REPORT

OF THE

HUMAN RIGHTS COMMITTEE

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTIETH SESSION

SUPPLEMENT No. 40 (A/40/40)

UNITED NATIONS

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NOTE

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

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[19 September 1985]

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Covenant

1. As at 26 July 1985, the closing date of the twenty-fifth session of the Human Rights Committee, there were 80 States parties to the International Covenant on Civil and Political Rights and 35 States parties to the Optional Protocol to the Covenant, both adopted by the General Assembly in resolution 2200 A (XXI) of 16 December 1966 and opened for signature and ratification in New York on 19 December 1966. Both instruments entered into force on 23 March 1976 in accordance with the provisions of their articles 49 and 9 respectively. Also as at 26 July 1985, 18 States had made the declaration envisaged under article 41, paragraph 1, of the Covenant which came into force on 28 March 1979.

2. 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.1-8).

B. Sessions and agendas

4. The Human Rights Committee has held three sessions since the adoption of its last annual report: the twenty-third session (545th to 572nd meetings) was held at the United Nations Office at Geneva from 22 October to 9 November 1984; the twenty-fourth session (573rd to 599th meetings) was held at United Nations Headquarters, New York, from 25 March to 12 April 1985; and the twenty-fifth session (600th to 624th meetings) at the United Nations Office at Geneva from 8 to 26 July 1985. The agendas of the sessions are shown in annex III.

C. Membership and attendance

5. At the eighth meeting of States parties, held at United Nations Headquarters, New York, on 14 September 1984, nine members of the Committee were elected, in accordance with articles 28 to 32 of the Covenant, to replace those whose terms of office were to expire on 31 December 1984. The following members were elected for the first time: Mrs. Rosalyn Higgins (United Kingdom of Great Britain and Northern Ireland), Mr. Fausto Pocar (Italy), Mr. S. Amos Wako (Kenya) and Mr. Adam Zielinski (Poland). Mr. Rajsoomer Lallah (Mauritius), who had earlier served as a member of the Committee from 1 January 1977 to 31 December 1982, was elected again as a member of the Committee. Messrs. Aguilar, Mavrommatis, Movchan and Serrano Caldera, whose terms of office were to expire on 31 December 1984, were re-elected. A list of the members of the Committee in 1985 is given in annex II.

6. All the members attended the twenty-third, twenty-fourth and twenty-fifth sessions of the Committee.

D. Solemn declarations

7. At the 573rd, 577th and 579th meetings, during the twenty-fourth session, members of the Committee who were elected or re-elected at the eighth meeting of the States parties to the Covenant made a solemn declaration, in accordance with article 38 of the Covenant, before assuming their functions.

E. Election of officers

8. At its 574th meeting, held on 25 March 1985, 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. Birame N'diaye Mr. Julio Prado Vallejo Mr. Christian Tomuschat
Rapporteur:	Mr. Bernhard Graefrath

F. Working groups

9. In accordance with rule 89 of its provisional rules of procedure, the Committee established working groups to meet before its twenty-third, twenty-fourth and twenty-fifth sessions entrusting them with the task of making recommendations to the Committee regarding communications under the Optional Protocol.

10. The Working Group of the twenty-third session waas composed of Messrs. Cooray, Dimitrijevic, Graefrath and Tomuschat. It met at the United Nations Office at Geneva from 15 to 19 October 1984 and elected Mr. Tomuschat as its Chairman/Rapporteur. The Working Group of the twenty-fourth session was composed of Messrs. Cooray, Dimitrijevic, Prado Vallejo and Tomuschat. It met at United Nations Headquarters, New York, from 18 to 22 March 1985. Mr. Dimitrijevic was elected Chairman/Rapporteur. The Working Group of the twenty-fifth session was composed of Mr. Cooray, Mrs. Higgins and Mr. Prado Vallejo. It met at the United Nations Office at Geneva from 1 to 5 July 1985 and elected Mr. Cooray as its Chairman/Rapporteur.

11. Under rule 62 of its provisional rules of procedure, the Committee also established working groups to meet before the twenty-third, twenty-fourth and twenty-fifth sessions, mandating them to prepare concise lists of issues or topics concerning second periodic reports scheduled for consideration at the Committee's twenty-third, twenty-fourth and twenty-fifth sessions; to make recommendations to the Committee as to how, in general, supplementary reports should be dealt with and how, in particular, supplementary reports already submitted should be treated; to review the Committee's methodology for dealing with second periodic reports; to prepare a programme for the Committee's further work on the drafting of general comments; and to consider any draft general comments that might be put before the Working Group.

12. The Working Group of the twenty-third session was composed of Messrs. Graefrath, N'diaye and Sir Vincent Evans. It met at the United Nations

Office at Geneva from 15 to 19 October 1984 and elected Sir Vincent Evans as its Chairman/Rapporteur. The Working Group of the twenty-fourth session was composed of Messrs. Movchan, N'diaye and Opsahl. It met at United Nations Headquarters, New York, from 18 to 22 March 1985 and elected Mr. Opsahl as its Chairman/Rapporteur. The Working Group of the twenty-fifth session met at the United Nations Office at Geneva from 1 to 5 July 1985. It was composed of Messrs. Aguilar, Graefrath, N'diaye and Opsahl. It elected Mr. Aguilar as its Chairman/Rapporteur.

G. Question of the transmission of the annual report of the Committee to the General Assembly

13. By its decision 1983/101 of 4 February 1983, the Economic and Social Council invited the Committee to consider the possibility of rescheduling its meetings so as to allow for transmittal of the Committee's annual report to the General Assembly through the Economic and Social Council. During 1984, consultations were held with regard to this matter between the President of the Economic and Social Council and the Chairman of the Human Rights Committee. The various implications of the proposal were considered by the Committee in some detail at its eighteenth and twenty-first sessions. The Committee reached the conclusion that, in view of its membership and functions, it would not be possible for it to rearrange its meetings and that, if its report were to be adopted during its spring session, it would be almost nine months out of date by the time it came before the General Assembly. Accordingly, at its twenty-third session, held from 22 October to 9 November 1984, the Committee decided as an interim arrangement "to request the Economic and Social Council to continue to authorize the Secretary-General, as it has done in the past, to transmit the report of the Human Rights Committee directly to the General Assembly, without prejudice to further consideration of the present arrangements at any time by the Economic and Social Council or by the Committee".

14. By its decision 1985/105 of 8 February 1985, the Economic and Social Council decided "to agree to the interim arrangement proposed and, without prejudice to further consideration by the Council of the present arrangements at a future session, to authorize the Secretary-General to transmit the annual report of the Human Rights Committee directly to the General Assembly". During its first regular session, on 24 May 1985, the Council adopted decision 1985/117, in which it authorized the Secretary-General "to transmit the annual report of the Human Rights Committee directly to the General Assembly at its fortieth session".

H. Miscellaneous

15. Members of the Committee continued to place great emphasis on the importance of publicizing the text of the Covenant and the Committee's work, which they regarded as significant in promoting the observance and enjoyment of the fundamental rights and freedoms contained in the Covenant. In examining the reports of States parties, members of the Committee also continued to stress the importance of bringing the Covenant to the notice of administrative and judicial authorities and of having the text of the Covenant translated into the main local languages of a State party.

16. At the Committee's twenty-fourth session, the Assistant Secretary-General for Human Rights informed the committee that the first set of annual bound volumes covering the Committee's activities during 1977 and 1978 was with the printers and that publication was expected prior to the Committee's session in the fall of 1985.

He also informed the Committee that the volume entitled Selected Decisions under the Optional Protocol (second to sixteenth sessions) had been published. At the Committee's twenty-fifth session, he informed it that the preparatory work had started within the Centre For Human Rights on the annual bound volumes concerning the Committee's activities during 1979 and 1980 and that it was hoped to complete the editorial work by the end of the year.

17. The question of providing technical assistance to States parties, inter alia, in order to help them meet their obligations under the Covenant, has been considered by the Committee in previous years. 1/ At its twenty-second session, pursuant to a request by the Government of Guinea, the Committee authorized one of its members to make himself available for consultation with the Government of Guinea with a view to ascertaining how that Government could be assisted in fulfilling its reporting obligations under the Covenant. 2/ That member, Mr. Birame N'diaye, reported to the Committee at its twenty-fourth session on the visit to Guinea he had undertaken for the foregoing purpose, from 11 to 14 March 1985. The Committee noted with satisfaction that the Government of Guinea had extended a warm reception and outstanding co-operation to Mr. N'diaye and had decided to complete Guinea's report by June 1985. The Committee further noted the need of Guinea, and possibly also that of other African countries in similar circumstances, for additional assistance in meeting obligations under the Covenant.

18. At the twenty-fourth session, a representative of the Government of Uruguay conveyed a message to the Committee from the Minister for Foreign Affairs of that country. Referring to the solemn announcement of the Government of Uruguay regarding its intention to observe faithfully the provisions of the Universal Declaration of Human Rights and of all international human rights instruments, the message listed a number of measures that had already been taken by the Government to that end, including: approval of a law of amnesty; restoration of judicial independence and freedom of the press; repeal of regulations prohibiting or limiting trade-union rights, including the right to strike; ratification of the American Convention on Human Rights 1969; restoration of academic freedom; removal of the prohibition on the activities of political parties; establishment of a National Repatriation Commission to promote the return of exiled Uruguayans; and the reinstatement of all civil servants dismissed for ideological, political and trade-union beliefs. The message also expressed the appreciation of the people of Uruguay for the many demonstrations of international solidarity at a time when their rights had been systematically ignored and violated, including, in particular, their appreciation for the close attention members of the Human Rights Committee had given to communications from Uruguay. The Committee warmly welcomed the message, which indicated that Uruguay had embarked on a new path towards full compliance with the Covenant.

19. The Assistant Secretary-General for Human Rights informed the Committee at its twenty-fifth sesion that a training course on the preparation and submission of reports had been organized by the United Nations Institute for Training and Research (UNITAR) at the suggestion of the Centre for Human Rights. The training course had been successfully held in Barbados from 29 April to 10 May 1985; 18 officials of the rank of Attorney-General, Solicitor-General and senior members of ministries of justice and foreign affairs from different Caribbean countries had participated. In assessing the results of that initial experience, the Assistant Secretary-General indicated that the participants had expressed high appreciation for the training course and had asked that such efforts be repeated periodically in the future. He further informed the Committee of the Centre's view that great value could be derived from pursuing the endeavour and that UNITAR, with the

co-operation and the active support of the Centre, was exploring the possibility of organizing other training courses of that type in Asia and Africa. As to the Centre's programme of advisory services, the Assistant Secretary-General pointed to the increasing emphasis being placed on responding to the need for practical training of officials whose tasks involved the implementation of the Covenants. He stated in that connection that the Centre intended to give priority to such officials in awarding human rights fellowships.

20. Also at the twenty-fifth session, the Assistant Secretary-General informed the Committee and provided relevant details concerning the establishment by the Economic and Social Council, at its first regular session in May 1985, of the Committee on Economic, Social and Cultural Rights.

21. The Committee also considered certain matters relating to the consultations on the composition of its bureau, the content of the summary records, the annual report and the services made available to the Committee by the Secretariat.

I. Adoption of the report

22. At its 622nd and 623rd meetings, held on 25 July 1985, the Committee considered the draft of its ninth annual report covering the activities of the Committee at its twenty-third, twenty-fourth and twenty-fifth sessions, held in 1984 and 1985. The report, as amended in the course of the discussions, was unanimously adopted by the Committee.

II. ACTION BY THE GENERAL ASSEMBLY ON THE ANNUAL REPORT SUBMITTED BY THE COMMITTEE UNDER ARTICLE 45 OF THE COVENANT

23. At its 592nd meeting, held on 8 April 1985, the Committee considered this item in the light of the relevant summary records of the Third Committee and General Assembly resolutions 39/136 and 39/138 of 14 December 1984.

24. Members of the Committee expressed satisfaction over the degree of attention that the Committee's work had received in the Third Committee and over the generally favourable nature of the comments made there. They were particularly gratified to note the satisfaction expressed by the General Assembly, in resolution 39/136, regarding the serious and constructive manner in which the Committee was continuing to undertake its functions.

25. It was noted that a number of comments and opinions relating to the Committee's work were advanced by representatives in the Third Committee. They included, inter alia, suggestions to take more fully into account the burden placed on States parties by their reporting obligations, to limit the cycle of reply and rebuttal at the admissibility stage of communications received under the Optional Protocol, to make the procedure relating to the consideraton of second periodic reports less time-consuming, to define the content and scope of restrictions and limitations referred to in some articles of the Covenant and to increase publicity for the Committee's work. An earlier suggestion to extend the time-limit for State parties' responses on questions of admissibility of communications was reiterated. With respect to the suggestion relating to the reporting obligations of States parties, the Committee noted that that topic had also been addressed in detail in General Assembly resolution 39/138.

26. Members also took note of opinions and comments expressed in the Third Committee relating to the meeting of the Chairmen of the bodies entrusted with the consideration of reports submitted under the relevant human rights instruments, held in the summer of 1984, pursuant to General Assembly resolution 38/117 of 16 December 1983.

27. Some members also noted with satisfaction that many observations had been made in the Third Committee on the Committee's general comments, particularly general comment 14 (23), which had helped to draw attention to the importance of all of the Committee's general comments. Regarding the differing opinions expressed by representatives in the Third Committee concerning the extent of the Committee's competence in addressing the matters covered in general comment 14 (23), the view was expressed that the right to life enunciated in article 6 of the Covenant could not be interpreted narrowly but was applicable to a wide range of issues. The Committee, therefore, was acting well within its mandate in appealing to States for a ban on nuclear weapons in order to protect the right to life. While agreeing that it was appropriate for the Committee to point out the need to remove the threat of war, some members felt that it was not part of its mandate to discuss how that should be done or to go into the matter in detail. One member suggested that some delegations in the Third Committee that had been critical of general comment 14 (23) had perhaps not read its very carefully worded contents closely enough. It was also stressed that the general comment promoted the implementation of the Covenant.

28. Members of the Committee also commented on some of the other opinions and suggestions regarding the Committee's work that had been advanced in the Third Committee, as well as on relevant portions of General Assembly resolution 39/138. In that connection, some members were of the view that the objective of easing the reporting burden on States should be pursued at the next meeting of the Chairmen of the relevant human rights bodies. As to the problem presented by the cycle of reply and rebuttal at the admissibility stage of communications under the Optional Protocol, some members suggested that the Committee should discuss the matter and perhaps develop a firmer practice than it had followed thus far in that regard.

29. Although members of the Committee agreed that the procedure relating to the consideration of second periodic reports was rather time-consuming, they did not favour the preparation of a generalized list of issues since the differing circumstances of States made it necessary that they be approached on an individual basis. For essentially the same reason, the proposals to define the content and scope of the restrictions and limitations in some of the articles of the Covenant were not regarded favourably by some members. Finally, with regard to the question of extending the allowable time-limit for responses of States parties on questions of admissibility of communications, one member considered that more time should be provided as most Governments seemed to find it difficult to meet the deadlines under the Committee's current prodecures. At the same time, he noted that the interests of complainants should also be taken into account and that a fair balance should be struck. However, another member recalled that the time-limit for submissions on admissibility of communications under the Optional Protocol had already been extended in two stages from four weeks to eight weeks.

30. The Committee took note with special appreciation of paragraphs 13 and 14 of General Assembly resolution 39/136, in which the Assembly urged the Secretary-General to give more publicity to the work of the Committee and to continue to expedite the publication of the Committee's official public records in bound volumes. The Committee also noted with appreciation paragraph 9 of resolution 39/136, in which the Assembly requested the Secretary-General to keep the Committee informed of the relevant activities of the General Assembly, the Economic and Social Council and various human rights bodies.

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

A. Submission of reports

31. States parties have undertaken to submit reports in accordance with article 40, paragraph 1, 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, paragraph 1 (a), of the Covenant, the Committee, at its second session, approved general guidelines regarding the form and content of initial reports, the text of which appeared in annex IV to its first annual report submitted to the General Assembly at its thirty-second session. 3/

32. Furthermore, in accordance with article 40, paragraph 1 (b), of the Covenant, the Human Rights Committee adopted a decision on periodicity requiring States parties to submit subsequent reports to the Committee every five years. The text of the decision on periodicity, as amended, appears in annex V to the Committee's fifth annual report 4/ submitted to the General Assembly at its thirty-sixth session. The guidelines regarding the form and content of periodic reports from States parties under article 40, paragraph 1 (b), of the Covenant appear in annex VI to the same report. 5/

33. At each of its sessions during the reporting period, the Committee was informed of and considered the status of submission of reports (see annex IV).

34. The action taken, information received and relevant issues placed before the Committee during the reporting period (twenty-third, twenty-fourth and twenty-fifth sessions) are summarized in paragraphs 35 to 46 and 51 to 52 below.

Twenty-third session

35. The Committee was informed that the Dominican Republic and New Zealand (Cook Islands) had submitted initial reports and that the Ukrainian Soviet Socialist Republic and the United Kingdom of Great Britain and Northern Ireland had submitted second periodic reports. The Committee was also informed of the receipt of information supplementing the initial reports of the Gambia and Panama.

36. Owing to lack of time, the Committee decided to defer all aciton on the submission of reports to its next session.

Twenty-fourth session

37. The Committee was informed that initial reports had been received from the Congo and Afghanistan and that a second periodic report had been submitted by Sweden. The Committee was also informed about the request of the Government of Tunisia that its supplementary report, submitted in June 1983, be treated as its second periodic report.

38. The Committee decided to send reminders to the Governments of Belgium, Bolivia, the Central African Republic, Gabon, Luxembourg, Saint Vincent and the Grenadines, Viet Nam and Zaire, whose initial reports were overdue. The Committee also decided to send reminders to those Governments whose second periodic reports were overdue, namely: Bulgaria, Cyprus, Czechoslovakia, Ecuador, Finland, Germany,

Federal Republic of, Iran (Islamic Republic of), Libyan Arab Jamahiriya, Madagascar, Mauritius, Poland, Romania, Syrian Arab Repbulic and Uruguay.

39. In addition to sending reminders, the Committee requested one of its members from the African region to make contact with the authorities of two States parties in that regard.

40. The Committee also decided that the deadline for the submission of the second periodic report of Canada would be extended to 8 April 1988.

Twenty-fifth session

41. The Committee was informed that Luxembourg had submitted its initial report and that Czechoslovakia, Finland, the Federal Republic of Germany and Hungary had submitted their second periodic reports.

42. After reviewing the situation with respect to the late submission both of initial reports and of second periodic reports, the Committee expressed growing concern at the increasing number of overdue reports.

43. Accordingly, with regard to States parties whose reports had been due for more than two years, the Committee decided at its 617th meeting (CCPR/C/SR.617), given the fact that at least two reminders had been sent and in some cases other contacts had also been made, to mention, in accordance with rule 69 of the provisional rules of procedure, the names of the following States parties as not having submitted their reports in accordance with article 40 of the Covenant:

Zaire (initial report and second periodic report)

Central African Republic
Saint Vincent and the Grenadines (initial reports)

Libyan Arab Jamahiriya
Iran (Islamic Republic of)
Uruguay (second periodic reports)

The Committee also decided that the Governments of the above-mentioned States parties should be informed of the foregoing decision and should be reminded once again of their reporting obligations under article 40 of the Covenant.

44. The Committee decided to send reminders to all other countries whose initial or second periodic reports were overdue as of 26 July 1985, namely Belgium, Bolivia, Gabon, Viet Nam and Zambia (initial reports); Bulgaria, Cyprus, Ecuador, Madagascar, Mauritius, Poland, Romania, the Syrian Arab Republic, Trinidad and Tobago, New Zealand, Iraq, Mongolia, Senegal, the Gambia and India (second periodic reports).

45. In a further effort to facilitate the timely submission of reports in the future, the Committee decided:

(a) To authorize the Secretariat to dispatch reminders about overdue reports to the States parties concerned, on a regular basis, following each of the Committee's spring and fall sessions;

(b) To include in the annotations to the provisional agenda of each session relevant data regarding the status of overdue reports.

46. Regarding the reports of El Salvador and Guinea, the Committee also decided:

(a) To inform the Government of El Salvador of the Committee's intention to continue consideration of its initial report (which had been started at the Committee's twentieth session 6/) at its twenty-seventh session, to be held from 24 March to 11 April 1986; and to that end, to request the Government of El Salvador to submit its supplementary report by 31 December 1985;

(b) To request the Government of Guinea to submit the new report, which was to have been provided by 30 September 1984, 7/ within the next three months.

B. Consideration of reports

1. Introduction

47. During its twenty-third, twenty-fourth and twenty-fifth sessions, the Committee considered initial reports from Trinidad and Tobago, the Dominican Republic, New Zealand - Cook Islands and Afghanistan, as well as supplementary reports from Venezuela and Canada. It also considered second periodic reports from Chile, 8/ the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, Spain, the United Kingdom of Great Britain and Northern Ireland and the Ukrainian Soviet Socialist Republic. The status of reports considered during the period under review and reports still pending consideration is indicated in annex V below.

2. Second periodic reports

48. The Committee's approach and procedure for considering second periodic reports was described in some detail in the Committee's eighth annual report. 9/ As indicated in that report, the Committee agreed to continue to develop its procedure within the context of its statement of duties under article 40 of the Covenant 10/ and agreed that the matter should be reviewed by the Working Group on article 40 of the Covenant which was to meet before its twenty-third session. On the basis of its review of the methodology for dealing with second periodic reports, the Working Group concluded that the existing approach would not require major modifications. In preparing the list of issues for the consideration of the second periodic reports which were to be taken up during the twenty-third session, the Working Group was able to introduce some refinements, making the lists more concise and yet sufficiently precise to highlight the specific matters which the Committee wished to focus on. The Group also agreed that the effectiveness of the procedure would depend largely on restraint by members of the Committee in exercising their right to comment and put questions, especially as the time available for considering second periodic reports was limited.

49. The Committee proceeded on the foregoing basis in considering the second periodic reports of the Union of Soviet Socialist Republics and the Byelorussian Soviet Socialist Republic at the twenty-third session, of Spain and the United Kingdom at the twenty-fourth session and of the Ukrainian Soviet Socialist Republic at the twenty-fifth session.

50. The Committee still feels the need to improve its procedure for considering second periodic reports.

3. Supplementary reports

51. After considering the report of its Working Group under article 40 of the Covenant concerning supplementary reports, the Committee decided as follows at its 601st meeting:

> The supplementary information provided by the Gambia, Kenya and France, whose second periodic reports are due in 1985, 1986 and 1987 respectively, are to be considered together with the second periodic reports and the States parties should be informed accordingly.
>
> The supplementary information provided by Panama is to be considered together with that State party's second periodic report, which was originally due on 6 June 1983. The Committee extends the time-limit for the submission of the report to 31 December 1986.

52. The Committee also agreed to consider further the general question of its approach to additional information and decided to request its Working Group under article 40, which was to meet prior to its twenty-sixth session, to consider the situation with respect to the provision of additional information promised by various States parties, as well as how to proceed when such information had not been submitted in time.

4. States parties

53. The following sections relating to States parties are arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of reports at its twenty-third, twenty-fourth and twenty-fifth sessions. These sections are only summaries, based on the summary records of the meetings at which the reports were considered by the Committee. Fuller information is contained in the reports and additional information submitted by the States parties concerned 11/ and in the summary records referred to.

Chile (continued)

54. The Committee resumed and completed its consideration of the report of Chile (CCPR/C/32/Add.1 and 2) at its 546th to 548th meetings, held on 23 and 24 October 1984 (CCPR/C/SR.546 to 548). 12/ The Committee pursued its consideration of the report on the basis of the list of issues transmitted to the Chilean representatives prior to their first appearance before the Committee on 16 July 1984. 13/

Right to a fair trial and equality before the law

55. Although that issue had already been discussed by the Committee at its twenty-second session, 14/ members of the Committee felt that certain points had still to be clarified by the Chilean representatives, especially with regard to respect for the obligations set forth in articles 14 and 15 of the Covenant under the state of emergency in Chile. One member stated that since last July nothing

had changed. In that connection, members of the Committee wished to receive further information regarding the guarantees of judicial independence in Chile, and which of articles 6 to 14 of the Covenant were observed without derogations. In particular, they wondered how the independence of the judiciary could be effective when, under the twenty-fourth transitional provision of the Chilean Constitution, remedies against certain special measures adopted by the executive could not be sought from judicial authorities but only from the executive itself. It was observed that such a provision appeared to be incompatible with the requirement of article 14 of the Covenant. It was also asked whether the new Constitutional Court established under article 81 of the Chilean Constitution was already in operation and, if so, how many decisions it had already delivered; whether, during the transitional period, the Constitutional Court was competent to rule on legislative acts promulgated by the President of the Republic under the eighteenth transitional provision of the Constitution and, if so, whether any past enactment had been declared unconstitutional; and what powers had been removed from the Supreme Court of Justice by the Constitutional Court and how that had affected the independence of the judiciary.

56. Members of the Committee expressed concern about the use of military tribunals to try civilians and wished to receive further information on how those tribunals in Chile exercised their jurisdiction. They asked, in that respect, whether lawyers were permitted by military courts, whether they were able to carry out their duties normally, and whether the accused could really enjoy the rights set forth in article 14, paragraphs 3 (b) and (e), of the Covenant with regard to their defence. They also wished to know whether the members of the armed forces who served on military courts had adequate legal training and the necessary qualifications to carry out their duties properly, and whether the right of appeal against judgements of military tribunals to the Supreme Court was limited to review of the law that had been applied or whether it also included a review of both the facts of the case and the sentence.

57. In addition, members of the Committee wondered whether persons charged under the Terrorism Act could have a fair trial if, as it appeared from the Act, the accused were not entitled to be apprised of statements by witnesses or even to know their names, except in the case of witnesses for the prosecution. Noting that it was possible to be declared a war criminal in peacetime in Chile, it was asked how such a measure could be justified in law, and what the exact position of examining magistrates was in that connection in the judicial system. Reference was also made to recent protest demonstrations in Chile which had caused the death of several people and it was asked who those people were, which courts had tried the persons arrested and what sentence convicted persons had received. In connection with the arrest of political party leaders ordered on 8 October 1984 by a judge "vested with full powers", it was asked what those "full powers" were and whether the judge had acted on his own initiative or whether he had been following instructions.

58. Replying to questions raised by members of the Committee, the representatives gave some examples of the independence of the judiciary in Chile. Regarding the matter of appeals against special measures taken by the executive under the twenty-fourth transitional provision of the Chilean Constitution, they noted that it was possible to seek an administrative remedy, consisting of an application for review (recurso de reconsideración), and to appeal against a measure on the ground that it was not in conformity with the twenty-fourth transitional provision (recurso de amparo). The representatives also informed the Committee about the respective powers of the Constitutional Court, the Supreme Court and the Office of the Controller General of the Republic in ruling upon the constitutionality and the

legality of laws. They noted that the Constitutional Court had not yet had occasion to rule on the legality of supreme decrees - to which the executive usually resorted - since it was for the Office of the Controller to do so first. In fact, the Office of the Controller had already formulated objections to certain supreme decrees and it was also possible to submit complaints about possibly illegal measures to that Office. Under article 82 of the Constitution, all laws which the President might propose for adoption during the transitional period could, as a general rule, be submitted for review to the Constitutional Court.

59. The representatives explained the system of military courts in Chile in some detail, referring to the existence of courts of first instance, composed of a military judge and a professional prosecutor, and courts of second instance - or courts martial - composed of general assessors who were civilian judges. Above the military courts of first and second instance was the Supreme Court, which was a civil court. The courts martial heard applications for review, appeals and complaints. The Supreme Court heard complaints, as well as appeals on the merits and on the ground of material irregularity. The officials of military courts were professionals and the prosecutors were lawyers. Military courts had jurisdiction for offences in which members of the armed forces were implicated as alleged perpetrators, as victims or as participants, and military law was applicable to both military and civilian offenders when they were involved in the same offence. The regulations governing procedural guarantees were the same as for civilian trials. The only practical difference between military courts and civilian courts was that the military procedure was faster. The application of wartime procedure in peacetime had been decided upon because it had the advantage of speed in the case of terrorist acts involving the deaths of many people. With respect to the right of appeal against judgements of military tribunals, there were three kinds of possible recourse: appeal against the decision of a military tribunal to a court martial; complaint against the court martial itself on procedural grounds; and appeal on the merits. In the two latter cases the Supreme Court had jurisdiction.

60. Referring to the procedure concerning testimony by witnesses under the Terrorism Act, the representatives stated that testimony favourable to the accused was placed on record, whereas the accused had to be informed immediately of adverse testimony and of the names of his accusers. However, in the case of terrorist crimes, additional precautions had to be taken to avoid possible reprisals by terrorists against persons taking part in the trial. No legal remedies had been sought in connection with the application or the violation of the provisions of the Terrorism Act within the first six months after its promulgation.

61. The representatives also referred to the protest demonstration in Chile that had been mentioned. They said that legal action against the organizers had been taken by ordinary courts in accordance with the State Security Act of 1958. The magistrate had only the powers vested in him by law and his decisions were appealable. Nearly all the persons arrested during the demonstration had been released on the spot or after a few hours and those accused of minor infractions had been brought before a justice of the peace.

Freedom of movement

62. Members of the Committee noted that the report of Chile made no reference to problems affecting the enjoyment of freedom of movement and referred, in particular, to information in that regard available from the reports of the Special Rapporteur on the situation of human rights in Chile appointed by the Commission on Human Rights.

63. According to that information, it appeared that a national list of persons denied the right to return to Chile was still in existence while, on the other hand, the Government had been publishing monthly lists of persons authorized to return to Chile. It was observed that the criteria used in the preparation of the national list were tantamount to the arbitrary restrictions prohibited by article 12, paragraph 4, of the Covenant. With regard to the national list published on 10 September 1984 containing the names of 4,800 persons who were not entitled to disembark in Chile, it was asked whether persons whose names did not appear on that list were free to return. Since no monthly list of persons authorized to return to Chile had apparently been published in 1984, it was also asked what the position was in regard to those who had applied to return; what the general policy was in the absence of monthly lists; whether any fundamental change in the matter could be expected; and whether the courts in Chile had any power to examine decisions prohibiting certain persons from entering Chile even where those persons claimed that they had been arbitrarily deprived of their rights.

64. Members of the Committee also wished to know the criteria used in categorizing a person as an activist within the meaning of article 8 of the Chilean Constitution; what the grounds were for the expulsion of persons or the deprivation of their right of entry into Chile; whether the Terrorism Act contained any provisions on freedom of movement and in what specific cases banishment was applied and by what authority. A number of further questions were raised concerning banishment, including the nature of the "specific offences", cited in the Chilean report, for which banishment could be imposed; the number of persons banned and the length of their banishment; whether banishment and expulsion were based on judicial decisions; whether such decisions could be appealed and, if so, in what court; how many orders for restricted residence, banishment or internal exile had been issued in 1984 and whether banished persons had been authorized to return to Chile or were entitled to retain their passports and to have them renewed.

65. The representatives of Chile stated that their Government had long questioned the powers of the Special Rapporteur appointed by the Commission on Human Rights and that, while it was resuming its co-operation with United Nations bodies that applied a normal and universal procedure, it continued to object to the discriminatory procedure adopted by the Special Rapporteur.

66. The representatives stated that the Government of Chile supplied airline companies with a list of persons who required permission before returning to the country. The number of such persons had dropped by more than 55 per cent since October 1983. Between 30 August 1983 and 30 September 1984, 5,107 persons had been authorized to return to Chile, including a large number of former political leaders. The list in question would eventually be abolished. Every month the Chilean Government transmitted to the various Chilean consulates a list of persons authorized to return to Chile. It was also possible for affected persons to lodge a legal appeal through the amparo procedure and favourable decisions had been taken in 25 such cases since May 1984. There was also a procedure for the re-examination of cases still pending.

67. The representatives stated that re-entry into Chile under article 8 of the Constitution could only be prohibited by prior decision of a competent court. Internal banishment to a restricted area (relegación) was an exceptional administrative measure applicable only as prescribed in the Constitution and implemented pursuant to the twenty-fourth transitional provision. Internal banishment orders were normally issued against persons who caused repeated public disturbances, engaged in subversive activities or committed certain less serious

offences, but only after the offender had received two warnings. Twenty-three orders had been issued during 1983 and none had yet been issued in 1984. Persons affected by internal banishment orders were entitled to recourse to the courts, and could invoke the amparo procedure to find out why they had been banished. With regard to expulsions, the representatives noted that in 1984 the Chilean authorities had sought the expulsion of two people but that the procedure had been stopped by the courts. All Chilean passports were now identical and bore no distinctive marks. In no case was an expulsion permanent and judicial remedies were available, in particular, the remedy of amparo which had been allowed by the Supreme Court in 10 cases in 1984. The persons concerned lost neither their Chilean nationality nor their social security and retirement pension rights.

Interference with privacy

68. Members of the Committee wished to know whether the powers of the National Information Agency of Chile (CNI) had ever been legally defined; whether there was any system of supervision over the actions of the CNI; whether measures such as telephone tapping were employed in Chile only in connection with terrorist offences or also in cases of other serious crimes; whether security forces that had committed abuses and violations, especially during the state of emergency, were being prosecuted and punished; whether there had been any requests for compensation and, if so, whether it had been granted.

69. The representatives replied that security forces acted strictly in accordance with court decisions. In administrative cases, they were answerable to the Ministry of the Interior; in criminal cases, they were answerable to the courts of justice. Telephone tapping could be used in cases involving terrorism, but only with authorization from the competent court. Members of the security forces who had exceeded their authority were prosecuted and punished, even with the death penalty for serious crimes.

Freedom of expression

70. Members of the Committee welcomed the fact that a number of publications representing opposition views were permitted to appear in Chile and expressed the hope that human rights organizations such as the Chilean Commission on Human Rights and the legal departments of the Church would be able to continue their work despite the reprisals which had occurred in the country. However, it was noted that article 8 of the Constitution prohibited individuals from propagating doctrines based on the idea of class struggle and it was asked whether such a provision was not in itself a restriction of freedom of expression in that it discriminated against a specific opinion. Clarification was also requested on the restrictive measures set out in Act No. 18,313 concerning the abuse of public information. In addition, members wished to know how many prosecutions had been brought against persons for insulting, defaming or abusing the State; whether the new legislation relating to the press which had recently been under consideration in Chile had been adopted; whether it was possible for indigenous minorities to express their traditional cultural values and whether there was any restriction on the use by such minorities of their own language or on their access to the information media.

71. The representatives stated that freedom of the press and the broadcasting media was guaranteed in Chile by the judiciary. In view of the increasing number of attempts by the media to defame individuals, however, Act No. 16,643 had been amended in May 1984 by Act No. 18,313, to make it an offence to engage in actions

which were, or might be, injurious to the reputations of individuals, their spouses or members of their families, or which falsely attributed to them acts which could cause material or moral injury. Since many people felt that the Act itself was unjust and could lend itself to abuse, amendments to it were currently under consideration by a commission of the Press Association.

72. With regard to indigenous minorities in Chile, the representatives referred to a number of problems affecting the Mapuche Indian population and stated that every effort was currently being made to incorporate them into Chilean society with the same status and rights as all other Chilean citizens.

Right of peaceful assembly

73. Members of the Committee wished to know what measures the Government was taking to guarantee the right of peaceful assembly, particularly with regard to the demonstrations planned in support of a return to democracy; whether the concept of "public order" was clearly defined in the law and the Constitution; how the courts established the intent to provoke violence and how they interpreted the term "disturbance of the public peace". With reference to Act No. 18,256 of 26 October 1983, it was asked whether there were any safeguards to ensure that authorization to hold a peaceful assembly was not denied arbitrarily or delayed for so long that the planned assembly had to be cancelled; why the organizers were made liable for any damage caused regardless of any causal relation; whether the behaviour of the security forces might be responsible for peaceful protests degenerating into violence; and whether any member of the security forces had ever been accused of acts committed to that end.

74. The representatives stated that the legislation governing public assemblies remained the same as under the Constitution of 1925. Under normal circumstances, it was necessary only to notify the competent authorities of the intention to organize an assembly. If a request for authorization to hold an assembly was refused, the applicant was entitled to put his case before the appeals court with a recourse of amparo which was dealt with by the court within 24 hours. Problems had arisen in cases of so-called "peaceful protests" during which offences and acts of terrorism had been committed. Under a recent amendment to the law, persons who organized such protests knowing what the consequences would be incurred criminal responsibility for any illegal acts committed. It was the responsibility of the courts to decide whether or not offences had been committed.

Political activities

75. Members of the Committee observed that provisions of the Chilean Constitution relating to the right to exercise political activities appeared to be restrictive and manifestly contrary to the provisions of article 25 of the Covenant. They referred, in particular, to article 8 of the Constitution, which made any action antagonistic to the family or intended to propagate doctrines advocating a totalitarian concept of society, the State or the judicial order illegal, and which was applicable retroactively. They asked whether that article did not introduce the idea of discrimination based on ideology or philosophy and how the term "totalitarian character" was interpreted in Chile. With regard to article 17 of the Constitution, it was asked whether violators were deprived in fact not only of their right to vote or to be elected but also of other rights normally guaranteed to them by law or by the Constitution. With regard to article 19, paragraph 15, of the Constitution, which stipulated that political parties did not have a privileged position or a monopoly with respect to civic participation, it was observed that

political parties needed to win the broadest possible support of the population - if they were to be effective - and that the aforementioned constitutional provision seemed to make political pluralism and legitimate ideological competition between parties impossible. Reference was also made, in that connection, to a number of arrests of Chilean political opponents.

76. It was further observed that the provisions of article 23 of the Constitution, preventing trade-union leaders from taking part in the activities of political parties, were contrary to the provisions of article 25 of the Covenant and that the tenth transitional provision of the Constitution also constituted an obstacle to the exercise of political activity in Chile.

77. Further information was requested on the progress made in preparing the draft laws concerning the electoral system, on the date of their entry into force and on the status of political parties in Chile. It was asked whether the Chilean Government had given any thought to setting up, in advance of free elections, a body representing the country's major political tendencies that could monitor the Executive with a view to avoiding political and legal problems that could arise from the monopolization of power by a single individual. Information was also requested on the use of intimidation by certain organizations and on the situation regarding the enjoyment of the right of association and the rights of indigenous people in Chile.

78. The representatives replied that article 8 of the Chilean Constitution referred to both totalitarianism of the left and totalitarianism of the right. Its application was to be governed by a law subject to judicial review and the authorities could not be arbitrary in the implementation of the article. They pointed out that paragraph 15 of article 19 of the Constitution derived from article 8 and its purpose was to avoid a monopoly in participation that implied the possibility of a single party taking over. The tenth transitional provision of the Constitution had never been implemented in practice and political activity in Chile had never stopped. The only political party which had been dissolved was the Partido Nacional.

79. The representatives stated further that a law on political parties was to be enacted in November 1984 and that a copy of that law would be transmitted to the Committee. They also provided some information regarding the draft legislation on elections and the composition of the National Congress which, it was hoped, would be passed in 1985. As to the establishment of a body representing the country's major political tendencies, the representatives pointed out that the Constitution provided for two types of body with precisely that objective: the councils for communal development and the regional development councils referred to in articles 109 and 101 of the Constitution.

80. The representatives also stated that various criminal acts committed by both extreme left and extreme right groups had all been investigated. Regarding the right of association and the rights of minorities, the representatives referred to relevant information transmitted to the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization and the Committee on the Elimination of Racial Discrimination.

General observations

81. Members of the Committee thanked the representatives of Chile for their co-operation during the consideration of their country's report. They observed, however, that while the representatives had endeavoured to reply to many questions raised by the Committee, some important questions had remained unanswered. Similarly, the report of Chile failed to deal with a number of basic issues, particularly the extent to which the application of the Covenant was affected by the emergency legislation, and provided no explanation or justification for the many violations of the Covenant that had occurred.

82. Members of the Committee pointed out that the situation of human rights in Chile, despite some encouraging signs, remained serious. The state of emergency persisted and was accompanied by restrictions on human rights. A new Constitution had been adopted in 1980, but it had been accompanied by transitional provisions under which many of the human rights guarantees set out in the Constitution had been restricted or suspended. Thousands of people had been arrested following public demonstrations and military courts continued to exercise jurisdiction over civilians. Furthermore, members of the Committee still found it difficult to understand why the application of measures to restore a democratic government in Chile must wait until 1989. They observed that the underlying cause of the problems of the country seemed to be the discontent aroused by the existing régime among the people, who were prevented from exercising their political rights in accordance with the Covenant. Members of the Committee expressed the hope that the situation of human rights in Chile would improve in the near future and that the Committee would be provided with a comprehensive report that genuinely reflected the situation.

83. The representatives of Chile stated that all the observations made by members of the Committee would be brought to the attention of their Government and competent authorities and would receive due consideration.

Trinidad and Tobago

84. The Committee considered the initial report on Trinidad and Tobago (CCPR/C/10/Add.9) at its 550th, 551st and 555th meetings, held on 25 and 29 October 1984 (CCPR/C/SR.550, 551 and 555).

85. The report was introduced by the representative of the State party who expressed her Government's regret that its submission, which had been due in 1980, had been delayed. Since the report did not provide sufficient information, particularly with regard to the actual situation of human rights in the country and the implementation of the provisions of the Covenant, the representative provided additional information in her introduction about the relationship between the Covenant and her country's constitutional system and legislation, as well as measures that had been adopted by the Government to give effect to the rights recognized under various articles of the Covenant.

86. By way of general background, the representative of the State party noted that Trinidad and Tobago had achieved its independence on 31 August 1962 and had inherited all its basic laws from the British tradition. It had retained the Westminister system of government with a bicameral legislature, a titular Head of State, a party system which provided the Executive, and an independent judiciary. The country had remained a constitutional monarchy from 1962 until 1976, when a Republican Constitution was promulgated and the Queen was replaced as Head of State

by a President. The Republican Constitution had maintained and continued to guarantee the fundamental freedoms and human rights that had been enjoyed earlier by the citizens of Trinidad and Tobago and also guaranteed the independence of the judiciary. The Government of Trinidad and Tobago had observed those fundamental rights and freedoms scrupulously over the past two decades and her country took pride in being an open and tolerant society.

87. With regard to article 2 of the Covenant, the representative stated that, while the Covenant itself had not been given the effect of law in her country, there was nevertheless a direct juridical relationship between the country's domestic legislation and the provisions of the Covenant. Moreover, the Constitution established the responsibilities, rights and freedoms of nationals without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

88. Although there were no specific laws expressly prohibiting discrimination, equality before the law was ensured by provisions of the Constitution, in legislation, international conventions and common law. The concept of equality before the law was also deeply rooted in the legal practice and institutions of Trinidad and Tobago. No one was precluded on grounds of race, colour, sex or religion from initiating legal proceedings, and legal practitioners could not refuse their services to a client on any ground except personal unavailability or the existence of a conflict between their duty and their interest.

89. Under the Legal Aid and Advice Act, the Legal Aid and Advisory Authority had been established in 1977, which made it possible to make legal aid and advice readily available to persons of small or moderate means, with the costs of such assistance being wholly or partly defrayed by funds provided by Parliament. That had made it possible to grant wider public access to the courts, without distinction as to race, colour or ethnic origin.

90. The creation of an ombudsman under the Constitution could also contribute to implementation of the rights recognized in the Covenant, although the ombudsman's powers were limited to administrative actions. After investigating any alleged act of injustice by public authorities the ombudsman could make such recommendations for redress as he saw fit to the public agency or authority concerned. Where, in his opinion, sufficient remedies had not been provided within the time he had specified, the ombudsman could submit a special report to Parliament - a potential step that was clearly viewed with the utmost seriousness by government departments.

91. The possibility of resort to the ombudsman did not in any way restrict the aggrieved party's right of recourse to the courts. Any person alleging that his rights were being or were likely to be denied could apply to the High Court, which had original jurisdiction in such cases and could provide appropriate protection or remedy. Appeals against orders or decisions of the High Court could lie to the Court of Appeals or ultimately to the Judicial Committee of the Privy Council in London.

92. The Bureau on Human Rights, a private non-governmental organization, had been established in 1978. It monitored the observance of human rights in the country and served to ensure their continued enjoyment under the law.

93. Regarding article 3 of the Covenant, there hads been no serious charges of inequality of the sexes in Trinidad and Tobago. There was a National Commission on the Status of Women whose members were drawn from both the private and the public

sector and which served as an advisory body to the Government. The Commission met on a monthly basis and concentrated on such areas as the situation of rural women; education, training and employment; health and welfare; the legal status of women; and the improvement of the status of women generally. Some of the Commission's special activities related to the question of women in the workplace, women and the laws, domestic violence, the changing role of women in society, the portrayal of women by the media and women in small business. The Commission was also actively promoting the establishment of child welfare centres.

94. The Commission had recently submitted comments on the Occupational Safety and Health Bill as well as on the Sexual Offences Bill, also under active consideration by the Government. It had also updated a publication originally issued in 1975, entitled Legal Status of Women in Trinidad and Tobago, which served to educate women about their legal rights and how such rights could be enforced.

95. The women of Trinidad and Tobago were generally and fully protected under the country's laws and that was exemplified also through their participation in the Government and in the conduct of both private and public affairs. The equal role of women in the country's political, economic and social development was quite significant and public service was open to all without sexual discrimination.

96. Trinidad and Tobago had not yet signed the Convention on the Elimination of All Forms of Discrimination against Women since not all of the relevant agencies in the country had submitted their views and opinions upon its provisions. Trinidad and Tobago was a party, however, to the ILO Discrimination (Employment and Occupation) Convention, 1958, as well as to the Slavery Convention of 1926 and to the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

97. With regard to article 4 of the Covenant, the representative noted that, in apparent derogation of sections 4 and 5 of the Constitution, certain exceptional powers had been conferred on the President and Parliament in the interest of preserving the common good during periods of public emergency. To minimize the possibility of abuses, the exercise of such exceptional powers was expressly circumscribed under the provisions of sections 7 to 11 of the Constitution. During a state of emergency in 1970, when the country had been temporarily disoriented by an attempt to introduce change by unconstitutional means, all of the provisions embodied in the Covenant and guaranteed under the Constitution had been observed.

98. The death penalty was still applicable in Trinidad and Tobago in cases of premeditated murder or treason. The provisions of article 6 of the Covenant were well respected and the rights of the accused were amply protected. Public debates regarding the abolition of the death penalty in recent years indicated that opinion was almost equally divided on the subject. Currently, some 15 to 20 persons were either awaiting trial for murder or the execution of death sentences.

99. Turning to article 9 of the Covenant, the representative of the State party noted that the right to liberty and security of person was fully guaranteed in the Constitution, the device of habeas corpus offering an important safeguard in that connection.

100. With regard to articles 12 and 13 of the Covenant, the representative stated that the right of freedom of movement was fully ensured under the constitution and could be curtailed only for reasons of State security or of public health, as

provided for by relevant immigration, nationality and public health laws, which also covered the expulsion of aliens.

101. As to articles 14, 15 and 16 of the Covenant, the representative stated that Trinidad and Tobago's legal machinery was almost entirely in conformity with the Covenant's provisions.

102. The rights affirmed in articles 17 to 19 of the Covenant were widely accepted and understood in Trinidad and Tobago. The Government took continuing action, particularly in the fields of education, culture and information, to combat prejudices and to promote understanding, tolerance and friendship among the population of differing racial and national origins. Topics designed to promote understanding of Trinidad and Tobago's history and cultural diversity had been incorporated into the school curriculum as a further means of developing awareness of fundamental rights and freedoms. In 1980, Hindi had been included in the school curriculum in recognition of the importance of that language to the development of the Indian community which represented over 40 per cent of the population.

103. With regard to article 20 of the Covenant, incitement to racial hatred was punishable under the criminal laws of Trinidad and Tobago. Meetings, marches and processions that could promote national, racial or religious hatred or incite discrimination, hostility or violence were dealt with under the Summary Offences (Amendment) Act. There were no associations whose purpose was to promote discrimination or violence on the basis of colour, race or ethnic origin and no such association could be legally incorporated.

104. As provided in articles 21 and 22 of the Covenant, the right to peaceful assembly and the right to form or to join trade unions were both enshrined in the Constitution and were fully applied and respected.

105. The fundamental right to protection of family and children, covered under articles 23 and 24 of the Covenant, was also guaranteed under the Constitution and its enjoyment was ensured by the Government. Marriage was covered by the Marriage Ordinance, the Hindu Marriage Ordinance and the Muslim Marriage and Divorce Ordinance - none of which made reference to distinctions based on race or colour. All children born in the country were required to be registered and were automatically entitled to citizenship.

106. Turning to article 25 of the Covenant, the representative of the State party noted that participation in the conduct of public affairs at any level and access to public service were open to all citizens. There were no laws prohibiting persons of any race from standing for election, which the multi-ethnic composition of the country's legislative bodies clearly confirmed.

107. Finally, with regard to article 26 of the Covenant, the representative reaffirmed her Government's resolute opposition to discrimination of any kind and its commitment to racial, cultural and religious equality, equality before the law and equality of opportunity.

108. Members of the Committee welcomed the report, expressing particular satisfaction with the additional information contained in the representative's introductory statement - a most useful supplement to the written report, which did not give sufficient details on laws and practices. Several members noted with special satisfaction that the provisions of the Covenant had been generally well observed in Trinidad and Tobago.

109. With regard to article 1 of the Covenant, given the international importance of the right of self-determination, information was requested regarding the State party's solidarity with peoples struggling for independence, in particular the peoples of Palestine and Namibia. Additional information was also requested concerning the degree to which economic independence had been achieved by Trinidad and Tobago.

110. Members of the Committee noted, in connect with article 2 of the Covenant, that each State party undertook both to respect and to ensure the rights recognized in the Covenant. While those rights seemed to be generally respected in Trinidad and Tobago, members wished to know how they were ensured. They wondered whether the provisions of the Covenant had been incorporated into domestic legislation and, if not, what their legal value was and by what procedures they could be incorporated. They asked whether the Covenant could be invoked in the courts and vis-à-vis the authorities and how and by whom treaties were approved.

111. With regard to article 3, additional information was requested as to whether both sexes enjoyed equal opportunities at all levels and as to the proportion of the sexes in the educational system, in the civil service, at the management level and in political life.

112. Questions were raised concerning the compatibility of the constitutional emergency powers with article 4, paragraph 2, of the Covenant. Trinidad and Tobago's reservation of the right not to apply article 4, paragraph 2, of the Covenant in full was seen as a serious inconsistency with the object and purpose of the Covenant within the meaning of article 19 (c) of the Vienna Convention on the Law of Treaties and it was asked whether the Government would consider withdrawing that reservation; whether there were any legal remedies that could be pursued by detainees during a period of public emergency if the writ of habeas corpus had been suspended. Additional information was also requested about the nature of emergency powers referred to in article 7, paragraph 1, of the Constitution.

113. With regard to article 6 of the Covenant, members asked for additional information about the rate of infant mortality and about the Government's progress in reducing it. They also asked what regulations governed the use of firearms by the police; whether incidents involving the use of firearms by the police had been investigated; and whether the Government of Trinidad and Tobago could keep the possible abolishment of the death penalty under continuing review.

114. In connection with article 7 of the Covenant, members asked whether police or prison officials had ever been charged with violations of human rights such as cruel or inhumane treatment of detainees and, if so, what the outcome had been.

115. Members of the Committee noted that at times long delays occurred between a person's arrest and trial, which was not consistent with article 9 of the Covenant and which could give rise to serious miscarriages of justice. It was asked what steps had been taken to remedy that situation. In addition, members wondered whether there had been any instance in which the right to compensation for unlawful arrest or detention, recognized under article 9, paragraph 5, had been invoked.

116. With regard to article 10 of the Covenant, members requested information on whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were being observed and whether any problems had arisen in that respect; whether detainees were made familiar with those Rules and whether there were adequate procedures for ensuring that their complaints received due consideration. It was

also asked whether there was a system in Trinidad and Tobago for prison inspections to be carried out by persons independent of prison authorities, whether accused persons were segregated from convicted persons, and whether accused juveniles were separated from adults and otherwise treated in accordance with article 10, paragraph 3.

117. Referring to article 12 of the Covenant, one member asked what effect "citizenship of the Commonwealth" had on the right to travel and whether there were any restrictions on the freedom of citizens to leave the country or to emigrate.

118. Members of the Committee requested information, in connection with article 14, on several aspects of Trinidad and Tobago's judicial structure and judicial processes, including: the number of judges, how many of them were women, what the qualifications were for appointment to judgeships and to what degree different sectors of society were reflected in the judiciary; whether judges could be removed from office; whether the Director of Public Prosecutions was subject to the authority of the Attorney-General; what the Supreme Court's relationship was to the High Court and the Court of Appeal; whether, in addition to habeas corpus, other procedures such as mandamus or certiorari also existed; whether there was some type of means test to determine the eligibility of persons for legal aid through the Legal Aid and Advisory Authority; and whether the ombudsman was sufficiently independent and enjoyed sufficient status and prestige to be taken seriously.

119. Referring to article 18 of the Covenant, members of the Committee requested additional information regarding the enjoyment of the right to freedom of thought, conscience and religion, particularly as to whether all religions were treated equally by the State.

120. One member noted, in connection with article 19 of the Covenant, that, while the Constitution of the State party prohibited discrimination on the grounds of race, origin, colour and sex, it did not do so on the grounds of political opinion. Since that appeared to be an essential matter, an explanation was requested.

121. In connection with article 22 of the Covenant, one member, noting that labour law in Trinidad and Tobago appeared to be based on the Industrial Relations Act, asked what law was applicable to labour in the agricultural sector.

122. Referring to article 23 of the Covenant, members of the Committee wondered whether family law applicable to Hindu and Muslim marriages was in keeping with the provisions of the Covenant. Information was also sought as to the exact situation regarding the status of illegitimate children. It was also asked whether marriage laws guaranteed free and full consent to marriage, whether they fulfilled the conditions required under article 23, paragraph 4, and whether they assured the equality of rights and responsibilities of spouses. Members further inquired whether de facto marriage was recognized in Trinidad and Tobago as common law marriage with all its legal consequences.

123. With regard to article 25 of the Covenant, information was requested as to how a criminal conviction affected a person's status as a citizen, whether there was a limitation of political rights, and, if so, whether it was based on the gravity of the offence or the penalty imposed.

124. Members of the Committee asked for information on how Trinidad and Tobago interpreted article 27 of the Covenant, in particular whether minorities existed in the country or whether all groups were seen as forming part of the same society or nation; if there were minority groups, whether the Government helped them actively in preserving their culture and autonomy and whether any special legislation had been enacted on their behalf?

125. Replying to questions raised by members, the representative of the State party first addressed the suggestion that her Government should consider withdrawing its reservation concerning article 4, paragraph 2. In view of the serious nature of the question, she said that it would have to be referred to the relevant Ministry in her country which would supply a timely answer. She was certain that her answers to the numerous questions that had been raised, together with further written replies to be submitted later, would establish the prerequisites for initiating a dialogue between her country and the Committee.

126. In answer to the question about the use of firearms by law enforcement officers, the representative noted that traditionally the police in Trinidad and Tobago had been unarmed, but that more recently they had been issued weapons, particularly when investigating certain criminal matters and drug trafficking. When such firearms were used the circumstances were always investigated.

127. As to the possible abolition of the death penalty, the representative informed the Committee that the subject had been discussed recently at a seminar convened by her country's Bar Association, but that her Government was looking for a wider public debate on the matter and a larger degree of consensus before taking any further action. She stressed, however, that no convicted prisoner on death row had been executed in her country within the past five years.

128. Responding to questions about the treatment of prisoners, particularly young offenders, the representative explained that children under 16 were tried by a juvenile court, access to which was restricted to those directly involved in the case. If convicted, young offenders were sent to industrial schools where they received further education, skills training and rehabilition. New regulations were being drafted currently which would further liberalize access to educational opportunities and training and permit juvenile offenders to spend a weekend at their homes every two months. A new Youth Training Centre had been under construction since 1981 and its programme would be designed to train, instruct and counsel young offenders and develop their potential as well as a sense of discipline.

129. The standard minimum rules of the Prison Service conformed to the United Nations Standard Minimum Rules for the Treatment of Prisoners. Prisoners had the legal right to address confidential complaints about their treatment to the ombudsman who could investigate and recommend corrective action. No information was available to suggest that prisoners had complained of non-compliance with standard minimum rules nor had any of the ombudsman's reports to Parliament indicated negligence in complying with those rules.

130. However, complaints had been voiced against the long delays in bringing serious cases to trial, which were due mainly to the shortage of judges and the difficulties the Government had experienced in recruiting persons of suitable background and calibre for appointment to the bench. The Chief Justice had continued to draw attention to the problem in his annual addresses but no definitive solution had as yet been found.

131. Concluding her replies to questions concerning prisoners, the representative noted that, except for being deprived of their liberty and not being entitled to vote or to stand for election if serving sentences in excess of one year, prisoners had the same rights as other citizens.

132. Turning to the questions raised by members of the Committee concerning the judiciary, the representative of the State party recalled that the appointment, qualifications, tenure and oath of office of judges were covered in sections 104 to 107 of the Constitution and that such appointments were made by the President, acting on the advice of the Judicial and Legal Service Commission. There were at present 19 judges, one of whom was a woman - the second to become a judge in Trinidad and Tobago. The removal from office of judges - a complex procedure - was covered in sections 136 and 137 of the Constitution, but no judge had as yet been removed from office. Judges could neither be transferred to another court nor downgraded during their terms of office and their salaries could not be lowered but only increased by statute.

133. The High Court sat in Port-of-Spain, San Fernando and Tobago and judges were rotated on a monthly basis according to the case-load. The independence of the judiciary was guaranteed both by the Constitution and in practice, with the Bar, the opposition parties, the press and the public acting as watch-dogs to ensure that there was no breach of such a hallowed principle.

134. In response to questions concerning freedom of religion, the representative of the State party reiterated that freedom and equality of all religions were guaranteed by the Constitution, that the Church and the State were separate and that all rights and freedoms covered in the Covenant were fully recognized and observed in practice.

135. Trinidad and Tobago's population, broken down by religions affiliation, consisted of: Roman Catholics - 33.6 per cent; Anglicans - 15 per cent; Hindus - 25 per cent; Muslims - 5.9 per cent; Presbyterians - 3.9 per cent; and others - 16.6 per cent. Religious instruction was compulsory in primary schools with the various denominations providing their own instructors.

136. Responding to questions raised by members concerning the legal system and arrangements for legal aid, the representative noted that the Legal Aid and Advisory Authority maintained a list of about 200 lawyers in private practice who could act for clients under the legal aid system. There was a means test, with qualifying income being set at $7,000 net of rent, maintenance and household expenses. Upon direct application to the Legal Aid Authority, legal aid could be obtained for cases leading up to the Privy Council. In criminal cases, accused persons with legal counsel were referred to the Legal Aid Authority by the court. In order to provide better service, the Authority had opened area offices throughout the country; the number of applications had nearly quadrupled since 1978.

137. Regarding the status of the Director of Prosecutions, the representative referred to section 90 of the Constitution, which dealt with the appointment, tenure and functions of that officer, emphasizing that the Director acted entirely independently of the Attorney-General in the conduct of criminal prosecutions.

138. Turning to questions concerning the ombudsman, the representative noted that sections 90 to 98 of the Constitution contained the relevant constitutional provisions and that the current incumbent was a distinguished lawyer and a highly respected retired judge. While it was true that failure to implement a

recommendation of the ombudsman was not punishable, in cases where the complaint involved a government department or authority the ombudsman was bound to submit a special report to Parliament. Concerned officials could ultimately be subjected to severe disciplinary actions including summary dismissal, reduction in rank or pay and reprimands or fines, which made it quite evident that the ombudsman's proceedings were taken very seriously by officials and government departments.

139. Concerning Trinidad and Tobago's commitment to self-determination and to solidarity with the peoples of Namibia and Palestine, the representative pointed out that her country had consistently joined with other third world nations in supporting measures adopted in the United Nations and the specialized agencies - and indeed in numerous other forums - for the self-determination of peoples. In particular, consistent support had been given to the struggle for the independence of Namibia and for due recognition of the rights of the Palestinian people.

140. With regard to questions concerning the signing and ratification of treaties, she noted that such acts were the responsibility of the Executive and did not require prior or subsequent Parliamentary approval. Where legislative action was required to give effect to treaty obligations, Parliament was requested to enact such legislation.

141. In response to members' questions concerning minorities, she noted that in her country's view the Carib Indian population - which together with the Arawaks had been the original inhibitants of Trinidad and Tobago - was small in size and not readily distinguishable as a separate ethnic group at the present time. However, the Community Development Division in the borough of Arima assisted in various activites aimed at preserving the remaining elements of Carib-Indian culture. If the term "minorities" were to be applied to elements in Trinidad and Tobago's population of African, East Indian, Chinese, Syrian, Lebanese, Portuguese, European or mixed origin, it would be clearly seen that members of such ethnic groups played equal and responsible roles in political, civil and cultural life, with all of them being represented in Parliament, the Senate, municipal bodies and county and village councils as well as in the public service and various State and private enterprises. Participation in political parties, in education and in every form of national activity also cut right across ethnic and racial lines.

142. Referring to questions posed by members regarding education in Trinidad and Tobago, the representative of the State party said that school was compulsory for children aged between 6 and 12, that despite limited school places and other difficulties every child of compulsory school age attended school in public or private schools, that there was equality of the sexes, although not all schools were mixed schools, and that, in the near future, the Government would be integrating nursery education fully into the existing school systems.

143. In reply to information which had been requested by a member of the Committee on the peoples' customs and practices in her country, the representative replied that Trinidad and Tobago, being an amalgam of peoples from every continent in the world, had continually worked to mould the various cultural elements into one nation and a distinctive people. The ethnic breakdown of the population was the following: Negro 40.8 per cent, East Indian 40.7 per cent, white 0.5 per cent, Chinese 0.9 per cent, mixed 16.3 per cent, and other 0.8 per cent.

144. Referring briefly to economic developments, the representative of Trinidad and Tobago stated that her country was moving away from a plantation economy towards industrialization. At the political level Trinidad and Tobago respected the

principles and fundamental freedoms in its Republican Constitution and remained committed to the maintenance and promotion of human rights.

145. In conclusion, she expressed regret that she had been unable to reply to many important questions, but assured members that more comprehensive replies would be submitted in good time.

146. The members of the Committee expressed their gratitude to the representative of Trinidad and Tobago for her co-operation and the most interesting information she had supplied to the Committee and said that they were looking forward to continuing the dialogue with her country.

Venezuela

147. The Committee considered the supplementary report of Venezuela (CCPR/C/6/Add.8) at its 556th and 557th meetings, on 30 October 1984 (CCPR/C/SR.556 and 557). 15/

148. The report contained a brief introduction to seven main issues which were then discussed in more detail.

149. The Chairman invited the representative of Venezuela to introduce the supplementary report and to respond to questions which had been asked in connection with the initial report.

150. Turning first to the question of the status of the Covenant under Venezuelan law, the representative of the State party noted that under article 128 of the Constitution of Venezuela treaties required approval under a special law in order to have the force of domestic law. After approval by Congress, promulgation by the President, publication in the official gazette and registration with the United Nations, a treaty was applicable both internally and externally and had a status second only to the Constitution. As such, once a treaty had been incorporated into domestic law Parliament had no power to revoke or modify any treaty provisions unilaterally. He also confirmed that, since the list of rights and guarantees set forth in the Constitution was not exhaustive, Venezuelan legislative organs were completely at liberty to supplement such rights by making use of elements in the Covenant.

151. Since human rights were recognized in the Venezuelan Constitution, citizens could challenge before the Supreme Court of Justice the constitutionality or legality of any act of the State such as laws, decrees or administrative acts that they deemed prejudicial to the exercise of such rights. Under article 206 of the Constitution compensation could be sought by individuals for any loss or damage they might have suffered from such acts.

152. Citizens could also have recourse to the Executive in seeking administrative remedies by exercising their right of petition, which was enshrined in article 67 of the Constitution. Mindful of the need to improve the practical implementation of human rights provisions set forth in the Constitution and the Covenant, an Administrative Procedures Act had been adopted by the Government in June 1981, which provided, inter alia, that public authorities must act upon petitions within 20 days of their submission, failing which the applicant would be free to apply to the next higher instance for an appropriate remedy.

153. In connection with questions that had been raised concerning the right of amparo, referred to in article 49 of the Constitution, the representative pointed out that, although no act had been passed to enforce that right, citizens could none the less exercise it, since article 50 of the Constitution specifically provided that the absence of legislation regulating rights set forth in the Constitution should not restrict the exercise of such rights.

154. Addressing questions raised concerning article 4 of the Covenant, the representative stated that the Venezuelan Constitution and legislation were fully in conformity with and perhaps even more liberal in safeguarding against derogations from obligations during public emergencies than article 4 of the Covenant itself. In that connection he referred in particular to article 241 of the Constitution which prohibited the suspension or restriction of fundamental rights guaranteed under various constitutional or legal provisions, such as the right to life and the rights not to be subjected to torture, slavery or ex post facto criminal legislation. He noted further that the rights and guarantees set forth in the Constitution had not been suspended during the past 21 years and that the President's power to suspend or restrict such rights was carefully circumscribed, with the functioning and prerogatives of the organs of national power - namely, the judiciary and the legislature - being unaffected by any measures the President might be prompted to take in a public emergency.

155. Regarding the question of publicity in Venezuela for human rights, the representative referred to a Presidential decree proclaiming 10 December Human Rights Day and stipulating the widespread distribution of the Universal Declaration of Human Rights as well as the holding of public meetings on the scope and significance of human rights. Most importantly, it had also been decided in 1983 that human rights would henceforth be included in school curricula.

