access to information.

319. In connexion with article 3 of the Covenant, the representative stated that Decree-Law No. 485/77 had set up the Commission on Female Status, the terms of reference of which were to promote and protect women's rights and to eliminate discrimination. He also gave detailed information on the participation of women in public affairs and the professions in Portugal and stated that the public was very interested in the question of the liberalization of abortion and a bill on this question was to be submitted to the Assembly of the Republic.

320. In respect of article 4 of the Convenant, which included a more extensive list of rights and freedoms which might not be restricted in time of emergency than article 19 of the Portuguese Constitution, the representative stated that the Constitution did not prohibit the adoption under national law of a more extensive system of non-derogable rights and that the National Defence Bill, which had not yet been passed, merely incorporated the provisions of article 19 of the Constitution in regard to the restriction of rights, freedoms and safeguards.

321. In connexion with article 5 of the Convenant, he stated that the principle of the automatic acceptance of the Convenant in national law was enshrined in the Constitution.

322. Replying to questions raised under article 6 of the Covenant, he explained that capital punishment had been abolished in Portugal in 1867. He further gave information on the crime rate in the country and legislation for the prevention and control of drug addiction.

323. In connexion with article 7 of the Covenant, he stated that Portuguese law was particularly strict in regard to torture under penal and prison conditions. If a complaint was submitted to the relevant committee in respect of police practices, an investigation would be held and the case brought before the courts. He regretted being unable to give information on complaints made by political activists as these were being referred to the courts and were sub judice. The use of force was permitted to overcome resistance to arrest or to prevent an attempted escape, but Decree-Law No. 265/79 laid down strict rules for the exercise of physical coercion, requiring the submission of a written report whenever such measures had had to be employed. As regards organ transplant,

Decree-Law No. 553/76 stipulated that death had to be certified by two independent medical practitioners of at least five years standing practice. The moment of death was determined on the basis of normal scientific criteria.

324. Wtih regard to article 9 of the Covenant, he explained that compulsory detention of persons of unsound mind was only permitted as a safety measure on the authority of a court and where the person concerned had committed an offence carrying a sentence of more than six months imprisonment or had been declared not to be responsible for his actions. Furthermore, the "right to popular action" under article 49 of the Constitution was applicable in cases of habeas corpus and article 306 of the Penal Code specified that a petition of habeas corpus could be formulated by any citizen in possession of his political rights.

325. As regards questions raised under article 10 of the Covenant, the representative stated that, under the Portuguese judicial system, the magistrate responsible for the implementation of punishment was also required to visit prison establishments at least once monthly and hear prisoners' complaints. Decree-Law No. 265/79 also made provision for special visits by prisoners' lawyers and prisoners were informed on the procedure for submission of complaints in accordance with article 25 of the European Convention on Human Rights.

326. In relation to article 13 of the Convenant, he pointed out that under Decree-Law No. 582/76 of 1976 the expulsion of foreigners was a matter to be decided by the courts and that the person in question had a right of appeal. A bill has been prepared in order to amend that Decree-Law and to strengthen foreigners' guarantees against expulsion.

327. Turning to the questions raised under article 14 of the Covenant, he stated that the Portuguese Penal Code laid down precise limits within which the proceedings had to be completed and gave detailed information on the admissible periods of preventive detention. A case of habeas corpus could be entered in the event of failure by the authorities to comply with the relevant regulations. The imposition of a greater punishment by a higher court on appeal was not permitted unless the facts were found to be different from those presented to the lower court or the public prosecutor claimed that an aggravated offence had been committed, but courts of the second instance were certainly empowered to reverse the findings of fact of lower courts. The representative also explained that the definition of political offences was contained in article 39 of the Code of Criminal Procedure and provided information on a recent case of political activities convicted of common law offences where the Portuguese Courts had examined the provisions of the law of amnesty and those of the Penal Code and had found that the benefit of amnesty was not applicable in the case. As regards legislation on terrorism, he recalled that Portugal had signed the European Convention on the Suppression of Terrorism and that the Assembly of the Republic had adopted a law amending a number of articles of the Penal Code, mainly to impose heavier penalities for crimes in certain cases. He also pointed out that the courts in Portugal were toally independent of the Executive as regards both their organization and their operation, that there was no possibility in Portugal of political persecution and that no member of the former secret police nor civil servants who had been prosecuted for their participation in the former régime were in detention. Judges in Portugal were irremovable by law and recruited by competitive examination, and besides an age requirement of 25 years, the law did not set more requirements.

There were in Portugal fiscal courts and juvenile courts; questions of social security were handled by special courts or by courts of general competence. The core of judges had been increased in the country by 70 per cent. Those judges accused of disciplinary responsibility for acts practised under the previous régime had been the subject of judicial action, but nearby all were still in judicial service since it had not been proved that there were determining factors in favour of exclusionary measures.

328. Replying to the question raised under article 16 of the Covenant, the representative stated that Portuguese legal literature did not consider the viability factor necessary for the recognition of an individual as a person before the law and regarded the separation of the foetus from the body of the mother as sufficient and took breathing as the decisive indication of life.

329. With regard to article 17 of the Covenant, he referred to legislation in force in Portugal to protect privacy and stated that very strict rules had been enacted to regulated the question of data treatment and that the general principle of compensation for moral injury was recognized by the law.

330. In connexion with article 18 of the Covenant, he provided information on international copyright conventions subscribed by Portugal and on the literacy rate in the country with regard to various age groups.

331. With reference to article 19 of the Convenant, he stated that there were in Portugal rules governing access by everyone to television and that there were information councils to guarantee ideological pluralism. He also referred to legal provisions relating to privately owned mass media and explained that the law itself specified the objective that the press performed a public function independent of the political and economic sectors and provided for measures to prevent the concentration of newspapers and newsagencies.

332. As regards article 21 of the Covenant, he pointed out that freedom of expression and association included the right of counter-manifestation provided that the exercise of manifestation was not affected.

333. Turning to the question raised under article 22 of the Covenant, the representative explained that Legislative Decree No. 215-B/1975 had been amended to repeal provisions which prevented trade-union pluralism. As regards the principles of "democratic management" which should govern trade union associations, he explained that that provision referred to matters relating to the organization and operation of trade unions. He also provided detailed information on ILO Conventions to which Portugal was a party, on their application in the country and on a complaint accusing the Portuguese Government of alleged violations of ILO Convention No. 151 on Labour Relations (Public Service) (1978). He also referred to the significance and scope which is given to the term "fascist régime" and pointed out that Law No. 64/78 of 6 October 1978 prohibited organizations advocating fascist ideologies and prescribed terms of imprisonment for their organizers, leaders and participants. Furthermore, he stated that the expression "direct association" was somewhat imprecise and it probably referred to the obligation to register with a party and not with a political organization of an intermediate or higher level. The expression "single application" meant that no one was allowed to be a member of more than one political party simultaneously.

334. In connexion with article 23 of the Covenant, the representative explained that the minimum age for marriage in his country was 16 years. The system of separation of property for husband and wife was mandatory under Portuguese law in two situations: where the marriage was concluded without the publication of bans and where the spouses were over 60 years of age at the time of marriage. In all other cases, the future spouses had, at the time of marriage, the choice from among several possible property systems. Moreover, the principle of equality of the spouses implied their freedom of choice of occupation and the law on matrimonial matters was based on the principle that the spouses were complementary to each other. The list of grounds for divorce was the same for men and for women and in the case of application by common consent, two attempts at conciliation were conducted by the judge; one attempt only was conducted in the case of a contested divorce.

335. With regard to article 24 of the Covenant, he stated that there were regulations governing family planning. Adoption was recognized in Portuguese law and was effected in pursuance of a judicial decision. Full adoption conferred the status of a child integrated in the adopter's family. In restricted adoption, the adopted child retained all the rights and obligations originating from his natural family.

336. Finally, the representative of Portugal informed the Committee that his Government had submitted to the Assembly, in February 1981, a request for ratification of the Optional Protocol to the Covenant.

Norway

337. At its 301st and 302nd meetings, on 21 July 1981 (CCRP/SR.301 and 302), the Committee examined the supplementary report submitted by Norway (CCPR/C/1/Add.52) containing replies to the questions raised during the consideration of the initial report (CCPR/C/1/Add.5). 8/ The various points were dealt with in succession.

338. The first point concerned the implementation of article 6 of the Covenant. In this connexion, one member of the Committee asked whether in 1979 the Norwegian parliament had repealed the rules on the death penalty in wartime and war-like situations unanimously or whether some members of parliament had opposed the repeal.

339. The representative of Norway replied that the abolition of the death penalty had deeply split public opinion in his country. In parliament the division had been determined by political considerations and the abolitionists had only just carried the day.

340. The following point related to preventive detention and solitary confinement in Norway in connexion with the implementation of article 7 of the Covenant. Referring to the information given in the supplmentary report, some members of the Committee wished to know whether there were rules in Norway to ensure that preventive detention by the authorities was not discretional. In particular,

---

8/ The initial report by Norway was examined by the Committee at its 77th, 78th and 79th meetings, on 12 and 13 July 1978; see CCPR/C/SR.77, 78 and 79 and Official Records of the General Assembly, Thirty-third session, Supplement No. 40 (A/33/40), paras. 227-257.

they noted that a prisoner could be wholly or partially deprived of the company of other prisoners if that was deemed necessary for disciplinary, security or similar reasons; they asked what those similar reasons could be and whether a mere notification to the Prisons Board allowed the prison authorities to put a prisoner in solitary confinement for more than one month. One member of the Committee pointed out that the provision whereby a prisoner sentenced to more than six months' imprisonment could be kept in solitary confinement at the beginning of his term seemed difficult to justify. Noting that 10 to 15 per cent of prisoners in Norway, mainly prisoners on remand, were kept in solitary confinement, members of the Committee asked why prisoners remanded in custody had to be subjected to that régime; whether the question had ever been raised in Norwegian law of fitting the punishment to the crime; whether prisoners held in solitary confinement on the decision of the prison authorities could appeal to the judicial authorities against that decision; whether such decisions could be appealed at the administrative level only; whether the prison administration came under the Ministry of Justice or the Ministry of the Interior; whether there were visiting magistrates in Norway with powers to supervise what took place in prisons; to what extent public officials were aware of Norway's obligations under international human rights instruments; and whether a prisoner in solitary confinement could nevertheless have access to his lawyer. As regards the solitary confinement procedure, it was asked whether solitary confinement was the subject of many applications to the Ombudsman or the competent authorities; whether persons in solitary confinement went on hunger strike; whether persons accused of terrorism were kept in solitary confinement; whether the light was on in the cells 24 hours of the day; and whether prisoners in solitary confinement had the right to listen to the wireless, watch television or take exercise outside their cells.

341. The representative of Norway replied that any remand in custody depended on the decision of the court, which gave a ruling on it and either fixed the length of the remand or ordered the release of the prisoner. The reasons other than disciplinary or security reasons for placing a prisoner in solitary confinement were the safety or health of the prisoner himself or the risk of his having an unfavourable effect on his fellow prisoners. The representative explained that a convicted prisoner who was to remain in prison for more than six months could be placed in solitary confinement on arrival at the prison in order to enable the prison administration to obtain information about his past history and general background, but that the rule was not applied automatically. Also, one of the reasons why a prisoner on remand could be placed in solitary confinement was so as not to prejudice the results of inquiries being made about him.

342. The representative of Norway went on to say that Norwegian legal tradition showed a strong tendency for making the punishment commensurate with the offence; that any decision on solitary confinement could be laid before the superior administrative authorities with a view to being appealed in the courts; that the prison system was administered by the Ministry of Justice; and that information services kept public opinion informed of Norway's international human rights obligations and that prison authorities in particular were the subject of information on that point. He said that persons on remand always had access to their lawyer and that a person held in solitary confinement was the subject of constant attention from the supervisory and medical staff of the prison establishment. The Ombudsman had received more complaints about the prison régime than about other spheres of public administration, but the number of applications concerned was tending to drop. There were isolated cases of hunger strike and the strikers were subject to intensive medical supervision. As far as terrorism was

concerned, that problem does not at present exist in Norway and it was therefore unneccessary to make the prison régime any stricter. Prisoners were simply the subject of careful supervision and the light was not kept on in the cells the whole time, and even prisoners in solitary confinement had the right to listen to the wireless, watch television and do at least one hour's exercise each day.

343. On the subject of the segregation of juvenile offenders from adult offenders in connexion with the implementation of article 10 of the Covenant, reference was made to the moderating effect which adult offenders, according to the information supplied by Norway, could have on juvenile offenders. It was recalled in this connexion that, under the Covenant, accused juvenile persons and juvenile offenders should be separated from adults; it was asked how Norway reconciled its international obligations with its prison régime and whether the results of the survey by the Norwegian Ministry of Justice on the segregation of juvenile offenders from adult offenders could be made available. It was also asked what measures were taken by Norway to avoid juvenile offenders being sent to prison and whether parents were liable for offences committed by their children and for payment of fines.

344. Answering questions by members of the committee, the representative of Norway remarked that his Government had entered a reservation concerning article 10 (2) and (3) of the Covenant which referred to the segregation of juvenile offenders from adults. Experience in Norway, which had been confirmed by an investigation by the Ministry of Justice, showed that in prison society adult offenders might be able to persuade juveniles that they would have continued to enjoy the privileges to which they were entitled if their conduct had been good.

345. He also said that in the treatment of juvenile delinquents in Norway measures other than criminal penalities were always given priority. For instance, municipal bodies were sometimes given responsibility for young criminals; the Norwegian authorities made every effort to encourage sound family relationships; under the civil law parents might exceptionally be required to pay for damage caused by their children; and a new post of ombudsman for education and child development had recently been established.

346. Turning to article 13 of the Covenant a member of the committee asked whether Norwegian legislation regarding expulsion, which had been under review when the initial Norwegian report was presented, had been amended subsequently.

347. The representative of Norway explained that a royal commission was studying the matter. Its work was not yet completed but the commission's report should be published in about a year's time.

348. With regard to article 14 of the Covenant and in particular court proceedings, questions were asked with regard to the status of the draft legislation mentioned in the rport and in particular whether the new criminal procedure act had been enacted, whether military courts were special courts, whether the rules regarding independence applicable to them were the same as those applying to ordinary courts, whether social, financial, fiscal and administrative cases were tried by the civil courts, whether the accused had the right to such speedier trial in cases where proceedings were unduly protracted, and whether there were exceptions to article 88 of the Constitution, under which the Supreme Court pronounced judgement in the final instance. Noting that according to the report the independence of courts was only applicable to their judicial functions and that when the courts performed

purely administrative tasks the judges were subject to the instructions of the competent administrative authority in accordance with the same principles as civil servants, a member of the Committee asked whether in practice such actions by the courts or the administrative authority did not impair the independence of the judiciary in the exercise of its strictly judicial functions. With regard to the non-retroactivity of laws, which is laid down in article 97 of the Norwegian Constitution, a member also asked whether in Norway the principle could be waived in the case of a law whose retroactive effect was favourable to an offender, as was provided in article 15 of the Covenant. Other members of the Committee asked why only the officially appointed defence counsel had, as seemed to be suggested in the report, the rights guaranteed by the Convenant, and not the counsel chosen by the accused himself. Commenting on the question of the resumption of criminal proceedings, a member of the Committee noted that article 415 (1) of the Criminal Procedures Act provided that a case could be resumed by reason of, among other things, subsequently produced evidence he asked whether this provision did not represent an unduly broad exception to the principle laid down in article 14 (7) of the Covenant that no one was liable to be tried or punished for an offence for which he had already been finally convicted or acquitted.

349. Replying to the questions concerning article 14 of the Covenant, the representative of Norway informed the Committee that the Norwegian Parliament had adopted the new General Code of Criminal Procedure on 27 May 1981 and that the Code would enter into force in about a year's time. He also explained that there were no military courts in time of peace and that the rules concerning the independence of the courts and the safeguards for the protection of the accused were strictly applied even in wartime. He also mentioned that special courts such as the labour court were few in Norway and that financial, fiscal and administrative cases were heard by the ordinary courts. In social security matters there was, however, a body that performed the functions of a court and was known as the Social Security Tribunal; its decisions could be appealed to the ordinary courts. The representative of Norway also said that unduly protracted criminal proceedings were not common in Norway but that if the case arose the accused could complain to the ordinary courts. There were very few exceptions to article 88 of the Constitution: the question had arisen when trial by jury was introduced in Norway and it had been decided that the jury's verdict was final but that the Supreme Court had jurisdiction to consider the legality of the proceedings.

350. With regard to the independence of the courts he pointed out that the administrative matters in which judges performed non-judicial functions were of such a kind (e.g. registration) that the question of the independence of judges did not arise. He also explained that although article 97 of the Norwegian Constitution provided that laws could not have retroactive effects, under the penal code the principle did not apply in the case of a lighter penalty to which article 15 of the Covenant referred. With regard to the accused's right to a free choice of defence counsel, he explained that the legislation was concerned only partly to safeguard the interest of the accused, inasmuch as the advocate selected by the accused must be competent, and partly the public interest, in cases where, for example, defence counsel might have been caught clandestinely passing letters to the accused. If the authorities objected to the advocate chosen, the accused could of course select replacement. With regard to the resumption of prosecutions, he noted that the matter was the subject of a formal reservation by his Government. To the mind of Norwegian legislators, it was inconceivable that a person accused of a criminal offence could not be charged again on the basis of fresh and apparently incontrovertible evidence.

351. Concerning article 2 of the Covenant, questions were asked as to whether the Norwegian courts gave weight in practice to the provisions of the Convenant when construing national enactments, as had been stated during the discussion of the initial report of Norway. It was also recalled that according to the initial report by Norway a comprehensive system was in existence to cover the case of persons whose rights had been infringed, enabling them to complain to the competent administrative or judicial authorities. In this connexion a question was asked as to what concrete steps could be taken by persons who were denied a passport or by aliens who were denied a resident's permit in spite of close family connexions in the country.

352. In reply the representative of Norway confirmed that the Convenant and other international human rights instruments could be taken into account by the courts and there were an increasing number of instances in which that had been done. The remedies available to individuals, who considered themselves unjustly treated, were initially brought to the administrative authorities and in the last resort to the courts; there was also the possibility of a recourse to the Ombudsman. That applied also to the case of an alien, whose application for a residence permit had been refused and any close family connexions would, of course, be taken into acount by the authorities.

353. One member of the Committee said he was still not entirely clear as to the exact meaning of the Norwegian reservation to the Option Protocol in regard to the implications of a previous examination of a communication from an individual. It was asked as to whether an individual, whose communication had been declared inadmissible by the European Commission, could still apply to the Human Rights Committee under the Optional Protocol.

354. The representative of Norway replied that an attempt had been made in part III of the supplementary report to explain in greater detail the Norwegian reservation to the Optional Protocol. His Government was aware that other matters might arise in connexion with that reservation but was not prepared to go further at the present time.

355. Several questions were asked concerning article 17 of the Covenant. In Norway's initial report mention was made of the provisional Act of 17 December 1976 granting the authorities the right to monitor telephone conversations in narcotics cases. The representative of Norway had then stated that the temporary Act in question would be in force until the end of 1978, pending permanent legislation on the matter. The members of the Committee wished to know whether the Act was still in force and, if not whether any new legislation on the subject had been enacted. With reference to the above-mentioned Act, one member of the Committee, recalling that court permission for telephone tapping could not be given for more than two weeks at a time, while permission from the prosecuting authority was not valid for more than 24 hours, asked about the present position in regard to telephone tapping. It was also asked, how did the Norwegian legislation deal with the right to privacy in regard to data-processing?

356. The representative of Norway replied that the provisional legislation on telephone tapping had been extended to 1980 and had now been further extended. As to the data-processing, an Act had been adopted on 9 June 1978 relating to data banks containing personal particulars and a comprehensive system had been devised for the protection of sensitive information, including obligatory registraton of

the relevant data banks. Private individuals had the right to check the data recorded on them, with a right of access to the administrative authorities and to the courts.

357. With reference to freedom of thought under article 18 of the Covenant, it was noted that in Norway this article was treated as though it concerned only freedom to exercise a religion. In fact, it was pointed out that, article 18 was much broader and covered not only freedom of religion but also freedom of thought and conscience, as well as freedom not to have a religion or indeed to hold anti-religious views. Clarification was, therefore, requested on the scope of application of this article. Welcoming the recognition in Norwegian Constitution of the right to hold a philosophy not based on religion, further clarification was sought on whether nazism, fascism and racism could be held to constitute philosophies and therefore claim protection under the above-mentioned constitutional principle; whether those idease were considered as being protected by the concept of freedom of thought and whether there was any legislation on the subject. It was also asked as to whether Norway was a party to the international conventions directed against those evils.

358. On the question of conscientious objectors to military service, it was noted that the provisions of Norwegian law made it possible to grant exemption from military service where there was reason to show that a recruit could not "do military service of any kind without coming into conflict with his deep personal convictions". In this connexion it was asked on which exact grounds recruits were exempted from military service, what was the procedure in the matter, dealt with the question and what was the number of individuals annually admitted to perform a service of a civilian nature.

359. Additional information was requested as to which religious communities had registered in order to receive financial support; whether there were any communities which had not so registered; what was the objective of registration and what particular advantages did a religious community lose by not registering. Recalling that registered religious communities had certain functions recognized by law, such as the right to solemnize marriages, it was asked if, for example, a Moslem religious community which applied for registration, would be allowed to perform all those functions and whether there was a prerequisite that a community should have a minimum number of members before the powers in question were conferred upon it. With reference to the Constitution of Norway under which anyone over 15 years of age may join or resign from the Church of Norway, but due account shall be taken of the views of children over 12 years of age, clarification was sought as to what was the practical effect of views of a child over 12 but below 15, since it was only at the age of 15 that freedom of choice existed.

360. It was noted from the report that the education of children included religion as a subject but that the parents of a child could request that their child be exempted from religious instruction when they themselves did not belong to the Church of Norway. That provision, it was stated did not appear to be compatible with the concept of freedom of conscience and religion, which should be granted on equal terms to all and not be made to appear as an exception.

361. In connexion with the original constitutional requirements that only persons of Lutheran faith could be appointed as senior State officials had been gradually done away with, it was inquired whether a non-Lutheran could become a senior official in Norway and how many such officials there were. Referring to article 2,

paragraph 2, of the Norwegian Constitution which provided that half of the members of the Government must profess the official religion of the State, it was asked whether that constitutional provision did not run counter to article 25 (c) of the Covenant, which stated that every citizen must have the right and the opportunity to have access, on general terms of equality to public service in his country, as well as to the provisions of article 2 (1) under which each State party undertook to ensure to all its citizens the rights recognized in the Covenant without distinction of any kind, including religion.

362. Questions were asked as to whether a person who claimed that a particular public post had been refused to him on grounds of his religion could seek redress from the courts and, if so, what form the redress would take.

363. Replying to the questions raised in the Committee, the representative of Norway agreed that the situation would be much clearer if a clear-cut distinction had been made between Church and State. However, that had not been the experience of Norway throughout a long and historical tradition. The resulting situation was not, however, incompatible with freedom of religion. The representative pointed out that 94 per cent of the population were members of the evangelical Lutheran Church and it was felt that human rights were safeguarded provided other religions and philosophical associations were given adequate financial support to enable them to fulfil their functions. He also agreed with the statement that article 18 of the Covenant was not concerned only with religion and referred to a well-known book on the Norwegian constitution, where strong arguments had been put forward in favour of interpreting paragraph 2 of the Constitution as protecting views both in favour of and against religion.

364. Turning to the freedom of thought, the representative of Norway pointed out that the Norwegian Penal Code contained far-reaching rules against the public expression of fascist and nazist sentiments. However, it was felt that a line had to be drawn between the need to suppress such ideologies and the right to freedom of expression. The representative confirmed that conscientious objection to military service existed in Norway, subject to certain conditions. Applicants must have non-violent moral convictions preventing them from bearing arms or joining the armed forces. In 1980, 2,000 persons had applied for registration as conscientious objectors, and only about 169 had not been accepted. The Ministry of Justice was responsible for deciding whether an application was valid or not. If an application was rejected and the applicant still declined to do his military service, the State took him to Court to prove that he did not fulfil the requirements for exemption. Exempted persons performed civilian service instead of military service. A Royal Commission had recently proposed that the relevant legislation should be revised. As to the principle that financial support should be given to unregistered religious and non-religious communities, it had recently received statutory force, with the result that the advantages of registration had been diminished and the position of communities which objected to registration on principle had been improved. Concerning the question asked with regard to relations between children and the Church, the representative stated that children belonged to the State Church if their parents were also members. Anyone over 15 years of age could join or resign from the Church of Norway.

365. The relationship betwen State and Church was reflected in the nation's educational system. Under the provisions of Act No. 26 of 13 June 1969 relating to the Basic School, schools must give their pupils "a Christian and moral upbringing", an equal aim was also to further the spiritual freedom and tolerance

of pupils, to promote knowledge of basic Christian values, the common cultural heritage, equality of man and international repsonsibility. Even though nominally 94 per cent of the population professed the State religion, the real picture in Norway was that of a strongly pluralistic State, and there was certainly no overwhelming pressure on other believers. On the subject of religion and official career, the representative stated that no statistics were available on the religious beliefs of civil servants, but it was most unlikely that membership or non-membership in the official church had any bearing on career prospects. The rule that at least a certain number of the members of the Government must be of the State Church had originated in the requirement that only members of the State Church could participate in governmental consideration of matters relating to that Church. In the Norwegian Government's view such a situation could not be deemed to be an unreasonable restraint on access to public service.

366. As regards article 19 of the Covenant, members referred to section 100 of the Norwegian Constitution which stated that "no person shall be punished for any writing, whatever its contents may be, which he has caused to be printed or published, unless he wilfully and manifestly has either himself shown or incited others to disobedience of the laws, contempt of religion or morality or the constitutional order". It was asked whether it would be considered contempt of religion to urge the separation of Church and State or of the constitutional order to advocate a Republic; what test was applied for the purpose of section 135 of the General Civil Penal Code, whereby anyone who endangered the general peace by publicly insulting or provoking hatred of the Constitution or any public authority was guilty of an offence since a breach of the peace was more often not so much a question of the intensity of the insult as of the extraordinary sensitivity of the listener. As regards the use of the term "contempt of religion or morality" in the same section of the Constitution, questions were raised as to whether "religion" meant the State religion, or included other religions, particularly those which were registered; whether if a person advocated revolution or advocated abortion, that would constitute contempt of religion; whether, if a person advocated living together of couples outside of marriage, that would amount to contempt of morality. With respect to the Norwegian Broadcasting Corporation, the only body controlling broadcasting in Norway, information was sought on whether it also had the objective of propagating the State religion, and according to which criteria were the members of the Board appointed.

367. In reply to the questions raised in relation to section 100 of the Constitution, the representative of the State party explained that he had agreed with the members of the Committee who had found the formulation of this section open to question and criticism. The Norweigian Constitution dated from 1814, and there was extreme conservatism as to the question of modernizing it. That conservatism, however, was counterbalanced by the need to interpret the Constitution in the light of changed circumstances and more modern standards. Furthermore, the section of the Constitution which had retained the Committee's attention did not say that freedom of expression had to be restricted on the grounds of religion and morality, but that there might be such restrictions. Other legislation lay down the extent to which religion and morality or other values were protected. The Penal Code contained more effective rules on that matter.

368. The representative also stressed that the restrictions on freedom of expression allowed by the Constitution presented no hindrance to public discussion of reforms on any subject whatsoever, including the separation of State and church. A person could take any view he wished on abortion, living together and

the other matters raised in the Committee. There was some restriction as to the form one could use to express those views, such as legislation on insults and limits concerning the use of violence. However, even someone advocating revolution on a theoretical basis could do so. If a practical danger was involved, it would be up to the authorities to act.

369. Concerning the questions that had been put with respect to paragraph 135 in the General Civil Penal Code, which "punishes anyone who endangers the general peace by publicly insulting or provoking hatred of the Constitution or any public authority ...", the representative agreed that the formulation, dating from 1902, gave rise to questions. However, he knew of no case where that paragraph had been used in modern times.

370. In reply to questions concerning the Norwegian Broadcasting Corporation, the representative stated that it was indeed a monopoly, but there was awareness in Norway of the need for broadcasting to have a neutral and pluralistic content. One of the functions of the members of the Board was to guarantee that neutral and pluralistic approach. The appointments of the Board members, who served in a personal capacity, were the subject of much debate in Parliament every year, showing that the matter had engaged public opinion.