156. Turning to questions relating to article 9 of the Covenant, the representative of the State party stressed that, while the President could, under article 244 of the Constitution, order the arrest or detention of suspects so as to prevent imminent disturbances of public order, such measures were subject to review by Congress within a maximum of 10 days and could be immediately countermanded if Congress considered them unjustified. In any event, such detention was limited to a maximum of 90 days and detainees could resort both to the right to amparo and to habeas corpus. Furthermore, under article 46 of the Constitution, public officials incurred criminal, civil and administrative liability for ordering or executing acts that violated or restricted constitutionally guaranteed rights, and under article 1196 of the Civil Code victims could be awarded compensation for such infringements of rights.

157. Referring to questions concerning the role of the Public Prosecutor's Department, the representative noted that the Department's general responsibilities were defined in article 220 of the Constitution. The Department had constitutional rank, was autonomous and independent of other organs of power, and was entitled to co-operation from other public authorities. The Prosecutor General was appointed by Parliament for a five-year term of service, corresponding to that of the legislature. The Department, which was responsible for initiating "necessary proceedings in order to render effective the civil, criminal, administrative or disciplinary liability incurred by public officials as a result of the performance of their duties", was clearly empowered to take action against an act of the Executive. It also had certain supervisory responsibilities vis-à-vis the police and could investigate cases of arbitrary detention. Under the Code of Criminal

Procedure, the Prosecutor General also had well defined obligatory procedural responsibilities, including those relating to the testimony of witnesses, rejection of evidence, supervision of the lawfulness of procedure and the notification of irregularities. The criminal police were obliged to notify the Department immediately after the arrest of a suspect and police interrogations were to be conducted in the presence of a prosecutor.

158. In his final comment concerning article 9 of the Covenant, the representative referred to the procedures in use in cases of pre-trial detention and to the duration of such detention as set out in the sixth transitional provision of the Constitution. Only those police authorities that were recognized under the law as auxiliaries in the administration of justice, namely, the judicial police, the gendarmerie, the highway police, the frontier police, and officials of the Customs and the Aliens Departments, were authorized to order pre-trial detention. The cases of detainees must be placed before a competent court within a maximum of eight days from the time of arrest and courts were obliged, in turn, to complete consideration of such cases within 96 hours - or at most eight days if they were serious and complex. Pre-trial detention beyond those time-limits was unlawful and the right of habeas corpus could be invoked.

159. As to the questions raised by members concerning article 14 of the Covenant, the representative explained that the independence of the judiciary had been clearly established since 1947, was affirmed explicitly in article 205 of the Constitution and had been reaffirmed in article 1 of the Organic Law of Venezuela. Even if constitutional guarantees were to be suspended, the Supreme Court would have precedence over organs of political power. The appointment of judges was dealt with under article 207 of the Constitution and appropriate implementation legislation - the Judges Act - had been adopted on 30 December 1980. Under article 217 of the Constitution, a Council on the Judiciary had been established to ensure the independence, efficiency, discipline and dignity of the courts. Five of the nine members of that Council were appointed by the Supreme Court, with two each being appointed by Parliament and the Executive, respectively.

160. Regarding the respective jurisdictions of military and civilian courts, he pointed out that civilians were subject to military jurisdiction only in cases covered by the Military Code or when employed in military establishments or during war-time. Under a Supreme Court ruling, where an offence was punishable under both the Penal Code and the Military Code, the former took precedence. In that connection, reference was made to the case of a journalist charged with publishing classified information, which had first been considered by a military court and then been transferred by the Supreme Court to the civil courts.

161. As to questions relating to defence rights in criminal cases, the representative said that no one could be held incommunicado in view of the right to immediate access to a defence, that persons must be informed of the reasons for their detention on the day of arrest, with a hearing taking place within 30 days and that the accused had the right to respond in open court after the reading of the indictment as well as the right to cross-examine witnesses.

162. Before replying to questions that had been raised concerning article 23 in connection with article 3 of the Covenant, the representative commented briefly on the general subject of the enjoyment of civil and political rights by women in Venezuela. He pointed out that women had had the right to vote and to be elected to public office since 1946, that several women had become Cabinet ministers and that they constituted the majority of judges, that women accounted for nearly half

the student body and about 40 per cent of the teaching staff at the higher levels of education and that women in fact already enjoyed a wide measure of equality with men. By establishing in 1979 a Ministry of State for the Participation of Women in Development, the Government had given further impetus to efforts to enhance the status of women through practical as well as legal measures.

163. The revised Civil Code, promulgated in 1982, contained provisions that had significantly enhanced the rights of married women. Articles 137 to 140 of the 1982 Code provided, for example, that both spouses had the same rights and duties in marriage and that decisions about married life, including the place of residence, were to be taken by mutual agreement. Civil Code provisions relating to joint property had also been altered, with both spouses being granted equal rights in administering such property and having an equal voice in its disposal. Another important provision (art. 185) removed the earlier bias against women in the treatment of adultery and made it a ground for divorce without qualification for either partner.

164. With reference to article 24 of the Covenant, the new Code had also made important improvements in the rights of illegitimate children, particularly by providing for their legal recognition by the father or the establishment of paternity (arts. 209 and 210) and by extending the right of inheritance even to those born out of wedlock, provided that the relationship between parents and descendants had been legally ascertained. The minimum age for marriage, about which members of the Committee had also inquired, had been raised from 14 to 16 for males and from 12 to 14 for females.

165. Referring to questions raised concerning freedom of religion in Venezuela, the representative of the State party stressed that everyone in the country had the right to profess his faith and practice his religion in private or in public, provided that it was not contrary to public order and morals. Any legislative limitations on that right could only be applied by the National Executive in keeping with the requirements of the Constitution.

166. Regarding article 19 of the Covenant, the representative stated that the principle of freedom of expression was upheld without discrimination in all the mass media. The Government had no intention of restricting press freedom by resorting arbitrarily to constitutional powers that were only to be used in case of danger to State security.

167. Replying to questions concerning self-determination, the representative of the State party referred to the preamble to the Constitution of Venezuela, which specifically called for co-operation with all nations in ensuring the self-determination of peoples and the rights of individuals as well as the repudiation of war and conquest as instruments of international policy. He noted that Venezuela had participated in the International Conference in Solidarity with the Struggle of the People of Namibia in 1978, wholeheartedly supported the independence of the Namibian people, was resolutely opposed to apartheid and had severed all forms of relations with the racist régime of South Africa. His Government also believed that a just solution in the Middle East could only be achieved by respecting the rights of the Palestinian people, including their right to self-determination.

168. In connection with article 3, the representative noted that men and women in Venezuela enjoyed equal opportunities under the law, that his country had ratified the Convention on the Political Rights of Women, that the principle of equal pay

for equal work without discrimination had been established in article 81 of the Constitution, and that the Venezuelan law prohibiting activity in commerce by women had been rescinded.

169. Regarding article 22, the representative noted that Venezuela had ratified the ILO conventions on forced labour, freedom of association, trade union rights and the equal treatment of migrant workers. Migrant workers enjoyed all the rights of other workers, including rights stemming from collective agreements. No discrimination was permitted in the employment of migrant workers on grounds of race, colour, sex etc. Under the Andean Agreement on Migrant Labour, even workers engaged in activities on their own account without the necessary papers were considered to have the right to work in Venezuela.

170. As to the situation of the indigenous population in Venezuela, it was noted that it formed only 0.8 per cent of the total population. The general policy being pursued was to provide instruction in Spanish while ensuring that the indigenous communities preserved their own language and characteristics.

171. Responding to questions regarding health care activities in Venezuela, the representative of the State party noted that the Ministry of Health received the largest proportion of the national budget, with the Ministry of Education coming second. The hospital and health centre network in the country had expanded considerably during the past 10 years and currently met the needs of 80 per cent of the population. State-provided medical services covered hospital care, preventive medicine and medical treatment, which were available to both Venezuelan nationals and foreigners free of charge without discrimination in respect of financial status. Social security institutions also provided community health services. On a related matter, the representative stated that drug addiction was a subject of great concern to the President of Venezuela, who had spoken of it at length in his statement before the General Assembly. Venezuela had enacted new legislation on drug abuse in 1983.

172. As to the question of granting recognition of the right of conscientious objection, the representative responded that, under article 53 of the Venezuelan Constitution, military service was compulsory, irrespective of class.

173. Responding to other questions that had been raised by members of the Committee, the representative stated that since 1958 considerable financial and personnel resources had been devoted to improving literacy and the current illiteracy rate was 15 per cent, that under article 63 of the Constitution private correspondence could not be seized except on judicial order and that the right of peaceful assembly, guaranteed by article 71 of the Constitution, was not limited to citizens of Venezuela but applied to foreigners as well.

174. Finally, the representative of the State party assured the Committee that there were no political detainees in Venezuela although detained persons occasionally claimed to have acted for political motives.

175. The Chairman of the Committee noted with satisfaction that much of the new legislation in the country had been influenced by the discussions in the Committee. He expressed regret that, due to lack of time, a number of questions had remained unanswered, but suggested that Venezuela might answer them in its second periodic report which was due to be submitted to the Committee in 1985.

Canada

176. The Committee considered the supplementary report of Canada (CCPR/C/1/Add.62) at its 558th to 560th and 562nd meetings, held on 31 October, 1 and 2 November 1984 (CCPR/C/SR.558 to 560 and 562). 16/

177. In introducing the supplementary report of Canada, the representative of the State party observed that a number of significant measures to protect human rights had been taken in his country since the submission of Canada's initial report, the most important being the coming into force in April 1982 of the Constitution Act, 1982, and with it, in all provinces except Quebec, the Canadian Charter of Rights and Freedoms, which consisted of a series of legal principles having the force and standing of constitutional law.

178. Taking up the various sections of the Charter, the representative explained in detail which sections of the Charter corresponded to the respective provisions of the Covenant.

179. In addition to guaranteeing various rights and freedoms, the Charter set out a series of rules governing its application. It also stipulated that the fact that it guaranteed certain rights and freedoms did not restrict any aboriginal treaty or other rights of the Indians, Inuits and Métis of Canada. Further, notwithstanding any other provisions of the Charter, the rights and freedoms referred to therein were guaranteed equally to both sexes. The Charter finally prescribed that it must be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

180. Anyone who considered that his Charter rights had been infringed might, under section 24, apply to a court of competent jurisdiction to obtain such remedies as the court deemed appropriate and just in the circumstances. They included protection against admissibility of evidence obtained in a manner contrary to the Charter. Moreover, under section 52 of the Constitution Act, 1982, where a law was inconsistent with a provision of the Charter, the court must declare it to be of no force or effect.

181. Section 33 of the Charter provided that the Federal Parliament, a provincial legislature or a territorial council might make any of its laws apply for a period not exceeding five years, notwithstanding the provisions of the Charter relating to fundamental freedoms, legal rights and equality rights. However, to continue to have effect, a "notwithstanding" clause must be re-enacted, but no re-enactment could be for a period exceeding five years.

182. All the provisions of the Charter relating to fundamental freedoms, democratic rights, freedom of movement and residence, legal rights and linguistic rights had been in force since 17 April 1982. Those relating to equality rights would become operative on 17 April 1985.

183. Although it was true that the Charter and the Covenant were not identical in every respect, there was a high degree of similarity and complementarity between them. The Charter gave effect to many of Canada's obligations under the Covenant. Further, the Covenant and the comments made by members of the Committee during the review of Canada's initial report had contributed to many of the changes to the original draft of the Charter.

184. The Covenant was also influencing the interpretation of the Charter. There were at least 20 decisions to date in which judges had referred to the Covenant and other human rights instruments to interpret the provisions of the Charter. One example was the September 1984 decision of the Ontario Court of Appeal in The Queen v. Vedeoflicks Ltd. in which the judge had drawn inspiration from the Covenant to arrive at the conclusion that freedom of religion included not only the ability to hold and openly profess certain beliefs, but also the right to observe the essential practices demanding by one's religion. Moreover, provincial Governments had agreed to consider the requirements of the Covenant when preparing their legislation.

185. The interpretation of the Charter would, however, be determined by the courts in proceedings submitted by persons alleging infringements or denial of the rights guaranteed by the Charter. To date, more than 1,400 judgements had been rendered on the Charter, and at least another 1,000 cases concerning it were before the courts, including some 40 appeals to the Supreme Court of Canada. The litigation sparked off by the Charter over the past two years had revealed certain deficiencies in Canadian laws and the way in which they were applied. However, the interpretation of the Charter thus far had revealed no major pattern of human rights violations in Canada.

186. Entrenching rights and freedoms in the Constitution conferred heavy responsibilities on the Canadian judiciary. In the course of the constitutional debate leading to the adoption of the Charter, concern had been expressed that legitimate policy interests of Parliament or the legislatures might be overriden by the judiciary. As a result, section 33 had been incorporated in the Charter, but only for issues relating to fundamental freedoms, legal rights and equality rights.

187. With one exception, no Government had availed itself of section 33 of the Charter. The National Assembly of Quebec had incorporated a notwithstanding clause in every provincial statute, whether adopted before or after the entry into force of the new Constitution. By that decision, the Government of Quebec indicated its disagreement with the process leading to the new Constitution and with its contents. It was in no way opposed to the protection and promotion of human rights. Indeed, the Government of Quebec had amended the Charte des droits et libertés de la personne du Québec to ensure that, in areas falling under its jurisdiction, all persons in Quebec would enjoy protection similar to that afforded by the Constitution.

188. The Canadian Charter of Rights and Freedoms protected the rights of the aboriginal population. Section 35 of the Constitution Act, 1982, recognized and affirmed the existing aboriginal and treaty rights of the Indian, Inuits and Métis of Canada. Section 37 made provision for the holding of a constitutional conference to identify and define those rights, including possible new rights for aboriginals. The Conference, held in March 1983, had brought together the Prime Minister of Canada, the Premiers of the provinces, the elected leaders of the territorial Governments and the leaders of Canada's aboriginal population and had led to important results, including the extension of aboriginal and treaty rights to men and women on an equal basis, and the scheduling of additional constitutional conferences prior to 17 April 1987. The Government also intended to seek the elimination of the discriminatory provisions against Indian women in the Indian Act, in particular section 12 (1) (b) which deprived an Indian woman of her status upon marriage to a non-Indian.

189. As far as legislative measures were concerned, the protection of human rights in Canada did not rest exclusively on the Canadian Charter of Rights and Freedoms. A broad spectrum of measures had been adopted to combat discrimination, including changes in the Canadian Human Rights Act and the Canadian Labour Code. For example, the protection of the disabled had been strengthened and the 1983 amendments to the Act prohibited discrimination on the basis of marital or family status.

190. With regard to the right to privacy, guaranteed by article 17 of the Covenant, the Federal Privacy Act, which entered into force on 1 July 1983, protected private life. It also gave Canadian citizens right of access to most of the information about them in Government files. If access was denied, a complaint could be addressed to the Privacy Commissioner and an appeal might be brought before the courts. The provinces had also adoped legislation to protect privacy. Further, to increase the effectiveness of the measures taken in conformity with articles 6, 10, 14, 23 and 24 of the Covenant, the Criminal Code had been amended to strengthen the protection afforded women, children and the family. The new provisions in the Criminal Code concerning sexual assault ensured greater protection for the complainant.

191. Since the effective enjoyment of human rights required a knowledge of those rights, considerable efforts were being deployed to promote human rights in Canada and also to alert the public to Canada's international human rights obligations. Thus, the texts of the basic United Nations instruments and Canada's reports submitted in conformity with those instruments were distributed free of charge to the public. Funding was also available to non-governmental organizations and individuals seeking to inform the Canadian public about matters related to the Canadian Charter of Rights and Freedoms and to upgrade human rights information. Those organizations had a significant role. The Canadian Human Rights Commissions also conducted campaigns to alert Canadians to the evils of discrimination and to remind them of the remedies available under federal and provincial legislation. The media, the members of the legal profession and the general public were increasingly aware of those rights and new groups consisting mainly of natives, disabled persons and women were militating nationally as well as within international organizations.

192. Referring to misgivings that had been expressed as to the length of time taken by the Government to decide on the admissibility of certain communications, the representative noted that delays sometimes occurred because of the size and the federal organization of the country, but that they were mostly due to the time devoted to research of which the Committee was the ultimate beneficiary. However, the competent authorities had been requested to proceed more expeditiously and the internal procedures regulating responses was being reviewed.

193. In concluding his introductory statement, the representative of the State party noted that, while Canada's next periodic report was due in April 1985, his Government wished to propose a postponement until April 1988 to enable it to present in that report a better evaluation of the impact of the Canadian Charter of Rights and Freedoms on Canadian laws and administrative practices. Moreover, by 1988 the Supreme Court of Canada would have passed judgement on a substantial number of cases involving the Charter.

194. Members of the Committee expressed appreciation for the supplementary report of Canada and for the highly informative introduction provided by the representative of the State party. They welcomed the Canadian Government's

seriousness and co-operation with the Committee, expressing particular satisfaction that the Committee's earlier comments had been taken into account in improving the protection of human rights in Canada. Further information was asked for concerning the importance attached by Canada to the Covenant in general and about the Covenant's place in Canadian domestic law at both the federal and the provincial level.

195. With regard to article 1 of the Covenant, one member regretted that there was not more information regarding article 1 in either the initial or the supplementary report of Canada and expressed the hope that such information would be provided, particularly regarding the Canadian Government's attitude to the Namibian and Palestinian people's struggle for self-determination and any practical measures of assistance to those peoples it contemplated. It was asked whether the use of the term "peoples" in section 35 of the Canadian Charter, in connection with the recognition and affirmation of the rights of the aboriginal peoples of Canada, did not cast a new light on the applicability of article 1 of the Covenant.

196. Turning to article 2 of the Covenant, several members wondered why the Canadian Charter did not seem to afford protection from violation of individual rights, through discrimination for example, committed by non-governmental or private entities. Further clarification was also requested concerning the precise intent of section 33 of the Charter, and whether its application would not lead to derogations from rights guaranteed under the Covenant. It was noted that the Canadian Charter did not make reference to all non-derogable rights mentioned in article 4 of the Covenant nor to the fact that any derogations that were permitted under the Covenant could only occur in times of public emergency and had to be non-discriminatory.

197. An additional question involving article 2 related to section 24 (1) of the Canadian Charter, which was presumably to be read in connection with article 2, paragraph 3 (c), of the Covenant as an enforcement measure, and not to be interpreted literally, since otherwise individuals merely alleging that violations of rights had occurred would appear not to have recourse to the courts in search of remedies. It was also noted that there was a property qualification for eligibility for membership of the Senate, which seemed incompatible with the prohibition against discrimination based on property contained in article 2, paragraph 1, of the Covenant. Finally, it was asked whether persons excluded from public service on national security grounds could challenge such decisions before judicial or other bodies.

198. In connection with article 3 of the Covenant it was asked why the entry into force of section 15 of the Charter, which dealt with equality and non-discrimination under the law, was to be delayed for three years beyond the entry into force of the rest of the Charter.

199. With reference to article 5 of the Covenant, one member wondered how the important rule of interpretation contained in that article could be invoked in a human rights case in Canada, when the Covenant itself was not applied.

200. Regarding article 6 of the Covenant, members of the Committee expressed a need for information concerning the protection of the right to life beyond issues connected with the death penalty. With regard to the death penalty, concern was expressed at the length of the list of offences for which the death penalty could be imposed under the National Defence Act, which seemed to indicate a departure from the principle of proportionality. It was asked whether the Canadian

Interdepartmental Committee on Human Rights, which, in 1983, had considered the question of incompatibility between penalties prescribed for certain offences against the Code of Service Discipline and article 6, paragraph 5, of the Covenant, had reached any conclusions and whether, in the view of the Canadian Government, the protection of the right to life guaranteed by article 6 of the Covenant applied to unborn children.

201. With reference to article 9 of the Covenant, additional information was requested about the remedies available to persons detained for reasons other than criminal offences, such as mentally ill persons confined in psychiatric hospitals or aliens detained prior to expulsion, whether such persons enjoyed protection from arbitrary measures, and whether a person arbitrarily confined to a mental hospital could challenge his admission under section 24 of the Charter. Referring to a well-known case, one member wanted to know what had been done to ensure that individuals could not be subjected to psychiatric experiments without their consent. Another member observed that there was an inconsistency between the subjective right to compensation provided for in article 9, paragraph 5, of the Covenant and the discretionary power of a court, under section 24 of the Charter, to decide whether compensation should or should not be granted. It was further observed that arresting officers were apparently not required to show arrest warrants in making arrests but only to have warrants in their possession "if possible".

202. In connection with article 10 of the Covenant, reference was made to recent reports of riots and suicides in Canadian prisons and it was asked how the Canadian authorities had reacted to such events, what policy was followed in recruiting prison staff and whether there was both a federal and a provincial prison system. Were there any studies or statistics showing that positive results had been obtained in rehabilitating former prison inmates or concerning the number of repeat offenders? Were there any provisions for eliminating all traces of previous prison records after years of good behaviour? Additional information was also requested about machinery at the provincial level for the inspection of prisons by persons independent of prison authorities.

203. Finally, it was noted that in Northwest Territories and the Yukon, the number of persons in prison per 100,000 inhabitants was much higher than in the other provinces and it was asked whether that indicated that there were proportionally more Indians than whites in Canadian prisons. If so, it could be further inquired whether indigenous communities had been properly integrated into Canadian life.

204. In connection with article 11 of the Covenant, it was asked whether a debtor who had been declared bankrupt was still able to enter into business agreements.

205. With regard to article 13 of the Covenant, one member asked for additional information about procedures for the expulsion of aliens from Canada and about the treatment of persons arriving in the country without a valid visa.

206. Regarding article 14 of the Covenant, it was asked whether decisions regarding the holding of a trial in camera rather than in public were always taken by the court or at times also by the Government or under some legal provision. Additional information was also requested about the status of the Juvenile Delinquents Act which provided for trials "without publicity, separately and apart from others accused", but which had apparently been declared unconstitutional by a court. It was also asked whether the information media respected judicial orders prohibiting publication of certain information that might be prejudicial to the rights of the

victim or the accused, and if not, whether legal action had been taken against them and to what penalties they might be, or had been, subjected. Members also inquired whether a foreign lawyer could represent Canadians before Canadian courts without a special licence and whether Canadian lawyers could represent a citizen in any court or only certain lawyers in certain courts. In addition, it was asked whether or not the services of an interpreter, when needed, were provided to accused persons free of charge, as required by article 14, paragraph 5 (f), of the Covenant. Further information was sought concerning the degree of independence of superior court judges, the procedures for their removal under section 99 of the Constitution Act of Canada and it was asked whether that Act guaranteed the independence of lower court judges vis-à-vis the Executive. Finally, observing that, by not providing compensation in cases of miscarriage of justice, Canada was failing to comply with article 14, paragraph 6, of the Covenant, one member considered that the situation should be remedied.

207. In connection with article 17 of the Covenant, members noted that the right to privacy was not explicitly recognized in the Charter, nor was it mentioned in the supplementary report. Did any federal or provincial legislation exist referring to the right of privacy? What system existed for protecting the privacy of individuals from infringement through data-processing technologies? Where an individual was denied access to personal information contained in a data bank, was there some type of remedy - a sort of habeas data - available? Citing reports about interference with the privacy of foreign students in Canada, particularly the correspondence of those who were politically active, one member inquired about the extent to which non-interference with privacy was guaranteed to aliens under Canadian laws.

208. With regard to article 18 of the Covenant, additional information was requested by one member on the problem of conscientious objection, particularly in view of the fact that members of the armed forces were still subject to the death penalty. Observing that the restrictions on the rights set forth in article 18, paragraph 3, article 19, paragraph 3, and article 23, paragraph 2, of the Covenant were subject to stricter conditions than those provided in section 1 of the Charter, the member asked whether the restrictions on rights and freedoms possible under that provision were compatible with the Covenant.

209. It was noted that neither the initial nor the supplementary report of Canada addressed Canada's obligations under article 20 of the Covenant and further information was requested in that regard.

210. As for the implementation of article 22 of the Covenant, it was asked whether the jurisdiction of the Canadian Labour Relations Board also covered public service employees and whether there was any provision for judicial review of the Board's administrative actions or for appeal against its decisions. Additional information was also requested about the nature of the Board's quasi-judicial and administrative functions and the effect of its decisions at the provincial and national levels, as well as the Board's relationship with the Ministry of Labour.

211. Members also inquired about the legal status of trade unions, whether they could be dissolved as a result of judicial proceedings or by a ministerial decision, whether they were organized at both the national and the provincial level, and whether collective bargaining agreements had general scope or were limited to certain sectors, categories or enterprises. Additional information was also sought about union membership and about the degree to which rights guaranteed

under ILO Conventions No. 87 and No. 98 could be exercised under Canada's complex legal system.

212. Referring to article 23 of the Covenant, it was asked why the minimum marriageable age in some Canadian provinces was so low; as an example the Civil Code of Lower Canada was cited which established an age limit of 12 and 14 years for women and men, respectively. It was also asked whether family courts, which had an important role in solving family disputes, operated in all Canadian provinces and territories.

213. Regarding article 25 of the Covenant, it was asked whether article 32 of the Public Service Employment Act, which deprived civil servants of eligibility for election to provincial or federal office, was not so broad as to constitute an unreasonable restriction on rights guaranteed under article 25 of the Covenant. A member also asked whether persons excluded from public service on the grounds that they might constitute a threat to national security could challenge such a decision before the courts.

214. With reference to article 26 of the Covenant, members of the Committee asked for further clarification as to whether section 15 of the Charter prohibited discrimination based on political opinion and how and under what legal rules the right to equality before the law could be restricted. It was asked whether the failure of the Ontario Code to provide protection on the grounds of language, social origin, property and birth, for example, indicated that discriminatory legislative provisions could be adopted.

215. In connection with article 27 of the Covenant, it was asked whether any steps had been taken to allow the indigenous population to use their own language before legal bodies or to protect their rights to ancestral lands. Members also inquired whether the term "aboriginal peoples", referred to in section 35 (2) of the Canadian Charter was the same as the term "minorities" employed in article 27 of the Covenant, whether persons belonging to minorities had access to the courts on a group or individual basis, whether treaties or agreements with the aboriginal peoples were fully recognized or restrictively interpreted and whether any members of Indian minority groups had been elected to the Senate or the House of Commons. Further questions were asked about what posts Indians could hold at the federal and provincial levels and about measures that had been taken on Indian conditions since the publication in 1980 of the survey by the Department of Indian and Northern Affairs.

216. The representative of the State party expressed appreciation for the Committee's searching comments, which he said showed an understanding of the Canadian situation. Canada had entered a transitional period in the interaction between its domestic law and its commitments under international instruments, was taking greater account of international standards and was entrenching in the Constitution the fundamental human rights embodied in the Covenant. While the Canadian authorities intended to benefit from the discussions with the Committee, it was unlikely, in view of the complexity of Canada's constitutional system, that all the issues raised by the Committee would be resolved by the time his country's second periodic report was submitted. At the same time, it should be noted that, although there were some apparent anomalies between the provisions of the Covenant and the Canadian Charter of Rights and Freedoms and some issues were not adequately dealt with in the law itself, that did not necessarily mean that Canada was not strictly complying with the Covenant or that no satisfactory remedies were available.

217. Replying to specific questions raised by members of the Committee, the representatives of the State party explained that both vertical and horizontal mechanisms existed for providing a co-ordinated approach to Canada's implementation of the Covenant. Generally speaking, vertical co-ordination was achieved through the activities of federal or provincial ministers who were responsible for various functional areas and through the work of the federal and provincial commissions on human rights. Horizontal co-ordination was accomplished at the provincial level by a minister designated within each province to co-ordinate human rights matters, and at the federal level by the Secretary of State of Canada, assisted by an Interdepartmental Committee on Human Rights, and the Federal-Provincial Committee of Officials responsible for Human Rights.

218. The principal aim was to make the public aware of the issues involved in the promotion of human rights. To that end, human rights material, including the reports to the Human Rights Committee, was widely circulated and the media were encouraged to cover international as well as national human rights affairs. Special attention was paid to schoolchildren, students, and interest groups representing the underprivileged, aborigines, women's groups and visible minority groups so that they were made aware of their rights and could take any appropriate action that might be needed.

219. Regarding the use of indigenous languages, the representative noted that individuals who did not speak either English or French were entitled to the services of interpreters before courts of law, including interpreters for the aboriginal languages. In addition, there were several federal and provincial programmes which assisted aboriginal peoples in preserving their socio-cultural heritage and provided centres where aborigines, particularly children, could learn indigenous languages outside school hours.

220. Replying to questions concerning the ways in which international treaty obligations were transformed into domestic law, the representative explained that such obligations were not automatically incorporated into domestic legislation, since the Federal Executive Government, which made the treaties, simply did not have the required law-making powers. It was up to Parliament to pass any necessary legislation as far as federal law was concerned and, where provincial jurisdiction was involved, the provincial legislatures had to act, failing which Canada was not in a position to apply treaty provisions that involved the need to change existing laws. A complicating factor, in the case of the Covenant was that many provisions, for example correctional issues, were a matter for both levels of government and it was difficult to differentiate between the federal and provincial spheres of competence.

221. With regard to the availability of remedies and procedures for asserting individual rights, it ws noted than an individual could attack any law in court as being inconsistent with the Federal Bill of Rights or the Charter. Access to the courts for remedy was broadly available and virtually any person with a legitimate concern about possible violations was able to apply.

222. Addressing questions relating to the limitation of rights under section 1 of the Charter, the representative stressed that any limits had to be "reasonable" and "demonstrably justifiable", with the burden of proof on that score resting with the Government. In addition, the principle of proportionality between ends and means also had to be observed. Thus, the legislature was not free arbitrarily to negate the rights set out in the Constitution. It was particularly noteworthy that in many cases the courts had specifically used the Covenant to assist them in

interpreting corresponding rights set out in the Canadian Charter and there had been 20 cases within the past 18 months in which court decisions contained specific reference to the Covenant and to Canada's obligations.

223. With regard to section 35 of the Charter, the representative stated that it was indeed a controversial provision, but one that was necessary for the constitutional entrenchment of human rights standards. In the light of Canada's tradition of parliamentary supremacy, the establishment of immediately enforceable overriding constitutional human rights standards meant that the Government was venturing into the unknown. It should be noted that section 33 was not designed to permit the suspension of obligations under the Covenant in a manner inconsistent with article 4, and its use in Quebec Province had not had a dramatic impact on the lives of people there since the Quebec Charter of Human Rights and Freedoms contained equivalent human rights provisions to those contained in the Canadian Charter. In the view of the Canadian Government, any resort to section 33 would have to be compatible with Canada's international obligations, including its obligation to report to the Human Rights Committee, and if anyone were ever deprived of a remedy through the use of section 33 they could clearly have recourse to the Human Rights Committee under the Optional Protocol, to which Canada was also a party. Section 33 remained controversial in Canada and pressure was being exerted by the Canadian Bar Association and human rights groups for a constitutional amendment to abolish it.

224. With regard to the invocation of the "notwithstanding" clause of section 33 by Quebec Province, it was made clear that Quebec's reasons for doing so were completely unrelated to the protection of human rights. Quebec's own Charter, which afforded the same kind of protection as the Canadian Charter, was applicable to the public and the private sectors as well as to relations between individuals and had precedence over other laws. It covered fundamental freedoms, the right to equality, non-discrimination, and recognition of legal, social, economic and cultural rights. It not only addressed instances of intentional discrimination but also systematic discriminatory practices and sought to ensure equality in employment, education and health care. Its implementation was the responsibility of the Quebec Human Rights Commission, an independent organization which, inter alia, received complaints, made inquiries and reported to the courts without charge to the complainant. Thus, the people of Quebec were not deprived of their fundamental rights as a result of the invocation of section 33.

225. Replying to comments to the effect that the Canadian Charter had no bearing on private action, the representative pointed out that the Charter was not the only instrument for guaranteeing rights covered under the Covenant. Over the past 40 years, at least, both the federal and provincial Governments had built up extensive networks of protection guaranteeing rights that were recognized in the Covenant and also covering, nationwide, about 25 other kinds of discrimination. For example, a company could not hire or even advertise for a male as opposed to a female worker or pay a man more than a woman for the same work. Thus, although the Charter did not deal with private action, private rights and freedoms were none the less very effectively protected.

226. Responding to concerns that had been expressed over the delay until 17 April 1985 of the entry into force of section 15 of the Charter - the equality of rights provision - the representative noted that, since that section would give equality of rights primacy over all other legislation it was essential to provide provincial Governments with an opportunity to review programmes and statutes which

drew distinctions on the basis of age, sex etc. - some of which, such as those relating to the use of mandatory retirement, were obviously sound.

227. Turning to questions raised by members concerning article 6 of the Covenant, the representative of the State party explained that therapeutic abortions were lawful in Canada in cases where the life or health of the woman concerned would be endangered by the continuation of the pregnancy. Current legislation sought to balance the competing interests of the foetus and the pregnant woman on the basis of health-related - and therefore life-related - criteria. As to the question of the death penalty, domestic provisions authorizing the death sentence had been abrogated, and therefore abolished, in 1976 by amendments to the Criminal Code. While that penalty was retained under the National Defence Act, it had not been imposed either during or since the Second World War. The Canadian forces were now studying a comprehensive revision of the National Defence Act and the concerns expressed by the Committee, particularly regarding the need for proportionality between the offence and punishment.

228. Referring to article 9 of the Covenant and the concerns expressed by members about the detention of persons seeking to enter Canada pending an investigation of their background, the representative stated that, while such persons could be authorized to leave the country voluntarily without an investigation being undertaken, it was occasionally necessary to detain others in order to prevent the entry of possible criminals, terrorists or illegal immigrants. Such detainees had access to remedies provided by the Immigration Act of 1976, including access to the courts, and could invoke the Canadian Charter of Rights and Freedoms or resort to the remedy of habeas corpus.

229. Regarding conscientious objection, the representative noted that the matter was not currently at issue since there was no compulsory military service in Canada.

230. In connection with article 10 of the Covenant, the representative noted that all adults sentenced to more than two years' imprisonment for breach of federal law were detained in federal institutions while all other adults were detained in provincial prisons. Juvenile offenders were held in provincial facilities and were to be held in separate establishments as from 1985. Inmates in federal prisons were provided with training programmes through the Correctional Service of Canada, which ran the federal establishments. Following the violent incidents which had taken place in prisons the Service had taken a number of measures, including the strengthening of staff training. Under the Criminal Records Act, prison records of persons who had been pardoned were not accessible to anyone, even the police, and under some federal and provincial laws, employment could not be refused to a person on account of his prison record.

231. With regard to questions relating to the independence of the judiciary, the representative explained that there was no distinction between superior court and county court judges in terms of their tenure, since both held office during "good behaviour". The reason why only superior court judges were mentioned in the Constitution was probably because of the constitutional standing of the superior courts in the United Kingdom and Canada. The salaries of judges were established and guaranteed under the law and could not be reduced. Procedures for the removal of lower court judges were established in sections 40 and 41 of the Judges Act.

232. Concerning article 17 of the Covenant, the representative stated that the silence of the Canadian Charter of Rights and Freedoms on the right of privacy might be more apparent than real. Court rulings indicated that both section 7,

encompassing the security of the person, and section 8, guaranteeing security against unreasonable search or seizure, could be successfully invoked in protection of the right to privacy. Wire-tapping was illegal and the Federal Privacy Act together with corresponding provincial legislation placed limits on the disclosure of private information held by Governments as well as restrictions on the collecion, retention and utilization of such information. In general, the system in Canada for protecting privacy was fairly comprehensive and ensured full compliance with the provisions of article 17 of the Covenant.

233. As to the related issue of in camera trials in criminal cases, which revealed the conflict between privacy interests and the right of the public and the media to full access to court proceedings, the Criminal Code and the Young Offenders Act authorized judges to restrict or prohibit public access to the court for reasons of specific public interest, thus making it possible, for example, to safeguard the privacy of young victims of sexual offences.

234. With reference to article 25 of the Covenant, the restriction on the right of civil servants to seek public electoral office ws not considered unreasonable, since the public service was based on the principles of merit and impartiality. The Public Service Commission was responsible for assessing requests for leave of absence to seek office submitted by civil servants and could authorize such leave if it found that the office being sought would not be incompatible with the public service position occupied by the applicant. The decisions of the Commission could be appealed. It was not considered unreasonable to refuse entry into the public service to persons who might constitute a threat to national security. However, any person refused employment for that reason had a right to be informed of the grounds for refusal and could avail himself of remedies open to him under the Canadian Charter or the Public Service Employment Act. As to the question regarding the property qualification for the office of Senator, the origins of that qualification went back to pioneer days when senators served for life and when society was fairly transient. Such a requirement as well as a residency requirement was then needed to ensure a certain necessary stability. While the question was technically legitimate, it was doubtful that the property qualification had a substantive effect on the implementation of the Covenant.

235. Addressing questions raised by members of the Committee relating to article 27 of the Covenant, the representative agreed that it was essential for indigenous peoples to have land in order to be able to conserve their heritage, but he could not accept that article 27 was the legal basis for that absolute necessity. Settlements reached on land claims by Indians sought to balance economic development needs with the land needs of the Indian communities.

236. As for the general economic situation of the indigenous population, it was probably true that the unemployment problems in the aboriginal reserves - which four years ago had involved about 50,000 people - had not improved much, despite federal and provincial efforts to foster social and economic development. In that regard, however, reference was made to several federal initiatives, including the provision of Government subsidies for housing construction since 1966, the establishment of job creation programmes for the unemployed who had exhausted their insurance benefits, the signing, in 1982, of the first economic development agreement between the federal Government and the Northwest Territories and the granting of special employment attention to indigenous citizens throughout Canada by both the public and the private sectors. The federal Government had also undertaken programmes of financial and other assistance to promote social and cultural development among the indigenous population.

237. Finally, responding to a member's question concerning the number of indigenous persons who were ministers of Government or members of the provincial or federal legislatures, the representative stated that while he did not know the exact figures, a number of indigenous citizens were in fact currently serving in the House of Commons and in the Senate, and the majority of the members in the Chamber of the Northwest Territories were also of indigenous origin.

238. The matter of compensation for miscarriages of justice, which had been raised by members, was of great concern in Canada. The matter was being given active consideration at both the federal and provincial levels and article 14, paragraph 6, of the Covenant was a very significant element in the analysis being carried out by the federal authorities.

239. Regarding the availability of remedies in cases of pre-trial detention, it was recalled that articles 9 and 10 of the Charter were also applicable to such cases. Moreover, the Criminal Code provided that the person arrested must be presented to a judge with 24 hours, that the matter of bail must be settled within three days and that pre-trial detention could not be extended beyond a total of eight days without the consent of the accused. Habeas corpus was also available and the validity of continued pre-trial detention had to be reviewed by a court every 90 days.

240. On the matter of the availability of remedies for those detained on grounds other than criminal activities, reference was made to the existence of Review Boards for mental health. Legislation in Ontario province provided that a person committed to a psychiatric hospital had the right to be heard and to be represented before the Review Board as well as the right of access to his records, including the medical report on which the commital decision had been based. He could also have recourse to habeas corpus, and to the protection against arbitrary detention afforded under section 9 of the Charter. Persons in hospital could also claim legal aid and had access to independent counsel regarding their rights and treatment.

241. Turning to the question of protection of detainees in provincial prisons, the representative explained that the relevant mechanisms had not been fully described in the supplementary report since the Government had thought that the Committee's earlier questions had related only to federal establishments. Canada's next report would supply additional information on the situation in the various provinces. In Ontario province the office of Ombudsman had existed for some time, with a staff of 120 persons and a budget of 5 million Canadian dollars. One third of the Ombudsman's time was devoted to prison-related issues and there had been a full review of all prisons in the province some years ago. Prisoners had uncensored access to the Ombudsman by correspondence and he had free access to the provincial prisons.

242. In response to questions concerning the right of lawyers to appear before Canadian courts, it was explained that Canadians could only be represented by foreign lawyers who had received a temporary licence from a provincial law society in accordance with its rules. If he could not obtain such a licence he could nevertheless accompany the Canadian lawyer responsible for the case into the court-room and serve as an adviser to him. In lower courts or administrative courts where a Canadian could be represented by persons other than lawyers a foreign lawyer's services could be used. Canadian lawyers could practise in a province only if they were members of that province's law society - lawyers frequently were registered in the law societies of three or four provinces. It was

also possible for a lawyer to obtain a licence to plead in a specific trial taking place in a province where he did not have law society memberhsip. A lawyer registered in a provincial law society could plead before all courts in that province as well as before the Canadian Supreme Court.

243. As to whether family courts existed in all provinces, it was stated that ech province determined for itself whether that type of court was needed to deal with family conflicts.

244. Responding to expressions of surprise that the Ontario Human Rights Code did not cite all the grounds affording protection from discrimination set out in article 26 of the Covenant - particularly the ground of political opinion, the representative explained that each province concerned itself primarily with its own particular problems and focused mainly on grounds which could give rise to discrimination locally. That certainly did not mean that there was no protection against discrimination and discrimination on the ground of political opinion would undoubtedly be punished in Ontario under the law.

245. Referring to one member's observation concerning the disproportionately high number of indigenous persons in custody in the Northwest Territories and the Yukon, the representative stated that steps had been taken to solve that problem.

246. With regard to article 22 of the Covenant, the representative described the Canadian industrial relations system, affirming that, despite the complexity and fragmented character of that system, which reflected Canada's federal structure, the principles relating to free association, the independence of trade unions, the legally binding nature of agreements reached through collective bargaining, the right of employers and employees in cases of conflict to assistance from any impartial third party and freedom to all to withdraw from or to dissolve their organizations were fully respected at both the federal and provincial levels.

247. Referring to article 7 of the Covenant, the representative noted that medical experiments were subject to many safeguards, particularly the provisions of criminal law which prohibited experimentation on persons who were not informed of its nature or who had not given their free consent.

248. Turning to questions that had been raised concerning the absence of Canadian legislation prohibiting war propaganda, the representative assured the Committee that, despite the absence of explicit legal provisions of that type, the Government and people of Canada were fully aware of the problems of war, the arms race and disarmament. His Government wholeheartedly respected the spirit of the Covenant and would take steps to fulfil its obligations under article 20. It must be recalled, however, that the principle of freedom of expression was absolutely respected in Canada and that the press, in particular, was completely free. There had been a number of developments attesting to Canada's interest in that area, including the recent establishment of a permanent Cabinet post of Ambassador for Disarmament, the setting up of a Disarmament Fund in 1979, and the founding of the Canadian Institute for International Peace and Security in 1984. Canada was contributing and participating actively in promoting disarmament through the United Nations and appreciated the importance of the question of prohibiting war propaganda.

249. Concluding his reply, the representative of Canada stressed that his Government welcomed the constructive dialogue which had been initiated with the Committee and would take due account of the Committee's opinion, as it had already done following consideration of its initial report.

250. The Chairman expressed his warm thanks to the Canadian delegation for its outstanding co-operation with the Committee. He assured the delegation that its request for postponement of the submission of the next periodic report of Canada would receive appropriate consideration from the Committee. 17/

Union of Soviet Socialist Republics

251. In accordance with the statement on its duties under article 40 of the Covenant adopted at its eleventh session (CCPR/C/18) and the guidelines adopted at its thirteenth session regarding the form and contents of reports from States parties (CCPR/C/20), and having further considered the method to be followed in examining second periodic reports, the Committee, prior to its twenty-third session, entrusted a working group with the review of the information so far submitted by the Government of the Union of Soviet Socialist Republics in order to identify those matters which it would seem most helpful to discuss with the representatives of the reporting State. The working group prepared a list of issues to be taken up during the dialogue with the representatives of the Soviet Union which was transmitted to the representatives of the reporting State prior to their appearance before the Committee with appropriate explanations on the procedure to be followed (i.e. that the representatives of the Soviet Union would be asked to comment on the issues listed, section by section, and to reply to members' additional questions, if any).

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252. The Committee considered the second periodic report of the Union of Soviet Socialist Republics (CCPR/C/28/Add.3) at its 564th to 567th and 570th meetings, held on 5, 6 and 8 November 1984 (CCPR/C/SR.564 to 567 and 570).

253. The report was introduced by the representative of the State party who said that the exercise of human rights and freedoms in Soviet society, proclaimed and guaranteed by the Constitution of 1977 and by Soviet laws, was ensured by the political and economic system of the State, the main aim of which was to meet the basic needs of individuals in a spirit of socialist democracy. He noted that the Soviet Union had enacted a number of laws in areas with which the Covenant was concerned since the preparation of the second report in April 1984. For example, on 18 June 1984 the Presidium of the Supreme Soviet had adopted several amendments to the Fundamental Legislation governing labour, housing, natural wealth, forests and water resources, which were intended to enhance the role of work collectives in the administrative organizations responsible for improving working conditions, safety, public health and the management of enterprises, institutions and organizations in general. On 10 May 1984, the Council of Ministers and the Central Council of Trade Unions had adopted a provision to ensure the creation by the workers themselves of necessary conditions for complete self-fulfilment in their work in a spirit of democratic development. In April 1984, the Supreme Soviet had approved the Fundamental Aspects of the Reform of General Education and Vocational Schools to help young people to lead independent lives thanks to a higher level of education and general culture. The representative also drew attention to the recent pay increase of over 30 per cent affecting more than 6 million teachers and educational officials. Finally, he noted that, at its eleventh session, the

Supreme Soviet had continued its major legislative activity relating to the protection of the interests of workers and increasing their participation in social life.

254. Members of the Committee congratulated the Soviet Government on its report, which had been drawn up in accordance with article 40 of the Covenant and the Committee's recommendations and general comments. On the basis of the questions raised in the Committee, the report provided detailed information on legislative and other changes concerning the Covenant introduced since the submission of the initial report.

Constitutional and legal framework within which the Covenant is implemented

255. With reference to that issue, members of the Committee wished to receive information on significant changes relevant to the implementation of the Covenant since the previous report, promotional activities concerning the Covenant and factors and difficulties, if any, affecting the implementation of the Covenant. They also wished to know how readily available the text of the Covenant was to those who wished to study it, whether restrictions were imposed on the activities of associations and individuals who had chosen to monitor laws and official practices with a view to promoting respect for human rights, and whether Soviet citizens could complain that a right of freedom recognized in the Covenant had been violated by persons acting in an official capacity and what socialist legality meant. Clarification was sought on the relationship between the Covenant and Soviet domestic law, particularly in the context of article 24 of the Act on the Conclusion, Implementation and Denunciation of International Treaties, and as to whether steps had been taken to ensure implementation of the provisions of the Covenant which were not covered by the Constitution. Further information was requested on the extent to which the programme of legislation announced in 1978 had been carried out, the validity and role of the Fundamental Principles governing legislation in the Soviet Union, whether they were acts which could be directly implemented or whether they were contained in the programme for the development and implementation of legislation, whether the legislation of the Union Republics had been adapted to conform to such principles, how conflicts between the Constitution of the Union of Soviet Socialist Republics and the legislation of those Republics were resolved, whether the legislation guaranteed security and independence to procurators in the performance of their duties and whether provisions existed for the removal of procurators from office and, if so, by whom and by what procedure they were removed. Finally, clarification was requested on whether the report before the Committee had been published and whether the work of the Committee would be brought to the knowledge of the Soviet people.

256. In his reply, the representative of the State party said that, under article 57 of the Constitution, respect for the individual and protection of the rights and freedoms of citizens were the duty of all State bodies, public organizations and officials, that similar provisions appeared in the Constitutions of all the Soviet Republics and that those principles had also been reaffirmed in all legislative texts adopted.

257. He gave a detailed account of additional relevant legislation that had been adopted since 1978, noting in particular that measures had been taken to strengthen procedures for dealing with individual complaints and to facilitate recourse to the courts against administrative decisions. In the latter connection, he drew attention to the special importance of recent legislation concerning administrative offences in the Union of Soviet Socialist Republics and the Union Republics. While

such provisions gave citizens greater opportunities for legal recourse concerning administrative decisions, the representative recalled that Soviet doctrine and practice were based on the principle that laws could not solve all problems and that the effective guarantee of civil, political and other rights depended on a number of factors, including material conditions in particular, which had been improved in many regions thus helping to ensure equality of rights in the Union Republics.

258. Turning to the question of factors and difficulties that might be affecting the implementation of the Covenant, the representative acknowledged that his country did indeed have unresolved problems, including difficulties in the implementation of civil and political rights. Respect for such rights, he noted, gave rise to new requirements, for example in terms of training, to which the party organs, trade unions and public organizations were drawing attention. Far from wishing to idealize what had been done thus far to strengthen socialist democracy, he acknowledged that his country was still experiencing growing pains in its efforts to generalize material benefits and the political culture of the masses. He stressed, however, that Soviet society was not developing under hothouse conditions and was not insulated against a hostile outside world, in which it was the target of psychological warfare and imperialism ran rampant. Accordingly, in order to overcome the existing difficulties, specific steps were being taken to ensure the steady development of socialist democracy and to strengthen the legislative foundations of political and social life.

259. Replying to additional questions, the representative said that Soviet citizens could invoke the provisions of the Covenant in support of their complaints. The problem of possible disparities between domestic legislation and the provisions of the Covenant had not arisen before the courts. The problem of divergencies between federal legislation and the legislation of the Republics was regulated by the provisions of article 121, paragraph 4, of the Constitution. He explained that respect for socialist legality had to be interpreted as respect for the legislation in force in the socialist States. The Decree of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics on the procedure for examination of proposals, applications and complaints by Soviet citizens enabled every citizen to submit any matter whatever to the competent bodies. Procurators were completely independent of the local authorities under the relevant legislative provisions and the institution of criminal proceedings against a procurator came within the exclusive competence of the Procurator's Office. The text of the Covenant had been widely circulated in the Soviet Union; it had been published in the Official Journal of the Supreme Soviet in the languages of all the Union Republics and reproduced in various other official publications and the provisions of the Covenant were printed in the textbooks of many educational establishments. Furthermore, the study of human rights questions appeared in the programme of law faculties, sociological institutes and other advanced or secondary educational establishments throughout the Soviet Union. The work of the Human Rights Committee was brought to the attention of the public by articles published in legal reviews, as well as in a popular scientific work containing detailed explanations of the Committee's activities.

Self-determination, including external as well as domestic aspects

260. With regard to that issue, members of the Committee wished to receive information on whether the right of self-determination included the right to choose other elements of a political system within the framework of the Soviet Union; on the importance of the right to secede; whether the Soviet Union, in its approach to

the right of self-determination of peoples, treated all people alike regardless of their political orientation or established distinctions on ideological grounds; how it was ensured that the presence of the armed forces of the Soviet Union in other countries and, in particular, in Afghanistan remained compatible with the right of self-determination and whether there were any other Republics, apart from the Ukrainian and Byelorussian Soviet Socialist Republics, which had exercised the right to enter into relations with other States. Additional information about the practical support rendered by the Soviet Union to peoples in their self-determination endeavours was also requested.

261. Replying to those qustions, the representative pointed out that his country regarded the right of self-determination as the basis for all rights and freedoms and was particularly proud of the key role it had played in the adoption by the United Nations of the Declaration on the Granting of Independence to Colonial Countries and Peoples. He also noted that the Soviet Union had taken an active part in drafting article 1 of both Covenants and many other international instruments, and that at the thirty-ninth session of the General Assembly it had tabled a proposal relating to the inadmissibility of the policy of State terrorism and any actions by States aimed at undermining the socio-political system in other sovereign States.

262. Referring to the internal applicaton of the right of self-determination, he stated that the Declaration of Rights of the Peoples of Russia of 15 November 1917 affirmed the right to self-determination of all peoples of former Tsarist Russia, including the right to secede and form an independent State and removed all national and religious privileges and restrictions. On 30 December 1922, the first All-Union Congress of Soviets had proclaimed the foundation of the Union of Soviet Socialist Republics on the basis of the freely expressed wishes of the people. Article 70 of the Constitution defined the Union of Soviet Socialist Republics as an "integral, federal, multinational State formed on the principle of socialist federalism as a result of the free self-determination of nations and the voluntary association of equal Soviet Socialist Republics", each Republic had the right to secede (art. 72); the question of the right of the Union Republics to secede from the Soviet Union did not arise in practice; there was in the Soviet Union such firm unity of all the nations and nationalities that the Union Republics considered their membership of the Union to be the source of their accomplishments and the basis of their well-being and prosperity; the territory of a Union Republic could not be altered without its consent although boundaries between them could be altered by mutual agreement of the Republics concerned and subject to ratification by the Soviet Union (art. 78); each Union Republic had the right to enter into relations with other States, conclude treaties with them, exchange diplomatic and consular representatives and take part in the work of international organizations (art. 80); the highest body of State authority of a Union Republic was the Supreme Soviet of that Republic, which was empowered to deal with all matters within the jurisdiction of the Republic (art. 137); the Soviet Union safeguarded the sovereign rights of the Union Republics (art. 81). The representative also stated that the Soviet Socialist Republics might conclude treaties or international agreements with neighbouring States on various questons and had the right to exchange diplomatic and consular representatives with foreign States.

263. The representative stressed that his country recognized the legitimacy of the struggle of peoples, particularly the Namibian people and the Palestinian people, for national liberation, and that the Palestine Liberation Organization was officially represented in Moscow. Finally, he stated that the Soviet Union fully

discharged all the obligations it had accepted under the multilateral and bilateral agreements that it had concluded, including agreements concluded with Afghanistan.

Treatment of aliens. Respects in which the rights of aliens are restricted as compared with those of citizens of the Union of Soviet Socialist Republics

264. With regard to that issue, members of the Committee wished to receive information on any restrictions that might in practice be imposed on the free movement of aliens and their free choice of residence, the relationship between the Act on the Legal Status of Aliens in the Union of Soviet Socialist Republics and the requirements of article 13 of the Covenant, whether aliens residing in the Soviet Union to whom political asylum had been granted enjoyed a higher status than other aliens; who made the decision to prevent an alien from leaving the country and whether there was any means of appeal against the decision; whether the provision of the Penal Code on the violation of telephone and telegraphic communications applied also to aliens and whether such interference could be ordered for reasons of national security. One member asked for an English or French translation of the Act on the Legal Status of Aliens in the Union of Soviet Socialist Republics.

265. The representative explained that, in accordance with the Act on the Legal Status of Aliens in the Union of Soviet Socialist Republics of 1981, aliens enjoyed the same rights and freedoms and bore the same responsibilities as citizens of the Soviet Union and that in principle there were no restrictions on their rights. However, citizens of those States that imposed special restrictions on the rights and freedoms of citizens of the Soviet Union could be subject to counter-restrictions. There were also certain differences in the legal status of aliens as compared with Soviet citizens (i.e. lack of voting rights, no obligation to perform military service). Furthermore, aliens could not be appointed to certain posts if Soviet legislation required that such posts should be reserved for Soviet citizens. In general, however, aliens enjoyed rights with regard to holidays, social security, housing, property, education, culture, freedom of conscience, marriage and family relations, the inviolability of the person and the home, taxation and defence before the courts and other State organs; they were entitled to join trade unions, co-operatives and scientific, cultural and sporting associations and other social organizations and were free to travel in the Soviet Union and to choose their place of residence under the terms established by the legislation of the Soviet Union. Some restrictions were permitted when they were necessary to protect State security, safeguard public order, health and morality and defend the rights and legitimate interests of citizens of the Soviet Union and other persons. The enjoyment of the rights and freedoms applicable to aliens was of course inseparable from the fulfilment of the obligations established by Soviet legislation and they had to comply with the Constitution and with Soviet laws and to respect the rules of the socialist community and the traditions and customs of the Soviet people.

266. The representative noted that the procedures regulating the movement and choice of residence of foreigners were set forth in the regulations concerning the residence and travel of aliens in the Soviet Union and that the right of asylum might be granted to foreigners in compliance with article 38 of the Constitution. The principle of inviolability of correspondence and telephone communications applied also to aliens under the terms of article 135 of the Code of Criminal Procedure. Finally, the representative stated that aliens were entitled to belong to public organizations.

Non-discrimination, particularly in regard to "political and other opinion" and the position of members of the Communist Party as compared with non-members

267. With reference to that issue, certain members of the Committee wished to receive information on why there was a fundamental discrepancy between article 34 of the Soviet Constitution and the provisions of articles 2, paragraphs 1, 25 and 26 of the Covenant which, in particular, prohibited discrimination for political or other opinions. Information was also requested on the percentage of Soviet citizens successful in reaching high office who were not members of the Communist Party and on the nature of the recourse available to an individual who alleged that he had been the victim of discrimination as specified in article 34 of the Constitution.

268. Replying to the questions raised under the issue, the representative explained that the Soviet Constitution proclaimed and guaranteed the equal rights of citizens in all fields of economic, political, social and cultural life, that women and men, as well as citizens of the Soviet Union of different races and nationality, enjoyed equal rights and that the reference to "other status" in article 34 of the Constitution meant any status, whatever it might be. Deputies to all Soviets were elected on the basis of universal, equal and direct suffrage by secret ballot and justice in the Soviet Union was based on the principle of the equality of citizens before the law and the courts. The same approach was to be found in all Soviet legislation, including the Fundamental Principles of Legislation on the Judicial System, as well as on civil and criminal procedures, labour legislation, legislation on education, family legislation and in many other legal provisions.

269. Regarding the position of the Communist Party of the Soviet Union, he noted that discrimination against citizens for any reason was not allowed and no political or other advantages could be accorded for members of the Party, that under article 6 of the Constitution all Party organizations had to function within the framework of the Constitution, that of persons elected to local soviets of people's deputies in 1982 only 42.8 per cent were members of the Party and that, while the Communist Party was the leading and guiding force of Soviet society and the nucleus of its political system and of State and social organizations, it did not replace the State.

Right to life

270. With reference to that issue, members wished to receive information, in particular, on whether the Soviet Union shared the views expressed by the Committee in its general comments on article 6 of the Covenant. Clarifications were also sought on why the Constitution had no specific provision on the right to life, how the death penalty was applied and for what crimes and whether any consideration had been given to its abolition or to a reduction in the number of crimes for which it could be imposed.

271. The representative said that his delegation welcomed and fully supported the Committee's general comments on article 6 of the Covenant and endorsed the view that the highest duty of States was the prevention of war, especially nuclear war, acts of genocide and other acts of mass destruction leading to the arbitrary deprivation of life. He gave a detailed account of the historical background and provided extensive information on legislative measures, health measures, and other practical steps taken by his country to defend peace and guarantee the right to life.

272. Referring to article 28 of the Constitution and other legislation, he pointed out that within the United Nations alone the Soviet Union had been responsible for no less than 100 proposals aimed at curbing the arms race, preventing the use of force in international relations, eliminating the threat of war and relieving international tensions; that the Soviet Union had solemnly made a unilateral commitment not to be the first to use nuclear weapons; that it had come forward with the far-reaching proposal of complete disarmament in conjunction with a universal system of control and had proposed a treaty on the non-use of force in outer space and from outer space directed towards the Earth.

273. The representative informed the Committee that in the Soviet Union the right to life was guaranteed by law, that the penal codes of individual Republics included special sections on "Crimes against life, health, freedom and human dignity", that the death penalty was always an exceptional form of punishment applied only to persons who had been found guilty of extremely serious crimes defined by law, that the Presidium of the Supreme Soviet had in fact reduced the number of crimes for which it could be imposed by a Decree dated 28 April 1980 and that article 121 of the Constitution gave the Presidium of the Supreme Soviet the right to issue all-Union acts of amnesty and to exercise the right of pardon.

274. The representative also described the measures for the protection of health of Soviet citizens, maternal and child care, the implementation of broad prophylactic measures as well as research to prevent and reduce the incidence of disease and ensure citizens long active lives.

Liberty and security of person

275. With reference to that issue, members of the Committee wished to receive information concerning the circumstances and periods for which persons might be held in detention pending trial without being charged with a criminal offense, detention in institutions other than prisons, remedies available to persons (and their relatives) who believed that they were being detained wrongfully, the observance of article 9, paragraphs 2 and 3, of the Covenant, the maximum period for which persons might be detained pending trial, contact between arrested persons and lawyers and the prompt notification of the family in cases of arrest.

276. Certain members also wished to receive further details, with regard to detention in psychiatric institutions, on whether the medical and psychiatric commissions involved in such cases were independent or whether they were responsible to the Ministry of Health, whether the results of an examination by a medical commission were made available to the person concerned, what legal remedies were available to persons hospitalized for mental illness and whether there was an appeal procedure allowing a person detained in a psychiatric hospital to request that a decision should be taken without delay on the lawfulness of his detention. References were made to a resolution adopted in August 1977 by the Congress of the World Psychiatric Association on alleged abuses of psychiatry for political purposes and the subsequent withdrawal of the Association of Soviet Psychiatrists from the World Psychiatric Association. In that connection, it was asked whether that resolution had led to any inquiries into such allegation in the Soviet Union or to any indictments of prosecutions. It was asked whether the Soviet authorities could invite an international group composed of well-known psychiatrists and jurists to visit persons who were being detained in psychiatric institutions in the Soviet Union, examine them on the basis of internationally recognized psychiatric criteria and report on their findings.

277. The representative of the State party stated that the inviolability of the person was guaranteed by article 54 of the Constitution and by a series of legislative measures and that the concept of preventive detention did not exist in Soviet law, the general rule being that persons could be detained only when there was concerete information about their involvement in specific crimes. Under the Decree of 8 June 1973, of the Supreme Soviet, the police had the right to detain people for up to three hours if they had committed administrative offences. According to article 32 of the Fundamentals of Criminal Legal Procedure of the Union of Soviet Socialist Republics, an investigative body could detain a suspect if he was caught committing the crime or immediately thereafter, if witnesses directly indicated that he had committed the offence or if clear evidence of the crime was found on the suspect or in his home. Within 24 hours of detention, the investigative body had to transmit a written report to the procurator who within 48 hours of receiving the information had to issue a warrant for the detainee's custody or release him. Thus, persons suspected of offences could not be detained for longer than 72 hours. Any complaints or statements addressed by a detainee to those handling the case had to be transmitted to the person concerned immediately.

278. The representative explained that imprisonment pending trial was only permitted when the alleged crime was punishable by at least one year's imprisonment and when there were grounds for believing that the accused would try to avoid appearing in court or would be likely to commit another crime. In that connection he stated that imprisonment pending trial could not generally exceed two months. However, in exceptional cases, the procurator of an autonomous republic or region or the military procurator of a military district could request its extension up to three months and the procurator of a union republic or a chief military prosecutor could request it to be extended up to six months; further extensions not exceeding three months could only be authorized by the General Procurator of the Soviet Union. Under no circumstances, therefore, could the total duration exceed nine months.

279. The representative also informed the Committee that on 18 May 1984 the Presidium of the Supreme Soviet had adopted a decree on compensation for prejudice caused to citizens by illegal acts of the State and public organizations and of officials in the accomplishment of their official duties. Under that Decree, any prejudice, including wrongful conviction, prosecution or imprisonment, was compensated in full by the State.

280. With regard to detention in psychiatric institutions, the representative said that the 1971 Law on Health of the Russian Soviet Federal Socialist Republic (RSFSR) allowed for the possibility of compulsory treatment for mental illness, venereal disease, leprosy, alcoholism and drug addiction, that within 24 hours of entering a hospital the person concerned had to appear before a medical commission which decided on the need for hospitalization and further treatment and that a patient was examined by six or seven doctors and errors could therefore be detected. Moreover, a commission of three psychiatrists evaluated the results of the treatment at least once a month and decided whether treatment should continue or the patient should be discharged; all bodies in the health-care system bore responsibility for the quality of the medical care provided and the commissions of local soviets of people's deputies monitored observance of the law. In criminal law, the decision concerning the use of enforced medical treatment involved not only doctors, but also the court dealing with the specific case. Compulsory treatment in such cases was never legally or otherwise regarded as punishment and the duration of the treatment depended on its effectiveness and the condition of the patient. Parents and close relatives could also take part in the investigation

and patients were re-examined at least once every six months to see whether the treatment should be continued or not.

281. The representative stated that his delegation rejected and considered unacceptable and tendentious all statements made by experts from one region that persons of sound mind were subjected to psychiatric treatment in the Soviet Union. Soviet law precluded all possibility of healthy persons being forced to undergo treatment in psychiatric institutions even when there were criminal charges against them for socially dangerous acts. He said that the Association of Soviet Psychiatrists had withdrawn from the activities of the World Psychiatric Association in view of a campaign of slander against the Soviet Union. He noted that the participants in the World Symposium on Schizophrenia held in the Soviet Union had been able to ascertain that there were no irregularities in Soviet psychiatric hospitals and that the medical dossiers of several persons whose cases had been mentioned in the Western press had been referred to leaders of the World Psychiatric Association for an opinion in 1977 but that no reply had been received.

Treatment of prisoners and other detainees

282. With reference to that issue, members of the Committee wished to receive information on whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were being complied with, whether prison and corrective labour camp regulations and directives were made known to and were accessible to prisoners on arrangements for the supervision of prisons and other places of detention and on procedures for receiving and investigating complaints by detainees. In addition, members of the Committee asked for information on the steps taken to ensure that medical care for prisoners and food were equivalent to that received by ordinary citizens and on the measures taken to ensure that the provisions of article 188.3 of the Criminal Code were not contrary to those of article 10, paragraph 3 and article 9 of the Covenant, as well as on the guarantees, if any, against their arbitrary application.

283. The representative drew attention to several provisions of the Fundamental Principles of Corrective Labour Legislation and the corresponding articles of the Labour Code of the Union Republics; he pointed out that the purpose of the execution of a sentence was not to inflict physical suffering or to impair human dignity and that Soviet legislation (art. 18 of the Corrective Labour Code of the RSFSR) went even further than article 10 of the Covenant in providing that first offenders were to be separated from persistent offenders.