371. On article 20 of the Covenant a question was asked as to why, since all religions, including Christianity, prohibited war, Norway, a country having a State religion, had no law banning war propaganda and whether the Storting which had rejected a bill outlawing war propaganda, had not acted counter to the State religion and, therefore, against the Constitution.

372. Replying to the question raised, the representative of Norway explained that if Norway could have eliminated war simply by enacting legislation that would have been done. Unfortunately, that was not a realistic approach. He assured the Committee that Norway had made and would continue to make every reasonable effort to further the cause of peace.

373. With respect to article 22 of the Covenant, the representative was asked whether labour contracts in Norway were concluded by trade unions, in both the public and private sectors. In reply, the representative explained that the right to negotiation and collective bargaining was guaranteed both in the public and private sectors and trade unions were parties to such collective agreements.

374. As regards article 23, paragraph 4, of the Covenant, which requires that, in the case of the dissolution of a marriage, provision be made for the protection of children, questions were asked as to whether any laws existed in Norway permitting the State to take over custody of children in extreme cases. Referring to the role of the Ombudsman in connexion with the implementation of the provisions of the Act of 1 January 1979, relating to equality between the sexes, it was asked whether the rules relating to remuneration for employment were based on the ILO criterion of equal pay for work of equal value.

375. In reply to the questions raised, the representative of Norway explained that the social services in his country were empowered to take children into care, in order to protect them against abusive treatment or violence on the part of their parents. Such a drastic solution of the problem was obviously only a last resort and every effort was made to enable the family to cope with its own problems. As regards the equality between the sexes he said that problems of equal remuneration

formed one of the principal categories of complaints referred to the Ombudsman. The wording of the Act of 1 January 1979 on equality between the sexes was that men and women in the same employment should receive equal remuneration for work of equal value, as recommended by the ILO.

376. With reference to article 25 of the Covenant, it was noted that article 58 of the Norwegian Constitution laid down the number of deputies that any Norwegian region might elect to the Storting. A question was asked as to whether the distribution of elected representatives was periodically revised to take account of population movements so as to avoid the possibility of discrimination in favour of certain areas.

377. The representative of the State party explained that the Constitution laid down very precise rules in regard to the geographical distribution of seats in the Storting. The distribution had been amended many times in the light of population movements. There was a definite bias in favour of rural populations but that was not a matter of discrimination but of deliberate Government policy. In the northern area of Finmark, for example, with its very low population density, the number of electors per deputy would be about one third of the corresponding figure for the captial.

378. With reference to article 27 of the Covenant it was asked as to what had been done in Norway to protect the right of Lapps or Samis to enjoy their own culture, religion and language, and whether there had been consultation with Sweden, Finland and the USSR, where there presumably were members of the same ethnic origin, regarding the treatment and protection of that group. Attention was also drawn to the close connection between articles 27 and 26 of the Covenant, since a member of a minority group outside his own part of the country was entitled to protection under article 26 of the Covenant not only against governments but also against private individuals. Questions were asked as to what redress was available for a Sami who was the object of discrimination.

379. The representative of Norway in reply said that both the Government and the general public had become more conscious of their responsibilities towards ethnic minorities since the submission of the initial report. The existence of important problems concerning the Sami minority which amounted to between 20,000 and 30,000 was brought to public notice in spectacular fashion by the planned construction of a large hydroelectric plant in Sami territory but even before that various measures had been taken by the Government to protect the Sami minority and to promote Sami culture. As far as ratification of ILO Convention No. 107 on indigenous peoples was concerned, the representative of Norway stated that it had not been favoured originally by representatives of the Sami people. In the light of changed circumstances, however, a Royal Commission has now been appointed to consider the rights of this minority to land and water and its legal position in general. The Commission would listen to representative of groups within this minority, local authorities and lawyers and would prepare a separate report on the need for the constitutional protection of those minority groups and also a report on the ratification of ILO Convention No. 107. Norway was collaborating with other countries in the Nordic Council on matters relating to common ethnic minorities. The protection of members of minority populations outside their own areas was fully covered by the law.

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

380. The Human Rights Committee established a working group to meet before the eleventh session in order to consider the formulation of such general comments as would be likely to gather the support of the Committee as a whole, and to examine what further work, if any, the Committee should at this stage undertake to give effect to its duties under article 40 of the Covenant. 9/

381. At its 260th meeting (eleventh session) the Committee adopted by consensus a statement, on the basis of a text prepared by the working group which had been discussed and amended during informal meetings and consultations at the same session. 10/

382. During the discussion 11/ that preceded the adoption of the text of the statement, a number of members stressed that this was only a step in the direction of promoting the effective implementation of human rights and of helping the Committee to discharge its responsibilities; that the procedure agreed upon was, as mentioned in the statement itself, without prejudice to further consideration of the Committee's duties under article 40, paragraph 4, of the Covenant; and that although the Committee's achievements to date in the examination of reports should not be underestimated, the Committee needed to keep its procedures under constant review and to further improve and develop them in the light of experience. It was also pointed out that the analysis to be prepared by the Secretariat, as provided in paragraph (j) of the statement, was intended for internal use by the Committee and would not be distributed to the States parties.

383. The representative of the Secretary-General noted that the text that had been adopted by consensus entrusted new tasks to the Secretariat. Paragraph (h) requested a digest or list of questions most frequently asked by members of the Committee, while paragraph (j) requested the Secretariat to establish, after each examination of a State report, an analysis based on a study of that report. The Secretariat would do its best to assist the Committee in those new tasks, as well as in its regular ones. His interpretation of the request in paragraph (j) was that it applied to the future and did not have retroactive effect.

384. At its twelfth session, the Committee began consideration 12/ of certain matters relevant to the statement adopted at its eleventh session with a view to taking the decisions called for in its various paragraphs. Some members were of the opinion that paragraph (b) of the statement was somewhat ambiguous and that they understood it to refer, in the light of their interpretation of article 40, paragraph 4 of the Covenant, to general comments that could be addressed to individual States parties in connection with their particular reports as well as to comments of a general nature addressed to all States parties. They maintained

---

9/ Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 40 (A/35/40), paras. 370-383.

10/ For the text of the statement, see annex IV below.

11/ See CCPR/C/SR.253, paras. 34-56, and CCPR/C/SR.260.

12/ See CCPR/C/SR.275 and 276.

that, although the consensus was binding upon all members of the Committee, it must be so interpreted as to conform strictly to the Covenant and that it was especially important that the statement should not be so restrictively construed as to prevent the Committee from taking further action in due course. In this connexion, it was pointed out that many Governments could claim that human rights were fully respected in their countries, if the Committee failed to draw attention to shortcomings and failed to take an explicit stand on matters which arose in the consideration of the reports of individual States. Other members stressed that, whereas certain procedures were clearly laid down under article 41 of the Covenant as well as under the Optional Protocol, no such procedures were mentioned in article 40 of the Covenant; that, although there were two schools of thought in the Committee regarding the interpretation of article 40, paragraph 4, the statement adopted by consensus provided for general comments to be addressed to all States parties and not to individual States; yet other members felt that the Committee had not yet reached the stage of making specific comments on the reports of individual States, especially since only few reports had been so thoroughly considered as to enable the Committee to formulate the kind of comments that one school of thought felt were required; that, although the Committee must take useful action in respect of individual States, such action would only be really useful when the Committee could express a common view; that the Committee should proceed at this juncture, on the basis of the text of thestatement, in preparing comments relating to States parties generally, bearing in mind that the principles outlined in the statement enabled the Committee to make some progress towards performing its functions under article 40 of the Covenant, while preserving its right to proceed further on individual reports at a later stage.

385. Members of the Committee pointed out that, in accordance with the text of the statement, several decisions were pending on such matters as the review of the guidelines for the preparation of initial reports (paragraph (e)), the periodicity of reports (paragraph (f)), the guidelines needed for the new reports (paragraph (g)), the list of questions most frequently asked by members of the Committee and their circulation to States parties for their information (paragraph (h)), and the analysis to be prepared by the Secretariat after each examination of a State report (paragraph (j)). Anticipating the consideration by the Committee at its next session of a certain supplementary report already submitted to it, some members invoked paragraph (i) of the statement and proposed the establishment of the working group provided for in that paragraph to prepare for the discussion with the representative of the State party concerned. Other members were of the view that the purpose of establishing such a working group was to prepare for the consideration of second periodic reports. Noting that, in accordance with paragraph (f), a supplementary report may be considered as a new report but not that it should be considered as such, some members pointed out that since it was the total inadequacy of certain initial reports which had led the Committee to request supplementary reports, the latter should in fact be treated as parts of the initial reports; and that, if it was decided that supplementary reports already submitted should be regarded as second periodic reports, then the whole system of periodicity would be destroyed. Another member emphasized the importance of dialogue being seen as a continuing process and to this end the Committee should proceed to the second stage as soon as possible on the basis of additional information received in response to the initial examination of the State's report.

386. At its 287th meeting, the Committee agreed to establish a special working group of five of its members to meet during the week preceding the opening of the thirteenth session to draft general comments, recommendations on how best to implement the decision taken by the Committee as reflected in paragraph (f) of the Statement (see annex IV below) and recommendations on the list of questions most frequently asked by Committee members during the consideraton of reports submitted by States parties under article 40 of the Covenant.

387. At the thirteenth session of the Committee, the working group submitted recommendations 13/ which, because of constraints of time, were limited to the items of its mandate relating to the implementation of the Committee's decision on periodicity and general comments.

388. With regard to the question concerning the implementation of its decision on periodicity, the Committee took into account a number of factors some of which may be highlighted. First, the time available to the Committee imposed practical limitations on the number of reports which the Committee could consider, particularly in the light of its experience in the consideraton, over the last five years, of some 44 initial reports and supplementary information submitted by States parties. Secondly, the Committee attached great importance to continuing the dialogue it had succeeded in establishing with States parties and considered that this could best be achieved through the submission of periodic reprots compiled in accordance with detailed guidelines designed to ensure that the reports contain the information required in the fullest measure. Thirdly, the Committee recognized the need to give to States parties the necessary time required for the preparation of these necessarily detailed and exhaustive reports. The Committee has, therefore, established for the time being a five-year periodicity without prejudice to moving to a three or four-year periodicity at a later stage as soon as this would appear to be feasible. The decision of the Committee on the question of periodicity and on guidelines for the preparation of periodic reports is contained in annexes V and VI respectively, to this report. The Committee reserved for further consideration the question of a reporting State submitting supplementary information before the due date for the submission of its second or subsequent report and the examination of such information. 14/

389. As regards general comments, the Committee recalled its decision of 30 October 1980 on this question as contained in paragraphs (a), (b) and (c), set out in annex VI. Members of the Committee reiterated their divergent views 15/ on the interpretation of article 40, paragraph 4, of the Covenant but agreed that,

---

13/ See CCPR/C/SR.295.

14/ For the discussion in the Committee before adoption of its decisions on periodicity and guidelines regarding the form and contents of reports from States parties under article 40, paragraph 1 (b), of the Covenant, see CCPR/C/SR.295, 296, 299, 303, 306 and 308.

15/ See Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 40 (A/34/40), paras. 15-20; Ibid., Thirty-fifth Session, Supplement No. 40 (A/35/40), paras. 370-382; CCPR/C/SR.275 and 276 and CCPR/C/SR. 304, 306, 308 and 309.

without prejudice to the further consideration of the Committee's duties under article 40, paragraph 4, of the Covenant, general comments should be made by the Committee in accordance with paragraphs (a), (b) and (c) of the decision of 30 October 1980 as a first step. The Committee adopted a number of general comments which will be followed by others from time to time as constraints of time and further experience might dictate. These general comments are set out annex VII.

D. Information conveyed by the Secretary-General to the Committee

390. At the 263rd meeting of the Committee, the representative of the Secretary-General informed the Committee that a letter had been received by the Director of the Division of Human Rights from the Ministry of Foreign Affairs of Sweden, dated 4 February 1981, stating that the Swedish Government, in accordance with a decision by the Parliament, had recently promulgated an act repealing as from 1 January 1982 the act concerning anti-social behaviour about which concern had been expressed in the Committee during its consideration of the initial and supplementary reports submitted by Sweden under article 40 of the Covenant.

391. At the 295th meeting of the Committee, the representative of the Secretary-General informed the Committee that a note verbale had been received by the United Nations Office in Geneva from the Ministry of Foreign Affairs of the Republic of Senegal, dated 10 July 1981, in which the Ministry recalled that, in April 1980, in the course of the examination of the report of the Republic of Senegal, under article 40 of the International Covenant on Civil and Political Rights, several members of the Committee had expressed reservatons with regard to the Republic's legislation which, in their view, was not consistent with certain provisions of the Covenant in that it limited the number of political parties to four and imposed an obligation on the citizens of the Republic to obtain an exit visa in order to be able to leave the country. The representative of the Secretary-General further informed the Committee that, in this connexion, the note verbale indicated that the legislation in question had been repealed by a constitutional instrument which establishes an unlimited multiparty system and by legislation which abolishes the obligation to obtain an exit visa.

IV. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

392. 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 Human Rights Committee for consideration. Twenty-six of the 67 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, the Central African Republic, Colombia, Costa Rica, Denmark, the Dominican Republic, Ecuador, Finland, Iceland, Italy, Jamaica, Madagascar, Mauritius, the Netherlands, Nicaragua, Norway, Panama, Peru, Senegal, Suriname, Sweden, Trinidad and Tobago, 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.

393. Consideration of communications under the Optional Protocol takes place in closed meetings (article 5(3) of the Optional Protocol). All documents pertaining to the work of the Committee under the Optional Protocol (submission from the parties and other working documents of the Committee) are confidential. The texts of final decisions of the Committee, consisting of views adopted under article 5(4) of the Optional Protocol, are however made public. This may also apply to such other decisions which the Committee decides to make public.

394. In carrying out its work under the Optional Protocol, the Committee is assisted by Working Groups on Communications, consisting of not more than five of its members, which submit recommendations to the Committee on the actions to be taken at the various stages in the consideration of each case. A Working Group may also decide on its own to request additional information or observations from the parties on questions relevant to the admissibility of a communication. 16/ The Committee has also designated individual members to act as Special Rapporteurs in a number of cases. The Special Rapporteurs place their recommendations before the Committee for consideration.

395. Since the Committee started its work under the Optional Protocol at its second session in 1977, 102 communications have been placed before it for consideration (72 of these were placed before the Committee from its second to its tenth session; 30 further communications have been placed before the Committee since then, i.e. at its eleventh, twelfth and thirteenth sessions, covered by the present report). Since the second session some 202 formal decisions have been adopted, as follows:

(a) Decisions at pre-admissibility stages (mainly under rule 91 of the Committee's provisional rules of procedure, requesting additional information or observations on questions relating to admissibility): 93

16/ The authority for the establishment of these working groups and the scope of their functions is laid down in rules 89, 91 and 94 (1) of the Committee's provisional rules of procedure (CCPR/C/3/Rev.1).

(b) Decisions declaring a communication inadmissible, discontinued or suspended (relating to 34 communications): 31

(c) Decisions declaring a communication admissible: 44

(d) Further decisions after a communication has been declared admissible (requesting further information or explanations from the parties): 16

(e) Final views (relating to 19 communications): 18

396. For an overview of the Committee's work under the Optional Protocol, a further statistical review is presented at the end of this chapter (paragraphs 10.1 to 10.4).

397. Consideration of communications under the Optional Protocol is, in practice, divided into several stages. In view of the periodicity of the Committee's meetings (normally three sessions each year) and the various time limits established either by the Optional Protocol (article 4(2)) or by the Committee, in accordance with its provisional rules of procedure, for the submission of information, clarifications, observations, or explanations by either party, the duration for the consideration of a single case may extend for several years. If a case is declared inadmissible or its consideration is discontinued for another reason at a procedural stage, this time is normally much shorter.

397.1 Although consideration of communications may be described as falling mainly into two stages, i.e. (a) consideration prior to admissibility and (b) consideration on the merits after a communication has been declared admissible, the following explanatory observations may further elucidate the Committee's methods of work as it has evolved in practice:

(i) Gathering of basic information:

397.2 Under rules 78(2) and 80 of the Committee's provisional rules of procedure, the Secretary-General 17/ may request clarifications from an author of a communication on a number of points of fact which are necessary for any meaningful consideration by the Committee (or its Working Group on Communications) of the case. This information gathering process does not, however, preclude the communication from being drawn to the attention of the Committee (or its Working Group on Communications).

(ii) Initial consideration:

397.3 The Working Group on Communications examines the material placed before it by the Secretariat and decides (a) whether further information should be sought from the author of the communication on issues relevant to the question of its admissibility; (b) whether the communication should at the same time be transmitted to the State party (or should only be transmitted to the State party) requesting observations or information relevant to the question of admissibility; (c) whether to recommend to the Committee that it decide on either of the two possibilities

---

17/ On behalf of the Secretary-General, the Division of Human Rights acts as the Secretariat of the Human Rights Committee.

listed in (a) or (b) above; (d) whether to recommend to the Committee that the communication be declared inadmissible under the Optional Protocol (or that consideration should be discontinued) because of clear deficiencies that cannot be remedied by seeking further information from the author (conditions for admissibility are laid down in articles 1, 2, 3, 5 (2) (a) and 5 (2) (b) of the Optional Protocol).

397.4 At this first round of discussion, the Committee decides on any recommendation from its Working Group, or decides to take a different approach than that recommended by the Working Group. It may also decide at this stage (or at any later stage) to designate a Special Rapporteur for a case. Any decision requesting additional information or observations from either party, sets out a time limit for such submission.

(iii) Further consideration prior to admissibility:

397.5 If a case goes forward from the first round of discussion, it is subject to further consideration by the Committee at a later session (based again on any recommendations which may be received from its Working Group on Communications or a Special Rapporteur, if assigned). The Committee may approve, change or reject any recommendation placed before it. Again further information may be sought from either party (with new time limits for the submission of such information), but the aim at this round of discussion is to declare the communication admissible, inadmissible or discontinued (possibly suspended, e.g. because contact has been lost with the author of the communication). No communication can be declared admissible before the State party has received a copy thereof and has been given an opportunity to furnish such information or observations as it deems relevant to the question of the admissibility of the communication.

(iv) Consideration on the merits:

397.6 Any communication declared admissible is subject to consideration on the merits of the claims presented by the authors. At this stage the State party has six months to submit its explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it (article 4 (2) of the Optional Protocol). Under rule 93 (3) of its provisional rules of procedure the Committee usually grants six weeks for the author of the communications to provide any additional information or observations which he may be prompted to make after the State party's submission under article 4 (2) of the Optional Protocol has been communicated to him. 18/

397.7 Even at this stage in the consideration of a case, the Committee may decide that specific additional information is needed from either party, before it reaches it final conclusion by adopting its views under article 5 (4) of the Optional Protocol. The Committee has, therefore, on a number of occasions resorted to the method of adopting Interim decisions aimed at collecting further information from one party or both, before adopting its final views.

18/ At all stages in the consideration of a communication, the Committee works on the basis of the principle of equality of arms, giving each party an opportunity to comment on any information submitted at the Committee's request by the other party.

397.8 Any of the stages described in paragraphs 397.3 to 397.7 above may entail discussions extending for more than one session of the Committee. This is necessitated both by established deadlines for either party, the principle of equality of arms and by the limited time available at each session.

Issues pertaining to admissibility

398. The issues pertaining (a) to the standing of the author; (b) events alleged to have occurred prior to the entry into force of the Covenant and the Optional Protocol for the country concerned; (c) the application of article 5 (2) (a) of the Optional Protocol which precludes consideration by the Committee if the same matter is being examined under another procedure of international investigation or settlement and (d) the requirement under article 5 (2) (b) of the Optional Protocol that domestic remedies must have been exhausted before a communication is considered under the Optional Protocol, have been extensively covered in the Committee's earlier annual reports. For reference, paragraphs 391 to 397 of the Committee's last annual report (A/35/40) are reproduced in annex VIII to the present report.

The Committee's eleventh session

399.1 The Committee concluded consideration of one case by adopting final views (Case No. R.7/28 Weinberger v. Uruguay). 19/ Procedural decisions in 20 other cases at various stages in the Optional Protocol procedure were adopted.

The Committee's twelfth session

399.2 The Committee concluded consideration of eight cases by adopting final views (Cases Nos. R.7/32 (Luis Tourón v. Uruguay), R.8/33 (Leopoldo Buffo Carballal v. Uruguay), R.8/31 (Jorge Landinelli Silva et al. v. Uruguay), R.9/35 (S. Aumeeruddy-Cziffra et al. v. Mauritius), R.9/37 (Esther Soriano de Bouton v. Uruguay), R.9/40 (Erkki Juhani Hartikainen et al. v. Finland), R.10/44 (Rosario Pietraroia Zapala v. Uruguay) and R.13/58 (Anna Maroufidou v. Sweden). 20/ Procedural decisions were adopted in 21 other cases.

The Committee's thirteenth session

399.3 The Committee concluded consideration of three cases by adopting its final views (Cases Nos. R.6/24 (Sandra Lovelace v. Canada), R.12/52 (Sergio Rubén López Burgos v. Uruguay) and R.13/56 (Lilian Celiberti de Casariego v. Uruguay). 21/ Procedural decisions were adopted in 24 other cases (thereof one decision relating to 10 cases which are identical except for dates and the names of the authors).

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

400.1 Up to and including its thirteenth session, 102 communications have been placed before the Human Rights Committee for consideration. The status of these communications is as follows:

19/ Reproduced as annex IX to the present report

20/ Reproduced as annexes X to XVII to the present report.

21/ Reproduced as annexes XVIII to XX to the present report.

Concluded by final views:	19
Concluded in other manner (inadmissible, discontinued, suspended or withdrawn):	34
Declared admissible, but unconcluded:	23
Pending at pre-admissibility stage (thereof 12 transmitted to the State party under rule 91 of the Committee's provisional rules of procedure):	36

400.2 Communications under the Optional Protocol have been submitted to the Committee in respect of thirteen of the twenty-six countries which have accepted the Committee's competence to deal with individual complaints of violations of the provisions of the Covenant. These thirteen countries are: Canada, Colombia, Denmark, Finland, Iceland, Italy, Madagascar, Mauritius, Nicaragua, Norway, Sweden, Uruguay and Zaire.

400.3 No communications have been received by the Committee with regard to the other thirteen countries which have accepted its competence to deal with individual complaints, namely: Barbados, the Central African Republic, Costa Rica, the Dominican Republic, Ecuador, Jamaica, the Netherlands, Panama, Peru, Senegal, Suriname, Trinidad and Tobago and Venezuela.

400.4 The 102 communications placed before the Human Rights Committee under the Optional Protocol, have been concluded or are pending before the Committee as follows:

Canada:

Twenty-nine communications concerning Canada (thereof 10 communications which are identical except for dates and the names of the authors) have been placed before the Committee.

Concluded by final views:	1
Concluded in other manner (inadmissible, discontinued or suspended): 22/	12
Declared admissible, but unconcluded:	3
Pending at pre-admissibility stage (thereof 2 transmittal to the State party):	13

Colombia:

Four communications concerning Colombia have been placed before the Committee.

Concluded by final views:	0
Concluded in other manner (inadmissible, discontinued or suspended):	0

22/ In one instance, two cases concerning the same matter were merged into one for joint consideration.

Declared admissible, but unconcluded: 3

Pending at pre-admissibility stage (transmitted to the State party) 1

Denmark:

Five communications concerning Denmark have been placed before the Committee. Four of these have been declared inadmissible. One was discontinued because of the author's failure to respond to repeated requests for information, without which meaningful consideration could not be given to the case.

Finland:

Five communications concerning Finland have been placed before the Committee.

Concluded by final views: 1

Concluded in other manner (inadmissible, discontinued or suspended): 2

Declared admissible, but unconcluded: 1

Pending at pre-admissibility stage (not transmitted to the State party) 1

Iceland:

One communication concerning Iceland has been placed before the Committee. The case was subsequently withdrawn by the author, who opted for another procedure of international investigation or settlement.

Italy:

Two communications concerning Italy have been placed before the Committee.

Concluded by final views: 0

Concluded in other manner (inadmissible, discontinued or suspended): 1

Declared admissible, but unconcluded: 1

Pending at pre-admissibility stage: 0

Madagascar:

One communication concerning Madagascar has been placed before the Committee. It is pending at a pre-admissibility stage.

Mauritius:

One communication concerning Mauritius has been placed before the Committee. It has been concluded by adoption of final views.

Nicaragua:

One communication concerning Nicaragua has been placed before the Committee. Consideration of the case was discontinued after the authors explained that they had already submitted the same matter for consideration under another procedure of international investigation or settlement.

Norway:

Three communications concerning Norway have been placed before the Committee.

Concluded by final views:	0
Concluded in other manner (inadmissible, discontinued or suspended):	2
Declared admissible, but unconcluded.	0
Pending at pre-admissibility stage (transmitted to the State party):	1

Sweden:

One communication concerning Sweden has been placed before the Committee. It has been concluded by adoption of final views.

Uruguay:

Forty-five communications concerning Uruguay have been placed before the Committee.

Concluded by final views: 23/	15
Concluded in other manner (inadmissible, discontinued or suspended):	8
Declared admissible, but unconcluded:	14
Pending at pre-admissibility stage (thereof 7 transmitted to the State party):	8

Zaire:

Four communications concerning Zaire have been placed before the Committee.

Concluded by final views:	0
Concluded in other manner (inadmissible, discontinued or suspended):	2
Declared admissible, but unconcluded:	1
Pending at pre-admissibility stage (not transmitted to the State party):	1

23/ In one instance, two communications concerning the same matter were merged into one before the adoption of the final views.

V. FUTURE MEETINGS OF THE COMMITTEE

401. As indicated in its last annual report (A/35/40), the Committee is scheduled to hold 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 also at Geneva from 11 to 29 October 1982 and, in each case, its Working Group would meet during the week preceding the opening of each session.

VI. ADOPTION OF THE REPORT

402. At its 315th and 316th meetings on 30 and 31 July 1981, the Committee considered the draft of its fifth annual report covering the activities of the Committee at its eleventh, twelfth and thirteenth sessions, held in 1980 and 1981. 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 31 July 1981

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

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Australia	13 August 1980	13 November 1980
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
France	4 November 1980 (a)	3 February 1981
Gambia	22 March 1979 (a)	22 June 1979
German Democratic Republic	8 November 1973	23 March 1976

a/ The Central African Republic acceded to the Covenant on 8 May 1981. The Covenant will enter into force for the Central African Republic on 8 August 1981.

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Germany, Federal Republic of	17 December 1973	23 March 1976
Guinea	24 January 1978	24 April 1978
Guyana	15 February 1977	15 May 1977
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
Mexico	23 March 1981 (a)	23 June 1981
Mongolia	18 November 1974	23 March 1976
Morocco	3 May 1979	3 August 1976
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 1978
Senegal	13 February 1978	13 May 1978

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Spain	27 April 1977	27 July 1977
Sri Lanka	11 June 1980 (a)	11 September 1980
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
Tunisia	18 March 1969	23 March 1976
Ukrainian Soviet Socialist Republic	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*

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

* The Central African Republic acceded to the Optional Protocol on 8 May 1981. The Optional Protocol will enter into force for the Central African Republic on 8 August 1981.

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
B. States parties to the Optional Protocol* (continued)		
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
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	3 October 1980	3 January 1981
Senegal	13 February 1978	15 May 1978
Suriname	28 December 1976 (a)	28 March 1977
Sweden	6 December 1971	23 March 1976
Trinidad and Tobago	14 November 1980 (a)	14 February 1981
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

State party	Valid from	Valid until
Austria	10 September 1978	Indefinitely
Canada	29 October 1979	Indefinitely
Denmark	23 March 1976	22 March 1983
Finland	19 August 1975	Indefinitely
Germany, Federal Republic of	28 March 1979	27 March 1986
Iceland	22 August 1979	Indefinitely
Italy	15 September 1978	Indefinitely
Netherlands	11 December 1978	Indefinitely
New Zealand	28 December 1978	Indefinitely

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force

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

State party	Valid from	Valid until
Norway	23 March 1976	Indefinitely
Senegal	5 March 1976	Indefinitely
Sri Lanka	11 June 1980	Indefinitely
Sweden	23 March 1976	Indefinitely
United Kingdom of Great Britain and Northern Ireland	20 May 1976	Indefinitely

ANNEX II

Membership of the Human Rights Committee

Name of member	Country of nationality
Mr. Andrés AGUILAR**	Venezuela
Mr. Mohammed AL-DOURI**	Iraq
Mr. Néjib BOUZIRI*	Tunisia
Mr. Abdoulaye DIEYE*	Senegal
Mr. Felix ERMACORA**	Austria
Sir Vincent EVANS**	United Kingdom of Great Britain and Northern Ireland
Mr. Bernhard GRAEFRATH*	German Democratic Republic
Mr. Vladimir HANGA**	Romania
Mr. Leonte HERDOCIA ORTEGA**	Nicaragua
Mr. Dejan JANČA*	Yugoslavia
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 TARNOPOLSKY**	Canada
Mr. Christian TOMUSCHAT*	Germany, Federal Republic of

* Term expires on 31 December 1982.

** Term expires on 31 December 1984.

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

States parties	Date due	Date of submission	Date of reminder(s) sent to States whose reports have not yet been submitted
Austria	14 September 1979	10 April 1981	
Dominican Republic	3 April 1979	NOT YET RECEIVED	(1) 25 April 1980 (2) 27 August 1980
El Salvador	28 February 1981	NOT YET RECEIVED	
Gambia	21 June 1980	NOT YET RECEIVED	
Guinea	23 April 1979	19 August 1980	
Guyana	14 May 1978	20 March 1981	
Iceland	21 November 1980	31 March 1981	
India	9 July 1980	NOT YET RECEIVED	
Jamaica	22 March 1977	12 September 1980	
Japan	20 September 1980	24 October 1980	
Lebanon	22 March 1977	NOT YET RECEIVED	(1) 30 September 1977 (2) 22 February 1978 (3) 29 August 1978 (4) 29 August 1980
Morocco	2 August 1980	9 February 1981	
Netherlands	10 March 1980	11 February 1981	
New Zealand	27 March 1980	NOT YET RECEIVED	
Nicaragua	11 June 1981	NOT YET RECEIVED	
Panama	7 June 1978	NOT YET RECEIVED	(1) 14 May 1979 (2) 23 April 1980 (3) 29 August 1980
Portugal	14 September 1979	29 September 1980	
Rwanda	22 March 1977	20 January 1981	

a/ From 2 August 1980 to 31 July 1981 (end of tenth session to end of thirteenth session.

A. Initial reports (continued)

State parties	Date due	Date of submission	Date of reminder(s) sent to States whose reports have not yet been submitted
Trinidad and Tobago	20 March 1980	NOT YET RECEIVED	
Uruguay	22 March 1977	NOT YET RECEIVED	(1) 30 September 1977 (2) 22 February 1978 (3) 29 August 1978 (4) 17 April 1980 (5) 29 August 1980
Zaire	31 January 1978	NOT YET RECEIVED	(1) 14 May 1979 (2) 23 April 1980 (3) 29 August 1980

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

State party	Date of submission
Jordan	7 July 1981

ANNEX IV

Statement on the duties of the Human Rights Committee under article 40 of the Covenant a/ b/

At its tenth session the Human Rights Committee established a small working group to meet before the eleventh session in order to consider the formulation of such general comments as are likely to gather the widest support from the Committee as a whole, and 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 Working Group met from 13 to 17 October. In the light of its consideration of the Working Group's report, the Committee has agreed, without prejudice to the further consideration of the Committee's duties under article 40, paragraph 4 of the Covenant, to proceed as follows:

(a) The Committee, having examined initial reports received from 36 States parties from different regions of the world and with widely differing political, social and legal systems, should now start to formulate general comments based on the consideration of the reports for transmission to the States parties.

(b) In formulating general comments the Committee will be guided by the following principles:

They should be addressed to the States parties in conformity with article 40, paragraph 4 of the Covenant;

They should promote co-operation between States parties in the implementation of the Covenant;

They should summarize experience the Committee has gained in considering States reports;

They should draw the attention of States parties to matters relating to the improvement of the reporting procedure and the implementation of the Covenant, and

They should stimulate activities of States parties and international organizations in the promotion and protection of human rights.

(c) The general comments could be related, inter alia, to the following subjects:

---

a/ Adopted by the Committee at its 260th meeting (eleventh session), on 30 October 1980.

b/ Also published separately in document CCPR/C/18.

The implementation of the obligation to submit reports under article 40 of the Covenant;

The implementation of the obligation to guarantee the rights set forth in the Covenant;

Questions related to the application and the content of individual articles of the Covenant;

Suggestions concerning co-operation between States parties in applying and developing the provisions of the Covenant.

(d) The Committee confirms its aim of engaging in a constructive dialogue with each reporting State. This dialogue will be conducted on the basis of periodical reports from States parties to the Covenant.

(e) The Committee considers that the guidelines which it adopted at its second session for the preparation of initial reports under article 40, paragraph 1 (a), which have been followed by the majority of reporting States, have proved useful both to those States and to the Committee. Nevertheless, the Committee will in due course review them to see whether they can be improved.

(f) To continue the dialogue with States parties, the Committee deems it desirable to establish a three or four year periodicity for subsequent States' reports under article 40, paragraph 1 (b), of the Covenant. Because of the actual workload, the Committee will decide in principle to request a second periodic report to be submitted by any State party within four years of the date when its initial report was examined by the Committee. As far as the States parties whose additional information or supplementary reports have already been considered by the Committee are concerned, these reports may be considered to be their second periodic reports.

(g) The Committee should, in the light of its experience in the consideration of the initial reports, develop certain guidelines for the purpose of such new reports. The contents of the subsequent reports should concentrate on:

The progress made in the meantime;

Changes made in laws and practices involving the Covenant;

Difficulties in the implementation of the Covenant;

The completion of the initial report, taking into account the questions raised in the Committee;

Additional information as to questions not answered or not fully answered;

Information taking into account general comments that the Committee may have made in the meantime;

Action taken as a result of the experience gained in co-operation with the Committee.

(h) For their general information, and to provide more active assistance to States parties when drawing up both initial and subsequent reports, it was considered useful as a first step to establish a digest or list of questions most frequently asked by members of the Committee, relating to the various subjects under the Covenant. Such a digest or list should be drawn up, and be updated from time to time, by the Secretariat on the basis of the summary records of Committee meetings and should be circulated to States parties for their information only after approval by the Committee.

(i) Prior to the meetings with representatives of the reporting States at which the second periodic report will be considered, a working group of three members of the Committee will meet to review the information so far received by the Committee in order to identify those matters which it would seem most helpful to discuss with the representatives of the reporting State. This will be without prejudice to any member of the Committee raising any other matter which appears to him to be important.

(j) The Committee will request the Secretariat to prepare after each examination of a State report an analysis of the study of that report. This analysis should set out systematically both the questions asked and the responses given with precise references to the domestic legal sources, quoting the main ones.

ANNEX V

Decision on periodicity a/ b/

1. Under article 40 of the Covenant, States parties have undertaken to submit reports to the Human Rights Committee:

(a) Within one year of the entry into force of the Covenant for the State party concerned (initial reports);

(b) Thereafter, whenever the Committee so requests (subsequent reports).

2. In accordance with article 40, paragraph 1 (b), the Human Rights Committee requests:

(a) States parties which have submitted their initial reports or additional information relating to their initial reports before the end of the thirteenth session to submit subsequent reports every five years from the consideration of their initial report or their additional information;

(b) Other States parties to submit subsequent reports to the Committee every five years from the date when their initial report was due.

This is without prejudice to the power of the Committee, under article 40, paragraph 1 (b), of the Covenant, to request a subsequent report whenever it deems appropriate.

---

a/ Adopted by the Committee at its 303rd meeting held on 22 July 1981.

b/ Also issued separately in document CCPR/C/19.

ANNEX VI

Guidelines regarding the form and content of reports from States parties under article 40, paragraph 1 (b) of the Covenant a/ b/

1. Under paragraph 1 of article 40 of the Covenant every State party has undertaken to submit reports to the Human Rights Committee on the implementation of the Covenant:

(a) Within one year of the entry into force of the Covenant for the State party concerned;

(b) Thereafter whenever the Committee so requests.

2. At its second session in August 1977, the Committee adopted general guidelines for the submission of reports by States parties under article 40. c/ In drawing up these guidelines the Committee had in mind particularly the initial reports to be submitted by States parties under paragraph 1 (a) of article 40. These guidelines have been followed by the great majority of States parties which have submitted reports subsequently to their issue and they have proved helpful both to the reporting States and to the Committee.

3. In paragraph 5 of those guidelines the Committee indicated that it intended, after the completion of its study of each State's initial report and of any subsequent information submitted, to call for subsequent reports under article 40, paragraph 1 (b), of the Covenant.

4. At its eleventh session in October 1980, the Committee adopted by consensus a statement concerning the next stages of its future work under article 40 (see annex IV to this report). It confirmed its aim of engaging in a constructive dialogue with each reporting State and determined that the dialogue should be conducted on the basis of periodical reports from States parties to the Covenant (para. (d)). It also decided that, in the light of its experience in the consideration of initial reports, it should develop guidelines for the purpose of subsequent reports. Pursuant to this decision and to the decision taken by the Committee at its thirteenth session to request States parties to submit reports under article 40, paragraph 1 (b), on a periodical basis, (see annex V to the present report), the Committee has drawn up the following guidelines regarding the form and contents of such reports.

---

a/ Adopted by the Committee at its 308th meeting, held on 27 July 1981.

b/ Also issued separately in document CCPR/C/20.

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

5. The aim of reports submitted under article 40, paragraph 1 (b) will be to complete the information required by the Committee under the Covenant and to bring it up to date. As in the case of initial reports (see the general guidelines referred to in para. 2 above), subsequent reports should be in two parts as follows:

Part I: General

This part should contain information concerning the general framework within which the civil and political rights recognized by the Covenant are protected in the reporting State.

Part II: Information in relation to each of the articles in parts I, II and III of the Covenant

This part should contain information in relation to each of the provisions of individual articles.

Under these two main headings the contents of the reports should concentrate especially on:

(a) The completion of the information before the Committee as to the measures adopted to give effect to rights recognized in the Covenant, taking account of questions raised in the Committee on the examination of any previous report and including in particular additional information as to questions not previously answered or not fully answered;

(b) Information taking into account general comments which the Committee may have made under article 40, paragraph 4, of the Covenant;

(c) Changes made or proposed to be made in the laws and practices relevant to the Covenant;

(d) Action taken as a result of experience gained in co-operation with the Committee;

(e) Factors affecting and difficulties experienced in the implementation of the Covenant;

(f) The progress made since the last report in the enjoyment of rights recognized in the Covenant.

6. It should be noted that the reporting obligation extends not only to the relevant laws and other norms, but also to the practices of the courts and administrative organs of the State party and other relevant facts likely to show the degree of actual enjoyment of rights recognized by the Covenant.

7. The report should be accompanied by copies of the principal legislative and other texts referred to in it.

8. It is the desire of the Committee to assist States parties in promoting the enjoyment of rights under the Covenant. To this end the Committee wishes to continue the dialogue which it has begun with reporting States in the most constructive manner possible and reiterates its confidence that it will thereby contribute to mutual understanding and peaceful and friendly relations among nations in accordance with the Charter of the United Nations.

ANNEX VII

General comments under article 40, paragraph 4, of the Covenant a/ b/

Introduction

The Committee wishes to reiterate its desire to assist States parties in fulfilling their reporting obligations. These general comments draw attention to some aspects of this matter but do not purport to be limitative or to attribute any priority as between different aspects of the implementation of the Covenant. These comments will, from time to time, be followed by others as constraints of time and further experience may make possible.

The Committee so far has examined 44 initial reports and, in some cases, additional information and supplementary reports. This experience, therefore, now covers a significant number of the States which have ratified the Covenant, at present 67. They represent different regions of the world with different political, social and legal systems and their reports illustrate most of the problems which may arise in implementing the Covenant, although they do not afford any complete basis for a world-wide review of the situation as regards civil and political rights.

The purpose of these general comments is to make this experience available for the benefit of all States parties in order to promote their further implementation of the Covenant; to draw their attention to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedure and to stimulate the activities of these States and international organizations in the promotion and protection of human rights. These comments should also be of interest to other States, especially those preparing to become parties to the Covenant and thus to strengthen the co-operation of all States in the universal promotion and protection of human rights.

General comment 1/13

States parties have undertaken to submit reports in accordance with article 40 of the Covenant within one year of its entry into force for the States parties concerned and, thereafter, whenever the Committee so requests. Until the present time only the first part of this provision, calling for initial reports, has become regularly operative. The Committee notes, as appears from its annual reports, that only a small number of States have submitted their reports on time. Most of them have been submitted with delays ranging from a few months to several years and some States parties are still in default despite repeated reminders and other actions by the Committee. The fact that most States parties have nevertheless, even if somewhat late, engaged in a constructive dialogue with the Committee suggests that the States

---

a/ Adopted by the Committee at its 311th meeting, held on 28 July 1981.

b/ Also issued separately in document CCPR/C/21.

parties normally ought to be able to fulfil the reporting obligation within the time-limit prescribed by article 40 (1) and that it would be in their own interest to do so in the future. In the process of ratifying the Covenant, States should pay immediate attention to their reporting obligation since the proper preparation of a report which covers so many civil and political rights necessarily does require time.

General comment 2/13

(1) The Committee has noted that some of the reports submitted initially were so brief and general that the Committee found it necessary to elaborate general guidelines regarding the form and content of reports. These guidelines were designed to ensure that reports are presented in a uniform manner and to enable the Committee and States parties to obtain a complete picture of the situation in each State as regards the implementation of the rights referred to in the Covenant. Despite the guidelines, however, some reports are still so brief and general that they do not satisfy the reporting obligations under article 40.

(2) Article 2 of the Covenant requires States parties to adopt such legislative or other measures and provide such remedies as may be necessary to implement the Covenant. Article 40 requires States parties to submit to the Committee reports on the measures adopted by them, on the progress made in the enjoyment of the Covenant rights and the factors and difficulties, if any, affecting the implementation of the Covenant. Even reports which are in their form generally in accordance with the guidelines have in substance been incomplete. It has been difficult to understand from some reports whether the Covenant had been implemented as part of national legislation and many of them were clearly incomplete as regards relevant legislation. In some reports the role of national bodies or organs in supervising and in implementing the rights had not been made clear. Further, very few reports have given any account of the factors and difficulties affecting the implementation of the Covenant.

(3) The Committee considers that the reporting obligation embraces not only the relevant laws and other norms relating to the obligations under the Covenant but also the practices and decisions of courts and other organs of the State party as well as further relevant facts which are likely to show the degree of the actual implementation and enjoyment of the rights recognized in the Covenant, the progress achieved and factors and difficulties in implementing the obligations under the Covenant.

(4) It is the practice of the Committee, in accordance with Rule 68 of its Provisional Rules of Procedure, to examine reports in the presence of representatives of the reporting States. All States whose reports have been examined have co-operated with the Committee in this way but the level, experience and the number of representatives has varied. The Committee wishes to state that, if it is to be able to perform its functions under article 40 as effectively as possible and if the reporting State is to obtain the maximum benefit from the dialogue, it is desirable that the States representatives should have such status and experience (and preferably be in such number) as to respond to questions put, and the comments made, in the Committee over the whole range of matters covered by the Covenant.

General comment 3/13

(1) The Committee notes that article 2 of the Covenant generally leaves it to the States parties concerned to choose their method of implementation in their territories within the framework set out in that article. It recognizes, in particular, that the implementation does not depend solely on constitutional or legislative enactments, which in themselves are often not per se sufficient. The Committee considers it necessary to draw the attention of States parties to the fact that the obligation under the Covenant is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights. This is obvious in a number of articles (e.g. article 3 which is dealt with in general comment 4/13 below), but in principle this undertaking relates to all rights set forth in the Covenant.

(2) In this connexion, it is very important that individuals should know what their rights under the Covenant (and the Optional Protocol, as the case may be) are and also that all administrative and judicial authorities should be aware of the obligations which the State party has assumed under the Covenant. To this end, the Covenant should be publicized in all official languages of the State and steps should be taken to familiarize the authorities concerned with its contents as part of their training. It is desirable also to give publicity to the State party's co-operation with the Committee.

General comment 4/13

(1) Article 3 of the Covenant requiring, as it does, States parties to ensure the equal right of men and women to the enjoyment of all civil and political rights provided for in the Covenant, has been insufficiently dealt with in a considerable number of States reports and has raised a number of concerns, two of which may be highlighted.

(2) First, article 3, as articles 2 (1) and 26 in so far as those articles primarily deal with the prevention of discrimination on a number of grounds, among which sex is one, requires not only measures of protection but also affirmative action designed to ensure the positive enjoyment of rights. This cannot be done simply by enacting laws. Hence more information has generally been required regarding the role of women in practice with a view to ascertaining what measures, in addition to purely legislative measures of protection, have been or are being taken to give effect to the precise and positive obligations under article 3 and to ascertain what progress is being made or what factors or difficulties are being met in this regard.

(3) Secondly, the positive obligation undertaken by States parties under that article may itself have an inevitable impact on legislation or administrative measures specifically designed to regulate matters other than those dealt with in the Covenant but which may adversely affect rights recognized in the Covenant. One example, among others, is the degree to which immigration laws which distinguish between a male and a female citizen may or may not adversely affect the scope of the right of the woman to marriage to non-citizens or to hold public office.

(4) The Committee, therefore, considers that it might assist States parties if special attention were given to a review by specially appointed bodies or institutions of laws or measures which inherently draw a distinction between men and women in so far as those laws or measures adversely affect the rights provided for in the Covenant and, secondly, that States parties should give specific information in their reports about all measures, legislative or otherwise, designed to implement their undertaking under this article.

(5) The Committee considers that it might help the States parties in implementing this obligation, if more use could be made of existing means of international co-operation with a view to exchanging experience and organizing assistance in solving the practical problems connected with the ensurance of equal rights for men and women.

General comment 5/13

(1) Article 4 of the Covenant has posed a number of problems for the Committee when considering reports from some States parties. When a public emergency which threatens the life of a nation arises and it is officially proclaimed, a State party may derogate from a number of rights to the extent strictly required by the situation. The State party, however, may not derogate from certain specific rights and may not take discriminatory measures on a number of grounds. The State party is also under an obligation to inform the other State parties immediately, through the Secretary-General, of the derogations it has made including the reasons therefor and the date on which the derogations are terminated.

(2) States parties have generally indicated the mechanism provided in their legal systems for the declaration of a state of emergency and the applicable provisions of the law governing derogations. However, in the case of a few States which had apparently derogated from Covenant rights, it was unclear not only whether a state of emergency had been officially declared but also whether rights from which the Covenant allows no derogation had in fact not been derogated from and further whether the other States parties had been informed of the derogations and of the reasons for the derogations.

(3) The Committee holds the view that measures taken under article 4 are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and that in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which no derogations can be made. The Committee also considers that it is equally important for States parties, in times of public emergency, to inform the other States parties of the nature and extent of the derogations they have made and of the reasons therefor and, further, to fulfil their reporting obligations under article 40 of the Covenant by indicating the nature and extent of each right derogated from together with the relevant documentation.

ANNEX VIII

Issues pertaining to the admissibility of communications, which have been the subject of decisions by the Human Rights Committee a/

/Excerpt from fourth annual report of the Human Rights Committee/

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

---

a/ See Official Records of the General Assembly, Thirty-fifth Session Supplement No. 40 (A/35/40), paras. 391-397.

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". b/ 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 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.

---

b/ 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.

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.

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.7/28

Submitted by: Luciano Weinberger Weisz

Alleged victim: Ismael Weinberger, author's brother

State party concerned: Uruguay

Date of communication: 8 May 1978 (date of initial letter)

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

Meeting on 29 October 1980,

Having concluded its consideration of communication No. R.7/28 submitted to the Committee by Luciano Weinberger Weisz 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 8 May 1978 and subsequent letters dated 16 June 1978, 11 February 1979 and 18 August 1980) is a Uruguayan citizen residing in Mexico. He submitted the communication on behalf of his brother, Ismael Weinberger, a journalist at present detained in Uruguay.

2. The author alleges the following: His brother was arrested in the presence of his relatives at his home in Montevideo, Uruguay, on 25 February 1976, without any warrant of arrest. He was held incommunicado for nearly 10 months, while Uruguayan authorities denied his detention for more than 100 days. Only in June 1976 did his name appear on a list of detained persons, but still his family was not informed about his place of detention, the prison of "La Paloma" in Montevideo. During this period of 10 months, he suffered severe torture, and was most of the time kept blindfolded with his hands tied together. In addition, like all other prisoners, he was forced to remain every day during 14 hours sitting on a mattress. He was not allowed to move around, nor to work or read. Food was

scarce (a piece of bread and thin soup twice a day without any meat). When his family was allowed to visit him aften 10 months, serious bodily harm (one arm paralysed, leg injuries, infected eyes) could be seen. He had lost 25 kgs and showed signs of application of hallucinogenic substances. At the end of 1976 or early 1977, he was transferred to the prison of "Libertad" in the Province of San José, where he received better treatment.

The author further states that Ismael Weinberger was brought before a military judge on 16 December 1976 and charged with having committed offences under article 60 (V) of the Military Penal Code ("subversive association") with aggravating circumstances of conspiracy against the Constitution (asociación para delinquir con el agravante de atentado a la Constitución). Only then could he avail himself of the assistance of legal counsel. Characterizing these accusations as a mere pretext, the author alleges that the real reasons for his brother's arrest and conviction were his political opinions, contrary to the official ideology of the present Government of Uruguay. He asserts that Ismael Weinberger was prosecuted solely for having contributed information on trade union activities to a newspaper opposed to the Government, i.e., for the exercise of rights expressly guaranteed by the Constitution of Uruguay to all citizens. Furthermore, he alleges that to be tried on a charge of "asociación para delinquir" amounted to prosecution for membership in a political party which had been perfectly lawful at the time when Ismael Weinberger was affiliated with it, and which had been banned only afterwards. In addition, he maintains that his brother did not have a fair and public hearing, since the trial of first instance was conducted in writing, military judges are subordinated to the military hierarchy and lack the required qualities of impartiality and independence, and his brother only had the assistance of counsel after approximately 10 months of detention. Finally, the author alleges that the judgement against his brother was not made public.

The author also alleges that pursuant to Acta Institucional No. 4 of 1 September 1976, (arts. 1 (a), (b) and 2 (a)) a/ his brother is now deprived of the right to engage in political activities for 15 years.

---

a/ Institutional Act No. 4 of 1 September 1976:

... The Executive Power, in exercise of the powers conferred on it by the institutionalization of the revolutionary process,

DECREES:

Art. 1. The following shall be prohibited, for a term of 15 years, from engaging in any of the activities of a political nature authorized by the Constitution of the Republic, including the vote:

(a) All candidates for elective office on the lists for the 1966 and 1971 elections of the Marxist and pro-Marxist Political Parties or Groups declared illegal by the resolutions of the Executive Power No. 1788/67 of 12 December 1967 and No. 1026/73 of 26 November 1973;

(b) All persons who have been tried for crimes against the nation.

Art. 2. The following shall be prohibited, for a term of 15 years, from

3. The author further claims that in practice domestic remedies do not exist in Uruguay. With regard to the recourse of habeas corpus, the authorities maintain that it is not applicable to the cases of persons detained under "prompt security measures", while an appeal against a sentence to a higher tribunal is in practice ineffective.

The author alleges that articles 2, 3, 7, 9, 10, 12, 14, 15, 25 and 26 of the International Covenant on Civil and Political Rights have been violated. He states in his letter of 16 June 1978 that the Inter-American Commission on Human Rights took note of his brother's case and, after having requested a report on it from the Government of Uruguay, decided to take no further action in the matter and to file it (case No. 2134).

4. On 26 July 1978, 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.

5. By a note dated 29 December 1978, the State party objected to the admissibility of the communication on three grounds:

(a) that the case had been considered by the Inter-American Commission on Human Rights (No. 2134) which had decided to shelve it when the complaint had been withdrawn by its author;

(b) that the date of the alleged violation of human rights (Ismael Weinberger was arrested on 18 January 1976) preceded the date of the entry into force for Uruguay of the Covenant and the Optional Protocol (23 March 1976);

(c) that domestic remedies had not been exhausted (the State party enclosed an annex listing the domestic remedies in the Uruguayan legal system).

6. In a decision adopted on 24 April 1979, the Human Rights Committee concluded:

(a) that it was not barred from considering the case after having ascertained that case No. 2134, concerning the alleged victim, was no longer under consideration by the Inter-American Commission on Human Rights;

(b) that it was not barred from considering the case although the arrest of the alleged victim preceded the date of the entry into force for Uruguay of the Covenant and the Optional Protocol, since the alleged violations continued after that date;

(continued)

engaging in any of the activities of a political nature authorized by the Constitution of the Republic, except the vote:

(a) All candidates for elective office on the lists for the 1966 and 1971 elections of the Political Organizations which were electorally associated with the organizations mentioned in the preceding article, subparagraph (a), under the same coincidental or joint slogan or subslogan; ...

(c) that, with regard to the exhaustion of domestic remedies, on the basis of the information before it, there were no further remedies which the alleged victim could have pursued;

The Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) 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 observations or explanations concerning the substance of the matter under consideration and in particular on the specific violations of the Covenant alleged to have occurred. The State party was requested, in this connexion, to enclose copies of any court orders or decisions of relevance to the matter under consideration;

(c) That this decision be communicated to the State party and to the author of the communication.

7. The six months time-limit referred to in the Committee's decision expired on 25 November 1979. By a note dated 10 July 1980, the State party submitted its written explanations under article 4 (2) of the Optional Protocol.

8. In this submission the State party repeats the views expressed in its earlier note of 29 December 1978 as to the non-exhaustion of domestic remedies. The State party points out that the fact that Mr. Weinberger has not exhausted the available domestic remedies is proved by the appeal against the judgement of the court of first instance which the defence lodged with the Supreme Military Court on 19 August 1979 and which was brought before that Court on 29 September 1979.

As far as the merits of the case are concerned, the State party submits that Ismael Weinberger was not arrested because of his political beliefs or ideas or his trade-union membership, but for having participated directly in subversive activities.

The State party further contests the allegation that Ismael Weinberger has not been afforded legal assistance. The State party submits that he had at all times access to the help of a defence lawyer of his choosing, Dr. Moises Sarganas.

9. In his submission dated 18 August 1980, under rule 93 (3) of the provisional rules of procedure, the author comments upon the State party's reply of 10 July 1980.

With regard to the exhaustion of domestic remedies, the author reiterates that they are in practice inoperative. In substantiation of this allegation he repeats the dates relating to his brother's arrest (25 February 1976), the day the Government acknowledged that arrest (June 1976), the day charges were brought against him (16 December 1976), the day the indictment was pronounced (September 1978), and the day he was sentenced by a Military Court of First Instance (14 August 1979). The author points out that these dates and the fact that no final judgement has been pronounced in his brother's case more than four and a half years after his arrest prove that domestic remedies are not operating normally in Uruguay.

As regards the merits of the case, the author submits that the State party should have explained and specified in what subversive activities Ismael Weinberger has been involved. In substantiation of that allegation the State party should have complied with the request of the Human Rights Committee to "enclose copies of any court orders or decisions of relevance to the matter under consideration".

10. 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.

11. 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. The author as well as the State party have stated that an appeal was lodged on behalf of Ismael Weinberger with the Supreme Military Court on 19 August 1979. Up to date no final judgement has been rendered in the case of Ismael Weinberger, more than four and a half years after his arrest on 25 February 1976. The Committee concludes that in accordance with article 5 (2) (b) of the Optional Protocol, it is not barred from considering the case, as the application of the remedy is unreasonably prolonged.

12. 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: Ismael Weinberger Weisz was arrested at his home in Montevideo, Uruguay, on 25 February 1976 without any warrant of arrest. He was held incommunicado at the prison of "La Paloma" in Montevideo for more than 100 days and could be visited by family members only 10 months after his arrest. During this period, he was most of the time kept blindfolded with his hands tied together. As a result of the treatment received during detention, he suffered serious physical injuries (one arm paralysed, leg injuries and infected eyes) and substantial loss of weight.

Ismael Weinberger was first brought before a judge and charged on 16 December 1976, almost 10 months after his arrest. On 14 August 1979, three and a half years after his arrest, he was sentenced to eight years of imprisonment by the Military judge of the Court of First Instance for "subversive association" (art. 60 (V) of the Military Penal Code) with aggravating circumstances of conspiracy against the Constitution. The concrete factual basis of this offence has not been explained by the Government of Uruguay, although the author of the communication claims that the true reasons were that his brother had contributed information on trade-union activities to a newspaper opposed to the Government and his membership in a political party which had lawfully existed while the membership lasted. The Committee further notes in this connexion that the State party did not comply with the Committee's request to enclose copies of any court orders or decisions of relevance to the matter under consideration.
Ismael Weinberger was not granted the assistance of a counsel during the first 10 months of his detention. Neither the alleged victim nor his counsel had the right to be present at the trial, the proceedings being conducted in writing. The judgement handed down against him was not made public.