284. Under article 23 of the Fundamental Principles of Corrective Labour Legislation every accused person was informed of his rights in respect of leisure, education and work; obligations; objects which he could keep or which would be confiscated; parcels, publications and correspondence he could receive; his food rations and the articles he would be allow to purchase.

285. The representative also stated that the Ministry of the Interior and the Procurator's Office were responsible for the application of legislation in prisons and that control commissions composed of representatives of the soviets, trade unions, youth organizations and social workers' and educators' organizations had been granted broad powers to enable them to monitor the activities of the administration of corrective labour institutions, including inspecting corrective labour institutions, talking to prisoners, listening to their complaints freely and commenting to the prison administration on their proposals as well as ultimately deciding on the release on parole of prisoners and considering petitions for

pardon. He added that detainess could lodge complaints or appeals in writing with State bodies which were sent directly to the proper quarter, that decisions relating to them were communicated in writing to the detainees concerned and that families could obtain legal assistance for detainees through lawyers with whom detainees could communicate personally.

286. Finally, with regard to article 188.3 of the Criminal Code and other relevant legal provisions, the representative recalled that under article 160 of the Constitution no one could be adjudged guilty of a crime and punished except by a court of law, with all the judicial safeguards being observed. Thus, arbitrary action, including on the part of the prison administration in the places of detention, was precluded.

Right to a fair trial and equality before the law

287. With reference to that issue, members of the Committee wished to receive information on the legal guarantees with regard to the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal; on relevant rules and practices concerning the publicity of trials and the public pronouncement of judgements as required by article 14, paragraph 1, of the Covenant; on special rules concerning the admission of the mass media to court hearings; on facilities for accused persons to enable them to obtain legal assistance and to exercise their right to defence and on new articles 188.3 and 198.2 introduced into the RSFSR Penal Code and whether the procedure aplicable under those articles satisfied the requirements of article 14. Further questions were posed as to whether the public was informed of the place and date of a particular trial, what an advocate's functions were and what the "college of advocates" was, whether lawyers practised independently and whether citizens had the right to obtain legal counsel and how much choice they had, whether the right of appeal was guaranteed in all cases and whether the Code of Criminal Procedure of the RSFSR guaranteed that an appellant would not receive a stiffer sentence from the superior court than from the lower court. Information was also requested on the availability of free legal assistance for persons seeking legal advice.

288. Replying to those questions, the representative of the State party pointed out that, under article 160 of the Constitution and article 3 of the Fundamental Principles of Criminal Legislation of the Union of Soviet Socialist Republics, no one could be subjected to punishment under criminal law except by the sentence of a court and in conformity with the law. He explained that criminal cases were examined by independent courts; that hearings were usually public, except as otherwise provided in article 12 of the Fundamental Principles of Criminal Legislation in cases requiring the protection of State secrets, cases of offences committed by minors, cases of sexual crimes and cases involving confidential matters; that judgements were rendered publicly and that the media could usually attend trials.

289. Under article 13 of the Fundamental Principles of Criminal Procedure, it was incumbent on the investigator and the court to provide the defendant with legal assistance and every defendant was entitled to present witnesses, to address the court in his own language or to benefit from the services of an interpreter, free of charge and to appeal against the decisions of the court. Defendants were afforded every opportunity to obtain legal assistance, which was compulsory in cases involving minors under 16 years of age or handicapped persons, and, if the defendant did not hire a defence counsel, the court was obliged to assign him one;

any detained person was entitled to meet his lawyer in private and there was no limitation on the length and number of interviews.

290. The representative informed the Committee about the provisions of articles 188.3 and 198.2 of the Criminal Code of the RSFSR which provided for penalties for disobeying the instruction of the administrative authorities of corrective labour institutions. He said that under article 188.3 of that Criminal Code solitary confinement for disciplinary reasons could be imposed on prisoners who had broken the rules and that article 198.2 established the penalties applicable to former prisoners who attempted to evade administrative supervision, for example by changing their residence or after release from prison by failing to appear within the prescribed period at their established residence. He repeated the reference to article 160 of the Constitution that no one could be adjudged guilty of a crime and subjected to punishment as a criminal except by the sentence of a court.

291. Referring to the right of appeal, the representative explained that it was guaranteed to all equally and that there were two procedures: judicial review for errors of law or judicial review for errors of fact by the court. In the former case the appeal had to be made before the verdict became enforceable, whereas judicial review for errors of fact was not subject to any time-limit or any restriction; the legality and cogency of a decision could be examined in all courts, save those of first instance, up to the Supreme Court of the Soviet Union. In case of appeal the sentence could not be made harsher; that was one of the guarantees accompanying the right of appeal. In order to guarantee public access to the courts, there were rules providing for appropriate advance notice of trials, accessibility of location etc. In public hearings everyone was admitted, including representatives of international organizations.

292. With regard to the colleges of advocates, the representative noted that they were voluntary associations composed of persons exercising the legal profession (advocates) who could not be employed in State and public bodies and who would represent the interests of any person who applied to them. Free legal assistance was provided to citizens in certain special cases, including certain criminal cases. Every citizen was entitled to choose an advocate to defend his case, including an advocate from another town or another Republic.

Freedom of movement

293. With reference to that issue, members of that Committee wished to receive information on the right of aliens to free movement and choice of residence in the Soviet Union. Questions were raised as to restrictions on the freedom of citizens to leave the country for travel abroad or for emigration. In addition questions were posed as to the legal basis of administrative measures regarding the assignment of citizens to a specific place of residence, what documents had to be submitted by those seeking to emigrate, the situation of people while they were awaiting authorization or whose request was rejected, whether or not the power to grant the right to leave the country was discretionary and what specific law governed the matter. Information was also requested on the number of emigration applications submitted by the Soviet citizens each year since 1979.

294. In his reply, the representative of the State party explained that, under article 9 of the Fundamentals of Civil Legislation of the Union of Soviet Socialist Republics and the Union Republics, Soviet citizens had the right to choose their place of residence and were authorized to travel abroad and were issued with

passports for that purpose, as were those who lived abroad on a permanent basis. Aliens in the Soviet Union had to respect the regulations on the residence of aliens in the country and the transit regulations adopted by the Council of Ministers of the Union of Soviet Socialist Republics on 10 May 1984. The number of foreigners visiting the Soviet Union had increased to 25 million from 154 different countries in the past five years, while 15 million Soviet citizens had visited 142 countries. There were currently 116,000 foreign students from 145 countries in the Soviet Union.

295. The representative stated that there were no objective reasons for emigrating since unemployment was non-existent and there were no problems of nationality because the peoples of the Soviet Union were all equal. Soviet citizens who left the country did so in order to reunite with their families or to marry foreigners. Negative decisions on emigration applications could be appealed and over 8,000 persons to who exit visas had initially been denied had finally been granted permission to leave the Soviet Union between 1976 and 1984.

296. In recent years a large number of Soviet citizens of Jewish, German or other origin had been enabled to leave the Soviet Union under the family unification programme. However, the number of applications for exit visas, particularly for Israel, had declined sharply between 1979 and 1984. The representative gave a detailed account of emigration applications submitted by Soviet citizens to the authorities to leave the country each year since 1979 to 1984.

Interference with privacy, particularly with regard to postal and telephonic communications

297. With regard to that issue, members of the Committee wished to receive information on whether there were any limits on the powers of the investigator, whether any control was exercised by the courts, whether the use of interception was limited to serious crimes, how frequently it was actually resorted to, and whether tape recordings obtained unlawfully either by government agents or by individuals were admissible evidence in the Soviet Union.

298. The representative stated that article 54 to 57 of the Constitution and article 12 of the Code of Criminal Procedure of te RSFSR guaranteed the inviolability of the person, the home and communications. Under article 168 of the Code of Criminal Procedure of the RSFSR, searches could be authorized if there were sufficient grounds to suppose that weapons used in crimes, criminally acquired objects or evidence required for criminal proceedings were to be found on the premises. Searches had to be carried out in the presence of witnesses and the person concerned or an adult member of his family had to be informed of his rights. Article 69 of the Criminal Code did not allow tape recordings as evidence. Under article 35 of the Fundamental Principles of Criminal Procedure of the USSR and the Union Republics, correspondence could be intercepted or confiscated only on the basis of a procurator's warrant or a court decision.

299. Former article 135 of the Criminal Code of the RSFSR dealing with liability for violation of the secrecy of correspondence had been considerably expanded and currently provided for criminal liability for interference not only with correspondence but also with telephonic and telegraphic communications.

Freedom of thought, conscience and religion

300. With reference to that issue, members of the Committee wished to receive more details on the implementation of Soviet legislation on freedom of conscience and religion. In that connection, some members asked whether the regulations were compatible with the statement in the report that, in the Soviet Union, the Church was separated from the State, since it seemed that the State claimed authority to control the Church. They further asked why parents seemed to be prohibited from organizing the religious instruction of their children on a private basis. Some members also noted that the Soviet Constitution expressly authorized atheistic propaganda, but it appeared by implication not to allow the propagation of religious beliefs; one member asked about the dates of publication of editions of the Bible in Lithuanian and Hebrew, how many religious buildings had been closed during the preceding five years and how many still existed and about the legal status of believers whose religious community had not been registered for some reason.

301. Replying to those questions, the representative explained that citizens of the Soviet Union were guaranteed freedom of conscience and the right to profess or not to profess any religion and to conduct religious worship. Incitement of hostility or hatred on religious grounds was prohibited by law. Under article 143 of the Criminal Code of the RSFSR and the relevant articles of the Criminal Codes of the Union Republics, interference with religious ceremonies which were not disturbing law and order gave rise to criminal liability. The Church was separated from the State, which meant that the State did not interfere in the religious affairs of the Church and vice versa. It also meant that religious education was not provided in the public schools. Moreover, the Church operated within a State-organized society and was therefore subject to the laws of the State. The registration of a religious association with the Council for Religious Affairs signified that the association undertook to observe the law while also placing itself under the protection of the law governing freedom of conscience. Believers who belonged to duly organized associations were entitled to practise religious rites together, hold prayer meetings and ceremonies, manage houses of prayer and religious property and collect voluntary contributions in the house of prayer with a view to the maintenance of religious buildings and property and for the purpose of meeting the religious needs of believers.

302. Religious associations regularly published literature, and over the past 15 years the Bible had been published widely (75,000 copies in 1983). Religious associations were also entitled to manufacture articles for use in religous rites and services and profits from the sale of such articles were not taxable. Teaching and religious study could be conducted privately and in the family. The State also permitted the establishment of seminaries for the training of priests and there were now 18 such institutions.

303. Although parents could not educate their children in denominational schools, they could have them attend religious services with them. The Church was on an equal footing with organizations such as trade unions and youth associations. Church-owned property and monuments of historical interest were covered by an agreement exonerating them from taxes. While some buildings had been closed down because they were no longer used for worship, they could be demolished only on the orders of the authorities of the Republic concerned.

304. Finally, the representative stated that his delegation categorically rejected the allegation that a person might incur a criminal penalty because he held certain religious beliefs; he said that he did not know of a single case of prosecution or arrest for reasons of religion.

Freedom of expression

305. Members of the Committee wished to received information on controls exercised on freedom of the press and the mass media and restrictions on freedom of information, on cases where persons might be arrested or detained on account of the political views they expressed and on restrictions on political debate. They also asked for additional details on the provisions of the Decree of 11 January 1984, adopted by the Presidium of the Supreme Soviet, which made a number of amendments and additions to the Union of Soviet Socialist Republics Act on Criminal Responsibility for Offences against the State of 25 September 1958.

306. The representative informed the Committee that Soviet citizens were kept informed without restriction and without delay. Every year 39 billion periodicals were printed which attested to the freedom of expression. The media were in no way dependent on private owners. Newspapers from more than 150 countries were available in the Soviet Union, and works by more than 200 foreign writers were printed and amounted to a million copies. The provision of article 19, paragraph 3, of the Covenant was construed and implemented in accordance with the basic principle that freedom of expression was subordinate to the interests of the people. All opinions, however controversial, could be freely expressed if they were designed to overcome existing shortcomings, abuses and bureaucratic practices and if they helped to improve Soviet society. He stated that, in full conformity with the provisions of article 19, paragraph 3, of the Covenant, Soviet law allowed restrictions on freedom of expression only in the case of views which were incompatible with the interests of State security, public order and morals.

307. The press, the radio and television were free within the aforementioned limits, but they were not permitted to go against the interests of socialist society or the rights of citizens. There was no control over them except for the editorial control exercised by the corresponding State or public organ in whose name the material was disseminated. Rules were established by the Fundamental Principles of Civil Law in the Union of Soviet Socialist Republics and the Union Republics and by other legislation and the publisher and editorial staff were responsible for ensuring that the law was observed. The State prohibited only statements that were criminal, contrary to the interests of the people, incompatible with the principles of humanity and democracy or associated with anything prohibited by law, for example, propaganda advocating racism, national hatred, fascism, war or disregard for the rights of other citizens. The expression of opinions and the conflict of ideas were completely without restriction, as could be seen from the nation-wide discussions of legislative bills and other important State decisions.

308. Replying to other questions, the representative explained that Decree No. 3 adopted by the Presidium of the Supreme Soviet on 11 January 1984, amending the Act on Criminal Responsibility for Offences against the State in respect of freedom of opinion, included a provision to the effect that the use of financial and material resources received from foreign organizations or individuals acting on behalf of those organizations was to be considered as anti-Soviet propaganda. Similar provisions were to be found in the legislation of many countries, he noted. The transfer or collection, with a view to its transfer to foreign organizations or

their agents, of economic, scientific, technical or other information constituting a State secret by any person to whom the information had been entrusted in the exercise of his functions or of which he had had cognizance in any other way was also declared to be a crime. The provision was intended to safeguard the economic interests of the State and could obviously not be considered as an intolerable restriction of freedom of expression or of opinion.

Protection of family and children, including the rights of citizens to marry aliens

309. With regard to that issue, the representative of the State party said that the legal equality of women was increasingly complemented by equality in terms of real social potential and that a great step forward had been taken through the involvement of women in political life and productive activity and the provision of equal educational opportunities for men and women.

310. Soviet women played an active part in the management of the State. They comprised over 50 per cent of the membership of local soviets and over 32 per cent of the membership of the Supreme Soviet of the Union of Soviet Socialist Republics; 36 per cent of judges were women. The Communist Party included more than 25 per cent women. Furthermore, 500,000 women were employed as managers in industrial and construction enterprises and educational and health establishments; in secondary and higher specialized educational establishments, 59 per cent of the staff were women.

311. The representative pointed out that the Soviet State had devoted particular attention to families in which both parents were working and that currently more than 14 million children were cared for in pre-school centres and 12 million spent holiday periods in Pioneer camps. Council of Ministers Decision No. 317 of 12 April 1984 on the Further Improvement of Public Pre-school Education and the Preparation of Children for School was part of a broader educational reform one of the aims of which was that primary education should start at the age of six.

312. With regard to the question of marriage, Soviet legislation placed no restriction on the right of Soviet citizens to marry aliens. Foreign citizens in the Soviet Union enjoyed the same rights and bore the same obligations in respect of marriage and family affairs as citizens of the Soviet Union. In recent years, over 32,000 Soviet citizens had contracted such marriages, and more than 16,000 had left the country with their spouses to take up residence in more than 100 countries of the world.

Rights of minorities, with particular reference to the experience of the Soviet Union in this regard

313. With regard to that issue, members of the Committee wished to receive information on whether Soviet legislation required the provision of education in minority languages and, if so, at what levels and to what extent minorities benefited from the resources derived from their land, either directly or through the general administration of the country.

314. Replying to the questions raised by the members of the Committee, the representative noted that, under article 36 of the Constitution, citizens of the Soviet Union of different races and nationalities had equal rights. They could use their native language and the languages of other peoples of the Soviet Union; any direct or indirect limitation on the rights of citizens or the establishment of direct or indirect privileges on grounds of race or nationality as well as any

advocacy of racial or national exclusiveness, hostility or contempt were punishable by law. Stressing that the Soviet Union included 15 Union Republics, 20 autonomous republics, 8 autonomous regions and 10 national districts, he indicated that those units all had their own democratically elected institutions, executive bodies and courts; that the Soviet State pursued a policy of equal rights for all nationalities and peoples, promoting their economic, social and cultural development; and that, as a result of that policy, rich natural resources had been mined, large enterprises set up and energy and transport facilities brought into operation in the areas in question.

315. Finally, the representative pointed out that more than 40 peoples had acquired a written language of their own for the first time and that a large number of newspapers, journals and other periodicals were published in Union Republics in the languages of the local population.

General observations

316. Members of the Committee thanked the Soviet delegation for its co-operation and welcomed the dialogue that had been re-established with the Committee on the occasion of the consideration of the second periodic report of the Soviet Union, which had made it possible to highlight the progress achieved in that country in implementing the provisions of the Covenant.

317. While sharing that appreciation, some members continued to have misgivings regarding the implementation of certain articles of the Covenant. The wish was expressed that the Soviet Government would give careful attention to the comments made by members of the Committee.

318. Other members expressed the opinion that the pertinent responses of the Soviet delegation had given a clear picture of the implementation of human rights in the Soviet Union. When considering a report, members should bear in mind that legal and social systems varied from country to country and that there were bound to be differences in the way of looking at human rights and international co-operation in that field, since the world was made up of States that had developed different social and economic systems.

319. Concluding the consideration of the second periodic report of the Soviet Union, the Chairman welcomed the dialogue which had continued between the Soviet Union and the Committee and warmly thanked the delegation for its co-operation with members of the Committee.

Byelorussian Soviet Socialist Republic

320. In pursuance of paragraph (j) of the statement on its duties under article 40 of the Covenant, adopted at its eleventh session (CCPR/C/18), and the guidelines, adopted at its thirteenth session regarding the form and contents of reports from States parties (CCPR/C/20), the Committee, prior to its twenty-third session, entrusted a working group with the review of the information so far submitted by the Government of the Byelorussian Soviet Socialist Republic in order to identify those matters which it would seem most helpful to discuss with the representatives of the reporting State. The working group prepared a list of issues to be taken up in connection with the consideration of the second periodic report with the representatives of the Byelorussian SSR. The list, supplemented by the Committee, was transmitted to the representatives of the reporting State prior to their appearance before the Committee and appropriate explanations on the procedure to be

followed (i.e. that the representatives of the Byelorussian Soviet Socialist Republic would be asked to comment on the issues listed, section by section, and to reply to members additional questions, if any) were given to them.

* * *

321. The Committee considered the second periodic report of the Byelorussian Soviet Socialist Republic (CCPR/C/28/Add.4) at its 568th, 569th and 571st meetings held on 7 and 8 November 1984 (CCPR/C/SR.568, 569 and 571).

322. The report was introduced by the representative of the State party who said that the second report reflected the major facets of the economic and political development of the Byelorussian SSR - including the adoption of legislative and statutory measures for strengthening the legal foundations of the Soviet system and consolidating the legal and practical guarantees of rights and freedoms for everyone - which had take place since the Committee's consideration of the first periodic report of his country in 1978.

323. The representative provided detailed information regarding the composition of the Supreme and local soviets of the Republic and cited legislation adopted on 11 February 1982 by the Presidium of the Supreme Soviet of the Byelorussian SSR which regulated the functions and activities of deputies and the procedures for public meetings at which the instructions given by the electorate to their deputies were discussed and defined. In that connection, he drew attention to one of the distinguishing features of socialist society, namely, the entity which human rights formed for it and the achievement of human rights through the active participation of the workers in directing the affairs of the State and society.

324. He drew the Committee's attention to the fact that 1984 marked the fortieth anniversary of his country's liberation from the forces of fascism and that one quarter of the population of the Byelorussian SSR had died in the course of the Second World War. The anniversary had provided an opportunity for a renewed expression of the desire of the people of the Byelorussian SSR for peace, security and the elimination of any risk of nuclear war. He felt that the enjoyment of all rights and freedoms and the development of international co-operation could only take place under conditions of peace and security.

325. Members of the Committee expressed their appreciation to the Government of the Byelorussian SSR for its second periodic report and for the additional information provided by the representative of the reporting State.

Constitutional and legal framework within which the Covenant is implemented

326. With reference to that issue, members of the Committee wished to receive information on any significant changes relevant to the implementation of the Covenant since the previous report; promotional activities concerning the Covenant and factors and difficulties, if any, affecting the implementation of the Covenant. They also wished to receive information on the division of responsibility between the USSR and the Byelorussian SSR for implementation of the Covenant; the methods used to inform Byelorussian citizens of the rights affirmed in the Covenant, whether the teaching of law at university level included courses on the Covenant and the role of the Committee, whether a citizen could invoke the Covenant before an administrative authority or a court when he considered that one of the rights conferred therein had been infringed and whether the Covenant had been published in the Republic.

327. The representative explained that, since the initial report had been considered by the Committee in 1978, the Republic had enacted new legislation designed to improve and develop the enjoyment of civil and political rights covering such matters as elections to the Supreme Soviet of the Byelorussian SSR, local soviets, the judicial structure and people's courts at the regional level; the removal of judges at the regional level; the acquisition of Byelorussian citizenship; instructions for deputies; and the colleges of advocates and citizens' organizations. Since many breaches of the law could be attributed to an inadequate knowledge of the laws and regulations on the part of officials or citizens, a major public education effort had also been undertaken. The Soviet legal system drew on the very nature of socialist society, with its attachment to the principles of legality, equality, mutual respect and responsibility towards the people. However, it must be borne in mind that the construction of socialist society was accompanied by specified problems and difficulties, both domestic and international in nature. The arms race triggered off by imperialist circles did not merely pursue military objectives but also sought to exhaust the Soviet Union, to deprive it of the material resources needed to solve economic and social problems. Socialism was a dynamic social system developing through the resolution of contradictions and difficulties. The free confrontation of views and broad discussion were normal phenomena recognized by law and approved by the public as a means of solving immediate problems in all fields of life. However, the main principle underlying decision-making was the subordination of the minority to the majority, with guarantees for both.

328. With regard to the division of responsibility between the USSR and the Byelorussian SSR for implementation of the Covenant, he noted that the question was regulated by the provisions of the Soviet Constitution relating to the establishment of legislative norms, that socialist federalism fully guaranteed the sovereign rights of the federal republics and that the areas of competence of the Byelorussian SSR were listed in article 70 of its Constitution. By virtue of that article and its general responsibility for legislative enactments and implementation, the Byelorussian SSR assumed direct resonsibility for the obligations it had assumed upon becoming a party to the Covenant.

329. Regarding the extent to which information about the Covenant was disseminated, the representative said that in all schools providing general education pupils studied the basic principles of law under a 35-hour programme; in technical schools and in special educational institutions the programme comprised 110 hours. At university law faculties the Covenant was studied individually. The Covenant was reproduced in full in the latest book on the treaties to which the Byelorussian SSR was a party; citizens of the Republic were fully entitled to invoke its provisions before the courts or before administrative authorities.

330. Regarding the implementation of article 56 of the Constitution, he stated that any interested party was entitled to have recourse to the courts for the protection of a right that had been violated or was being disputed, that a court must take up a case if a person turned to it for the defence of his rights or legally protected interests and that in cases arising under administrative law citizens could submit complaints and declarations.

Non-discrimination, particularly in regard to "political or other opinion" and the position of members of the Communist Party as compared with non-members

331. With reference to that issue, members of the Committee wished to receive information on the implementation of article 2, paragraph 1, and articles 25 and 26 of the Covenant.

332. In that connection, the representative stated that the equal rights of citizens were guaranteed by the Constitution in all fields of economic, political, social and cultural life, that all citizens were equal before the law and that women had equal access with men to education and vocational training, employment, remuneration and promotion and to social, political and cultural activities. The equality of spouses in family life was guaranteed and marriage could be contracted only with the mutual consent of the spouses. Further, the law provided protection and material and moral support to women enabling them to combine work with motherhood. Members of the Communist Party were not privileged in relation to citizens who did not belong to the Party and they were required to exercise their rights and to discharge their obligations like all other citizens.

Right to life and the application of the death penalty

333. With regard to that issue, members of the Committee wished to receive information regarding the position of the Byelorussian SSR on the general comments of the Committee to article 6 of the Covenant, on how many times the death penalty had been applied in the course of the past five years, whether the Byelorussian SSR was contemplating abolishing the death penalty and whether the environment in the Republic was protected by administrative or legislative measures.

334. In his reply, the representative of the reporting State said that his country had supported all General Assembly resolutions on ending the arms race, limiting the proliferation of nuclear arms and eliminating any threat of nuclear war. It had sponsored a resolution on the inalienable right to life at the thirty-ninth session of the General Assembly. His delegation fully endorsed the general comments made by the Committee during the current session concerning article 6 of the Covenant.

335. Replying to other questions, the representative stated that during the past six years the death sentence had been pronounced only for premeditated murder with aggravating circumstances and for very serious crimes, but that it was not mandatory. He also explained that the environment was a major concern of the Byelorussian SSR and that the Criminal Code established criminal liability for pollution of air, water and crops as well as for unlawful felling of trees.

Liberty and security of the person

336. Members of the Committee wished to receive information on the circumstances and periods for which persons might be held in preventive detention without being charged with a criminal offence, detention in institutions other than prisons, remedies available to persons (and their relatives) who believed that they were being detained wrongfully, the observance of article 9, paragraphs 2, 3 and 4, of the Covenant, the maximum period for which persns might be detained pending trial, the contact between arrested persons and lawyers and the promptness with which the families of arrested persons were informed of an arrest.

337. In addition, members requested information on the criteria for determining when a case was so complex as to require the extension of the period of pre-trial detention, whether the period of pre-trial detention was taken into consideration when the verdict was delivered, whether the limitation on the period of pre-trial detention was also applicable in the case of lesser offences, such as immigration infractions, and whether a suspect could refuse to answer questions put to him at the time of arrest by the procurator.

338. The representative of the reporting State said that constitutional guarantees regarding the security of the person were set forth in detail and developed in many legal instruments such as the Code of Criminal Procedure and the Byelorussian Judiciary Act. Under article 7 of the Code of Criminal Procedure, for example, the procurator was required to release anyone detained longer than the prescribed time-limit. Article 3 of the Code limited liability to criminal prosecution only to authors of crimes committed deliberately or through negligence.

339. Legislation concerning pre-trial detention empowered the organs responsible for the investigation to arrest anyone suspected of a crime normally punished by deprivation of liberty in cases where he had been caught in flagrant delicto where he had been recognized by witnesses or victims, or where evidence of guilt had been found on his person or at his domicile. The period of pre-trail detention might be extended up to a maximum of nine months in very complex cases, but sanctions envisaged in the course of the preliminary investigation might be cancelled or amended by decision of the court during the trial. Moreover, suspects or their families could lodge complaints against the organs responsible for the inquiry or investigation and the examining magistrate or the procurator was required to consider such complaints within 24 hours.

340. The representative also stated that arrested persons enjoyed many other rights, including the right to be informed of the reasons for their arrest and the charges against them, the right to provide evidence and to be informed of the conclusions of the preliminary investigation, the right to be assisted by a defence counsel and the right to appeal any adverse judgement. The organs responsible for the preliminary investigation were required to transmit their files to the procurator who must either confirm the penalty or release the accused person, notifying his family immediately of the decision taken. If necessary, the children of an arrested or sentenced person were entrusted to an organization or other members of the family by a court order and measures were taken to protect his property. Finally, legislation guaranteed the right of any accused person to be assisted by a defence counsel in the course of the investigation as well as at the trial itself and there was no limit on the number and length of interviews between defence counsel and his client.

341. Replying to other questions, the representative stated that the maximum period of pre-trial arrest was nine months, but as a rule it only lasted two months, that during the past decade courts had not made use of the nine-month period and that the period of pre-trial arrest was deducted from the sentence if the person was convicted and in the case of acquittal the person was compensated.

342. Finally, the representative explained that the accused had the right to make a statement but was not obliged to do so and that he was presumed innocent, the onus of proof being on the investigators and the court.

343. With reference to that issue, members of the Committee wished to know whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and whether prison and corrective labour camp regulations and directives were made known to and were accessible to prisoners. Information was also requested on arrangements for the supervision of prisons and other places of detention, procedures for receiving and investigating complaints by detainees and new measures introduced pursuant to the Decrees dated 29 March 1977 and 16 December 1982 of the Presidium of the Supreme Soviet of the Byelorussian SSR.

344. In addition, members of the Committee wished to receive clarification, with regard to the amendment of article 48-1 of the Criminal Code, as to what form the relevant administrative processes took, what guarantees were applicable to those processes and what the consequences of such administrative processes were for the accused person. Additional information was sought as to whether accused juveniles were subject to the same rules and protected by the same guarantees as adults, whether there were different régimes of detention within each centre or a single régime, whether the administration of the various categories came under different authorities and on what basis people were placed in different categories whether detainees generally served their sentences in the Byelorussian SSR or in other parts of the territory of the USSR, what rules governed solitary confinement, the dimensions of cells and the time a person could be detained in isolation and whether judges inspected prisons and labour camps. Finally, it was asked whether the individual against whom administrative measures had been taken had the right to a court hearing.

345. Replying to the questions, the representative stated that the criminal legislation of the Byelorussian SSR laid down in detail the procedure for the preliminary investigation, detention and arrest of suspects and accused persons and for the examination of witnesses, victims and third parties. The law provided numerous guarantees to prevent the use of force against suspects or accused or convicted persons, including the separation of adults from minors and men from women. Persons sentenced to deprivation of liberty were permitted to purchase food, books and newspapers with money earned in prison and were granted short and long visits from relatives and short periods of release from prison (up to seven days). They could hold interviews with their lawyers, were required to work an eight-hour day, with one day's rest per week, and were paid by the quality and quantity of ther output in accordance with the rates applied in the national economy. Unskilled workers received obligatory vocational training. Prophylactic care was provided in strict compliance with health regulations. The régimes at corrective labour colonies were categorized as normal, intensive, strict and special; minors served their sentences in educational labour colonies, while women prisoners served their sentences in normal-régime corrective colonies. The representative stressed that all those provisions of the Corrective Labour Code and other legislation complied with the Standard Minimum Rules for the Treatment of Prisoners.

346. With regard to labour camp regulations and their accessibility to prisoners, he noted that the time-table at corrective labour institutions must include time for work, rest, study and political education and that all regulations were posted at easily accessible points.

347. The representative stated that the supervision of prisons and other places of detention was the repsonsibility of the Office of the Procurator of the Republic, who was required to put an end to any contravention of the law, to bring guilty persons to justice and to take necessary corrective action. Procurators were obliged to make regular visits to prisons and to examine prisoners' complaints. In accordance with article 9 of the Corrective Labour Code, the general public had a part to play in supervising the institutions and bodies responsible for the execution of sentences of imprisonment.

348. With regard to new measures introduced by the Decrees dated 29 March 1977 and 16 December 1982 of the Presidium of the Supreme Soviet of the Byelorussian SSR, the representative explained that the Decree of 1977 did away with criminal liability in respect of acts of minor hooliganism repeated within the space of a year and introduced suspended sentences in the case of minors sentenced to less than three years' imprisonment for a first offence where such persons could be rehabilitated without isolation from society. It also substituted administrative for criminal proceedings in the case of offences which did not involve great social danger, made provision for the conditional commutation of a sentence or the imposition of a less severe punishment and introduced a number of other changes. The Decree of 16 December 1982 extended the possibility of suspended sentences to almost all those sentenced to terms of imprisonment not exceeding three years and significantly widened the use of fines and of corrective labour at the offender's place of work, deleting the sentence of deprivation of liberty from a number of articles in the Criminal Code.

349. Replying to additional questions raised, the representative said that, in conformity with the amendment to article 48-1 of the Criminal Code, a person who had committed a minor crime punishable by not more than one year's deprivation of liberty might be freed from criminal liability and held liable administratively if it was seen that he could be reformed and rehabilitated more effectively without the imposition of a criminal penalty; the alternative administrative procedure might involve a fine of up to 100 roubles.

350. With regard to accused juveniles, he stated that article 10 of the Criminal Code defined minors for purposes of the law as persons under the age of 18. Minors served their sentences separately from adult prisoners in educational corrective labour camps where they were held under less stringent conditions, being entitled to receive more visits, more parcels and transfers of money. The decision to transfer a convicted person who had reached the age of 18 while serving his sentence to an adult corrective establishment could only be taken by a court.

351. The representative stressed that the aim of all corrective treatment was to rehabilitate the offender and to instil honesty. Finally, he noted that visits by relatives were granted to all prisoners, that each centre applied a single régime, that the Corrective Labour Code permitted prisoners to be held in solitary confinement only as punishment and for not more than 15 days and that systematic visits were made by judges, especially in connection with the granting of conditional release or mitigation of sentence.

Right to fair trial and equality before the law

352. With reference to that issue, members of the Committee wished to receive information on the legal guarantees with regard to the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal, on relevant rules and practices concerning the publicity of trials and the public

pronouncement of judgements as required by article 14, paragraph 1, of the Covenant, on specific rules concerning the admission of the mass media to court hearings, on facilities to enable accused persons to obtain legal assistance and to exercise their right to defence and further information concerning the draft Byelorussian code on administrative violations.

353. Members also requested further information on the procedure for removing judges from office, the tenure of judges and whether judges could be dismissed in an arbitrary manner that could affect their independence and impartiality.

354. The representative of the reporting State explained that district and municipal people's courts dealt with the vast majority of civil and criminal cases, the highest body being the Supreme Court. The Constitution and other legislation guaranteed the right to an open, fair and impartial hearing in an independent court. Cases were heard on a collegiate basis; in courts of the first instance, hearings took place before a judge and two independent and elected people's assessors. Judges in both the people's courts and the Supreme Court were elected by general, equal and direct suffrage and secret ballot for terms of five years. Judges and people's assessors could be removed from office if they did not carry out their tasks satisfactorily or proved unworthy of their responsibilities according to a procedure set out in a Decree of 26 November 1981.

355. Proceedings in all courts were open to the public except in cases involving State secrets, crimes committed by minors, sex crimes or other crimes when it was necessary to protect the privacy of those involved. Any citizen over the age of 16 had the right to be present at a court hearing and cases could be covered in the news media. There was no legal provision to prevent press correpondents from covering trials.

356. The Constitution and other legislation guaranteed a person's right to legal protection against violation of his honour, dignity, life, health, freedom and property and State bodies were obliged to ensure that accused persons had the possibility of defending themselves by all legal means. Accused persons had the right to know the substance of the accusation, to submit evidence, to lodge an appeal, to be provided with details of the case after completion of the investigation, to participate in the court hearing and to contest the acts and decisions of the investigator, the procurator and the court. The accused also had the right to choose counsel and in cases involving minors or handicapped persons counsel was appointed immediately the accusation was made. Defence counsel was bound to use all legal means to determine the circumstances of the case and to give the accused the necessary legal assistance.

357. With regard to the question of the draft Byelorussian code on administrative violations, he said that the draft code would shortly be completed and was expected to be discussed at the forthcoming session of the Supreme Soviet of the Byelorussian SSR in December 1984.

Freedom of movement

358. With reference to that issue, members of the Committee wished to receive information on the restrictions on the freedom of citizens to leave the country for travel abroad or for emigration.

359. With regard to the emigration of Jewish families from the Soviet Union, some members wished to know the general policy in the Byelorussian SSR, how many applications had been made in recent years, and on what grounds the public authorities could deny a visa for travel abroad.

360. The representative of the reporting State noted that thousands of Byelorussian citizens travelled to foreign countries every year as tourists, on official mission, in connection with cultural, technical or scientific events, or to study or visit relations living abroad. Requests for travel abroad with a view to permanent residence were made basically for reasons of family reunification or as a result of marriage to a foreigner. All such applications were made to the visa sections of the offices of internal affairs of the executive committees of regional soviets of people's deputies and were considered in the normal manner and in accordance with the law. In accordance with article 12 of the Covenant, the right to leave was subject solely to such limitations as were laid down by law and as were necessary to protect national security, public order, public health or morals or the rights and freedom of others. The exit permit process at times required the prior settlement of property and family questions and other matters involving other people.

361. Replying to questions raised concerning exit permits for citizens of Jewish origin, the representative said that the question was dealt with by the appropriate authorities on the basis of all-Union legislation. During the previous 40 years, more than 11,000 people of Jewish origin had emigrated from the Byelorussian SSR, but the number of requests to leave had decreased in recent years, no doubt because those who wished to leave had already done so.

Interference with privacy, particularly with regard to postal and telephone communications

362. With reference to that issue, the representative of the Byelorussian SSR explained that, under article 55 of the Constitution, respect for the individual and protection of the rights and freedoms of citizens was the duty of all State bodies, public organizations and officials and that, under article 54, the pivacy of citizens and of their correspondence, telephone conversations and telegraphic communications was protected by law. Under article 173 of the Code of Criminal Procedure of the Republic, the interception of correspondence was allowed in exceptional cases but only on the basis of a warrant from th procurator or by court order. There was no legislation in the Republic that empowered any State organ or any individual to tap telephone conversations. Under article 135 of the Criminal Code of the Republic, criminal liability could be incurred for violation of confidentiality of correspondence, telephone conversations and telegraphic communications.

Freedom of thought, conscience and religion

363. With regard to that issue, members of the Committee wished to receive relevant information on what the position of the authorities would be if a group of parents asked for religious education to be taught in schools and in regard to religious propaganda, whether there were laws and regulations controlling the practice of religion, whether any prosecutions had been brought under such laws and whether there were any religious groups which were in conflict with the authorities in the Republic under the relevant laws and regulations.

364. In his reply, the representative referred to various constitutional and legislative provisions under which freedom of thought, conscience and religion were guaranteed. He noted in that connection the existence of special legal norms which provided that any person who obstructed the performance of religious rites would incur liability, provided those rites did not disturb public order or constitute an infringement of the rights of citizens. A Decree of 1966 also provided that if on the ground of his attitute towards religion any citizen was refused employment or entry into an educational establishment, was dismissed from employment or deprived of any legal privileges or suffered any other significant restriction of his rights as a citizen, criminal liability would be incurred under article 139 of the Criminal Code.

365. Thus believers were provided with all the necessary conditions to profess their religion, but the State also required that they comply unconditionally with Soviet law. Under that law, meetings of believers were not to be used to make political statements directed against the interests of the State and believers must not be encouraged to neglect their obligations as citizens or to engage in practices that could damage their health.

366. Currently, there were 10 religious faiths in the Republic. No one had ever been prosecuted for his religious beliefs and such prosecution would be unconstitutional by virtue of article 50 of the Constitution. Education was a secular matter which excluded the influence of the Church, and the establishment of religious schools for children was therefore not permitted. Religious education could, however, be obtained in special institutions which could be attended by adults and children could receive religious instruction from their parents. Churches were open to all, as was the teaching given therein, and religious literature was available. There was no justification therefore for the view that religious propaganda was not specifically provided for.

Freedom of expression

367. With reference to that issue, members of the Committee wished to receive information on controls exercised on freedom of the press and the mass media in cases where persons were arrested or detained for expressing political views and on restrictions on political debate. They also asked to what extent an individual was permitted, in private and in public, to express his disagreement with the existing order and to propagate ideas for peaceful change even if those ideas were at variance with those of the régime, and whether the penal provisions against slander could not be misused to suppress criticism. Further information on the freedom of assembly and freedom of the press was also requested.

368. Replying to those questions, the representative of the State party said that any citizen of the Byelorussian SSR was free not only to hold his own opinions, but also to criticize shortcomings in the work of State organs and public organizations. Officials had an obligation to consider workers' proposals and statements within a fixed period of time, to reply to them and take the necessary action. Victimization for the expression of criticism was prohibited and persons guilty of it were liable in law. Freedom of the press in the Byelorussian SSR was guaranteed by the Constitution and found its primary expression in the absence of the material dependence of newspapers and magazines on private owners. Newspapers and journals were issued by party organizations, government departments, trade unions, artistic associations, scientific and technical societies etc. The only restrictions imposed on the Soviet press by law were that it must not engage in war propaganda or incitement to racial or national hatred, offend the feelings of

believers, publish pornography, incite persons to violence and the undermining of Soviet power or publish material contrary to the truth. The spirit of those restrictions did not contravene article 19, paragraph 3, of the Covenant and they were considered to be reasonable and necessary.

369. Finally, the representative noted that article 67 of the Criminal Code, which provided for punishment of slanderous and libellous attacks on the Soviet State structure, also specified the limitations in that respect and that article 28 of the Criminal Code also gave a specific definition of libel as consisting of manifestly false statements or deliberate belittlement of the worth of the individual, expressed in an indecent manner.

Freedom of assembly and association

370. On that issue, members of the Committee wished to receive information in particular on the right to form political parties, trade unions, associations and groups to promote human rights and other special interests.

371. In reply, the representative of the reporting State said that there were special provisions whereby citizens could hold gatherings in their homes as a form of direct participation in public and State affairs and that there were no restrictions on the freedom of association other than those provided in the Criminal Code of the Republic.

Protection of family and children

372. Members of the Committee requested information on the right of citizens to marry aliens and on the revised section V of the Byelorussian Marriages and Family Code.

373. In his reply, the representative of the State party explained that amendments to the Marriages and Family Code had been proposed with a view to bringing it into line with the Act of Citizenship of the USSR. Section V of the Code dealt with the application to foreign and stateless persons of Soviet legislation on marriage and the family. In particular, it governed the rights and duties of foreigners and stateless persons within marriage and in family affairs; marriage between a Soviet citizen and a foreigner and between foreigners on the territory of the Beylorussian SSR; the conclusion of marriage between Soviet citizens in Byelorussian consular institutions; recognition of marriages concluded outside the Byelorussian SSR; dissolution of marriages be between Soviet and foreign citizens; recognition of paternity, guardianship, registration of civil acts of family and marriage and recognition of documents issued in foreign States. Section V of the Code also dealt with the question of the marriage and family laws of other States and related international treaties.

Exercise and restriction of political rights

374. With reference to that issue, members of the Committee wished to receive information on people's control committees in the Republic and why they had been found necessary.

375. The representative replied that the functions of the organs of people's control were to monitor the implementation of economic and social development plans, to ensure the economic use of human and material resources, to combat waste, to promote and encourage the scientific organization of work and to supervise the

progress of work in economic enterprises. In the case of persons guilty of a violation or breach of the law, the organs of people's control endeavoured to encourage criticism and to discuss with such persons the errors of their ways. Any material on misappropriation by officials under investigation by the organs of people's control was sent to the Procurator's Office for a decision on whether criminal proceedings should be instituted. The members of the organs of people's control were elected for periods of two years at general assemblies of workers.

Rights of minorities

376. Members of the Committee wished to receive information regarding the demographic composition of the population of the Byelorussian SSR, the languages taught and the measures taken to preserve the culture of minority groups. Information was also requested on the situation of the Polish, Lithuanian and Jewish communities in the Republic.

377. Replying to those questions, the representative said that citizens of more than 80 nations lived and worked in the Byelorussian SSR. According to the 1979 census, there were 7,569,000 persons of Byelorussian origin (80 per cent of the population), 1,134,000 persons of Russian origin (12 per cent), 403,000 of Polish origin (4 per cent), 231,000 of Ukrainian origin (2.5 per cent), 135,000 persons of Jewish origin (1.4 per cent) and 61,000 persons of other origins (0.7 per cent).

378. With regard to legislation, he noted that the Constitution of the Byelorussian SSR stipulated that any direct or indirect restriction on the rights or privileges of citizens on the ground of race or nationality was punishable by law. All citizens regardless of origin participated in the political, economic, social and cultural life of the country on an equal footing and enjoyed equal rights and freedoms. Persons of different national origins did not live apart from others in any way.

379. Persons of Polish, Jewish and Lithuanian origin were entitled to enjoy their particular culture, profess their religion and use their native language. There were no special schools for such persons, however, simply because they did not live in concentrated groups but were scattered throughout the Republic. Furthermore, the number of families whose members belonged to different nationalities was constantly on the increase and had grown by 200,000 during the preceding decade.

General observations

380. Members of the Committee thanked the delegation of the Byelorussian SSR for the spirit of co-operation in which the information requested had been supplied and which members of the Committee wished to consider in depth.

381. Concluding the consideration of the second periodic report of the Byelorussian SSR, the Chairman thanked the delegation for its co-operation with members of the Committee.

Dominican Republic

382. The Committee considered the initial report of the Dominican Republic (CCPR/C/6/Add.10) at its 577th, 578th, 581st and 582nd meetings, held on 27 and 29 March 1985 (CCPR/C/SR.577, 578, 581 and 582).

383. The report was introduced by the representative of the State party who expressed his Government's regret for the long delay in submitting the report and assured the Committee of his Government's readiness to co-operate.

384. The representative stated that since the end of the dictatorial régime, 25 years previously, his country had been committed to democracy and the rule of law. Since 1978, when the Partido Democrático Revolucionario assumed power, the protection of human rights had formed an integral part of his country's official policy. The Dominican Republic had promulgated a general amnesty law and promptly ratified the International Covenant on Civil and Political Rights and its Optional Protocol and had taken a number of measures to bring legislation into line with the provisions of the Covenant, including the removal of restrictions on travel to certain countries, restoring the full rights of certain political parties, including the Communist party, and establishing a presidential office for the promotion and protection of human rights. As a further token of its attachment to human rights, the Dominican Republic had been among the first States, in February 1985, to sign the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

385. Members of the Committee welcomed the additional information provided by the representative of the State party which, in their view, had helped to supplement, to some extent, a report that was inadequate and dealt almost exclusively with constitutional provisions rather than also addressing relevant laws and practices designed to ensure the enjoyment of the rights set out in the Covenant. They expressed particular interest in learning more about how the changes since 1978 and the current economic and debt problems had affected the enjoyment of human rights.

386. Referring to article 1 of the Covenant, members sought information on the position of the Dominican Republic regarding the crisis in Central America, the practice of apartheid in South Africa and the right to self-determination of the peoples of Palestine, Namibia, Democratic Kampuchea and Afghanistan.

387. Regarding article 2 of the Covenant, members asked whether the provisions of the Covenant had direct effect in the Dominican Republic or whether further legislation was needed to bring them into effect. If the former, it was asked whether the Covenant's provisions could be directly invoked before the courts. It was further inquired whether a system existed for harmonizing legislation that pre-dated both the Constitution and the Covenant. Questions were also asked about the publicity accorded to the Covenant, whether the Covenant was easily accessible to the public, whether instruction on human rights issues was provided in schools and universities and whether the general public was aware that the report was considered by the Committee. In addition, members asked what the activities to celebrate Human Rights Day comprised and whether activities designed to make the population aware of human rights problems were included.

388. In connection with article 3 of the Covenant, one member requested information about laws and regulations ensuring the quality of rights of men and women in the Dominican Republic, the number of girls attending primary school and university and the number of women doctors and lawyers.

389. With regard to article 4 of the Covenant, it was asked what powers the Government had in a state of emergency, whether a state of emergency had ever been declared and, if so, whether such a declaration had been in conformity with the provisions of article 4 of the Covenant. In the same connection, it was asked

whether an individual detained during a public emergency could avail himself of a writ of habeas corpus.

390. Regarding article 6 of the Covenant, members expressed concern about the disappearance of persons in the Dominican Republic and asked what the Government had done to investigate such cases, including several specific cases to which members of the Committee referred. They also inquired about certain recent incidents where the use of excessive force by police had led to death and injury and asked whether such incidents had been investigated with what results, and whether conditions imposed by the International Monetary Fund had caused these incidents. In addition, members asked for information regarding the regulations in force with respect to the use of firearms by security forces.

391. One member asked for additional information about population growth rates and infant mortality rates and whether or not abortion was legalized.

392. With regard to article 8 of the Covenant, members of the Committee referred to reports alleging that illegal migrant workers from Haiti had been forcibly transported to several sugar plantations and kept working against their will. Further information was requested about that matter, particularly as to whether the Government had put a stop to any such treatment.

393. Commenting on article 9 of the Covenant and the reported practice in the Dominican Republic of arbitrary arrest and preventive detention, members asked whether illegal practices of that kind, if they took place, had been halted and what remedies were available to victims of such practices - could they, for example, directly invoke article 8, section 2 (c), of the Constitution to obtain immediate discharge from custody or could they resort to habeas corpus? Members also asked whether such persons could apply for compensation, as provided in article 9, paragraph 5, of the Covenant. It was also asked what progress had been achieved in reducing the length of pre-trial detention.

394. Referring to article 10 of the Covenant, members asked for additional information about steps the Government had taken to ensure that the conditions of and rules for the treatment of prisoners were in conformity with international standards, whether law enforcement authorities had received adequate guidance concerning the United Nations Standard Minimum Rules for the Treatment of Prisoners and whether any difficulties had been encountered in implementing the Regulation (No. 7083) governing the organization and operation of public prisons.

395. In connection with articles 12 and 13 of the Covenant and with reference to the constitutional principle regarding freedom of movement cited in the report, members asked for additional clarification about the actual extent of permissible restrictions on the freedom of movement. Regarding the question of nationality, members inquired about the relevant laws governing the nationality of illegitimate children born in the Dominican Republic to accredited diplomatic representatives or to other aliens and whether any bilateral agreement had been concluded with other countries on the question of duality nationality. It was also asked whether aliens whose expulsion from the country had been ordered could appeal such decisions under any established procedure. In connection with the situation of Haitian refugees living in the Dominican Republic, it was asked whether the Dominican Government had made representations to the Government of Haiti concerning the forcible repatriation of refugees by Haitian agents.

396. In connection with article 14 of the Covenant, members asked for additional details concerning the judiciary system, including the tenure, dismissal and disciplining of members of the judiciary; whether the practice of election of judges by the Senate was adequate in ensuring judicial independence; whether there were any social or financial restrictions limiting access to the legal profession; how the court system was organized for the effective protection of human rights and what competence courts had in respect of administrative, social and labour matters; whether a legal aid system existed to assist persons who could not afford to pay legal costs; and whether any judges appointed during the era of the dictatorship were still serving. One member asked whether the establishment of an office of ombudsman or defensor del pueblo had ever been considered by the Government as a means of improving the administration of justice, particularly in rural areas or for foreign workers. Another member noted that the Committee had adopted a general comment dealing with the scope of article 14 (general comment 13 (21)) and suggested that the Government consider that general comment in preparing its next periodic report.

397. With reference to article 17 of the Covenant, information was requested on the actual application of the constitutional principle of the inviolability of the home. In particular, it was asked what the statute on police powers provided regarding permissible house searches.

398. In connection with article 19 of the Covenant, members asked whether a licence or other form of government approval was required to establish a newspaper, whether newspaper closures ordered by the Government could be challenged in the courts and, if so, under what procedure, whether broadcasts from mobile reporting units were still banned and, if so, why; whether any radio station had been closed since the ratification of the Covenant, whether the entry of foreign publications into the country was controlled by the Government and, if so, under what legislative authority. It was asked what remedies were available to those affected by such restrictions. It was also asked how article 1 of Act No. 4033, which apparently severely restricted the circulation of juvenile publications, could be reconciled with article 19 of the Covenant. In addition, one member inquired whether there were currently any political detainees in the country.

399. In connection with the activities of the National Human Rights Committee, members inquired as to the Government's attitude towards that Committee and its criticisms and asked that the reported arrest of a board member of the National Human Rights Committee be investigated.

400. With respect to article 21 of the Covenant, it was asked whether the right to freedom of assembly could be exercised within the Dominican Republic without undue government restrictions or interference. Specific reference was made to the reported unexplained prohibition of a meeting that was to have been held under the auspices of the National Human Rights Committee in December 1984 to celebrate Human Rights Day.

401. With regard to article 22 of the Covenant, members requested additional clarification concerning the exclusion from coverage under the Labour Code of such broad categories of the labour force as agricultural, agro-industrial, forestry and stock-raising workers, as well as civil servants and other workers employed by public authorities. It was also asked whether striking workers enjoyed legal protection from dismissal and, if so, whether they could effectively avail themselves of such protection by seeking court ordered reinstatement after dismissal.

402. Referring to article 24 of the Covenant, information was requested concerning any measures taken by the Government to protect the rights and welfare of minors, particularly juvenile workers of foreign parentage. Members also asked about the age limit for compulsory education and about school enrolment statistics.

403. In connection with article 25 of the Covenant and with reference to the statement in the report concerning the need for conformity between the tenets of political parties or associations and constitutional principles, further clarification was requested as to the possible restrictions on political activities that such a proviso could lead to.

404. With regard to article 27 of the Covenant, one member asked whether there were any ethnic or religious minorities in the Dominican Republic.

405. The representative of the State party expressed appreciation for the Committee's constructive attitude in considering his country's initial report which, he acknowledged, was late and not sufficiently complete. He then proceeded to reply to questions raised by the Committee.

406. With regard to article 1 of the Covenant, the representative stated that his Government had declared its support for the principle of self-determination in all international forums, that it had consistently supported the struggle of the Namibian and Afghan peoples, that his Government also supported the right of the Palestinian people to exercise the right of self-determination without interference and coercion, including the right to establish a sovereign and independent State in Palestinian territory and that it considered the withdrawal of Israeli troops from Palestinian and other occupied Arab territories to be a prerequisite for a solution to the problem. His Government also considered apartheid to be a crime against humanity and an affront to man's conscience. He also reaffirmed his country's dedication to the principle of non-intervention, which constituted one of the key tenets of the Constitution of the Dominican Republic. In that connection, his Government's position on the current crisis in Central America was that it must be peacefully resolved and it had therefore staunchly supported the efforts of the Contadora Group to that end. His Government was fully aware that the situation in the region was a consequence of unjust political and economic structures.

407. Referring to questions posed under article 2 of the Covenant, the representative stated that as a valid international treaty which had been published in a nationally circulated newspaper and the Registre Oficial (official gazette), the provisions of the Covenant had been fully incorporated into domestic law and could be directly invoked in the courts. Like other international treaties the Covenant had the force of constitutional law.

408. With regard to article 3 of the Covenant, the representative stated that under Dominican law women enjoyed full equality with men, including the right to vote and to be elected to public office. There were currently women in such important offices as government minister and provincial governor. Abortions were prohibited by law, but the Government was pursuing a policy of reducing the population growth rate.

409. Responding to the question raised under articles 4 and 9 of the Covenant as to the possibility of resort to habeas corpus by detainees, the representative said that any person deprived of his freedom could invoke habeas corpus before a competent tribunal to determine whether the detention was lawful.

410. Responding to questions raised under article 6 of the Covenant concerning the question of unexplained disappearances, the representative said that his Government had no specific policy covering such cases, which were considered to be sporadic, isolated incidents having no political overtones. With respect to one of the specific cases of disappearance that had been cited - that of the Haitian refugee Luis Samuel Roche - he noted that the alleged disappearance had occurred under the previous Government and that a thorough investigation had turned up no record of his ever having been held in the prison that had been named in the allegation or of his ever having been detained by Dominican police or immigration authorities.

411. As to the question posed by members concerning the alleged use of excessive force by the police in quelling public protests, he stated that law enforcement officers had received special training so as to avoid the use of excessive force in coping with such protests. He pointed out that the protests had been directed against a serious economic situation which had been precipitated by his Government's negotiations with the International Monetary Fund, and he strongly supported a suggestion for a study of the adverse effects which the conditions imposed by the International Monetary Fund had had on the enjoyment of human rights. He acknowledged, however, that excessive force might have been used during the isolated incident that had occurred in 1984, at a time when tension was very high.

412. With regard to birth rates and infant mortality rates, he stated that, according to the most recently available data, the birth rate in 1980 was 3.5 per cent and the infant mortality rate in 1979 was 33.2 per thousand.

413. With regard to articles 8 and 12 of the Covenant and the allegations concerning the treatment of illegal migrants from Haiti as forced labourers on sugar plantations, the representative categorically denied that the situation of such migrants was as depicted in the reports to which members of the Committee had made reference. In fact, illegal Haitian immigrants were not persecuted by the authorities and lived openly in Dominican society, some of them even marrying Dominican nationals.

414. As to the broader question concerning the treatment of migrant workers, particularly Haitians, he stated that, in accordance with international labour conventions, funds were set aside to ensure that basic requirements for medical care, transport, food and the fulfilment of contracts were met. A recent ILO commission of inquiry had found that Haitian workers had been voluntarily recruited and could reside wherever they wished under the temporary residence permits with which they had entered the Dominican Republic. Such workers were not subjected to forced labour and enjoyed freedom of movement. In view of the requirements of the sugar harvest they did not work fixed hours, but could not be obliged to work more than six or seven hours a day. A general effort was under way, subject to the availability of funds, to improve housing conditions and the Government did all it could to abide by various ILO conventions concerning migrant workers.

415. Responding to one of the questions posed by members of the Committee under article 9 of the Covenant, the representative stated that he knew of no provision for granting financial compensation to a person who had been unlawfully arrested or detained, but that it was possible for such a person to seek moral redress (see also the answer provided under para. 409 above concerning resort by detainees to the remedy of habeas corpus).

416. With reference to article 10 of the Covenant, the representative explained that the pursuit of rehabilitation, to the extent that the scarcity of resources allowed, was an important objective in all cases of imprisonment. He also noted that a Prison Reform Commission, of which the country's First Lady, an ardent human rights advocate, was a member, had been set up to study ways of improving prison conditions.

417. With regard to articles 12 and 13 of the Covenant, the representative stated that illegitimate children of aliens, if born in the Dominican Republic and facing the prospect of being stateless, were granted Dominican nationality. As to the question of dual nationality, no bilateral agreements had been concluded granting dual nationality as such. However, an agreement had been concluded with Spain under which Dominican nationals enjoyed the same civil, economic, social and cultural rights in Spain as Spanish nationals. With respect to the question of Haitian exiles, the representative stated that his country welcomed them and did nothing to hamper their freedom or to restrict their rights. No member of a foreign security service could act freely in the Dominican Republic since that would be a gross violation of Dominican sovereignty.

418. With respect to article 13 of the Covenant, the representative stated that foreigners were well received in the Dominican Republic, enjoyed full rights and could only be expelled for serious cause.

419. Replying to questions posed in connection with article 14 of the Covenant, the representative of the State party provided the following details concerning the judicial structure in the Dominican Republic: the highest tribunal was the Supreme Court, which reviewed both questions of fact and questions of the law. The courts of appeal reviewed criminal cases; justices of the peace were concerned with petty offences. The courts of first instance were subdivided into penal, civil and commercial tribunals. The land courts dealt with all matters pertaining to the ownership of land, and the labour courts took up labour-related cases after the parties concerned had exhausted the conciliation remedies available in the Ministry of Labour. There was also a State Audit Office which reported annually on the State's accounts.

420. In further responding to questions posed by members of the Committee under article 14, he noted that the legislature was considering a bill providing for the appointment of judges by the Supreme Court, that most judges belonged to the new generation that had grown up following the dictatorship and that there were no judges sitting who had served under the previous régime, that there was both a legal aid system and a system of public defenders in the Dominican Republic and that all persons had access to justice and to the courts.

421. With reference to article 17 of the Covenant, the representative stated that the inviolability of the home was safeguarded under the law.

422. With regard to article 19 of the Covenant, the representative noted, inter alia, that there was no censorship of the media in the Dominican Republic, that there were 10 nationally circulated newspapers, 100 television stations and more than 200 radio stations in the country, that the media could report on all domestic and international matters without restriction provided that public order, national security and propriety were not jeopardized, that broadcasting from mobile units had been discontinued as a preventive measure after the broadcasting of information from the scene of the events of April 1984 had resulted in increased unrest and that there were no special requirements for the establishment of

newspapers other than those normally required for commercial enterprises. In addition, he stressed that there had been no political prisoners in his country for many years - a fact that was acknowledged by Dominican opposition parties and national human rights bodies. The representative also stated that he had no information concerning the reported detention of a leader of the Dominican Human Rights Committee and that the question would be addressed in the next report.

423. With regard to article 22 of the Covenant, the representative explained that the Labour Code, which dated back to the time of the dictatorship, had been supplemented by a considerable body of labour legislation and adapted to contemporary labour realities and that the right to strike was neither prohibited nor restricted except in the case of public employees. He added that strikers who had been dismissed from their job could apply to the courts for redress.

424. In connection with article 24 of the Covenant, the representative noted that a National Children's Council had been established to formulate appropriate policies with regard to all aspects of child welfare, that primary education was free and compulsory and that a high proportion of the population was pursuing some form of education as a result of a literacy campaign launched by the Government in 1978.

425. Replying to the question raised under article 27 of the Covenant concerning the existence of any ethnic or religious minorities in the Dominican Republic, the representative stated that there were no such minorities in the country.

426. Finally, the representative said that his country was eager to provide a supplementary report and to meet the Committee's requirements in its second period report.

427. Members of the Committee commended the State party for its considerable progress, since the ratification of the Covenant, in protecting and implementing human rights. The Committee welcomed the co-operation being extended by the State party and expressed special appreciation for the earnest endeavour of the representative of the Dominican Republic to provide answers to as many of the Committee's questions as possible and for the offer to submit a supplementary report.

428. The Committee decided to request the State party to submit its second periodic report, which would have been due in April 1984, within one year of the date of consideration of the current report, and to include in the second periodic report the supplementary information requested during consideration of the initial report. It was the Committee's expectation that, in addition to conforming to the guidelines concerning the form and content of periodic reports, the new report would contain information that would normally have been provided in the initial report, amplify, where necessary, the oral responses supplied by the State party's representative in the course of the consideration of the initial report and provide answers to the outstanding questions.

429. The representative of the Dominican Republic thanked the Committee for its decision and assured it of his Government's continued readiness to co-operate.

New Zealand (Cook Islands)

430. The Committee considered the initial report of New Zealand (Cook Islands) (CCPR/C/10/Add.13) at its 579th and 582nd meetings, held on 28 and 29 March 1985 (CCPR/C/SR.579 and 582). 18/

431. The report was introduced by the representative of the Cook Islands who explained that, following consultations with the Government of the Cook Islands, the obligations set forth in the Covenant had been extended to the Cook Islands when New Zealand had ratified the Covenant. He noted that the laws and administrative practices relating to the protection of human rights reviewed in the report came within the exclusive purview of the Government of the Cook Islands. The fundamental rights of Cook Islanders were set out in a written Constitution, but perhaps the strongest guarantee of such rights was the high level of political awareness and participation of the population.

432. In discussing the relationship of the Cook Islands with New Zealand, the representative recalled that the Islands had exercised their right to self-determination in 1966, under United Nations supervision, and that they had chosen full self-government in free association with New Zealand. After providing additional details regarding the Islands' international relations and status, the representative drew attention to several relevant developments that had occurred since submission of the report, including the passage of the Ombudsman Act in 1984, the adoption of a constitutional amendment modifying eligibility rules for election to Parliament and the entry into force, with respect to the Cook Islands, of the Convention on the Elimination of All Forms of Discrimination against Women.

433. Members of the Committee commended the Government of the Cook Islands on the high quality of the report which, in their view, compared favourably with reports submitted by larger countries and which demonstrated a full grap of the Committee's requirements.

434. One member of the Committee inquired about the size of the Cook Islands population and about the nature and cause of the movement of the population among the islands and away from the Cook Islands. He also requested information about the policies and efforts of the Cook Islands with respect to the problems of Namibia and apartheid, the right of the Palestinian people to self-determination, and the question of Democratic Kampuchea and Afghanistan.

435. Regarding article 2 of the Covenant, members asked whether the provisions of the Covenant had been incorporated into the domestic legislation of the Cook Islands and whether they could be invoked before the courts. Additional clarification was also sought as to why sections 2 to 6 of the Constitution Act 1964 and articles 2, 37 (5) and 41 of the Constitution enjoyed a special status.

436. With reference to article 3 of the Covenant, it was asked whether women in the Cook Islands were free from discrimination and whether there was in fact equality between spouses, for example in the case of divorce.

437. In connection with article 8 of the Covenant, one member requested clarification of the term "community service order" which was used in the report and which might be interpreted as a form of forced labour.

438. In connection with article 9 of the Covenant, members of the Committee requested information as to whether there were frequent cases of arrested persons'

not being promptly informed of the grounds for their arrest, whether anyone had ever sought damages for unlawful arrest or detention and whether the authorities were permitted to arrest or detain persons for reasons other than criminal actions. In the latter case, it was asked whether the guarantees provided for in article 9 of the Covenant, which in certain respects seemed broader in scope than guarantees provided under domestic laws, were adequately ensured.

439. Concerning article 10 of the Covenant, it was asked whether the treatment of juvenile offenders was in conformity with the provisions of that article and whether the practice of exercising strict control over a prisoner's correspondence was compatible with due respect for privacy.

440. With regard to article 12 of the Covenant, it was noted that, according to the report, exit from the Cook Islands was restricted by law in certain instances. It was asked whether, in cases where authorization to leave had been denied, legal recourse was available to the individual concerned. Members also asked whether freedom of travel between the Cook Islands and New Zealand was complete and requested further details about the relationship of the Cook Islands and New Zealand regarding nationality and the issuing of passports.

441. With reference to article 14 of the Covenant, it was asked whether there was a legal profession in the Cook Islands and whether legal assistance was readily available so that individuals could exercise the rights set forth in article 14, paragraph 3; whether there were sufficient justices of the peace; what the qualifications were for appointment as a judge or commissioner of the High Court; whether judges could be appointed on contract, as implied in article 58 (2) of the Constitution, and, if such contracts were renewable, whether that would not place judges unduly under the influence of the executive; whether recourse to customary law was encouraged; whether the independence of the legal profession was ensured; how many Cook Islands citizens were lawyers; on what basis legal aid was granted - whether it was available for civil as well as criminal cases - and how many persons had applied for such aid.

442. Commenting on article 18 of the Covenant and noting that under the Religious Organizations Restrictions Act 1975 the establishment of some religious organizations in the Cook Islands required prior ministerial approval, members asked whether under such powers the practice of any religion had ever been prohibited and, if so, for what reason. They also asked what the rationale for that Act was; whether the Maoris had their own religious practices; whether members of the clergy were allowed to teach at all levels in the Islands' secular schools; and whether there were any religious schools.