Pursuant to Acta Institucional No. 4 of 1 September 1976, Ismael Weinberger is deprived of the right to engage in political activities for 15 years.

13. As regards the treatment to which Ismael Weinberger has been subjected, the Committee notes that the State party did not at all comment thereon in its submission of 10 July 1980.

14. 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. The Covenant (art. 4) allows national measures derogating from some of its provisions only 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.

15. The Human Rights Committee is aware that under the legislation of many countries criminal offenders may be deprived of certain political rights. Accordingly, article 25 of the Covenant only prohibits "unreasonable" restrictions. In no case, however, may a person be subjected to such sanctions solely because of his or her political opinion (arts. 2 (1) and 26). Furthermore, in the circumstances of the present case there is no justification for such a deprivation of all political rights for a period of 15 years.

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) because of the severe treatment which Ismael Weinberger received during the first 10 months of his detention;

of article 9 (3) because he was not brought promptly before a judge or other officer authorized by law to exercise judicial power and because he was not tried within a reasonable time;

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

of article 14 (1) because he had no fair and public hearing and because the judgement rendered against him was not made public;

of article 14 (3) because he did not have access to legal assistance during the first 10 months of his detention and was not tried in his presence;

of article 15 (1) because the penal law was applied retroactively against him;

of article 19 (2) because he was detained for having disseminated information relating to trade-union activities;

of article 25 because he is barred from taking part in the conduct of public affairs and from being elected for 15 years in accordance with Acta Institucional No. 4 of 1 September 1976.

17. The Committee, accordingly, is of the view that the State party is under an obligation to provide the victim with effective remedies, including his immediate release and 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.7/32

Submitted by: Lucía Sala de Tourón on behalf of her husband Luis Tourón

State party concerned: Uruguay

Date of communication: 16 May 1978

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

Meeting on 31 March 1981,

Having concluded its consideration of communication No. R.7/32 submitted to the Committee by Lucía Sala de Tourón, 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 16 May 1978, is an Uruguayan national, residing in Mexico. She submitted the communication on behalf of her husband, Luis Tourón, a 54-year-old Uruguayan citizen and a former municipal official of the city of Montevideo, allegedly detained in Uruguay.

2.1 The author alleges that her husband was arrested on 21 January 1976 and subjected to cruel and inhuman treatment (of which she gives no details) during his detention incommunicado from the date of arrest until August 1976. She states that he was subsequently sentenced to 14 years' imprisonment by a military court and that at the time of writing (16 May 1978) his case was still pending before the second military instance (the Supremo Tribunal Militar). She further states that her husband, having been subjected during the first part of his detention to the régime of "prompt security measures", was denied the right to leave the country, although article 186 (17) of the Uruguayan Constitution provides that persons under that régime have the option to leave the country.

2.2 The author maintains that no formal charges were made against her husband, and he was not brought before a judge, until seven months after his arrest, in

August 1976, when he was formally charged with the offence of "subversive association" and afforded the right to have the assistance of a counsel; that the real reasons for his arrest were his political opinions and public activities; that he was never afforded a public hearing before a tribunal, as there are no public hearings during the whole procedure of first instance; that, as in the case of any person prosecuted under military justice in Uruguay, he was not allowed to be present at the trial or to defend himself in person; and that judgement was not made public.

2.3 She further alleges that military tribunals do not have the competence to deal with the cases of civilian detainees under article 253 of the Constitution and that they are not impartial since, as part of the armed forces, they are subordinated to the military hierarchy. As for the recourse of habeas corpus, the authorities allegedly claim that it is not applicable to the cases of persons detained under "prompt security measures".

2.4 The author also alleges that, pursuant to "Institutional Act No. 4" (Acta Institucional No. 4) of 1 September 1976, her husnand has been deprived of the right to engage in political activities, including the right to vote, for 15 years.

2.5 The author claims that articles 2, 3, 7, 9 (1) (2) (3) (4) (5), 10 (1) (2a) (3), 12, 14 (1) (2) (3a, d, e, g) (5), 15, 25 (a and b), and 26 of the Covenant have been violated.

3. On 28 July 1978, 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 of the communication. The time-limit for the State party's information or observations expired on 9 November 1978. No reply was received from the State party.

4. On 24 April 1979 the Human Rights Committee therefore decided:

(a) that the communication was admissible;

(b) that, in accordance with article 4 (2) of the Optional Protocol, the State party should 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 (including copies of any court orders or decisions relevant to the matter) and the remedy, if any, that may have been taken by it.

5. The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 25 November 1979. By notes dated 23 November 1979 and 13 February 1980, the State party requested the Committee to accord a reasonable extension of time. By a note dated 10 July 1980, the State party submitted the following explanations under article 4 (2) of the Optional Protocol:

> "... contrary to what is maintained in the communication under consideration, Mr. Luis Tourón was not detained without formal charges against him; as was fully proved by his own statements, he entered into association with others with a view to taking direct action to change the form of government by means which are inadmissible under internal public law and

committed acts aimed at reorganizing the directive machinery of the banned Communist party with the object of adapting it for underground operations. The author refers to her communication to 'the lack of a public hearing before a tribunal'. It must be explained that public hearings do not exist under the Uruguayan legal order. The trial is conducted in writing and the accused has the opportunity to express himself through his counsel and by means of the formal statements before the judge. Another legal error in the communication under consideration is the assertion that military tribunals are not competent to judge civilian detainees. Since the entry into force of the State Security Act (No. 14,068 of 6 July 1972, approved by Parliament) it has been established that offences against the State come within the jurisdiction of military courts. This Act gives effect to a constitutional norm, article 330, which provides: 'Anyone who takes action to upset the present Constitution, following its adoption and publication, or provides means for such action to be taken, shall be regarded, sentenced and punished as an offender against the State'. Consequently, the sole jurisdiction for these offences is the military, since, from the entry into force of the 1884 Military Penal Code, the duty to safeguard the nation comes specifically within the sphere of military competence.

On 29 September 1977 Mr. Tourón was sentenced by a court of first instance to 14 years' imprisonment for 'subversive association' (article 60 (v) of the preparatory acts (articles 60 (I), paragraph 6, and 60 (XII)) in a combination of principal and secondary offences (Military Penal Code, article 7 and Ordinary Penal Code, article 56). On 10 October 1977 Colonel Otto Gilomen, counsel for the accused, appealed to the Supreme Court of Military Justice against the judgement rendered by the court of first instance. On 17 May 1979 final judgement was passed by a court of second instance, upholding the previous judgement, and it became enforceable on 29 June 1979. As may be observed, not only did the accused have the benefit of due legal assistance in the proceedings but he availed himself of the remedy of appeal to which Uruguayan legislation entitled him. It may be added that under Uruguayan law the remedy of appeal functions automatically in the case of final judgements imposing prison sentences of over three years, such sentences not being considered enforceable until they have been comprehensively reviewed in appeal by the Supreme Court of Military Justice; in other words, in such cases it is mandatory for counsel to appeal against such sentences. To continue with the erroneous or false assertions, it is stated in the communication that Mr. Tourón's case has not been submitted to any other international body, when in reality it was brought before and considered by the Inter-American Commission on Human Rights as case No. 2011. With regard to the reference to physical coercion, the Government of Uruguay categorically rejects this accusation".

6. The Human Rights Committee notes that the State party has informed the Committee in another case (R.2/9) that the remedy of habeas corpus is not applicable to persons detained under the prompt security measures.

7. As to the State party's observation in its note dated 10 July 1980 that the case of Luis Tourón was brought before and considered by the Inter-American Commission on Human Rights as case No. 2011, the Committee recalls that it has already ascertained in connexion with its consideration of other

communications (e.g. R.1/1) that IACHR case No. 2011 (dated 27 January 1976, listing the names and dates of arrest of a large number of persons, offering no further details), predates the entering into force of the Covenant, and the Optional Protocol for Uruguay, and therefore does not concern the same matter which the Committee is competent to consider. Further, the Committee recalls that no objection was raised by the State party as to the admissibility of the present communication under rule 91 of the Committee's provisional rules of procedure.

8. The Human Rights Committee, considering 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, hereby decides to base its views on the following facts which have either been essentially confirmed by the State party, or are unrefuted: Luis Tourón was arrested on 21 January 1976 and was detained incommunicado from the date of arrest until August 1976 when he was eventually brought before a judge and formally charged with the offence of "subversive association" and "conspiracy to overthrow the Constitution followed by preparatory acts". It was not until then that he was afforded the right to have the assistance of counsel. He was not allowed to be present at his trial or to defend himself in person. There was no public hearing, and judgement was not delivered in public. On 29 September 1977 he was sentenced by a military court of first instance to 14 years' imprisonment. On 17 May 1979 a final judgement was passed by a court of second instance, upholding the previous judgement. He has been deprived of all his political rights, including the right to vote, for 15 years.

9. As to the allegations of ill-treatment, they are in such general terms that the Committee makes no finding in regard to them.

10. 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. The Covenant (article 4) allows national measures derogating from some of its provisions only in strictly defined circumstances, and the Government has not made any submissions of fact or law to justify such derogation.

11. The Human Rights Committee is aware that under the legislation of many countries criminal offenders may be deprived of certain political rights. However, article 25 of the Covenant permits only reasonable restrictions. The Committee notes that Mr. Tourón has been sentenced to 14 years' imprisonment for "subversive association" and "conspiracy to overthrow the Constitution followed by preparatory acts". The State party has not responded to the Committee's request that it should be furnished with copies of any court orders or decisions relevant to the matter. The Committee is gravely concerned by this omission. Although similar requests have been made in a number of other cases, the Committee has never yet been furnished with the texts of any court decisions. This tends to suggest that judgements, even of extreme gravity, as in the present

case, are not handed down in writing. In such circumstances, the Committee feels unable, on the basis of the information before it, to accept either that the proceedings against Luis Tourón amounted to a fair trial or that the severity of the sentence imposed or the deprivation of political rights for 15 years were justified.

12. In addition, 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 as found by the Committee, 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 violations of the International Covenant on Civil and Political Rights, in particular:

of article 9 (3) because Luis Tourón was not brought promptly before a judge or other officer authorized to exercise judicial power;

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

of article 14 (1) because he had no public hearing and because the judgement rendered against him was not made public;

of article 14 (3) because he did not have access to legal assistance during the first seven months of his detention and was not tried in his presence.

13. 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 he has suffered and to take steps to ensure that similar violations do not occur in the future.

ANNEX XI

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

concerning

Communication No. R.8/33

Submitted by: Leopoldo Buffo Carballal

State party concerned: Uruguay

Date of communication: 30 May 1978

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

Meeting on 27 March 1981;

Having concluded its consideration of communication No. R.8/33 submitted to the Committee by Leopoldo Buffe Carballal, 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 30 May 1978, is Leopoldo Buffo Carballal, a 36 year old Uruguayan national, residing in Mexico. He submitted the communication on his own behalf.

2.1 The author states the following:

2.2 Upon arriving in Argentina on 4 January 1976 (by legally crossing the border between Uruguay and Argentina), he was arrested without a warrant of arrest and handed over to members of the Uruguayan Navy, who took him back to the city of Paysandú, Uruguay. He was not informed of why he had been deprived of his liberty. A few days later he was transferred to Montevideo.

2.3 During the first period of detention, until 12 February 1976, he was repeatedly subjected to torture (blows, hanging from his hands and forced to stand motionless - "plantón" - for long periods. On 12 February 1976, after having been forced to sign a statement to the effect that he had suffered no abuses, he

was transferred to the military barracks of the Fifth Artillery. From there, he was taken to a large truck garage. The author describes the events as follows:

> "They moved us all to a large truck garage with a concrete roof and two big doors that were open summer and winter. We slept on the floor, which was covered with oil and grease. We had neither mattress nor blankets. For the first time since I was detained, I was allowed to take a bath, although I had to put on the same clothes, soiled by my own vomit, blood and excrement. When I took off the blindfold I became dizzy. Later on, my family was allowed to send me a mattress. In this dungeon I remained incommunicado, sitting on the rolled-up mattress during the day, blindfolded and with my hands bound. We were allowed to sleep at night. The only food was a cup of soup in the morning and another at night. They would not allow our relatives to bring us food or medicine. I suffered from chronic diarrhoea and frequent colds."

2.4 On 5 May 1976 he appeared before a military court, and on 28 July 1976 he was brought before the court again to be notified that his release had been ordered.

2.5 In spite of the order for his release, he was still detained at the Fifth Artillery barracks under the régime of "prompt security measures" until 2[illegible] January 1977. He was, however, forbidden to leave Montevideo and ordered to report to the authorities every 15 days. He gained asylum in the Embassy of Mexico in Montevideo on 4 March 1977 with his wife and children. At the time his home was plundered and his belongings were taken away.

2.6 The author claims that during his detention he was effectively barred from any recourse, not only because he had no access to the outside world while he was held incommunicado (until 28 July 1976) but also, from then on, because of the interpretation given by the Uruguayan authorities to the relevant provisions of the Constitution in respect of detention under "prompt security measures". He states that he was never charged with any offence of the law and alleges that the sole reason for the injustices inflicted upon him were his political opinions, the nature of which, however, he fails to specify.

2.7 He states that he did not receive any compensation after his release.

2.8 He submits that he was a victim of violations of articles 7, 9 (1, 2, 3, 4, 5), 10 (1 and 3), 12, 17 and 19 (1) of the International Covenant on Civil and Political Rights.

3. On 28 July 1978, 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 29 December 1978, the State party argued that the alleged violation took place on 4 January 1976, prior to the entry into force of the Covenant for Uruguay, and made the general observation that every person in the

national territory has free access to the courts and to public administrative authorities and may exercise freely all the administrative and judicial remedies provided for under the legal system of the country.

5. On 24 April 1979, the Human Rights Committee,

(a) having concluded that, although the date of arrest was prior to the entry into force of the Covenant for Uruguay, the alleged violations continued after that date,

(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, 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 25 November 1979. By notes dated 23 November 1979 and 13 February 1980, the State party requested the Committee to accord a reasonable extension of time. The only submission received to date from the State party consists of a brief note, dated 7 July 1980, in which the State party reaffirms that the legal system in force affords every guarantee of due process and adds the following explanations:

> "The author's assertions about the conditions of his detention under the prompt security measures are completely unfounded, for in no Uruguayan place of detention may any situation be found which could be regarded as violating the integrity of persons. Leopoldo Buffo Carballal was arrested on 4 January 1976 for his presumed connexions with subversive activities and was interned under the prompt security measures; he was granted unconditional release on 28 June 1976. On 29 June 1976 the Fifth Military Court of Investigation closed the preliminary investigation proceedings for lack of evidence. Afterwards, Buffo Carballal took refuge in the Mexican Embassy before leaving for Mexico. The foregoing shows that justice in Uruguay is not arbitrary and that in the absence of any elements constituting proof of criminal acts, no one is deprived of his liberty. For all these reasons, the author's assertions, which are merely accusations devoid of all foundation, are hereby rejected".

7. The Human Rights Committee notes that it 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 detained under the prompt security measures.

8. The Human Rights Committee has received no further correspondence from the author subsequent to his original communication of 30 May 1978. Letters addressed to him by the Secretariat have been returned by the Mexican postal authorities as unclaimed.

9. The Human Rights Committee, considering 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, hereby decides to base its views on the following facts which have been essentially confirmed by the State party, are unrefuted or are uncontested, except for denials of a general character offering no particular information or explanation. Leopoldo Buffo Carballal was arrested on 4 January 1976 and held incommunicado for more than five months, much of the time tied and blindfolded, in several places of detention. Recourse to habeas corpus was not available to him. He was brought before a military judge on 5 May 1976 and again on 28 June or 28 July 1976, when an order was issued for his release. He was, however, kept in detention until 26 January 1977.

10. As to the allegations of torture, the Committee notes that they relate explicitly to events said to have occurred prior to 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay). As regards the harsh conditions of Mr. Buffo Carballal's detention, which continued after that date, the State party has adduced no evidence that the allegations were duly investigated. A refutation in general terms to the effect that "in no Uruguayan place of detention may any situation be found which could be regarded as violating the integrity of persons" is not sufficient. The allegations should have been investigated by the State party, in accordance with its laws and its obligations under the Covenant and the Optional Protocol.

11. The Human Rights Committee has considered whether acts and treatment which 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. The Covenant (article 4) allows national measures derogating from some of its provisions only in strictly defined circumstances, and the Government has not made any submission 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.

12. The Human Rights Committee has duly taken note of the State party's submission that Leopoldo Buffo Carballal was arrested and detained for his presumed connexion with subversive activities. Such general reference to "subversive activities" does not, however, suffice to show that the measures of penal prosecution taken against Leopoldo Buffo Carballal were compatible with the provisions of the Covenant. The Covenant provides in article 19 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. To date, the State party has never explained the scope and meaning of "subversive activities", which constitute a criminal offence under the relevant legislation. Such an explanation is particularly necessary in the present case, since the author of the communication contends that he has been prosecuted solely for his opinions.

13. 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 articles 7 and 10 (1), because of the conditions under which Mr. Buffo Carballal was held during his detention;

of article 9 (1), because he was not released until approximately six or seven months after an order for his release was issued by the military court;

of article 9 (2), because he was not informed of the charges brought against him;

of article 9 (3), because he was not brought before a judge until four months after he was detained and 44 days after the Covenant entered into force for Uruguay;

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

of article 14 (3), because the conditions of his detention effectively barred him from access to legal assistance.

14. The Committee, accordingly, is of the view that the State party is under an obligation to provide effective remedies, if applied for, including compensation for the violations which Mr. Buffo Carballal has suffered, and to take steps to ensure that similar violations do not occur in the future.

ANNEX XII

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.8/34

Submitted by: Jorge Landinelli Silva and other persons

State party concerned: Uruguay

Date of communication: 30 May 1978 (date of initial letter)

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

Meeting on 8 April 1981,

Having concluded its consideration of communication No. R.8/34 submitted to the Committee by Jorge Landinelli Silva and other persons, 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 authors of the communication and by the State party concerned,

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The authors of this communication (initial letter dated 30 May 1978 and a further letter dated 26 February 1981) are Jorge Landinelli Silva, 34 years old, professor of history; Luis E. Echave Zas, 46 years old, farm labourer; Omar Patron Zeballos, 52 years old, assistant accountant; Niurka Sala Fernández, 49 years old, professor of physics; and Rafael Guarga Ferro, 39 years old, engineer, all Uruguayan citizens residing in Mexico. They submitted the communication on their own behalf.

2. The facts of the present communication are undisputed. The authors of the communication were all candidates for elective office on the lists of certain political groups for the 1966 and 1971 elections and which groups were later declared illegal through a decree issued by the new Government of the country in November 1973. In this capacity, Institutional Act No. 4 of 1 September 1976

(art. 1 (a)) a/ has deprived the authors of the communication of the right to engage in any activity of a political nature, including the right to vote for a term of 15 years.

3.1 The authors contend that such a deprivation of their rights goes beyond the restrictions envisaged in article 25 of the Covenant, since suspension of political rights under the Uruguayan juridical system, as in others, is only permissible as a sanction for certain categories of penal crimes. They further contend that the duration of the suspension of rights, as well as the number of categories of persons affected by this suspension, are without precedent in political history. In conclusion, the authors claim that the fundamental idea upon which the "Institutional Act No. 4" is based, is incompatible with the principles set forth in article 25 of the Covenant.

3.2 The authors of the communication state that they have not submitted the same case to any other procedure of international investigation or settlement.

4. Under rule 91 of the provisional rules of procedure of the Committee, the communication was transmitted to the State party on 28 September 1978 with the request that the State party submit, not later than 9 November 1978, information or observations which it might deem relevant to the question of the admissibility of the communication, in particular as regards the fulfilment of the conditions set out in article 5 (2) (a) and 5 (2) (b) of the Optional Protocol. No reply was received from the State party in this connexion.

5. The Committee found, on the basis of the information before it, that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that there were effective domestic remedies available to the alleged victims in the circumstances of their case, which they had failed to exhaust. Since, furthermore no other procedural impediment had emerged, the Human Rights Committee declared the communication admissible on 24 April 1979.

6. On 10 July 1980, the State party submitted its observations under article 4 (2) of the Optional Protocol. Essentially, it invoked article 4 of the Covenant in the following terms:

"The Government of Uruguay wishes to inform the Committee that it has availed

---

a/ The text reads as follows:

... The Executive Power, in exercise of the powers conferred on it by the institutionalization of the revolutionary process,

DECREES:

Art. 1. The following shall be prohibited, for a term of 15 years, from engaging in any of the activities of a political nature authorized by the Constitution of the Republic, including the vote:

(a) All Candidates for elective office on the lists for the 1966 and 1971 elections of the Marxist and pro-Marxist Political Parties or Groups declared illegal by the resolutions of the Executive Power No. 1788/67 of 12 December 1967 and No. 1026/73 of 26 November 1973; ...

itself of the right of derogation provided for in article 4 (3) of the International Covenant on Civil and Political Rights. The Secretary-General of the United Nations was informed of this decision and, through him, notes were sent to the States parties containing the notification of the Uruguayan State. Nevertheless, the Government of Uruguay wishes to state that it reiterates the information given on that occasion, namely that the requirements of article 4 (2) of the Covenant are being strictly complied with - requirements whose purpose is precisely to ensure the real, effective and lasting defence of human rights, the enjoyment and promotion of which constitute the basis of our existence as an independent, sovereign nation. Article 25, on which the authors of the communication argue their case, is not mentioned in the text of article 4 (2). Accordingly, the Government of Uruguay, as it has a right to do, has temporarily derogated from some provisions relating to political parties. Nevertheless, as is stated in the third preambular paragraph of Act No. 4, dated 1 September 1976, it is the firm intention of the authorities to restore political life."

7. 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.

8.1 Although the Government of Uruguay, in its submission of 10 July 1980, has invoked article 4 of the Covenant in order to justify the ban imposed on the authors of the communication, the Human Rights Committee feels unable to accept that the requirements set forth in article 4 (1) of the Covenant have been met.

8.2 According to article 4 (1) of the Covenant, the States parties may take measures derogating from their obligations under that instrument in a situation of public emergency which threatens the life of the nation and the existence of which has been formally proclaimed. Even in such circumstances, derogations are only permissible to the extent strictly required by the exigencies of the situation. In its note of 28 June 1979 to the Secretary-General of the United Nations (reproduced in document CCPR/C/2/Add.3, p. 4), which was designed to comply with the formal requirements laid down in article 4 (3) of the Covenant, the Government of Uruguay has made reference to an emergency situation in the country which was legally acknowledged in a number of "Institutional Acts". However, no factual details were given at that time. The note confined itself to stating that the existence of the emergency situation was "a matter of universal knowledge"; no attempt was made to indicate the nature and the scope of the derogations actually resorted to with regard to the rights guaranteed by the Covenant, or to show that such derogations were strictly necessary. Instead, the Government of Uruguay declared that more information would be provided in connexion with the submission of the country's report under article 40 of the Covenant. To date neither has this report been received, nor the information by which it was to be supplemented.

8.3 Although the sovereign right of a State party to declare a state of emergency is not questioned, yet, in the specific context of the present communication, the Human Rights Committee is of the opinion that a State, by merely invoking the existence of exceptional circumstances, cannot evade the obligations which it has undertaken by ratifying the Covenant. Although the substantive right to take derogatory measures may not depend on a formal notification being made pursuant to article 4 (3) of the Covenant, the State party concerned is duty-bound to give a sufficiently detailed account of the relevant facts when it invokes article 4 (1) of the Covenant in proceedings under the Optional Protocol. It is the function of

the Human Rights Committee, acting under the Optional Protocol, to see to it that States Parties live up to their commitments under the Covenant. In order to discharge this function and to assess whether a situation of the kind described in article 4 (1) of the Covenant exists in the country concerned, it needs full and comprehensive information. If the respondent Government does not furnish the required justification itself, as it is required to do under article 4 (2) of the Optional Protocol and article 4 (3) of the Covenant, the Human Rights Committee cannot conclude that valid reasons exist to legitimize a departure from the normal legal régime prescribed by the Covenant.

8.4 In addition, even on the assumption that there exists a situation of emergency in Uruguay, the Human Rights Committee does not see what ground could be adduced to support the contention that, in order to restore peace and order, it was necessary to deprive all citizens, who as members of certain political groups had been candidates in the elections of 1966 and 1971, of any political right for a period as long as 15 years. This measure applies to everyone, without distinction as to whether he sought to promote his political opinions by peaceful means or by resorting to, or advocating the use of, violent means. The Government of Uruguay has failed to show that the interdiction of any kind of political dissent is required in order to deal with the alleged emergency situation and pave the way back to political freedom.

9. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that, by prohibiting the authors of the communication from engaging in any kind of political activity for a period as long as 15 years, the State party has unreasonably restricted their rights under article 25 of the Covenant.

10. Accordingly, the Human Rights Committee is of the view that the State party concerned is under an obligation to take steps with a view to enabling Jorge Landinelli Silva, Luis E. Echave Zas, Omar Patrón Zeballos, Niuska Sala Fernández and Rafael Guarga Ferro to participate again in the political life of the nation.

ANNEX XIII

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

concerning

Communication No. R.9/35

Submitted by: Shirin Aumeeruddy-Cziffra and 19 other Mauritian women

State party concerned: Mauritius

Date of communication: 2 May 1978 (date of initial letter)

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

Meeting on 9 April 1981;

Having concluded its consideration of communication No. R.9/35 submitted to the Committee by Shirin Aumeeruddy-Cziffra and 19 other Mauritian women 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 authors of the communication and by the State party concerned;

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The authors of this communication (initial letter dated 2 May 1978 and a further letter dated 19 March 1980) are 20 Mauritian women, who have requested that their identity should not be disclosed to the State party. b/ They claim that the enactment of the Immigration (Amendment) Act, 1977, and the Deportation (Amendment) Act, 1977, by Mauritius constitutes discrimination based on sex against Mauritian women, violation of the right to found a family and home, and removal of the protection of the courts of law, in breach of articles 2, 3, 4, 17, 23, 25 and 26 of the International Covenant on Civil and Political Rights. The authors claim to be victims of the alleged violations. They submit that all domestic remedies have been exhausted.

---

a/ Mr. Rajsoomer Lallah, pursuant to rule 85 of the provisional rules of procedure, did not participate in the consideration of this communication or in the adoption of the views of the Committee under article 5 (4) of the Optional Protocol in this matter.

b/ Subsequently one of the authors agreed to the disclosure of her name.

1.2 The authors state that prior to the enactment of the laws in question, alien men and women married to Mauritian naticnals enjoyed the same residence status, that is to say, by virtue of their marriage, foreign spouses of both sexes had the right, protected by law, to reside in the country with their Mauritian husbands or wives. The authors contend that, under the new laws, alien husbands of Mauritian women lost their residence status in Mauritius and must now apply for a "residence permit" which may be refused or removed at any time by the Minister of Interior. The new laws, however, do not affect the status of alien women married to Mauritian husbands who retain their legal right to residence in the country. The authors further contend that under the new laws alien husbands of Mauritian women may be deported under a ministerial order which is not subject to judicial review.

2. On 27 October 1978, 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.

3. The State party, in its reply of 17 January 1979, informed the Committee that it had no objection to formulate against the admissibility of the communication.

4. On 24 April 1979, the Human Rights Committee,

(a) Concluding that the communication, as presented by the authors, should be declared admissible;

(b) Considering, however, that it might review this decision in the light of all the information which would be before it when it considered the communication on the merits;

Therefore decided:

(a) That the communication was admissible;

(b) 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 on the substance of the matter under consideration;

(c) That the State party be requested, in this connexion, to transmit copies of any relevant legislation and any relevant judicial decisions.

5.1 In its submission dated 17 December 1979, the State party explains the laws of Mauritius on the acquisition of citizenship and, in particular on the naturalization of aliens. The State party further elaborates on the deportation laws, including a historical synopsis of these laws. It is admitted that it was the effect of the Immigration (Amendment) Act, 1977 and of the Deportation (Amendment) Act, 1977 to limit the right of free access to Mauritius and immunity from deportation to the wives of Mauritian citizens only, whereas this right had previously been enjoyed by all spouses of citizens of Mauritius irrespective of their sex. Both Acts were passed following certain events in connexion with which some foreigners (spouses of Mauritian women) were suspected of subversive activities. The State party claims, however, that the authors of the communication do not allege that any particular individual has in fact been the victim of any specific act in breach of the provisions of the Covenant. The State party claims

that the communication is aimed at obtaining a declaration by the Human Rights Committee that the Deportation Act and the Immigration Act, as amended, are capable of being administered in a discriminatory manner in violation of articles 2, 3, 4, 17, 23, 25 and 26 of the Covenant.