443. With regard to article 19 of the Covenant, one member inquired whether the press was government-owned and, if so, how it was possible to prevent government control of the media and to ensure political pluralism.

444. Commenting on the fact that there was no legislation prohibiting war propaganda, one member asked whether the enactment of legislation to bring the Cook Islands into compliance with article 20 of the Covenant was being contemplated.

445. Although aware of New Zealand's reservation in respect of article 22 of the Covenant, members asked whether workers were free to exercise their right to form trade unions and why there were no trade unions. Information was also requested about various aspects of the law governing the establishment of trade unions. One

member asked whether at some stage New Zealand might not wish to consider withdrawing its reservation to article 22.

446. In connection with article 25 of the Covenant, it was asked how members of Parliament were elected; whether the requirement for resignation from the public service of elected officials would not deter public servants from seeking elective office; how many political parties there were and what their relative strength was; and whether the constitutional amendment excluding certain persons from Parliament for life was consistent with the Covenant. Several members asked whether the hereditary basis for membership of the House of Arikis did not contravene article 25 or if local political groups considered that it did.

447. Regarding article 27 of the Covenant, members of the Committee asked why the scope of customary Maori law was restricted to only two areas and was not made more broadly applicable, whether Maori women enjoyed the same rights and opportunities as other women and whether the principle of proportionality in the ethnic composition of the staffs of the organs of government, the educational system and the civil service was adequately respected. Several members asked for additional information about the situation of minorities in general, in terms of their enjoyment of the rights set out under article 27 of the Covenant.

448. Replying to a question concerning the size and movements of the population, the representative noted that there had been a strong trend between 1976 and 1984 towards migration by young Cook Islanders to New Zealand to take advantage of better educational and employment prospects, but that more recently the population appeared to have stabilized at about 17,000, reflecting the increasing confidence of Cook Islanders in the economic future of their country. The reduction of traditional family size was also expected to be a stabilizing factor. The population drift from the northern group of islands had also levelled off.

449. With regard to questions posed under article 1 of the Covenant, the representative noted that the Cook Islands expressed their views concerning such international affairs through New Zealand. They exerted an influence in their own right in the Pacific region and did not aspire to influence any further afield.

450. As to why the Covenant had not been incorporated into domestic law, the representative was of the view that the real issue was whether or not the legal system in its entirety provided adequate protection for fundamental rights - and by that criterion such rights were guaranteed in the Cook Islands. Concerning the special status of certain sections of the Constitution Act 1964 and the Constitution, he noted that those "entrenched" provisions involved fundamental matters such as the functions of the Head of State and the principles that the Cook Islands should be self-governing, that the Constitution should be the supreme law, that external affairs and defence should be the responsibility of New Zealand after consultation and that Cook Islanders should be New Zealand citizens.

451. Replying to the question concerning article 3 of the Covenant, the representative explained that women had equal opportunities with men to participate in public life but that their number in the public service was relatively small since such involvement represented a departure from the traditional role of Polynesian women. For the previous 13 years, however, the Speaker of the Parliament had been a woman and there had also been a woman Cabinet minister in a previous Government. Women were strongly represented in the House of Arikis. Divorces were very few, and when they did occur the family assets were divided equally between the partners. There was no legislation concerning the status of

women because it was taken for granted that they enjoyed every right, particularly the traditional rights of Polynesian women in the home.

452. With respect to the question concerning the possible interpretation of community service as forced labour, posed under article 8 of the Covenant, the representative stated that forced labour was not permitted but that prisoners could work if they chose, in return for a modest remuneration.

453. Replying to questions raised under article 9 of the Covenant, he stated that, while the Criminal Procedure Act required that a person be brought before a court within 48 hours of his arrest, in practice no one had ever been held longer than overnight before that was done; that although a remedy was available there had never been an action in the courts seeking damages for false imprisonment; and that under the law arrests without a warrant were prohibited, except in certain prescribed circumstances such as when a person was clearly about to commit a crime.

454. Regarding the questions raised under article 10 of the Covenant, the representative stated that juveniles in the prison of Rarotonga were kept in separate accommodation and that prisoners' correspondence was checked in order to establish the nature of the communication.

455. In connection with questions posed under article 12 of the Covenant, he explained that Cook Islanders were free to leave the Cook Islands whenever they wished, subject to obtaining a tax clearance, that they had free access to New Zealand citizenship and were entitled to hold New Zealand passports and that New Zealanders were obliged to obtain residence permits for visits to the Cook Islands exceeding 90 days.

456. Replying to questions posed under article 14 of the Covenant, the representative stated that there were two firms of solicitors in Rarotonga, each employing two or three lawyers, and four qualified lawyers in government service. All lawyers were graduates of New Zealand universities. There was no law society or bar association. There were at least three justices of peace on every island and there were now three European justices of the peace in addition to those of Maori origin. The qualifications for judges were stipulated in the Constitution and no Cook Islander had as yet met such qualifications. Although judges were given three-year appointments and could be reappointed there was no danger of undue government influence, since they were not resident and only visited the Cook Islands occasionally, in connection with their duties. In actual practice, judges departed of their own accord and their resignations were accepted with reluctance.

457. Regarding the questions posed under article 18 of the Covenant, the representative of the Cook Islands acknowledged that on its face, the Religious Organizations Restrictions Act appeared to be inconsistent with the obligation under the Covenant to ensure freedom of religion. It had been passed because of the frequency of visits to the country by evangelists of obscure religious sects whose influence on some people had caused concern. The Act had not been effective in dealing with that problem and neither did it restrict the establishment of other religions. The concerns of the Committee on that score would, however, be conveyed to the Government with a view to recommending that the Act be repealed. The Church participated in education at all levels.

458. With respect to article 19 of the Covenant, the representative noted that one daily newspaper was published by the Cook Islands Broadcasting and Newspaper Corporation, which was a statutory body required by law to maintain a proper

balance in selecting and presenting the news. It also ran an island-wide AM radio station. Other newspapers, generally weeklies, were also published, usually representing the views of the parliamentary opposition. There was also a privately-owned FM station broadcasting to Rarotonga, but no television.

459. Replying to questions raised under article 22 of the Covenant, the representative of the Cook Islands pointed out that trade unions were permitted and there were no obstacles to freedom of association. The Government was the major employer and there was a public service association as well as a union of dockside workers. The absence of other trade-union activity indicated that Cook Islands workers had thus far felt no need for it.

460. In connection with questions raised under article 25 of the Covenant, the representative stated that the requirement for the resignation from the public service of public servants who had been elected to Parliament was consistent with the principle of the separation of powers. There were two main political parties. At the most recent election, support for those parties had been evenly divided, with the result that there was currently a coalition government. The House of Arikis was strictly an advisory body. As an inherited part of the Cook Islands system, it was not part of the electoral process and could not be changed. The appointment of Arikis was a matter of lineage and succession and could not be made subject to elections. The representative also stated that he would convey to his Government the questions raised with regard to the constitutional amendment concerning membership of Parliament.

461. Replying to questions raised by Committee members under article 27 of the Covenant, the representative of the Cook Islands stated that approximately 95 per cent of the population were Cook Island Maoris of pure or mixed blood, the remaining 5 per cent being Europeans of predominantly New Zealand origin.

462. Customary law was concerned almost exclusively with land questions, chiefly titles. The Government had decided, in principle, that the protection of customary law afforded by the Cook Islands Act of 1915 should be embodied in the Constitution.

463. As to the general situation of minorities, he pointed out that Europeans constituted the only ethnic minority in the Cook Islands and they were not discriminated against in any way.

464. Concluding the consideration of the report of New Zealand (Cook Islands), the Chairman thanked the delegation of the Cook Islands for its co-operation with the Committee and welcomed the fruitful dialogue that had begun. He expressed the hope that it would be possible for the Government of the Cook Islands to co-ordinate the second periodic report with the one due from New Zealand.

Spain

465. In accordance with the statement on its duties under article 40 of the Covenant adopted at its eleventh session (CCPR/C/18) and the guidelines adopted at its thirteenth session regarding the form and content of reports from States parties (CCPR/C/20), and having further considered the method to be followed in examining second periodic reports, the Committee, prior to its twenty-fourth session, entrusted a working group with the review of the information so far submitted by the Government of Spain in order to identify those matters which it would seem most helpful to discuss with the representatives of the reporting State. The working group prepared a list of issues to be taken up during the

dialogue with the representatives of Spain. The list, supplemented by the Committee, was transmitted to the representatives of Spain prior to their appearance before the Committee with appropriate explanations on the procedure to be followed. The Committee stressed, in particular, that the list of issues was not exhaustive and that members could raise other matters. The representatives of Spain would be asked to comment on the issues listed, section by section, and to reply to members' additional questions, if any.

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466. The Committee considered the second periodic report of Spain (CCPR/C/32/Add.3) at its 585th to 589th meetings, held on 2, 3 and 4 April 1985 (CCPR/C/SR.585-589).

467. The report was introduced by the representative of the State party who explained that, since the Committee's consideration of Spain's initial report six years ago, his country had carried on an intensive programme of legislative and political activity designed to give effect to the 1978 Constitution. One element of that programme had been the creation of the Constitutional Court, the General Council of the Judiciary and the post of People's Advocate, all of which had now become fully operational. In addition, the Spanish Parliament was currently engaged in a number of legislative and parliamentary initiatives aimed at bringing the existing legal order up to date. It was working on draft organic laws for the electoral system and the judiciary; a new military penal code and disciplinary legislation for the armed forces; a local authorities bill; draft organic laws on the rights and freedoms of aliens in Spain; the right to education and trade-union freedom; and a new extradition act. Susbtantial amendments were also being made to existing laws, amounting to a far-reaching reform of the existing legal system in areas affecting the protection of individual rights.

468. His country was making every effort to ensure the effective implementation of the rights recognized in the Covenant and in the Constitution. By virtue of article 2 of the Constitution, Spain had undertaken to enact necessary legislative and other measures both to give effect to such rights and to provide for effective remedies in case of violations. It had also acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Optional Protocol to the Covenant, had made declarations under article 41 of the Covenant, had recognized the competence of the European Commission of Human Rights to receive complaints of violations and had signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

469. The remainder of the representative's introductory remarks were devoted to a detailed description of various features of Spanish legislation relevant to the articles of the Covenant.

Constitutional and legal framework, as well as other measures adopted to give effect to the Covenant

470. With reference to the first item, members of the Committee wished to receive information on significant changes relevant to the implementation of the Covenant that had taken place since their consideration of Spain's previous report, on the relationship between the Covenant and domestic law, on promotional activities concerning the Covenant, and on the factors and difficulties, if any, affecting the implementation of the Covenant. With regard to the question of remedies, members also asked whether Act No. 62/1978 would remain in force under article 161 (1) (b) of the Constitution; what effect the new Habeas Corpus (Amparo) Act 1984 would have and what the respective roles of the Ministerio Fiscal, the Defensor del Pueblo and

the Parliamentary Committees were compared to that of the courts. They also sought additional clarification about the actual human rights situation in the country and how the relevant legislation was being implemented, how the supremacy of the Covenant over ordinary domestic legislation was ensured, the circumstances under which habeas corpus procedures could be suspended; the power of the People's Advocate, including his role in guaranteeing compensation in cases of miscarriage of justice and the manner in which the Committee's earlier proceedings had been transmitted to the Spanish Government and Legislature.

471. In his reply, the representative of the State party explained that, under article 10.2 of the Constitution, the Covenant, together with other international instruments, was recognized as a basis for interpreting the constitutional rules pertaining to fundamental rights and freedoms and could be directly invoked in the courts. Since it served as a norm for interpreting the human rights provisions of the Constitution it necessarily took precedence over the Constitution. Under article 96 (1) of the Constitution, the provisions of the Covenant also took precedence over ordinary domestic laws, with any possible conflicts being resolved by the courts in favour of the former.

472. As indicated in the report, the Constitution authorized the suspension of certain rights in all or part of the national territory under circumstances that were clearly defined. Rights that might be suspended on an individual basis in connection with the investigation of activities by armed bands or terrorist groups were also specified. Under recent legislation (Organic Law 6/1984) the right of habeas corpus could no longer be suspended in relation to terrorist acts (art. 55 (2) of the Constitution) but only during a state of emergency or siege (art. 55 (1) of the Constitution). Even in such cases - which remained theoretical since they had not actually arisen - any suspension would have to conform to article 116 of the Constitution and to the legislation governing states of alarm, emergency and siege.

473. With reference to promotional activities, he stated that the Committee's consideration of Spain's initial report had provided an impetus for the great mass of legislation that had been enacted over the past six years in order to bring domestic law into conformity with the Covenant and the Constitution and to move from an autocratic régime to one that guaranteed fundamental freedoms. All collections of Spanish legislation included the Covenant and various other international instruments. The Covenant had been translated into Catalan and there were plans to translate it into other vernacular languages. As to questions concerning the People's Advocate, the representative noted that that office had been established mainly with a view to promoting human rights and preventing violations of fundamental freedoms. The People's Advocate screened out many cases, performed fact-finding functions and often channelled appropriate cases to the courts; thus, his functions were complementary to those of the courts.

474. In connection with the question of remedies, the representative stated that, although the Government intended to amend Act No. 62/1978, it remained in force, providing guarantees against abuse of power and for the suspension of administrative acts that violated individual rights. The new Organic Law on amparo, he said, was expected to have a strong impact on both legislation and judicial and police practice because it covered all possible forms of detention, whether by the police, the courts or the military authorities, as well as forcible detention in medical institutions. Conditions for compensation in cases of miscarriage of justice, such as unlawful detention, were set out in the recently adopted anti-terrorist Organic Law No. 8/1984 and in the bill on judicial power that was currently before the legislature.

State of emergency

475. With reference to that issue, members of the Committee wished to receive information on the relationship between article 55 of the Constitution and article 4 of the Covenant, whether a state of emergency had ever been declared under article 55 (1) and on the manner in which Organic Laws Nos. 11/1980 and 8/1984 were applied in the implementation of article 55 (2) of the Constitution. Members expressed special concern about the provision in Organic Law No. 8/1984 for extending the maximum permissible period of detention under police custody from 72 hours to up to 10 days. In that regard, they asked whether the expanded period during which persons could be held incommunicado meant that such persons had no access to legal representation for as long as 10 days; whether they were free to choose their own legal representation and whether such representatives could actively assist them; whether the rights of suspects, including their protection from abuse and torture during that period were adequately safeguarded and, if so, through what measures; and whether a judge's authorization was required in order to extend the detention period beyond 72 hours. Noting that measures derogating from obligations under the Covenant could only be taken following an officially proclaimed state of emergency, as provided in article 4 of the Covenant, members questioned the compatibility with that article of provisions authorizing restrictions of rights on an individual basis, pursuant to Organic Law No. 8/1984 and article 55 (2) of the Constitution. In addition, members sought further clarification concerning the prevailing definition of terrorism, or of "members of armed bands and terrorist groups", based on Spanish jurisprudence or court decisions, including the views of the constitutional court. It was also asked whether terrorist suspects were governed by a special régime in terms of their place of detention, rights and duties and legal position and what remedies or compensation were available to persons unlawfully arrested or detained.

476. In his reply, the representative of the State party said that article 55 of the Constitution conformed strictly to article 4 of the Covenant and was even more restrictive in scope since only those rights that were specifically enumerated could be suspended. It had not been found necessary to declare a state of emergency or siege, pursuant to article 55 (1), since the adoption of the Constitution. The report contained a list of the provisions of the Covenant that could be suspended during a state of emergency, but even then the right of persons to be informed of the grounds for their arrest, their right not to be compelled to make a statement and their right to legal assistance would be respected. Article 55 (2) of the Constitution authorized the suspension of certain rights of specified persons in connection with investigations into the activities of armed bands or terrorist groups, and Organic Law No. 8/1984 incorporated into one law a number of isolated provisions relating to terrorism, including Organic Law No. 11/1980. While allowing some restrictions of individual rights, Organic Law No. 8/1984 also contained special safeguards, including judicial intervention, the specific right of habeas corpus, a special reporting requirement to Parliament every three months on the application of such restrictions, and penal liabilities in cases of abuse of power. The prohibition on communication did not mean that lawyers could not intervene when the detainee was being questioned by the police or other authorities, since the right to such assistance was guaranteed by aritcle 17 (3) of the Constitution, from which no derogation was possible. The role of counsel in such a situation was not a passive one - he could ensure that the detainee had been informed of his rights, find out from the judicial authorities or investigating officials the exact content of the investigation and of any statements made by the detainee, ensure that statements were not extracted under duress and interview the detainee after he had been questioned. The meaning

of the requirement in article 13 of Organic Law No. 8/1984 that detainees must be "puestos a dispocición del Juez" was that a judge must either visit the detainee or have the latter brought to him. The representative also noted that the period of detention could be extended up to 10 days only with a judge's authorization. Thus, there was no lack of compatibility between article 55 (2) of the Constitution and article 4 of the Covenant. The representative informed the Committee in that connection, however, that a suit had been brought before the Constitutional Court recently challenging the constitutionality of Organic Law No. 8/1984.

477. As to the question of remedies, the representative explained that his Government was currently considering a draft law of which one chapter was devoted to the subject of compensation in cases of miscarriage of justice. He noted that individuals already enjoyed a right to compensation under article 106 (2) of the Constitution and, as provided in article 96, could also invoke article 9, paragraph 5, of the Covenant in Spanish courts. With regard to torture or degrading treatment, the Ministry of the Interior was attempting by all possible means to ensure that its officials carried out their duties lawfully and with respect for essential rights. Under the Criminal Code, all persons had the right of appeal in cases of torture. Individuals could also have recourse to amparo, could testify before the European Commission of Human Rights and invoke the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Self-determination, including external and internal aspects

478. Members of the Committee wished to receive information concerning the actual degree to which the Autonomous Communities of Spain were self-governing and whether, in connection with the administration of non-self-governing territories, the relevant constitutional provisions would be brought into line with article 1 of the Covenant. It was asked what Spain's position was with respect to the illegal occupation of Namibia, the situation of the Palestinian people and the apartheid régime in South Africa. In the latter regard, members asked specifically whether Spain had terminated its commercial relations with South Africa or whether it had allowed Spanish citizens and juridical entities to maintain such relations.

479. In his reply, the representative of the State party stressed that the Spanish Constitution had been adopted by an overwhelming majority in a referendum in 1978 and that his Government felt that it had fully carried out its obligation with respect to the right of self-determination of the Spanish people. He noted, with respect to the status of the Autonomous Communities, that they were authentic political entities with their own executive and legislative institutions sharing responsibilities with the State in their areas of competence, which were defined by the Constitution and the Constitutional Court. The 17 Autonomous Communities, which made up the Spanish State, had had certain powers transferred to them from the central Government through a complex process which had now been practically concluded as far as most of them were concerned. His Government had also established the basis for the self-determination of Western Sahara and would continue to support the principles which had led it to take that action. In addition, it had spoken out in favour of the self-determination of peoples in all international forums and had specifically condemned, without reservation, the delaying policies of the Government of South Africa with regard to the question of Namibia.

Non-discrimination and equality of sexes

480. With reference to that issue, members of the Committee wished to receive information on measures to provide for sexual equality; the degree to which women enjoyed equality in family matters and were actually availing themselves of the recent legislative changes that had been enacted to promote greater equality; and the extent of their involvement in the public service and education. Noting that Spain had ratified the Convention on the Elimination of All Forms of Discrimination against Women, one member also asked whether Spain had submitted a report for examination by the Committee established under that Convention.

481. Responding to the questions raised by members of the Committee, the representative stated that the principle of equality had been recognized, under article 1 of the Constitution, as one of the higher values of the legal order along with liberty, justice and political pluralism. Under article 9 (2) of the Constitution, public authorities were obliged to ensure the effective enjoyment of freedom and equality by individuals and groups, as well as the participation of all citizens in economic, social and cultural life. Equality before the law of all Spaniards, without discrimination, was guaranteed by article 14 of the Constitution. Legislation enacted recently and based on the foregoing principles provided, inter alia, for the elimination of differences in the legal status of women or of children born out of wedlock, the transmission of nationality through the mother, guardianship rights equal to those of men and equality between the sexes in the matter of penal treatment. Laws had also been passed to provide for equal opportunity for handicapped persons (Act No. 13/1982) and for equal legal treatment for conscientious objectors (Act No. 48/1984). Legislation enacted during the period 1981-1983 regarding divorce and annulment of marriage was assuming enormous importance. Finally, he noted that Spain had not yet submitted its report under the Convention on the Elimination of All Forms of Discrimination against Women but that such a report was currently in preparation.

Right to life

482. With reference to that issue, members of the Committee wished to receive information concerning measures that had been taken by Spain with respect to the points raised in the Committee's general comments Nos. 6 (16) and 14 (23), particularly in connection with weapons of mass destruction and increasing life expectancy, and concerning the instructions issued to the security forces regarding the use of firearms.

483. In his reply, the representative of the State party said that the death penalty had been abolished in Spain, except as provided in military criminal law applicable in time of war. Since the Penal Code reform in 1983, the death penalty had also been abolished for the crime of genocide. The circumstances of any death, even when it occurred in the exercise of a public duty, were investigated under court procedures. A person who caused a death while acting in self-defence would be required to demonstrate that he was acting to repel illegitimate aggression involving the use of force; the issue of proportionality would also arise in determining whether the amount of force employed in repelling the illegitimate aggression might have been excessive. It was up to the judicial authorities to decide whether or not the circumstances of the death were consistent with legitimate self-defence. In police cases, proportionality was of particular importance.

Treatment of persons, including prisoners and other detainees

484. With reference to that issue, members of the Committee requested further information on measures and mechanisms to prevent or punish treatment contrary to articles 7 and 10 of the Covenant and asked specifically whether there had been any cases of cruel, inhuman or degrading treatment and, if so, what action had been taken and with what result; what had been done to educate the police and the Civil Guard regarding Spain's obligations under articles 7 and 10 of the Covenant and whether the courts devoted special attention to that issue. The attention of the representative of Spain was also drawn to the Committee's general comment 7 (16) which contained suggested safeguards against ill-treatment such as avoiding holding persons incommunicado and granting access to detainees by doctors, lawyers and family members.

485. In his reply, the representative of the State party said that the Penal Code defined torture as a specific offence and the public authorities were required by the Constitution to work for the eradication of all forms of torture. Organic Law No. 14/1983 provided for legal assistance to detainees and prisoners, including those held in solitary confinement, at all stages of criminal investigation. Organic Law No. 6/1984 regulating the habeas corpus procedure established direct judicial control over both the causes and the form of detention and applied to detention which, although lawful, had been unduly prolonged. Police regulations condemned the degrading or humiliating treatment of detainees, and under the General Prisons Act a supervisory judge was responsible for approving sentences of solitary confinement exceeding 14 days, resolving complaints by inmates about disciplinary measures and, in general, safeguarding the rights of inmates and redressing any abuses which might occur in the application of prison regulations. In addition, Spain's acceptance of mechanisms of international control made it possible for any person who believed he was a victim of an act of torture to bring his case to the European Commission of Human Rights.

486. The representative further stated that during the period 1983-1984 there had been 126 complaints of torture which had been brought to court, including the Olara and Olano cases, but that they were all still sub judice. In the Olano case two civil guards had been suspended on 15 October 1984 and proceedings had also been instituted against others. Some members of the armed forces had, however, been convicted of inhuman treatment. The representative was of the view that with the passage of time there would be a gradual and total renewal of the police forces and of those responsible for the administration of justice. In the meantime, the Ministry of the Interior had issued a number of disciplinary directives, which had been approved by a decree dated 11 July 1984, warning the police against harassment or inhuman treatment of prisoners. Recourse to the courts or to the People's Advocate was readily available both to victims of ill-treatment or even to non-victims, alleging that a criminal infraction had occurred. Regarding the question of access to detainees, the representative noted that the period of detention incommunicado during which communication with family members or friends was not permitted was usually much shorter than 10 days, after which the detainee had the right to inform his family of his whereabouts as well as the right to legal assistance.

487. With reference to that issue, members of the Committee wished to receive information regarding the circumstances and periods for which persons could be held in preventive detention without being charged with a criminal offence; detention in institutions other than prisons or for reasons other than crime (psychiatric institutions, social rehabilitation centres, military penitentiaries); the remedies, including habeas corpus, available to persons (and their relatives) who believed that they were being wrongfully detained; the effectiveness of such remedies; the observance of article 9, paragraphs 2 and 5, of the Covenant, particularly with respect to the promptness of judicial control of conditions of arrest and detention; the maximum period for which persons could be detained pending trial; contact between arrested persons and lawyers and the prompt notification of the family in case of arrest. Members of the Committee questioned, in particular, the compatibility with article 9, paragraph 5, of the Covenant of two specific legal provisions: the provision in Organic Law No. 8/1984 authorizing up to 10 days of detention for certain suspects prior to arraignment before a judge and the possibility of extremely lengthy periods of up to four years of pre-trial detention. In the latter connection, some members also questioned the practice of linking the period of allowable detention to the length of the possible sentence associated with the offence with which a detainee had been charged. In the view of those members the only criterion for determining the length of pre-trial detention should be the amount of time needed for the investigation and preparation of the case.

488. In his reply, the representative of the State party pointed out that the right to liberty and security of person was guaranteed under article 17 of the Spanish Constitution. In order to safeguard the right to liberty, the Criminal Prosecution Act determined the cases in which a person could be detained and for how long. Articles 503 and 504 of that Act had been amended by Organic Law Nos. 7/1983 and 9/1984 in order to establish the circumstances in which pre-trial detention could be applied and the maximum duration of such detention. Organic Law No. 6/1984 on habeas corpus established a speedy and simple procedure for obtaining, within 24 hours following the request, judicial approval of the legality and conditions of any kind of detention. Organic Law No. 14/1983 on legal assistance for detainees required that information regarding the grounds for detention and the rights of the detainee should be presented in a "comprehensible form" and established a system for the appointment of legal counsel. Under Organic Law No. 8/1984, the time-limit of 72 hours for the arraignment of the detainee could be lengthened for a maximum period of another seven days; such action must be authorized by the judge, who could at any time revoke it.

489. With regard to the length of pre-trial detention, the representative explained that the maximum limits were three months in the cases of offences carrying a sentence of one to six months; one year in the case of offences carrying a sentence of six months to six years; and two years in the case of offences carrying a sentence of more than six years. In certain complicated cases or where it was felt that the accused might try to flee from justice, the one and two year maximums could be doubled to two and four years respectively. He stressed that not everyone accused of an offence was held in detention pending trial. Bail could be granted depending on such factors as the past record of the accused, the degree of social alarm that had been created by the offence and the frequency of similar offence. Whenever pre-trial detention or other preventive measures were ordered, the judge was obliged to explain why he had found it necessary to limit the individual's right to freedom or to privacy. However, the individual concerned was free at a...

times to appeal to the judge or to a higher body against a decision to keep him in detention.

490. Accordingly, in the view of the representative of the State party, the Spanish legislation governing pre-trial detentions was consistent with the requirements of the Covenant. The length of time involved in bringing an accused person to trial depended on the circumstance of each individual case and remedies were available against unreasonable delay through an action for amparo, or through appeal to the courts or to the European Commission of Human Rights.

Right to a fair trial and equality before the law

491. With reference to those issues, members of the Committee asked for any comments the State party might wish to make concerning the Committee's general comment 13 (21) and inquired whether legal aid was available in both civil and criminal cases, as envisaged in article 14, paragraph 3 (d), of the Covenant; whether restrictions on communications with counsel of one's own choosing or other restrictions or suspensions of procedural rights had been introduced in cases of terrorism or armed bands and, if so, what those restrictions were and how they could be justified under the Covenant; whether the procedural rights of juveniles were based on legislative enactments or only on constitutional provisions; whether legislation had been enacted to implement the rights set out in article 14, paragraphs 5 and 6, of the Covenant; and whether the last sentence of article 15, paragraph 1, was understood as applying only to cases in progress or also to cases already adjudicated. One member requested additional information on the procedures for the transfer, suspension or dismissal of judges and asked who controlled such matters, whether judges were appointed on a permanent basis or under temporary contracts, whether they enjoyed immunity from suits brought by individuals under the law of defamation for acts or omissions in the course of their duties and whether the system of incompatabilities for members of the judiciary, mentioned in article 127 (2) of the Constitution had been established. Another member, noting the vital importance of ensuring the independence of judges of the Supreme Court, asked what the procedure was for their removal from office.

492. Responding to the request for comments on the Committee's general comment 13 (21) (art. 14), the representative of the State party said that the entire Spanish legal system was based on respect for the principles of the Covenant. So far as articles 14, 15, 16 and 26 were concerned, their provisions accorded with the procedures of Spanish law. Their principles were embodied in Spanish legislation and were broadly reproduced in article 24 of the Constitution. The references in the Committee's general comment to the duration of proceedings presented no particular problem. In Spain, as elsewhere, justice was slow and there were demands for greater speed and flexibility in its administration. There were complaints about the duration of proceedings, but those concerned could invoke their rights under the Constitution and the European Convention on Human Rights. The causes of delays in the administration of justice and ways of remedying them were a constant source of concern and steps were being taken to give the judicial system greater flexibility. A number of laws had been adopted in recent years which were designed to strengthen the system of due process, and the Constitutional Court was making rulings concerning trial proceedings on a continuing basis, with a view to implementing the principles embodied in the Spanish Constitution, the Covenant and in article 6 of the European Convention on Human Rights.

493. Before replying to other questions, the representative pointed out that legislation governing the Spanish judiciary went back as far as 1870 which would make it difficult to respond fully to all of the questions that had been asked. As to the questions concerning judicial tenure and administration, he said that a judgeship was a career appointment and was not subject to election or contract. The Constitution did not distinguish between categories of judges, none of whom could be removed from office without due cause, which had to be determined under the law governing the judiciary. The disciplinary code for judges was administered by the General Council of the Judiciary so as to ensure their autonomy with respect to other authorities, including the Supreme Court itself. The General Council of the Judiciary had no judicial functions itself but controlled the appointment, discipline and removal of judges. The majority of its members were themselves judges, but another eight were lawyers and politicians appointed by parliament to ensure that society as a whole was also represented.

494. With regard to the question of legal assistance, the representative explained that the Spanish system imposed on the bar associations the obligation to defend those in need of their services. The law on legal assistance enabled detainees to obtain immediate assistance from the system of duty lawyers operated by the bar associations, whose services were charged to the State budget. Legal assistance was thus guaranteed. The right to such assistance applied to both criminal and civil cases, subject only to the defendant's need. Anyone who could not afford to pay for legal assistance could request the appointment of a lawyer under the system.

Freedom of movement and expulsion of aliens

495. With reference to that item, members of the Committee wished to receive information on any new legislation, whether already adopted or under consideration, concerning the status of aliens (other than the Asylum and Refugee Status Act No. 5/1984). It was also asked whether there was any legislation allowing aliens to submit arguments against an expulsion order and to have their cases presented before competent authorities. Noting that some proposed legislation concerning aliens provided for restrictions established under unspecified laws as well as for severe restrictions for reasons of public security as determined by the Minister of the Interior, some members called attention to the incompatibility of such provisions with article 12, paragraph 3, of the Covenant.

496. In his reply, the representative of the State party noted that the right to freedom of residence and movement was guaranteed under article 19 of the Constitution. A draft law on the rights and freedoms of aliens in Spain specifically provided that aliens who were legally in Spanish territory would have the right freely to move throughout the territory and choose their place of residence, subject only to such limitations as were provided for under the law or necessary to ensure public security. If a person declared dangerous was an alien, the judge could apply the relevant legal measures or could expel him from the national territory. In that connection, the representative assured the Committee that he would convey the Committee's concerns to parliament so that it could bear in mind the issue of compatibility with the Covenant when considering the proposed legislation.

497. As to the question of recourse available to aliens, he stated that under the Constitution aliens had the same rights as nationals and could also turn to the European Commission of Human Rights if they felt that their rights had been violated. Expulsion could be ordered only as a security measure under a disused provision of the Penal Code and as an alternative to a prison sentence. The legal

remedy against such an expulsion order was an action for amparo or recourse to international procedures.

Interference with privacy

498. With reference to that issue, members of the Committee inquired whether there had been any progress towards adopting legislation regarding the use of data processing, as envisaged under article 18 (4) of the Constitution.

499. In his reply, the representative of the State party said that there was currently no law specifically governing the use of data processing, which was, however, protected in article 18 (4) of the Spanish Constitution. For the time being, Organic Law No. 1/1982 on the right to honour, to personal and family privacy and to personal reputation covered data processing and offered both civil and penal protection. In addition, Organic Law No. 2/1984 regulated the right of redress and recognized the right of any natural or juridical person to correct information circulated about him which he considered incorrect and the disclosure of which might prove harmful to him.

Freedom of thought, conscience and religion

500. With reference to those issues, members of the Committee wished to receive additional information regarding the relationship between the State and the churches, in particular the position of the Catholic Church in law and practice; they also asked for relevant details concerning the draft law on conscientious objection and clarification of the difference, regarding the rights of parents, between "instruction" and "education" (Constitutional Court, judgement of 13 February 1981). Noting that article 3.2 of Organic Law No. 7/1980 could conceivably be used to prosecute certain sects, one member wondered what authority would decide upon their exclusion from protection under Organic Law No. 7/1980 and whether an action for amparo or other remedy would be available. It was also asked whether the freedom of activity of such sects, if judged to be non-religious, would be jeopardized, whether an unregistered religious community could govern itself as it wished and whether the provisions of article 7.1 of Organic Law No. 7/1980 referred only to the Catholic Church or also to other registered Churches and religious communities that had actually been registered under that Law. Referring to Constitutional Court judgement No. 24/1982, legal conclusion No. 4 (CCPR/C/32/Add.3, 13 (a) (1)), he also asked whether any requests had been made to the State to provide facilities in the armed forces for the practice of religions other than Catholicism. Referring to article 16 (1) of the Constitution, yet another member of the Committee asked in what way religious practice could represent a threat to public order.

501. In his reply, the representative of the State party pointed out, that in accordance with article 16 of the Constitution, Spain was a secular State without an established religion, although the religious beliefs of Spanish citizens - most of whom were Catholic - were taken into account. The long-standing relationship with the Catholic Church was a social reality, but the Catholic Church held no privileged position of any kind. Under Organic Law No. 7/1980 governing religious freedom, all religions had equal rights under the law; once registered, as required, with the relevant office under the Ministry of Justice, a religious sect enjoyed legal personality. All religions came under the jurisdiction of the Advisory Commission on Religious Freedom created by the law.

502. As to why Organic Law No. 7/1980 did not extend protection to groups interested in psychic or parapsychological phenomena, spiritualism or humanism, the representative explained that rights provided by the Constitution were not affected by the Organic Law, which simply clarified the legal status of certain religious groups. Thus, even though a group was not registered it could still exercise all of its constitutional rights, and it could avail itself of the remedy of amparo if it considered that such rights had been violated. Regarding the distinction between "instruction" and "education", he noted that Spanish law did not differentiate between those two terms but rather between the actual act of teaching (enseñanza) and education (educación), which included the idea of instruction (formación). The distinction was significant in that it had a bearing on State assistance given to religious centres to enable parents to exercise their rights under article 18, paragraph 4, of the Covenant. In a new draft organic law relating to the right to education a change was envisaged in the existing system regarding the right to religious instruction, but the opposition had brought an action for unconstitutionality, which was currently before the Constitutional Court, against the draft law.

Freedom of opinion and expression, prohibition of war propaganda and advocacy of national, racial or religious hatred

503. With reference to those issues, members of the Committee wished to know whether any legislation such as that envisaged in article 20 (1) (d) of the Constitution had as yet been drafted and requested information on the meaning of the term "accurate information" in that clause, on the question of ownership, influence and control of the media and concerning actions relating to the "right to peace" and the prohibition of war propaganda. They also asked whether the State television monopoly could be challenged on grounds of unconstitutionality, how article 24 of the Radio and Television Statute, which stipulated that access to television was guaranteed to the country's "main" social and political groups, was actually applied in practice and what the term "personal reputation", used in article 20 (4) of the Constitution, meant and by whom it was interpreted.

504. In his reply, the representative stated that no legislation envisaged in article 20 (1) (d) of the Constitution had as yet been drafted. Two relevant laws did exist on that matter, however. Organic Law No. 2/1984 regulating the right of redress made it possible for individuals or groups to request the media publicly to correct inaccurate information published about them and to appeal to the courts if the media refused such requests. Organic Law No. 1/1982 regulating civil protection of the right to honour, to personal and family privacy and to personal reputation also protected individuals against the publication of inaccurate information about them and provided for financial compensation to be paid for any damage to their honour, privacy or reputation. The Penal Code also established penalties for violations of the above right. The term "accurate information" in article 20 (1) (d) was difficult to define; broadly speaking, it meant that events must be presented and recorded as they had occurred and must not be distorted and then presented as the truth. With regard to control of the media, the freedom of expression guaranteed by the Constitution took the form, in practice, of absolute freedom for the media and the freedom to set up communication companies. There were some restrictions on television, however. The 1980 Radio and Television Statute regulated radio and television broadcasting as a public, State-run service. Independent radio stations existed, but there was still a State monopoly on television, although there was considerable public debate about the possibility of setting up a private television channel.

505. The representative further explained that Spanish television was overseen by an impartial Board of Governors of 12 members, elected in equal proportion by the Congress of Deputies and the Senate, which ensured that the main principles of the constitutional order, such as political, religious, social, cultural and linguistic pluralism and the right to honour, privacy and personal reputation, were properly respected. The Board was responsible, inter alia, for determining the allocations of broadcasting time to the main political and social groups. Since the Spanish Constitution firmly prohibited censorship and Spanish television was supposed to be independent, the possibility of television news being censored should not arise. Regarding the meaning of the term "personal reputation" or "propia imagen", he noted that Organic Law No. 1/1982 defined the latter term as being the individual's right not to have pictures of himself in his private life reproduced in photographic, film or other form or recordings of his voice in private life reproduced for commercial purposes.

506. Regarding the right to peace, the representative said that, although that right was not recognized specifically in the Constitution, in fact the entire document was inspired by it. Furthermore, an amendment to the Penal Code adopted in 1983 provided for the inclusion among illegal associations of those which promoted or encouraged racial discrimination, as well as paramilitary associations.

Freedom of association, including the right to form and join trade unions

507. With reference to those issues, clarification was requested concerning a provision of a draft organic law currently before the Spanish parliament providing that trade union freedom included the right to form trade unions without having to obtain prior authorization. In addition, it was asked, in connection with the constitutional requirement of democratization of political parties as a sine qua non of their legal existence or recognition, what the legal meaning of democratization was, and specifically whether it had any connection with the internal operation of political groups, their suspension, or recognition of their legal personality.

508. In his response, the representative of the State party said that a trade union wishing to have the status of a juridical person had to fulfil the conditions set forth in the law on freedom of association, which included registration with the appropriate authority. The registering authority could reject an application which failed to fulfil the requirements of the law, in which case the trade union would have recourse to the remedy of amparo. The notion of democratization, which had been included in the light of recent Spanish history, reflected the principles established in the United Nations against Fascist organizations or organizations which might use the system of freedoms to attack freedom itself. In that context, the Spanish Constitution referred specifically to secret paramilitary and other organizations which might use their rights to impair the rights of others.

Protection of family and children, including the right to marry

509. With reference to that issue, members of the Committee wished to receive information on the extent to which compliance with the Covenant had been ensured through the extensive legislative reforms that had been adopted.

510. In his reply, the representative stated that the protection of the family was ensured under article 39 (1) of the Constitution and that various amendments had been adopted to the Civil Code ensuring, inter alia, the legal equality of spouses and parents and the equality of spouses during marriage and at its dissolution.

Regarding the rights of children, to which Spain attached the greatest importance, he referred to new legislation covering descent, guardianship, equal treatment of children born in or out of wedlock and the right of children to know their origins and to inquire into their parentage. He also noted that Spain had acceded to Convention No. 6 of the International Commission on Civil Status concerning determination of the maternal filiation of children born out of wedlock.

Political rights

511. With reference to that issue, members requested information on legislation and practices concerning access to public office and practice regarding popular initiatives. It was also asked how the problem of political extremism was dealt with in Spain and whether persons advocating violence or the rejection of basic democratic principles could become civil servants.

512. In responding, the representative explained that access to public service was regulated by a recent law (Act No. 30/1984), which introduced a number of civil service reforms and provided for the participation of civil servants in the determination of their conditions of service through designated representatives. Access to the judiciary, the civil service or any other State service, as well as to office in the Autonomous Communities, was subject to competitive examination. The exclusion of persons from the civil service by reason of their opinions would be contrary to the principle of equality under the Constitution and the only grounds for such exclusion would be conviction for a criminal offence.

513. Regarding the practice of popular initiatives, the representative explained that the relevant provisions of the Constitution concerning popular initiatives had been given effect through Organic Law No. 3/1984. While there had been cases in which the required large number of signatures (500,000) had been collected with the involvement of trade unions, popular initiatives and referenda were exceptional measures in a democracy where the normal channels of popular participation were the political parties and regular elections.

Rights of minorities

514. With reference to that issue, members of the Committee wished to receive information on any affirmative action that might have been taken with respect to linguistic or other minorities.

515. Responding to that request, the representative explained that the only ethnic minority in Spain was the gypsies, who had come to Spain in the fifteenth century and had remained apart from the community, largely for economic reasons. In 1979, an International Commission had been established to study their problems and they were now being given special attention in parliament - which had one gypsy member - and through press, radio and television campaigns against social and cultural discrimination. Spain's linguistic minorities were frequently in the majority in regions where their languages were spoken, for example, in the Catalan, Basque and Galician regions. The Constitution guaranteed every community the right to its language as part of its cultural heritage, and the various languages were promoted, inter alia, through television, literature, theatre and cinema.

General observations

516. Members of the Committee expressed satisfaction about the progressive improvement in the protection of human rights in Spain and the constructive

character of the discussion that had taken place during the consideration of Spain's second periodic report. The genuine dialogue that had taken place had clarified many issues of concern to members.

517. On the Committee's behalf, the Chairman thanked the representative of Spain and asked him to convey to his Government the Committee's appreciation of its co-operation and of its efforts in the field of human rights.

United Kingdom of Great Britain and Northern Ireland

518. In accordance with the statement on its duties under article 40 of the Covenant adopted at its eleventh session (CCPR/C/18) and the guidelines adopted at its thirteenth session regarding the form and content of reports from States parties (CCPR/C/20), and having further considered the method to be followed in examining second periodic reports, the Committee, prior to its twenty-fourth session, entrusted a working group with the review of the information so far submitted by the Government of the United Kingdom of Great Britain and Northern Ireland in order to identify those matters which it would seem most helpful to discuss with the representatives of the reporting State. The working group prepared a list of issues to be taken up during the dialogue with the representative of the United Kingdom. The list, supplemented by the Committee, was transmitted to the representatives of the United Kingdom prior to their appearance before the Committee with appropriate explanations or the procedure to be followed. The Committee stressed, in particular, that the list of issues was not exhaustive and that members could raise other matters. The representatives of the United Kingdom would be asked to comment on the issues listed, section by section, and to reply to members' additional questions, if any.

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519. The Committee considered the second periodic report of the United Kingdom of Great Britain and Northern Ireland (CCPR/C/32/Add.5) at its 593rd to 598th meetings, held from 9 to 11 April 1985 (CCPR/C/SR.593-598).

520. The report was introduced by the representative of the State party who stated that a number of significant developments had taken place in United Kingdom domestic law and administrative practice since the submission of his country's initial report. They included the enactment of the Police and Criminal Evidence Act, the Mental Health Act, the British Nationality Act and the Data Protection Act, changes in the rules governing prisoners' correspondence and a review of disciplinary offences applying to prisoners and of the arrangements for their investigation, adjudication and punishment. The arrangements for compensating miscarriages of justice were also currently under review by the Home Office as was its legislation on public order. The Interception of Communications Bill, which placed the interception of communications on a statutory footing and established machinery for investigating complaints of unlawful interception, and the Prosecution of Offences Bill, which for the first time established a national prosecution service independent of the police and provided for statutory time-limits within which a defendant must be brought to trial, were currently before Parliament. Domestic courts were also making increasing use of the procedure for judicial review, under which the reasonableness of administrative decisions could be challenged before the courts and a ruling obtained. Finally, all the recommendations of an independent inquiry into the operation of the

prevention of terrorism legislation, which were designed to mitigate the severity of some of that legislation's provisions, had been implemented in the Prevention of Terrorism (Temporary Provisions) Act 1984 and the Government was currently reviewing the Northern Ireland emergency legislation in the light of the recommendations of a 1984 inquiry into that legislation.

521. The representative noted that his country's second periodic report concerned only the metropolitan territory of the United Kingdom and that a supplementary report on the United Kingdom dependent territories would be submitted shortly, for consideration by the Committee at a future session.

Constitutional and legal framework as well as other measures adopted to give effect to the Covenant

522. Members of the Committee wished to receive more specific information about new legislation and regulations adopted to give effect to the Covenant as well as about the extent to which pre-existing legislation and regulations afforded adequate protection of rights covered in the Covenant. They also asked whether there had been any precedent-setting judicial decisions regarding the implementation of the Covenant or cases in which reference had been made to the Covenant; and, given the fact tht there was no written constitution and no written bill of rights and that the courts operate on the basis of common law and precedents, whether the United Kingdom was in fact in a position to "ensure" that the Covenant's provisions were given proper effect. Furthermore, it was asked how, under such circumstances, citizens could be aware of their rights and judges could apply the provisions of the Covenant. It was noted that the Privy Council could adjudicate on human rights provisions entrenched in certain Commonwealth constitutions but the judiciary could not do so in the case of the United Kingdom itself, because the United Kingdom had failed to enact similar legislation. In that connection, members asked what consideration had been given to the possible introduction of a bill of rights or similar measures for ensuring the implementation of human rights which, they felt, would provide a firmer basis, for compliance with the Covenant. It was also asked whether the existing system of specific remedies actually covered all of the rights under the Covenant. Additional information was also requested about the legal framework in Scotland and Northern Ireland and about factors and difficulties, particularly of a political and economic nature such as race relations or unemployment, that might have affected the implementation of the Covenant. In that respect, members requested further information about the human rights situation in Northern Ireland. Regarding promotional activities, it was asked what specific measures were being taken to enable people to enjoy civil and political rights, what steps had been taken to overcome existing economic inequalities, whether the Covenant, the Standard Minimum Rules for the Treatment of Prisoners, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Code of Conduct for Law Enforcement Officials had been publicized among the armed forces, the police and prison officers, especially in Northern Ireland, and whether the general public in the United Kingdom was aware of its rights under the Covenant. Noting that women were placed at a disadvantage under certain provisions of the British Nationality Act of 1981, a member requested additional details about that legislation.

523. In his reply, the representative of the State party explained that in his country the existence of human rights and individual freedoms had been traditionally assumed and that such rights were protected by common law. Thus, it had not been considered necessary to adopt legislation to cover every possible

infringement of human rights. However, recently it had become necessary to enact protective measures and declaratory laws in such areas as race relations, sex discrimination and data protection. Clearly, the law and administrative practice were evolving in keeping with the Covenant's principles and the need to stay abreast of changing circumstances.

524. Over the past 10 years there had also been considerable debate in Parliament concerning the possibility of enacting a bill of rights, but as yet no bill had won sufficient support to permit any further action. While the idea of a bill of rights enjoyed considerable support in some parliamentary and legal circles, without regard to party affiliation, there was also considerable opposition from those who argued that it would represent a surrender of influence by the House of Commons in favour of the judiciary and the legal profession. The Government hoped to submit new proposals in that regard at some future date, but in view of the lack of broad agreement it did not feel it possible to take action at the present time. Consideration was also being given to various progressive measures which would fall short of incorporating a bill of rights into the national legislation. The current approach of applying ad hoc remedies to problems and situations as they arose might continue. Although that approach had the disadvantage of being inconsistent and difficult to understand, it provided effective remedies to particular problems. It should also be kept in mind, however, that providing a wide range of remedies could give rise to abuses which might be very detrimental in the long run to government. In addition, the Government was considering the practicability of the partial incorporation of relevant provisions of the Covenant or the European Convention on Human Rights into the national legislation.

525. Regarding new or existing legislation and regulations to give effect to the Covenant, a list of the relevant laws and regulations had been appended to the report and copies of the texts made available to members of the Committee. There had also been several court rulings under the process of judiciary review which had had a significant impact inter alia, on the rights of prisoners set out in the Covenant, and rulings of the European Court of Human Rights had also prompted the enactment of domestic legislation. Concerning the legal framework in Scotland and Northern Ireland, the representative noted that a considerable body of law, for instance that governing immigration, nationality and data protection, was applicable to the United Kingdom as a whole. Some other laws, for instance those on equal pay, sex discrimination and race relations, extended to Scotland. Separate legislation, based on the same principles, existed for Northern Ireland but legislation against religious or political discrimination, which did exist there, had no parallel in the rest of the United Kingdom. Thus, in so far as the system of common law applied in Northern Ireland as it did in England and Wales the law was substantially the same, with divergences occurring mainly with respect to statute law in such areas as those illustrated above.

526. With regard to promotional activities, both the Covenant and the work of the Human Rights Committee were well publicized, as was the European Convention on Human Rights. Informed opinion in the United Kingdom was well aware of the possibilities offered by the two instruments and of how they could be used to ensure the protection of human rights in the United Kingdom and internationally, and the Government had not felt it necessary to engage in any additional promotional activities. As to whether there were factors and difficulties affecting the implementation of the Covenant, it was a fact that there were some areas of national life in which the provisions of the Covenant could not be reconciled with Government policy and practice. In such areas, which included sex discrimination in immigration control legislation and differing political views as

to whether or not specific legislation should be enacted to give effect to the Covenant, the United Kingdom had entered reservations to the Covenant.

527. Concerning the extent to which it was possible for courts in the United Kingdom to base decisions on the provisions of the Covenant, the representative explained that the situation had not changed since the submission of the United Kingdom's initial report. In interpreting provisions of domestic law British courts took into account all the obligations of the United Kingdom under international legal instruments to which it was a party. While he did not know of any particular case in which the Covenant had been referred to in a court decision, there were no restrictions preventing litigants from invoking provisions of the Covenant in a court of law and, in fact, in many instances lawyers did refer to the legal obligations of the United Kingdom under the Covenant and the European Convention of Human Rights in presenting their cases. Undoubtedly, the Government of the United Kingdom could also speak before judicial bodies as amicus curiae for the purpose of drawing their attention to certain provisions of international law; in practice, international instruments were often brought to the attention of the court by the judge himself or by lawyers.

State of emergency

528. With reference to that issue, members of the Committee wished to know whether the rights covered by the Covenant which had been derogated from had been fully restored following the termination of the state of emergency on 22 August 1984, whether there were any differences in that regard between Northern Ireland and other parts of the United Kingdom and whether any other emergency or exceptional measures were still in force and, if so, whether they affected the enjoyment of human rights and were considered adequate. Additional information was requested regarding the measures that had been taken to investigate deaths resulting from the action of security forces in Northern Ireland and the results of such investigations, particularly in the context of preventing the recurrence of such acts, in line with the Committee's general comment 6 (16) (art. 6). In that connection, it was asked who controlled the actions of the police and the security forces. Members asked for clarification of several other aspects relating to the emergency, including the operations of the Diplock courts in Northern Ireland, whose precedures seemed inconsistent with articles 2, paragraphs 1, 14 and 26 of the Covenant. They also asked whether the required measures in the political and social fields had been taken to solve the problems which had led to violence and whether any improvement or progress had been achieved towards the resolution of the Irish question; whether the recommendations of the Bennett Committee on police interrogation practices had been put into effect and, if so, to what extent; and whether there was any parliamentary control over the emergency powers of the executive in Northern Ireland, including the police, who appeared to have the power both to carry out investigations of police misconduct and to decide whether prosecutions were warranted. Referring to paragraph 3 of the Committee's general comment 5 (13) concerning article 4 of the Covenant, members also requested information about the nature and extent of each right derogated from and why it was now thought possible to operate within the provisions of articles 9 and 14 of the Covenant. It was further asked how far it had been possible for an individual to have recourse to the Covenant in order to establish whether measures taken by the Government were legitimate.

529. Replying to those questions, the representative of the State party said that his Government had withdrawn its notice of derogation from the Covenant not because there was no longer an emergency in Northern Ireland, but because it believed that

the rights in the Covenant were currently fully observed throughout the United Kingdom. In fact, there were still two Acts of Parliament in force which provided special powers: the Northern Ireland Emergency Provisions Act 1978, which conferred special powers of arrest and search and established special judicial procedures for terrorists, and the Prevention of Terrorism (Temporary Provisions) Act 1984. Those measures were considered sufficient to deal with the situation, but the Government was also currently considering some recommendations based on an independent inquiry into Northern Ireland emergency legislation by Sir George Baker.

530. In Northern Ireland, as in England and Wales, any death or serious injury resulting from the action of the security forces was fully investigated by the police - the Royal Ulster Constabulary in the case of Northern Ireland - and the Chief Constable was obliged by law to refer any case which he felt might involve criminal action by the security forces to the Director of Public Prosecutions, who was independent both of the Government and the police and whose responsibility it was to decide whether a prosecution should be brought. A number of police officers and soldiers had been charged with criminal offences and brought to trial. There was also an independent procedure in Northern Ireland, similar to that existing in England and Wales, for investigating complaints against police officers. It was administered by an independent police complaints board whose function it was to see that complaints were investigated and to pass them on to the Director of Public Prosecutions if it appeared that a criminal offence had been committed. The fact that police and soldiers had been prosecuted for alleged crimes had demonstrated that the system could work. Under the Police and Criminal Evidence Act 1984 the police complaint boards in England and Wales had been replaced by a new body authorized to supervise police investigation of service offences directly, and there were plans to set up a similar system in Northern Ireland. A number of the recommendations made by the Bennett Committee concerning the treatment of suspected terrorists had also been implemented. Security forces in Northern Ireland were not instructed to shoot to kill and were subject to the same restrictions in that regard as the police in England. Every soldier carried a yellow card which listed the circumstances in which he could open fire and similar instructions had been issued to members of the police force. Plastic bullets were designed to be used only against people involved in some specific public disorder and it was believed that the use of such bullets had saved lives.

531. As to the question whether there was an inconsistency between the judicial procedures in use in Northern Ireland and articles 2, paragraph 1, and 26 of the Covenant, the representative responded that in his Government's view the application of different degrees of protection in the trial of offenders - or in the existence of Diplock courts - did not constitute a breach of those articles and it had not therefore been considered necessary to derogate from those articles. The special procedures were necessary because experience had shown that intimidation made it impossible to guarantee a fair trial by jury.

532. Regarding the matter of convictions on the basis of confessions or in the evidence of informers, a number of procedural safeguards had been provided. The admission of confessions as evidence was forbidden under section 8 of the Northern Ireland Emergency Provisions Act, unless it was shown that they had not been obtained by means prohibited by article 7 of the Covenant. In Northern Ireland, as in Great Britain, judges also had power to refuse the admission of confessions if they considered that their prejudicial effect outweighed their value as evidence. While the law had always allowed the introduction into evidence of the testimony of informers or accomplices, both in Northern Ireland and in Great Britain judges were required to warn juries against convicting on the basis of uncorroborated testimony

from such witnesses. In trying terrorist cases in Northern Ireland, without juries, judges were required to observe the same degree of caution they would enjoin upon juries. Judges in such trials were also required by law to give not just their judgement but the reasons for their findings. A further special safeguard in such cases in Northern Ireland - which contributed to making safeguards more rigorous there than in the rest of the United Kingdom - was the automatic right of appeal to a higher court on matters of fact as well as of law.

533. Replying to questions concerning the United Kingdom's derogations from certain articles when it had ratified the Covenant and why such derogations had been withdrawn, the representative explained that the derogation from article 9 had been considered necessary in 1976 because the provision for detention without trial in Northern Ireland had still been in force (it had been discontinued in 1980). Similar considerations applied to the derogation from article 14, because proceedings before Commissioners might not have been compatible with its provisions. The derogation from article 10, paragraphs 2 and 3, could be withdrawn, since juveniles convicted of terrorist offences were now detained in two new centres and no longer had to be accommodated together with adult offenders. Article 12, paragraph 1, had been derogated from because it had been felt that the powers then in force to prevent the movement of suspects between Northern Ireland and Great Britain might not have been compatible with that provision. Such powers had since been drastically reduced and could now be considered to fall within the exceptions allowed by article 12, paragraph 3. Similar considerations applied to other derogations that had been entered in 1976, and the United Kingdom was again confident that it was giving full effect to the provisions of the Covenant in Northern Ireland. The United Kingdom had never derogated from its obligations under article 3 of the Covenant, and the emergency measures that had been taken were found by the European Court of Human Rights to have been strictly required by the exigencies of the situation.

534. With reference to questions concerning the measures that were being taken to solve the problems in Northern Ireland, the representative stated that his country was making every effort to find appropriate solutions. In 1982, the Northern Ireland Assembly had been charged with producing constitutional proposals which would receive the support of both the majority and the minority communities, but so far no such proposals had emerged. Measures had also been taken to assure respect for the rights of the minority community, such as the Northern Ireland Constitution Act 1973, which prohibited public discrimination on the basis of religion or political opinion, and the Fair Employment (Northern Ireland) Act 1976, which had established a fair employment agency to work towards the elimination of any discrimination in employment.

535. Since 1977 there had been a steady decline in terrorist acts resulting in death or serious injury, although a substantial number of such acts still occurred. The fact that the situation had improved was partly a result of the measures that had been taken by the United Kingdom. The legislation that had been enacted to deal with the emergency (i.e. the Prevention of Terrorism (Temporary Provisions) Act 1984 and the Northern Ireland Emergency Provisions Act 1978) were temporary measures and their extension was subject to the adoption of resolutions by both Houses of Parliament.

536. With reference to that issue, members of the Committee wished to know what the situation was regarding the territories that had not yet become independent, what the United Kingdom's intentions were with regard to the possible withdrawal of its reservation concerning the application of the Covenant to the British Indian Ocean Territories in furtherance of articles 1 and 12 of the Covenant, what its position was on the right of self-determination of the peoples of Namibia and Palestine; what its intentions were concerning islands which had belonged to Mauritius and which had subsequently been incorporated into the British Indian Ocean Territories and how it exercised its power at home over British subjects and corporations to prevent them from supporting the South African régime. It was also asked what the United Kingdom Government was doing to promote self-determination in Northern Ireland and what the constitutional and political processes were that would allow the exercise of the right of self-determination, what had been done to develop a dialogue with a view to resolving the situation in the Falkland Islands, what the nature and legal basis of the ties existing between the United Kingdom and the Channel Islands was and what the constitutional position of Governors-General was and whether holders of that office had the right to invite foreign intervention without the consent of the local authorities. Noting that 11 dependent territories had gained independence since the submission of the United Kingdom's initial report, one member inquired how many dependent territories remained. Commenting on the success of the United Kingdom's decolonization policy, another member questioned the utility of retaining the United Kingdom's reservation to article 1 of the Covenant and asked whether the withdrawal of that reservation could be reconsidered.

537. In his reply to the questions raised by members of the Committee, the representative of the State party said that a supplementary report dealing with the United Kingdom's dependent territories - and, inter alia, with the question whether the United Kingdom intended to withdraw its reservation concerning the application of the Covenant to the British Indian Ocean Territories as well as with the question concerning the Falkland Islands - would be submitted at a later stage. His Government had the highest regard for its obligations under article 1 of the Covenant and was not indifferent to the many cases of international disputes involving the right of self-determination. Its position on such issues, including the important questions of Namibia and Palestine, had been clearly stated before the relevant United Nations bodies and was well known. He assured the Committee that no British companies were responsible for the denial of the right of self-determination in southern Africa and stated that the United Kingdom had no intention of detaching any part of Mauritius.

538. With reference to the questions relating to the role of the Governors-General, the representative explained that holders of that office were personal representatives of the Queen and exercised whatever powers the monarch might have under the constitution of the territory in question. As to the remaining number of dependent territories, he said that 10 territories remained under British administration currently as compared with 43 in 1946.

539. Responding to the request for information concerning the political and constitutional process that would enable the people of Northern Ireland to determine their future, the representative explained that two basic elements were involved. Currently, the applicable principle was that of continued direct rule and continued association with Great Britain as part of the United Kingdom. However, there were statutory provisions for testing the wishes of the Northern

Ireland electorate on the question of direct rule by means of a poll at periodic intervals of not more than 10 years. In addition, there was also the Northern Ireland Assembly, which had been set up in 1982 to make proposals for devolution and to scrutinize the process of direct rule. Unfortunately, owing to various difficulties not much progress had been made thus far on formulating new constitutional arrangements, although the Assembly had provided a valuable local and democratic contribution to direct rule.

540. With reference to the constitutional relationship between the United Kingdom and the Channel Islands, the representative explained that it was based on an old relationship involving the Duchy of Normandy in the Middle Ages. Currently, the Channel Islands were regarded as Crown Dependencies.

Non-discrimination and equality of sexes

541. With reference to this issue, members of the Committee wished to have information on how article 2, paragraph 1, of the Covenant, which prohibited discrimination "without distinction of any kind", was implemented in British law and specifically whether the principle of non-discrimination and equality before the law had been incorporated into a written law covering all the provisions of articles 2, 3 and 26 of the Covenant. Members also asked about the implications of the United Kingdom's reservation concerning immigration control; whether certain rules that had been established by the immigration services were not, in fact, aimed primarily at controlling immigration from the Indian subcontinent and Africa rather than applying equally to all; whether, contrary to article 9 of the Covenant, persons detained by the immigration services were kept in detention for fairly long periods merely on the basis of administrative decisions; whether such detainees could have recourse to habeas corpus, bail, or other judicial safeguards; whether special measures had been taken by the British Government to prevent discrimination against racial minorities in connection with employment in the public service, including discrimination against certain naturalized citizens; whether children born in the United Kingdom automatically enjoyed United Kingdom citizenship; and whether minorities, particularly Muslims, were free to practise their religion without encountering difficulties.

542. In regard to the question of sexual equality, members wished to receive additional information about the actual enjoyment by women of rights contained in the Covenant, particularly those in article 25, as well as the application of article 3 in such areas as the treatment of women in matters of employment, divorce, child custody, alimony and inheritance. It was also asked whether the islands of Jersey and Guernsey had taken measures to ensure equality between men and women. One member expressed surprise that the United Kingdom, which had often shown that it favoured the emancipation of women, had not yet ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women. Commenting on certain immigration provisions which had the effect, inter alia, of hindering or preventing family reunification, some members noted that while the United Kingdom's reservations regarding the Covenant might make such provisions technically permissible, they could not be justified from a humanitarian standpoint.

543. In his reply, the representative of the State party pointed out that the Race Relations Act 1976 and the Sex Discrimination Act 1975 prohibited any form of discrimination based on race. Persons who considered themselves victims of such discrimination could resort to the courts for redress and could receive legal and other help in pursuing the matter from the Commission for Racial Equality and the

Equal Opportunities Commission. However, those Acts did not apply to immigration control. The United Kingdom's reservation in that regard was intended to protect the right of the British Government and Parliament to legislate in the area of immigration control, particularly in view of the imperative need to protect the British labour market, which was experiencing a high level of unemployment. That was the principal reason for making distinctions between the sexes in cases of family reunification and for controlling the entry of persons, principally from east Africa, who had British citizenship but no other ties with the United Kingdom. The question of granting British nationality and residence to persons from other countries was a thorny one, but there were compelling economic and social reasons for the restrictions that were being applied.

544. The representative categorically denied that the British Nationality Act was administered in a discriminatory manner, noting that thousands of Indians and black British subjects were currently enjoying all the rights provided under that Act. If the immigration regulations placed more restrictions on immigration from India, that was not done in a spirit of racism. Nevertheless, it had been recognized that certain elements of the population, particularly persons originating in the United Kingdom overseas dependent territories, did not enjoy the full range of rights conferred by British nationality, which was perhaps not entirely consistent with article 12, paragraph 4, of the Covenant, but which was unavoidable. The British Nationality Act of 1981 provided that a child born in the country was a British subject by birth if one of his parents was of British nationality or was established in the United Kingdom. The Act was not discriminatory either in principle or in its application. There had been 13,615 naturalizations, the majority involving persons from the West Indies and the Indian subcontinent, during 1984. Applications for entry into the United Kingdom from British overseas citizens numbered 3,448 from India, 334 from Kenya, 323 from the United Republic of Tanzania, 143 from Malawi and 21 from Zambia. Some 22,000 applications for entry were pending in family reunion cases, the waiting period varying between 2 and 23 months. All British citizens could aspire to civil service employment regardless of the method of acquisition of British nationality.

545. With respect to the actual enjoyment by women of the rights contained in the Covenant, there was no distinction between men and women with respect to the right to vote, eligibility for office and participation in public affairs. Of some 650 members of the House of Commons, 23 were women. That proportion was low but was not the result of discrimination: in the United Kingdom, as in many other countries, women had difficulties in reconciling family life and a professional career and often gave preference to the former. The Government was attempting in every way possible to increase the number of women appointed to public office, but possibilities for action at the structural and regulatory levels were limited. Concerning the situation of women in the family context, the man was generally regarded as the head of the family but women were generally granted custody of children in cases of separation. Former husbands were required by the courts to provide means of subsistence to their former wives and children in the light of their own circumstances. Wives could not be disinherited by their husbands. The delay in the ratification of the Convention on the Elimination of All Forms of Discrimination against Women was explained by the fact that, in view of the Convention's complexity, the Government of the United Kingdom wished to ensure that all its provisions would be applied in law and fact. It was hoped that the Convention would be ratified soon.