5.2 The State party admits that the two statutes in question do not guarantee similar rights of access to residence in Mauritius to all foreigners who have married Mauritian nationals, and it is stated that the "discrimination", if there is any, is based on the sex of the spouse. The State party further admits that foreign husbands of Mauritian citizens no longer have the right to free access to Mauritius and immunity from deportation therefrom, whereas prior to 12 April 1977, this group of persons had the right to be considered, de facto, as residents of Mauritius. They now must apply to the Minister of the Interior for a residence permit and in case of refusal of the permit they have no possibility to seek redress before a court of law.

5.3 The State party, however, considers that this situation does not amount to a violation of the provisions of the Covenant which - in the State party's view - does not guarantee a general right to enter, to reside in and not to be expelled from a particular country or a certain part of it and that the exclusion or restriction upon entry or residence of some individuals and not others cannot constitute discrimination in respect of a right or freedom guaranteed by the Covenant. The State party concludes that if the right "to enter, reside in and not to be expelled from" Mauritius is not one guaranteed by the Covenant, the authors cannot claim that there has been any violation of articles 2 (1), 2 (2), 3, 4 or 26 of the Covenant on the grounds that admission to Mauritius may be denied to the authors' husbands or prospective husbands or that these husbands or prospective husbands may be expelled from Mauritius, and that such exclusion of their husbands or prospective husbands may be an interference in their private and family life.

5.4 As far as the allegation of a violation of article 25 of the Covenant is concerned, the State party argues that if a citizen of Mauritius chooses to go and live abroad with her husband because the latter is not entitled to stay in Mauritius, she cannot be heard to say that she is thus denied the right to take part in the conduct of public affairs and to have access on general terms of equality to public service in her country. The State party claims that nothing in the law prevents the woman, as such, from exercising the rights guaranteed by article 25, although she may not be in a position to exercise the said rights as a consequence of her marriage and of her decision to live with her husband abroad. The State party mentions, as an example of a woman who has married a foreign husband and who is still playing a prominent role in the conduct of public affairs in Mauritius, the case of Mrs. Aumeeruddy-Cziffra, one of the leading figures of the Mouvement Militant Mauricien opposition party.

5.5 The State party further argues that nothing in the laws of Mauritius denies any citizen the right to marry whomever he may choose and to found a family. Any violation of articles 17 and 23 is denied by the State party which argues that this allegation is based on the assumption that "husband and wife are given the right to reside together in their own countries and that this right of residence should be secure". The State party reiterates that the right to stay in Mauritius is not one of the rights guaranteed by the provisions of the Covenant, but it admits that the exclusion of a person from a country where close members of his family are

living can amount to an infringement of the person's right under article 17 of the Covenant, i.e. that no one should be subjected to arbitrary and unlawful interference with his family. The State party argues, however, that each case must be decided on its own merits.

5.6 The State party recalls that the Mauritian Constitution guarantees to every person the right to leave the country, and that the foreign husband of a Mauritian citizen may apply for a residence permit or even naturalization.

5.7 The State party is of the opinion that if the exclusion of a non-citizen is lawful (the right to stay in a country not being one of the rights guaranteed by the provisions of the Covenant), then such an exclusion (based on grounds of security or public interest) cannot be said to be an arbitrary or unlawful interference with the family life of its nationals in breach of article 17 of the Covenant.

6.1 In their additional information and observations dated 19 March 1980, the authors argue that the two Acts in question (Immigration (Amendment) Act, 1977 and Deportation (Amendment) Act, 1977) are discriminatory in themselves in that the equal rights of women are no longer guaranteed. The authors emphasize that they are not so much concerned with the unequal status of the spouses of Mauritian citizens - to which the State party seems to refer - but they allege that Mauritian women who marry foreigners are themselves discriminated against on the basis of sex, and they add that the application of the laws in question may amount to discrimination based on other factors such as race or political opinions. The authors further state that they do not claim "immunity from deportation" for foreign husbands of Mauritian women but they object that the Deportation (Amendment) Act, 1977 gives the Minister of the Interior an absolute discretion in the matter. They argue that, according to article 13 of the Covenant, the alien who is lawfully in the country has the right not to be arbitrarily expelled and that, therefore, a new law should not deprive him of his right of hearing.

6.2 As has been stated, the authors maintain that they are not concerned primarily with the rights of non-citizens (foreign husbands) but of Mauritian citizens (wives). They allege:

(a) That female citizens do not have an unrestricted right to married life in their country if they marry a foreigner, whereas male citizens have an unrestricted right to do so;

(b) That the law, being retroactive, had the effect of withdrawing from the female citizens the opportunity to take part in public life and restricted, in particular, the right of one of the authors in this respect;

(c) That the "choice" to join the foreign spouse abroad is only imposed on Mauritian women and that only they are under an obligation to "choose" between exercising their political rights guaranteed under article 25 of the Covenant, or to live with their foreign husbands abroad.

(d) That the female citizen concerned may not be able to leave Mauritius and join her husband in his country of origin for innumerable reasons (health, long-term contracts of work, political mandate, incapacity to stay in the husband's country of origin because of racial problems, as e.g. in South Africa);

(e) That by rendering the right of residence of foreign husbands insecure, the State party is tampering with the female citizens' right to freely marry whom they choose and to found a family.

The authors do not contest that a foreign husband may apply for a residence permit, as the State party has pointed out in its submission; but they maintain that foreign husbands should be granted the rights to residence and naturalization. The authors allege that in many cases foreign husbands have applied in vain for both and they claim that such a decision amounts to an arbitrary and unlawful interference by the State party with the family life of its female citizens in breach of article 17 of the Covenant, as the decision is placed in the hands of the Minister of the Interior and not of a court of law, and as no appeal against this decision is possible.

6.3 The authors enclose as an annex to their submission a statement by one of the co-authors, Mrs. Shirin Aumeeruddy-Cziffra, to whose case the State party had referred (see para. 5.4 above). She states inter alia that on 21 April 1977, in accordance with the new laws, her foreign husband applied for a residence permit and later for naturalization. She alleges that during 1977 her husband was twice granted a one-month visa and that an application for a temporary work permit was refused. She states that when returning to Mauritius, after a one-week stay abroad, her husband was allowed to enter the country on 24 October 1978 without question and that he has been staying there since without a residence or work permit. She remarks that her husband is slowly and gradually giving up all hope of ever being naturalized or obtaining a residence permit. The author, an elected member of the legislative assembly, points out that this situation is a cause of frustration for herself and she alleges that the insecurity has been deliberately created by the Government to force her to abandon politics in view of the forthcoming elections in December 1981. She stresses that she does not want to leave Mauritius, but that she intends, after the expiry of her present mandate, to be again a candidate for her party.

7.1 The Human Rights Committee bases its view on the following facts, which are not in dispute:

7.2 Up to 1977, spouses (husbands and wives) of Mauritian citizens had the right of free access to Mauritius and enjoyed immunity from deportation. They had the right to be considered de facto as residents of Mauritius. The coming into force of the Immigration (Amendment) Act, 1977, and of the Deportation (Amendment) Act, 1977, limited these rights to the wives of Mauritius citizens only. Foreign husbands must apply to the Minister of the Interior for a residence permit and in case of refusal of the permit they have no possibility to seek redress before a court of law.

7.3 Seventeen of the co-authors are unmarried. Three of the co-authors were married to foreign husbands when, owing to the coming into force of the Immigration (Amendment) Act, 1977, their husbands lost the residence status in Mauritius which they had enjoyed before. Their further residence together with their spouses in Mauritius is based under the statute on a limited, temporary residence permit to be issued in accordance with section 9 of the Immigration (Amendment) Act, 1977. This residence permit is subject to specified conditions which might at any time be varied or cancelled by a decision of the Minister of the Interior, against which no remedy is available. In addition, the Deportation

(Amendment) Act, 1977, subjects foreign husbands to a permanent risk of being deported from Mauritius.

7.4 In the case of Mrs. Aumeeruddy-Cziffra, one of the three married co-authors, more than three years have elapsed since her husband applied to the Mauritian a authorities for a residence permit, but so far no formal decision has been taken. If her husband's application were to receive a negative decision, she would be obliged to choose between either living with her husband abroad and giving up her political career, or living separated from her husband in Mauritius and there continuing to participate in the conduct of public affairs of that country.

8.1 The Committee has to consider, in the light of these facts, whether any of the rights set forth in the Covenant on Civil and Political Rights have been violated with respect to the authors by Mauritius when enacting and applying the two statutes in question. The Committee has to decide whether these two statutes, by subjecting only the foreign husband of a Mauritian woman - but not the foreign wife - of a Mauritian man to the obligation to apply for a residence permit in order to enjoy the same rights as before the enactment of the statutes, and by subjecting only the foreign husband to the possibility of deportation, violate any of the rights set forth under the Covenant, and whether the authors of the communication may claim to be victims of such a violation.

8.2 Pursuant to article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights, the Committee only has a mandate to consider communications concerning individuals who are alleged to be themselves victims of a violation of any of the rights set forth in the Covenant.

9.1 The Human Rights Committee bases its views on the following considerations:

9.2 In the first place, a distinction has to be made between the different groups of the authors of the present communication. A person can only claim to be a victim in the sense of article 1 of the Optional Protocol if he or she is actually affected. It is a matter of degree how concretely this requirement should be taken. However, no individual can in the abstract, by way of an actio popularis, challenge a law or practice claimed to be contrary to the Covenant. If the law or practice has not already been concretely applied to the detriment of that individual, it must in any event be applicable in such a way that the alleged victim's risk of being affected is more than a theoretical possibility.

9.2 (a) In this respect the Committee notes that in the case of the 17 unmarried co-authors there is no question of actual interference with, or failure to ensure equal protection by the law to any family. Furthermore there is no evidence that any of them is actually facing a personal risk of being thus affected in the enjoyment of this or any other rights set forth in the Covenant by the laws complained against. In particular it cannot be said that their right to marry under article 23 (2) or the right to equality of spouses under article 23 (4) are affected by such laws.

9.2 (b) 1 The Committee will next examine that part of the communication which relates to the effect of the laws of 1977 on the family life of the three married women.

9.2 (b) 2 The Committee notes that several provisions of the Covenant are applicable in this respect. For reasons which will appear below, there is no doubt

that they are actually affected by these laws, even in the absence of any individual measure of implementation (for instance, by way of a denial of residence, or an order of deportation, concerning one of the husbands). Their claim to be "victims" within the meaning of the Optional Protocol has to be examined.

9.2 (b) 2 (i) 1 First, their relationships to their husbands clearly belong to the area of "family" as used in article 17 (1) of the Covenant. They are therefore protected against what that article calls "arbitrary or unlawful interference" in this area.

9.2 (b) 2 (i) 2 The Committee takes the view that the common residence of husband and wife has to be considered as the normal behaviour of a family. Hence, and as the State party has admitted, the exclusion of a person from a country where close members of his family are living can amount to an interference within the meaning of article 17. In principle, article 17 (1) applies also when one of the spouses is an alien. Whether the existence and application of immigration laws affecting the residence of a family member is compatible with the Covenant depends on whether such interference is either "arbitrary or unlawful" as stated in article 17 (1), or conflicts in any other way with the State party's obligations under the Covenant.

9.2 (b) 2 (i) 3 In the present cases, not only the future possibility of deportation, but the existing precarious residence situation of foreign husbands in Mauritius represents, in the opinion of the Committee, an interference by the authorities of the State party with the family life of the Mauritian wives and their husbands. The statutes in question have rendered it uncertain for the families concerned whether and for how long it will be possible for them to continue their family life by residing together in Mauritius. Moreover, as described above (para. 7.4) in one of the cases, even the delay for years, and the absence of a positive decision granting a residence permit, must be seen as a considerable inconvenience, among other reasons because the granting of a work permit, and hence the possibility of the husband to contribute to supporting the family, depends on the residence permit, and because deportation without judicial review is possible at any time.

9.2 (b) 2 (i) 4 Since, however, this situation results from the legislation itself, there can be no question of regarding this interference as "unlawful" within the meaning of article 17 (1) in the present cases. It remains to be considered whether it is "arbitrary" or conflicts in any other way with the Covenant.

9.2 (b) 2 (i) 5 The protection owed to individuals in this respect is subject to the principle of equal treatment of the sexes which follows from several provisions of the Covenant. It is an obligation of the State parties under article 2 (1) generally to respect and ensure the rights of the Covenant "without distinction of any kind, such as ... (i.a.) sex", and more particularly under article 3 "to ensure the equal right of men and women to the enjoyment" of all these rights, as well as under article 26 to provide "without any discrimination" for "the equal protection of the law".

9.2 (b) 2 (i) 6 The authors who are married to foreign nationals are suffering from the adverse consequences of the statutes discussed above only because they are women. The precarious residence status of their husbands, affecting their family life as described, results from the 1977 laws which do not apply the same measures of control to foreign wives. In this connexion the Committee has noted that under section 16 of the Constitution of Mauritius sex is not one of the grounds on which discrimination is prohibited.

9.2 (b) 2 (i) 7 In these circumstances, it is not necessary for the Committee to decide in the present cases how far such or other restrictions on the residence of foreign spouses might conflict with the Covenant if applied without discrimination of any kind.

9.2 (b) 2 (i) 8 The Committee considers that it is also unnecessary to say whether the existing discrimination should be called an "arbitrary" interference with the family within the meaning of article 17. Whether or not the particular interference could as such be justified if it were applied without discrimination does not matter here. Whenever restrictions are placed on a right guaranteed by the Covenant, this has to be done without discrimination on the ground of sex. Whether the restriction in itself would be in breach of that right regarded in isolation, is not decisive in this respect. It is the enjoyment of the rights which must be secured without discrimination. Here it is sufficient, therefore, to note that in the present position an adverse distinction based on sex is made, affecting the alleged victims in their enjoyment of one of their rights. No sufficient justification for this difference has been given. The Committee must then find that there is a violation of articles 2 (1) and 3 of the Covenant, in conjunction with article 17 (1).

9.2 (b) 2 (ii) 1 At the same time each of the couples concerned constitutes also a "family" within the meaning of article 23 (1) of the Covenant, in one case at least - that of Mrs. Aumeeruddy-Cziffra - also with a child. They are therefore as such "entitled to protection by society and the State" as required by that article, which does not further describe that protection. The Committee is of the opinion that the legal protection or measures a society or a State can afford to the family may vary from country to country and depend on different social, economic, political and cultural conditions and traditions.

9.2 (b) 2 (ii) 2 Again, however, the principle of equal treatment of the sexes applies by virtue of articles 2 (1), 3 and 26, of which the latter is also relevant because it refers particularly to the "equal protection of the law". Where the Covenant requires a substantial protection as in article 23, it follows from those provisions that such protection must be equal, that is to say not discriminatory, for example on the basis of sex.

9.2 (b) 2 (ii) 3 It follows that also in this line of argument the Covenant must lead to the result that the protection of a family cannot vary with the sex of the one or the other spouse. Though it might be justified for Mauritius to restrict the access of aliens to their territory and to expel them therefrom for security reasons, the Committee is of the view that the legislation which only subjects foreign spouses of Mauritian women to those restrictions, but not foreign spouses of Mauritian men, is discriminatory with respect to Mauritian women and cannot be justified by security requirements.

9.2 (b) 2 (ii) 4 The Committee therefore finds that there is also a violation of articles 2 (1), 3 and 26 of the Covenant in conjunction with the right of the three married co-authors under article 23 (1).

9.2 (c) 1 It remains to consider the allegation of a violation of article 25 of the Covenant, which provides that every citizen shall have the right and the opportunity without any of the distinctions mentioned in article 2 (inter alia as to sex) and without unreasonable restrictions, to take part in the conduct of public affairs, as further described in this article. The Committee is not called upon in this case to examine any restrictions on a citizen's right under article 25. Rather, the question is whether the opportunity also referred to there, i.e. a de facto possibility of exercising this right, is affected contrary to the Covenant.

9.2 (c) 2 The Committee considers that restrictions established by law in various areas may prevent citizens in practice from exercising their political rights, i.e. deprive them of the opportunity to do so, in ways which might in certain circumstances be contrary to the purpose of article 25 or to the provisions of the Covenant against discrimination, for example if such interference with opportunity should infringe the principle of sexual equality.

9.2 (c) 3 However, there is no information before the Committee to the effect that any of this has actually happened in the present cases. As regards Mrs. Aumeeruddy-Cziffra, who is actively participating in political life as an elected member of the legislative assembly of Mauritius, she has neither in fact nor in law been prevented from doing so. It is true that on the hypothesis that if she were to leave the country as a result of interference with her family situation, she might lose this opportunity as well as other benefits which are in fact connected with residence in the country. The relevant aspects of such interference with a family situation have already been considered, however, in connexion with article 17 and related provisions above. The hypothetical side-effects just suggested do not warrant any finding of a separate violation of article 25 at the present stage, where no particular element requiring additional consideration under that article seems to be present.

10.1 Accordingly, 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, as outlined in paragraph 7 above, disclose violations of the Covenant, in particular of articles 2 (1), 3 and 26 in relation to articles 17 (1) and 23 (1) with respect to the three co-authors who are married to foreign husbands, because the coming into force of the Immigration (Amendment) Act, 1977, and the Deportation (Amendment) Act, 1977, resulted in discrimination against them on the ground of sex.

10.2 The Committee further is of the view that there has not been any violation of the Covenant in respect of the other provisions invoked.

10.3 For the reasons given above, in paragraph 9 (a), the Committee finds that the 17 unmarried co-authors cannot presently claim to be victims of any breach of their rights under the Covenant.

11. The Committee, accordingly, is of the view that the State party should adjust the provisions of the Immigration (Amendment) Act, 1977 and of the Deportation (Amendment) Act, 1977 in order to implement its obligations under the Covenant, and should provide immediate remedies for the victims of the violations found above.

ANNEX XIV

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.9/37

Submitted by: Esther Soriano de Bouton

State party concerned: Uruguay

Date of communication: 7 June 1978

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

Meeting on 27 March 1981;

Having concluded its consideration of communication No. R.9/37 submitted to the Committee by Esther Soriano de Bouton under the Optional Protocol to the International Covenant on Civil and Political Rights;

Having taken into account all written information made available to it;

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of this communication, dated 7 June 1978, is Esther Soriano de Bouton, a Uruguayan national, residing in Mexico. She submitted the communication on her own behalf.

2.1 The author alleges that she was arrested in Montevideo, Uruguay, on 19 February 1976 by members of the "Fuerzas Conjuntas" (Joint Forces), with no warrant of arrest being shown to her. She was allegedly kept in detention, without charges, for eight months and then taken before a military court which, within one month, decided she was innocent and ordered her release. However, the release was allegedly only effected one month later, on 25 January 1977.

2.2 The author claims that she was detained at three different places (one called "El Galpón", another "La Paloma", with the third one being not known to her by name) and that she was subjected to moral and physical ill-treatment during detention.

2.3 She states, inter alia, that once she was forced to stand for 35 hours, with minor interruptions; that her wrists were bound with a strip of coarse cloth which hurt her and that her eyes were continuously kept bandaged. During day and night she could hear the cries of other detainees being tortured. During interrogation she was allegedly threatened with "more effective ways than conventional torture to make her talk".

2.4 The author states that, due to the continuing threats and tension, she signed a paper which she could not read, apparently confessing that she had attended "certain meetings" in 1974. She was then transferred to a detention centre called "La Paloma" where she allegedly was told by an official that "people came to recover from the ill-treatment suffered at the first place" ("El Galpón"). She claims that at this second place of detention she and the other detainees continued to be subjected to inhuman and degrading treatment.

2.5 In September 1976 the author, together with other women, was taken to a third place where conditions grew worse. There she was allegedly kept sitting on a mattress, blindfolded, not allowed to move, for many days. She was allowed to take a bath every 10 or 15 days. After approximately one month at this detention centre, by the end of which she had completed eight months in detention, absolutely incommunicado, she was brought before a military court and the next day the incommunicado order was lifted. Nevertheless, it took the court another month to decide that the author was innocent of any offence and order her release. She was released on 25 January 1977, nearly one year after her arrest.

2.6 The author therefore alleges that in violation of the International Covenant on Civil and Political Rights, she suffered arbitrary arrest, detention without charges and cruel and inhuman treatment. She further claims that during her detention she was kept incommunicado, and thus deprived of any contact with her family, lawyers or other persons who could file a recourse on her behalf, and that the recourse of habeas corpus is not accepted by the Uruguayan courts under the régime of "prompt security measures". She claims that other recourses were not applicable, since once she was taken before a judge he ordered her release. Finally, she alleges that it is impossible to expect that under the present Uruguayan Government compensation for the wrongs inflicted on her would be granted.

2.7 The author maintains that although she was arrested a few days before the entry into force of the Covenant for Uruguay, her detention and the alleged events took place for the most part after 23 March 1976. She states that she has not submitted her case to any other international body.

3. On 27 October 1978, 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. No reply was received from the State party to this request.

4. The Committee found, on the basis of the information before it, that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that there were effective domestic remedies, available to the alleged victim in the circumstances of her case, which she had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

5. On 24 April 1979, the Human Rights Committee therefore decided:

1. That the communication was admissible;

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

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

6.1 On 23 November 1979, two days before expiry of the six months time-limit, the State party informed the Human Rights Committee, through its Chairman, that its submission under article 4 (2) of the Optional Protocol would be presented "as soon as possible".

6.2 On 13 February 1980, the State party, again through the same channels, informed the Committee that, due to reasons of a technical nature, its submission was not ready and requested "a reasonable" extension of time for its submission.

7. On 10 July 1980, the State party submitted its observations under article 4 (2) of the Optional Protocol. It informed the Committee that Mrs. Soriano de Bouton was arrested on 12 February 1976 under the "prompt security measures" because of "presumptive connexions with subversive activities"; that on 2 December 1976 a military judge ordered her "conditional" release ("libertad con carácter de emplazada") of which Mrs. Soriano was informed the same day. The State party further submits that, on 11 February 1977, Mrs. Soriano applied for authorization to leave Uruguay for Mexico, which was granted to her the same day. It categorically refuted the allegations of mistreatment made by the author of the complaint, declaring that in all Uruguayan prisons the personal integrity of all detainees is guaranteed. In this connexion, the State party asserted that members of diplomatic missions in Uruguay as well as members of international humanitarian organizations are free to visit any detainee, without any witnesses, and it referred, for example, to a recent visit by the International Committee of the Red Cross.

8. 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.

9. 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.

10. The Committee 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: Esther Soriano de Bouton was arrested on 12 February 1976, allegedly without any warrant. Although her arrest took place before the coming into force of the International Covenant on Civil and Political Rights and of the Optional Protocol thereto on 23 March 1976 in respect of Uruguay, her detention without trial continued after 23 March 1976. Following her arrest, Esther Soriano de Bouton was detained for eight months incommunicado, before she was taken before a military court which, within one month, decided that she was innocent and ordered her release. Her release was effected one month later on 25 January 1977.

11. As regards the serious allegations of ill-treatment made by Mrs. Soriano de Bouton, the State party has adduced no evidence that these allegations have been investigated. A refutation of these allegations in general terms, as contained in the State party's submission of 10 July 1980, is not sufficient.

12. 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, in its submission, has referred to the provisions of Uruguayan law, such as 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.

13. 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 as found by it, 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 inhuman and degrading treatment of Esther Soriano de Bouton;

Of article 9 (1), because she was not released until one month after an order for her release was issued by the military court;

Of article 9 (3), because she was not brought before a judge until eight months after she was detained;

Of article 9 (4), because recourse to habeas corpus was not available to her.

14. Accordingly, the Committee is of the view that the State party is under an obligation to provide Esther Soriano de Bouton with effective remedies, including compensation, for the violations which she has suffered and to take steps to ensure that similar violations do not occur in the future.

ANNEX XV

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.9/40

Submitted by: Erkki Juhani Hartikainen on his own behalf as well as on behalf of other persons

State party concerned: Finland

Date of communication: 30 September 1978 (date of initial letter)

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

Meeting on 9 April 1981;

Having concluded its consideration of communication R.9/40 submitted to the Committee by Erkki Juhani Hartikainen 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 30 September 1978 and several further letters received between December 1978 and January 1981) is Erkki Juhani Hartikainen, a Finnish school teacher residing in Finland. He submitted the communication on his own behalf and also in his capacity as General Secretary of the Union of Free Thinkers in Finland and on behalf of other alleged victims, members of the Union.

2.1 The author claims that the School System Act of 26 July 1968, paragraph 6, of Finland is in violation of article 18 (4) of the Covenant inasmuch as it stipulates obligatory attendance in Finnish schools, by children whose parents are atheists, in classes on the history of religion and ethics. He alleges that since the textbooks on the basis of which the classes have been taught were written by Christians, the teaching has unavoidably been religious in nature. He contends that there is no prospect of remedying this situation under the existing law. He states that letters seeking a remedy have been written, in vain, to the Prime Minister, the Minister of Education and members of Parliament. He argues that it would be of no avail to institute court proceedings, as the subject matter of the complaint is a law which creates the situation of which he and others are the victims.

2.2 A copy of the law in question (in Finnish) is attached to the communication. This, in translation, reads as follows:

> "The curriculum of a comprehensive school shall, as provided for by decree, include religious instruction, social studies, mother tongue, one foreign language, study of the second domestic language, history, civics, mathematics, physics, chemistry, natural history, geography, physical education, art, music, crafts, home economics as well as studies and practical exercise closely related to the economy and facilitating the choice of occupation.
>
> "Five or more students who by virtue of the Religious Freedom Act have been exempted from religious instruction and who do not receive any comparable instruction outside of school, shall instead of religious instruction receive instruction in the study of the history of religions and ethics. Where five or more students of the same religious denomination have by virtue of the Religious Freedom Act been exempted from the general religious instruction of a school and the guardians of those students demand religious instruction of that denomination, such instruction shall be given in that school."

2.3 The author seeks amendment of the law so as to make the classes (teaching) complained of, neutral or non-compulsory in Finnish schools.

3. On 27 October 1978, the Committee on Human Rights decided: (a) 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 of the communication in so far as it related to the author in his personal capacity, and to request the State party, if it contended that domestic remedies had not been exhausted to give details of the effective remedies available to the alleged victim in the particular circumstances of his case, and (b) to inform the author that it could not consider the communication in so far as it had been submitted by him in his capacity as General Secretary of the Union of Free Thinkers in Finland, unless he furnished the names and addresses of the persons he claimed to represent together with information as to his authority for acting on their behalf.

4. In December 1978 and January 1979, the author submitted the signatures and other details of 56 individuals, authorizing him to act on their behalf as alleged victims.

5. In its reply dated 17 January 1979, the State party admitted that the Finnish legal system did not contain any binding method for solving a possible conflict between two rules of law enacted by Parliament in accordance with the Constitution, i.e., the School System Act of 26 July 1968 and the International Covenant on Civil and Political Rights which had been brought into force by Decree No. 108 of 30 January 1976. The State party stated further that "thus it could be said that there were no binding local remedies for such a case".

6. On 14 August 1979, the Human Rights Committee noted that, as regards the question of exhaustion of local remedies, the State party had admitted in its reply that no such remedies were available and the Committee found therefore that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol. The Human Rights Committee therefore decided:

1. That the communication was admissible;

2. 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.

7.1 In its submission under article 4 (2) of the Optional Protocol, dated 7 March 1980, the State party refutes the allegation that there has been a violation of the Covenant on Civil and Political Rights in Finland. It affirms that the Finnish legislation concerning religious freedom, including the School System Act, paragraph 6, was scrutinized in connexion with the process of ratifying the Covenant and found to be in conformity with it. It points out that not only is religious freedom guaranteed by the Constitution of Finland, but the Religious Freedom Act (which is referred to in the School System Act, paragraph 6) stipulates in paragraph 8 that:

> "If religious instruction according to any specific denomination is given at a government-subsidized primary or elementary school or other institute of learning, a student who adheres to another denomination, or no denomination, shall upon the demand of the guardian be exempted from such religious instruction."

7.2 Having regard to the relevant legislation, the State party submits that it can be stated that religious education is not compulsory in Finland. It adds that there is, however, the possibility that students, who by virtue of the Religious Freedom Act have been exempted from religious instruction, may receive instruction in the study of the history of religions and ethics; such instruction is designed to give the students knowledge of a general nature deemed to be useful as part of their basic education in a society in which the overwhelming majority of the population belongs to a religious denomination. The State party claims that the directives issued by the National Board of Education concerning the principal aims of the instruction to be given show that the instruction is not religious in character. However, the State party explains that there have in some cases been difficulties in the practical application of the teaching plan relating to this study and that in January 1979 the National Board of Education established a working group consisting of members representing both religious and non-religious views to look into these problems and to review the curriculum.

8.1 On 13 April 1980, the author submitted additional information and observations in response to the State party's submission under article 4 (2) of the Optional Protocol. A copy of the author's submission was forwarded to the State party for information.

8.2 In his submission the author claims that an application which he had made for the privilege of not attending religious events in the school where he was a teacher had not by then been accepted. He reiterates the Free Thinkers' belief that the Finnish constitutional laws do not guarantee freedom of religion and belief to a sufficient extent and contends that the result of the School System Act, paragraph 6, and the Comprehensive School Statute, paragraph 16, is that there is compulsory instruction for atheists on the history of religions and ethics. In support of this contention he quotes a part of the teaching plan for this course

of instruction a/ and refers to certain cases which had allegedly occurred. As to the working group established by the National Board of Education (referred to in paragraph 7.2 above), the author claims that there was only one distinctly atheist member of this working group and since he had been left in a minority he could not have any influence on the work of the group. Further letters were received from the author dated 25 September, 28 October and 7 November 1980.

9.1 The State party submitted additional comments under article 4 (2) of the Optional Protocol in a note dated 2 December 1980. A copy of the State party's submission was transmitted to the author of the communication with the request that any comments which he might wish to submit thereon should reach the Human Rights Committee not later than 16 January 1981.

9.2 In its submission, the State party observed that the letter of Mr. Erkki Juhani Hartikainen, dated 13 April 1980, to which reference is made in paragraph 8 above, included elements that went beyond the scope of the original communication to the Human Rights Committee. It explained that, owing to the lack of precise information about the concrete cases referred to in the author's letter of 13 April 1980, it was unable to verify the facts of these claims. However, it

---

a/ "Second class

Spring term

Stories of the childhood of Jesus. Jesus is brought to the temple. The Magi. The flight to Egypt. The return from Egypt to Nazareth. What was the home area of Jesus like? A Jewish home and manners. The education of a Jewish boy.

What Jesus taught. The good Samaritan. Applications of the story for children's life in modern time.

What was Jesus like? Jesus' attitude to people thrown away outside the community, to the disliked and the despised (the ill, blind, invalid, poor, starving, illiterate, women and children).

Stories about what Jesus did. Jesus heals the son of the official. Jesus heals the daughter of Jairaus ... The feeding 5,000 people. The meaning of the stories about the activities of Jesus: the value of them does not depend on the verity of details.

Jesus as ideal. Jesus was good and helped those in need for support. The ideal of Jesus in modern world: the use of knowledge and skills for the benefit of people in need for help. Jesus disliked no one. Jesus saw in every human also good.

The church building and service. Lutheran, Orthodox and Roman Catholic church building and service.

Development aid. The help in different emergency situations. The permanent aid of the developing countries. The early form of development aid, missionary work.

Francis of Assisi and his solar song. Francis: man, who experienced God so strongly that even others realized that. Legends about Francis ... The solar song."

pointed out that the Finnish legal system provides an extensive network of domestic remedies for concrete violation of rights.

9.3 In order to illustrate the efforts made in Finland to improve the teaching of the history of religions and ethics, the State party annexed to its submission a report of the working group established by the National Board of Education, which was handed to the Board on 16 October 1980. The report classifies the contents of the teaching of the subject according to the following objectives:

1. Education for human relationships which function on ethical principles;

2. Education promoting full development of an individual's personality;

3. Education for understanding the cultural heritage of our own nation as well as our present culture, with special reference to different beliefs;

4. Education for understanding the cultural heritage of various nations, with special reference to different beliefs in the present world. b/

The State party observes that Mr. Hartikainen was among the experts consulted by the working group and that the National Board of Education intends to request the Union of Free Thinkers in Finland, among others, to give its comments on the working group's proposal for a curriculum before the working group is asked to work out a teacher's guide. However, the Government of Finland submits that it is beyond the competence of the Human Rights Committee to study the formulation of school curricula and repeats its conclusion that no legislative inconsistency with the Covenant has been established.

10.1 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. Its views are as follows:

10.2 Article 18 (4) of the International Covenant on Civil and Political Rights provides that -

> "The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

---

b/ The author, in his submission of 5 January 1981, offers the following translation of these objectives:

"1. Education for ethically rightly functioning human relationships;

"2. Education for individual, communal and social consciousness, sense of responsibility and functioning;

"3. Education to understand the cultural heritage of our own nation and our present culture, especially material from world view;

"4. Education to understand the cultural heritage of various nations, especially different world views in the present world."

10.3 The Committee notes that the information before it does not sufficiently clarify the precise extent to which the author and the other alleged victims can actually be said to be personally affected, as parents or guardians under article 1 of the Optional Protocol. This is a condition for the admissibility of communications. The concept of a "victim" has been further examined in other cases, for instance in the final views in case No. R.9/35. However, this case having been declared admissible without objection on this point, the Committee does not now consider it necessary to reopen the matter, for the following reasons.

10.4 The Committee does not consider that the requirement of the relevant provisions of Finnish legislation that instruction in the study of the history of religions and ethics should be given instead of religious instruction to students in schools whose parents or legal guardians object to religious instruction is in itself incompatible with article 18 (4), if such alternative course of instruction is given in a neutral and objective way and respects the convictions of parents and guardians who do not believe in any religion. In any event, paragraph 6 of the School System Act expressly permits any parents or guardians who do not wish their children to be given either religious instruction or instruction in the study of the history of religions and ethics to obtain exemption therefrom by arranging for them to receive comparable instruction outside of school.

10.5 The State party admits that difficulties have arisen in regard to the existing teaching plan to give effect to these provisions, (which teaching plan does appear, in part at least, to be religious in character), but the Committee believes that appropriate action is being taken to resolve the difficulties and it sees no reason to conclude that this cannot be accomplished, compatibly with the requirements of article 18 (4) of the Covenant, within the framework of the existing laws.

ANNEX XVI

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.10/44

Submitted by: Alba Pietroroia on behalf of her father, Rosario Pietraroia, also known as Rosario Pietraroia (or Roya) Zapala

State party concerned: Uruguay

Date of communication: January 1979 (date of initial letter)

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

Meeting on 27 March 1981;

Having concluded its consideration of communication No. R.10/44, submitted to the Committee by Alba Pietroroia 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 the communication (initial letter dated January 1979 and further letters dated 11 June and 13 August 1979 and 18 August 1980) is a Uruguayan national, residing in Peru. She submitted the communication on behalf of her father, Rosario Pietraroia (or Roya) Zapala, a 68-year-old Uruguayan citizen, a former trade-union leader and alternate member of the Chamber of Deputies in the Uruguayan Parliament, at present detained in Uruguay. She states that from his early youth her father had worked as a lathe operator, that he had held the post of General-Secretary of the National Union of Metal and Allied Workers and that he had been Vice-President of the Trade Unions International of Workers in the Metal Industry.

2.1 The author claims that her father was arrested in Montevideo on 19 January 1976 without any court order. She further alleges that her father was held incommunicado and virtually in isolation, since not only the place in which he had been imprisoned but also the fact of his arrest was kept absolutely secret for four months. She submits that, thereafter, the family received indirect confirmation of the fact that he was alive and in detention, her mother being visited by two officials asking for her husband's clothes. After two further

months the author's mother was permitted to see him for the first time. The author submits that she is not in a position to give precise details of the treatment her father suffered during that first period of his detention but that, at least on two occasions, he was committed to the military hospital, which, according to the author, is done only in extremely serious cases.

2.2 She further states that after six months in administrative detention, her father was charged on 10 August 1976 by a military court with the alleged offences under the Military Penal Code of "subversive association" ("asociación subversiva") and "an attack on the Constitution in the degree of conspiracy" ("atentado a la Constitución en grado de conspiración") and that, in May 1977, the military prosecutor called for a penalty of 12 years' rigorous imprisonment, a sentence which was pronounced by a military judge in September 1978. In this connexion, the author submits that her father did not enjoy a position of equality before the court which tried him, because persons arrested on charges of trade-union or political activities are subjected to systematic discrimination before the military courts, i.e., that they are not presumed innocent before the trial. She further states that her father has been prosecuted and held guilty for acts which were not illegal at the time when they were committed. She submits that he was not given a public hearing, since the trial took place in writing, the accused not being present, and that not even the judgement was made public in such cases. She further alleges that the tribunal was not a competent tribunal, since under the Constitution military judges are prohibited from trying civilians. She also claims that the choice of defence counsel was prevented by the systematic harassment of lawyers who tried to take up cases of political prisoners. The author further states that the case is now before the military court of second instance, beyond which it could not go, and that her father is at present held in the "military detention establishment" at Libertad, after having been held before in various other military units.

2.3 The author also points out that her father's right to take part in public affairs was suspended for a period of 15 years up to September 1991 under the provision of the "Institutional Act No. 4" dated 1 September 1976, ordering the suspension of all political rights of "all candidates for election office, appearing in the 1966 and 1977 election lists of Marxist or pro-Marxist parties or political groups declared illegal by Executive Power resolutions No. 1788/67 of 12 December 1967 and No. 1026/73 of 26 November 1973".

2.4 The author declared that the complaint on behalf of her father had not been submitted for examination under any other procedure of international investigation or settlement. With regard to domestic remedies, the author alleged that there were no effective local remedies, habeas corpus not being applicable under "prompt security measures" when the prisoner was before a military judge, but that, nevertheless, an appeal against the sentence of the first military instance had been lodged, although no appeal was possible against the procedure that led to the sentence of 12 years' imprisonment.

2.5 The author claims that the following provisions of the International Covenant on Civil and Political Rights have been violated by the Uruguayan authorities in respect of her father: 2, 7, 9 (1), (2), (3), (4), (5) 10 (1), (2), (3), 12 (2), 14 (1), (2), (3), (5), 15, 17, 18 (1), 19 (1), 22 (1 and 3).

3. By its decision of 24 April 1979, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State

party concerned, requesting information and observations relevant to the question of admissibility of the communication, and requested the author to furnish additional information regarding the progress and outcome, if any, of the appeal lodged and in substantiation of her claim that there were no effective remedies to be exhausted in the case.

4. In response to the Human Rights Committee's request, the author, in her letter dated 11 June 1979, claimed that "judicial" remedies under the military process consisted solely of an appeal against the decision. She stated that that remedy had been used in her father's case, but that it remained ineffective, no decision having been given to date. The author further drew attention to her father's state of health, claiming that he was suffering from various disorders, one of which threatened to blind him. She requested the Committee to call upon the State party to report promptly on her father's state of health.

5. The State party, in its response dated 13 July 1979, stated that the case of Rosario Pietraroia Zapala had been submitted to the Inter-American Commission on Human Rights for consideration. The State party further submitted that Rosario Pietraroia Zapala had been arrested on 7 March 1976 for involvement in subversive activities and detained under emergency measures, that he had been charged ("procesado") on 10 August 1976 before the examining magistrate of the Military Court for offences committed contrary to articles 60 (V), "subversive association", and 60 (XII) in conjunction with 60 (i) clause 6 of the Military Criminal Code, "conspiracy to violate the Constitution, followed by acts preparatory thereto". The State party further stated that Rosario Pietraroia Zapala had been sentenced on 28 August 1978 to 12 years' imprisonment, that the legal proceedings instituted against him had been entirely consistent with the provisions of the Uruguayan legal code, that he had appeared before a court as soon as his trial began on 10 August 1978 a/ and that for his defence he had benefited at all times from the legal constitutional guarantees.

6. On 14 August 1979, the Human Rights Committee,

(a) having noted, as regards the question of exhaustion of domestic remedies, that the State party had not raised any objection to the admissibility of the communication on this ground, and

(b) having ascertained that the case concerning Rosario Pietraroia, which had been submitted to the Inter-American Commission of Human Rights under case No. 2020, had been effectively withdrawn,

Therefore decided:

1. that the communication was admissible;

2. 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;

---

a/ This may be a typing error in the State party's submission. From the context, the correct date would appear to be 10 August 1976.

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 of the Covenant alleged to have occurred. The State party was requested, in this connexion, to enclose copies of any court orders or decisions of relevance to the matter under consideration;

4. that the attention of the State party be drawn to the concern expressed by the author of the communication with regard to the state of health of her father and that the State party be requested to furnish information to the Committee thereon.

7. In a further letter, dated 13 August 1979, the author submitted her comments on the State party's submission under rule 91 of the Committee's provisional rules of procedure. Those comments were received after the adoption of the Committee's decision on 14 August 1979. The author reiterated that her father was arrested on 19 January 1976 and that for nearly eight months (from 19 January to 10 August 1976) he had not been brought before any form of judicial authority.

8. In a further note, dated 5 October 1979, the State party submitted its comments on the author's reply of 11 June 1979 to the Human Rights Committee's request for further information under rule 91 of its provisional rules of procedure. Concerning the state of health of Rosario Pietraroia, the State party informed the Committee that "because of congenital glaucoma, his left eye had to be removed by surgery carried out at the Central Hospital of the Armed Forces three months ago. During his illness, Mr. Pietraroia enjoyed all the guarantees of medical, surgical and hospital care afforded to all detainees, and his current state of health is good."

9. The six months' time-limit referred to in the Committee's decision of 14 August 1979 expired on 12 April 1980. By a note dated 10 July 1980, the State party submitted its written explanations under article 4 (2) of the Optional Protocol.

10. In that submission, the State party informed the Committee that a judicial decision had been delivered on the appeal lodged by the defence of the alleged vict[illegible] and gave the following explanations:

"On 9 October 1979, the Supreme Military Court rendered a judgement in second instance confirming the judgement of the first instance. Consequently, the author's assertions concerning domestic remedies are wholly groundless, since, at the time of submission of the communication to which this reply refers, the domestic remedies could not be considered to have been exhausted. Furthermore, for the guidance of the Committee, the Government of Uruguay reiterates that the remedies of appeal for reversal and appeal for review may be exercised in respect of final judgements rendered by military courts in second instance. In such cases, the court of justice which hears and delivers a decision on the appeal is formed by five civilian members and two high-ranking officers. With regard to the author's request to be informed about her father's state of health, the Government of Uruguay has already replied to the Committee, explaining the reason for his operation. As he was found to be suffering from congenital glaucoma of the left eye, the eye had to be removed. In

the course of that operation, carried out in the Central Hospital of the Armed Forces, and also during his convalescence, Mr. Pietraroia received constant medical care, just as all detainees needing any kind of intensive care have received and are receiving such care. He is currently being held at Military Detention Establishment M.1, and his state of health is good. All prisoners receive permanent medical care. In addition, they are visited regularly by eye, ear, nose and throat, and heart specialists. Any persons requiring more specialized care and/or surgical operations are taken to the Central Hospital of the Armed Forces, where they remain as long as is necessary for their recovery."

11. In a further submission, dated 18 August 1980, under rule 93 (3) of the Committee's provisional rules of procedure, the author states that, with regard to the remedies of appeals for reversal and for review, these remedies can only be invoked when the person concerned has served half his sentence, i.e., in her father's case in two years' time. Concerning her father's state of health, she maintained the following:

"The deafness from which my father has been suffering since the early months when he was held incommunicado has not been treated, since it was diagnosed as an 'old person's complaint'; I must advise the Committee that he had never before had hearing problems. This, together with the problem of his sight, is a consequence of being beaten about the head. As a result of being strung up his spine and collar-bone have been damaged. In early April of the present year, one of his forefingers was operated on because, once bent, it did not return to its normal position, but the operation was a failure because it did not correct the defect and he has been suffering from pain in his hand ever since.

"In the barracks where he was detained before being transferred to the Libertad prison, where he is held at present, he put out his knee performing military drill and his leg has not been right since. A short while ago 'he fell into a well he had not noticed' and gravely injured his leg, which causes him considerable pain. Finally, his feet get very cold, which is a sign of a serious deterioration in his physical condition. Nevertheless, his morale is high, which accounts for the fact that his physical appearance may seem good.

"My father is now 68 years old and unless he receives constant and adequate medical attention, I think that his physical condition will be further undermined in view of the harassment and 'accidents' to which he has been and continues to be exposed."

12. The Human Rights Committee notes that it 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 detained under the prompt security measures. As regards the question of exhaustion of domestic remedies the Committee observes that, notwithstanding the fact that an appeal against the judgement of the first instance was pending at the time of the submission of the communication in January 1979 and at the time the communication was declared admissible on 14 August 1979, the State party did not, in its submissions of 13 July 1979 under rule 91 of the Committee's provisional rules of procedure, raise any objection to the admissibility of the communication on that ground and, in any event, that remedy has since been exhausted. As regards the possibility of

invoking the remedies of cassation ("casación") or review ("revisión"), the State party has informed the Committee in several other cases that these remedies are of an exceptional nature. The Committee is not satisfied that they are applicable in the present case and, in any event, to require resort to them would unreasonably prolong the exhaustion of domestic remedies.

13.1 The Human Rights 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. It hereby 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:

13.2 Rosario Pietraroia Zapala was arrested in Uruguay, without a warrant for arrest, early in 1976 (according to the author on 19 January 1976; according to the State party on 7 March 1976), and held incommunicado under the prompt security measures for four to six months. During the first period of his detention he was at least on two occasions committed to the military hospital. His trial began on 10 August 1976, when he was charged by a military court with the offences of "subversive association" ("asociación subversiva") and "conspiracy to violate the Constitution, followed by acts preparatory thereto" ("atentado contra la Constitución en el grado de conspiración sequida de actos preparatorios"). In this connexion, the Committee notes that the Government of Uruguay has offered no explanations as regards the concrete factual basis of the offences for which Rosario Pietraroia was charged in order to refute the claim that he was arrested, charged and convicted on account of his prior political and trade-union activities which had been lawful at the time engaged in. In May 1977, the military prosecutor called for a penalty of 12 years' rigorous imprisonment and on 28 August 1978 Rosario Pietraroia was sentenced to 12 years' imprisonment, in a closed trial, conducted in writing and without his presence. His right to a defence counsel of his own choice was curtailed, and the judgement of the court was not made public. On 9 October 1979, the Supreme Military Court rendered a judgement of second instance, confirming the judgement of the first instance. The Committee notes that the State party did not comply with the Committee's request to enclose copies of any court orders or decisions of relevance to the matter under consideration. Pursuant to Acta Institucional No. 4 of 1 September 1976, Rosario Pietraroia is deprived of the right to engage in political activities for 15 years.

14. 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. The Covenant (art. 4) allows national measures derogating from some of its provisions only 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.

15. 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 activities in which Rosario Pietraroia 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 conspiracy to violate the Constitution, followed by preparatory acts thereto, 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 Rosario Pietraroia was justified on any of the grounds mentioned in article 19 (3) of the Covenant.

16. The Human Rights Committee is aware that the sanction of deprivation of certain political rights is provided for in the legislation of some countries. Accordingly, article 25 of the Covenant prohibits "unreasonable" restrictions. In no case, however, may a person be subjected to such sanctions solely because of his or her political opinion (arts. 2 (1) and 26). Furthermore, the principle of proportionality would require that a measure as harsh as the deprivation of all political rights for a period of 15 years be specifically justified. No such attempt has been made in the present case.

17. 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 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 article 9 (2), because Rosario Pietraroia Zapala was not duly informed of the charges against him;

of article 9 (3), because he was not brought promptly before a judge or other officer authorized by law to exercise judicial power and because he was not tried within a reasonable time;

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

of article 10 (1), because he was held incommunicado for months;

of article 14 (1), because he had no fair and public hearing and because the judgement rendered against him was not made public;

of article 14 (3), because he did not have access to legal assistance during his detention incommunicado and was not tried in his presence;

of article 15 (1), because the penal law was applied retroactively against him;

of article 19 (2), because he was arrested, detained and tried for his political and trade-union activities;

of article 25, because he is barred from taking part in the conduct of public affairs and from being elected for 15 years, in accordance with Acta Institucional No. 4 of 1 September 1976.

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

ANNEX XVII

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.13/58

Submitted by: Anna Maroufidou

State party concerned: Sweden

Date of communication: 5 September 1979 (date of initial letter)

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

Meeting on 9 April 1981;

Having concluded its consideration of communication No. 13/58 submitted to the Committee by Anna Maroufidou under the Optional Protocol to the International Covenant on Human 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 5 September 1979 and further letters of 20 December 1979, 30 May 1980 and 20 January 1981) is Anna Maroufidou, a Greek citizen. She submitted the communication on her own behalf through her legal representative.

2.1 The author alleges that she is a victim of a breach by Sweden of article 13 of the International Covenant on Civil and Political Rights. She describes the relevant facts as follows:

2.2 In 1975 she came to Sweden seeking asylum. In 1976 she was granted a residence permit. Early in 1977 several aliens and Swedish citizens were arrested in Sweden on suspicion of being involved in a plan to abduct a former member of the Swedish Government. This plan had allegedly been contrived by the alleged terrorist Norbert Kröcher from the Federal Republic of Germany, who was at the time staying in Sweden illegally. He and other arrested foreigners were subsequently expelled from Sweden.

2.3 The author of the communication was arrested in connexion with the foregoing events in April 1977, because she had met some of the suspects in the Refugee Council's office in Stockholm which was a meeting place for young people of many nationalities and also a counselling centre for persons seeking asylum. At first the author was held as a suspect under the Swedish law governing arrest and remand in custody in criminal cases (Rattengangsbalken 24/5) as it was suspected that information concerning acts of sabotage had been communicated to her. It seems that after a few days this allegation was dropped and that she continued to be detained under the Swedish Aliens Act of 1954 (Utlänningslagen sec. 35, nom. 1). The Government, however, raised the issue of her expulsion as a presumed terrorist. A lawyer was appointed to represent her in that connexion. Her expulsion was decided upon on 5 May 1977. The decision was immediately executed and she was transported, under guard, to Greece. In spite of a certificate, issued by the Swedish Embassy in Athens on 6 May 1977, that she was not being prosecuted for any punishable act in Sweden, her expulsion as a potential terrorist made it impossible for her to find any meaningful employment in Greece. She was harassed and even physically attacked by persons whom she assumed to be right-wing extremists. She returned illegally to Sweden at the end of 1978 in order to apply for reconsideration of her case, which seemed to her to be the only solution to her problems. A review of the case was granted, but on 14 June 1979 the Swedish Government confirmed its previous decision of 5 May 1977.

2.4 The Swedish Government based its decisions on the Aliens Act of 1954 which, since 1975, contains provisions against terrorism. The relevant provisions applied in the author's case were in sections 20, 29, 30 and 31. Section 29 provides that an alien may be expelled from Sweden "if there is founded reason to assume that he belongs to, or works for, /a terrorist/ organization or group", as defined in section 20, and if "there is a danger, considering what is known about his previous activities or otherwise, that he will participate in Sweden in an act" as referred to in section 20. Section 20 defines a terrorist organization or group as "an organization or group which, considering what is known about its activities, can be expected to use violence, threat or force outside its home country for political purposes and, in this connexion, to commit such acts in Sweden". According to section 30 of the Aliens Act, the decision to expel an alien would in these cases be taken by the Government, which, however, must first hear the views of the Central Immigration Authority. According to section 31 expulsion has to be preceded by an interrogation of the person concerned. a/

2.5 The decision of the Swedish Government to expel her is contested by the author on the ground that it was based only on the allegation that she had had such contact with Kröcher and other persons involved in the kidnapping plan that she was not likely to have remained ignorant about the planned abduction. She denies such knowledge and argues further that even if she had had such knowledge this would not have been a sufficient basis to expel her under the Aliens Act because that law stipulates that the person concerned has to belong to, or work for, an organization or group as described by its provisions. Mere knowledge of planned terrorist activities was, therefore, in her submission, not sufficient to justify an expulsion in accordance with the law. In addition, she points out that Kröcher and other persons involved had not formed a group or organization as

---

a/ The English translation of the quoted section is that provided by the State party.

described by the Aliens Act. They were just several young persons of various nationalities who had met in Stockholm, and therefore their "home country" in that context should be considered to be Sweden.

2.6 For these reasons the author considers that the decision to expel her from Sweden, while she was lawfully staying in that country, was not taken in accordance with Swedish law and was therefore in violation of article 13 of the International Covenant on Civil and Political Rights.

2.7 The author states that all available domestic remedies have been exhausted.

3. On 14 March 1980 the Working Group of 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. The State party, in its reply of 19 May 1980, did not contest the admissibility of the communication, but reserved its right to reply on the merits, stating merely that it considered the complaint to be unfounded.

5. On 25 July 1980, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) of the Optional Protocol, the State party should 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.

6.1 In its submission under article 4 (2) of the Optional Protocol, dated 8 December 1980, the State party stated that Anna Maroufidou was arrested on 4 April 1977. She was interrogated by the police on 15, 25 and 26 April. On 28 April 1977 the Central Immigration Authority declared that, in its opinion, there was good reason to assume that Anna Maroufidou belonged to, or worked for, an organization of the kind dealt with in section 20 of the Aliens Act, and that there was a danger that she would participate in Sweden in an act envisaged by that article. The Central Immigration Authority therefore concluded that the conditions for her expulsion pursuant to section 29 of the Aliens Act were fulfilled. On 5 May 1977 the Swedish Government decided to expel Anna Maroufidou and the decision was immediately executed. In a petition dated 15 September 1978 Anna Maroufidou, through her lawyer, asked the Government to revoke its decision to expel her. After obtaining the comments of the National Board of the Police as well as the reply of Anna Maroufidou's lawyer to these comments the Government decided on 14 June 1979 to reject the petition.

6.2 As to the application of article 13 of the Covenant, in the opinion of the Swedish Government article 13 requires that there shall be a legal basis for a decision regarding expulsion. The decision shall be taken by a public authority which has competence in the matter, and in accordance with procedure prescribed by law. The decision shall also be taken on the basis of legal provisions or rules which lay down the conditions for expulsion. On the other hand, the interpretation of national law must primarily be the task of the competent

national authorities. In this regard the task of the Human Rights Committee should be limited to an examination of whether the national authorities interpreted and applied the law in good faith and in a reasonable manner.

6.3 The State party pointed out that the conditions for expulsion which were found to be fulfilled in the case of Anna Maroufidou were laid down in sections 20 and 29 of the Aliens Act. The provisions of these articles were interpreted and applied by the State party in good faith and in a reasonable manner. Kröcher and his collaborators must be considered to constitute an organization or group of the kind envisaged in section 20, and there were clear indications that Anna Maroufidou had been actively involved in the work of that organization or group. She was known to have found a flat for Kröcher and to have taken steps, after Kröcher's arrest, to remove from the flat objects which were of interest as evidence against Kröcher. Suspicions against Anna Maroufidou were further strengthened by certain objects (masking equipment etc.) which were found in her possession. Subsequent disclosures, in particular at the trial against the Swedish nationals involved in the Kröcher conspiracy, confirmed, in the opinion of the State party, that she was a close collaborator of Kröcher and had been actively involved in discussions concerning the planned abduction and that she had been designated by Kröcher to play an active role in the abduction itself.

6.4 The State party submitted therefore that the decision to expel Anna Maroufidou was "reached in accordance with law" and that there has been no violation of article 13 of the Covenant in this case.

7.1 On 20 January 1981, the author of the communication submitted, through her legal representative, comments on the State party's submissions under article 4 (2) of the Optional Protocol. In her comments she states that she does not dispute the opinion of the Swedish Government that article 13 of the Covenant requires a legal basis for a decision to expel an alien. In the opinion of the author, however, if the ground for the decision is one which cannot be found in the applicable domestic law of the State party, then the conclusion must be drawn that article 13 has been violated. In this regard the author submits that it is clear that mere knowledge of a terrorist plan is not a ground for expulsion under the relevant provisions of the Swedish Aliens Act. She contends that it is obvious from the travaux préparatoires of this law and all legal literature about it that the legislation against terrorism is of an extraordinary nature and that it should be applied in a restrictive manner. It is also clear, in her submission, that the only charge against her at the time of the decision which she is contesting was this alleged knowledge. She maintains that all the circumstances mentioned by the State party have natural explanations and are by no means decisive. As stated in her original communication all the refugees who met and made each other's acquaintance at the Refugee Council's office in Stockholm found themselves in a similar situation and often had common interests. Many of them had difficulties in finding rooms or flats to live. It was common knowledge that they assisted each other and often crowded into rather small quarters. They frequently rented their rooms on short-term conditions and there was for this reason much moving around. The author helped several people to find a place to live. After Kröcher's arrest she was afraid that she might be arrested herself. The newspapers were full of news and big headlines about this arrest and Kröcher's dramatic plans of terrorism. Therefore she did hide certain things not to protect Kröcher but to protect herself against any unjust suspicion of collaboration with him.