546. Regarding the question of detention in British ports, the representative stated that the law did not permit the arbitrary refoulement of a British subject; but, if it was established that a person was an illegal immigrant - the burden of proof on the point resting with the immigration authorities - administrative action could be taken. In general, an illegal immigrant could not be released on bail, but the remedy of habeas corpus was available to all.

547. Responding to other questions raised by members, the representative stated that his Government was monitoring the ethnic composition of the public services; that, while cases of religious or employment discrimination undoubtedly occurred, there was no government-approved systematic discrimination of any kind; that persons who felt they had been discriminated against could have recourse to courts, such as the labour courts if the problem was of a professional character; and that there was no longer any significant distinction made between the sexes in tax treatment. Concerning the responsibility of his country's authorities for education in the field of discrimination, the representative pointed out that that issue, and the question of racial equality, were regarded by the Home Secretary as matters of special importance.

Right to life

548. In connection with that issue, members of the Committee wished to receive information about any positive measures that had been taken by the United Kingdom on the points raised in the Committee's general comments 6 (16) (art. 6) and 14 (23) and about the question of control of the use of arms by security forces. Noting that a connection existed between general comment 6 (16), which dealt with the need to make every effort to avert the danger of thermonuclear war, and article 20 of the Covenant, one member asked why the United Kingdom had not yet adopted a law against propaganda for war. Another member requested additional information concerning the application of section 3 of the Criminal Law Act, which permitted the taking of life to prevent a crime.

549. Responding to questions raised by members of the Committee, the representative of the State party noted, with respect to general comment 6 (16), that members of the British security forces were in no circumstances, except in time of war, authorized to kill in an arbitrary manner. They could only do so for their own immediate protection or for the protection of another, and the legality of the act was subject to determination under criminal law. The seizure of persons against their will constituted a criminal offence in the United Kingdom. A person could only be imprisoned in accordance with the law and the place of detention could not be kept secret. The National Health Service provided social services to the entire population, generally free of charge, and there was also a system of social security. Thus, the Committee's concerns expressed in paragraph 5 of general comment 6 (16) could be seen as not applying to the United Kingdom. With reference to the United Kingdom's position regarding the general comments adopted by the Committee on article 6, more generally, the representative stated that, while his Government paid close attention to them and held them in high regard, it did not necessarily agree wholeheartedly with everything in them. His feeling that the Committee was not the right forum in which to restate his Government's views concerning disarmament, which had been developed elsewhere, in no way diminished the importance the United Kingdom attached to the promotion and protection of the fundamental right to life under the Covenant. As to the issue of the elimination of racial discrimination, his Government had recently submitted a full report to the appropriate committee and it would also be submitting a report shortly

concerning the implementation of the International Covenant on Economic, Social and Cultural Rights.

550. With reference to the question on the use of arms by the security forces, the representative explained that arms could only be used as a last resort, after a warning had been given, and only when there was a threat to life. Concerning the use of firearms by police, section 3 of the Criminal Law Act provided that only such use of force as was reasonable under any given circumstance was permissible. In applying the provision and deciding whether reasonable force had been used, the court would always consider the seriousness of the crime and judge whether the force used had been too great in relation to the crime.

Treatment of persons, including prisoners and other detainees

551. Members of the Committee wished to receive information on measures and mechanisms to prevent or to punish treatment contrary to articles 7 and 10 of the Covenant. They asked whether there had been cases of cruel, inhuman or degrading treatment and, if so, whether appropriate action had been taken, whether prisoners or inmates detained in psychiatric institutions could lodge complaints with an independent body, whether the proposed new Police Complaints Authority would also cover prisons, especially persons detained on remand, and about the outcome of complaints concerning the use of corporal punishment in schools. Regarding the Board of Visitors, it was asked what instructions that body operated under; whether, being composed of laymen, it was competent to adjudicate criminal matters; whether its ability to punish a prisoner for making an unjustified complaint did not in fact deter prisoners from lodging complaints; and whether the powers of the Board, which could order solitary confinement of prisoners for up to 50 days on a repeated basis, were not, in fact, too great. Regarding degrading or inhuman treatment, members asked if there had been any debate in the United Kingdom as to whether permitting a prisoner to die as a result of a hunger strike constituted inhumane treatment and whether the use of force by police in searching the private parts of detainees for concealed weapons did not represent degrading treatment prohibited under article 7 of the Covenant or infringement of the right to inherent dignity covered by article 10. Members also requested further clarification as to how consent for psycho-surgery of compulsorily detained mental patients was obtained, whether there were specific provisions prohibiting scientific experiments without the consent of the individual concerned, how the procedures of "prior ventilation" and "simultaneous ventilation" actually worked in practice and how the proposals of the Royal Commission on Criminal Procedure were to be implemented, particularly in connection with assuring the independence of the investigatory procedure and the establishment of time-limits for pre-trial detention. In addition, one member asked whether the penitentiary system had proved successful in reforming and rehabilitating prisoners and whether any efforts had been made to modernize prison conditions with a view to achieving such results.

552. In his reply to questions concerning the treatment of prisoners, the representative of the State party said that the United Nations Standard Minimum Rules for the Treatment of Prisoners had been brought to the attention of prison officers, who were also required to observe a Code of Conduct and Prison Department instructions which were compatible with the Minimum Rules. Body or strip searches were authorized under article 55 of the Police and Criminal Evidence Act 1984 only in cases when a prisoner was suspected of having hidden an object that could cause physical injury and of intending to use it, or was suspected of concealing a dangerous drug such as heroin or cocaine. As to whether it could be considered ethically acceptable to allow a hunger striker to die, the representative explained

that the British Government had studied the question carefully 15 years ago and had come to the conclusion that it was better not to interfere in such cases inasmuch as the practice of force-feeding was more inhumane and degrading. Regarding the matter of corporal punishment in schools, views were divided, but under a bill currently before Parliament parents would be enabled to exempt their children from corporal punishment if they wished to do so. The view that corporal punishment in schools was actually inhuman or degrading was held only by a minority.

553. In his reply to questions concerning the Board of Visitors, the representatve of the State party explained that the members of the Board were advised that they must consider making available legal advice to prisoners appearing before them on serious charges. Although members of the Board were not professional lawyers, some of them were lay magistrates, and at least one such magistrate had to be on the adjudicating panel when a serious offence was involved. It would be wholly inappropriate for the same Board of Visitors to consider a complaint against a prison officer and then to determine whether the allegation had been false or malicious. The procedure governing the handling of false and malicious allegations was under review, as were the entire disciplinary system in custodial institutions and the arrangements relating to the imposition of solitary confinement.

554. Concerning the treatment of mental patients without their consent, he said that patients or relatives desiring to make complaints in that regard could do so to the Mental Health Act Commissioners or the Health Service Commissioner. The administration of treatment to such patients was subject to the Health Hospital Guardianship and Consent to Treatment Regulations (1983) and required the consent of a medical practitioner appointed by the Mental Health Act Commission. Referring to the question of simultaneous and prior ventilation, the representative explained that, under the new procedure, prisoners could write to anyone outside the prison at the same time as they lodged a complaint within the prison system, rather than having to wait for the outcome of the internal proceedings as in the past. Prisoners did not have first to ventilate their complaints internally if they wished to take legal action and could contact their legal advisor straightaway.

555. With regard to the independence of investigations of complaints against the police, under the new procedures personnel from the complaints authority could supervise the investigation, which would still be carried out by the police though not by an officer who had any connection with the alleged incident. As to the matter of pre-trial detention time-limits, the representative pointed out that the relevant provisions of the Police and Criminal Evidence Bill were in the form of powers given to the Secretary of State to impose time-limits through subordinate legislation. Experiments would be required in selected courts to see what effect such time-limits would have. Finally, responding to a member's question concerning the rehabilitative effect of imprisonment, the representative explained that there was considerable disillusionment on that score and the prison service no longer claimed to be able to make a real difference to a prisoner's outlook or personality. Courts were encouraged to set custodial sentences in relation to the gravity of the offence and not in relation to the benefit that a prisoner might derive from treatment or training while in prison. Accordingly, it was recognized that although constructive education and training programmes should be made available to all prisoners, greater emphasis was placed on treating young offenders and helping them to obtain qualifications.

556. With reference to that issue, members of the Committee wished to receive information on the circumstances and periods for which persons might be held in preventive detention without being charged with a criminal offence; on detention in institutions, including psychiatric institutions, other than prisons; on remedies available to persons (and their relatives) who felt that they were being wrongfully detained and on the effectiveness of such remedies; on the observance of article 9, paragraphs 2 and 3, of the Covenant, particularly regarding prompt judicial control of conditions of arrest and detention; on the maximum period of detention pending trial and on contact between arrested persons and lawyers. It was also asked whether families were promptly informed of an arrest and whether the "codes of practice" were merely instructions to the police or were envisaged as having the force of law.

557. Concerning habeas corpus, it was asked what the powers of judges were in such proceedings; what the role of the courts was and what the purpose of saving the remedy of habeas corpus was in matters envisaged by the Police and Criminal Evidence Bill; whether any consideration had been given to codifying the remedy of habeas corpus itself; whether habeas corpus proceedings had ever been adjourned to enable the authorities involved to be legally represented; whether persons detained under section 12 of the Prevention of Terrorism Act 1976, which allowed detention for up to seven days prior to presentation before a court, were not in fact effectively deprived of their right of recourse to habeas corpus; and whether a writ of habeas corpus was restricted to determining the validity of a detention order or could also constitute an appeal against continued detention.

558. Members also requested additional information on the administrative or judicial régime governing the detention of aliens who had been refused entry into the United Kingdom or expelled but who were unable to depart immediately. They asked in particular what legal remedies were available, what the maximum period, if any, of such detention was, and at what stage the legal authorities became involved in such cases. They also asked whether persons could be detained for administrative reasons other than those arising under the immigration laws and whether persons unlawfully arrested or detained had an effective right to compensation, as provided in article 9, paragraph 5, of the Covenant.

559. In his reply, the representative of the State party explained that under the Police and Criminal Evidence Act 1985 a person detained for questioning had to be released within 24 hours, extendable to a maximum of 96 hours on the authority of a magistrates' court, that a detainee's relatives and lawyers had to be informed of the detention immediately, and in any case no later than within 36 hours; and that a detainee had to be brought before a court as soon as possible after being charged, usually a magistrates' court on the following day. In Northern Ireland, the police could detain suspected terrorists for questioning for up to 72 hours. Detainees could be held without bail for seven days at a time and there was no specific time-limit on the period that bail could continue to be denied, except that eventually statutory time-limits for detention would be reached. The remedy of habeas corpus was available to prisoners who believed that they were being improperly detained, and the Police and Criminal Evidence Act would make it easier for them to start such proceedings. If they succeeded, applicants would have the right to seek compensation through the courts for false imprisonment. The remedy of habeas corpus was also available to detained foreigners, who could only be held pending a decision on their case. In extreme cases of prolonged detention of foreigners, the court could order the detainee's release. Courts could adjourn

proceedings for habeas corpus for several days when a full judiciary hearing, in which the detaining authority would usually be required to defend its action, had been ordered by a judge. As to the judicial recourse available to would-be immigrants, the representative explained that those who had been refused admittance had the right of appeal only after leaving the country, whereas those first admitted and then ordered deported could appeal both to immigration appeal authorities and ultimately to the courts through the judicial review procedure. Bail might also be granted pending appeal.

560. In response to questions raised by members of the Committee concerning detentions under section 12 of the Prevention of Terrorism Act 1984, the representative stated that persons suspected of involvement in terrorism could be held by the police for up to 48 hours, a period that could be extended by the Home Secretary for an additional five days. That provision did not deprive such detainees from availing themselves of the remedy of habeas corpus, although it was true that such persons might find it difficult to establish before a judge that their detention was unreasonable. There was no longer any provision in the United Kingdom for administrative detention except in cases of illegal immigration.

Right to a fair trial and equality before the law

561. With reference to that issue, members of the Committee wished to receive information concerning any observations the United Kingdom might have made in respect of the Committee's General Comment 13(21). They asked whether legal aid was provided for in both civil and criminal cases; about rules for granting compensation in accordance with article 14, paragraph 6, of the Covenant; about cases in which the trial could be deferred by Crown Courts beyond the eight-week limit established in the Supreme Court Act 1981; whether the Emergency Powers Act 1976, which was in force in Northern Ireland, authorized the use of methods to secure confessions that would not be permissible under common law and whether the Criminal Appeal Act 1968 conformed to the requirement in article 14, paragraph 5, of the Covenant regarding right of appeal to a higher tribunal. With reference to article 14, paragraph 6, members expressed regret that there was no statutory basis in the United Kingdom for the right of compensation for miscarriages of justice and urged that appropriate measures be taken to ensure full compliance with that article.

562. In his reply, the representative of the State party said that the United Kingdom had borne the Committee's general comments in mind when drawing up its reports and pointed out that the second periodic report should be read in the context of the initial report, in which most of the issues covered by the general comments had been discussed. The United Kingdom believed that its laws and practices were essentially in conformity with articles 14, 15, 16 and 26 of the Covenant. In the case of article 14, paragraph 6, while it could be considered that the article was not applied to the letter, since the compensation system that had been established did not have the force of law, it was nevertheless clear that the system did conform to the spirit of paragraph 6 since it operated within clearly defined rules from which the Home Secretary could not easily derogate without running a high risk that his decision would be reversed by the courts.

563. With regard to the question of legal aid, the representative stated that such aid was available in British courts in both civil and criminal cases provided that the litigant's income and capital did not exceed certain financial limits. According to estimates, some 70 per cent of the population would qualify for legal aid on financial grounds. In determining whether or not legal aid should be

granted, the seriousness of a case was also an important factor, particularly if the accused faced serious consequences such as a prison sentence or loss of employment. As to the implementation of article 14, paragraph 3 (g); of the Covenant, it was true that the rules under the Northern Ireland Emergency Provisions Act were not as favourable to the accused as under English law and that suspected terrorists could at times be subjected to long interrogations. However, that Act expressly prohibited the use of torture or any inhuman or degrading treatment to obtain confessions and no one was compelled to testify against himself or to confess guilt. Concerning the question of Crown Courts delaying the opening of a trial beyond the eight-week maximum, he explained that such delays occurred primarily in cases in which a defendant had not had sufficient time to prepare his defence or if the case was exceptionally complex; the court was not then bound to set any time-limit for the opening of the trial. However, the general question of time-limits was under review.

Freedom of movement and expulsion of aliens

564. With reference to that issue, members of the Committee asked whether the United Kingdom's reservations concerning immigration matters were intended to exclude from the Committee's purview all immigration-control related matters arising under any of the Covenant's provisions and whether there had been any violations of Race Relations Act 1976 regarding the right to enter one's own country. Members also requested further clarification of the extent to which account was taken in practice of the 1951 United Nations Convention relating to the Status of Refugees, which had promulgated the principle of "non-refoulement", as well as concerning extradition practices and the meaning of the term "expulsion" in United Kingdom law.

565. In his response, the representative of the State party said that, while his country's reservation did, in fact, apply to all aspects of immigration control, that did not mean that all the conditions concerning such control were incompatible with the provisions of the Covenant. Except for the distinction drawn between men and women for certain purposes and the situation of overseas citizens as far as admission to the United Kingdom was concerned, immigration control conditions appeared to be consistent with the provisions of the Covenant. The Race Relations Act was not applicable in matters concerning immigration control, but it was clear from the relevant regulations that such control should be carried out without racial discrimination. As to the question regarding the Geneva Convention, he said that the rights of refugees were fully protected in the United Kingdom and in no case could a person be expelled to a country in which he might expect to be persecuted. The term "expulsion" was not used in United Kingdom law and undesirable persons could be expelled only through refusal of entry, deportation or extradition.

Interference with privacy, family etc.

566. With reference to that issue, members of the Committee wished to receive information on measures taken to prevent arbitrary or unlawful interference with privacy, such as wire-tapping; on the types of recourse that were available to victims of the infringement of privacy other than that provided under the Data Protection Act 1984. It was also asked whether the Interception of Communications Bill protected the right of individuals sufficiently, whether the registration of data on the whole population would not lead to violations of article 17 of the Covenant, whether the Immigration Rules of 15 February 1983 affected the right of

the family to stay together and whether it distinguished between men and women, and whether the volume of prisoners' correspondence could be restricted.

567. In his reply, the representative of the State party explained that there was no general right to privacy and no general remedy against invasions of privacy in the United Kingdom, but there were remedies for specific breaches under the Law on Trespass, the Law on Defamation and the Law on Breaches of Confidence. The interception of postal or telephone communications was considered an offence and a measure was currently before Parliament, the Interception of Communications Bill, which would define the conditions for lawful interception of communications and protect the right of individuals to take legal action in case of abuse. The practice of data registration was specifically intended to protect privacy by limiting access to information about individuals and was in fact expressly designed to ensure the implementation of the provisions of article 17 of the Covenant. As to the question concerning the right of the family to stay together, the representative confirmed that the Immigration Rules of 15 February 1983 made a clear distinction between men and women, and acknowledged that, while their purpose was not to hinder the reunion of members of a family, they could have the practical effect of preventing members of a family from living together in the United Kingdom. With regard to prisoners' correspondence, he pointed out that, although the number of letters that could be examined under the censorship procedure was necessarily limited, there were no problems in the United Kingdom in that regard.

Freedom of thought, conscience and religion

568. With reference to that issue, members of the Committee wished to receive information on discrimination on religious grounds, particularly in Northern Ireland, where the Fair Employment Agency was seeking to promote equal employment opportunities, and on the results of the Law Commission's study of offences aginst religion and public worship, including blasphemy.

569. In responding, the representative of the State party said that the Fair Employment Act 1976 was expressly aimed at outlawing all religious discrimination in employment. In addition to the efforts of the Fair Employment Agency in that regard, the Northern Ireland Manpower Department had published a Guide to Manpower Policies and Practices which provided, inter alia, that public contracts with private companies should be restricted to companies that did not practise discrimination. Since its establishment in 1976, the Fair Employment Agency had received 436 complaints of discrimination, of which 257 had been investigated, with unlawful discrimination being found in 32 cases. Th Law Commission's study of offences against religion and public worship, including blasphemy, was not yet complete.

Freedom of opinion and expression; prohibition of war propaganda and advocacy of national, racial or religious hatred

570. With reference to those issues, members of the Committee wished to know about ownership, influence and control of the media; whether there was any form of censorship of the media, works of art, or other creative works on the grounds of decency and whether there was any control over the production and sale of videotapes; whether there had been any cases of arrest and detention for the expression of political views, particularly prosecutions of people who spoke out against nuclear weapons and in favour of peace, or police measures against peace activists, trade-union members or striking workers publicly expressing their opinion. The also asked about the new rules concerning contempt of court and

reporting on trials by the press, the results of the Law Commission's study of sedition and allied offences; and they inquired whether the United Kingdom intended to withdraw its reservation relating to article 20 of the Covenant in the light of the Committee's general comment 11 (19). One member requested information on the number of cases in which proceedings had been instituted by the Attorney-General since 1976 under section 5 A of the Public Order Act, which had made it a criminal offence to stir up racial hatred.

571. In his reply, the representative of the State party explained that there was no censorship as such in the United Kingdom, but that there were some restrictions in certain circumstances on what could be published and a number of statutory provisions had been designed to protect the public from indecency and from inflammatory material. The production and sale of videotapes were controlled under the Indecent Displays Control Act 1981 and the Video Recording Act 1984. There was no restriction in the United Kingdom on the expression of political views and cases of arrest and detention for such expression were unknown. In certain cases, when the police had been obliged to arrest demonstrators, the arrests had been made solely with a view to restoring public order and had had nothing to do with the ideas expressed by the demonstrators. The restrictions in effect on the press coverage of particularly controversial trials were applied in cases in which it was deemed that publication could hinder court proceedings. The Contempt of Court Act 1981 had reduced the length of the period during which such restrictions could be applied. The Law Commission's study on sedition and allied offences, a question which had not been accorded high priority, was progressing slowly and it was not possible to give precise information thereon.

572. Concerning the United Kingdom's reservation relating to article 20 of the Covenant, the representative stated that his country did not intend to withdraw that reservation because it was not planning to introduce the kind of legislation that article 20 seemed to require. War propaganda was not a problem in the United Kingdom and therefore no need was seen for legislation of the subject. Likewise, no additional legislation, beyond the provisions in the Race Relations Act and the Public Order Act, was currently planned in the area of prohibiting incitement to national, racial or religious hatred, and the aim of the existing laws was not so much to prohibit the expression of ideas as to avoid any disorder that could result from the expression of those ideas.

Freedom of assembly and association

573. With reference to that issue, members of the Committee wished to receive information regarding the compatibility of the closed shop system with article 22 of the Covenant, the actual application of legislation guaranteeing reinstatement or compensation for employees unfairly dismissed for membership of an independent trade union and the existence of any legal machinery for verifying implementation of the principle of safeguarding national security. It was also asked why there was no legal prohibition in the United Kingdom of racist and neo-Fascist assemblies, organizations and activities.

574. In his reply, the representative of the State party said that under recently introduced legislation it was possible for employees themselves to decide whether or not they wished to adopt the closed shop system; that in cases of appeals against wrongful dismissal the tribunals generally ordered compensation rather than reinstatement which, in a situation of high unemployment, was admittedly not as just as reinstatement would be; and that judicial review was available against administrative decisions taken on grounds of national security, although courts

were traditionally inclined to leave such matters to the competence of the Minister concerned. As to why the laws did not expressly prohibit assemblies, organization and activities of a racist and neo-Fascist character, the representative reiterated his response to an earlier question, namely, that it was because the legislative goal in the United Kingdom was not to prohibit the expression of ideas but to avoid any resulting disorder.

Political rights

575. With reference to that issue, members of the Committee asked how political rights were exercised and what restrictions there were on such rights; whether the imposition of a nationality test on candidates for public office and on their parents did not constitute racial discrimination and what types of recourse were available to those who had been refused access to, or who were removed from public office.

576. In his reply, the representative of the State party explained that, in principle, there was no difference between the public service and other employment and persons who failed to be selected for a post had no redress unless the grounds for the exclusion were racial or sexual. A dismissed civil servant, like anyone else, had access to redress through the tribunals.

General observations

577. Members of the Committee thanked the United Kingdom delegation for its co-operation and for its detailed answers, which had provided valuable information demonstrating the achievements of the United Kingdom in implementing the Covenant.

578. Members appreciated the efforts made by the United Kingdom to find ways of implementing its commitments under the Covenant through its own traditional system, as well as the withdrawal of its derogations from the Covenant relating to the states of emergency in Northern Irish affairs. It was, however, felt that there were still gaps in the implementation of certain articles of the Convenant and with regard to a comprehensive system of remedies.

579. Several members stressed that additional written laws and a statutory Bill of Rights could improve the system of protection of human rights and better define adequate guarantees and remedies.

580. The Chairman, in concluding consideration of the second periodic report of the United Kingdom, welcomed the very satisfactory manner in which the dialogue with the United Kingdom had continued and warmly thanked the delegation for its constructive role in that dialogue and its efforts to provide detailed replies.

Afghanistan

581. The Committee considered the initial report of Afghanistan (CCPR/C/31/Add.1) at its 603rd, 604th and 608th meetings, held on 10 and 12 July 1985 (CCPR/C/SR.603, 604 and 608).

582. The report was introduced by the representative of the State party who acknowledged that his country's report was rather brief but explained that it was the first time his Government had prepared a report of that type and, like other Governments of developing countries, it did not have sufficient technical experience.

583. The representative referred to the feudal system existing in Afghanistan before the Revolution of April 1978 and to the democratic and progressive reforms of the present Government. He stated that since the Revolution more than 300 laws, decrees and regulations had been promulgated in his country, including several concerned with promoting and protecting human rights in accordance with the provisions of the Covenant and other international instruments to which Afghanistan was a party. He cited in this regard measures to ensure respect for the democratic rights and freedoms of Afghan citizens, including the abolition of all inhuman and anti-democratic laws, arbitrary arrest, persecution and search; the guarantee of the right to life and security for all, respect for the principles of Islamic religion and religious observances, freedom of thought, conscience and religion, and freedom to manifest one's religion or belief in worship and observance; a profound respect for and observance of the national, historical, cultural and religious traditions of the people; the equality of Afghan citizens not only before the law but also in the economic, political, social and cultural spheres; the right of everyone to recognition everywhere as a person before the law, respect for legitimate rights, the inviolability of the person and the principle of peace and revolutionary order in the country; the right freely and openly to express one's opinions, the right of assembly and the right of peaceful demonstration, likewise the right to join democratic and progressive social organizations in a patriotic spirit, in the interests of the social order and national security; equal rights of women and men and the right to work, to rest, to education, to health and the right to social security for the elderly, for disabled workers, for families which had lost their breadwinner; the freedom to engage in scientific, technical, cultural and artistic activities in accordance with the objectives of the Revolution; respect for private ownership and property, security of domicile and of communications, including telephonic, telegraphic and other communications; the right of movement and freedom to choose one's residence freely, the right of return of every Afghan citizen to Afghanistan, and the right to complain or to petition individually or collectively to State organs. In that conection, he pointed out that fundamental rights and freedoms were guaranteed by the Fundamental Principles of the Democratic Republic of Afghanistan, that relevant legislation was constantly being improved and brought up to date and that practical steps had been taken to ensure the enjoyment of all the rights contained in the Covenant by everyone living in Afghanistan and those who were subject to Afghan legislation, without any distinction. He also pointed out that limitations of the rights of Afghan nationals and other people under Afghan jurisdiction were determined by law and were in compliance with article 4, paragraph 2, of the Covenant.

584. The representative stated that the combination of the duty of the State and that of the citizens to observe the law constituted the unique principle of democratic legality of the country. He stressed that humanism was a fundamental aspect of the national and democratic revolution in Afghanistan and that thousands of citizens initially opposed to the present Government had returned to their homes, availing themselves of the general amnesty promulgated on 18 June 1981. He also informed the Committee about the meeting of the Loya-Jirgah or Supreme Council, composed of the most respected representatives of the people, held at Kabul from 23 to 25 April 1985. In its deliberations the Loya-Jirgah had supported the Government in its domestic and foreign policies and socio-economic changes.

585. Regarding the implementation of articles 6, 7, 9, 19 and 20 of the Covenant, the representative drew the attention of the Committee to the relevant information provided by his Government. With reference, in particular, to article 7 of the Covenant, the representative said that any person guilty of inflicting cruel,

inhuman or degrading treatment, torture or corporal punishment was liable to a term of imprisonment of five to 10 years under article 275 of the Afghan Penal Code.

586. In respect of the implementation of article 14 of the Covenant, the representative stated that, in accordance with chapter 7 of the Fundamental Principles, the judicial system was independent of government influence. The Supreme Court, which was the highest judiciary body in the country, supervised the work of the lower courts and ensured uniform application of the law at all levels. Trials were conducted in accordance with the law. If a law was not sufficiently explicit, the court decided in conformity with the shariah (Islamic Law) and the principles of democratic legality and justice. In November 1981, the Presidium of the Revolutionary Council had established that acts which were contrary to the law and any abuse of power or interference with the rights of citizens could be appealed in accordance with the procedures established by law. A special revolutionary court had been established to try special cases of crimes against the interior and exterior security of the State. However, the special court was a provisional one and owed its existence to the undeclared war conducted against his country by international imperialism and the forces of reaction in the region. The special court respected the Fundamental Principles of the Democratic Republic of Afghanistan and its activities would automatically come to an end when the war ceased and the situation returned to normal.

587. In addition, the representative stated that the principle of the presumption of innocence was guaranteed under the law; if the charge could not be substantiated no action was taken against the accused person, with any doubts always being resolved in his favour. He pointed out that under the Criminal Procedure Act of Afghanistan, the examining magistrate was required to submit to the prosecutor within 72 hours all material confirming the need to arrest a person charged with a criminal act. The prosecutor, in turn, was required to decide within three days whether to extend the detention, to bring charges or to release the detainee.

588. With regard to the right to form and join trade unions, guaranteed by article 6 of the Fundamental Principles of the Democratic Republic of Afghanistan, the representative stated that the Central Council of Afghan Trade Unions, set up after the Revolution, currently had more than 200,000 members and was making efforts to develop training schemes and to improve the working and living conditions of the population. A labour law, currently in the final stage of preparation and to be adopted in the near future, provided for the guarantee of workers' rights.

589. With regard to measures taken in Afghanistan to implement article 25 of the Covenant, the representative referred to the Law of Local Organs of the State Power and Administration which provided for the right of the people to participate directly and to share in the decision-making process regarding State affairs. He said that the Political Bureau of the Central Committee of the People's Democratic Party of Afghanistan (PDPA) had recently launched an appeal to the people to take a more active part through traditional local self-governing bodies (jirgahs) in bringing about revolutionary transformation and in managing State affairs at the local level. In addition, the representative drew attention to various legal measures adopted by his Government concerning the equality of citizens before the law and the eradication of the historical causes of underdevelopment, illiteracy and the passive status of women. He stressed that the Democratic Organization of Afghan Women, with the support of the PDPA and of the State, had initiated a broad-based programme for the protection of women's interests and their active participation in the political an social life of the country. In addition, the

historical practice of oppression of the Hazars, the Turkomen, the Uzbeks and other minorities had now been brought to an end and equality between all ethnic, religious or linguistic minorities was ensured by law.

590. Members of the Committee expressed appreciation to the Government of Afghanistan for acceding to the Covenant at a time when the State was facing a difficult situation and thanked the representative for considerably amplifying the information provided in the report. They noted, however, that the report was too concise. It referred only to the legal measures adopted to give effect to rights recognized in the Covenant, but did not mention the actual situation in the country, the progress made in the enjoyment of those rights or the factors and difficulties affecting the implementation of the Covenant. Members were deeply concerned about the general situation in Afghanistan, stressed the need for additional information and invited the representative of Afghanistan to give the Committee a realistic picture of the situation. Two members were of the view that the Committee should consider whether it would be appropriate to request a new report. It was stressed that co-operation should be extended to the State party and that the Secretary-General should be assisted in his efforts to bring about a peaceful solution in Afghanistan.

591. Members of the Committee wondered how laws and remedies could be successfully implemented in Afghanistan given the current situation which was variously described as a state of emergency, a civil war, an armed conflict, a war or a situation brought about by terrorist activities, an they asked to what extent that situation affected human rights. Several members of the Committee pointed out that, in addition to the State party's report, they had also consulted the report on the situation of human rights in Afghanistan prepared by the Special Rapporteur of the Commission on Human Rights (E/CN.4/1985/21). According to those members, that report provided clear evidence of regrettable violations of human rights in Afghanistan. They hoped that a frank and constructive dialogue on the factual situation in the country could be established between the Afghan Government and the Committee. It was observed, on the other hand, that the comprehensive legislation introduced in Afghanistan was in itself an impressive achievement for such a young régime, especially considering the troubled state of the country. In order to provide a complete picture of those achievements, it would be necessary to know the actual situation, what had motivated the desire for change and what factors were hampering the Government's efforts to attain its proclaimed goal and might justify emergency measures. Therefore, information was needed regarding the situation before the Revolution, the extent to which the Fundamental Principles of the Democratic Republic of Afghanistan and other laws and activities had changed it, and what difficulties were being encountered.

592. One member of the Committee expressed the opinion that the report and the introductory statement made by the representative of the Government of Afghanistan constituted a distortion of the reality existing in the country. He stated that, although the Government of Afghanistan had signed a number of international instruments pertaining to human rights, such as the Covenant, its motivation had been the protection of its public image rather than of its population. He referred to many information sources according to which thousands of citizens had been deprived of their fundamental rights, such as the right to life, the right to freedom of religion, and the right to freedom of expression. Opponents to the régime had been tortured and assassinated. Mosques had been violated and members of the Islamic faith forced to endorse government policies. Tens of thousands of people had been massacred and 4 million Afghans were currently living as refugees in neighbouring countries. In his view the report was unacceptable.

593. Several members of the Committee made particular reference to the detailed information provided by the Special Rapporteur of the Commission on Human Rights with regard to the situation of conflict existing in Afghanistan, in which foreign troops and armed groups were involved, and to the massive exodus of people living as refugees in neighbouring countries. In connection with article 1 of the Covenant, they asked what steps had been taken or were being taken by the Afghan Government, internally or internationally vis-à-vis neighbouring countries, to face up to the refugee situation and to allow the Afghan nation to enjoy its rights under that article, as well as whether there were legal and political processes whereby the people of Afghanistan could exercise that right. It was also asked when foreign troops would leave the country and when the Afghan people would have the right to choose their own government and political, economic and social system without any form of outside pressure. With regard to article 31 of the Fundamental Principles, which stated that Afghan people must "be proud of the title of subject of the Democratic Republic of Afghanistan", it was asked whether in the current situation of conflict that was a legal obligation enforceable by punishment and, if so, what penalty was prescribed and to what extent revolutionary legislation expressed the will of the people.

594. Referring to article 2, paragraph 2, of the Covenant, members of the Committee wished to know why the report did not mention the right to political or other opinion among the rights respected for all individuals in Afghanistan without distinction of any kind; whether the Covenant was incorporated into the legislation of Afghanistan and whether a citizen whose rights were violated could invoke the Covenant in the Afghan courts; whether the Covenant had been translated into the Afghan national languages and made available to the public; whether illiteracy constituted a problem for its publicity; whether an effort had been made to develop awareness among the people and law enforcement officials of the rights contained in the Covenant; what rememdies and legal procedures existed under the Afghan Penal Code for individuals seeking to defend their rights under the Covenant, especially if they had been violated by persons acting in an official capacity; what rules and regulations ensured the right to an effective remedy and what civil remedies existed in Afghanistan; whether there was a procedure equivalent to habeas corpus and what the provisions for compensation were in the case of a miscarriage of justice.

595. In connection with article 3 of the Covenant, it was asked what incompatibilities prevented Afghanistan from acceding to the Convention on the Elimination of All Forms of Discrimination against Women and why they did not affect the ratification of the Covenant.

596. Referring to article 4 of the Covenant, members of the Committee wished to know whether the Government of Afghanistan, in view of the situation existing in the country, had decreed a state of emergency under that article and had apprised the Secretary-General of the United Nations and other States parties of that fact; whether the state of emergency had been legalized; what rights had been suspended; which authority was empowered to declare a state of emergency; under what circumstances such a declaration could be made; what powers the Executive had in such a case and the exact meaning of the expression, referred to in the report, "the law has anticipated certain limitations of rights ... during public emergencies". The attention of the Government of Afghanistan was drawn to the experience of Governments in using the provisions of article 4 of the Covenant to combat terrorist activities.

597. With regard to article 6 of the Covenant, members of the Committee asked whether Afghanistan intended to abolish the death penalty, how often the death penalty had been imposed in the recent past, whether statistics existed on its application which would show how many death sentences had actually been carried out, how many people had been pardoned or had had their sentences commuted, for what crimes the death penalty was imposed and what the "unforgivable crimes", for which a person could be sentenced to death, were. They also wished to know which courts were authorized to impose the death penalty; whether that penalty was subject to appeal or review and, if so, under what circumstances and what official machinery existed for investigating alleged aribtrary killings. It was also asked whether the Government of Afghanistan shared the view that provisions concerning minimum guarantees in armed conflicts not of an international character, which were contained in the 1949 Geneva Conventions and Additional Protocol II, reflected the substance of article 6 of the Covenant and were applicable; how it was ensured that foreign troops complied with the Afghan Government's obligations under the Covenant and what the situation was in the parts of the national territory which were not under the Government's control.

598. In relation to article 7 of the Covenant, certain members, referring to allegations of torture, asked what the procedure was for investigating and punishing persons responsible for torture; what was being done to abolish torture and to remedy alleged cases of torture and ill-treatment of individuals; and what advice the Government was giving to the police on the State's responsibilities under article 7.

599. Turning to article 9 of the Covenant, members of the Committee wished to know how long provisional detention could last; what the maximum period of detention fixed by law was and to what extent the courts permitted its extention; what remedies were available to a person alleging unlawful arrest or detention, cruel or inhuman treatment at the hands of the police or defence forces and inhuman conditions of detention. Further information was sought on the Khäd, or security apparatus; some members suggested that its operations raised different considerations regarding security of person. They asked whether it was empowered to arrest and detain people and even to carry out summary executions, where its powers were set out and how they were controlled.

600. With regard to article 10 of the Covenant, details were requested on the penitentiary sytem and the steps taken to ensure the reformation and social rehabilitation of prisoners.

601. Regarding article 12 of the Covenant, members of the Committee asked what the normal procedure was for leaving the country or moving from one part of it to another. It seemed to some that indirect restrictions existed and further information was sought on them. It was also asked under what circumstances a person could be deprived of the right to enter Afghanistan or an Afghan citizen could be prevented from returning to his country; what general restrictions existed on the right to leave the country and to return to it; whether reports of refugees being turned back at the Pakistan border and in some cases even being attacked were true; and whether the Afghan Government had any programme to facilitate the return and resettlement of refugees. The report of Afghanistan spoke of "former citizens" not being permitted to return. Certain members wanted to know the circumstances in which a person could be deprived of his citizenship and thus perhaps lose his right to return to his country.

602. In connection with article 14 of the Covenant, members of the Committee referred to the special court established to deal with issues of State security and inquired whether it was possible to appeal against its decisions and, if so, with what chance of success; whether the amparo or habeas corpus system was applicable to it; what the maximum penalties it could impose were; whether it was a court of final appeal or the sole court of that type; whether there were any other special or exceptional jurisdictions; who appointed the judges and how their independence was guaranteed; whether the court was a military one; whether it used summary proceedings; in what form it passed sentence and whether it had imposed the death sentence on any occasion.

603. Furthermore, members of the Committee wished to know how the judicial system gave effect to the independence of the judiciary; whether there were any courts in Afghanistan other than those referred to in article 56 of the Fundamental Principles, and, if so, what their jurisdictions were. They also asked what the procedure was for the removal of judges; what security of tenure they possessed; what control existed over their salary and pension rights; how many times persons attempting to exert pressure on judges had been relieved of their duties; why it was necessary for the Supreme Court to report its activities to the Revolutionary Council and whether that did not undermine the independence of the judiciary; whether the court settled criminal cases in accordance with the shariah, where the law was not clear and whether the Afghan Government was ready to accept the forms of punishment sanctioned by some versions of the shariah.

604. In addition, members of the Committee asked how the minimum guarantees set out in paragraphs 3, 4 and 5 of article 14 of the Covenant were applied and, in particular, what rights an individual had to legal assistance of his own choosing; whether a defence lawyer was always provided; whether any restrictions were placed on his action; how the independence of lawyers was safeguarded; how many lawyers there were in Afghanistan and how many were employed in government service; whether private practice was allowed; what the contents of the proposed law on the legal profession were; what the definition of a political crime was; under what circumstances a trial could take place in camera; which courts heard appeals; and whether an accused person had the right to representation before the Presidium of the Revolutionary Council when it was deciding whether or not to approve a death sentence.

605. With regard to article 17 of the Covenant, it was asked under what circumstances the entry or search of a home was permitted by law and whether the Khad had arbitrarily interfered with privacy.

606. In connection with article 22 of the Covenant, reference was made to article 29, paragraph 7, of the Fundamental Principles and it was asked how "democratic and progressive social organizations" were defined and who had the power to define them.

607. With reference to article 24 of the Covenant, information was requested on maternity and family allowances and on maternity and infant mortality rates.

608. Regarding article 25 of the Covenant, members of the Committee referred to the Law of Local Organs of the State Power and Administration and asked how the implementation of that law would "stabilize and consolidate democracy"; what steps had been taken in Afghanistan to promote democracy; whether the law provided for political pluralism; what legal provisions and procedures governed local organs and how it was ensured that those organs were truly representative. Information was

also requested on the law governing the election of the Supreme Council (Loya-Jirgah) and on when the Afghan authorities intended to hold genuine elections. In addition, it was asked whether all political tendencies could participate in political life on an equal footing or whether there was merely a one-party system, what legal provisions existed to ensure that women had an equal right to take part in public affairs and what percentage of public employees were women.

609. The representative of Afghanistan, in his reply to questions raised and comments made by members of the Committee, referred to the economic and social situation of his country before the Revolution of April 1978. He stated that, according to the estimation of United Nations experts per capita income at that time was one of the lowest in the world; 90 per cent of the population were landless; infant mortality rates had been high and life expectancy had not exceeded 40 years. The people had been deprived of all fundamental rights. After the Revolution, the economic situation of the country had been improving. Public health and education services had been extended and currently 233,300 people were involved in literacy programmes. The basic needs of the population in terms of food and supplies had been met.

610. The representative rejected allegations according to which his Government was opposed to the Islamic religion. He stated that the Government had made efforts to create favourable conditions for all citizens to exercise their religion freely and to respect its traditions provided that such activities did not threaten the peace and security of the State. Various articles of the Fundamental Principles referred to respect for the responsibilities and duties of the clergy; moreover, a Supreme Council for Islamic Clergy had been established as well as a Department of Islamic Affairs which had since become a Ministry. That Ministry had provided facilities for use by Muslims and a large number of Afghan Muslims had made the pilgrimage to Mecca.

611. The representative explained that immediately following the Revolution, a number of hostile régimes, in particular the United States, had launched a carefully planned military and economic campaign to undermine the efforts of the Afghan people. The destruction caused by external aggression against Afghanistan had amounted to three quarters of the country's total development investment in the 20 years preceding the Revolution. Only when the aggression against Afghanistan had finally reached such proportions that the Revolutionary Government had no longer been able to oppose it alone, had it asked for help. The presence of Soviet troops in Afghanistan to help defend the country's borders from external aggression was justified under the 1978 Afghan-Soviet Treaty of Friendship, Good Neighbourliness and Co-operation, as well as under article 51 of the Charter of the United Nations. He rejected the allegation that villages had been bombed. With regard to refugees, he stated that their number had been over-estimated and that many so-called refugees were merely nomads conforming to their life-style or migrant workers.

612. With reference to article 1 of the Covenant, the representative pointed out that Afghanistan had subscribed to the resolution of the non-aligned countries prohibiting interference in the internal affairs of countries by foreign Powers. The Afghan people had exercised their right of self-determination by bringing about the victory of the Revolution and by choosing, without interference or coercion, a form of government and a social, economic and political system reflecting their interests.

613. With regard to article 2 of the Covenant, the representative stated that Afghan citizens could invoke the provisions of the Covenant in support of applications to the competent bodies; that the Covenant had been translated into the official languages of Afghanistan and had been published and placed at the disposal of the population and that the report of the Afghan Government to the Committee had also been brought to the attention of the public.

614. In connection with article 3 of the Covenant, he said that although his Government had not yet acceded to the Convention on the Elimination of All Forms of Discrimination against Women it had taken steps in that direction. He also informed the Committee that Afghan women had been granted equal pay under article 62 of the Labour Act and that pregnant women and nursing mothers had acquired special rights under articles 80 and 81 of the same legislation. Dowries, arranged and early marriages and discrimination in employment had all been abolished. Over 10 per cent of union members were women. More than 250,000 women were employed in schools, hospitals, public administration and industry. The Loya-Jirgah included 60 women deputies and hundreds of literacy courses had been set up for women.

615. With reference to article 6 of the Covenant, the represenative gave as an example of an "unforgivable crime" punishable by the death penalty the explosion arranged near the Kabul international airport by a group of CIA-backed terrorists on 31 August 1984 which had killed 13 persons and injured 207. He stated that in no case had the death penalty been imposed contrary to the provisions of national law or of the Covenant or other human rights instruments, and that many persons condemned to death had been pardoned. A limited number of terrorists and mercenaries, who had threatened the lives of innocent people and the security of society, had been duly brought to justice, found guilty on the basis of irrefutable evidence and sentenced by the competent court in public session. With reference to the application of the Geneva Conventions, in particular article 3 and of Additional Protocol II, the representative stated that there was no civil war in Afghanistan and that the Revolutionary Government controlled the entire country. Terrorists and bandits armed by foreign Powers who launched raids from outside the country were alone responsible for all acts of aggression perpetrated against the Afghan people.

616. Referring to article 7 of the Covenant, the representative rejected as totally fallacious alleged torture cases, and pointed to the prohibition of torture under article 30, paragraph 7, of the Fundamental Principles and to article 275 of the Afghan Penal Code, according to which anyone responsible for inflicting ill-treatment in order to extract statements or confessions was liable to a prison term ranging from 5 to 10 years.

617. Referring to article 9 of the Covenant the representative indicated that article 221 of the Criminal Procedure Act reproduced the contents of article 9, paragraph 2, of the Covenant and that articles 414 to 417 of the Afghan Penal Code prescribed severe penalties for those who for any reason contravened regulations and principles concerning arrest and detention. In conformity with the Criminal Procedure Act anyone arrested or detained on a criminal charge had to be brought promptly before a judge.

618. Regarding article 10 of the Covenant, the representative stated that impartial journalists and delegations from various international organizations who had visited Afghanistan during the period 1980-1985 had expressed their satisfaction at the treatment of prisoners. Furthermore, accused persons were segregated from

convicted persons and juveniles from adults. Article 150 of the Criminal Procedure Act provided for the prompt release of the accused persons found not guilty by the court. Also under that article, special instructions had been issued to members of the police force to observe and apply all the United Nations Standard Minimum Rules for the Treatment of Prisoners.

619. Replying to questions raised under article 14 of the Covenant, the representative pointed out that the Supreme Court, the highest organ in Afghanistan, oversaw the courts and ensured that they applied the law uniformly at all levels. Its judges were empowered to try cases in complete independence. They were bound only by the law. The special revolutionary court was a temporary institution and was due only to the undeclared war being waged against his country. The verdicts of the special revolutionary court, including those concerning capital punishment, were not final but had to be approved by the Presidium of the Revolutionary Council. The Presidium could appoint a special legal body to consider any verdict by that court. The members of the special legal body were chosen from among the judges of the special revolutionary court or those of the Supreme Court, with the exception of the judges who had pronounced the original verdict. The special body had the function of reviewing the verdict and either upholding it, modifying it, or setting it aside, or referring the case to another legal organ. The representative also stated that officials or any other persons who attempted to exert pressure on judges were subject to dismissal and trial for abuse of authority. Hearings in all courts were public. Closed trials took place only in cases and under circumstances defined by law. Hearings were held in the presence of the lawyer chosen by the accused, except in cases where the accused decided to defend himself personally, and in certain cases, in the presence of local and foreign journalists.

620. The right of defence, laid down in article 30, paragraph 4, of the Fundamental Principles and article 12 of the Courts Organization Act and the Criminal Procedure Act, included the right to know the causes of the charge and to provide explanations, produce evidence and submit petitions. An accused person had the right to appeal to a higher court against a refusal to grant his requests or against any action by the examining magistrate, the prosecutor or the court. Under article 221 of the Criminal Procedure Act he had the right to interrogate witnesses for the prosecution. In certain cases the law provided for free legal assistance to accused persons who could not afford to engage a lawyer. When the preliminary investigation was completed, the accused had the right to see his file, participate personally in the court proceedings and, as appropriate, appeal against the court's verdict.

621. In connection with article 17 of the Covenant, the representative indicated that article 22 of the Fundamental Principles and articles 1903 and 1904 of the Afghan Civil Code guaranteed the protection of private property. Article 29, paragraph 8, of the Fundamental Principles guaranteed security of domicile and confidentiality of correspondence and other means of communication except in cases provided for by law. The Afghan Penal Code provided an effective remedy for those whose rights in that matter were violated by individuals acting in an official capacity. House searches and the interception of private correspondence were forbidden except when expressly authorized by a court in connection with a specific inquiry.

622. Regarding article 22 of the Covenant, the representative explained that all organizations whose activities were in conformity with the Fundamental Principles were regarded as democratic and were permitted. However, citizens could not join neo-Fascist, neo-Nazi or terrorist organizations.

623. With reference to article 25 of the Covenant, the representative stated that the law provided for direct and equal participation of all citizens in public affairs. The right to vote and to be elected to public office was guaranteed without discrimination. Popular representatives in local assemblies were democratically elected candidates of the National Patriotic Front, which represented all the country's major social organizations.

624. The representative categorically rejected the report on the situation of human rights in Afghanistan prepared by the Special Rapporteur of the Commission on Human Rights as contrary to the established principles of mandatory international instruments to which his country was a party. He also deplored the adoption by the Commission on Human Rights of resolution 1984/55 on the human rights situation in Afghanistan which, in the view of his Government, constituted unwarranted interference in the internal affairs of the country.

625. Finally, the representative stated that he would transmit any further questions raised by the Committee to his Government so that it could provide additional information.

626. Members of the Committee, while expressing gratitude to the representative of Afghanistan for his explanations, regretted that the report and the representative's statement referred only to the Constitution of Afghanistan and to legal texts and they drew attention to questions that had remained unanswered.

627. In conclusion, the Chairman of the Committee welcomed the representative's offer to request additional information from his Government for submission to the Committee, so that it could learn more about the actual situation in the country as well as about the practical application of the measures that had been introduced and the difficulties that were being faced.

Ukrainian Soviet Socialist Republic

628. In accordance with the guidelines adopted at its thirteenth session regarding the form and contents of reports from States parties (CCPR/C/20) and having further considered the method to be followed in examining second periodic reports, the Committee prior to its twenty-fifth session entrusted a working group with the review of the informaton so far submitted by the Government of the Ukrainian Soviet Socialist Republic in order to identify those matters which it would seem most helpful to discuss with the representatives of the reporting State. The working group prepared a list of issues to be taken up during the dialogue with the representatives of the Ukrainian SSR, which was transmitted to the representatives of the reporting State prior to their appearance before the Committee, and appropriate explanations on the procedure to be followed were given to them. The Committee stressed, in particular, that the list of issues was not exhaustive and that members could raise other matters. The representatives of the Ukrainian SSR would be asked to comment on the issues listed, section by section, and to reply to members' additional questions, if any.

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629. The Committee considered the second periodic report of the Ukrainian Soviet Socialist Republic (CCPR/C/32/Add.4) at its 609th to 613th meetings held from 15 to 17 July 1985 (CCPR/C/SR.609/613).

630. The report was introduced by the representative of the State party who drew the Committee's attention to certain legislative steps which had been taken in the Ukrainian SSR since the submission of its second periodic report. In particular, the Supreme Soviet of the Ukrainian SSR had adopted a Code of Administrative Offences codifying all Acts in force in the Republic concerning responsibility for actions constituting administrative misdemeanours. On 20 May 1985, the Presidium of the Supreme Soviet of the Ukrainian SSR had adopted a Decree which introduced amendments and additions to articles of the Civil Code on compensation for harm caused to a citizen by unlawful administrative acts of a State or public organization or of officials in the performance of their duties. On 1 March 1985, the Presidium of the Supreme Soviet of the Ukrainian SSR approved another Decree simplifying the procedure for ensuring receipt of maintenance payments for minor children and providing fuller guarantees covering the property rights of mothers and children. The representative noted that the foregoing measures, as well as others, demonstrated the central importance the Ukrainian SSR attached to the improvement of social relations, the strengthening of the rule of law and the protection of the rights and interests of citizens. Great importance was also attributed to the development and extension of socialist democracy and to the growing involvement of citizens in running the affairs of the State and of society. In that connection, he drew attention to the election on 24 February 1985 of some 527,000 deputies to the Republic's Supreme Soviet and local Soviets of People's Deputies.

631. Members of the Committee expressed appreciation for the detailed second periodic report of the Ukrainian SSR, which had been prepared in full compliance with the Committee's guidelines as well as for the lucid introductory statement made by the State party's representative.

Constitutional and legal framework within which the Covenant is implemented

632. With reference to that issue, members of the Committee wished to receive information on the division of responsibility between the USSR and the Ukrainian SSR concerning the implementation of the Covenant, the role of the Communist Party in the implementation of the Covenant, promotional activities concerning the Covenant and factors and difficulties, if any, affecting the implementation of the Covenant. They also wished to know whether the Ukrainian SSR maintained diplomatic representatives in foreign countries, what part non-governmental organizations and trade unions played in the Ukrainian SSR in the promotion and development of human rights, what measures had been taken against certain groups, such as the Helsinki monitoring group concerning the defence of human rights, whether a person alleging that his rights recognized under the Covenant had been violated could seek a remedy directly before a court and to what extent the Covenant was available and had been disseminated to the people of the Ukrainian SSR in their own languages. More specific information on the general division of responsibility between the USSR and the Ukrainian SSR in an individual case was also requested.

633. In his reply, the representative of the Ukrainian SSR stated that the provisions of the Covenant were reflected both in all-Union and in Republican legislation and that legislative competence was divided between the USSR and the Union Republics into three groups. Matters within the exclusive competence of the

USSR included, for example, legislation in the spheres of civil aviation, merchant shipping, customs etc. Road transport, housing and communal services, local industry etc., fell within the exclusive competence of the Union Republics. The largest group comprised the laws falling within the realm of joint Union-Republican competence, in which Union organs established the fundamentals of legislation and the Republics issued Republican codes. The provisions of the Covenant were reflected in all those legislative instruments.

634. With regard to the role of the Communist Party in the implementation of the Covenant, he noted that the Communist Party was the ruling political party in the Soviet Union occupying a special place in the country's political system and that its policies were carried out through representative organs of the State constituted on an elective basis by both Party and non-Party members. All Party organizations functioned strictly within the framework of the Constitution and, like all public organizations in the Soviet Union, the Party had the right to put forward legislative proposals. It played a particularly important role in the adoption and execution of strategic policy decisions.

635. The representative explained with regard to promotional activities concerning the Covenant that there was a global process of renewal of existing legislation, in which all provisions of the Covenant were reflected; a wide range of activities was designed to educate officials on matters of law and to control and evaluate the work of officials. Officials found to have violated the law not only risked being relieved of their duties but also, in the case of serious misdemeanours, incurred responsibility under the Criminal Code or the Code of Administrative Offences.

636. On the question of the factors and difficulties affecting the implementation of the Covenant, he noted that difficulties in formulating laws were extremely rare and that difficulties affecting the Covenant's implementation tended to be of a subjective nature. They were mainly dealt with through insistence on better knowledge of the law among officials and by punishing wilful violations and other deviations from socialist standards by public officials.

637. Replying to additional questions, the representative said that although the Ukrainian SSR was entitled to exchange diplomatic representation at all levels the need to do so had not arisen. The Republic had concluded several international treaties with other countries, relating particularly to movements of population and the position of aliens. With regard to the Helsinki group, he stated that since its activities sometimes took the form of illegal actions, in certain cases measures had been taken to ensure strict compliance with the law. The right to compensation for errors made by persons acting in an official capacity could be pursued in the courts, but there were alternative channels for doing so, for example through the administration, trade unions and the procurator's office. The full text of the Covenant was published in Ukrainian and was available in the many public libraries in the country. Public officials had access to the Covenant and were required to be acquainted with its provisions. The Constitution of the Ukrainian SSR was based on that of the USSR because their general political and economic systems were uniform in character but there were differences in such areas as the administrative-territorial structure, budgeting, etc.

Non-discrimination and equality of sexes

638. With regard to that issue, members of the Committee wished to receive information particularly concerning non-discrimination for political and other opinion and the position of members of the Party as compared to that of non-members, as well as on women's equality with men in practice. In addition, it was asked how many women held policy-making posts in the Communist Party and whether article 35 of the Ukrainian Constitution allowed for the adoption of restrictions on foreigners contrary to article 2 of the Covenant and, if so, what recourse was available to them.

639. Replying to those questions, the representative of the State party pointed out that the provisions of the Covenant were fully covered in his country's Constitution and that citizens of the Ukrainian SSR were equal before the law without any distinction. Members of the Party could therefore have no special privileges that were not available to other citizens even though they bore added responsibility. With regard to women's equality with men in practice, the 1978 Constitution set forth a much more complete list of the means of ensuring the exercise of those rights than earlier instruments. He noted that 36 per cent of the members of the Supreme Soviet and 49.6 per cent of the members of local Soviets were women and that the Chairman of the Presidium of the Supreme Soviet of the Republic, a member of the Politburo of the Central Committee of the Party, the Deputy Chairman of the Council of Ministers and several Ministers were also women. More than half of the highest posts in the fields of culture, science, health and education were held by women. There were also many women members of the Central Committee of the Party. In regard to political or other opinion and the position of members of the Party as compared to that of non-members, he said that there were no limitations on the freedom of opinion of either and that if a citizen refrained from expressing his opinion through illegal acts, no action was taken against him. A person could be held responsible for slandering the Soviet way of life and system, but that was a matter of the internal competence of the State and it was completely in conformity with the Covenant for a country to define the scope of forbidden acts. Foreigners enjoyed all kinds of rights, including the right to work, leisure, health care, social security, property, education, culture, freedom of conscience, freedom to marry and found a family and inviolability of the person. Limitations related only to a few areas, such as service in the army or work in elective bodies.

Right to life

640. With reference to that issue, members of the Committee wished to receive information on the application of the death penalty, for what offences and how often had it been applied, on other aspects of the right to life and any observations made by the Ukrainian SSR on the Committee's General Comments relating to article 6. They also asked whether the Supreme Court, acting as a court of first instance, with no appeal possible, could try cases involving capital offences.

641. The representative stated that the death penalty had always been considered to be an exceptional measure in his country. Persons who had not attained the age of 18 at the time of commission of the crime and women who were pregnant when the judgement was rendered or was to be executed could not be sentenced to death. As to which specific crimes were punishable by death, he said that the death penalty was envisaged for crimes against the State, banditry, counterfeiting, speculation involving large amounts of currency, murder with especially serious aggravating circumstances, rape in the case of a dangerous recidivist, corruption and bribery

with aggravating circumstances and attempts on the life of a policeman. The hijacking of an aircraft in flight or on land carried a penalty of 3 to 10 years' imprisonment; if the hijacking entailed violence or caused an accident to the aircraft, the penalty was increased to 15 years. In practice, however, the death penalty was applied almost exclusively for murder with aggravating circumstances.

642. With regard to other aspects of the right to life, which included the development of health care, consolidation of peace, prevention of nuclear war and reduction of infant mortality, the representative fully shared the views expressed in the Committee's General Comments 6 (16) and 14 (23).

643. Regarding cases tried by the Supreme Soviet in the first instance, the representative stated that the death penalty was applied on the basis of all Union laws in conjunction with the laws of the Ukrainian SSR. A person sentenced by the Supreme Court could apply to the Supreme Soviet of the Ukrainian SSR and then to the Supreme Soviet of the USSR for a pardon, which was often granted by the supreme authorities. Thus, although there were no further judicial appeals, the possibility for a condemned person to save his life did exist.

Liberty and security of the person

644. With reference to that issue, members of the Committee wished to receive information concerning the law and practice relating to pre-trial detention and detention in institutions other than prisons, the remedies available to persons (and their relatives) alleging unlawful detention (art. 9, para. 4, and art. 2, para. 3, of the Covenant), the relationship between the courts and the procurators in that area, observance of article 9, paragraphs 2 and 3 of the Covenant, contacts between arrested persons and lawyers and the practice of compensation for unlawful arrest (Decree of 18 May 1981).

645. Some members also asked whether there was any procedure in the Ukrainian SSR for judicial control of arrest similar to that provided by habeas corpus and whether there was any provision under which an arrested person could be released on bail pending either trial or appeal; how long a detainee might be lawfully held incommunicado before being charged; whether a detainee might be visited by his relatives during that period subject to the agreement of the investigating officer; and whether it was customary to detain persons in custody on suspicion. Members of the Committee also requested more specific information on the role of the procurator and the judicial powers of his office. In addition, they asked for more information concerning provisions for the punishment of acts of slander and disobedience in prison. It was also asked whether a detainee could communicate with defence counsel before the investigation was completed.

646. In responding to the questions, the representative of the State party explained that under the Criminal Code and the new Code of Administrative Offences there were a number of rules regulating in detail the grounds for detention, its permissible duration and the procedure for complaints. The investigating officer was responsible for informing the relatives and the work place or educational institute of the detainee's whereabouts. In the case of minors, the parents had to be notified. The time-limit for administrative detention was three hours; persons charged with crossing a border illegally might be detained for identification up to 72 hours. The procurator had to be notified in writing within 24 hours and further detention could be authorized only by him. The Code of Criminal Procedure listed the following grounds for detention: when a person was caught in the act of, or immediately after, committing a crime; when eyewitnesses, including victims

directly identified the person as the offender; and when clear traces of a crime were discovered on the suspected person or his clothing or in his keeping or in his dwelling. In every case of detention, the investigatory body had to draw up a report stating the grounds for the detention. The detention of a suspect had to be reported to the procurator in writing within 24 hours. Within 48 hours of receiving such notification, the procurator had to authorize the continued remand in custody of the person concerned or his release. The detainee retained his right to complain to a higher body. Detention in institutions other than prisons was governed by detailed legislation.

647. With regard to the role of the procurator, the representative noted that, for the purpose of article 9, paragraph 3, of the Covenant, the procurator discharged the duties of "a judge or other officer authorized by law to exercise judicial power". Only when the investigation was carried out by the court itself was a decision on the matter taken by the court. While there was provision in the Code of Administrative Offences for an accused person to have contact with a lawyer, the question was dealt with in greater detail in the Code of Criminal Procedure. Unless otherwise provided, the detainee or a close relative could ask for the assistance of a lawyer.

648. With regard to compensation for unlawful arrest or detention covered in article 9, paragraph 5, of the Covenant, there was detailed legislation in the Ukrainian SSR providing for full compensation for both loss of earnings and injury caused by loss of housing and other rights.

649. Replying to other questions, the representative stated that an individual might be released pending trial if suitable guarantees were forthcoming. One such guarantee was the detainee's written assurance that he would not leave his place of residence; such a guarantee might be given by an official at his work or his educational institute or by a social or other organization of which the detainee was a member. Release on bail was not practised because it would treat people unequally. The normal period of investigation was up to two months. When the case was very complex, the period could be extended to a total of six months on the authorization of the procurator of the Ukrainian SSR, and to a maximum of nine months, with the express authorization of the procurator of the Soviet Union. During pre-trial detention the procurator was responsible for granting or refusing visits to the defendant; after sentencing such visits were strictly regulated by law. In general, the presence of a defence counsel was allowed from the moment the preliminary investigation had been completed with the exception of cases involving minors and mentally handicapped persons where the presence of a defence counsel was authorized at an earlier stage. The role of the procurator in the Soviet system was sui generis. His major responsibility was to ensure that the law was correctly implemented and he was responsible for ensuring that the rights of citizens were respected, in particular that pre-trial detention was applied only in extreme cases. The procurator's office had no administrative powers and its function was to monitor the application and the strict observance of laws by State bodies and by all institutions.

650. Turning to the question of punishment for acts of slander and defamation against the State or system, he said that under the Criminal Code the systematic and intentional dissemination of deliberate falsehoods defamatory to the Soviet State or social system was a punishable offence. That did not mean that no criticism was allowed; on the contrary, criticisms of State institutions and managers of State enterprises appeared in the mass media and there was no question of regarding such criticism as a punishable offence. Under article 42 of the

Constitution, every citizen had the right to submit proposals to State bodies and public organizations for improving their activity and to criticize shortcomings in their work; officials were obliged to examine all proposals and to take appropriate action. Moreoever, persecution for criticism was prohibited. The punishment of wilful disobedience of authorities in correctional institutions was considered as punishment of an additional crime and not as an increase in the original sentence.

Treatment of persons, including prisoners and other detainees

651. With reference to that issue, members of the Committee wished to receive information on measures and mechanisms to prevent or to punish treatment contrary to articles 7 and 10 of the Covenant. They asked whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with, whether relevant regulations and directives were known and accessible to detainees, whether a sentence of corrective labour involved a change of domicile for the offender, what measures and mechanisms had been put into place to ensure compliance with article 7 of the Covenant; whether every single complaint made was fully investigated and whether those found responsible were brought to trial and punished. It was also asked whether judges in the Ukrainian SSR had the right and duty to visit prisons, whether any legislative acts specified the frequency of visits by supervisory commissions, whether a prisoner could submit his complaint to members of the supervisory commission or to the procurator without members of the prison staff being present, what punishments there were for violating the legal régime of the corrective labour institutions, what action had been taken to prevent the detention of a healthy person in a psychiatric institution and what remedies were open to a person who had suffered from such detention, and how many times a person could be placed in solitary confinement as a disciplinary measure and what the conditions of such confinement were. One member asked about the application of suspended sentences.

652. In responding, the representative of the State party said that there were three mechanisms to prevent treatment contrary to articles 7 and 10 of the Covenant, the systematic monitoring of the activities of corrective labour institutions by the Ministry of the Interior, the supervision of penal institutions by procurators, and measures of social control of corrective labour institutions, particularly through observation commissions established in regions where corrective labour institutions were located. Members of those commissions included representatives of trade unions, of Komsomols, and members of other social organizations; officials from the procurator's office and the Ministry of Justice were excluded. The commissions had right of access to convicted persons to ensure that they were treated in accordance with the law and to help them on the road to rehabilitation. Members of the commissions had the right to confer with the director and other officials of the establishment concerned and to propose improvements in running the establishment and in the treatment of prisoners. It was the function of the procurator's office to ascertain the legality of detentions in corrective labour institutions and to look into complaints from detainees.

653. The representative further stated that the United Nations Standard Minimum Rules for the Treatment of Prisoners were fully complied with in the Ukrainian SSR, as its rules and regulations clearly showed, and that the relevant regulations and directives were prominently displayed in corrective labour establishments so that no detained person could fail to be aware of them.

654. He also said that, in accordance with the Criminal Code, a sentence was given not just to punish the crime but to rehabilitate the offender so that in future he would observe the rules of law in socialist society. In all cases, the accused had the right to any number of meetings of unlimited duration with a lawyer, alone. Meetings with the lawyer were also possible following conviction and during appeal procedures as well as when a person was remanded for sentence. The procurator was also duty-bound to visit the place of detention and to meet the detainee.

655. With reference to the question of whether healthy persons could be held in psychiatric institutions, he stated that, if during the preliminary investigation a person's mental state gave rise to doubt, a compulsary psychiatric examination was ordered and, if the person was recognized as being socially dangerous, he might be committed to a psychiatric institution. If he or his lawyer or relatives did not agree with the court's decision, they could apply to courts all the way up to the Supreme Court to have the examination repeated.

656. Replying to the question on suspended sentences, he pointed out that the court was entitled to impose a number of obligations on a person who had been granted such a suspension, such as the obligation to repair any harm done, to accept employment, to remain at the same domicile, to submit to treatment for alcohol or drug abuse, and to ask the pardon of the victim. If that person failed to carry out such obligations the court was entitled to revoke the suspension. Corrective labour was applied either in the place of employment or at some place decided by the acting body.

657. The representative also drew attention to the Corrective Labour Code which defined the types of disciplinary measures that were fair and in keeping with the general principles of the law, including deprivation of privileges or temporary isolation from other prisoners. The law provided that in the application of disciplinary measures account was to be taken of all the circumstances so that the punishment would be commensurate with the nature and seriousness of the offence. Solitary confinement did not exist as a form of punishment under the legislation of his country. However, a dangerous recidivist could be kept in isolation for up to six months, with the possibility of that period being extended.

Right to a fair trial and equality before the law

658. With reference to that issue, members of the Committee wished to receive information on observations, if any, on the Committee's General Comment relating to article 14 of the Covenant. They requested further explanation of the statement that removal of judges by majority vote safeguarded their independence (Act of 5 June 1981) and asked about the extent of the obligation to guarantee legal defence (Decree of 16 April 1984), for example with reference to the stage of proceedings and to economic criteria. They also wished to know how a defendant was able to exercise his right of choice of a lawyer in practice, how the College of Advocates was organized and how its members were remunerated, what the role of representatives of public organizations was and whether provision of free legal aid depended on the outcome of the case. Referring to the provision whereby the Supreme Court could act as a court of first instance, it was asked in what cases it could do so and what the nature of its position as a court of first instance was. Questions were also asked concerning the independence of the court and the presumption of innocence in a case where a very biased press article was published shortly before the court heard the appeal.

659. In his reply, the representative of the State party said that his country had examined and agreed with the Committee's General Comment on article 14 and had no special observations pertaining thereto. Concerning the removal of judges, he explained that the Act of 5 June 1981 placed responsibility for the decision to remove a judge from his post with those who had elected him. The only grounds for his removal were betrayal of the trust of the electorate or performance of acts unworthy of his mandate and no higher body or State authority was empowered to make that decision. The Presidium of the Supreme Soviet of the Ukrainian SSR could decide only on matters involving the retirement of a judge at his own request or his election to a higher court.

660. The Decree of 16 April 1984 stipulated that not just the procurator, but all those concerned with the case, must respect the accused person's right to defence. A lawyer was appointed by the College of Advocates only in cases in which the accused person did not want counsel but was under a legal obligation to have one. The Criminal Code established that defence counsel was mandatory if the defendant had a mental or physical deficiency that prevented him from exercising his right to defence; if he was a minor; if he did not speak the language in which the case was being conducted; if there was more than one person accused and one of them already had counsel; if the crime committed was punishable by the death penalty; if a procurator was involved; if confinement in a psychiatric institution was possible; and if the accused person, who was a minor at the time the crime was committed, had reached the age of majority at the time of the trial. The right to defence counsel was independent of economic criteria. If a defendant was unable to pay for counsel, he could be fully or partially released from the obligation to pay defence costs.

661. Replying to other questions, the representative explained that a defence lawyer was chosen by the accused himself, by his relatives or by persons entrusted with that task and that the choice was entirely free. A defence counsel was appointed on the initiative of the procurator only when, for various reasons, the accused had not chosen one himself. The College of Advocates was a self-managing organization, responsible for admissions to and exclusions from the College, the organization of its work and the payment of advocates. It was controlled by the Ministry of Justice only with respect to the strict observance of the law. Personal arrangements between a client and a member of the College of Advocates were prohibited. A person was not precluded from asking a relative or representative of an official organization or workers' collective to defend him. A defence counsel could not be replaced without the consent of the accused. Upon decision of the court, representatives of public organizations might be allowed to participate in court proceedings as public prosecutors or as public defence counsel. Such persons were chosen by vote as meetings of the public organization or work collective concerned and their functions were confirmed in the records of that meeting.

662. On the subject of legal aid, the representative stated that ordinary clients paid the lawyer's fees to the College of Advocates, which retained 30 per cent and gave 70 per cent to the advocate concerned. Advocates working under the free legal defence scheme were paid out of the funds accumulated from the 30 per cent retained by the College.

663. The representative also explained that the Supreme Court's role as a court of first instance was exercised only in a very small number of complicated cases with wide repercussions and where especially highly qualified judges were required. In cases where the Supreme Court acted as a court of first instance there was no

higher court to which an appeal could be made against the verdict. However, upon the protest of the President of the Court himself or of the procurator, the decision could be reviewed by the Plenum of the Supreme Court. The case might also be considered by the Supreme Court of the USSR if a Union law had been violated. There could be concern over situations in which the press published articles before cases were heard, but when informed of such cases the authorities took the necessary steps. The presumption of innocence was set forth in the law and was applied, although unfortunately cases of violation of that principle due to ignorance of the law did sometimes occur.

Freedom of movement

664. With regard to that issue, members of the Committee wished to receive information on procedures and restrictions concerning travel of Ukrainian citizens. Concerning internal travel, they asked whether a Ukrainian citizen could move to another area for a short-term visit, not requiring housing, without the need for registration or permission. In addition, some members requested more information on the situation of the Crimean Tartars and their right to return to the Crimea and to settle there in order to reconstitute their community. Some members also asked about restrictions on the freedom of citizens to leave the country, inquiring specifically into the foundation of the legal control of emigration and into the reasons for the significant drop in emigration figures in recent years.

665. The representative, in his reply, stated that freedom of movement throughout the territory of the Republic was granted to all citizens with no discrimination on any basis whatsoever. Every citizen could select his own residence and enjoyed freedom of movement throughout the Ukrainian SSR and the other Republics without having to ask permission. The State had honoured the commitment, laid down in the Constitution and set forth in detail in the Housing Code, to provide housing for all citizens. Freedom of movement also applied equally to the Crimean Tartars, many of whom had entered the Ukrainian SSR and lived throughout the territory, with their families, in keeping with current legislation and the passport regulations. Of the deputies of the local Soviets, 265 were of Tartar nationality, which showed that the Tartars not only enjoyed full citizens' rights but participated actively in the implementation of State policy. Any citizen of Tartar nationality could enter the Crimea or any other region of the Republic.

666. In regard to questions concerning emigration, he said that during the five-year period culminating in 1979, there had been an increasing wave of emigration by Jews. Many of those requests had been conditioned by propaganda by Zionist organizations and reflected only a hazy understanding of what emigration would entail. Many of those who had emigrated had subsequently sent letters requesting re-entry to the Ukrainian SSR. Others had written to their friends and relatives back home in such a way that they had decided not to apply to emigrate. He read out the annual figures on applications for exit permits in the previous five years, which had dropped from 9,215 in 1980 to 322 in the first six months of 1985. All refusals had been based strictly on the provisions of the Covenant and had primarily involved persons working in jobs connected with State security or persons who had responsibilities such as material obligations to support aged parents. Appeals against refusal of a request to emigrate were submitted first to the regional division of the Ministry of the Interior, then to the Ministry of the Interior itself, and finally to higher government instances. When the higher authorities reviewed the cases they usually found the rejections to have been well-founded.

667. With regard to that issue, members of the Committee wished to receive information on freedom of religion in law and in practice and the reasons for applying criminal law to members of religious communities, as well as the frequency of that practice. Clarification and justification was also requested of the provisions of the Decree of 1 November 1976, which required the registration of religious communities with the National Council for Religious Affairs of the Council of Ministers of the USSR. They noted that the law prohibited collective religious practice in places other than the locally recognized prayer-houses. Members asked for justification of that law and the criteria for refusing registration of certain religious denominations. Clarification was sought on whether ministers could give religious teaching in a family and the right of parents to ensure the religious and moral education of their children in conformity with their own convictions. The particular situation of the Catholic Uniate Church was also mentioned. Some members wanted to know about the situation regarding the teaching of religion and the training of priests.

668. Replying to those questions, the representative of the State party said that freedom of conscience was enshrined in article 50 of the Constitution and that the Criminal Code made incitement of hostility or hatred on religious grounds a criminal offence. He stressed that all citizens were equal before the law regardless of their approach to religion, that it was not permitted to use religion against the State or individuals and that the Church and the State practised mutual non-interference in their respective internal affairs. A decree dated 1 November 1976 of the Presidium of the Supreme Soviet of the Ukrainian SSR had ratified the regulations governing religious associations and gatherings and authorized all that was necessary to carry out the functions of the Church, subject only to the interest of the State and the rights of other citizens. It stipulated that religious organizations should not engage in activities other than those required for ministering to the religious needs of believers. Religious organizations had to apply for registration, but that was true of any other voluntary organizations of citizens with the exception of the mass organizations. In the Ukrainian SSR, there were 6,200 religious organizations covering 20 denominations. The largest groups were the Russian Orthodox Church and the Baptists, followed by the Roman Catholic Church, the Reformed Church, the Seventh Day Adventists and a number of others.

669. In addition, the representative explained that in order to effect registration, not less than 20 persons must submit a written application to open a place of worship or establish a religious association. Activities by religious organizations which involved disturbances of public order, harmed citizens' health or in any way encroached on their person and rights and duties were prohibited. Religious associations could receive voluntary contributions but could not request compulsory contributions. The restrictions on religious organizations were based on the separation of Church and State and that of Church and school. Religious associations of children, young people or women were prohibited. Children, however, could be taught religion by their parents privately, could also profess their religion and could attend services. Seminaries had been set up to provide religious training; there was a religious seminary in Odessa and a number of others in the USSR. He also pointed out that recent legislation had established administrative liability for the violation of laws concerning religious associations. It defined the actions entailing such liability, such as the refusal of religious leaders to register their associations with State authorities or the violation of rules on holding religious meetings. The Criminal Code established

responsibility for the infringement of the right of citizens on the pretext of conducting religious services.

Freedom of expression, assembly and association

670. With regard to that issue, members of the Committee wished to receive information on freedom of expression in law and practice, the relationship between the expression of views and punishable actions and the status of peace movements and peace propaganda. They also asked for additional information on trade unions in the Ukrainian SSR, how the Republic granted trade-union freedom, which was one of the rights contained in the Covenant, and how the concept and the actual exercise of freedom of trade unions were assured in a social and economic system based on patterns of production and labour organization which differed from those that had given rise to the classic concept of trade-union freedom.

671. In responding, the representative informed the Committee that article 48 of the Constitution set forth freedoms guaranteed to citizens, such as freedom of speech, of the press and of assembly, meetings, street processions and demonstrations. The State wished to involve the largest possible number of people in the discussion of current problems and believed that the accumulation of individual views could help to solve such problems in the framework of the country's own democratic machinery. No citizen was held accountable before the law for his views or opinions on any question, provided that they were based on facts known to all citizens and that they neither undermined State or public security, nor infringed the rights of citizens or the interests of society. The Criminal Code, however, prohibited anti-Soviet propaganda which might subvert the social system and also propaganda inciting persons to racial hatred or national hostility. Moreover, article 125 of the Criminal Code established liability for the offence of slander, which was considered to be the oral dissemination of deliberately misleading information.

672. With regard to peace movements and peace propaganda in the Republic, the representative said that the Committee for the Defence of Peace provided a forum in which the widest sections of the population, as well as public organizations such as the Soviet Committee of War Veterans, the Committee of Soviet Women and religious associations, were able to express their desire for peace and the prevention of nuclear war.

673. Replying to other questions, he explained that trade unions in the Ukrainian SSR were self-managing organizations formed by workers to pursue their activities in accordance with their rules and, in that sense, they were no different from trade unions in market-economy countries. However, there were differences since they were integrated into the Soviet political system which consisted of the State and its organs, the Party, the Komsomols, and other organizations and work collectives as well as trade unions which, within the framework defined by the law and in accordance with their statutes, decided on political, economic, social and cultural matters. They also contributed to formulating economic plans and the distribution of national income and their role extended into the area of social policy such as housing, provision of social security benefits, social insurance, pension funds and the welfare of workers, including their health and leisure. Trade unions also had a say in the running of economic enterprises: commissions composed of equal numbers of management and trade-union representatives existed to settle disputes between management and the labour force and trade-union representatives had the final say should the commission fail to settle any dispute. Trade unions had the right to demand the

dismissal of a manager in certain circumstances as well as the right of legislative initiative in labour matters. Trade unions were organized on industry lines, with each industry and trade represented by its own union.

Right to participation in public affairs

674. Members of the Committee wished to receive information on the application in practice of the legal provisions for instructing and recalling deputies and on how the law of 17 June 1983 of the USSR with regard to work collectives was applied in practice.

675. In his reply, the representative of the State party said that deputies were required to meet their electors regularly to report on their work. A distinctive feature of socialist democracy was the dependence of deputies on the electors; deputies who had not justified the confidence of their constituencies could be recalled at any time. Turning to the activity of work collectives, he said that they were not only concerned with economic development but played an active role in political decision-making at the State level. They took part in discussing and deciding on State and public affairs, in planning production and social development, in training and placing personnel, in improving working conditions, as well as in discussing and deciding on matters pertaining to the general management of enterprises and institutions. The Act on Work Collectives and the Enhancement of their Role in the Management of Enterprises, Institutions and Organizations of 17 June 1983 had been shown by a follow-up investigation to have been instrumental in promoting initiative and the involvement of workers in the decision-making process and to have great potential for developing creative activities in enterprises.

Protection of minorities

676. With regard to that issue, members of the Committee wished to receive information on the protection of minorities against hostile propaganda and persecution, on cultural aspects of the life of various ethnic groups in the Ukrainian SSR, and asked why Ukrainian was not mentioned as an official language in the Constitution of the Ukrainian SSR.

677. Replying to the questions raised by the members of the Committee, the representative pointed out that article 32 of the Constitution proclaimed that citizens of the Ukrainian SSR were equal before the law. The Constitution also stipulated that judicial proceedings should be conducted in the Ukrainian language or in the language spoken by the majority of the people in the locality. He also informed the Committee that there were 20,500 schools in the Republic with 7.5 million pupils; Ukrainian was the medium of instruction in about 15,000 of those schools, and Russian in about 4,400. In some parts of the Republic there were Hungarian, Moldavian and Polish language schools. Newspapers were published in various languages; there were 1,275 newspapers in Ukrainian, 456 in Russian, 6 in Moldavian, 5 in Hungarian and 1 in English.

678. The representative stated that Russian was taught as a second language in all Ukrainian schools and in the schools in the Republic where Russian was the language of instruction, it was compulsory to study Ukrainian. As for Ukrainian not being mentioned as an official language in the Constitution, the question had not arisen for historical reasons and all the previous Ukrainian Constitutions had been silent on that point. The Ukrainian SSR differed in that respect from some of the other Union Republics.

General observations

679. Members of the Committee expressed their appreciation for the report of the Ukrainian SSR. Its excellent presentation by the representative of the State party and his comprehensive knowledge and willingness to answer every question immediately had been particularly impressive. Members were pleased to have been furnished with details about new legislation to ensure the enjoyment of human rights in the Ukrainian SSR and to note the responsible attitude of the Ukrainian SSR to a continuing fruitful dialogue with the Committee.

680. Some members expressed doubts about the implementation of certain articles of the Covenant or the effectiveness of certain legislation in practice. It was noted that there were differences of interpretation of the Covenant among members of the Committee and that it was natural that there should also be differences among Governments. The views expressed by the representative of the Ukrainian SSR had increased the Committee's understanding of the problems encountered in implementing the Covenant.

681. Concluding the consideration of the second periodic report of the Ukrainian SSR, the Chairman welcomed the desire of the State party for a dialogue with the Committee and warmly thanked the delegation for promptly answering all the questions that had been posed and for its co-operation with the Committee.

IV. GENERAL COMMENTS OF THE COMMITTEE

Introduction

682. The preliminary discussions in the Human Rights Committee on the question of its reports and general comments under article 40, paragraph 4, of the Covenant have been described in earlier annual reports. The annual report for 1984 19/ described in detail the principles by which the Committee had agreed to be guided in formulating its general comments, as well as the method of preparation and the uses of general comments.

General comment on article 6 (No. 14(23))

683. The Committee discussed its general comment on article 6 in closed session on the basis of a draft provided by its Working Group, at its 554th, 555th and 561st meetings. The Committee adopted the general comment in open session at its 564th meeting, held on 2 November 1984 (see annex VI). In view of its importance, the Committee agreed to submit the text of that general comment to the General Assembly at its thirty-ninth session. The Committee also decided to submit it, together with general comments relating to articles 1 and 14 (Nos. 12(21) and 13(21), respectively), to the Economic and Social Council at its first regular session of 1985.

Further work on general comments

684. At its 590th, 607th and 618th meetings, held on 4 April, 12 and 22 July 1985, the Committee had exchanges of views on a draft general comment concerning article 27 of the Covenant, prepared by its Working Group prior to its twenty-third session. Following these exchanges, the Committee agreed to review the draft general comment in the light of the discussions.

685. The Working Group of the Committee, during its meetings prior to its twenty-fifth session, completed work on a draft general comment on the position of aliens, which was distributed to the members of the Committee but not taken up during the session, owing to the lack of time.

V. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

A. Introduction

686. 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. Thirty-five of the 80 States which have acceded to or ratified the Covenant have accepted the competence of the Committee to deal with individual complaints by ratifying or acceding to the Optional Protocol. These States are Barbados, Bolivia, Cameroon, Canada, the Central African Republic, Colombia, the Congo, Costa Rica, Denmark, the Dominican Republic, Ecuador, Finland, France, Iceland, Italy, Jamaica, Luxembourg, Madagascar, Mauritius, the Netherlands, Nicaragua, Norway, Panama, Peru, Portugal, Saint Vincent and the Grenadines, Senegal, Spain, Suriname, Sweden, Trinidad and Tobago, Uruguay, Venezuela, Zaire and Zambia. 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. Communications have been received with respect to 21 States parties.

B. Progress of work

687. Since the Committee started its work under the Optional Protocol at its second session in 1977, 189 communications have been placed before it for consideration (174 of these were placed before the Committee from its second to its twenty-second session; 15 further communications have been placed before the Committee since then, i.e. at its twenty-third, twenty-fourth and twenty-fifth sessions, covered by the present report). A volume containing selected decisions under the Optional Protocol from the second to the sixteenth sessions (July 1982) was published in 1985. 20/

688. The status of the 189 communications so far placed before the Human Rights Committee for consideration is as follows:

(a) Concluded by views under article 5, paragraph 4, of the Optional Protocol: 68;

(b) Concluded in another manner (inadmissible, discontinued, suspended or withdrawn): 92;

(c) Declared admissible; not yet concluded: 13;

(d) Pending at pre-admissibility stage (12 thereof transmitted to the State party under rule 91 of the Committee's provisional rules of procedure): 16.

689. During the twenty-third to twenty-fifth sessions the Committee examined a number of communications submitted under the Optional Protocol. It concluded consideration of 12 cases by adopting its views thereon. These are cases Nos. 89/1981 (Paavo Muhonen v. Finland), 115/1982 (John Wight v. Madagascar), 132/1982 (Monja Jaona v. Madagascar), 139/1983 (Hiber Conteris v. Uruguay) and eight cases that were dealt with jointly, 146/1983 and 148 to 154/1983 (Kanta Baboeram-Adhin, Johnny Kamperveen, Jenny Jamila Rehnuma Karamat Ali,

Henry François Leckie, Vidya Satyavati Oemrawsingh-Adhin, Astrid Sila Bhamini-Devi Sohansingh-Kamhai, Rita Dulci Imanuel-Rahman and Irma Soeinem Hoost-Boldwijn v. Suriname). The Committee also concluded consideration of 10 cases by declaring them inadmissible. These are cases Nos. 113/1981 (C. F. et al. v. Canada), 158/1983 (O. F. v. Norway), 168/1984 (V. O. v. Norway), 173/1984 (M. F. v. the Netherlands), 174/1984 (J. K. v. Canada), 175/1984 (N. B. v. Sweden), 178/1984 (J. D. B. v. the Netherlands), 183/1984 (D. F. et al. v. Sweden), 185/1984 (L. T. K. v. Finland) and 187/1985 (J. H. v. Canada). The texts of the views adopted on the 12 cases as well as the texts of the decisions on the 10 cases declared inadmissible are reproduced in annexes VII to XXI to the present report. Consideration of 11 other cases was discontinued (in four cases at the request of the author). Procedural decisions were adopted in a number of pending cases (transmitted to the State party under rule 91 of the Committee's provisional rules of procedure or declared admissible) and Secretariat action was requested on other pending cases.

C. Issues considered by the Committee

690. For a review of the Committee's work under the Optional Protocol from its second session in 1977 to its twenty-second session in 1984, the reader is referred to the Committee's annual report for 1984, 21/ which, inter alia, contains a summary of the procedural and substantive issues considered by the Committee and of the decisions taken. The full texts of the views adopted by the Committee and of its decisions declaring communications inadmissible under the Optional Protocol have been reproduced regularly in annexes to the Committee's annual reports. As indicated in paragraph 687 above, a selection of the Committee's decisions adopted under the Optional Protocol up to and including its sixteenth session (July 1982) has been published in United Nations publication, Sales No. E.84.XIV.2.

691. The following summary reflects further developments of issues considered during the period covered by the present report.

1. Procedural issues

(a) The "claim" under article 2 of the Optional Protocol

692. Article 2 of the Optional Protocol requires that a claim of a violation must relate to a right enumerated in the Covenant. In case No. 174/1984 (J. K. v. Canada) the author, who had allegedly been injustly convicted of a criminal offence several years before the Covenant and the Optional Protocol entered into force for the State party, claimed that the stigma of the allegedly unjust conviction and the social and legal consequences thereof made him a victim today of violations of a number of articles of the Covenant. He asked the Committee to request the State party to annul the conviction and to pay him equitable indemnity. After noting that the communication was inadmissible, ratione temporis, in so far as it related to events said to have taken place prior to the entry into force of the Covenant and the Optional Protocol for the State party and that it was also beyond the Committee's competence to review findings of fact made by national tribunals or to determine whether national tribunals properly evaluated new evidence submitted on appeal, the Committee observed that the consequences of the conviction, as described by the author, "do not themselves raise issues under the International Covenant on Civil and Political Rights in his case. The Committee, accordingly, concludes that the author has no claim under article 2 of the Optional Protocol".

The Human Rights Committee decided, therefore, that the communication was inadmissible (see annex XIV).

693. In case No. 173/1984 (M. F. v. the Netherlands) the author, a national of Chile, filed an application for political asylum in the Netherlands. His request was turned down and an order was issued for his expulsion. The author claimed to be a victim of violations by the State party of a number of articles of the Covenant. The Human Rights Committee declared the communication inadmissible and stated as follows:

> "A thorough examination of the communication has not revealed any facts in substantiation of the author's claim that he is a victim of a breach by the State party of any rights protected by the Covenant. In particular, it emerges from the author's own submission that he was given ample opportunity, in formal proceedings including oral hearings, to present his case for sojourn in the Netherlands. The Committee, accordingly, concludes that the author has no claim under article 2 of the Optional Protocol." (See annex XIII.)

(b) Reservations by States parties

694. The question of the Committee's competence in the light of State party reservations 22/ was the subject of its decision in case No. 168/1984 (V. O. v. Norway). At its twenty-fifth session, the Committee, in declaring the communication inadmissible, shed further light on the meaning of the term "the same matter", as applied to communications submitted both to the Committee and to another international procedure. In this regard the Committee stated:

> "The Committee notes that the Norwegian reservation to article 5, paragraph 2, of the Optional Protocol stipulates that the Committee shall lack competence to consider a communication if 'the same matter' has already been examined under other international procedures. This phrase in the view of the Committee refers, with regard to identical parties, to the complaints advanced and facts adduced in support of them. Thus the Committee finds that the matter that is before the Committee now is in fact the same matter that was examined by the European Commission. While fully understanding the circumstances which have led the author to make a communication under the Covenant, the Committee finds that the State party's reservation operates to preclude it from examining the communication." (See annex XIX.)

(c) Review of decision on admissibility

695. Rule 93, paragraph 4, of the Committee's provisional rules of procedure permits the Committee to review a decision declaring a communication admissible in the light of explanations or statements submitted by the State party under article 4, paragraph 2, of the Optional Protocol. This rule was applied for the first time at the Committee's twenty-fourth session. Case No. 113/1981 (C. F. et al. v. Canada) had been declared admissible by the Committee at its nineteenth session. At its twenty-fourth session in April 1985, the Committee revised its prior decision as follows:

> "Pursuant to rule 93, paragraph 4, of its provisional rules of procedure the Human Rights Committee has reviewed its decision on admissibility of 25 July 1983. On the basis of the additional information provided by the Canadian Government, the Committee concludes that the authors could have obtained redress for the violation complained of by seeking a declaratory

judgement. The Committee has stressed in other cases that remedies the availability of which is not reasonably evident cannot be invoked by the Government to the detriment of the author in proceedings under the Optional Protocol. According to the detailed explanations contained in the submission of 17 February 1984, however, the legal position appears to be sufficiently clear in that the specific remedy of a declaratory judgement was available and, if granted, would have been an effective remedy against the authorities concerned ...

"...

"In the light of the above considerations, the Committee finds that it is precluded under article 5, paragraph 2 (b), of the Optional Protocol from considering the merits of the case and decides:

"1. The decision of 25 July 1983 is set aside.

"2. The communication is inadmissible." (See annex XV.)

(d) Substantiation of allegations

696. A number of communications have been declared inadmissible on the ground of non-substantiation of allegations. In case No. 178/1984 (J. D. B. v. the Netherlands) the author complained that he had suffered discrimination in the field of employment and referred to article 6 of the International Covenant on Economic, Social and Cultural Rights, which protects the right to work. The author claimed that the discrimination which he had allegedly suffered made him a victim of a violation of article 26 of the International Covenant on Civil and Political Rights. Concluding that no facts had been submitted in substantiation of the author's claim that he was a victim of a violation of any of the rights guaranteed by the International Covenant on Civil and Political Rights, the Human Rights Committee declared the communication inadmissible. (See annex XVI.)

2. Substantive issues

(a) The right to life (article 6 of the Covenant)

697. Article 6 of the Covenant protects the inherent right to life and provides that the right to life shall be protected by law and that no one shall be arbitrarily deprived of his life. At its twenty-fourth session, the Committee adopted views under article 5, paragraph 4, of the Optional Protocol in eight cases, Nos. 146/1983 and 148 to 154/1983 (Kanta Baboeram-Adhin et al. v. Suriname), concerning the right to life. Pursuant to rule 88, paragraph 2, of the Committee's provisional rules of procedure, the cases were dealt with jointly. In its views the Committee declared:

"The right enshrined in this article is the supreme right of the human being. It follows that the deprivation of life by the authorities of the State is a matter of the utmost gravity. This follows from the article as a whole and in particular is the reason why paragraph 2 of the article lays down that the death penalty may be imposed only for the most serious crimes. The requirements that the right shall be protected by law and that no one shall be arbitrarily deprived of his life mean that the law must strictly control and limit the circumstances in which a person may be deprived of his life by the

authorities of a State. In the present case it is evident from the fact that 15 prominent persons lost their lives as a result of the deliberate action of the military police that the deprivation of life was intentional. The State party has failed to submit any evidence proving that these persons were shot while trying to escape.

"The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the victims were arbitrarily deprived of their lives contrary to article 6, paragraph 1, of the International Covenant on Civil and Political Rights. In the circumstances, the Committee does not find it necessary to consider assertions that other provisions of the Covenant were violated.

"The Committee therefore urges the State party to take effective steps: (i) to investigate the killings of December 1982; (ii) to bring to justice any persons found to be responsible for the death of the victims; (iii) to pay compensation to the surviving families; and (iv) to ensure that the right to life is duly protected in Suriname." (See annex X.)

(b) The right to a fair hearing (article 14) and the right to minimum guarantees in the determination of any criminal charge, including the right to have adequate time and facilities for the preparation of one's defence (article 14, paragraph 3 (b)) and the right, where the interests of justice so require, to have free legal assistance (article 14, paragraph 3 (d))

(i) The right to have adequate time and facilities for the preparation of one's defence (article 14, paragraph 3 (b))

698. In case No. 158/1983 (O. F. v. Norway) the author had been convicted of driving his automobile at a speed exceeding that allowed by the traffic law and of failing to furnish information to an official register about a business firm that he operated. He claimed that he was not able adequately to prepare his defence because the Court did not provide him with copies of all relevant documents about the traffic violation. In declaring the case inadmissible, the Committee noted:

"that from 26 August to the date of the hearing on 21 October 1982 the author could have examined, personally or through his lawyer, documents relevant to his case at the police station. He chose not to do so, but requested that copies of all documents be sent to him. The Committee notes that the Covenant does not explicitly provide for a right of a charged person to be furnished with copies of all relevant documents in a criminal investigation, but does provide that he shall have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. 1/ Even if all the allegations of the author were to be accepted as proven, there would be no ground for asserting that a violation of article 14, paragraph 3 (b), occurred." (See annex XII.)

(ii) The right to free legal assistance (article 14, paragraph 3 (d))

699. In the same case the author claimed that his right to free legal assistance, as provided for in article 14, paragraph 3 (d), of the Covenant, had been violated. The State party submitted that the fact that the author was not assigned free legal assistance must be seen in the light of the nature of the offences with

which he was charged. Both charges, the State party argued, were trivial and ordinary and could in practice only lead to a light sentence. The author was sentenced to pay a fine of NKr. 1,000 or to serve 10 days' imprisonment if the fine was not paid. In declaring the communication inadmissible, the Committee noted that

> "The Covenant foresees free legal assistance to a charged person 'in any case where the interests of justice so require and without payment to him in any such case if he does not have sufficient means to pay for it. The author has failed to show that in his particular case the 'interests of justice' would have required the assignment of a lawyer at the expense of the State party." (See annex XII.)

(c) The right to freedom of thought, conscience and religion (article 18). The right to hold opinions, freedom of expression (article 19)

700. In case No. 185/1984 (L. T. K. v. Finland) the author claimed that the failure of the State party to recognize his status as a conscientious objector made him a victim of a breach by the State party of articles 18 and 19 of the Covenant. At its twenty-fifth session the Human Rights Committee declared the communication inadmissible on the ground that it was incompatible with the provisions of the Covenant, observing that "the Covenant does not provide for the right to conscientious objection; neither article 18 nor article 19 of the Covenant, especially taking into account paragraph 3 (c) (ii) of article 8, can be construed as implying that right". (See annex XXI.)

3. Question of action subsequent to the adoption of the Committee's views under the Optional Protocol or subsequent to a decision declaring a communication to be inadmissible

701. At previous sessions the Committee has been seized of the question which possibilities might be open to it under the Optional Protocol to take any further action in cases which have already been concluded by the adoption of views and cases which have been declared inadmissible. In a number of cases concluded by the adoption of views under article 5, paragraph 4, of the Optional Protocol, the authors have asked the Committee to take additional steps to persuade the States parties concerned to act in conformity with the views expressed by the Committee. Also, in a number of cases which have been concluded by the adoption of inadmissibility decisions, the authors have asked the Committee to review such decisions. The opinion of the Committee is that its role in the examination of any given case comes to an end when it adopts views or another decision of a final nature. Only in exceptional circumstances may the Committee agree to reconsider an earlier final decision. Basically, this would only occur when the Committee is satisfied that new facts are placed before it by a party claiming that those facts were not available to it at the time of the Committee's consideration of the case and that they would have altered the final decision.

702. The Committee, however, takes an interest in any action which may have been taken by a State party as a consequence of the Committee's views under the Optional Protocol, or in any action taken by the State party that concerns either the legal issues involved or the situation of the person concerned. Thus, when forwarding its views to a State party, the Committee invites the State party to inform it of any action taken pursuant to the views. 23/

703. By notes dated 11 October 1984, 4 February 1985 and 25 March 1985, the Government of Uruguay furnished the Secretary-General with lists of persons released from imprisonment in 1984 and 1985 with the request that these lists be brought to the attention of the Human Rights Committee. The lists include the names of a number of persons whose cases are pending before the Committee or have been considered and concluded by final views. Some of the pending cases have subsequently been discontinued at the request of the authors. By a note of 15 March 1985, the new Government of Uruguay also transmitted part of the text of the general amnesty law of 8 March 1985.

704. With respect to the Committee's views on communication No. 24/1977 (Sandra Lovelace v. Canada, views adopted on 30 July 1981, finding that the law in force (Indian Act) was discriminatory in respect of Indian women), the Government of Canada, on 6 June 1983, provided the Committee with information on legislative and other measures that had been taken in response to the Committee's views. 24/ By a note of 5 July 1985, the Government of Canada submitted additional information, observing that on 28 June 1985 a new Canadian law amending the Indian Act received royal approval and that the amendments were deemed to have entered into force on 17 April 1985. In particular, article 12 (1) (b) of the Indian Act (the contested provision in case No. 24/1977) has been abrogated and henceforth Indian women who had lost their Indian status upon marriage to a non-Indian may once again be registered as Indians, pursuant to article 6 (1) (c) of the new law.

705. By a note of 19 July 1985, the Permanent Mission of Madagascar transmitted comments of the State party on the views of the Human Rights Committee adopted on 1 April 1985 concerning communication No. 132/1982 (Monja Jaona v. Madagascar). (For the text of the views, see annex IX.) Firstly, the State party reaffirmed its position that the communication was inadmissible because of non-exhaustion of domestic remedies. It enclosed copies of various court orders and decisions showing that a case against Mr. Jaona was pending before the Supreme Court when the communication was declared admissible in April 1984. Secondly, it submitted a detailed description of the events leading to the detention of Mr. Jaona on 15 December 1982, referring to riots that had allegedly broken out on account of agitation provoked by Mr. Jaona and his party followers. Thirdly, the State party quotes from the detention order of Mr. Jaona, which specifically listed the offences with which he was charged, and indicated that Mr. Jaona was informed of those charges at the time of his arrest. Fourthly, the State party mentions that Mr. Jaona was detained at Kelivondrake at one of the secondary residences of the Head of State, that Mr. Jaona's son was able to stay with him and that his wife was allowed to visit him. The State party thus concludes that no provisions of the Covenant had been violated with respect to Mr. Jaona. It regrets not having made this informtion available to the Committee at an earlier date and affirms its intention to co-operate more fully with the Committee in the future.

706. The Committee welcomes the co-operation of States parties in forwarding to it information and positive responses relevant to the views adopted by the Committee under the Optional Protocol.

Notes

1/ Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40), paras. 42-43; and Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), para. 38.

2/ Ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), para. 160.

3/ Ibid., Thirty-second Session, Supplement No. 44 (A/32/44 and Corr.1), annex IV.

4/ Ibid., Thirty-sixth Session, Supplement No. 40 (A/36/40), annex V.

5/ Ibid., annex VI.

6/ Ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), paras. 68-94.

7/ Ibid., para. 156.

8/ Consideration of this report was initiated at the twenty-second session and completed at the twenty-third session.

9/ Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), paras. 58-65.

10/ Ibid., Thirty-sixth Session, Supplement No. 40 (A/36/40), annex IV.

11/ The reports and additional information of States parties are documents for general distribution and are listed in annexes to the annual reports of the Committee; these documents as well as summary records will be published in the bound volumes which are being issued, beginning with the years 1977 and 1978.

12/ For the first part of the consideration by the Committee of the report of Chile, see: Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), paras. 435-478.

13/ Ibid., para. 435.

14/ Ibid., paras. 469-473.

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

16/ The Committee considered the initial report of Canada (CCPR/C/1/Add.43, vols. I and II) at the 205th to 208th and 211th meetings held on 25, 26 and 28 March 1980 (CCPR/C/SR.205 to 208 and 211).

17/ At its 569th meeting, held on 7 November 1984, the Committee decided that the deadline for the submission of the second periodic report of Canada would be extended until 8 April 1988 (CCPR/C/SR.569, paras. 77-80).

18/ The initial report of New Zealand (CCPR/C/10/Add.6), including the reports on Niue and Tokelau (CCPR/C/10/Add.10 and 11), was considered by the Committee at its 481st, 482nd and 487th meetings, held on 7 and 10 November 1983 (CCPR/C/SR.481, 482 and 487).

19/ Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), paras. 541-557.

20/ United Nations publication, Sales No. E.84.XIV.2, so far available in English only; other language versions are in preparation.

21/ Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), chap. III.

22/ A number of States parties to the Optional Protocol have made reservations with regard to article 5, paragraph (a), of the Optional Protocol to the effect that the Committee shall not have competence to consider a communication if the same matter has already been examined under another procedure of international investigation or settlement. These States parties are Denmark, France, Iceland, Italy, Luxembourg, Norway, Spain and Sweden.

23/ For information received from States parties after the adoption of views under the Optional Protocol, see Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40), para. 396 and annexes XXXI to XXXIII. See also Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), paras. 623 and 624.

24/ Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40 and Corr.1 and 2), annex XXXI.

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 26 July 1985

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

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Afghanistan	24 January 1983 (a)	24 April 1983
Australia	13 August 1980	13 November 1980
Austria	10 September 1978	10 December 1978
Barbados	5 January 1973 (a)	23 March 1976
Belgium	21 April 1983	21 July 1983
Bolivia	12 August 1982 (a)	12 November 1982
Bulgaria	21 September 1970	23 March 1976
Byelorussian Soviet Socialist Republic	12 November 1973	23 March 1976
Cameroon	27 June 1984 (a)	27 September 1984
Canada	19 May 1976 (a)	19 August 1976
Central African Republic	8 May 1981 (a)	8 August 1981
Chile	10 February 1972	23 March 1976
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Cyprus	2 April 1969	23 March 1976
Czechoslovakia	23 December 1975	23 March 1976
Democratic People's Republic of Korea	14 September 1981 (a)	14 December 1981
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 (a)	4 April 1978
Ecuador	6 March 1969	23 March 1976
Egypt	14 January 1982	14 April 1982
El Salvador	30 November 1979	29 February 1980
Finland	19 August 1975	23 March 1976
France	4 November 1980 (a)	4 February 1981

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Gabon	21 January 1983 (a)	21 April 1983
Gambia	22 March 1979 (a)	22 June 1979
German Democratic Republic	8 November 1973	23 March 1976
Germany, Federal Republic of	17 December 1973	23 March 1976
Guinea	24 January 1978	24 April 1978
Guyana	15 February 1977	15 May 1977
Hungary	17 January 1974	23 March 1976
Iceland	22 August 1979	22 November 1979
India	10 April 1979 (a)	10 July 1979
Iran (Islamic Republic of)	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
Luxembourg	18 August 1983 (a)	18 November 1983
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 1979
Netherlands	11 December 1978	11 March 1979
New Zealand	28 December 1978	28 March 1979
Nicaragua	12 March 1980 (a)	12 June 1980
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	28 April 1978	28 July 1978
Poland	18 March 1977	18 June 1977
Portugal	15 June 1978	13 September 1978

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Romania	9 December 1974	23 March 1976
Rwanda	16 April 1975 (a)	23 March 1978
Saint Vincent and the Grenadines	9 November 1981 (a)	9 February 1982
Senegal	13 February 1978	13 May 1978
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
Togo	24 May 1984 (a)	24 August 1984
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
Viet Nam	24 September 1982 (a)	24 December 1982
Yugoslavia	2 June 1971	23 March 1976
Zaire	1 November 1976 (a)	1 February 1977
Zambia	10 April 1984 (a)	10 July 1984

B. States parties to the Optional Protocol

Barbados	5 January 1973 (a)	23 March 1976
Bolivia	12 August 1982 (a)	12 November 1982
Cameroon	27 June 1984 (a)	27 September 1984
Canada	19 May 1976 (a)	19 August 1976
Central African Republic	8 May 1981 (a)	8 August 1981
Colombia	29 October 1969	23 March 1976

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Congo	5 October 1983	5 January 1984
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
France	17 February 1984	17 May 1984
Iceland	22 August 1979 (a)	22 November 1979
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Luxembourg	18 August 1983 (a)	18 November 1983
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
Portugal	3 May 1983	3 August 1983
Saint Vincent and the Grenadines	9 November 1981 (a)	9 February 1982
Senegal	13 February 1978	15 May 1978
Spain	25 January 1985	25 April 1985
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
Zambia	10 April 1984 (a)	10 July 1984

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	Indefinitely
Ecuador	24 August 1984	Indefinitely
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
Luxembourg	18 August 1983	Indefinitely
Netherlands	11 December 1978	Indefinitely
New Zealand	28 December 1978	Indefinitely
Norway	23 March 1976	Indefinitely
Peru	9 April 1984	Indefinitely
Senegal	5 January 1981	Indefinitely
Spain	25 January 1985	25 January 1988
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

1985-1986

Name of member	Country of nationality
Mr. Andrés AGUILAR**	Venezuela
Mr. Nejib BOUZIRI*	Tunisia
Mr. Joseph A. L. COORAY*	Sri Lanka
Mr. Vojin DIMITRIJEVIC*	Yugoslavia
Mr. Roger ERRERA*	France
Mr. Bernhard GRAEFRATH*	German Democratic Republic
Mrs. Rosalyn HIGGINS**	United Kingdom of Great Britain and Northern Ireland
Mr. Rajsoomer LALLAH**	Mauritius
Mr. Andreas V. MAVROMMATIS**	Cyprus
Mr. Anatoly P. MOVCHAN**	Union of Soviet Socialist Republics
Mr. Birame N'DIAYE*	Senegal
Mr. Torkel OPSAHL*	Norway
Mr. Fausto POCAR**	Italy
Mr. Julio PRADO VALLEJO*	Ecuador
Mr. Alejandro SERRANO CALDERA**	Nicaragua
Mr. Christian TOMUSCHAT*	Germany, Federal Republic of
Mr. S. Amos WAKO**	Kenya
Mr. Adam ZIELINSKI**	Poland

* Term expires on 31 December 1986.

** Term expires on 31 December 1988.

ANNEX III

Agendas of the twenty-third, twenty-fourth and twenty-fifth sessions of the Human Rights Committee

Twenty-third session

At its 545th meeting, held on 22 October 1984, the Committee adopted the following provisional agenda, submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its twenty-third session:

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.

Twenty-fourth session

At its 574th meeting, held on 25 March 1985, the Committee adopted the following provisional agenda, submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its twenty-fourth session:

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 38 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. Action by the General Assembly at its thirty-ninth session on the annual report submitted by the Human Rights Committee under article 45 of the Covenant.

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

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

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

Twenty-fifth session

At its 600th meeting, held on 8 July 1985, the Committee adopted the following provisional agenda, submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its twenty-fifth session:

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 under 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.

ANNEX IV

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 written reminder sent to States whose reports have not yet been submitted
Afghanistan	23 April 1984	2 April 1984 b/	-
Belgium	20 July 1984	NOT YET RECEIVED	15 May 1985
Bolivia	11 November 1983	NOT YET RECEIVED	17 May 1985
Central African Republic	7 June 1982	NOT YET RECEIVED	(1) 23 November 1983 (2) 17 May 1985
Congo	4 January 1985	8 December 1984	-
Dominican Republic	3 April 197[illegible]	18 July 1984	
Gabon	20 April 1984	NOT YET RECEIVED	15 May 1985
Luxembourg	17 November 1984	1 July 1985	-
Saint Vincent and the Grenadines	8 February 1983	NOT YET RECEIVED	(1) 10 May 1984 (2) 15 May 1985
Viet Nam	23 December 1983	NOT YET RECEIVED	22 May 1985
Zaire	31 January 1978	NOT YET RECEIVED	(1) 14 May 1979 (2) 23 April 1980 (3) 29 August 1980 (4) 31 March 1982 (5) 1 December 1982 (6) 23 November 1983 (7) 20 May 1985
Zambia	9 July 1985	NOT YET RECEIVED	

B. Second periodic reports of States parties due in 1983

States parties	Date due	Date of submission	Date of written reminder sent to States whose reports have not yet been submitted
Zaire	30 January 1983	NOT YET RECEIVED	20 May 1985
Czechoslovakia	4 February 1983	22 July 1985	-
Libyan Arab Jamahiriya	4 February 1983	NOT YET RECEIVED	(1) 10 May 1984 (2) 15 May 1985
Tunisia	4 February 1983 c/	28 June 1983	-
Iran (Islamic Republic of)	21 March 1983	NOT YET RECEIVED	(1) 10 May 1984 (2) 15 May 1985
Uruguay	21 March 1983	NOT YET RECEIVED	(1) 10 May 1984 (2) 17 May 1985
Panama	6 June 1983 d/	-	-
Germany, Federal Republic of	3 August 1983	17 July 1985	-
Madagascar	3 August 1983	NOT YET RECEIVED	15 May 1985
Ecuador	4 November 1983	NOT YET RECEIVED	22 May 1985
Mauritius	4 November 1983	NOT YET RECEIVED	15 May 1985

C. Second periodic reports of States parties due in 1984 e/ (within the period under review)

Dominican Republic	29 March 1984 f/	-	-
Bulgaria	28 April 1984	NOT YET RECEIVED	15 May 1985
Romania	28 April 1984	NOT YET RECEIVED	15 May 1985
Cyprus	18 August 1984	NOT YET RECEIVED	15 May 1985
Finland	18 August 1984	18 June 1985	
Syrian Arab Republic	18 August 1984	NOT YET RECEIVED	15 May 1985
Ukrainian Soviet Socialist Republic	18 August 1984	1 September 1984	-

States parties	Date due	Date of submission	Date of written reminder sent to States whose reports have not yet been submitted
United Kingdom of Great Britain and Northern Ireland	18 August 1984	3 September 1984	-
Poland	27 October 1984	NOT YET RECEIVED	15 May 1985
Sweden	27 October 1984	14 November 1984	-

D. Second periodic reports of States parties due in 1985 g/ (within the period under review)

Trinidad and Tobago	20 March 1985	NOT YET RECEIVED	-
New Zealand	27 March 1985	NOT YET RECEIVED	-
Iraq	4 April 1985	NOT YET RECEIVED	-
Mongolia	4 April 1985	NOT YET RECEIVED	-
Senegal	4 April 1985	NOT YET RECEIVED	-
Gambia	21 June 1985	NOT YET RECEIVED	-
India	9 July 1985	NOT YET RECEIVED	-

Notes

a/ From 27 July 1984 to 26 July 1985 (end of twenty-second session to end of twenty-fifth session).

b/ The original submission of 2 April 1984 was not received by the Secretariat. A copy of the original submission was received on 25 January 1985.

c/ A supplementary report was submitted by the Government of Tunisia on 28 June 1983. By its note of 28 February 1985 the Government of Tunisia requested the Human Rights Committee to consider the text of its supplementary report to be the second periodic report of Tunisia.

d/ At its twenty-fifth session, the Committee took note of the supplementary report submitted by the Government of Panama and decided to consider it together with the second periodic report. The Committee also decided to extend the deadline for the submission of the second periodic report of Panama to 31 December 1986.

e/ For a complete list of States parties whose second periodic reports were due in 1984, see CCPR/C/32.

f/ At its twenty-fourth session, the Committee, in view of its consideration at that session of the initial report of the Dominican Republic, decided to extend the deadline for the submission of the second periodic report of the Dominican Republic to 29 March 1986.

g/ For a complete list of States parties whose second periodic reports are due in 1985, see CCPR/C/37.

ANNEX V

Status of reports considered during the period under review and reports still pending consideration

A. Initial reports

States parties	Date due	Date of submission	Meetings considered at
Trinidad and Tobago	20 March 1980	23 March 1984	550th, 551st, 555th (twenty-third session)
Dominican Republic	3 April 1979	18 July 1984	577th, 578th, 581st, 582nd (twenty-fourth session)
New Zealand (Cook Islands)	27 March 1980	6 September 1984	579th, 582nd (twenty-fourth session)
Afghanistan	23 April 1984	2 April 1984	603rd, 604th, 608th (twenty-fifth session)
Luxembourg	17 November 1984	1 July 1985	NOT YET CONSIDERED
Congo	4 January 1985	8 December 1984	NOT YET CONSIDERED

B. Second periodic reports

Chile (resumed)	28 April 1984	5 April 1984	546th, 547th, 548th (twenty-third session)
Union of Soviet Socialist Republics	4 November 1983	9 April 1984	564th, 565th, 566th, 567th, 570th (twenty-third session)
Byelorussian Soviet Socialist Republic	4 November 1983	4 July 1984	568th, 569th, 571st (twenty-third session)
Spain	28 April 1984	16 July 1984	585th, 586th, 587th, 588th, 589th (twenty-fourth session)
United Kingdom of Great Britain and Northern Ireland	18 August 1984	3 September 1984	593rd, 594th, 595th, 596th, 597th, 598th (twenty-fourth session)
Ukrainian Soviet Socialist Republic	18 August 1984	1 September 1984	609th, 610th, 611th, 612th, 613th (twenty-fifth session)
Tunisia	4 February 1983	28 June 1983 a/	NOT YET CONSIDERED

B. Second periodic reports (continued)

States parties	Date due	Date of submission	Meetings considered at
Sweden	27 October 1984	14 November 1984	NOT YET CONSIDERED
Finland	18 August 1984	18 June 1985	NOT YET CONSIDERED
Hungary	2 August 1985	3 July 1985	NOT YET CONSIDERED

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

State party	Date of submission	Meetings considered at
Venezuela	28 March 1982	556th, 557th (twenty-third session)
Canada	7 September 1983	558th, 559th, 560th, 562nd (twenty-third session)
Kenya b/	4 May 1982	NOT YET CONSIDERED
France c/	18 January 1984	NOT YET CONSIDERED
Gambia d/	5 June 1984	NOT YET CONSIDERED
Panama e/	30 July 1984	NOT YET CONSIDERED

Notes

a/ The report of Tunisia of 28 June 1983 was originally submitted as a supplementary report. By a note of 28 February 1985, the Government of Tunisia requested the Human Rights Committee to consider its supplementary report to be the second periodic report of Tunisia.

b/ At its twenty-fifth session (601st meeting), the Committee decided to consider the report together with the State party's second periodic report.

c/ Ibid.

d/ Ibid.

e/ At its twenty-fifth session (601st meeting), the Committee decided to consider the report together with Panama's second periodic report and to extend the deadline for the submission of the latter to 31 December 1986.

ANNEX VI

General comments a/ under article 40, paragraph 4, of the International Covenant on Civil and Political Rights b/ c/

General comment 14 (23) d/ (article 6)

1. In its general comment 6 (16), adopted at its 378th meeting on 27 July 1982, the Human Rights Committee observes that the right to life enunciated in the first paragraph of article 6 of the International Covenant on Civil and Political Rights is the supreme right from which no derogation is permitted even in time of public emergency. The same right to life is enshrined in article 3 of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948. It is basic to all human rights.

2. In its previous general comment, the Committee also observes that it is the supreme duty of States to prevent wars. War and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year.

3. While remaining deeply concerned by the toll of human life taken by conventional weapons in armed conflicts, the Committee has noted that, during successive sessions of the General Assembly, representatives from all geographical regions have expressed their growing concern at the development and proliferation of increasingly awesome weapons of mass destruction, which not only threaten human life but also absorb resources that could otherwise be used for vital economic and social purposes, particularly for the benefit of developing countries, and thereby for promoting and securing the enjoyment of human rights for all.

4. The Committee associates itself with this concern. It is evident that the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today. This threat is compounded by the danger that the actual use of such weapons may be brought about, not only in the event of war, but even through human or mechanical error or failure.

5. Furthermore, the very existence and gravity of this threat generate a climate of suspicion and fear between States, which is in itself antagonistic to the promotion of universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and the International Covenants on Human Rights.

6. The production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity.

7. The Committee accordingly, in the interest of mankind, calls upon all States, whether parties to the Covenant or not, to take urgent steps, unilaterally and by agreement, to rid the world of this menace.

Notes

a/ For the nature and purpose of the general comments, see Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII, introduction. For a description of the history of the method of work, the elaboration of the present general comments and their use, see Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2). For the text of the general comments already adopted by the Committee, see Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII and ibid., Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V; Thirty-eighth Session, Supplement No. 40 (A/38/40), annex VI; Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), annex VI. Also issued separately in CCPR/C/21 and Add.1-3.

b/ Adopted by the Committee at its 563rd meeting (twenty-third session), held on 2 November 1984.

c/ Also issued separately in CCPR/C/21/Add.4.

d/ The number in parentheses indicates the session at which the general comment was considered.

ANNEX VII

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights - twenty-fourth session

concerning

Communication No. 89/1981

Submitted by: Paavo Muhonen

Alleged victim: The author

State party concerned: Finland

Date of communication: 28 March 1981 (date of initial letter)

Date of decision on admissibility: 6 April 1984

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

Meeting on 8 April 1985,

Having concluded its consideration of Communication No. 89/1981 submitted to the Committee by Paavo Muhonen 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, paragraph 4, of the Optional Protocol

1. The author of the communication (initial letter dated 28 March 1981 and further submissions of 20 September 1981 and 25 January 1982) is Paavo Muhonen, a Finnish citizen, born on 17 February 1950, employed as a librarian in Finland. He states that he is a conscientious objector to military service and, alleging that his ethical conviction has not been respected by the Finnish authorities, claims to be a victim of an infringement of the right to freedom of conscience, in violation of article 18, paragraph 1, of the International Covenant on Civil and Political Rights. The facts of the claim are as follows.

2.1 In August 1976, at that time eligible for military service, Mr. Muhonen applied to the Military Service Examining Board to be permitted, on profound ethical grounds and in accordance with existing law (Unarmed and Alternative Service Act, 1969), to do alternative service subject to the civil authorities, instead of armed or unarmed service in the armed forces. By its decision of 18 October 1977, the Examining Board rejected the application on the ground that Mr. Muhonen had not proved that serious moral considerations based on ethical conviction prevented him from doing armed or unarmed military service and ordered

that he should do armed service (with the details of posting and the time for reporting for duty to be communicated to him at a later date). The proceedings before the Examining Board were conducted in writing. Mr. Muhonen did not avail himself of the opportunity to appear personally before the Examining Board, both because it was inconvenient for him to travel a long distance for a hearing and also because the Examining Board had indicated to him that a decision could be taken in his absence. Mr. Muhonen therefore concluded that his presence was not necessary and that his absence would not affect the disposition of the matter. Being dissatisfied with the decision of the Examining Board, Mr. Muhonen (as he was entitled to under the law) appealed to the Ministry of Justice to change the decision of the Examining Board. By a decision of 21 November 1977, the Ministry of Justice concluded that "no cause for changing the decision of the Military Service Examining Board [had] been shown" and upheld the decision of the Examining Board. The text of the decision of the Ministry of Justice also states that under the law "this decision is not subject to appeal".

2.2 On 13 February 1978, Mr. Muhonen resubmitted to the Military Service Examining Board a declaration of refusal to bear arms. The Examining Board decided, on 1 September 1978, not to examine Mr. Muhonen's renewed declaration, "as the Ministry of Justice [had] already adopted a decision in this case". Mr. Muhonen again appealed to the Ministry of Justice, asking that he be called up for alternative service. In a decision of 3 November 1978, the Ministry of Justice, taking the view that the Examining Board should not have left Mr. Muhonen's declaration without a hearing on the grounds invoked, decided not to return the matter to the Board in view of the fact that the circumstances of the case were already clarified, but to give it direct consideration, reaching the conclusion that no cause had been shown for changing the final decision which the Examining Board had reached in its decision of 18 October 1977 and on the appeal against which the Ministry of Justice had adopted a decision on 21 November 1977. Again, the text of the decision of the Ministry of Justice stated that it was not subject to appeal.

2.3 In the meantime, i.e. before the Examining Board and the Ministry of Justice acted on his submission of 13 February 1978, Mr. Muhonen was called up for military service (15 February 1978). He reported to the military unit where he had been posted and there refused to do any military service. He was furloughed the same day. Criminal court proceedings were then initiated against Mr. Muhonen for refusal to do military service and an ordinary court of first instance sentenced him to 11 months imprisonment on 13 December 1978. The Eastern Finland Higher Court confirmed that verdict on 26 October 1979, and Mr. Muhonen started to serve his sentence on 4 June 1980.

2.4 In the autumn of 1980, Mr. Muhonen applied for a new hearing before the Military Service Examining Board, which acceded to this request and now found in favour of Mr. Muhonen. In a decision of 2 February 1981 the Examining Board stated as follows:

> "The Military Service Examining Board, having studied the documents relating to the original refusal to bear arms which are in the possession of the Ministry of Justice, and having provided Mr. Paavo Juhani Muhonen with an opportunity to explain his convictions personally to the Board, has considered Mr. Muhonen's application and has found that Mr. Muhonen who, as may be believed on the basis of a conversation which has now taken place, has an ethical conviction within the meaning of the Unarmed and Alternative Service

Act (132/69) which prevents him from doing armed or unarmed service in the armed forces and who, having already reached the age of 30, may not be called up for service.

"Accordingly, this case requires no further action by the Military Service Examining Board."

2.5 At this stage (2 February 1981) Mr. Muhonen had already been serving his 11 months' prison sentence since 4 June 1980. It is stated on his behalf that a number of persons then requested a presidential pardon in his case; that the case was handed over by the Ministry of Justice to the Highest Court of Finland; and that, as a result, Mr. Muhonen was pardoned on 27 March 1981 and released from prison two weeks later. It is claimed, however, that Mr. Muhonen has not been allowed any monetary relief for the wrongs which he has allegedly suffered. The facts, as submitted, do not indicate which steps, if any, have been taken by Mr. Muhonen, or on his behalf, to obtain such monetary relief.

2.6 As stated above (see para. 1) Mr. Muhonen claims that the facts, as described, make him a victim of a violation by Finland of his right protected by article 18, paragraph 1, of the International Covenant on Civil and Political Rights reading as follows:

Article 18

"1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

3. The Committee was of the opinion that, in so far as the decisions of the Military Service Examining Board and of the Ministry of Justice in 1977 and 1978, refusing Mr. Muhonen's application to be exempted from service in the armed forces on ethical grounds, raised a question of compliance with article 18, paragraph 1, of the Covenant, the subsequent decision of the Examining Board of 2 February 1981 had already provided an answer in that respect and that consequently no further question of violation of that article arose. Therefore, the question whether article 18, paragraph 1, guaranteed a right of conscientious objection to military service did not have to be determined by the Committee in the present case. It observed, however, that the facts of the case might still raise an issue under article 14, paragraph 6, of the Covenant which the Committee should consider.

4.1 On 28 July 1982, the Human Rights Committee therefore decided to transmit the communication to the State party concerned under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility, in so far as the communication might raise issues under article 14, paragraph 6, of the International Covenant on Civil and Political Rights, which reads as follows:

"...

"6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him."

4.2 In response, the State party, on 29 October 1982, objected to the admissibility of the communication on the ground that "in so far as the communication refers to decisions of the Ministry of Justice, all local remedies have not been exhausted in this case, since the possibility of seeking the annulment of the decision in the Supreme Administrative Court, which is open to the author of communication, has not yet been used".

5.1 Considering that the successive decisions of the Ministry of Justice handed to Mr. Muhonen had already stated that there was no appeal from the decisions of the Ministry of Justice, the Human Rights Committee requested further clarifications from the State party as to the nature of the remedy which it now said had been available to Mr. Muhonen.

5.2 The State party's response, dated 21 June 1983, reads as follows:

"According to paragraph 6 of the Act on Extraordinary Remedies in Administrative Affairs (200/66), the extraordinary remedy of seeking the annulment of an administrative decision can be used:

"1. If a procedural fault has been made in the case that may have essentially affected the decision;

"2. If the decision is based on an apparently faulty application of law or on a mistake that may have essentially affected the decision;

"3. If such new information has been obtained in the case that might have essentially affected the decision and the appellant is not responsible for the omission to present such information on time.

"In the case of this extraordinary remedy, an application must be lodged with the supreme administrative court within five years from the entry into effect of the decision. If particularly weighty grounds exist, an extraordinary remedy may be used after the set period of five years.

"The Ministry of Justice of Finland considers that in the present case where normal procedure of appeal is not available, an extraordinary remedy such as seeking the annulment of decision[s] of the Ministry of Justice could have been an effective local remedy. Owing to the fact that a decision of the Ministry of Justice under section 6 of the Unarmed and Alternative Service Act cannot be subject to appeal, similar cases have previously been brought up in the Supreme Administrative Court on the basis of paragraph 6 of the Act on Extraordinary Remedies in Administrative Affairs referred to above and have been decided upon by the Court.

"The Ministry of Justice of Finland considers that article 14, paragraph 6 of the Covenant does not apply in the case of the decision of the city court of Joensuu of 13 December 1978 based on act No. 23 of 1970 on the punishment of certain conscripts refusing to do regular military service, since the decision was not in itself wrong. The Ministry of Justice states that Mr. Muhonen could possibly have avoided the process through the use of the extraordinary remedy of seeking the annulment of the decisions of the Ministry of Justice."

6.1 When considering the admissibility of the communication, the Committee noted, with regard to article 5, paragraph 2 (b), of the Covenant, that it could not accept the State party's contention that the communication should be declared inadmissible on the ground that the extraordinary remedy indicated by it had not been used. In the first place, the author of the communication had clearly been given to understand that there was no further remedy. Secondly, having regard to the limited scope of the extraordinary remedy in question, the State party did not show that there were grounds for believing that the remedy could be or could have been effective in the particular circumstances of the case.

6.2 With regard to the State party's contention that article 14, paragraph 6, of the Covenant is inapplicable in the circumstances of the present case, the Committee observed that that was a matter for consideration on the merits of the communication.

7. On 6 April 1984 the Human Rights Committee therefore decided:

1. That the communication was inadmissible in so far as it related to an alleged breach of article 18, paragraph 1, of the International Covenant on Civil and Political Rights, in view of the remedy obtained by the author of the communication on 2 February 1981 (see paras. 2.4, 2.6 and 3 above);

2. That the communication was admissible, in so far as it raised issues under article 14, paragraph 6, of the Covenant;

3. That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of 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.

8. In its submission under article 4, paragraph 2, of the Optional Protocol, dated 22 October 1984, the State party again reviewed the facts of the communication and concluded:

"The author of communication No. 89/1981 had been sentenced by a court of law on the basis of the law concerning the punishment of certain conscripts who decline to do military service (23/71). The legality of the sentence had been considered and confirmed at the highest level of judicial review. The fact that the Military Service Examining Board, by its decision of 2 February 1981, considered that the conviction of the applicant had now been established does not indicate that its earlier decisions or those of the Ministry of Justice would have been at fault. Under no circumstances can the validity of the decisions of the courts of law in this matter be questioned.

"According to article 29 (1) of the Constitution Act (94/19) if, due to changed circumstances, compliance with a valid court decision is no longer equitable, the President can, in an individual case, having received the opinion of the Supreme Court, pardon the person concerned or make his sentence lighter. This is precisely what happened in the case of the author of communication No. 89/1981.

"There was no 'miscarriage of justice' during the process. Therefore, article 14, paragraph 6, of the Covenant does not apply. Nor has the applicant the right to compensation under the Law on Compensation to Persons Who Have Been Innocently Imprisoned or Convicted (422/74)."

9. The State party's submission was duly forwarded to the author of the communication. No further comments have been received from Mr. Muhonen.

10. The Committee, having 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, decides to base its views on the facts as submitted by the parties, which are not in dispute.

11.1 In considering the merits of the communication, and bearing in mind the decision on admissibility, the Human Rights Committee starts from the premise that existing Finnish law grants certain categories of persons an option to do alternative service instead of armed or unarmed service in the Finnish Armed Forces. While Finland does have legislation allowing such an exemption, the Committee recognizes that only the Finnish authorities are responsible for evaluating each application for exemption under Finnish law.

11.2 The Committee's task is limited to determining whether, in the particular circumstances of the case, Mr. Muhonen was entitled to receive compensation in accordance with article 14, paragraph 6, of the Covenant. Such a right to compensation may arise in relation to criminal proceedings if either the conviction of a person has been reversed or if he or she "has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice". As far as the first alternative is concerned, the Committee observes that Mr. Muhonen's conviction, as pronounced in the judgement of the city court of Joensuu on 13 December 1978 and confirmed by the Eastern Finland Higher Court on 26 October 1979, has never been set aside by any later judicial decision. Furthermore, Mr. Muhonen was not pardoned because it had been established that his conviction rested on a miscarriage of justice. According to the relevant Finnish statute, the Law concerning the punishment of certain conscripts who decline to do military service (23/72), whoever refuses military service not having been recognized as a conscientious objector by the Examining Board commits a punishable offence. This means that the right to decline military service does not arise automatically once the prescribed substantive requirements are met, but only after due examination and recognition of the alleged ethical grounds by the competent administrative body. Consequently, the presidential pardon does not imply that there had been a miscarriage of justice. As the State party has pointed out in its submission of 22 October 1984, Mr. Muhonen's pardoning was motivated by considerations of equity.

11.3 To be sure, Mr. Muhonen's conviction came about as a result of the decision of the Examining Board of 18 October 1977, denying him the legal status of conscientious objector. This decision was based on the evidence which the

Examining Board had before it at that time. Mr. Muhonen succeeded in persuading the Examining Board of his ethical objection to military service only after he had personally appeared before that body following his renewed application in the autumn of 1980, while in 1977 he had failed to avail himself of the opportunity to be present during the Examining Board's examination of his case.

12. Accordingly, the Human Rights Committee is of the view that Mr. Muhonen has no right to compensation which the Finnish authorities have failed to honour and that consequently there has been no breach of article 14 (6) of the Covenant.