7.2 The author argues that, if it was true that she had participated in the preparations for the crimes planned by Kröcher, she would have been prosecuted for conspiracy and preparations for those crimes under Swedish law but she was not. In addition, subsequent disclosures at the trial against the Swedish nationals involved in the Kröcher conspiracy could not justify the decision to expel her because that trial took place a long time afterwards, and because the author as well as many other foreigners who had been expelled were not present at that trial. So the Swedish citizens then accused were free, without being challenged to make any reference to the absent aliens which they and their defence counsel saw fit.

7.3 The author also argues that section 20 of the Swedish Aliens Act requires that the organization or group must, while being suspected of planning or committing acts in Sweden, be outside its home country. She claims, therefore, that the application of the relevant provisions of this law to a group which has been formed in Sweden is an evident misinterpretation.

7.4 For all these reasons, the author does not agree with the State party's statement that the task of the Human Rights Committee should be limited to an examination of whether the competent authorities have applied the law in good faith and in a reasonable manner. She states that it is not her intention to enter into a debate as to whether the Swedish Government at the time of the decision acted in good faith or not: her case is that this decision was not reached in accordance with the provisions of the Aliens Act since it was based on one ground which was not to be found in those provisions and on another ground which was an obvious misinterpretation of them.

8. The Committee considering 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, hereby decides to base its views on the following facts which have been essentially confirmed by the State party: Anna Maroufidou, a Greek citizen, who came to Sweden seeking asylum, was granted a residence permit in 1976. Subsequently on 4 April 1977 she was arrested on suspicion of being involved in a plan of a terrorist group to abduct a former member of the Swedish Government. In these circumstances the Central Immigration Authority on 28 April 1977 raised the question of her expulsion from Sweden on the ground that there was good reason to believe that she belonged to, or worked for, a terrorist organization or group, and that there was a danger that she would participate in Sweden in a terrorist act of the kind referred to in sections 20 and 29 of the Aliens Act. A lawyer was appointed to represent her in the proceedings under the Act. On 5 May 1977 the Swedish Government decided to expel her and the decision was immediately executed.

9.1 Article 13 of the International Covenant on Civil and Political Rights provides that

> "An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

9.2 Article 13 lays down a number of conditions which must be complied with by the State party concerned when it expels an alien from its territory. The article applies only to an alien "lawfully in the territory" of the State party, but it is not in dispute that when the question of Anna Maroufidou's expulsion arose in April 1977 she was lawfully resident in Sweden. Nor is there any dispute in this case concerning the due observance by the State party of the procedural safeguards laid down in article 13. The only question is whether the expulsion was "in accordance with law".

9.3 The reference to "law" in this context is to the domestic law of the State party concerned, which in the present case is Swedish law, though of course the relevant provisions of domestic law must in themselves be compatible with the provisions of the Covenant. Article 13 requires compliance with both the substantive and the procedural requirements of the law.

10.1 Anna Maroufidou claims that the decision to expel her was in violation of article 13 of the Covenant because it was not "in accordance with law". In her submission it was based on an incorrect interpretation of the Swedish Aliens Act. The Committee takes the view that the interpretation of domestic law is essentially a matter for the courts and authorities of the State party concerned. It is not within the powers or functions of the Committee to evaluate whether the competent authorities of the State party in question have interpreted and applied the domestic law correctly in the case before it under the Optional Protocol, unless it is established that they have not interpreted and applied it in good faith or that it is evident that there has been an abuse of power.

10.2 In the light of all written information made available to it by the individual and the explanations and observations of the State party concerned, the Committee is satisfied that in reaching the decision to expel Anna Maroufidou the Swedish authorities did interpret and apply the relevant provisions of Swedish law in good faith and in a reasonable manner and consequently that the decision was made "in accordance with law" as required by article 13 of the Covenant.

11. The Human Rights Committee acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights is therefore of the view that the above facts do not disclose any violation of the Covenant and in particular of article 13.

ANNEX XVIII

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

concerning

Communication No. R.6/24

Submitted by: Sandra Lovelace

State party concerned. Canada

Date of communication: 29 December 1977

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

Meeting on 30 July 1981;

Having concluded its consideration of communication No. R.6/24 submitted to the Committee by Sandra Lovelace 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 authors 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 the communication dated 29 December 1977 and supplemented by letters of 17 April 1978, 28 November 1979 and 20 June 1980, is a 32-year-old woman, living in Canada. She was born and registered as "Maliseet Indian" but has lost her rights and status as an Indian in accordance with section 12 (1) (b) of the Indian Act, after having married a non-Indian on 23 May 1970. Pointing out that an Indian man who marries a non-Indian woman does not lose his Indian status, she claims that the Act is discriminatory on the grounds of sex and contrary to articles 2 (1), 3, 23 (1) and (4), 26 and 27 of the Covenant. As to the admissibility of the communication, she contends that she was not required to exhaust local remedies since the Supreme Court of Canada, in The Attorney-General of Canada v. Jeanette Lavalle, Richard Isaac et al. v. Ivonne Bédard /197_ S.C.R. 1349, held that section 12 (1) (b) was fully operative, irrespective of

---

a/ Mr. Walter Surma Tarnopolsky, pursuant to rule 85 of the provisional rules of procedure, did not participate in the consideration of this communication or in the adoption of the views of the Committee under article 5 (4) of the Optional Protocol in this matter.

its inconsistency with the Canadian Bill of Rights on account of discrimination based on sex.

2. By its decision of 18 July 1978 the Human Rights Committee transmitted the communication, under rule 91 of the provisional rules of procedure, to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. This request for information and observations was reiterated by a decision of the Committee's Working Group, dated 6 April 1979.

3. By its decision of 14 August 1979 the Human Rights Committee declared the communication admissible and requested the author of the communication to submit additional information concerning her age and her marriage, which had not been indicated in the original submission. At that time no information or observations had been received from the State party concerning the question of admissibility of the communication.

4. In its submission dated 26 September 1979 relating to the admissibility of the communication, the State party informed the Committee that it had no comments on that point to make. This fact, however, should not be considered as an admission of the merits of the allegations or the arguments of the author of the communication.

5. In its submission under article 4 (2) of the Optional Protocol concerning the merits of the case, dated 4 April 1980, the State party recognized that "many of the provisions of the ... Indian Act, including section 12 (1) (b), require serious reconsideration and reform". The Government further referred to an earlier public declaration to the effect that it intended to put a reform bill before the Canadian Parliament. It none the less stressed the necessity of the Indian Act as an instrument designed to protect the Indian minority in accordance with article 27 of the Covenant. A definition of the Indian was inevitable in view of the special privileges granted to the Indian communities, in particular their right to occupy reserve lands. Traditionally, patrilineal family relationships were taken into account for determining legal claims. Since, additionally, in the farming societies of the nineteenth century, reserve land was felt to be more threatened by non-Indian men than by non-Indian women, legal enactments as from 1869 provided that an Indian woman who married a non-Indian man would lose her status as an Indian. These reasons were still valid. A change in the law could only be sought in consultation with the Indians themselves who, however, were divided on the issue of equal rights. The Indian community should not be endangered by legislative changes. Therefore, although the Government was in principle committed to amending section 12 (1) (b) of the Indian Act, no quick and immediate legislative action could be expected.

6. The author of the communication, in her submission of 20 June 1980, disputes the contention that legal relationships within Indian families were traditionally patrilineal in nature. Her view is that the reasons put forward by the Canadian Government do not justify the discrimination against Indian women in section 12 (1) (b) of the Indian Act. She concludes that the Human Rights Committee should recommend the State party to amend the provisions in question.

7.1 In an Interim decision, adopted on 31 July 1980, the Human Rights Committee set out the issues of the case in the following considerations:

7.2 The Human Rights Committee recognized that the relevant provision of the Indian Act, although not legally restricting the right to marry as laid down in article 23 (2) of the Covenant, entails serious disadvantages on the part of the Indian woman who wants to marry a non-Indian man and may in fact cause her to live with her fiancé in an unmarrried relationship. There is thus a question as to whether the obligation of the State party under article 23 of the Covenant with regard to the protection of the family is complied with. Moreover, since only Indian women and not Indian men are subject to these disadvantages under the Act, the question arises whether Canada complies with its commitment under articles 2 and 3 to secure the rights under the Covenant without discrimination as to sex. On the other hand, article 27 of the Covenant requires States parties to accord protection to ethnic and linguistic minorities and the Committee must give due weight to this obligation. To enable it to form an opinion on these issues, it would assist the Committee to have certain additional observations and information.

7.3 In regard to the present communication, however, the Human Rights Committee must also take into account that the Covenant has entered into force in respect of Canada on 19 August 1976, several years after the marriage of Mrs. Lovelace. She consequently lost her status as an Indian at a time when Canada was not bound by the Covenant. The Human Rights Committee has held that it is empowered to consider a communication when the measures complained of, although they occurred before the entry into force of the Covenant, continued to have effects which themselves constitute a violation of the Covenant after that date. It is therefore relevant for the Committee to know whether the marriage of Mrs. Lovelace in 1970 has had any such effects.

7.4 Since the author of the communication is ethnically an Indian, some persisting effects of her loss of legal status as an Indian may, as from the entry into force of the Covenant for Canada, amount to a violation of rights protected by the Covenant. The Human Rights Committee has been informed that persons in her situation are denied the right to live on an Indian reserve with resultant separation from the Indian community and members of their families. Such prohibition may affect rights which the Covenant guarantees in articles 12 (1), 17, 23 (1), 24 and 27. There may be other such effects of her loss of status.

8. The Human Rights Committee invited the parties to submit their observations on the above considerations and, as appropriate, to furnish replies to the following questions:

(a) How many Indian women marry non-Indian men on an average each year? Statistical data for the last 20 years should be provided.

(b) What is the legal basis of a prohibition to live on a reserve? Is it a direct result of the loss of Indian status or does it derive from a discretionary decision of the Council of the community concerned?

(c) What reasons are adduced to justify the denial of the right of abode on a reserve?

(d) What legislative proposals are under consideration for ensuring full equality between the sexes with regard to Indian status? How would they affect the position of Mrs. Lovelace? How soon can it be expected that legislation will be introduced?

(e) What was Mrs. Lovelace's place of abode prior to her marriage? Was she at that time living with other members of her family? Was she denied the right to reside on a reserve in consequence of her marriage?

(f) What other persisting effects of Mrs. Lovelace's loss of status are there which may be relevant to any of the rights protected by the Covenant?

9.1 In submissions dated 22 October and 2 December 1980 the State party and the author, respectively, commented on the Committee's considerations and furnished replies to the questions asked.

9.2 It emerges from statistics provided by the State party that from 1965 to 1978, on an average, 510 Indian women married non-Indian men each year. Marriages between Indian women and Indian men of the same band during that period were 590 on the average each year; between Indian women and Indian men of a different band 422 on the average each year; and between Indian men and non-Indian women 448 on the average each year.

9.3 As to the legal basis of a prohibition to live on a reserve, the State party offers the following explanations:

> "Section 14 of the Indian Act provides that '(an Indian) woman who is a member of a band ceases to be a member of that band if she marries a person who is not a member of that band'. a/ As such, she loses the right to the use and benefits, in common with other members of the band, of the land allotted to the band. b/ It should, however, be noted that 'when (an Indian woman) marries a member of another band, she thereupon becomes a member of the band of which her husband is a member'. As such, she is entitled to the use and benefit of lands allotted to her husband's band.
>
> "An Indian (including a woman) who ceases to be a member of a band ceases to be entitled to reside by right on a reserve. None the less it is possible for an individual to reside on a reserve if his or her presence thereon is tolerated by a band or its members. It should be noted that under section 30 of the Indian Act, any person who trespasses on a reserve is guilty of an offence. In addition, section 31 of the Act provides that an Indian or a band (and of course its agent, the Band Council) may seek relief or remedy against any person, other than an Indian, who is or has been
>
> "(a) unlawfully in occupation or possession of,
>
> "(b) claiming adversely the right to occupation or possession of, or
>
> "(c) trespassing upon
>
> a reserve or part thereof."

---

a/ Mrs. Lovelace married a non-Indian. As such, she ceased to be a member of the Tobique band. In addition, by the application of subparagraph 12 (1) (b) of the Indian Act, she lost her Indian status.

b/ It should be noted that when an Indian ceases to be a member of a band, he is entitled, if he meets the conditions set out in sections 15 and 16 of the Indian Act, to compensation from Her Majesty for this loss of membership.

9.4 As to the reasons adduced to justify the denial of the right of abode on a reserve, the State party states that the provisions of the Indian Act which govern the right to reside on a reserve have been enacted to give effect to various treaty obligations reserving to the Indians exclusive use of certain lands.

9.5 With regard to the legislative proposals under consideration, the State party offers the following information:

> "Legislative proposals are being considered which would ensure that no Indian person, male or female, would lose his or her status under any circumstances other than his or her own personal desire to renounce it.
>
> "In addition, changes to the present sections under which the status of the Indian woman and minor children is dependent upon the status of her spouse are also being considered.
>
> "Further recommendations are being considered which would give Band Councils powers to pass by-laws concerning membership in the band; such by-laws, however, would be required to be non-discriminatory in the areas of sex, religion and family affiliation.
>
> "In the case of Mrs. Lovelace, when such new legislation is enacted, she would then be entitled to be registered as an Indian.
>
> "Legislative recommendations are being prepared for presentation to Cabinet for approval and placement on the Parliamentary Calendar for introduction before the House by mid-1981."

9.6 As to Mrs. Lovelace's place of abode prior to her marriage both parties confirm that she was at that time living on the Tobique Reserve with her parents. Sandra Lovelace adds that as a result of her marriage, she was denied the right to live on an Indian reserve. As to her abode since then the State party observes:

> "Since her marriage and following her divorce, Mrs. Lovelace has, from time to time, lived on the reserve in the home of her parents, and the Band Council has made no move to prevent her from doing so. However, Mrs. Lovelace wishes to live permanently on the reserve and to obtain a new house. To do so, she has to apply to the Band Council. Housing on reserves is provided with money set aside by Parliament for the benefit of registered Indians. The Council has not agreed to provide Mrs. Lovelace with a new house. It considers that in the provision of such housing priority is to be given to registered Indians."

9.7 In this connexion the following additional information has been submitted on behalf of Mrs. Lovelace:

> "At the present time, Sandra Lovelace is living on the Tobique Indian Reserve, although she has no right to remain there. She has returned to the Reserve, with her children because her marriage has broken up and she has no other place to reside. She is able to remain on the reserve in violation of the law of the local Band Council because dissident members of the tribe who support her cause have threatened to resort to physical violence in her defence should the authorities attempt to remove her."

9.8 As to the other persisting effects of Mrs. Lovelace's loss of Indian status the State party submits the following:

"When Mrs. Lovelace lost her Indian status through marriage to a non-Indian, she also lost access to federal government programs for Indian people in areas such as education, housing, social assistance, etc. At the same time, however, she and her children became eligible to receive similar benefits from programs the provincial government provides for all residents of the province.

"Mrs. Lovelace is no longer a member of the Tobique band and no longer an Indian under the terms of the Indian Act. She however is enjoying all the rights recognized in the Covenant, in the same way as any other individual within the territory of Canada and subject to its jurisdiction."

9.9 On behalf of Sandra Lovelace the following is submitted in this connexion:

"All the consequences of loss of status persist in that they are permanent and continue to deny the complainant rights she was born with.

"A person who ceases to be an Indian under the Indian Act suffers the following consequences:

"(1) Loss of the right to possess or reside on lands on a reserve (ss. 25 and 28 (1)). This includes loss of the right to return to the reserve after leaving, the right to inherit possessory interest in land from parents or others, and the right to be buried on a reserve;

"(2) An Indian without status cannot receive loans from the Consolidated Revenue Fund for the purposes set out in section 70;

"(3) An Indian without status cannot benefit from instruction in farming and cannot receive seed without charge from the Minister (see section 71);

"(4) An Indian without status cannot benefit from medical treatment and health services provided under section 73 (1) (g);

"(5) An Indian without status cannot reside on tax exempt lands (section 87);

"(6) A person ceasing to be an Indian loses the right to borrow money for housing from the Band Council (Consolidated Regulations of Canada, 1978, c. 949);

"(7) A person ceasing to be an Indian loses the right to cut timber free of dues on an Indian reserve (section 4 - Indian Timber Regulations, c. 961, 1978 Consolidated Regulations of Canada);

"(8) A person ceasing to be an Indian loses traditional hunting and fishing rights that may exist;

"(9) The major loss to a person ceasing to be an Indian is the loss of the cultural benefits of living in an Indian community, the emotional ties to home, family, friends and neighbours, and the loss of identity."

10. The Human Rights Committee, in the examination of the communication before it, has to proceed from the basic fact that Sandra Lovelace married a non-Indian on 23 May 1970 and consequently lost her status as a Maliseet Indian under section 12 (1) (b) of the Indian Act. This provision was - and still is - based on a distinction de jure on the ground of sex. However, neither its application to her marriage as the cause of her loss of Indian status nor its effects could at that time amount to a violation of the Covenant, because this instrument did not come into force for Canada until 19 August 1976. Moreover, the Committee is not competent, as a rule, to examine allegations relating to events having taken place before the entry into force of the Covenant and the Optional Protocol. Therefore as regards Canada it can only consider alleged violations of human rights occurring on or after 19 August 1976. In the case of a particular individual claiming to be a victim of a violation, it cannot express its view on the law in the abstract, without regard to the date on which this law was applied to the alleged victim. In the case of Sandra Lovelace it follows that the Committee is not competent to express any view on the original cause of her loss of Indian status, i.e. the Indian Act as applied to her at the time of her marriage in 1970.

11. The Committee recognizes, however, that the situation may be different if the alleged violations, although relating to events occurring before 19 August 1976, continue, or have effects which themselves constitute violations, after that date. In examining the situation of Sandra Lovelace in this respect, the Committee must have regard to all relevant provisions of the Covenant. It has considered, in particular, the extent to which the general provisions in articles 2 and 3 as well as the rights in articles 12 (1), 17 (1), 23 (1), 24, 26 and 27, may be applicable to the facts of her present situation.

12. The Committee first observes that from 19 August 1976 Canada had undertaken under article 2 (1) and (2) of the Covenant to respect and ensure to all individuals within its territory and subject to its jurisdiction, the rights recognized in the Covenant without distinction of any kind such as sex, and to adopt the necessary measures to give effect to these rights. Further, under article 3, Canada undertook to ensure the equal right of men and women to the enjoyment of these rights. These undertakings apply also to the position of Sandra Lovelace. The Committee considers, however, that it is not necessary for the purposes of her communication to decide their extent in all respects. The full scope of the obligation of Canada to remove the effects or inequalities caused by the application of existing laws to past events, in particular as regards such matters as civil or personal status, does not have to be examined in the present case, for the reasons set out below.

13.1 The Committee considers that the essence of the present complaint concerns the continuing effect of the Indian Act, in denying Sandra Lovelace legal status as an Indian, in particular because she cannot for this reason claim a legal right to reside where she wishes to, on the Tobique Reserve. This fact persists after the entry into force of the Covenant, and its effects have to be examined, without regard to their original cause. Among the effects referred to on behalf of the author (quoted in paragraph 9.9, above, and listed (1) to (9)), the greater number, ((1) to (8)), relate to the Indian Act and other Canadian rules in fields

which do not necessarily adversely affect the enjoyment of rights protected by the Covenant. In this respect the significant matter is her last claim, that "the major loss to a person ceasing to be an Indian is the loss of the cultural benefits of living in an Indian community, the emotional ties to home, family, friends and neighbours, and the loss of identity".

13.2 Although a number of provisions of the Covenant have been invoked by Sandra Lovelace, the Committee considers that the one which is most directly applicable to this complaint is article 27, which reads as follows:

> "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

It has to be considered whether Sandra Lovelace, because she is denied the legal right to reside on the Tobique Reserve, has by that fact been denied the right guaranteed by article 27 to persons belonging to minorities, to enjoy their own culture and to use their own language in community with other members of their group.

14. The rights under article 27 of the Covenant have to be secured to "persons belonging" to the minority. At present Sandra Lovelace does not qualify as an Indian under Canadian legislation. However, the Indian Act deals primarily with a number of privileges which, as stated above, do not as such come within the scope of the Covenant. Protection under the Indian Act and protection under article 27 of the Covenant therefore have to be distinguished. Persons who are born and brought up on a reserve, who have kept ties with their community and wish to maintain these ties must normally be considered as belonging to that minority within the meaning of the Covenant. Since Sandra Lovelace is ethnically a Maliseet Indian and has only been absent from her home reserve for a few years during the existence of her marriage, she is, in the opinion of the Committee, entitled to be regarded as "belonging" to this minority and to claim the benefits of article 27 of the Covenant. The question whether these benefits have been denied to her, depends on how far they extend.

15. The right to live on a reserve is not as such guaranteed by article 27 of the Covenant. Moreover, the Indian Act does not interfere directly with the functions which are expressly mentioned in that article. However, in the opinion of the Committee the right of Sandra Lovelace to access to her native culture and language "in community with the other members" of her group, has in fact been, and continues to be interfered with, because there is no place outside the Tobique Reserve where such a community exists. On the other hand, not every interference can be regarded as a denial of rights within the meaning of article 27. Restrictions on the right to residence, by way of national legislation, cannot be ruled out under article 27 of the Covenant. This also follows from the restrictions to article 12 (1) of the Covenant set out in article 12 (3). The Committee recognizes the need to define the category of persons entitled to live on a reserve, for such purposes as those explained by the Government regarding protection of its resources and preservation of the identity of its people. However, the obligations which the Government has since undertaken under the Covenant must also be taken into account.

16. In this respect, the Committee is of the view that statutory restrictions affecting the right to residence on a reserve of a person belonging to the minority concerned, must have both a reasonable and objective justification and be consistent with the other provisions of the Covenant, read as a whole. Article 27 must be construed and applied in the light of the other provisions mentioned above, such as articles 12, 17 and 23 in so far as they may be relevant to the particular case, and also the provisions against discrimination, such as articles 2, 3 and 26, as the case may be. It is not necessary, however, to determine in any general manner which restrictions may be justified under the Covenant, in particular as a result of marriage, because the circumstances are special in the present case.

17. The case of Sandra Lovelace should be considered in the light of the fact that her marriage to a non-Indian has broken up. It is natural that in such a situation she wishes to return to the environment in which she was born, particularly as after the dissolution of her marriage her main cultural attachment again was to the Maliseet band. Whatever may be the merits of the Indian Act in other respects, it does not seem to the Committee that to deny Sandra Lovelace the right to reside on the reserve is reasonable, or necessary to preserve the identity of the tribe. The Committee therefore concludes that to prevent her recognition as belonging to the band is an unjustifiable denial of her rights under article 27 of the Covenant, read in the context of the other provisions referred to.

18. In view of this finding, the Committee does not consider it necessary to examine whether the same facts also show separate breaches of the other rights invoked. The specific rights most directly applicable to her situation are those under article 27 of the Covenant. The rights to choose one's residence (article 12), and the rights aimed at protecting family life and children (articles 17, 23 and 24) are only indirectly at stake in the present case. The facts of the case do not seem to require further examination under those articles. The Committee's finding of a lack of a reasonable justification for the interference with Sandra Lovelace's rights under article 27 of the Covenant also makes it unnecessary, as suggested above (paragraph 12), to examine the general provisions against discrimination (articles 2, 3 and 26) in the context of the present case, and in particular to determine their bearing upon inequalities predating the coming into force of the Covenant for Canada.

19. Accordingly, 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 thatthe facts of the present case, which establish that Sandra Lovelace has been denied the legal right to reside on the Tobique Reserve, disclose a breach by Canada of article 27 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.6/24

Individual opinion appended to the Committee's views at the request of Mr. Néjib Bouziri:

/Original: French/
/30 July 1981/

In the Lovelace case, not only article 27 but also articles 2 (para. 1), 3, 23 (paras. 1 and 4) and 26 of the Covenant have been breached, for some of the provisions of the Indian Act are discriminatory, particularly as between men and women. The Act is still in force and, even though the Lovelace case arose before the date on which the Covenant became applicable in Canada, Mrs. Lovelace is still suffering from the adverse discriminatory effects of the Act in matters other than that covered by article 27.

ANNEX XIX

Views of the Human Rights Committee Under Article 5 (4) of the Optional Protocol to the International Convenant on Civil and Political Rights

concerning

Communication No. R.12/52

Submitted by: Delia Saldías de López on behalf of her husband, Sergio Rubén López Burgos

State party concerned: Uruguay

Date of communication: 6 June 1979 (date received)

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

Meeting on 29 July 1981;

Having concluded its consideration of communication No. R.12/52, submitted to the Committee by Delia Saldías López 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 the communication is Delia Saldías de López, a political refugee of Uruguayan nationality residing in Austria. She submits the communication on behalf of her husband, Sergio Rubén López Burgos, a worker and trade-union leader in Uruguay.

2.1 The author states that mainly because of the alleged victim's active participation in the trade union movement, he was subjected to various forms of harassment by the authorities from the beginning of his trade union involvement. Thus, he was arrested in December 1974 and held without charges for four months. In May 1975, shortly after his release and while still subjected to harassment by the authorities, he moved to Argentina. In September 1975 he obtained recognition as a political refugee by the Office of the United Nations High Commissioner for Refugees.

2.2 The author claims that on 13 July 1976 her husband was kidnapped in Buenos Aires by members of the "Uruguayan security and intelligence forces" who were aided by Argentine para-military groups, and was secretly detained in Buenos Aires for about two weeks. On 26 July 1976 Mr. López Burgos, together with several other

Uruguayan nationals, was illegally and clandestinely transported to Uruguay, where he was detained incommunicado by the special security forces at a secret prison for three months. During his detention of approximately four months both in Argentina and Uruguay, he was continuously subjected to physical and mental torture and other cruel, inhuman or degrading treatment.

2.3 The author asserts that her husband was subjected to torture and ill-treatment as a consequence of which he suffered a broken jawbone and perforation of the eardrums. In substantiation of her allegations the author furnishes detailed testimony submitted by six ex-detainees who were held, together with Mr. López Burgos, in some of the secret detention places in Argentina and Uruguay, and who were later released (Cecilia Gayoso Jauregui, Alicia Cadenas, Monica Soliño, Ariel Soto, Nelson Dean Bermudez, Enrique Rodriguez Larreta). Some of these witnesses describe the arrest of Mr. López Burgos and other Uruguayan refugees at a bar in Buenos Aires on 13 July 1976; on this occasion his lower jaw was allegedly broken by a blow with the butt of a revolver; he and the others were then taken to a house where he was interrogated, physically beaten and tortured. Some of the witnesses could identify several Uruguayan officers: Colonel Ramírez, Mayor Gavazzo (directly in charge of the torture sessions), Mayor Manuel Cordero, Mayor Mario Martínez and Captain Jorge Silveira. The witnesses assert that Mr. López Burgos was kept hanging for hours with his arms behind him, that he was given electric shocks, thrown on the floor, covered with chains that were connected with electric current, kept naked and wet; these tortures allegedly continued for ten days until López Burgos and several others were blindfolded and taken by truck to a military base adjacent to the Buenos Aires airport; they were then flown by an Uruguayan plane to the Base Aérea Militar No. 1, adjacent to the Uruguayan National Airport at Carrasco, near Montevideo. Interrogation continued, accompanied by beatings and electric shocks; one witness alleges that in the course of one of these interrogations the fractured jaw of Mr. López Burgos was injured further. The witnesses describe how Mr. López Burgos and 13 others were transported to a chalet on Shangrilá Beach and that all 14 were officially arrested there on 23 October 1976 and that the press was informed that "subversives" had been surprised at the chalet while conspiring. Four of the witnesses further assert that López Burgos and several others were forced under threats to sign false statements which were subsequently used in the legal proceedings against them and to refrain from seeking any legal counsel other than Colonel Mario Rodriquez. Another witness adds that all the arrested, including Mónica Soliño and Inés Quadros, whose parents are attorneys, were forced to name "ex officio" defence attorneys.