ANNEX VIII

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights - twenty-fourth session

concerning

Communication No. 115/1982

Submitted by: John Wight (represented by Maître Eric Hamel)

Alleged victim: John Wight

State party concerned: Madagascar

Date of communication: 5 January 1982 (date of initial letter)

Date of decision on admissibility: 24 March 1983

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

Meeting on 1 April 1985;

Having concluded its consideration of Communication No. 115/1982 submitted to the Committee by John Wight 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, paragraph 4, of the Optional Protocol

1. The author of the communication (initial letter dated 5 January 1982 and further letters dated 14 February and 22 May 1982 and 31 May 1983, 30 January and 3 July 1984 and a final letter (undated) received on 21 September 1984) is John Wight, a South African national who was imprisoned in Madagascar from January 1977 to February 1984. He is represented by Maître Eric Hamel, who was a lawyer in Madagascar until his expulsion on 11 February 1982 and is at present in France. The facts of this case are similar to those of Communication No. 49/1979 concerning Dave Marais, Jr., another South African national who was also imprisoned in Madagascar. The Human Rights Committee adopted views under article 5, paragraph 4, of the Optional Protocol concerning Communication No. 49/1979 on 24 March 1983. a/

2.1 Maître Hamel (who was also the lawyer of Dave Marais, Jr.) alleged at the time of submission that, as in the Marais case, his client Wight was unable to submit a communication himself, as he was not permitted to engage in correspondence from his place of detention in Madagascar.

2.2 Maître Hamel states that John Wight was a pilot for South African Airways; that on 18 January 1977, on a private flight, he had to make an emergency landing at Mananajary, Madagascar, for technical reasons; that on 22 March 1978 the Military Tribunal of Antananarivo sentenced him, together with Dave Marais, to five years' imprisonment and fined him FMG 500,000 for the offence of unlawfully overflying Malagasy territory; that on 15 May 1981 the Correctional Tribunal of Antananarivo sentenced him to an additional two years' imprisonment and fined him FMG 1 million for the offence of escaping from prison; that he was detained at the prison in Manjakandriana until 27 November 1981 when, by written order of M. Honoré Rakotomana, Secretary-General of the Ministry of Justice, he was transferred to the DGID (political police) prison at Ambohibao, purportedly for the protection of his physical integrity.

2.3 It is alleged that the pretext used to justify the transfer to Ambohibao was false, and that John Wight was held there under the same inhuman conditions as Dave Marais, Jr., in a cell measuring 1 m by 2 m, that he could not receive any visitors or communicate with his attorney and that he could not send or receive letters. b/

2.4 Maître Hamel explains that, pursuant to articles 550 and 551 of the Malagasy Code of Penal Procedure, convicted persons must be detained in the penal establishments under the Ministry of Justice and that detention of a convicted person at a police establishment is illegal.

2.5 Maître Hamel claims that Mr. Wight is a victim of violations of article 10, paragraph 1, and article 14, paragraph 3, of the International Covenant on Civil and Political Rights.

3. By its decision of 16 March 1982, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of admissibility of the communication. The Working Group also requested the State party to provide the Committee with copies of any court orders or decisions relevant to the case.

4.1 By a note dated 11 August 1982, the State party transmitted to the Committee a photocopy of a letter dated 14 July 1982, signed by Mr. John Wight and Mr. Dave Marais and addressed to the Director of the Directorate-General of Investigations and Documentation of the Malagasy Republic. The text of the letter reads as follows:

> "We would like to thank you very much for the letters from our families, which were safely received yesterday. It is absolutely wonderful to have news of our wives after so many months.
>
> "In writing, I take the opportunity also to thank you for all the money which you have provided to buy cigarettes, soap and medicine. Also for the food, the room and particularly for the kindness shown to us. We remain in good spirits and, in view of the circumstances, want for almost nothing - except, of course, our freedom.

"I would like to request your permission to write to President Ratsiraka to ask him if he might be so good as to consider a remission of sentence or an amnesty for us. I am extremely eager to return home so as to be able to participate in the struggle against apartheid ..."

4.2 The State party further informed the Committee that the relevant Malagasy high authorities were studying the action to be taken on the requests made in the letter referred to above.

5.1 The Human Rights Committee further examined the communication of John Wight at its seventeenth session. In view of the information furnished by the State party, which the Committee welcomed, and in order to give time to the President of Madagascar to respond to the appeal for clemency made to him by Mr. Wight and Mr. Marais, the Committee decided to defer further consideration of their cases until its eighteenth session. The State party was so informed on 25 November 1982 and requested to inform the Committee not later than 31 January 1983 whether the appeal for clemency made by Mr. Wight and Mr. Marais had been granted.

5.2 No further information was received from the State party prior to the Committee's eighteenth session.

6.1 With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee noted that it had not received any information that the subject-matter had been submitted to another procedure of international investigation or settlement.

6.2 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee noted that the State party had not contended that there were domestic remedies which had not been exhausted. On the basis of the information before it, the Committee was unable to conclude that there were remedies available to the alleged victim which he could pursue or should have pursued.

6.3 Accordingly, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (a), or (b), of the Optional Protocol.

7. On 24 March 1983, the Human Rights Committee decided:

1. That the communication was admissible;

2. That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of 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, paragraph 2, of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that, in order to fulfil its responsibilities, it required specific responses to the allegations which had been made and the State party's explanations of the actions taken by it. The State party was again requested to enclose copies of any court orders or decisions of relevance to the matter under consideration.

8. In a note dated 10 May 1983, the State party informed the Committee that

"the authorities of the Democratic Republic of Madagascar have not deemed it appropriate to respond to the appeal for clemency made by Mr. Dave Marais and Mr. John Wight on 14 July 1982 and will be unable to do so until Nelson Mandela has been finally released in exchange".

9.1 On 31 May 1983, Maître Hamel submitted a legal memorandum on behalf of John Wight, alleging that since 27 November 1981 John Wight had been detained in a dark cell in the basement of the Malagasy political police prison at Ambohibao under the same conditions as Dave Marais, Jr., and completely incommunicado, and that since that date the detainee had been unable to communicate with his lawyer. b/ Maître Hamel pointed out that three successive lawyers of the two South Africans had all been arrested and detained and then expelled or else had escaped the country; the purpose of the alleged persecution was to prevent political prisoners from being properly defended. In particular he alleges:

"(a) That Maître J. J. Natbai, their first lawyer, who was temporarily in France in early 1978 (on the eve of their trial), was prohibited from returning to Madagascar (his return visa was cancelled) ...;

"(b) That Maître Boitard, their second lawyer, was arrested by the political police in May 1979 charged with conspiracy and with aiding and abetting the escape of his two clients detained in prison and that he escaped on 3 January 1980 ...;

"(c) That the present defence counsel was arrested first on 3 March 1980 by DGID, interrogated on that day and then released and that he was again arrested by DGID in November 1980, interrogated on that day and then released, that his chambers were searched by the Malagasy political police in early February 1982, that he was arrested by the political police, detained in a basement cell of the Malagasy political police prison and then expelled from Madagascar on 11 February 1982 ... [and] that one of the principal charges levelled against this counsel during his detention and interrogation was that he had defended political prisoners, including the two South Africans."

9.2 With regard to the facts of the case, Maître Hamel elaborates on the initial communication and explains that

"the South African aircraft piloted by the detainee made an emergency landing at Manjary for technical reasons and in order to refuel because of atmospheric disturbances and bad weather between Madagascar and La Réunion and Mauritius (the month of January, which is mid-summer in the southern hemisphere, is generally a period of bad weather and cyclones). That since then, many aircraft have made emergency landings for technical reasons at Madagascar (aircraft from Botswana, Zambia, French aircraft from La Réunion, etc.) and that none of the pilots or passengers of those aircraft has been arrested or harassed, that in general such aircraft remain on the field guarded by the army or the gendarmerie, the passengers are confined to the aircraft but are given food, and that after the necessary repairs or refuelling, the aircraft are authorized to take off for their scheduled destination."

9.3 Maître Hamel therefore concludes that John Wight and Dave Marais were arrested and charged primarily because of their South African nationality and because of the South African nationality of their aircraft.

10.1 In its submission under article 4, paragraph 2, of the Optional Protocol dated 12 January 1984, the State party explains with respect to the nature of Mr. Wight's imprisonment that

> "under article 550 of the Code of Penal Procedure, to which the communication submitted on behalf of John Wight refers, imprisonment may be effected in two types of place: a prison or separate quarters of a penal establishment. This provision of the Code of Penal Procedure points to the concept of quarters and signifies that a penal establishment (forming a whole at the administrative level) may have quarters in a number of different places: so much so that in the case of Antananarivo Central Prison, the quarters reserved for adults and for juveniles are in two different places more than 15 kilometres apart. Nevertheless, these premises are under the administration of the Head Warden of the Central Prison ... The Central Prison of Antananarivo, to which Mr. John Wight was committed, has never ceased to be responsible for him."

10.2 With respect to the charge of unlawful detention, the State party notes

> "that the definition of unlawful detention depends not on the place of detention but on the existence of a proper detention order issued by the competent judicial authority. Following his arrest, the author of the communication was the subject of the following detention orders in due form: warrant of commitment issued by the examining magistrate in charge of the case following examination; warrant of commitment issued by the indictment division which is valid until the time the prisoner is tried by the competent court; decision of the military court which convicted him and authorized his imprisonment until completion of his sentence."

10.3 With respect to the question of any irregularity in the imprisonment of Mr. Wight, the State party declares that the provisions of article 557 of the Malagasy Code of Penal Procedure have been respected and points out that extracts from the Prison Calendar (which the State party submits to the Committee) bears witness to the fact that the provisions of the law were complied with.

> "It is clear from those documents that Mr. John Wight has never ceased to be under the authority of Antananarivo Central Prison. If Mr. John Wight was transferred to another place of detention, it was in order to strengthen surveillance and prevent any recurrence of his escape. His present whereabouts are more appropriate for such surveillance and can guarantee the security of his person."

11.1 The State party also forwarded a copy of the sentence of the military court of Antananarivo dated 22 March 1978, and a copy of the decision of 20 March 1979 of the Supreme Court of Madagascar, dismissing the appeal filed by Messrs. Marais, Lappeman and Wight.

11.2 On the question of the legitimacy of the overflight of Malagasy territory by the aircraft of which Mr. Wight was the pilot, the Supreme Court of Madagascar held

> "WITH REGARD TO THE SECOND GROUND FOR CASSATION proposed by Me. BOITARD, counsel, referring to the violation of article 5 of the Chicago Convention, in that that article explicitly provides that each contracting State authorizes the overflight of its territory and landing in that territory for

reasons of safety, and that it cannot be denied that both the Democratic Republic of Madagascar and the Republic of South Africa are signatories to that Convention;

"Whereas article 5 of the Chicago Convention of 7 December 1944 does indeed stipulate that each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services, shall have the right to make flights into or transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, under article 9 (b) of the Convention each contracting State reserves the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory;

"Whereas, by prohibiting flying over its territory during a period of emergency, and in the interest of public safety, the State of Madagascar was merely availing itself of the possibility afforded by article 9 (b) of the Chicago Convention;

"Whence it follows that the appeal is unfounded."

12.1 On 30 January 1984, Maître Hamel submitted a memorandum concerning the State party's submission under article 4 , paragraph 2, of the Optional Protocol. He points out, inter alia, that the State party has failed to submit the judgement by the Correctional Tribunal of Antananarivo of 14 May 1981, c/ which sentenced John Wight for escaping from prison and overflying the territory. He reiterates that the place of imprisonment of John Wight is irregular, explaining that from the legal point of view, the Malagasy political police (DGID) is a police and intelligence service responsible for preliminary investigations, and that the political police prison is not part of the prison service, but is administered directly by the political police. Prisoners are guarded not by prison service officials, but by political police staff and military personnel from various units. Moreover, the political police prison has no commitment register because prisoners held there are listed in the Commitment registers of the ordinary prisons. Within the legal meaning of the term, the political police prison is not a prison.

12.2 With respect to the conditions of detention, Maître Hamel reiterates that his client was held in the basement of the political police prison, where he was even chained at times. He was kept in the strictest solitary confinement, could not see anyone, could not receive or send letters and could not communicate with his lawyer. "No one from outside DGID, including chaplains, is allowed to enter the prison. Prisoners are also prohibited from talking to one another, as the undersigned counsel is in a particularly good position to know, since he was detained in that prison in the same conditions." d/

12.3 Maître Hamel also submitted a copy of the order for release "from the lock-up" and the text of Ordinance No. 021/77 of 10 June 1977 amending the Code of Penal Procedure to read, inter alia, "Article 54 (new): A prisoner awaiting trial may, after his first hearing, communicate freely with his defence counsel. In no case shall the prohibition on communication apply to him. However, any person who is being held in custody in connection with an investigation of a crime or offence against State security and who is also charged with other offences may be

prohibited by the competent judicial officer from communicating with his defence counsel except during hearings at which his presence is required and during sentencing."

13. By telegram dated 26 March 1984, the State party informed the Committee that Messrs. John Wight and Dave Marais, Jr., had been released from prison upon completion of their terms of imprisonment and that they had left Malagasy territory on 16 February 1984.

14. In a letter dated 3 July 1984, requesting the Committee to continue consideration of his communication for the purpose of adopting views thereon, Mr. Wight confirmed that the facts as described by Maître Hamel are basically correct, but added the following clarifications concerning the conditions of his detention:

> "(i) After our escape from prison and subsequent recapture in September 1978, I was kept in a solitary room at the DGID chained to a bed spring on the floor, with minimal clothing and a severe rationing of food (I lost 25 kg of weight) for a period of 3 1/2 months. I was then fortunate in contracting hepatitis and was transferred to the hospital. During the period of being chained to the floor, I was seldom allowed to wash (perhaps once a fortnight). During this period and in fact until July 1979 (10 months), I was held totally incommunicado.
>
> "(ii) From July 1979 until November 1981 I was held in a prison at Manjakandriana where conditions were at least human.
>
> "(iii) I was then transferred to the DGID where I was kept in a basement cell 2 m x 1 1/2 m in inhuman conditions for a period of one month. Incommunicado.
>
> "(iv) In January 1982, I was transferred from the basement cell to a room 3 m x 3 m, which I shared with Dave Marais until our release. The conditions were satisfactory and the treatment good, except that for the first 18 months of these last two years we were never allowed out of the room. We were now for the first time officially permitted to correspond with our families.
>
> "The above are the basic facts of my detention which are far less severe than the conditions under which Dave Marais was detained. He was held incommunicado in the 2 m x 1 1/2 m basement cells for a period of more than two years."

15.1 The Human Rights Committee has the obligation under article 5, paragraph 1, of the Optional Protocol to consider this communication in the light of all written information made available to it by or on behalf of John Wight, and by the State party. It therefore decides to base its views on the following facts, which have not been contradicted by the State party.

15.2 John Wight, a South African national, was the pilot of a private South African aircraft which, en route to Mauritius, made an emergency landing in Madagascar on 18 January 1977. A passenger on the plane, Dave Marais, Jr., a South African national, another passenger, Ed Lappeman, a national of the United States of America, and John Wight were tried and sentenced to five years' imprisonment and a fine for overflying the country without authority and thereby endangering the external security of Madagascar. On 19 August 1978, while serving his sentence,

John Wight escaped from the Antananarivo Central Prison, was subsequently apprehended, tried on charges of prison-breaking and, on 15 May 1981, sentenced to an additional two years' imprisonment. After his recapture in September 1978, John Wight was kept in a solitary room at the political police prison at Ambohibao (DGID), chained to a bed spring on the floor, with minimal clothing and severe rationing of food, for a period of 3 1/2 months. During this period and until July 1979 (10 months) he was held incommunicado. He was then held from July 1979 to November 1981 in a prison at Manjakandriana where conditions were better. In November 1981 he was again transferred to the DGID prison where he was kept incommunicado in a basement cell measuring 2 m by 1 1/2 m in inhuman conditions for a period of one month. In January 1982, he was moved from the basement cell to a room measuring 3 m by 3 m, which he shared with Dave Marais until their release. Although they were not allowed out of the room for the first 18 months of this period, John Wight acknowledges that the conditions were otherwise satisfactory and the treatment good. They were now allowed for the first time since their arrest to correspond with their families. John Wight and Dave Marais were released in February 1984 upon completion of their prison sentences.

16. The Human Rights Committee observes that the information available to it is insufficient to show that Mr. Wight was arrested and charged primarily because of his South African nationality and the South African nationality of his aircraft.

17. The Human Rights Committee, acting under article 5, paragraph 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, with respect to:

- article 7 and article 10, paragraph 1, because of the inhuman conditions in which John Wight was at times held in prison in Madagascar;

- article 14, paragraph 3 (b), because during a 10-month period (from September 1978 to July 1979), while criminal charges against him were being investigated and determined, he was kept incommunicado without access to legal counsel.

18. The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy the violations which John Wight has suffered and to take steps to ensure that similar violations do not occur in the future.

Notes

a/ See Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40), annex XI.

b/ See para. 14, further clarifications concerning his conditions of imprisonment, received from John Wight after his release.

c/ In an earlier submission (see para. 2.2 above) Maître Hamel gives the date of this judgement as being 15 May 1981.

d/ See footnote b.

ANNEX IX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights - twenty-fourth session

concerning

Communication No. 132/1982

Submitted by: Monja Jaona (represented by Maître Eric Hammel)

Alleged victim: Monja Jaona

State party concerned: Madagascar

Date of communication: 30 December 1982 (date of initial letter)

Date of decision on admissibility: 6 April 1984

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

Meeting on 1 April 1985;

Having concluded its consideration of Communication No. 132/1982 submitted to the Committee by Monja Jaona 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, paragraph 4, of the Optional Protocol

1. The author of the communication (initial letter dated 30 December 1982, further letters dated 12 May and 15 August 1983 and 18 January 1984) is Monja Jaona, a 77-year-old Malagasy national, former "Doyen du Conseil Suprême de la Révolution malgache" and candidate in the presidential elections held in Madagascar on 7 November 1982, at present Member of the National People's Assembly in Madagascar. He is represented by Maître Eric Hammel, who was a lawyer in Madagascar until his expulsion on 11 February 1982 and who now resides in France.

2.1 Maître Hammel states that on 15 December 1982 Mr. Monja Jaona was arrested at his residence in Tananarive and that, although according to an official announcement Mr. Jaona was subjected only to house arrest, he was actually taken to the military camp of Kelivondrake, 600 km south of Tananarive, where he was detained until his release before the elections to the National People's Assembly held on 28 August 1983. Mr. Jaona was arrested under government decree, without any reasons being given for his arrest, for an unlimited period of time and without the possibility of being brought before a judge. His arrest took place subsequent

to the following events. Mr. Jaona was a candidate in the 1982 presidential elections against the incumbent President. During his campaign he denounced the allegedly corrupt policies of the Government. It is claimed that election fraud caused Mr. Jaona's defeat, that he publicly denounced the alleged abuses and called for new elections. Maître Hammel states that Mr. Jaona was then arrested on the pretext that demonstrations organized in his support were endangering public order and security.

2.2 Maître Hammel also refers to a previous arrest of his client under similar conditions in December 1980. Maître Hammel sought before the courts repeal of the governmental decree and compensation for the damages suffered by Mr. Jaona, who was subsequently released on 9 March 1981, by Governmental decree, no reasons being given. Mr. Jaona maintained his complaints before the courts. Maître Hammel claims that his own expulsion by order of the Ministry of Justice of Madagascar on 11 February 1982 was, inter alia, a consequence of his involvement in that case.

2.3 Maître Hammel claims that Mr. Jaona is a victim of breaches by Madagascar of article 9, paragraphs 1 and 2, article 18, paragraph 1, and article 19, paragraph 1, of the International Covenant on Civil and Political Rights.

3. By its decision of 17 March 1983, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of admissibility of the communication. The Working Group also requested the State party to provide the Committee with copies of any court orders or decisions relevant to the case and to inform the Committee of the state of health of Mr. Monja Jaona.

4.1 In a further letter dated 12 May 1983, Maître Hammel submitted additional information concerning the state of health of his client and alleged that the Malagasy Government was refusing to give Mr. Jaona the necessary medical care and that it had not authorized specialist professors, including the Dean of the Faculty of Medicine of Tananarive, to see and examine Mr. Jaona.

4.2 Maître Hammel also enclosed a copy of a letter by Mrs. Monja Jaona, dated 19 April 1983, referring to her husband's two hunger-strikes, from 10 to 14 January and again from 15 to 23 January 1983.

4.3 In an annexed statement dated 12 January 1983, Monja Jaona explained his hunger-strike as follows:

> "It is the fact that I have been arrested and detained at Kelivondrake: that is arbitrary, and that is why I oppose it. There was no investigation and I was never informed of the grounds for my arrest: that is what I take exception to. I know very well that I have been arrested because of the elections. It was stated that any candidate sponsored by a party belonging to the Front could stand for election and that candidates outside the Front were not allowed to stand. The MONIMA party nominated me and I accepted. Subsequently, the way in which the elections were held made it clear to me that fraud had been committed at my expense. Those responsible were the persons in charge of the decentralized collectives and the ministers, whose departure I have long been demanding. Then, when I gave a press conference, I was totally censored. I stated that the Malagasy people had not elected Ratsiraka for the next seven years. As the press conference was censored, I reacted by calling a strike to demand the holding of new elections, the

transmission by radio of my press conference and the abolition of the censorship which affects the entire press. During this period I was never summoned anywhere but was immediately placed under arrest. The aim of this arbitrary arrest is to conceal the truth. Moreover, since I stood for election to the highest office in the country, my arrest is entirely unjust."

5.1 By a note dated 15 July 1983, the State party objected to the admissibility of the communication on the ground that it did not fulfil the requirements of article 5, paragraph 2 (b), of the Optional Protocol, since domestic remedies had not been exhausted. The State party submitted that:

"Order No. 82-453 of 15 December 1982 placing Mr. Monja Jaona under house arrest was issued under statute No. 60-063 of 22 July 1960, relating to the dissolution of certain associations and to the placing under house arrest of persons convicted of subversive activities. Article 5 of the statute provides for the possibility of appeal. Mr. Monja Jaona availed himself of that provision on 15 March 1983, by lodging an appeal with the Administrative Chamber of the Supreme Court to have Order No. 82-453 of 15 December 1982 rescinded. The case is currently pending before that court, and Mr. Monja Jaona should have awaited the decision of the Administrative Chamber before lodging a parallel appeal, if that proved necessary, with an international body."

5.2 The State party further stated that it would transmit information as to the state of health of Mr. Monja Jaona at a later date. No such information has been received yet from the State party.

6.1 On 15 August 1983, Maître Hammel forwarded his comments in reply to the State party's submission of 15 July 1983. He stated, inter alia:

"The Malagasy Government claims that because an appeal was lodged on 15 March 1983 to the Administrative Chamber of the Supreme Court of Madagascar the petition addressed to the Human Rights Committee is inadmissible. This argument is not, however, well founded ...

"The Malagasy Government instructed a lawyer in its pay to submit a petition to the Supreme Court and the petition was submitted on 15 March 1983 or two and a half months after the communication to the Human Rights Committee. This late petition cannot constitute an argument against admissibility ...

"Possibilities for appeal are indeed provided by Malagasy law, but it has already been reported that these possibilities are purely symbolic and have been paralysed by the action of the President of the Malagasy Republic.

"During the earlier internment of Mr. Monja Jaona on 10 December 1980, his counsel submitted his petition to the Administrative Chamber of the Supreme Court of Madagascar on 15 December 1980; on 3 January 1981, the Court in summary procedure issued him with a permit to communicate by visiting his client detained in Kelivondrake ..., but the defence counsel was turned back by the camp guards who told him that, by order of the Office of the President of the Republic, permits to communicate were invalid.

"The file at the Supreme Court was complete in respect of substance at the end of June 1981, but on the instructions of the President of the Malagasy Republic, the First President of the Supreme Court decided to preside himself over the court which was going to hear this case ...

"Fifteen days later, the President of the Republic decided to retire the First President of the Supreme Court and it was therefore necessary to await the appointment and installation of a new First President, whose appointment was greatly delayed; to cut short any claims, the Malagasy Government expelled the defence counsel in February 1982 before rearresting Mr. Monja Jaona on 15 December 1982.

"The appeal against the first arrest on 7 July 1980 is thus still pending.

"On 15 December 1980 defence counsel lodged a complaint against 'X' for violation of the freedom of Mr. Monja Jaona, and by letter dated 9 January 1981 the President of the Court at Ihosy advised defence counsel that the file had been asked for and monopolized by the Minister of Justice on the orders of the Office of the President and that he could do nothing without it. The many written reminders that I sent have remained unanswered and now, almost three years later, the preliminary investigation has not yet started, while the time-limit on public action is approaching (article 4, Malagasy Code of Criminal Procedure) even before the beginning of the investigation ...

"This is clearly a case coming under ... article 5, paragraph 2 (b), of the Optional Protocol; the existing remedies are being drawn out over an unreasonable period of time and are being rendered ineffective by the Office of the President of the Malagasy Republic."

6.2 Maître Hammel also forwarded to the Committee a report prepared at the end of July 1983 on the conditions of detention of Mr. Jaona "in the Chinese hospital of Mahitzy (30 km from Tananarive), to which he was transferred at the beginning of July and where he is interned and detained under particularly severe and inhuman conditions for a sick person aged over 75 years". The text of the report reads in part:

"State of health

"(1) At the beginning of July, following a consultation with Prof. Andrianjatovo, who had finally been authorized to go to Kilivondrake ... the elderly detainee was hospitalized at Mahitzy ... The cataract from which he is suffering will require an operation, more than two months late.

"(2) His family and his friends are however very concerned, for two reasons:

"Although his physical health is good, the conditions of hospitalization (of detention as he calls it) are very trying for him and might affect his intellectual faculties (for example, he is prevented from walking during the day, and even the X-rays which he has to have are taken only at night so that he has no contact with anyone ...).

"His wife, who asked to visit him as soon as she knew officially of his hospitalization, has so far (14 July) not been authorized to do so ..."

7. By a note dated 10 November 1983, the State party commented on Maître Hammel's memorandum of 15 August 1983. It denied that the Government of Madagascar had deliberately lodged an appeal with the local courts on behalf of Monja Jaona so as to render Jaona's petition to the Human Rights Committee inadmissible. It pointed out in this connection that "defence counsel has neither the right nor the power to compel Mr. Monja Jaona to lodge an appeal with any court or, to that end, to force him to accept a court-appointed counsel". It also questioned whether Maître Hammel had sought the necessary information from his client. Without indicating the exact date of Mr. Jaona's release, the State party informed the Committee that Mr. Jaona had stood in the elections of 28 August 1983 in the electoral district of the city of Tananarive and that he had been elected deputy of Madagascar and thus a member of the National People's Assembly.

8.1 The State party's note of 10 November 1983 was transmitted to Monja Jaona and to his counsel, Maître Hammel, on 7 December 1983 and Mr. Jaona was asked whether he wished the Committee to continue or discontinue consideration of his case.

8.2 By letter dated 18 January 1984 Maître Hammel informed the Committee that Mr. Jaona had requested him to continue the procedure before the Committee and, in a memorandum of the same date, Mr. Hammel confirmed that Mr. Jaona was released on 15 August 1983. He alleged, however, that in

> "Madagascar, such releases tend to mean very brief periods at liberty. Mr. Monja Jaona had, in fact, been released from his previous detention on 10 March 1981, only to be arrested again on 15 December 1982 after no more than 21 months of freedom. In Madagascar, detention is nothing more than an administrative police measure, involving no indictment, investigation or judicial inquiry. Anyone who inconveniences or displeases the régime in power is detained on the basis of a mere order, issued by the Minister of the Interior, which is valid for an unlimited period until such time as the Minister sees fit to release him ... Mr. Monja Jaona is therefore living under the constant threat of being detained again, as he was in the past. Accordingly, he wants the present procedure to be continued until a decision is taken on the detention (or rather detentions) he has suffered. The purpose of the petition of 30 December 1982 was to establish that Mr. Monja Jaona's arrest of 15 December 1982 and his detention, in the strictest solitary confinement, at a military camp 600 km from Tananarive constituted breaches of the International Covenant on Civil and Political Rights. Fortunately, he has been released, but that fact in no way affects the legal issue raised in the petition of 30 December 1982 ...
>
> "In his memorandum of 15 August 1983, the undersigned established that the procedures theoretically possible in Madagascar were rendered ineffective by the authorities, which refused to part with the files (as confirmed in the note from the President of the Court at Ihosy) and instructed the First President of the Supreme Court to preside over the court that was to hear the case (while, at the same time, sending the First President into retirement).
>
> "The appeals lodged in Madagascar at the time of the previous detention of Mr. Monja Jaona on 15 December 1980 with the Court at Ihosy (complaint in respect of violation of freedom) and with the Administrative Chamber of the Supreme Court (against the detention order) remained unanswered and are still pending. On his release in March 1981, the undersigned notified the courts that it was his intention to ensure that both cases were continued and ruled on.

"The offence of violation of freedom (article 114 of the Penal Code), punishable by loss of civil rights together with detention for a period of up to five years (article 34 of the Penal Code), is now statute-barred (three years, as stipulated in article 4 of the Malagasy Code of Criminal Procedure) since the file has remained for more than three years with the Ministry of Justice, i.e. before even starting the preliminary police inquiry.

"Hence it is evident that in Madagascar political matters involve indefinite time-limits and are therefore unreasonably prolonged.

"In these circumstances, Mr. Monja Jaona's petition is certainly admissible and it is also founded on arbitrary orders for indefinite detention without any form of indictment or legal proceedings, contrary to the articles of the Covenant cited in the petition of 30 December 1982.

"Moreover, in its memorandum of 10 November 1983, the Malagasy Government did not reply to the arguments set forth by the undersigned in his memorandum of 15 August 1983, particularly those relating to the outcome of the proceedings instituted in Madagascar in December 1980 (at the time of Mr. Monja Jaona's previous detention). Its silence presumably signifies that it cannot produce any argument."

9.1 When considering the admissibility of the communication, the Committee noted, that it had not received any information that the subject-matter had been submitted to another procedure of international investigation or settlement. Accordingly, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (a), of the Optional Protocol.

9.2 With regard to article 5, paragraph 2, (b), of the Optional Protocol, the Committee duly took note of the State party's contention in its note of 15 July 1983 that Mr. Jaona had not exhausted domestic remedies. The Committee also noted that Mr. Jaona was released in August 1983. It assumed therefore that the Supreme Court was no longer seized of the case. In the absence of any indication of the existence of another remedy still available to Mr. Jaona in regard to the matters complained of (see para. 2.4), the Committee found that the communication was not inadmissible under article 5, paragraph 2 (b), of the Optional Protocol. It indicated, however, that this point could be reviewed in the light of further explanations which the State party might submit under article 4, paragraph 2, of the Optional Protocol, giving specific details of domestic remedies which it claims to have been available to the alleged victim, together with evidence that there would be a reasonable prospect that such remedies would be effective.

10. On 6 April 1984 the Human Rights Committee decided:

1. That the communication was admissible as regards Mr. Jaona's complaints of violation of article 9, paragraphs 1 and 2, article 18, paragraph 1, and article 19, paragraph 1, arising from his arrest of 15 December 1982 and subsequent detention until 15 August 1983;

2. That, in accordance with article 4, paragraph 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, paragraph 2, of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that, in order to fulfil its responsibilities, it required specific responses to the allegations which had been made, and the State party's explanations of the actions taken by it;

4. That the State party be again requested to provide the Committee with copies of any court orders or decisions relevant to this case.

11. The time-limit for the State party's submission under article 4, paragraph 2, of the Optional Protocol expired on 9 November 1984. The Committee has not received any further explanations or specific responses to the author's allegations, as requested in operative paragraph 3 of the Committee's decision on admissibility. Moreover, the State party has not furnished the Committee with copies of any relevant court orders or decisions, as requested in operative paragraph 4 of the decision on admissibility. No further explanations were received from the State party concerning the question of availability of domestic remedies.

12.1 The Human Rights Committee, having examined the present communication in the light of all the information made available to it by the parties as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts, which appear uncontested, except for denials of a general character offering no particular information or explanations.

12.2 Monja Jaona is a 77-year-old Malagasy national and leader of MONIMA, a political opposition party. In the elections held in Madagascar in November 1982 he was the presidential candidate of his party. Following the re-election of President Ratsiraka, Mr. Jaona challenged the results and called for new elections at a press conference. Shortly afterwards, on 15 December 1982, Mr. Jaona was placed under house arrest in Tananarive and subsequently detained at the military camp of Kelivondrake, 600 km south of Tananarive. He was not informed of the grounds for his arrest and there is no indication that charges were ever brought against him or investigated. An appeal against his arrest was lodged on 15 March 1983, but there is no indication that the appeal was ruled on. Mr. Jaona was released on 15 August 1983. He was elected deputy to the National People's Assembly in elections held on 28 August 1983.

13. In formulating its views the Human Rights Committee also takes into account the failure of the State party to furnish the requested information and clarifications necessary for the Committee to discharge its tasks. The State party has submitted that Mr. Jaona was placed under house arrest on the basis of a law relating to the dissolution of certain associations and to the placing under house arrest of persons convicted of subversive activities. It has adduced no evidence, however, that this law was applicable in the case of Mr. Jaona. In the circumstances, due weight must be given to the author's allegation. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. On the basis of the information before it, the Committee therefore cannot conclude that Mr. Jaona was engaged in any activities prohibited by the law in question.

14. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that these facts disclose violations of the Covenant:

- Of article 9, paragraph 1, because Monja Jaona was arrested in December 1982 and detained until August 1983 on account of his political opinions;

- Of article 9, paragraph 2, because he was not informed of the reasons for his arrest or of any charges against him;

- Of article 19, paragraph 2, because he suffered persecution on account of his political opinions.

15. While giving due weight to the allegations made by the author, the Committee, nevertheless, observes that the claim that Monja Jaona is a victim of a breach by the State party of article 18, paragraph 1, of the Covenant, protecting the right of freedom of thought, conscience and religion, is not sustained by the information which the Committee has before it. The Committee will, therefore, make no finding in this respect.

16. The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy the violations which Monja Jaona has suffered, to grant him compensation under article 9, paragraph 5, of the Covenant, on account of his arbitrary arrest and detention, 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, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights - twenty-fourth session a/

concerning

Communications Nos. 146/1983 and 148 to 154/1983

Submitted by: - Kanta Baboeram-Adhin on behalf of her deceased husband, John Khemraadi Baboeram (146/1983)

- Johnny Kamperveen on behalf of his deceased father, André Kamperveen (148/1983)

- Jenny Jamila Rehnuma Karamat Ali on behalf of her deceased husband, Cornelis Harold Riedewald (149/1983)

- Henry François Leckie on behalf of his deceased brother, Gerald Leckie (150/1983)

- Vidya Satyavati Oemrawsingh-Adhin on behalf of her deceased husband, Harry Sugrim Oemrawsingh (151/1983)

- Astrid Sila Bhamini-Devi Sohansingh-Kanhai on behalf of her deceased husband, Somradj Robby Sohansingh (152/1983)

- Rita Dulci Imanuel-Rahman on behalf of her deceased brother, Lesley Paul Rahman (153/1983)

- Irma Soeinem Hoost-Boldwijn on behalf of her deceased husband, Edmund Alexander Hoost (154/1983)

Alleged victims: John Khemraadi Baboeram, André Kamperveen, Cornelis Harold Riedewald, Gerald Leckie, Harry Sugrim Oemrawsingh, Somradj Robby Sohansingh, Lesley Paul Rahman and Edmund Alexander Hoost.

State party concerned: Suriname

Date of communications: 5 July 1983, 31 July and 4 August 1983

Date of decision on admissibility: 10 April 1984

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

Meeting on 4 April 1985;

Having concluded its consideration of communications Nos. 146/1983 and 148-154/1983 submitted to the Committee 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 communications and by the State party concerned;

adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

Communication No. 146/1983

1.1 The author of communication No. 146/1983 (initial letter dated 5 July 1983 and further letters of 4 November 1983 and 3 January 1985) is Kanta Baboeram-Adhin, a Surinamese national, at present residing in the Netherlands. She submits the communication on behalf of her deceased husband, John Khemraadi Baboeram, a Surinamese lawyer who was allegedly arrested by Surinamese military authorities on 8 December 1982 and whose corpse was delivered to the mortuary on 9 December 1982 showing signs of severe maltreatment and numerous bullet wounds.

1.2 It is stated that on 8 December 1982 at around 2 a.m. a number of persons in Paramaribo, Suriname, were taken from their beds and arrested, including John Baboeram, whose corpse along with the corpses of 14 other persons was identified on 10 December 1982 and was described in the "Report of the Dutch Lawyers Committee for Human Rights" (United Nations Commission on Human Rights document E/CN.4/1983/55, submitted by the author as an annex to her communication) as "heavily and brutally maltreated in the face. He for instance had a broken upper jaw. Almost all his teeth, except for one, on the upper right hand side, were beaten inwards and his lips were pulped. He had a horizontal gash on his forehead. In addition he had a bullet wound on the left side of his nose, which was later covered by a plaster. Further he had wounds, cuts on the cheeks and internal haemorrhages."

1.3 The persons arrested and allegedly killed were four journalists, four lawyers, amongst whom was the Dean of the Bar Association, two professors, two businessmen, two army officers and one trade union leader. The names of the victims are John Baboeram, Bram Behr, Cyrill Daal, Kenneth Gonçalves, Eddy Hoost, André Kamperveen, Gerald Leckie, Sugrim Oemrawsingh, Leslie Rahman, Soerindre Rambocus, Harold Riedewald, Jiwansingh Sheombar, Jozef Slagveer, Somradj Sohansingh and Frank Winjngaarde. The executions are said to have taken place at Fort Zeelandia.

2.1 The author of the communication states that she has not submitted the matter to any other procedure of international investigation.

2.2 With respect to the exhaustion of domestic remedies, the author states that no recourse has been made to any court in Suriname because "it became obvious from different sources that the highest military authority ... was involved in the killing", because the official judicial investigation required in such a case of violent death had not taken place, and "because of the atmosphere of fear one would find no lawyer prepared to [plead] such a case, considering the fact that three lawyers have been killed, apparently because of their concern with human rights and democratic principles". The author also refers to the report of the International Commission of Jurists' mission to Suriname, dated 21 March 1983, which, inter alia, surveys the situation in Suriname with respect to freedom of the press, freedom of association, freedom from arbitrary arrest, the right to protection of life and

bodily integrity and the right of recourse to effective legal remedies. The report confirms the author's contention that there are no effective legal remedies.

2.3 The author claims that her husband was a victim of violations of articles 6, 7, 9, 10, 14 and 17 of the International Covenant on Civil and Political Rights.

3. By its decision of 27 July 1983, the Working Group of the Human Rights Committee transmitted communication No. 146/1983 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. The Working Group also requested the State party to transmit to the Committee copies of the death certificate and medical report and of a report on whatever inquiry has been held in connection with the death of John Khemraadi Baboeram.

4. In a submission dated 5 October 1983, the State party objected against the admissibility of communication No. 146/1983 on the ground that the same matter had already been submitted to and was "being examined under another procedure of international investigation or settlement," referring in this connection to "investigations regarding the human rights situation in Suriname by international organizations dealing with human rights such as the Inter-American Commission on Human Rights and the International Committee of the Red Cross". The State party also mentioned that "the Special Rapporteur on summary or arbitrary executions of the United Nations Commission on Human Rights, Mr. Amos Wako," would pay a visit to Suriname during the week beginning 31 October 1983. b/

5. In her comments dated 4 November 1983, the author of communication No. 146/1983 rejected the State party's contention that "the same matter" had been submitted to another procedure of international investigation or settlement. She submitted that the procedures mentioned by the Government of Suriname for the study of the human rights situation in that country were not comparable with the procedure for the examination of individual cases under the Optional Protocol to the International Covenant on Civil and Political Rights.

Communications Nos. 148 to 154/1983

6.1 Five communications Nos. 148/1983, 149/1983, 150/1983, 151/1983 and 152/1983 dated 31 July 1983 and two communications Nos. 153/1983 and 154/1983 dated 4 August 1983 were submitted by close relatives of 7 of the 15 persons allegedly killed in Suriname on 8/9 December 1982. All seven authors, at present residing in the Netherlands, allege that the deceased were victims of violations by the Government of Suriname of articles 6, 7, 9, 10, 14, 17 and 19 of the International Covenant on Civil and Political Rights. The facts of these cases are similar to those of communication No. 146/1983 concerning John Khemraadi Baboeram.

6.2 The authors of these seven cases are Johnny Kamperveen, on behalf of his late father, André Kamperveen, formerly a businessman in Paramaribo (No. 148/1983); Jenny Jamila Rehnuma Karamat Ali, on behalf of her late husband Cornelis Harold Riedewald, formerly a lawyer in Paramaribo (No. 149/1983); Henry François Leckie, on behalf of his late brother Gerald Leckie, formerly a professor at the Faculty of Social Sciences of the University of Suriname (No. 150/1983); Vidya Satyavati Oemrawsingh-Adhin, on behalf of her late husband Harry Sugrim Oemrawsingh, formerly a professor at the Technical Faculty of the University of Suriname (No. 151/1983); Astrid Sila Bhamini-Devi Sohansingh-Kanhai, on behalf of her late husband Somradj Robby Sohansingh, formerly a businessman in Paramaribo (No. 152/1983); Rita Dulci Imanuel-Rahman, on behalf of her late brother

Lesley Paul Rahman, formerly a journalist and trade union leader from Aruba, Netherlands Antilles (No. 153/1983); and Irma Soeinem Hoost-Boldewijn, on behalf of her late husband Edmund Alexander Hoost, formerly a lawyer in Paramaribo (No. 154/1983).

6.3 Common to all of these communications are the following allegations: the alleged victims were arrested at their respective homes in the early morning hours of 8 December 1982; in the evening of the same day it was declared by Surinamese authorities that a coup attempt had been foiled and in the evening of 9 December 1982 it was declared that a number of arrested persons had been killed during an attempt to escape; the bodies of the 15 persons lay from 10 to 13 December 1982 in the mortuary of the Academic Hospital and were seen by family members and other persons; the bodies showed numerous wounds, apparently inflicted from the front side. Neither autopsies nor official investigations of the killings have taken place. The relevant facts are also described in United Nations Commission on Human Rights document E/CN.4/1983/55, which some of the authors incorporate by reference.

6.4 A summary of the specific allegations in the individual cases follows:

André Kamperveen was allegedly subjected to violence upon his arrest. Much damage was done to his house through fire arms and handgrenades; his radio station ABC was burned down. His body reportedly showed injuries to the jaw and a swollen face, 18 bullet wounds in the chest, a shot wound in the right temple, a fractured femur and a fractured arm.

Cornelis Harold Riedewald was arrested by military police who allegedly did not show a warrant. His body showed a bullet wound through the right temple, severe injuries on the left side of the neck and numerous bullet wounds in the chest.

Gerald Leckie was arrested by military police who allegedly did not show a warrant. His body had internal haemorrhages in the face and bullet holes in the chest.

Harry Sugrim Oemrawsingh was arrested by military police who allegedly did not show a warrant. His body had a wound in the right cheek and a bigger wound on the left temple.

Somradj Robby Sohansingh had already been detained seven months and allegedly subjected to mistreatment, but had been released pending trial for his alleged participation in the coup attempt of 13 March 1982. He was rearrested by military police on 8 December 1982. His body had wounds on the face, his teeth were beaten inwards and one of his cheekbones was fractured. He had six bullet wounds in the chest and abdominal area.

Lesley Paul Rahman was arrested by military police who allegedly did not show a warrant. His body had lumps on the forehead and parts of the skin of the upper thigh were torn off.

Edmund Alexander Hoost was arrested by military police who allegedly did not show a warrant. His body had several bullet wounds which had entered the body from the front side.

6.5 The authors of the seven communications state that they have not submitted the same matter to any other procedure of international investigation or settlement.

6.6 With respect to exhaustion of domestic remedies, the authors explain in an annex common to all seven communications that no recourse has been made to any court in Suriname because, inter alia:

> "1. The highest military and civilian authorities were involved in planning and carrying out the murders. 2. Taking into account the general atmosphere of fear and the fact that three lawyers were killed apparently because of their involvement in defending opponents of the régime one would find no lawyer prepared to defend such a case. 3. From official side there was neither an autopsy, nor an investigation of the death of the 15 victims as is required in such a case of violent death ..."

7. By decisions of 20 October 1983, the Working Group of the Human Rights Committee transmitted communications Nos. 148/1983 to 154/1983 to the State party concerned under rule 91 of the Committee's provisional rules of procedure, requesting information and observations relevant to the question of admissibility of the communications. The Working Group also requested the State party to provide the Committee with copies of the death certificates and medical reports and reports of whatever inquiry has been held in connection with the death of the alleged victims.

8. In a submission dated 6 April 1984 the State party objected against the admissibility of communications Nos. 148/1983 to 154/1983 on the grounds already set out in its submission of 5 October 1983 in respect of communication No. 146/1983 (see para. 4 above), namely, that the matter had already been submitted to and is "being examined under another procedure of international investigation or settlement". The State party added the following:

> "In this regard, the Government of the Republic of Suriname wishes to refer once more to investigations regarding the human rights situation in Suriname by international organizations dealing with human rights, such as the Inter-American Commission on Human Rights of the Organization of American States, the International Committee of the Red Cross, the International Labour Organisation, the International Commission of Jurists, Amnesty International, as well as the proposed visit to Suriname of the United Nations Special Rapporteur on summary or arbitrary executions. ..."

9.1 With respect to the admissibility of the communications the Human Rights Committee observed firstly that a study by an intergovernmental organization either of the human rights situation in a given country (such as that by IACHR in respect of Suriname) or a study of the trade union rights situation in a given country (such as the issues examined by the Committee on Freedom of Association of the ILO in respect of Suriname), or of a human rights problem of a more global character (such as that of the Special Rapporteur of the Commission on Human Rights on summary or arbitrary executions), although such studies might refer to or draw on information concerning individuals, cannot be seen as being the same matter as the examination of individual cases within the meaning of article 5, paragraph 2 (a), of the Optional Protocol. Secondly, a procedure established by non-governmental organizations (such as Amnesty International, the International Commission of Jurists or the ICRC, irrespective of the latter's standing in international law) does not constitute a procedure of international investigation or settlement within

the meaning of article 5, paragraph 2 (a), of the Optional Protocol. Thirdly, the Human Rights Committee ascertained that, although the individual cases of the alleged victims had been submitted to IACHR (by an unrelated third party) and registered before that body, collectively, as case No. 9015, that case was no longer under consideration. Accordingly, the Human Rights Committee concluded that it was not barred by the provisions of article 5, paragraph 2 (a), of the Optional Protocol from considering the communications.

9.2 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee noted that the State party did not challenge the author's contention that there were no effective legal remedies to exhaust. The Committee recalled that it had already established in numerous other cases that exhaustion of domestic remedies could be required only to the extent that these remedies were effective and available within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. Accordingly, the Human Rights Committee concluded that it was not barred by the provisions of article 5, paragraph 2 (b), of the Optional Protocol from considering the communications.

10.1 On 10 April 1984, the Human Rights Committee therefore decided:

1. That the communications were admissible;

2. That, in accordance with article 4, paragraph 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. These should include copies of the death certificates and medical reports and of reports of whatever inquiry has been held in connection with the death of John Khemraadi Baboeram, André Kamperveen, Cornelis Harold Riedewald, Gerald Leckie, Harry Sugrim Oemrawsingh, Somradj Robby Sohansingh, Lesley Paul Rahman and Edmund Alexander Hoost.

10.2 The Committee also decided, pursuant to rule 88 (2) of its provisional rules of procedure, to deal jointly with all eight communications, i.e. communications Nos. 146/1983 and 148/1983 to 154/1983.

11.1 In response to the Committee's request for explanations or statements in accordance with article 4, paragraph 2, of the Optional Protocol the State party submitted a note, dated 12 November 1984, a death certificate, issued by the medical staff of the University Hospital in Suriname on 25 October 1984, and a copy of Suriname's observations dated September 1983, on a report prepared by the Inter-American Commission on Human Rights on the human rights situation in Suriname, following an IACHR visit to Suriname from 20 to 24 June 1983.

11.2 In its note of 12 November 1984, the State party indicates that the investigation of the Special Rapporteur on summary or arbitrary executions, Mr. Amos Wako, temporarily deferred in 1983, was finalized during the period of 17 to 21 July 1984. "[T]his important investigation concentrated on the unfortunate occurrences of 8 and 9 December 1982, the causes of these occurrences, the plans to promote democratization of the Surinamese society, as well as the maintenance of the constitutional state in our society and the measures taken to prevent a repetition of the occurrences referred to before." c/

11.3 In the relevant parts of Suriname's observations on the IACHR report the State party notes:

"The right to life is only being discussed in connection with the death of 15 persons early in December 1982, whereas this right comprises much more. The Surinamese authorities deeply regret the death of these persons not because they are said to be of 'National Stature' but because they were citizens of this country ...

"It is regretted that the IACHR hardly pays any attention to the information supplied on the Surinamese side concerning the developments of Suriname regarding the occurrences of early December 1982. Beforehand, the reply of the Surinamese authorities seems to be regarded as of no importance, whereas great value is attached to information of the 'responsible sources' ...

"Again and again the oppositional view is being given which leads to the Committee's conclusion that 15 prominent Surinamese citizens have been eliminated because they led a critical movement for the return to democracy. Nowhere is the analysis objectively and systematically entertained which has been expressed in official talks, about the part which the deceased played in the planning of the overthrow of the legal authority.

"See ... the intensified continuation of these attempts with mercenaries after 8 December 1982 as well as the CIA disclosures about this matter."

12.1 On 3 January 1985, the author of communication No. 146/1983, Kanta Baboeram-Adhin submitted her comments on the State party's submission under article 4, paragraph 2, of the Optional Protocol. Identical comments were submitted by the author of communication No. 151/1983, Vidya S. Oemrawsingh-Adhin, on 5 January 1985.

12.2 In their comments the authors claim that the State party has failed to clarify the matters placed before the Human Rights Committee by the authors and that no information has been given about measures taken to remedy the alleged violations. The authors further point out that the official version of the killings had maintained that the victims had been shot while trying to escape. However, "in a recent interview with a well-known Dutch Magazine 'Elsevier' the military leader, also the highest authority in Suriname, admits that the victims were executed and that it was a matter of 'their lives or ours' and that 'we killed them first before they could kill us' '.

13.1 The Human Rights Committee has considered the present communications in the light of all information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. The Committee bases its views on the following facts, which are not in dispute or which are unrefuted by the State party.

13.2 In the early hours of 8 December 1982, 15 prominent persons in Paramaribo, Suriname, including journalists, lawyers, professors and businessmen, were arrested in their respective homes by Surinamese military police and subjected to violence. The bodies of these 15 persons, among them eight persons whose close relatives are the authors of the present communications, were delivered to the mortuary of the Academic Hospital, following an announcement by Surinamese authorities that a coup attempt had been foiled and that a number of arrested persons had been killed while trying to escape. The bodies were seen by family members and other persons who have testified that they showed numerous wounds. Neither autopsies nor official investigations of the killings have taken place.

14.1 In formulating its views, the Human Rights Committee also takes into account the following considerations, which reflect a failure by the State party to furnish the information and clarifications requested by the Committee. The Committee notes that the death certificate submitted by the State party is dated nearly two years after the killings and does not indicate whether the medical doctors who signed the certificate had carried out any autopsies or whether they had actually seen the bodies. The death certificate merely confirms that "on 9 December 1982 the following persons died, probably as a result of gunshot wounds ...".

14.2 In operative paragraph 2 of its decision on admissibility of 10 April 1984, the Committee requested the State party to forward copies of medical reports and of reports of whatever inquiry has been held in connection with the deaths of the eight named victims. No such reports have been received by the Committee. In this connection, the Committee stresses, as it has done in a number of other cases (e.g. Nos. 30/1978, 84/1981) that it is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities and to furnish to the Committee the information available to it. In cases where the allegations are corroborated by evidence submitted by the authors and where further clarification of the cases depends on information exclusively in the hands of the State party, the Committee may consider the authors' allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

14.3 Article 6 (1) of the Covenant provides:

> "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

The right enshrined in this article is the supreme right of the human being. It follows that the deprivation of life by the authorities of the State is a matter of the utmost gravity. This follows from the article as a whole and in particular is the reason why paragraph 2 of the article lays down that the death penalty may be imposed only for the most serious crimes. The requirements that the right shall be protected by law and that no one shall be arbitrarily deprived of his life mean that the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State. In the present case it is evident from the fact that 15 prominent persons lost their lives as a result of the deliberate action of the military police that the deprivation of life was intentional. The State party has failed to submit any evidence proving that these persons were shot while trying to escape.

15. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the victims were arbitrarily deprived of their lives contrary to article 6 (1) of the International Covenant on Civil and Political Rights. In the circumstances, the Committee does not find it necessary to consider assertions that other provisions of the Covenant were violated.

16. The Committee therefore urges the State party to take effective steps (i) to investigate the killings of December 1982; (ii) to bring to justice any persons found to be responsible for the death of the victims; (iii) to pay compensation to the surviving families; and (iv) to ensure that the right to life is duly protected in Suriname.

Notes

a/ Pursuant to rule 85 of the provisional rules of procedure, Mr. S. Amos Wako did not participate in the adoption of the views of the Committee under article 5, paragraph 4, of the Optional Protocol on this matter.

b/ The visit subsequently took place between 22 and 27 July 1984.

c/ The report of the Special Rapporteur of the Commission on Human Rights on summary or arbitrary executions was submitted to the forty-first session of the Commission (document E/CN.4/1985/17). Annex 5 to the report deals with the Special Rapporteur's visit to Suriname.

ANNEX XI

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights - twenty-fifth session

concerning

Communication No. 139/1983

Submitted by: Ilda Thomas on behalf of her brother, Hiber Conteris

Alleged victim: Hiber Conteris

State party concerned: Uruguay

Date of communication: 16 March 1983 (date of initial submission)

Date of decision on admissibility: 30 March 1984

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

Meeting on 17 July 1985;

Having concluded its consideration of Communication No. 139/1983 submitted to the Committee by Ilda Thomas 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, paragraph 4, of the Optional Protocol

1.1 The author of the communication (initial letter dated 16 March 1983 and further letters dated 12 May and 8 November 1983 and 12 March, 14 June and 1 July 1985) is Ilda Thomas, the alleged victim's sister, at present residing in the United States of America. She is legally represented. She submits the communication on behalf of her brother, Hiber Conteris, a Uruguayan national born on 23 September 1933, who was detained at Libertad Prison in Uruguay until 10 March 1985.

1.2 The author stated that Hiber Conteris worked as pastor for the Methodist Church from 1955 to 1965 and that for many years he was a staff writer for Marcha, a weekly magazine banned in 1974. He was a professor of the History of Ideas at the National University of Uruguay's School of Law and Social Sciences from 1968 to 1972. In the late 1960s Mr. Conteris was a member of the Movement for National Liberation (Tupamaros), but the author claims that he completely disassociated himself from them in 1970 as political and economic tensions rose and the Tupamaros turned to progressively more violent means.

1.3 On 2 December 1976, Mr. Conteris was arrested by the security police, allegedly without a warrant, at Carrasco Airport, Montevideo, upon returning from a Christian Peace Conference held in Brno, Czechoslovakia. He was taken to the intelligence service headquarters in the city. Two weeks later when his family went to these offices to bring him food, they were given his belongings and told that he had been transferred to "an army establishment". This was the last they heard of him for three months. On 4 March 1977, his daughter was allowed to see him for 15 minutes under strict supervision. He was in a deplorable physical condition and had lost 20 kilos in weight. His arms were scarred. The family later learned that he had been moved between several military establishments, including the most notorious centre known as "El Infierno" - the 13th Armoured Infantry Battalion. He was also held at the Sixth Cavalry Headquarters and, during the initial two weeks at the intelligence service headquarters (DINARP) in Montevideo.

1.4 During this three-month period of detention, incommunicado, Mr. Conteris was allegedly tortured. He was hanged by the wrists for 10 days and was subjected to burnings and repeated "submarino" - immersing the head of the victim in water fouled by blood, urine and vomit almost to the point of drowning. Under these conditions of extreme ill-treatment Mr. Conteris was forced to sign a confession that he had been an active guerrilla, taking part in kidnapping and/or murder. Approximately four months after his arrest, Mr. Conteris was taken to Libertad Prison.

1.5 The author also alleged that, since his arrest in 1976, Mr. Conteris was never brought before a judge or granted a public hearing at which he could defend himself. No judgement against him has ever been made public. It is also alleged that Mr. Conteris had been detained for over two years before he was informed of the charges against him. The date of Mr. Conteris' first trial is unclear. He was convicted and sentenced in absentia by a military court of the first instance, for "subverting the Constitution", "criminal and political association", "unlawful entry" and "kidnapping". Although a civilian, he was tried by a military court under the Law of National Security enacted in 1972 because he was charged with subversive activities. Mr. Conteris was asssigned "legal counsel" (abogado de oficio), designated by the military as Dr. Alcimar Perera. a/ Mr. Conteris never saw Dr. Perera before the trial. It was only after the proceedings that Mr. Conteris had a brief meeting with him. Mr. Conteris never heard from him again. Mr. Conteris submitted his own statement to the military court of first instance but this statement was ignored and not included in the record. He was sentenced to 15 years' imprisonment and in addition to one to five years precautionary detention (medidas de seguridad eliminativas). Without the assistance of legal counsel, he appealed against the decision of the court of first instance to the Supreme Military Tribunal in August 1980. In a letter dated 24 May 1981, he described the appeal as follows:

> "... I had hoped to be able to speak to the lawyer assigned to me, to know his defence in my case, to ask for clarification of the charges formulated by the judge of the first instance who took no notice of my statements, nor did these appear in the instructions for the hearing, and I hoped to have the opportunity to reply to the charges before the members of the Supreme Military Tribunal. None of this happened. My lawyer never came to see me, I did not appear in person before the members of the Tribunal, a junior functionary confined himself to reading the sentence and asking for my signature, and the whole hearing took no more than three or four minutes. So there I am, after

the higher appeal in my case with a sentence of 15 years imprisonment and one to five years' precautionary detention without having been able to articulate my defence with the assistance of a lawyer who took my case seriously, or having personally appeared before any judge in any of the three instances." b/

1.6 The author stated that since Mr. Conteris' transfer to Libertad Prison, he did not report the kind of severe torture he experienced in the Sixth Cavalry Headquarters and the 13th Armoured Infantry Battalion. He did, however, experience other forms of physical and psychological abuse. Mr. Conteris ws repeatedly subjected to solitary confinement and was held in the coldest part of the prison, the first floor. He was plagued with severe rheumatism in his spine, which often prevented him from leaving his cell for a few minutes' exercise when allowed. Periodically, he was transferred from one floor to another, a method used to increase the prisoner's feelings of distrust and insecurity.

1.7 It was alleged that at the time of submission no effective legal remedy existed for Hiber Conteris or his family under Uruguayan law since the writ of habeas corpus and the basic guarantees against arbitrary arrest and for fundamental fairness and due process set forth in the 1967 Constitution had been totally denied in virtually every case of a person held under the Prompt Security Measures or the Law of National Security. In the case of Hiber Conteris the Supreme Military Tribunal was the court of last instance.

1.8 A case concerning Mr. Conteris, which had been submitted to the Inter-American Commission on Human Rights (IACHR) by an unrelated third party, was withdrawn at the request of the Conteris family dated 12 May 1983.

1.9 The author claims that the above facts reveal breaches by Uruguay of a number of articles of the International Covenant on Civil and Political Rights, including articles 7, 9, 10 and 14. It is also alleged that articles 4, 12, 15, 18 and 19 have been violated.

2. By its decision of 6 April 1983, the Working Group of 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. The Working Group also requested the State party to transmit to the Committee copies of any court orders or decisions relevant to this case.

3. In a submission dated 27 September 1983 the State party informed the Committee

"that Mr. Conteris was arrested on 2 December 1976 because of his connection with the kidnapping of the former Consul of Brazil, Mr. Aloisio M. de Diaz Gomide, as well as for having taken part in the meeting of the Tupamaros National Liberation Movement at which the decision was taken to assassinate Mr. Dan Mitrione, a United States citizen. He was tried and subsequently sentenced to 15 years' rigorous imprisonment and 5 to 8 years' precautionary detention measures for 'criminal conspiracy', 'conspiracy to undermine the Constitution followed by criminal preparations', 'usurpation of functions' and 'theft and co-perpetration of kidnapping, with a combination of principal and secondary offences'. Mr. Conteris was not persecuted for his political opinions, but, rather, tried for committing acts which constitute offences under existing legislation. The procedure followed for his trial took place in accordance with the existing legal rules and at no time was he subjected to any kind of physical or psychological coercion".

4.1 On 8 November 1983, the author submitted comments on the State party's submission under rule 91 and forwarded a copy of the transcript of the indictment of the Fourth Military Court of Investigation, dated 1 March 1977, and of the judgement of the Supreme Military Tribunal, dated 5 August 1980, obtained by Mr. Conteris' lawyer.

4.2 She stated that the crimes her brother was accused of having committed occurred after he had disassociated himself from the Movement for National Liberation (Tupamaros). Even while he was a member, there is no indication that Mr. Conteris took any active role. The Uruguayan Government has never alleged that he was one of their leaders, and therefore would have been privy to high-level decision-making such as plans to kidnap. In fact, he was hardly a leader. He was a professor, a writer, a former minister. The extent of his involvement in the Tupamaros was to meet with fellow intellectuals, in small meetings, in a private apartment.

4.3 In the transcript of the indictment of the Fourth Military Court of Investigation, dated 1 March 1977, the Prosecutor stated that "there is prima facie evidence that the accused ... is guilty of the offences which are provided for in articles 150 (criminal conspiracy), 132 in conjunction with 137 (conspiracy to undermine the Constitution followed by criminal preparations), 346 (kidnapping) and 294 (unlawful entry into the home) of the Ordinary Penal Code". The Court agreed with this opinion and ordered that the prisoner "be indicted and held incommunicado" and that he be summoned to appear "at the hearing on 2 March ... at which he shall be informed of the name of his defence counsel to be appointed from among those on the roster". On 2 March 1977, the Court appointed as defence counsel Dr. Daniel Artecona.

4.4 Hiber Conteris was also indicted for offences under articles 166 (ursurpation of functions) and 340 (theft) of the Ordinary Penal Code. By the judgement of first instance rendered by the Fourth Military Court presided over by Judge Colonel Luis G. Blanco Vila, Mr. Conteris was sentenced to a term of 15 years' rigorous imprisonment and 5 to 8 years' precautionary detention.

4.5 The judgement by the Supreme Military Tribunal, dated 5 August 1980, reviewed the particular characteristics of Mr. Conteris' involvement in the Tupamaros movement. It found that he did not completely break with the movement until September of 1970; that up to that date he had participated in numerous conspiratorial meetings, many of which took place in his apartment in Montevideo, and that he also gave the key to the apartment to conspirators who met there in his absence. The Supreme Military Tribunal upheld the sentence of the court of first instance, found Mr. Conteris guilty of a further offence provided for in article 133 of the Ordinary Penal Code (acts exposing the Republic to the risk of war or reprisals) and sentenced him to an additional term of one to five years' precautionary detention.

5.1 When considering the admissibility of the communication, the Committee found that it was not precluded by article 5, paragraph 2 (a), of the Optional Protocol from considering the communication, because the case before IACHR was submitted by an unrelated third party and in any event was withdrawn at the request of the Conteris family. The Committee was also unable to conclude that in the circumstances of the case there were effective remedies available to the alleged victim which he had failed to exhaust. It noted in this connection that Mr. Conteris appealed to the Supreme Military Tribunal which confirmed his

conviction. Accordingly, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

5.2 The Committee observed that there were a number of factual issues in dispute in the case, which had to be assessed during consideration of the case on the merits. For instance, it had to be determined whether the allegation of ill-treatment and torture and whether the allegations of denial of judicial guarantees were well founded. The Committee stated that it would rely on both parties to clarify any factual issues in dispute.

5.3 On 30 March 1984, the Human Rights Committee therefore decided:

1. That the communication was admissible;

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

3. That the State party be informed that the written explanations or statements submitted by it under article 4, paragraph 2, of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that, in order to perform its responsibilities, it required specific responses to the allegations which had been made by the author of the communication, and the State party's explanations of the actions taken by it;

4. That the State party be again requested to furnish the Committee with decisions taken against Mr. Hiber Conteris which are not already in the possession of the Committee, in particular the judgement of the Fourth Military Court.

6.1 The decision on admissibility containing the Committee's request for specific information was transmitted to the State party and to the author on 8 May 1984. The time-limit for the State party's response expired on 8 November 1984.

6.2 By a note of 25 March 1985, the new Government of Uruguay informed the Committee that Mr. Hiber Conteris had been released from prison on 10 March 1985, but shed no further light on the factual issues in dispute.

7.1 The Committee observes in this connection that the author of the communication has submitted detailed allegations of ill-treatment and that the State party has adduced no evidence that these allegations have been duly investigated. A general refutation of these allegations merely stating that "at no time was he subjected to any kind of physical or psychological coercion" (see para. 3 above) is not sufficient. The Committee also observes that the author has made detailed allegations that Hiber Conteris was denied judicial guarantees set out in a number of provisions of article 14 of the Covenant. In its submission of 27 September 1983, the State party merely informed the Committee that "the procedure followed for his trial took place in accordance with the existing legal rules" (see para. 3 above). Again, a refutation in such general terms is not sufficient.