2.4 The author further states that her husband was transferred from the secret prison and held "at the disposition of military justice", first at a military hospital where for several months he had to undergo treatment because of the physical and mental effects of the torture applied to him prior to his "official" arrest, and subsequently at Libertad prison in San José. After a delay of 14 months his trial started in April 1978. At the time of writing, Mr. López was still waiting for final judgement to be passed by the military court. The author adds in this connexion that her husband was also denied the right to have legal defence counsel of his own choice. A military "ex officio" counsel was appointed by the authorities.

2.5 Mrs. Saldías de López states that the case has not been submitted to any other procedure of international investigation or settlement.

2.6 She also claims that the limited number of domestic remedies which can be invoked in Uruguay under the "prompt security measures" have been exhausted and she also refers in this connexion to an unsuccessful resort to "amparo" by the mother of the victim in Argentina.

2.7 She has also furnished a copy of a letter from the Austrian Consulate in Montevideo, Uruguay, mentioning that the Austrian Government has granted a visa to Mr. López Burgos and that this information has communicated to the Uruguay Ministry of Foreign Affairs.

2.8 She alleges that the following articles of the Covenant on Civil and Political Rights have been violated by the Uruguayan authorities in respect of her husband: articles 7, 9 and 12 (1) and article 14 (3).

3. By its decision of 7 August 1979 the Human Rights Committee:

(1) Decided that the author was justified in acting on behalf of the alleged victim;

(2) Transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication indicating that if the State party contended that domestic remedies had not been exhausted, it should give details of the effective remedies available to the alleged victim in the particular circumstances of his case.

4. The State party, in its response under rule 91 of the provisional rules of procedure, dated 14 December 1979, states "that the communication concerned is completely devoid of any grounds which would make it admissible by the Committee since, in the course of the proceedings taken against Mr. López Burgos he enjoyed all the guarantees afforded by the Uruguayan legal order". The State party refers in this connexion to its previous submissions to the Committee in other cases citing the domestic remedies generally available at present in Uruguay. Furthermore the State party provides some factual evidence in the case as follows: Mr. Burgos was arrested on 23 October 1976 for his connexion with subversive activities and detained under prompt security measures; on 4 November 1976, the second military examining magistrate charged him with presumed commission of the offence of "subversive association" under section 60 (V) of the Military Penal Code; on 8 March 1979, the court of first instance sentenced him to seven years' imprisonment for the offences specified in section 60 (V) of the Military Penal Code, section 60 (I) (6) in association with 60 (XII) of the Military Penal Code and sections 7, 243 and 54 of the Ordinary Penal Code; subsequently, on 4 October 1979, the Supreme Military Court rendered final judgement, reducing his sentence to four years and six months. It is further stated that Mr. Burgos' defence counsel was Colonel Mario Rodríguez and that Mr. Burgos is being held at Military Detention Establishment No. 1. The Government of Uruguay also brings to the attention of the Committee a report on a medical examination of Mr. Burgos, stating in part as follows:

> "Medical history prior to imprisonment (Antecedentes personales anteriores a su 'reclusión'): operated on for bilateral inguinal hernia at the age of 12; (2) history of unstable arterial hypertension; (3) fracture of lower left jaw.

Family medical history: (1) father a diabetic.

Medical record in prison (Antecedentes de 'reclusión'): treated by the dental surgery service of the Armed Forces Central Hospital for the fracture of the jaw with which he entered the Establishment. Discharged from the Armed Forces Central Hospital on 7 May 1977 with the fracture knitted and progressing well; subsequently examined for polyps of larynx on left vocal cord; a biopsy conducted ...".

5. In a further letter dated 4 March 1980 the author, Delia Saldías de López, refers to the Human Rights Committee's decision of 7 August 1979 and to the note of the Government of Uruguay dated 14 December 1979, and claims that the latter confirmed the author's previous statement concerning the exhaustion of all possible domestic remedies.

6. In the absence of any informaton contrary to the author's statement that the same matter had not been submitted to another procedure of international investigation or settlement and concluding, on the basis of the information before it, that there were no unexhausted domestic remedies which could or should have been pursued, the Committee decided on 24 March 1980;

(1) That the communication was admissible in so far as it relates to events which have allegedly continued or taken place after 23 March 1976 (the date of the entry into force of the Covenant and the Optional Protocol for Uruguay):

(2) 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;

(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 of the Covenant alleged to have occurred. The State party is requested, in this connexion, to give information as to the whereabouts of López Burgos between July and October 1976 and as to the circumstances in which he suffered a broken jaw and to enclose copies of any court orders or decisions of relevance to the matter under consideration.

7.1 In its submission under article 4 (2) of the Optional Protocol, dated 20 October 1980, the State party asserts that Mr. López Burgos had legal assistance at all times and that he lodged an appeal; the result of the appeal was a sentence at second instance that reduced the penalty of seven years to four years and six months of rigorous imprisonment. The State party also rejects the allegation that López Burgos was denied the right to have defense counsel of his own choice, asserting that he was not prevented from having one.

7.2 As to the circumstances under which Mr. López Burgos' jaw was broken the State party quotes from the "relevant medical report":

"On 5 February 1977 he entered the Armed Forces Central Hospital with a fracture of the lower left jaw caused when he was engaged in athletic activities at the prison (Military Detention Establishment No. 1). He was treated by the dental surgery service of the hospital for the fracture of the jaw with which he entered the hospital. He was discharged on 7 May 1977 with the fracture knitted and progressing well".

7.3 Whereas the author claims that her husband was kidnapped by members of the Uruguayan security and intelligence forces on 13 July 1976, the State party asserts that Mr. López Burgos, was arrested on 23 October 1976 and claims that the whereabouts of Mr. López Burgos have been known since the date of his detention but no earlier information is available.

7.4 As to the right to have a defense counsel, the State party generally asserts that accused persons themselves and not the authorities choose from the list of court-appointed lawyers.

8.1 In her submission under rule 93 (3) dated 22 December 1980 the author indicates that since accused persons can only choose their lawyers from a list of military lawyers drawn up by the Uruguayan Government, her husband had no access to a civilian lawyer, unconnected with the Government, who might have provided "a genuine and impartial defence" and that he did not enjoy the proper safeguards of a fair trial.

8.2 With regard to the State party's explanations concerning the fractured jaw suffered by López Burgos, the author claims that they are contradictory. The transcription of the medical report in the State party's note of 14 December 1979 lists the fracture in the paragraph beginning "Medical history prior to 'reclusión'" and goes on to the paragraph beginning "Medical record 'de reclusión'" to state that López Burgos was "treated by the dental surgery service of the Armed Forces Central Hospital for the fracture of the jaw with which he entered the establishment". In other words, the fracture occurred prior to his imprisonment. However, the note of 20 October 1980 states that he entered the hospital with a fractured jaw caused "when he was engaged in athletic activities at the prison". She reiterates her allegation that the fracture occurred as a consequence of the tortures to which López Burgos was subjected between July and October 1976, when he was in the hands of the Uruguayan Special Security Forces.

9. The State party submitted additional comments under article 4 (2) of the Covenant in a note dated 5 May 1981, contending that there is no contradiction between the medical reports, because the State party used the term "reclusión" (translated in CCPR/C/FS/R.12/52/Add.1 as "imprisonment" and "in prison") to mean "internación en el establecimiento hospitalario" (hospitalization), and reasserts that the fracture occurred in the course of athletic activities in the prison.

10.1 The Human Rights 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. The Committee bases its views inter alia on the following undisputed facts:

10.2 Sergio Rubén López Burgos was living in Argentina as a political refugee until his disappearance on 13 July 1976; he subsequently reappeared in Montevideo, Uruguay, not later than 23 October 1976, the date of his purported arrest by Uruguayan authorities and was detained under prompt security measures.

On 4 November 1976 pre-trial proceedings commenced when the second military examining magistrate charged him with the offence of "subversive association", but the actual trial began in April 1978 before a military court of first instance, which sentenced him on 8 March 1979 to seven years' imprisonment; upon appeal the court of second instance reduced the sentence to four years six months. López Burgos was treated for a broken jaw in a military hospital from 5 February to 7 May 1977.

11.1 In formulating its views the Human Rights Committee also takes into account the following considerations:

11.2 As regards the whereabouts of López Burgos between July and October 1976 the Committee requested precise information from the State party on 24 March 1980. In its submission dated 20 October 1980 the State party claimed that it had no information. The Committee notes that the author has made precise allegations with respect to her husband's arrest and detention in Buenos Aires on 13 July 1976 by the Uruguayan security and intelligence forces and that witness testimony submitted by her indicates the involvement of several Uruguayan officers identified by name. The State party has neither refuted these allegations nor adduced any adequate evidence that they have been duly investigated.

11.3 As regards the allegations of ill-treatment and torture, the Committee notes that the author has submitted detailed testimony from six ex-detainees who were held, together with López Burgos, in some of the secret detention places in Argentina and Uruguay. The Committee notes further that the names of five Uruguayan officers allegedly responsible for or personally involved in the ill-treatment are given. The State party should have investigated the allegations in accordance with its laws and its obligations under the Covenant and the Optional Protocol. As regards the fracture of the jaw, the Committee notes that the witness testimony submitted by the author indicates that the fracture occurred upon the arrest of López Burgos on 13 July 1976 in Buenos Aires, when he was physically beaten. The State party's explanation that the jaw was broken in the course of athletic activities in the prison seems to contradict the State party's earlier statement that the injury occurred prior to his "reclusión". The State party's submission of 14 December 1979 uses "reclusión" initially to mean imprisonment, e.g. "Establecimiento Militar de reclusión". The term reappears six lines later in the same document in connexion with "Antecedentes personales anteriores a su reclusión". The Committee is inclined to believe that "reclusión" in this context means imprisonment and not hospitalization as contended by the State party in its submission of 5 May 1981. At any rate, the State party's references to a medical report cannot be regarded as a sufficient refutation of the allegations of mistreatment and torture.

11.4 As to the nature of the judicial proceedings against López Burgos the Committee requested the State party on 24 March 1980 to furnish copies of any court orders or decisions of relevance to the matter under consideration. The Committee notes that the State party has not submitted any court orders or decisions.

11.5 The State party has also not specified in what "subversive activities" López Burgos was allegedly involved or clarified how or when he engaged in these activities. It would have been the duty of the State party to provide specific information in this regard, if it wanted to refute the allegations of the author that López Burgos has been persecuted because of his involvement in the trade union movement. The State party has not refuted the author's allegations that

López Burgos was forced to sign false testimony against himself and that this testimony was used in the trial against him. The State party has stated that López Burgos was not prevented from choosing his own legal counsel. It has not, however, refuted witness testimony indicating that López Burgos and others arrested with him, including Monica Soliño and Inés Quadros, whose parents are attorneys, were forced to agree to ex officio legal counsel.

11.6 The 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 of the case. The Government of Uruguay has referred to provisions, in Uruguayan law, of 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 in relation thereto. Moreover, some of the facts referred to above raise issues under provisions from which the Covenant does not allow any derogation under any circumstances.

11.7 The Human Rights Committee notes that if the sentence of López Burgos ran from the purported date of arrest on 23 October 1976, it was due to be completed on 23 April 1981, on which date he should consequently have been released.

11.8 The Committee notes that the Austrian Government has granted López Burgos an entry visa. In this connexion and pursuant to article 12 of the Covenant, the Committee observes that López Burgos should be allowed to leave Uruguay, if he so wishes, and travel to Austria to join his wife, the author of this communication.

12.1 The Human Rights Committee further observes that although the arrest and initial detention and mistreatment of López Burgos allegedly took place on foreign territory, the Committee is not barred either by virtue of article 1 of the Optional Protocol ("... individuals subject to its jurisdiction ...") or by virtue of article 2 (1) of the Covenant ("... individuals within its territory and subject to its jurisdiction ...") from considering these allegations, together with the claim of subsequent abduction into Uruguayan territory, inasmuch as these acts were perpetrated by Uruguayan agents acting on foreign soil.

12.2 The reference in article 1 of the Optional Protocol to "individuals subject to its jurisdiction" does not affect the above conclusion because the reference in that article is not to the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred.

12.3 Article 2 (1) of the Covenant places an obligation upon a State party to respect and to ensure rights "to all individuals within its territory and subject to its jurisdiction", but it does not imply that the State party concerned cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State, whether with the acquiescence of the Government of that State or in opposition to it. According to article 5 (1) of the Covenant:

> "1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destructon of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant."

In line with this, it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory.

13. 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 communication discloses violations of the Covenant, in particular:

of article 7 because of the treatment (including torture) suffered by López Burgos at the hands of Uruguayan military officers in the period from July to October 1976 both in Argentina and Uruguay;

of article 9 (1) because the act of abduction into Uruguayan territory constituted an arbitrary arrest and detention;

of article 9 (3) because López Burgos was not brought to trial within a reasonable time;

of article 14 (3) (d) because López Burgos was forced to accept Colonel Mario Rodríguez as his legal counsel;

of article 14 (3) (g) because López Burgos was compelled to sign a statement incriminating himself;

of article 22 (1) in conjunction with article 19 (1) and (2) because López Burgos has suffered persecution for his trade union activities.

14. The Committee, accordingly, is of the view that the State party is under an obligation pursuant to article 2 (3) of the Covenant to provide effective remedies to López Burgos, including immediate release, permission to leave Uruguay and 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.12/52

Individial opinion appended to the Committee's views at the request of Mr. Christian Tomuschat:

I concur in the views expressed by the majority. None the less, the arguments set out in paragraph 12 for affirming the applicability of the Covenant also with regard to those events which have taken place outside Uruguay need to be clarified and expanded. Indeed, the first sentence in paragraph 12.3, according to which article 2 (1) of the Covenant does not imply that a State party "cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State", is too broadly framed and might therefore give rise to misleading conclusions. In principle, the scope of application of the Covenant is not susceptible to being extended by reference to article 5, a provision designed to cover instances where formally rules under the Covenant seem to legitimize actions which substantially run counter to its purposes and general spirit. Thus, Governments may never use the limitation clauses supplementing the protected rights and freedoms to such an extent that the very substance of those rights and freedoms would be annihilated; individuals are legally barred from availing themselves of the same rights and freedoms with a view to overthrowing the régime of the rule of law which constitutes the basic philosophy of the Covenant. In the present case, however, the Covenant does not even provide the pretext for a "right" to perpetrate the criminal acts which, according to the Committee's conviction, have been perpetrated by the Uruguayan authorities.

To construe the words "within its territory" pursuant to their strict literal meaning as excluding any responsibility for conduct occurring beyond the national boundaries would, however, lead to utterly absurd results. The formula was intended to take care of objective difficulties which might impede the implementation of the Covenant in specific situations. Thus, a State party is normally unable to ensure the effective enjoyment of the rights under the Covenant to its citizenis abroad, having at its disposal only the tools of diplomatic protection with their limited potential. Instances of occupation of foreign territory offer another example of situations which the drafters of the Covenant had in mind when they confined the obligation of States parties to their own territory. All these factual patterns have in common, however, that they provide plausible grounds for denying the protection of the Covenant. It may be concluded, therefore, that it was the intention of the drafters, whose sovereign decision cannot be challenged, to restrict the territorial scope of the Covenant in view of such situations where enforcing the Covenant would be likely to encounter exceptional obstacles. Never was it envisaged, however, to grant States parties unfettered discretionary power to carry out wilful and deliberate attacks against the freedom and personal integrity against their citizens living abroad. Consequently, despite the wording of article 2 (1), the events which took place outside Uruguay come within the purview of the Covenant.

ANNEX XX

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.13/56

Submitted by: Lilian Celiberti de Casariego represented by Francesco Cavallaro

State party concerned: Uruguay

Date of communication: 17 July 1979 (date of initial letter)

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

Meeting on 29 July 1981;

Having concluded its consideration of communication No. R.13/56 submitted to the Committee by Francesco Cavallaro on behalf of Lilian Celiberti de Casariego 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 the communication (initial letter dated 17 July 1979 and further letters dated 5 and 20 March 1980), is Francesco Cavallaro, practising lawyer in Milan, Italy, acting on behalf of Lilian Celeberti de Casariego, who is imprisoned in Uruguay. The lawyer has submitted a duly authenticated copy of a General Power of Attorney to act on her behalf.

2.1 In his submission of 17 July 1979 the author of the communication alleges the following:

2.2 Since 1974 Lilian Celiberti de Casariego, a Uruguayan citizen by birth and of Italian nationality based on ius sanguinis, had been living in Milan, Italy, with her husband and two children. Mrs. Celiberti had been authorized to leave Uruguay in 1974. While in Uruguay she had been an active member of the Resistencia Obrero-Estudiantil and in this connexion she had been arrested for "security reasons", and subsequently released, several times. In 1978 Mrs. Celiberti, her two children (3 and 5 years of age) and Universindo Rodríguez Diaz, a Uruguayan

exile living in Sweden, travelled to Porto Alegre (Brazil) purportedly to contact Uruguayan exiles living there. The author claims that, based on information gathered, inter alia, by representatives of private international organizations, the Lawyers' Association in Brazil, journalists, Brazilian parliamentarians and Italian authorities, Mrs. Celiberti was arrested on 12 November 1978 together with her two children and Universindo Rodríguez Diaz in their apartment, in Porto Alegre, by Uruguayan agents with the connivance of two Brazilian police officials (against whom relevant charges have been brought by Brazilian authorities in this connexion). From 12 November probably to 19 November 1978, Mrs. Celiberti was detained in her apartment in Porto Alegre. The children were separated from their mother and were kept for several days in the office of the Brazilian political police. The mother and the children were then driven together to the Uruguayan border where they were separated again. The children were brought to Montevideo (Uruguay) where they remained for 11 days in a place together with many other children before being handed over on 25 November 1978 by a judge to their maternal grandparents. Mrs. Celiberti was forceably abducted into Uruguayan territory and kept in detention. On 25 November 1978 the Fuerzas Conjuntas of Uruguay publicly confirmed the arrest of Mrs. Celiberti, her two children and Mr. Universindo Rodríguez Diaz, alleging that they had tried to cross the Brazilian-Uruguayan border secretly with subversive material. Until 16 March 1979, Mrs. Celiberti was held incommunicado. At that time she was detained in Military Camp No. 13, but neither her relatives nor other persons, including representatives of the Italian Consulate, were allowed to visit her. On 23 March 1979, it was decided to charge her with "subversive association", "violation of the Constitution by conspiracy and preparatory acts thereto" and with other violations of the Military Penal Code in conjunction with the ordinary Penal Code. She was ordered to be tried by a Military Court. It was further decided to keep her in "preventive custody" and to assign an ex officio defense lawyer to her.

2.3 The author claims that the following provisions of the International Covenant on Civil and Political Rights have been violated by the Uruguayan authorities in respect of Lilian Celiberti de Casariego: articles 9, 10 and 14.

3. On 10 October 1979, 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.

4.1 By a note dated 14 December 1979 the State party objected to the admissibility of the communication on the ground that the same matter had been submitted to the Inter-American Commission on Human Rights and referred to case No. 4529, dated 15 August 1979.

4.2 In a further submission dated 5 March 1980, the author states that, as the legal representative of Lilian Celiberti de Casariego, he cannot rule out the possibility of her case having been submitted to the Inter-American Commission on Human Rights. He claims, however, that the Human Rights Committee's competence is not excluded for the following reasons: (a) the communication relating to Mrs. Celiberti was submitted to the Human Rights Committee on 17 July 1979, i.e., before the matter reached the Inter-American Commission on Human Rights; (b) if the case was submitted to the Inter-American Commission on Human Rights by a third party, this cannot prejudice the right of the legal representative of Mrs. Celiberti to choose the international body to protect her interests.

5. On 2 April 1980, the Human Rights Committee,

(a) Having ascertained from the secretariat of the Inter-American Commission on Human Rights that a case concerning Lilian Celiberti was submitted by an unrelated third party and opened on 2 August 1979 under No. 4529,

(b) Concluding that it is not prevented from considering the communication submitted to it by Mrs. Celiberti's legal representative on 17 July 1979 by reason of the subsequent opening of a case by an unrelated third party under the procedure of the Inter-American Commission on Human Rights,

(c) 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, 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 29 October 1980. Up to date no such submission has been received from the State party.

7. The Human Rights Committee notes that it has been informed by the Government of Uruguay in another case (R.2/9 Edgardo D. Santullo Valcada v. Uruguay) that the remedy of habeas corpus is not applicable to persons detained under the prompt security measures.

8. The Human Rights Committee, considering 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, hereby decides to base its views on the following facts as set out by the author in the absence of any comments thereupon by the State party.

9. On 12 November 1978 Lilian Celiberti de Casariego was arrested in Porto Alegre (Brazil) together with her two children and with Universindo Rodríguez Diaz. The arrest was carried out by Uruguayan agents with the connivance of two Brazilian police officials. From 12 to 19 November 1978, Mrs. Celiberti was detained in her apartment in Porto Alegre and then driven to the Uruguayan border. She was forceably abducted into Uruguayan territory and kept in detention. On 25 November 1978 the Fuerzas Conjuntas of Uruguay publicly confirmed the arrest of Mrs. Celiberti, her two children and Mr. Universindo Rodríguez Diaz, alleging that they had tried to cross the Brazilian-Uruguayan border secretly with subversive material. Until 16 March 1979, Mrs. Celiberti was held incommunicado. On 23 March 1979, she was charged with "subversive association", "violation of the Constitution by conspiracy and preparatory acts thereto", and with other violations of the Military Penal Code in conjunction with the ordinary Penal Code. She was ordered to be tried by a Military Court. She was ordered to be kept in "preventive custody" and assigned an ex officio defense lawyer.

10.1 The Human Rights Committee observes that although the arrest and initial detention of Lilian Celiberti de Casariego allegedly took place on foreign territory, the Committee is not barred either by virtue of article 1 of the Optional Protocol ("... individuals subject to its jurisdiction ...") or by virtue of article 2 (1) of the Covenant ("... individuals within its territory and subject to its jurisdiction ...") from considering these allegations, together with the claim of subsequent abduction into Uruguayan territory, inasmuch as these acts were perpetrated by Uruguayan agents acting on foreign soil.

10.2 The reference in article 1 of the Optional Protocol to "individuals subject to its jurisdiction" does not affect the above conclusion because the reference in that article is not to the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred.

10.3 Article 2 (1) of the Covenant places an obligation upon a State party to respect and to ensure rights "to all individuals within its territory and subject to its jurisdiction", but it does not imply that the State party concerned cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State, whether with the acquiescence of the Government of that State or in opposition to it. According to article 5 (1) of the Covenant:

> "1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant."

In line with this, it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory.

11. 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 as found by the Committee, disclose violations of the International Covenant on Civil and Political Rights, in particular:

> of article 9 (1), because the act of abduction into Uruguayan territory constituted an arbitrary arrest and detention;
>
> of article 10 (1), because Lilian Celiberti de Casariego was kept incommunicado for four months;
>
> of article 14 (3) (b), because she had no counsel of her own choosing;
>
> of article 14 (3) (c), because she was not tried without undue delay.

12. The Committee, accordingly, is of the view that the State party is under an obligation, pursuant to article 2 (3) of the Covenant, to provide Lilian Celiberti de Casariego with effective remedies, including her immediate release, permission to leave the country and compensation for the violations which she 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.13/56

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

I concur in the views expressed by the majority. None the less, the arguments set out in paragraph 10 for affirming the applicability of the Covenant also with regard to those events which have taken place outside Uruguay need to be clarified and expanded. Indeed, the first sentence in paragraph 10.3, according to which article 2 (1) of the Covenant does not imply that a State party "cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State", is too broadly framed and might therefore give rise to misleading conclusions. In principle, the scope of application of the Covenant is not susceptible of being extended by reference to article 5, a provision designed to cover instances where formally rules under the Covenant seem to legitimize actions which substantially run counter to its purposes and general spirit. Thus, Governments may never use the limitation clauses supplementing the protected rights and freedoms to such an extent that the very substance of those rights and freedoms would be annihilated; individuals are legally barred from availing themselves of the same rights and freedoms with a view to overthrowing the régime of the rule of law which constitutes the basic philosophy of the Covenant. In the present case, however, the Covenant does not even provide the pretext for a "right" to perpetrate the criminal acts which, according to the Committee's conviction, have been perpetrated by the Uruguayan authorities.

To construe the words "within its territory" pursuant to their strict literal meaning as excluding any responsibility for conduct occurring beyond the national boundaries would, however, lead to utterly absurd results. The formula was intended to take care of objective difficulties which might impede the implementaton of the Covenant in specific situations. Thus, a State party is normally unable to ensure the effective enjoyment of the rights under the Covenant to its citizens abroad, having at its disposal only the tools of diplomatic protection with their limited potential. Instances of occupation of foreign territory offer another example of situations which the drafters of the Covenant had in mind when they confined the obligation of States parties to their own territory. All these factual patterns have in common, however, that they provide plausible grounds for denying the protection of the Covenant. It may be concluded, therefore, that it was the intention of the drafters, whose sovereign decision cannot be challenged, to restrict the territorial scope of the Covenant in view of such situations where enforcing the Covenant would be likely to encounter exceptional obstacles. Never was it envisaged, however, to grant States parties unfettered discretionary power to carry out wilful and deliberate attacks against the freedom and personal integrity against their citizens living abroad. Consequently, despite the wording of article 2 (1), the events which took place outside Uruguay come within the purview of the Covenant.

ANNEX XXI

List of Committee documents issued

A. Eleventh session

Documents issued in the general series

CCPR/C/1/Add.53	Initial report of Jamaica
CCPR/C/6/Add.5	Initial report of Guinea
CCPR/C/6/Add.6	Initial report of Portugal
CCPR/C/10/Add.1	Initial report of Japan
CCPR/C/13	Provisional agenda and annotations - Eleventh session
CCPR/C/SR.247-262 and corrigendum	Summary records of the eleventh session

B. Twelfth session

Documents issued in the general series

CCPR/C/1/Add.54	Initial report of Rwanda
CCPR/C/2/Add.4	Reservations, declarations, notifications and communications relating to the International Covenant on Civil and Political Rights and the Optional Protocol thereto
CCPR/C/10/Add.2	Initial report of Morocco
CCPR/C/10/Add.3	Initial report of the Netherlands
CCPR/C/14	Consideration of reports submitted by States parties under article 40 of the Covenant - Initial reports of States parties due in 1981: Note by the Secretary-General
CCPR/C/15	Provisional agenda and annotations - Twelfth session
CCPR/C/SR.263-289 and corrigendum	Summary records of the twelfth session

C. Thirteenth session

CCPR/C/1/Add.55	Supplementary report of Jordan
CCPR/C/4/Add.6	Initial report of Guyana
CCPR/C/6/Add.7	Initial report of Austria
CCPR/C/10/Add.4	Initial report of Iceland
CCPR/C/16	Provisional agenda and annotations - Thirteenth session
CCPR/C/SR.290 - 316 and corrigendum	Summary records of the thirteenth session

كيفية الحصول على منشورات الامم المتحدة

يمكن الحصول على منشورات الامم المتحدة من المكتبات ودور التوزيع في جميع انحاء العالم . استعلم عنها من المكتبة التي تتعامل معها أو اكتب الى : الامم المتحدة ،قسم البيع في نيويورك او في جنيف .

如何购取联合国出版物

联合国出版物在全世界各地的书店和经售处均有发售。请向书店询问或写信到纽约或日内瓦的联合国销售组。

HOW TO OBTAIN UNITED NATIONS PUBLICATIONS

United Nations publications may be obtained from bookstores and distributors throughout the world. Consult your bookstore or write to: United Nations, Sales Section, New York or Geneva.

COMMENT SE PROCURER LES PUBLICATIONS DES NATIONS UNIES

Les publications des Nations Unies sont en vente dans les librairies et les agences dépositaires du monde entier. Informez-vous auprès de votre libraire ou adressez-vous à : Nations Unies, Section des ventes, New York ou Genève.

КАК ПОЛУЧИТЬ ИЗДАНИЯ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ

Издания Организации Объединенных Наций можно купить в книжных магазинах и агентствах во всех районах мира. Наводите справки об изданиях в вашем книжном магазине или пишите по адресу: Организация Объединенных Наций, Секция по продаже изданий, Нью-Йорк или Женева.

COMO CONSEGUIR PUBLICACIONES DE LAS NACIONES UNIDAS

Las publicaciones de las Naciones Unidas están en venta en librerías y casas distribuidoras en todas partes del mundo. Consulte a su librero o diríjase a: Naciones Unidas, Sección de Ventas, Nueva York o Ginebra.

Litho in United Nations, New York

Price: $U.S. 17.00

24865—October 1981—4,300