7.2 The Committee recalls that it has already established in other cases (e.g. Nos. 30/1978 CR.7/30 c/ and 85/1981 d/) that the burden of proof cannot rest alone on the author of the communication, especially considering that the author and

the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its authorities and to furnish to the Committee the information available to it. In cases where the author has submitted to the Committee allegations supported by witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

7.3 The author's allegations of breaches of the provisions of article 9 of the Covenant have not been commented on by the State party and are, therefore, treated as uncontested.

7.4 The author's allegations of breaches of the provisions of articles 12, 15, 18 and 19 of the Covenant are not adequately substantiated. The Committee, therefore, makes no finding in respect to these articles.

7.5 With regard to the author's allegations of a breach of article 4, the Committee notes that the State party has not purported to rely on any derogation from provisions of the Covenant pursuant to article 4. The Committee, therefore, regards it as inappropriate to make a finding in respect to this article.

8. In a notarized personal affidavit dated 14 June 1985, Mr. Hiber Conteris described in detail aspects of his interrogation, trial and detention, thus confirming the information submitted by the author on his behalf. In a telegram dated 1 July 1985, his wish that the Committee continue its consideration of the case was confirmed.

9.1 The Human Rights Committee, having examined the present communication in the light of all the information made available to it by the parties as provided in article 5, paragraph 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 uncontested except for denials of a general character offering no particular information or explanations.

9.2 Hiber Conteris was arrested without a warrant by the Security Police on 2 December 1976, at the Carrasco airport, Montevideo, and taken to the intelligence service headquarters in the city. He was later transferred to different military establishments, including the establishment known as "El Infierno" and the Sixth Cavalry Headquarters. From 2 December 1976 to 4 March 1977, he was held incommunicado, and his relatives were not informed of his place of detention. During this period Mr. Conteris was subjected to extreme ill-treatment and forced to sign a confession. On 4 March 1977, when his daughter was allowed to see him for the first time after his arrest, she witnessed that his physical condition was very poor and that he had lost 20 kilos of weight. Since that time he was kept at Libertad Prison under harsh and, at times, degrading conditions, including repeated solitary confinements. The remedy of habeas corpus was not available to Hiber Conteris. He was never brought before a judge and was kept uninformed of the charges against him for over two years. He was not granted a public hearing at which he could defend himself and he had no opportunity to consult with his court appointed lawyer in preparation for his defence. He was tried and sentenced by a military court of first instance to 15 years' imprisonment and, it appears, to

one to five years of precautionary detention. His own statements to the military court of first instance were ignored and not entered into the court records. Without the assistance of legal counsel, he appealed to the Supreme Military Tribunal in August 1980, which upheld the conviction and sentenced him to 15 years' imprisonment and 5 to 8 years' of precautionary detention for "criminal conspiracy", "conspiracy to undermine the Constitution followed by criminal preparations", "usurpation of functions" and "theft and co-perpetration of kidnapping, with a combination of principal and secondary offences". After the change of Government in Uruguay Mr. Conteris was released on 10 March 1985 pursuant to the Law of Amnesty of 8 March 1985.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Politicl Rights, is of the view that the facts as found by the Committee disclose violations of the Covenant, in particular:

- of article 7, because of the severe ill-treatment which Hiber Conteris suffered during the first three months of detention and the harsh and, at times, degrading conditions of his detention since then;

- of article 9, paragraph 1, because the manner in which he was arrested and detained, without a warrant, constitutes an arbitrary arrest and detention, irrespective of the charges which were subsequently laid against him;

- of article 9, paragraph 2, because he was not informed of the charges against him for over two years;

- of article 9, paragraph 3, because he was not brought promptly before a judge and because he was not tried within a reasonable time;

- of article 9, paragraph 4, because he had no opportunity to challenge his detention;

- of article 10, paragraph 1, because he was held incommunicado for over three months;

- of article 14, paragraph 1, because he had no fair and public hearing;

- of article 14, paragraph 3 (b), because he had no effective access to legal counsel for the preparation of his defence;

- of article 14, paragraph 3 (c), because he was not tried without undue delay;

- of article 14, paragraph 3 (d), because he was not tried in his presence and could not defend himself in person or through legal counsel of his own choosing;

- of article 14, paragraph 3 (g), because he was forced by means of torture to confess guilt.

11.1 The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy the violations which Mr. Hiber Conteris has suffered and to grant him compensation.

11.2 The State party has provided the Committee with a number of lists indicating the names of persons released from prison since August 1984 and until the newly elected Government came to power on 1 March 1985. The Committee has further learned that, pursuant to an amnesty law enacted by the new Government on 8 March 1985, all political prisoners have been released and all forms of political banishment have been lifted. The Committee exresses its satisfaction at the measures taken by the State party towards the observance of the Covenant and co-operation with the Committee.

Notes

a/ According to the text of the indictment it appears that Mr. Conteris had a different ex officio lawyer, Dr. Artecona. See para. 4.3.

b/ It appears that the three instances are: (i) the military court of investigation, (ii) the military court of first instance and (iii) the Supreme Military Tribunal.

c/ See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40 and Corr.1 and 2), annex X.

d/ Ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40), annex IX.

ANNEX XII

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights - twenty-third session

concerning

Communication No. 158/1983

Submitted by: O. F. [name deleted]

Alleged victim: O. F.

State party concerned: Norway

Date of communication: 2 August 1983 (date of initial letter)

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

Meeting on 26 October 1984,

adopts the following:

Decision on admissibility

1.1 The author of the communication (initial letter dated 2 August 1983 and six subsequent letters) is O. F., a Norwegian national, born in 1939, residing in Norway and claiming to be a victim of violations by Norway of article 14, paragraph 3 (a), (b), (d) and (e), of the International Covenant on Civil and Political Rights. In particular O. F. claims that the prosecuting authorities and the courts have not respected his right adequately to prepare his defence, to be assisted by legal counsel and to obtain and have examined witnesses on his behalf as laid down in the Covenant.

1.2 Following a radar control undertaken by the police on a State road for measuring traffic speed, O. F. was in July 1982 charged with having driven his car at a speed of 63 km per hour in a 50 km per hour zone in violation of the traffic law. O. F. states that he requested details from the police concerning the conduct of the radar control, but that he did not receive any. The case was taken up in the district court (Bodo byrett) on 22 October 1982, together with another unrelated charge, concerning an alleged failure by O. F. in 1981 to furnish information to an official register about a business firm which he operated. O. F. claims to have requested a postponement of the case, so that he could adequately prepare his defence, but that such postponement was denied. He claims that he was denied adequate access to the documents of the court, that he was not given an opportunity to assess whether it would be necessary to engage a lawyer or to have witnesses called on his behalf. Further, he claims that the method of the court to deal in one case with two totally unrelated charges unjustly affected his possibilities to defend himself.

1.3 By a judgement of the court delivered on 29 October 1982, O. F. was found guilty on both charges and sentenced to a fine of NKr 1,000 or 10 days' imprisonment. He was also sentenced to pay the costs of the case, NKr 1,000. O. F. appealed to the Supreme Court, which rejected the appeal on 17 December 1982. He maintains that a request for a renewed handling of the case was also rejected. O. F. also states that by a letter from the Supreme Court dated 26 November 1982 he was informed that "a suspected person does not have a legal right to borrow case documents".

1.4 In a further letter dated 27 October 1983, the author stated that he had submitted the same matter to the European Commission of Human Rights on 1 August 1983. However, the Secretariat of the European Commission informed him by letter of 12 August 1983 that the European Commission would not be able to consider his case, since it had not been submitted within six months of the date of exhaustion of domestic remedies.

2. By its decision of 9 November 1983, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of admissibility of the communication.

3.1 By a note dated 12 March 1984, the State party, inter alia, explained the following with respect to the facts of the case:

> "On 27 July 1982 the police issued an ordinary write of optional fine, comprising the count under the Road Traffic Act as well as the one relating to the Act on Statistics. The author did not accept to pay the fine. In a letter of 19 July 1982 the author asked the police for technical information about the control. By letter of 26 July the police informed the author that information would be collected from the police officers operating the radar during the traffic control. It would then be submitted to him as soon as it was available. On 26 August the author was contacted by a police officer and informed that he could come to the police station and examine all documents of the two cases there in order to prepare his defence. The author answered that he did not want to meet at the police station and asked for copies of all documents. The police informed him that this request would not be met.
>
> "On 6 October 1982 the author was summoned to the main hearing, which took place on 21 October in Bodø District Court. He met without a counsel for his defence. At the beginning of the hearing he requested that the case be temporarily dismissed so that he could properly prepare his defence. He also submitted that if the main hearing was nevertheless to take place, a counsel should be appointed at the expense of the State. The Court did not accept the requests made by the author. It ruled that the Criminal Procedure Act did not give the accused the right to obtain copies of the documents and there was no reason for a temporary dismissal of the case. From the author's appeal of 25 November 1982 to the Supreme Court ... it follows, however, that the hearing was suspended for a quarter of an hour to enable him to read the documents of the case. Moreover, the Court was of the opinion that the joinder of the two counts was in conformity with the material legislation. Finally, under the Criminal Procedure Act he was not entitled to a defence counsel paid by the State".

3.2 With respect to the relevant domestic legislation, the State party submits that

"[a]ccording to the Road Traffic Act of 18 June 1965 § 5 everyone is obliged to observe prohibitions and injunctions in purusance of traffic signs. Under § 31 violations of the Act are punishable with fines or imprisonment up to one year. A violation is regarded as a minor offence ... Under § 31 b the police may issue summary writs of optional fine on the spot to persons having committed minor traffic offences. This is a simplified procedure; for instance, a brief reference to the applicable penal provision and the facts is sufficient. The summary writ of optional fine must be accepted on the spot. If this is not done the case will be reported to the police station and an ordinary write of optional fine will normally be issued (under the Criminal Procedure Act § 287), describing the facts of the offence with reference to the provisions applicable. Again the procedure is optional. If the accused refuses to accept, judgement in the Court of first instance is normally requested by the prosecuting authorities.

"Under the Act of 25 April 1907 relating to the procurement of specifications to the Official Statistics § 1 private employers are obliged to submit information requested by the authorities in conformity with a decision of Parliament. Anyone who without valid reason fails to submit such information is subject to fines (§4). In the present case the question at issue was the duty of the employer to fill in a form ... requesting information about the firm and send it to the register of enterprises of the Central Bureau of Statistics.

"The General Penal Code of 22 May 1902 §63 regulates the situation when somebody has committed more than one offence and fines are applicable for both or all offences. The court shall then impose one single fine which has to be more severe than the one applicable as a result of each offence."

3.3 With respect to the Norwegian Reservation to the Optional Protocol to the International Covenant on Civil and Political Rights, the State party points out that

"Norway when ratifying the Optional Protocol entered a reservation to article 5 (2) 'to the effect that the Committee shall not have competence to consider a communication from an individual if the same matter has already been examined under other procedures of international investigation or settlement'. Accordingly, whereas article 5 (2) (a) prevents simultaneous duplicating procedures (pendente lite), ... the reservation sets forth the principle of non bis in idem.

"Before forwarding his communication to the Committee the author submitted an application to the European Commission of Human Rights, which is clearly another procedure of international investigation ... The application related to 'the same matter' as the present communication, as it was based on the same facts and referred to provisions of the European Convention corresponding to article 14 (3) (a), (b), (d) and (e) of the Covenant. The question arises therefore whether the communication should be declared inadmissible as incompatible (ratione materiae) under Article 3 of the Optional Protocol, given the Norwegian reservation.

"The answer depends on the interpretation of the words 'has been examined' in the reservation. In the opinion of the Government one can hardly argue that the author's case has been examined by the European Commission of Human Rights. In fact, the Secretariat of the Commission merely informed him that he had failed to comply with the six months time-limit under article 26 of the Convention ... Given the fact that in the present case there was not even a decision on inadmissibility the Government will not argue that the communication should be declared inadmissible because of its reservation. It was, however, thought useful to draw the attention of the Committee to the question."

3.4 On the question of admissibility the State party, inter alia, observes:

"In relation to article 14 (3) (a) the Government are unable to see that the author was not informed 'promptly and in detail in a language which he understands of the nature and the cause of the charge against him'. The author's communication with enclosures contains no facts implying a violation of this provision. In connection with the traffic control the author was immediatey informed by the two police officers that he had driven at 63 km/h. A summary writ of optional fine on the spot, which he did not accept, also contains material information relating to the offence ... The ordinary writ of optional fine referred to the provisions of the Road Traffic Act and the Act on Statistics and gave a brief description of the facts of the two cases. Also when the author was summoned to (6 October 1982) and appeared in court (21 October 1982) he was informed of the nature and cause of the charge against him. Consequently, it is the opinion of the Government that the facts of the case do not raise any issue under article 14 (3) (a) of the Covenant.

"Article 14 (3) (e) gives the individual the right to 'examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him'.

"As to the first part of this provision the facts of the case cannot possibly disclose a violation of the Covenant. During the main hearing the two police officers carrying out the traffic control met as witnesses. The author has stated himself (see e.g., his appeal to the Supreme Court of 25 November 1982, p. 4) that he asked several questions concerning the operation of the radar equipment, to which the witnesses responded. It is a matter of fact therefore that the author examined the witnesses against him as required by the first part of article 14 (3) (e).

"As regards the second part of that provision it should first be noted that in his appeal of 25 November 1982 ... the author considers the evidence relating to the traffic signs, given by the third witness (an engineer), as militating strongly in his favour.

"Secondly, during the preparation of the main hearing the author had the right under Norwegian law (as required by the Covenant) to request that witnesses be summoned on his behalf. It is a matter of fact that he never used this right. Consequently, in this respect he cannot allege that article 14 (3) (e) was violated.

"With regard to article 14 (3) (b) it seems from the enclosures that the only allegation of a violation made by the author is based on the fact that his request for copies of all documents was refused by the local police, and that he consequently was denied 'adequate time and facilities for the preparation of his defence'.

"Subparagraph (b) does not explicitly provide for a right of the accused to copies of documents in criminal investigation. A general right for the accused to obtain copies in all circumstances would be outside the wording and beyond the purpose of the provision, i.e., to secure that the individual has a real opportunity to defend himself and hence get a fair trial, cf. article 14 (1) ...

"The question must be therefore - as stated in the text of article 14 (3) (b) itself - whether the accused in a given case has had adequate time and facilities for the preparation of his defence. In the present case the Government are of the opinion that the requirements of article 14 (3) (b) were met. As stated above the author was offered to come to the police station to see the documents on 26 August 1982. He did not accept this offer. For almost two months he refrained from using this possibility. The author was working about 1 km from the police station. A visit would have caused no practical difficulties. With his car he could also easily have come from his home, a distance of 20-30 km. There is nothing to suggest that his right to see the documents at the police station would have been ineffective. The access of accused persons to documents is a well established practice with which the police are familiar. Moreover, in the present case the documents were uncomplicated and their number limited. Furthermore, the facts relevant to the two penal provisions at issue (non-compliance with the duty to fill in a form and exceeding the speed limit) were easy to assess for the purpose of preparing the defence.

"If the author had examined the documents at the police station he would have had a precise picture of the information available and an adequate basis for the further preparation of his defence. If deemed necessary after having read the documents, he could have contacted a lawyer ... and requested for additional witnesses ... In addition, he was also informed about the charge when he was interrogated by the police and later summoned to court.

"Taking all these elements into consideration it should also be noted that the hearing was suspended (although for a short time) to enable the author to read the documents when he raised the issue at the beginning of the main hearing in the District Court. ...

"Even if the Criminal Procedure Act does not provide for a right of the accused to obtain copies of the documents during the investigation, unless a court meeting in the case takes place, it is general practice, as described above, that the documents are available for examination by the accused at the police station before the main hearing. This practice probably amounts to a binding legal principle.

"An over-all evaluation of all the elements of the present case leads to the conclusion that the author had adequate time and facilities for the prearation of his defence. ... The Government are of the opinion therefore that the facts of the case do not raise any issue under article 14 (3) (b).

"As far as article 14 (3) (d) is concerned, it is beyond dispute that the author was tried in his presence, defended himself in person and was aware of his right to be defended through legal assistance. Consequently, it is presumed that the author's reason for invoking this provision must be that the interest of justice required that he should have been assigned free legal assistance. The fact that the author was not assigned free legal assistance must be seen in the light of the nature of the offences with which the author was charged. Both charges were trivial and ordinary and could in practice only lead to a small fine ...

"Even if the accused usually has no right to free legal assistance in minor cases, he is of course (§ 99 of the Criminal Procedure Act) entitled to be assisted by a counsel of his own choice - paid by himself - at any stage of the prosecution, including the main hearing. ...

"Consequently, the Government are of the opinion that the facts of the case do not raise any issue under article 14 (3) (d)."

3.5 For the reasons explained above the State party submits that the author's communication should be declared inadmissible under article 3 of the Optional Protocol.

4.1 In response to the State party's submission under rule 91 the author, inter alia, forwarded the following comments dated 8 April 1984:

"In the Government's reply, it is asserted that I could go to the police station and obtain the information which I had requested and needed for my defence. The Government knows that is untrue. On 5 April 1984 the necessary information on the radar's field of action was not yet available. This was confirmed by Police Sergeant E., by telephone, on 5 April 1984; he also said that the Police Chief, W., was opposed both to this information being obtained from the police officers operating the radar and to my being given this information, obviously from fear of losing face if the police should once again lose a court case involving radar control brought against me and other drivers. E. added that there was strong antagonism on the part of the superior officers of Bodø police station. ...

"It is stated that I asked for the case to be postponed, but not why I did so. I wanted a postponement firstly because I had not been able to prepare my defence without the necessary information and documents, although these had been promised me on 26 July 1982, and also because during the brief adjournment of about 15 minutes which was granted in order to allow me to study the photocopies of some documents which had just been distributed, I noticed that I had received copies which were so dark (overexposed) that it was quite impossible to see what they represented. ... Without documents, I did not have much material to give a lawyer in order to get him to help me. It is only when I saw some of the documents, just before the hearing, that I received confirmation of the shortcomings of the police's case, and became aware of my small possibilities of defence. I then invoked paragraph 99 (1) of the Criminal Procedure Act: 'the accused has the right to be assisted by counsel at every state of the proceedings'. This too was refused, without the judge recording anything in this connection.

"It is stated, under point 2, that 'anyone who without valid reason fails to submit such information (to the official statistical services) is subject to fines (article 4)'. ...

"It is stated that the Penal Code provides for the joinder of several offences. This is true, but it is also presumed that the sentence should not exceed by more than 50 per cent the maximum penalty applicable to any of the individual offences: this was not observed in my case. See Penal Code, paragraph 62 (1).

"The maximum sentence (on condition of having been found liable to a penalty) should have been 'only' a fine of NKr. 900, or, in case of non-payment of the fine, three days' imprisonment. The sentence was a fine of NKr. 1,000 or 10 days' imprisonment. This is contrary to Norwegian law, and, strangely enough, this was accepted by the courts concerned! Furthermore, I was sentenced to pay the State Nkr. 1,000 legal costs (when I was unable to defend myself satisfactorily). ...

"Mention is made of article 14 (3) (e) concerning the right to examine the witnesses of both parties. I wished to hear the statements of the witnesses of the State Motor Vehicle Office/Motor Vehicle Inspector Service and the State Highway Office, concerning the traffic signs on the spot (the Highway Office has since acknowledged that the signposting was defective and has changed it) and to obtain an opinion, in particular, from the Defence Research Institute (FFI) concerning the possible reflection of the radar waves on a bus shelter located further on. For this purpose, it was necessary to have a reply or photocopies of the police documents of the case, as well as the technical data (which have still not been provided) of the Radar Control Service concerning the radar's field of action. ...

"To excuse itself, the Government then argued that article 14 (3) (d) would have been respected if the accused had had a lawyer. No reference is made to the following problem: not everyone can obtain the help of a lawyer, which is difficult either for economic reasons, or because of the large distances in the remote regions of Norway, or finally because private individuals usually do not know how to obtain the assistance of a lawyer. ...

"It is stated that on 26 August 1982 I was invited to go to the police station to see the (incomplete) documents of the case, but that I did not accept that invitation. This is only part of the truth. In fact, it was I who telephoned the police; first of all, I spoke to Police Chief W. and asked him if the information I wanted was now available; he did not answer this question, but merely transferred the call to Deputy Chief B., who later represented the Public Prosecutor during the trial. B. told me that W. had decided that I should not receive the information I requested, despite the promise that had been made me in writing by Sergeant E. on 26 July 1982. ...

"It is then asserted that this was a simple case and that if I had examined the documents at the police station I would have had a better idea of the information available and therefore a better basis for preparing my defence; if I deemed it necessary, I could have contacted a lawyer and asked him to have witnesses appear. In my opinion, this is an inadmissible attempt to wriggle out of a situation in which human rights have been violated."

4.2 The author concludes:

> "It cannot be denied that it will be of great significance both for me and for countless Norwegians if the Committee considers that there have been violations of United Nations conventions and if it criticizes this situation. It is absolutely unjust, for example, that a police chief can fail to reply to important requests from persons against whom he wishes to institute proceedings before the courts and that such behaviour should be accepted. As recently as March 1984, W. did everything he could to have me serve the term of 10 days' imprisonment and rejected all my requests to have the prison sentence suspended until a decision had been taken concerning my request of 22 December 1983 for the reopening of the case on the one hand, and until the United Nations Human Rights Committee had considered my communication, on the other."

5.1 Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee concurs with the State party (see para. 3.3 above) that the reservation of Norway with regard to article 5, paragraph 2 (a) of the Optional Protocol does not apply in the present case. The European Commission of Human Rights has not "examined" the facts of the case. Its Secretariat merely pointed out to the author that the period of six months, within which applications may be made to the European Commission in accordance with article 26 of the European Convention on Human Rights, had already expired. As a consequence the case was not even registered by the European Commission of Human Rights.

5.3 The Committee has carefully considered the material submitted by the author, but is unable to find that there are grounds substantiating his allegations of violations of the Covenant.

5.4 With regard to article 14, paragraph 3 (a), no evidence has been submitted indicating that the author was not "informed promptly and in detail in a language which he understands of the nature and cause of the charge against him."

5.5 With regard to article 14, paragraph 3 (b), the submissions indicate that from 26 August to the date of the hearing on 21 October 1982 the author could have examined, personally or through his lawyer, documents relevant to his case at the police station. He chose not to do so, but requested that copies of all documents be sent to him. The Committee notes that the Covenant does not explicitly provide for a right of a charged person to be furnished with copies of all relevant documents in a criminal investigation, but does provide that he shall "have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing." Even if all the allegations of the author were to be accepted as proven, there would be no ground for asserting that a violation of article 14, paragraph 3 (b), occurred.

5.6 With regard to article 14, paragraph 3 (d), the only disputed issue in this case is whether the author should have been assigned free legal assistance. The Covenant foresees free legal assistance to a charged person "in any case where the interests of justice so require and without payment to him in any such case if he does not have sufficient means to pay for it." The author has failed to show that in his particular case the "interests of justice" would have required the assignment of a lawyer at the expense of the State party.

5.7 With regard to article 14, paragraph 3 (e), the submissions indicate that the author was able to question witnesses against him and to adduce to favourable witness testimony. The Committee cannot see that there was any miscarriage of justice in this respect.

6. In the light of its observations set out in paragraphs 5.1 to 5.7 above, the Human Rights Committee concludes that no facts have been submitted in substantiation of the author's claim that he is a victim of violations of any provisions of the International Covenant on Civil and Political Rights.

7. The Human Rights Committee therefore decides:

The communication is inadmissible.

ANNEX XIII

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights - twenty-third session

concerning

Communication No. 173/1984

Submitted by: M. F. [name deleted]

Alleged victim: M. F.

State party concerned: the Netherlands

Date of communication: 13 April 1984

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

Meeting on 2 November 1984,

adopts the following:

Decision on admissibility

1. The author of the communication, dated 13 April 1984, is M. F., a national of Chile, born 1960, at present residing in the Netherlands. He is represented before the Committee by a Dutch lawyer.

2.1 The author states that after political persecution and detention in Chile he left the country on 26 July 1980 on a valid passport and that he flew to Spain, where he resided until March 1981, when he travelled to Belgium and subsequently to Den Helder in the Netherlands. On 1 June 1981, he filed an application for political asylum in the Netherlands. On 15 September 1982, his requests for a residence permit and refugee status were turned down by administrative decree on the grounds that he had not belonged to an opposition party, had been able to leave Chile without objection from the authorities and had sojourned in Spain and Belgium prior to entering the Netherlands. The author's lawyer appealed against the administrative decree on 22 October 1982, contending that the author had been a member of a resistance group and that the Chilean Government had a practice of inducing "undesirable elements" to leave the country. On 16 June 1983, a hearing took place before a Standing Consultative Committee for Alien Affairs of the Ministry of Justice and on 16 September 1983 the Deputy Minister of Justice by administrative decree rejected the request for asylum. An appeal was lodged against the decree on 14 October 1983, before an "independent judge" (name of court not given), but it appears that this procedure has not been concluded. The Deputy Minister of Justice, bypassing the appeal, ordered the expulsion of the author by 3 November 1983 at the latest. Thereupon the author initiated a separate court procedure against the State of the Netherlands, seeking an injunction against the expulsion order, at least until the appeal was decided. On 17 January 1984, in an interim judgement, the president of the Court in The Hague stated that the author

did not qualify for refugee status. On 15 March 1984, the Court ruled that the author's submission that he suffered from a mental illness and that this should be considered in his favour did not constitute a ground barring expulsion. Therefore, on 29 March 1984, the Deputy Minister of Justice instructed the local police to expel the author, stipulating that an appeal against the judgement of the president of the Court could not delay the process of expulsion. A further appeal against the judgement of 15 March 1984 was lodged on 24 May 1984 at a Superior Court in The Hague. It appears that this appeal is still pending.

2.2 The author claims that the following provisions of the International Covenant on Civil and Political Rights have been violated: article 6 in connection with an earlier suicide attempt (it is unclear how this claim is to be understood but it appears that the life of the author was at one time in danger, because he had taken an overdose of pills. He maintains, however, that it was never his intention to put an end to his life and that he had merely taken the drugs in an attempt to temporarily forget his misery); article 7, because the author's expulsion would now constitute cruel and inhuman treatment; article 9, because of the risk of being rearrested in Chile, if he is not granted asylum elsewhere; article 14, paragraph 1, because there is still a procedure pending (appeal lodged on 14 October 1983) and the author's expulsion would deprive him of equality status before the court; article 17, paragraph 1, because the author lives in common-law marriage with his pregnant girl-friend, an Israeli national, who would not be admitted to Spain or Chile, so that expulsion would be tantamount to interference with his privacy and family life.

2.3 As far as can be seen two proceedings in the author's case (on separate issues) are still pending before the Dutch courts, namely, (a) the appeal lodged on 14 October 1983 before an independent judge against the decision of the Deputy Minister of Justice (of 16 September 1983) to reject the request for asylum and (b) the appeal lodged on 24 May 1984 before a Superior Court in The Hague against the decision of the Court of The Hague (of 15 March 1984) that the author's claim that he suffers from a mental illness does not constitute a ground barring his expulsion.

2.4 The author does not indicate whether the same matter is being examined by another procedure of international investigation or settlement.

3. Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4. A thorough examination of the communication has not revealed any facts in substantiation of the author's claim that he is a victim of a breach by the State party of any rights protected by the Covenant. In particular, it emerges from the author's own submission that he was given ample opportunity, in formal proceedings including oral hearings, to present his case for sojourn in the Netherlands. The Committee, accordingly, concludes that the author has no claim under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

The communication is inadmissible.

ANNEX XIV

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights - twenty-third session

concerning

Communication No. 174/1984

Submitted by: J. K. [name deleted]

Alleged victim: J. K.

State party concerned: Canada

Date of communication: 7 May 1984

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

Meeting on 26 October 1984,

adopts the following:

Decision on admissibility

1. The communication, dated 7 May 1984, is submitted (through a Swiss lawyer) by J. K., a Canadian citizen living in Canada, born in 1925 in Yugoslavia.

2. The author states that on 12 December 1970 his house at Port Alberni, County of Nanaimo, British Columbia, Canada, burned down and that he was accused and convicted of committing arson with the motive of collecting the insurance on the property, and that on 2 April 1971 he was sentenced to a term of 18 months' imprisonment. An appeal before the Court of Appeals of Vancouver was rejected on 24 November 1971. A petition to the Supreme Court of Canada for leave to appeal was denied in February 1973.

3. The author alleges that he is innocent and submits a number of affidavits purporting to show that he was in the United States on 12 December 1970 and that therefore he could not have committed the crime imputed to him. He contends that his first defence lawyer failed to prepare an adequate defence and to present all the evidence available and necessary for acquittal. He further alleges that the Court of Appeal erred in not considering or not properly evaluating the new evidence submitted on appeal.

4. Although all the events took place prior to the entry into force of the International Covenant on Civil and Political Rights and the Optional Protocol for Canada (19 August 1976), the author maintains that the stigma of the allegedly unjust conviction and the social and legal consequences thereof, including the general prejudice in society against convicted persons, make him a victim today of article 14, paragraphs 1 and 3 (a) to (c), and article 25 of the Covenant - of article 14 because he was allegedly denied a fair trial and of article 25,

because his conviction bars him from equal access to public service and from running for public office and because his criminal record puts him at a disadvantage, in particular in the field of employment.

5. The author requests the Committee to invite the State party to ensure an annulment of the conviction, to take all necessary measures to rehabilitate him and to pay him an equitable indemnity for the injuries suffered as a consequence of his conviction.

6. Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.1 The Committee notes that in so far as the communication relates to events that occurred prior to 19 August 1976, the date when the Covenant and the Optional Protocol entered into force for Canada, the communication is inadmissible ratione temporis.

7.2 The Committee further observes that it is beyond its competence to review findings of fact made by national tribunals or to determine whether national tribunals properly evaluated new evidence submitted on appeal.

7.3 As to the author's contention that the continuing consequences of his conviction make him a victim today of violations of the Covenant, the Committee observes that in the circumstances referred to in paragraph 7.1 and 7.2 above the consequences as described by the author do not themselves raise issues under the International Covenant on Civil and Political Rights in his case. The Committee, accordingly, concludes that the author has no claim under article 2 of the Optional Protocol.

8. The Human Rights Committee therefore decides:

The communication is inadmissible.

ANNEX XV

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights - twenty-fourth session

concerning

Communication No. 113/1981

Submitted by: C. F. et al.

Alleged victims: The authors

State party concerned: Canada

Date of communication: 10 December 1981

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

Meeting on 12 April 1985,

Setting aside an earlier decision on admissibility, now adopts the following:

Decision on admissibility

1. The authors of the communication (initial letter of 10 December 1981 and further letter of 3 June 1983) are C. F., M. L. and J.-L. L., three Canadian citizens detained at the time of submission in different federal penitentiaries in the province of Quebec, Canada, alleging a breach by Canada of article 25 (b), and article 2, paragraphs 1 and 3 (b), of the International Covenant on Civil and Political Rights, relating to the general provincial elections held in Quebec on 13 April 1981. The object of the communication is to vindicate their right to vote in the Quebec provincial general elections held on 13 April 1981 and to ensure that prisoners can exercise their right to vote in any elections which may be held in the future, whether federal or provincial.

2. The facts of the case were set out in detail in the Committee's decision of 25 July 1983 by which it declared the communication to be admissible. In the following, only a summary account will be given.

3.1 On 19 August 1976, the International Covenant on Civil and Political Rights and the Optional Protocol thereto entered into force for Canada. In order to bring the Quebec Election Act into conformity with the provisions of article 25 of the Covenant, several amendments to the Act were adopted by the National Assembly of Quebec on 13 December 1979, establishing, inter alia, the right of every inmate to vote in general elections in Quebec and adding special provisions relating to voting procedures for inmates (arts. 51-64 of the Election Act, 1979). Article 64 of this Act provided in particular that ... "to allow inmates to exercise their right to vote, the Director General of Elections may make any agreement he considers expedient with the warden of any house of detention established under an Act of Parliament of Canada or of the Legislature". In view of the upcoming general

provincial elections in Quebec on 13 April 1981, the Director General of Elections of Quebec, on 11 March 1981, concluded an agreement pursuant to article 64 of the Election Act with representatives of the wardens of the provincial detention centres of Quebec concerning the voting of the detainees of provincial detention centres.

3.2 To enable the voting of detainees of federal penitentiaries in Quebec at general elections, an agreement similar to the one concluded between the wardens of provincial detention centres and the Director General of Elections of Quebec was required between the Solicitor General of Canada, as head of the federal penitentiary system, and the appropriate provincial authorities, in the specific case the Director of Elections of Quebec. The Director General of Elections of Quebec therefore contacted the Solicitor General's Office suggesting the conclusion of an administrative agreement concerning the voting of inmates of federal penitentiaries in the province of Quebec. In a letter dated 4 March 1981, the Solicitor General of Canada informed the Director General of Elections of Quebec of his decision not to conclude, for the time being, such an administrative agreement which would permit detainees in federal penitentiaries to vote in general provincial elections. He argued that that matter still required further study.

3.3 Prompted by this negative decision of the Solicitor General of Canada, the authors, on 26 March 1981, filed a request for a temporary injunction ("requête en injunction provisoire interlocutoire et pour une audience urgente"), on their own behalf and as authorized representatives of co-detainees, with the Federal Court of Canada, division of first instance, asserting that under the Election Act of Quebec they were fully entitled to vote in the forthcoming general election in Quebec. They claimed that the decision of the Solicitor General of Canada not to permit inmates of federal penitentiaries to vote in provincial general elections was discriminatory because it prevented them, as inmates of federal penitentiaries in Quebec, from casting their vote in the forthcoming general elections on 13 April 1981, while inmates of provincial detention centres were allowed to do so. In substantiation of their claim they referred to domestic laws in Canada ("Code civil" of Quebec (art. 18) and "Charte des droits et libertés de la personne" (art. 22)), as well as to international instruments which Canada had ratified, specifically the International Covenant on Civil and Political Rights, which provide for the enjoyment of the right to vote without discrimination. They requested, inter alia, that their right to vote be recognized and the Solicitor General of Canada be advised to stop obstructing the exercise of the applicants' right to vote, seeking prompt action by the court to ensure that the administrative arrangements for their full participation in the general elections of 13 April 1981 could be made in time.

3.4 On 30 March 1981, the authors' request for an injunction was rejected by the federal court of first instance, for reasons of "form" and of "substance". In his opinion on the rejection of the request the judge stated, inter alia, that the "right to vote" of detainees in federal penitentiaries was not contested in the decision of the Solicitor General which concerned the "exercise" of this right during detention, a condition which normally affected the civil rights of a person in certain respects. He also pointed out that the Election Act of Quebec, "dans sa forme et dans sans son esprit", acknowledged the necessity of an agreement ("entente") in order to allow inmates the exercise of the right to vote; such agreement could not be forced upon the Federal Government by provincial authorities.

3.5 The authors indicate that they did not appeal this decision before the Federal Court of Appeal. They claim that in the circumstances of their specific case a recourse would have proven totally useless and futile, because the deadline for

effective participation in the general elections in Quebec on 13 April 1981 expired the very day of the court of first instance's decision.

4.1 By a note dated 20 August 1982, the State party objected to the admissibility of the communication on the grounds that the authors had failed to exhaust domestic remedies as required by article 5, paragraph 2 (b), of the Optional Protocol; and that the communication was without object or moot and therefore inadmissible under article 1 of the Optional Protocol.

4.2 As regards the non-exhaustion of domestic remedies the State party argues that the authors, by seeking an interlocutory decision against the Solicitor General's negative reply, had chosen an inappropriate remedy and that instead they should have applied for a declaratory judgement as to their right to vote. The State party claims that such a declaration would have been an "effective and sufficient" remedy according to international jurisprudence and Canadian legal practice. The State party admits that it could be argued that there was not sufficient time to get a declaratory judgement before the Quebec provincial elections of 1981 were held and that therefore a declaration was not an effective remedy in regard to the present communication. The State party, however, argues that the real object of the communication is to assert the right of inmates in federal penitentiaries in relation to future elections (see para. 1 above) and therefore concludes that it was not "too late" for the authors to seek a declaration of their rights in the domestic courts to achieve this object of their claim. Consequently domestic remedies had not been exhausted.

4.3 The State party also argues that the authors, after the entry into force of the Canadian Charter of Rights and Freedoms on 17 April 1982, should have sought the remedy granted in section 24 (1) of the Charter whenever one of its substantive provisions is alleged to have been violated. Since the Charter recognizes the right to vote (sect. 3), the authors would have obtained full redress in respect of any future elections.

5.1 On 7 June 1983, the authors of the communication forwarded their comments in reply to the State party's submission under rule 91 of the provisional rules of procedure. They refute the State party's contention that the communication is inadmissible on grounds of non-exhaustion of domestic remedies and mootness of the object of the communication.

5.2 As regards the first the authors maintain that the period available was not long enough to allow them to have recourse to the remedy of a declaratory judgement before the elections of 13 April 1981. They submit that, after the elections, in the state of the law as it was before the adoption of section 3 of the Constitution Act of 1982, an action for a declaratory judgement did not constitute an effective and sufficient domestic remedy ensuring respect for their right to vote. They refer in this connection to Canadian jurisprudence in the case of John Ernest McCann et al. v. The Queen and Dragan Cernetic, head of a penitentiary institution in British Columbia, (1976) IC.F.570, concerning inmates' claims that they had been subjected to cruel and unusual punishment or treatment in a special unit of the prison. They argue that a declaratory judgement delivered by Judge Heald at first instance of the Federal Court of Canada on 30 December 1975 in favour of the inmates' claims did not relieve the prison situation, nor did it affect the treatment of prisoners in other Canadian institutions in the future. The authors conclude that this case shows that a declaratory judgement would be pointless in their case which is similar because execution of such judgement would depend entirely on the decisions of the Solicitor General.

5.3 Referring to the State party's argument that, since 17 April 1982 a remedy is available to the authors under sections 3 and 24 a/ of the Canadian Charter of Rights and Freedoms, the authors point out that, while "section 3 of the Charter recognizes the right of every Canadian citizen to vote, it is to be noted that the remedy provided for in section 24 is available to the victims of a violation for the purpose of obtaining redress". They stress "that this remedy would be available to them only if they were victims in the future of a further violation of their right to vote", adding that "the purpose of the present communication is to prevent such an occurrence, and there does not at present exist a domestic remedy that is effective and sufficient from the point of view of paragraph 2 (b) of article 5 of the Optional Protocol".

6.1 On 25 July 1983, the Committee declared the communication to be admissible. At the same time, however, it drew the attention of the State party concerned to rule 93 (4) of the Committee's provisional rules of procedure according to which a decision that a communication is admissible may be reviewed in the light of any pertinent information received at a later stage.

6.2 With regard to article 5, paragraph 2 (b), of the Optional Protocol the Committee observed that, although the authors might not have been able to obtain a declaratory judgement before the elections of 13 April 1981, a subsequent judgement could nevertheless in principle have been an effective remedy in the meaning contemplated by article 2, paragraph 3, of the Covenant and article 5, paragraph 2 (b), of the Optional Protocol. The Covenant provides that a remedy shall be granted whenever a violation of one of the rights guaranteed by it has occurred; consequently, it does not generally prescribe preventive protection, but confines itself to requiring effective redress ex post facto. However, the Committee was of the view that the Canadian Government had not shown that an action for a declaratory judgement would have constituted an effective remedy either with regard to the elections of 13 April 1981 or with regard to any future elections. On the basis of the Government's submission of 20 August 1982, it was not clear whether an action seeking to have declared unlawful the refusal of the competent prison authorities to let the alleged victims participate in the elections of 13 April 1981 would have been admissible. On the other hand, taking into account the authors' submission received on 7 June 1983, the Committee expressed doubt as to whether, and to what extent, executive authorities in Canada are bound to give effect to a declaratory judgement in similar circumstances arising in the future. Since it is incumbent on the State party concerned to prove the effectiveness of remedies the non-exhaustion of which it claims, the Committee concluded that article 5, paragraph 2 (b), of the Optional Protocol did not preclude the admissibility of the communication.

7.1 By a note dated 17 February 1984, the State party invoked rule 93 (4) of the Committee's provisional rules of procedure, which provides that "the Committee may review its decision that a communication is admissible in the light of any explanation or statements submitted by the State party pursuant to this rule". In doing so the State party specifically relied on that part of the Committee's decision on admissibility indicating the possibility of review.

7.2 Referring to the Committee's conclusion that the State party had not established that a declaratory judgement was an available domestic remedy in the circumstances of the case, the State party now submits, inter alia,

> "that an action seeking to have declared unlawful the refusal of the competent prison authorities to let the alleged victims participate in the election of

13 April 1981 would have been admissible in the Federal Court, Trial Division. ... In particular, Canada contends that the action would not have been dismissed on any of the following preliminary grounds:

"(i) that a declaration is not available against the Crown;

"(ii) that it would pertain to events concluded in the past, in regard to which no practical remedy or consequential relief was any longer available; or

"(iii) that it did not disclose a reasonable cause of action.

"In regard to (i), it is well established in Canadian law that a declaration may be granted against the Crown (The King v. Bradley; [1941] S.C.R. 270). The statutory basis for granting such a declaration is section 18 of the Federal Court Act, R.S.C. 1970 2nd Supp. c. 10, which reads as follows:

'18. The Trial Division has exclusive original jurisdiction

(a) to issue an injunction, writ of certiorari, writ of mandamus, or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada to obtain relief against a federal board, commission or other tribunal.'

"Indeed, in McCann v. The Queen, the case cited by the authors of this communication, a declaration was granted against the Crown.

"In regard to (ii), Canada notes that the fact that the declaration would pertain to events concluded in the past, in regard to which no practical remedy or consequential relief was any longer available, would not render an action for a declaration inadmissible. Again, the McCann case provides authority for this point. The plaintiffs in that case were no longer being held in solitary confinement units at the time that the court considered their case. Nevertheless, the declaration was not refused on the ground that it would be of no practical utility. Rather, Heald, J. noted that it would provide practical guidance for the future as to the acceptable nature of solitary confinement units. ...

"Similarly, in the present case, although it is too late to provide the authors of the communication with the opportunity to vote in the 1981 Quebec election, a declaration that the Solicitor General had acted illegally would certainly give him practical guidance as to the course he should take in regard to future Quebec elections.

"Canada also notes that in Solosky v. The Queen, [1980], 1 S.C.R. 821, the Supreme Court of Canada indicated at 830 that so long as a 'real issue' is involved, and particularly if it is an 'important' one, the courts should not dismiss applications for declarations on the ground that they are lacking in practical effect and are of a hypothetical or academic nature. ...

"In regard to (iii), the authors of the communication have submitted that 'after the elections, in the state of the law as it was before the adoption of section 3 of the Constitution Act of 1982, an action for a declaratory judgement did not constitute an effective and sufficient domestic remedy ensuring respect for their right to vote'. It is submitted on behalf of Canada that, although it is not possible to predict the outcome of an action for a declaration in the circumstances of this case, there would appear to be sufficient legal basis for the action that it would not be struck out by a court pursuant to Rule 419 (1) of the Federal Court Rules. ...

"As the Supreme Court of Canada has indicated in Attorney-General of Canada v. Inuit Tapirisat of Canada et al., [1980] 2 S.C.R. 735 at 740:

> 'On a motion to strike [pursuant to Rule 419 (1)] a court should, of course, dismiss the action or strike out any claim made by the plaintiff only in plain and obvious cases and where the Court is satisfied that "the case is beyond doubt" ...'."

7.3 The State party further submits

"that executive authorities are sufficiently bound to give effect to declaratory judgements in similar circumstances arising in the future for a declaration to constitute an effective and sufficient available domestic remedy in the circumstances of this case.

"The legal status of a declaration in Canada is as follows. A declaration is a statement of the law made by a judicial tribunal with authority to determine the nature of such law; it forms a binding precedent and, moreover, renders any issue determined by it res judicata (Canadian Warehousing Association v. The Queen [1969] S.C.R. 176). ...

"Although a declaration does not pronounce any direct sanction against a defendant if he or she fails to respect it, it is nevertheless a legal remedy of practical effectiveness in Canada. Indeed, one of the principal criteria taken into account by the courts in determining whether they have jurisdiction to grant a declaration is whether it would serve some practical use ... In particular, as pointed out by Canada in its previous submissions on the admissibility of this communication, it is an established practice in Canada that the Crown will treat a declaration as equivalent to a judgement of mandatory effect. As noted in The King v. Bradley, [1941] S.C.R. 270 at 276, 'The subject's right to relief is declared by the Court in full assurance that the Crown will give effect to the right so declared'. ...

"Indeed, it is therefore in regard to the Crown that declarations are regarded as especially useful and effective remedies. Thus, in Gruen Watch Co. v. A.G. of Canada, [1950] O.R. 429, McRuer, C.J.H.C. said the following at 450:

> 'This peculiar right of recourse to the Courts (the declaratory order) is a valuable safeguard for the subject against any arbitrary attempt to exercise administrative power not authorized by statute, and judges ought not to be reluctant to exercise the discretion in them where a declaration will afford some protection to the subject against the invasion of his rights by unlawful administrative action.'"

7.4 In response to the allegation of the authors that the declaration granted in the McCann case was not given practical effect by the Crown, and that therefore a declaration is not an effective remedy in Canada, at least in so far as it pertains to the Solicitor General, Canada makes the following observations:

"(i) In the McCann case, Heald, J. declined to grant a declaration that the Penitentiary Service Regulation authorizing the imposition of solitary confinement was invalid pursuant to the Canadian Bill of Rights as authorizing cruel and unusual punishment. Rather, he found that the particular conditions in the specific solitary confinement units in which the plaintiffs had been held were contrary to the Canadian Bill of Rights. Therefore, the fact that there are still solitary confinement units of a different character in other federal penitentiaries does not indicate that the Crown does not respect the rights set forth in declarations. Indeed, it notes that the reason the correction unit in which the plaintiffs had been held was closed for four months (as indicated in the submission of the authors of the communication) was to correct conditions so as to ensure that they complied with the declaration granted in the McCann case.

"(ii) There were many factors that Heald, J. took into account in determining that the conditions in the solitary confinement units in which the plaintiffs had been held constituted cruel and unusual punishment, including such matters as the size of the cells, their inadequate ventilation, the insufficient time available to inmates for outdoor exercise, and more guards being involved in 'skin frisks' than was necessary (at 601-04). These are all factors which involve a matter of degree, and it is therefore inevitable that controversy will arise as to whether subsequent conditions in these units changed sufficiently for there to have been compliance with the declaration. This complicating factor would not arise in regard to the issue of whether there had been compliance with a declaration that prison inmates had been improperly denied the means of exercising their right to vote in a Quebec general election.

"If a declaration were granted in this case, it would pertain to events in the past in regard to which there is no consequential relief or practical remedy presently available. However, the power of a declaration does not lie in any sanction it pronounces against the defendant, but rather, in the circumstances of this case, in the respect the Crown necessarily has for binding statements of the law made by the judiciary. It therefore by no means follows that such a declaration would be devoid of practical effect. Indeed, as indicated above, the declaration in the McCann case pertained to past events, but it was nevertheless granted by the court because of the practical guidance it would provide for conduct in the future .... Similarly, in the Solosky case it was assumed by the Supreme Court of Canada that if a declaration relating to future events were granted against the Crown, it would be of practical effect. Certainly in the present case Canada can assure the Human Rights Committee that if a final declaratory judgement were granted that the Solicitor General had acted illegally in not taking the steps necessary to permit inmates in federal penitentiaries to vote in the Quebec general election of 13 April 1981, such steps would be taken by him or her in regard to future Quebec general elections as a necessary consequence of the declaratory judgement."

7.5 The State party "reiterates its claim that the present communication is inadmissible because of the failure of its authors to exhaust all available domestic remedies, and requests the Human Rights Committee to reconsider its decision on the admissibility of this communication. There are in fact two remedies available to the authors that have not been exhausted by them:

"(i) The authors failed to seek a declaration that their rights had been violated in the circumstances of the Quebec election of 13 April 1981. An action for such a declaration would be admissible in the Canadian courts, and, if granted, would have a practical effect on the future course of conduct of Canadian authorities.

"(ii) The authors failed to seek a declaration to the effect that in upcoming Quebec elections it would be contrary to section 3 of the Canadian Charter of Rights and Freedoms for the Solicitor General not to take the steps necessary to enable them to vote in such elections. Section 24 of the Charter has been so interpreted as to extend to prospective infringements or denials of Charter rights as well as to the past. It is therefore submitted that an action for such a declaration was available to the authors, and moreover would have constituted an acceptable ex post facto remedy for their complaint."

8.1 The State party also submits extensive explanations and statements on the substance of the matter, and argues that

"it has not violated its obligations pursuant to article 2 (1) and 2 (3) (b) of the International Covenant on Civil and Political Rights to respect the rights set forth in article 25 (b) of the Covenant. In particular, Canada submits that the refusal of the Solicitor General to take steps to enable inmates in federal penitentiaries to vote in the Quebec general election of 13 April 1981, did not constitute an unreasonable restriction upon their rights as set forth in article 25 (b) for the following reasons:

"(i) Because of the substantial administrative problems involved in enabling inmates in federal penitentiaries to vote in general elections, it was not unreasonable to deprive them of the opportunity to vote in the Quebec election held on 13 April 1981.

"(ii) It is not unreasonable to withhold the right to vote in general elections from people who have engaged in criminal misconduct sufficiently serious to justify their detention in a federal penitentiary."

9. The deadline for the presentation of the authors' comments on the State party's submission under article 4, paragraph 2, expired on 10 July 1984, during the Committee's twenty-second session. Because of the complexity of the subject-matter, the Committee deferred review of the admissibility of the case until its twenty-third session and, again, until its twenty-fourth session. No comments have been received from the authors.

10.1 Pursuant to rule 93, paragraph 4, of its provisional rules of procedure the Human Rights Committee has reviewed its decision on admissibility of 25 July 1983. On the basis of the additional information provided by the Canadian Government, the Committee concludes that the authors could have obtained redress for the violation complained of by seeking a declaratory judgement. The Committee has stressed in

other cases that remedies the availability of which is not reasonably evident cannot be invoked by the Government to the detriment of the author in proceedings under the Optional Protocol. According to the detailed explanations contained in the submission of 17 February 1984, however, the legal position appears to be sufficiently clear in that the specific remedy of a declaratory judgement was available and, if granted, would have been an effective remedy against the authorities concerned. In drawing this conclusion, the Committee also takes note of the fact that the authors were represented by legal counsel.

10.2 Given the availability of a declaratory judgement as shown by the State party concerned, the Committee does not feel it necessary to deal with the question as to whether a domestic remedy such as the one provided for in section 24 (1) of the Canadian Charter of Rights and Freedoms, which was established after the submission of a communication to the Human Rights Committee, needs to be resorted to in order to comply with the requirements set forth in article 5, paragraph 2 (b), of the Optional Protocol.

11. In the light of the above considerations, the Committee finds that it is precluded under article 5, paragraph 2 (b), of the Optional Protocol from considering the merits of the case and decides:

1. The decision of 25 July 1983 is set aside.

2. The communication is inadmissible.

Notes

a/ Section 24 (1) provides for remedies when a provision of the Charter is violated:

> "Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances."

ANNEX XVI

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights - twenty-fourth session

concerning

Communication No. 178/1984

Submitted by: J. D. B. [name deleted]

Alleged victim: J. D. B.

State party concerned: the Netherlands

Date of communication: June 1984

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

Meeting on 26 March 1985,

adopts the following:

Decision on admissibility

1. The author of the communication, dated June 1984, is J. D. B., a Dutch citizen living in the Netherlands. He claims to be the victim of a violation by the Dutch Government of article 26 of the International Covenant on Civil and Political Rights.

2.1 He describes the facts of the case as follows: He has been trained as a radio- and TV-repairman, but does not have a licence from the Chamber of Commerce. As he has been unemployed for a long period of time, he has endeavoured to maintain his working capacity by taking on occasional jobs as a TV-repairman. Because of this activity, however, he has been subjected to criminal prosecution before the Appellate Court of Arnhem, which rendered a judgement against him on 13 October 1983 and fined him 300 Dutch Guilders. This judgement was upheld by the Supreme Court of the Netherlands on 8 May 1984.

2.2 The author considers himself to be discriminated against by Dutch legislation which prevents him from gainful employment and which punishes him for seeking an alternative to being unemployed. In this connection he also refers to article 6 of the International Covenant on Economic, Social and Cultural Rights, which guarantees the right to work.

2.3 Since final judgement has been rendered by the Supreme Court of the Netherlands the author contends that all domestic legal remedies have been exhausted. He also states that the same matter has not been submitted for examination to another procedure of international investigation or settlement.

3. Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is inadmissible under the Optional Protocol to the Covenant.

4. The Human Rights Committee, after careful examination of the communication, concludes that no facts have been submitted in substantiation of the author's claim that he is a victim of a violation of any of the rights guaranteed by the International Covenant on Civil and Political Rights.

5. The Human Rights Committee therefore decides:

The communication is inadmissible.

ANNEX XVII

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights - twenty-fourth session

concerning

Communication No. 183/1984

Submitted by: D. F. [name deleted]

Alleged victims: D. F. et al.

State party concerned: Sweden

Date of communication: 9 April 1984 (date of initial letter)

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

Meeting on 26 March 1985,

adopts the following:

Decision on admissibility

1.1 The author of the communication dated 9 April 1984, D. F., is a Swedish citizen, born in Austria on 23 April 1942. He claims to submit the communication on his own behalf and, it appears, on behalf of Arabs and Muslims (not further specified) who allegedly have constantly been the targets of discrimination and abuse in Sweden. The author submits that his communication reveals breaches by Sweden of the following articles of the International Covenant on Civil and Political Rights: article 2, paragraph 1, article 5, paragraph 1, article 7, article 14, paragraphs 1, 2, 3 (d), (e) and (g), article 15, paragraph 1, article 17, article 25 (a) and article 26.

1.2 As to steps taken to exhaust domestic remedies the author submits the text of a reply addressed to him on 12 July 1983 by the Office of the Attorney-General, in response to his request that the Attorney-General bring to trial those responsible for a cartoon which appeared in a Stockholm newspaper and which the author considered to reveal racial hatred against Arabs. The reply informed D. F. that the Attorney-General did not intend to take any action on the basis of his complaint.

2. As it is obliged to do, under article 5, paragraph 2, (a), of the Optional Protocol, the Human Rights Committee has ascertained that D. F. has also filed an application with the European Commission of Human Rights, which is pending for consideration before that body.

3. The Human Rights Committee has carefully reviewed the communication submitted by D. F., including a dossier of various enclosures purporting to substantiate his

claims. Apart from being barred from considering a communication, if the same matter is being examined under another procedure of international investigation or settlement (art. 5, para. 2 (a), of the Optional Protocol), such as the procedure implemented by the European Commission of Human Rights, the Human Rights Committee has reached the conclusion that the communication does not in any manner substantiate the author's claim that he is personally a victim of any alleged violation of the International Covenant on Civil and Political Rights. In addition, the communication does not reveal that the author has any authority to speak on behalf of other persons, whose rights he purports to protect.

4. As the communication fails to fulfil the requirements of articles 2 and 5, paragraph 2 (a), of the Optional Protocol, the Human Rights Committee decides:

The communication is inadmissible.

ANNEX XVIII

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights - twenty-fourth session

concerning

Communication No. 187/1985

Submitted by: J. H.

Alleged victims: (In general, English-speaking members of the Canadian Armed Forces)

State party concerned: Canada

Date of communication: 1 February 1985

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

Meeting on 12 April 1985,

adopts the following:

Decision on admissibility

1. The author of the communication dated 1 February 1985 is J. H., a Canadian national and retired member of the Canadian Armed Forces, living in Ontario, Canada. He alleges that promotion policies in the Canadian Armed Forces are discriminatory and constitute a violation by Canada of article 2, paragraph 1, of the International Covenant on Civil and Political Rights.

2.1 It is alleged that Administrative Order 11-6 (1972) of the Canadian Armed Forces, which provides for an increased percentage of officers and soldiers of French mother tongue, has resulted in discrimination on the basis of language, tantamount to a form of racial discrimination, since English- and French-speaking persons in Canada are of two different ethnic origins. It is alleged that persons of French mother tongue are preferred for promotion within all ranks of the Armed Forces, to the corresponding disadvantage of persons of English mother tongue.

2.2 In late 1978, shortly before his retirement in April 1979, the author, who is of English mother tongue, began his endeavours to point out what he considered to be the linguistic and racial discrimination being practised in the promotion policy of the Canadian Armed Forces. He wrote letters to several opposition Members of Parliament and to two successive Ministers of National Defence. In June 1980 he filed a complaint with the Canadian Human Rights Commission (a statutory body created by federal legislation to administer the Canadian Human Rights Act).

2.3 In 1984, a new administrative order was promulgated (2-15 of 29 June 1984), under which "mother tongue" was no longer to be used to determine the participation ratio of English- and French-speaking members of the Canadian Armed Forces. The

reference to "mother tongue" was replaced by "first official language". The author submits that the change was intended to answer the criticism of the prevailing promotion policy. He asserts, however, that the change was only cosmetic and that the same promotion policy continues to be applied today and that the only difference is the manner in which the English and French language and origin are defined.

2.4 As a result of the reworded promotion policy, the Canadian Human Rights Commission felt that there were no longer any grounds for potential ethnic or racial discrimination and informed the author that it would not make a decision in the complaint brought by him. J. H. points out in this connection that there is no legislation in Canada prohibiting discrimination on the basis of language (neither the Charter of Rights and Freedoms, part of the Canadian Constitution, nor the Canadian Human Rights Act includes linguistic discrimination as a prohibited practice). He further submits that the conclusion of the Canadian Human Rights Commission to the effect that there was no discrimination is not a "decision" on which an appeal to the courts could be made. He finally mentions that further correspondence with Members of Parliament and other persons in positions of authority have produced no results.

2.5 There is no specific indication in the communication that the author has himself been adversely affected by the policy which he complains about. He requests that his complaint be examined and that the Government of Canada be advised "that it is actually discriminating against English-speaking Canadians in implementing its incentive programmes to assist French-speaking Canadians".

3. Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.1 The Committee notes that articles 1 and 2 of the Optional Protocol require that the author of a communication must himself claim, in a substantiated manner, that he is or has been a victim of a violation by the State party concerned of any of the rights set forth in the Covenant. It is not the task of the Human Rights Committee, acting under the Optional Protocol, to review in abstracto national legislation or practices as to their compliance with obligations imposed by the Covenant.

4.2 The author of the present communication has not put forward any facts to indicate that he has himself been a victim of discrimination in violation of the provisions of the Covenant. An allegation to the effect that past or present promotion policies are generally to the detriment of English-speaking members of the Canadian Armed Forces is not sufficient in this respect. The Committee, accordingly, concludes that the author has not shown that he has a claim under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

The communication is inadmissible.

ANNEX XIX

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights - twenty-fifth session

concerning

Communication No. 168/1984

Submitted by: V. Ø. [name deleted]

Alleged victim: The author

State party concerned: Norway

Date of communication: 27 March 1984

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

Meeting on 17 July 1985,

adopts the following:

Decision on admissibility a/

1. The author of the communication (initial letter dated 27 March 1984 and subsequent letters of 1 July and 27 September 1984 and 17 March 1985) is V. O., a Norwegian national living in Norway. He claims that, with regard to the custody of his daughter by marriage, one-sided and biased decisions in divorce proceedings conducted before Norwegian courts make him a victim of violations of various provisions of the International Covenant on Civil and Political Rights.

2.1 The author describes the facts as follows: In August 1976 his marriage broke up and his wife returned to her home country, Sweden, together with their daughter (born in August 1975). The author initiated divorce proceedings in Norway and, on 26 November 1979, the District Court pronounced the divorce and granted custody of the child to the mother and visiting rights to the father. It is alleged that the mother has denied to the author the right of orderly contacts with his daughter. The author appealed the question of custody to the Court of Appeal which, on 23 April 1982, decided that custody of the child should remain with the mother. The Court of Appeal also granted visiting rights to the father and laid down detailed rules as to when and how visits should take place both in Sweden and in Norway. The Court emphasized in that connection the mother's special responsibility for ensuring the effective enjoyment of visiting rights. As a result of continued non-compliance by the mother, the author applied for leave to appeal to the Supreme Court of Norway and presented in that connection additional evidence concerning the constant refusal of the mother to honour his visiting rights. On 6 October 1982, the Appeals Committee of the Supreme Court decided that leave to appeal should not be granted. The author contends that domestic remedies have therefore been exhausted.

2.2 The author alleges that as a result of these court decisions a de facto separation between himself and his daughter has taken place. He contends that the court decisions were ill-founded since they were based on the unreasonable assumption that the mother would somehow co-operate while the issue of continuous obstruction of the visiting rights was allegedly never properly considered by the Court of Appeal. The author claims that, by not granting leave to appeal, the Supreme Court has in effect sanctioned a decision of the Court of Appeal which allegedly runs counter to the Supreme Court's own decision in another case. He adds that for all practical purposes it is impossible in Norway to enforce visiting rights if the parent who has custody of the child does not co-operate. He claims that the present state of affairs makes him a victim of violations of articles 3, 14, 17, paragraph 1, 23, paragraphs 1 and 4, and 26 of the International Covenant on Civil and Political Rights.

2.3 On 20 November 1982, the author submitted an application to the European Commission of Human Rights, claiming to be a victim of violations by Norway of various provisions of the European Convention on Human Rights, including article 6 (1), because he allegedly did not get a fair hearing with regard to the court decisions concerning the custody of his daughter; article 8 (1), because his right to respect for his family life was allegedly violated by the same court decisions; and article 14, because he has allegedly been discriminated against by reasons of sex, considering that the Supreme Court, allegedly in a similar case, had transferred custody of a child to a mother from a recalcitrant father. As far as can be seen, the facts, in so far as they concern the above allegations of violations of the provisions of the European Convention on Human Rights, are the same as those presented by the author to the Human Rights Committee in substantiation of his claim that he is a victim of violations of articles 14, paragraph 1, 17, paragraph 1 and 26 of the International Covenant on Civil and Political Rights.

2.4 The European Commission of Human Rights decided on 15 March 1984 that the application was inadmissible. In a detailed decision (19 pages) it found that the allegations of violations of article 6 (1), both as regards to the right to a fair hearing and the right to determination "within a reasonable time", of article 8 concerning the right to respect for family life and of article 14 prohibiting discrimination on any ground, including the ground of sex, were manifestly ill-founded on all accounts.

2.5 With regard to his prior application to the European Commission of Human Rights, the author submits in his communication to the Human Rights Committee, (a) that the European Commission focused mainly on the question of the alleged tardiness of the court procedures, to the detriment of the main issues complained of and (b) that the provisions of the European Convention invoked before the European Commission of Human Rights differ in several areas from those of the Covenant invoked in the present communication to the Human Rights Committee. He maintains that the relevant provisions of the Covenant are better suited to protect his rights in the matter complained of than those earlier invoked before the European Commission of Human Rights.

2.6 In the author's subsequent submission of 1 July 1984 he further explained that his application to the Human Rights Committee is no "appeal" over the decision by the European Commission, but concerns only the Norwegian court decision. "The European Convention for the Protection of Human Rights and Fundamental Freedoms, article 6, reads that 'everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'. It

follows from this that the European Convention has a limited mandate with respect to the issue of equality before the law. Furthermore, the European Convention does not cover the areas, which come under articles 23 and 26 of the Covenant. Thus, in the case of the applicant the International Covenant is of considerably more interest than the European Convention."

2.7 The author further argues that "the same matter has not already been properly examined under any other procedures of international investigation or settlement. Certainly, the same matter has not been examined anywhere with regard to the International Covenant, articles 3, 14, 23 and 26."

2.8 On 27 September 1984, the author forwarded to the Committee a copy of the decision of the European Commission of Human Rights dated 15 March 1984, which he claims contains false allegations, unfair assumptions and ill-founded conclusions.

3. By its decision of 2 November 1984, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of admissibility of the communication in so far as it may raise issues under article 23, paragraphs 1 and 4, of the Covenant.

4.1 In its submission dated 27 February 1985, the State party restated the facts and examined at length the proceedings before the European Commission of Human Rights. In this connection the State party specifically indicated that when ratifying the Optional Protocol Norway entered a reservation to article 5 (2) "to the effect that the Committee shall not have competence to consider a communication from an individual if the same matter has already been examined under other procedures of international investigation or settlement". Thus, whereas article 5, paragraph 2 (a), of the Protocol precludes simultaneous consideration of the "same matter" by the Committee and another international instance, the reservation sets forth the principle of non bis in idem.

4.2 The State party argues that its reservation under article 5, paragraph 2 (a), is applicable in the present case, because the European Commission "has clearly examined the application lodged at the European level ... all aspects of the case were considered, and the Commission then declared it inadmissible as manifestly ill-founded with the meaning of article 27 (2). This involves an examination of the substance of the application." Moreover, a comparison of the author's application submitted to the European Commission on 19 November 1982 with his communication to the Human Rights Committee, dated 27 March 1984, shows that "the two letters are almost identical", since they refer to the same facts, no new events being submitted to the Committee, and because the legal arguments in the two proceedings are the same.

4.3 With respect to the provisions invoked by the author before the European Commission and the Human Rights Committee, the State party advances various arguments designed to show that although the European Convention does not contain a provision identical to article 23, paragraphs 1 and 4, of the Covenant, various articles in the European Convention - notably articles 8 and 12, in conjunction with article 14 - offer in substance the same protection. It also contends that article 6 of the European Convention is comparable, for the purposes of passing upon the facts of the present case, to article 14 of the Covenant, notwithstanding the absence in the latter of the requirement that a fair hearing be "within a reasonable time".

4.4 The Committee notes that the Norwegian reservation to article 5, paragraph 2, of the Optional Protocol stipulates that the Committee shall lack competence to consider a communication if "the same matter" has already been examined under other international procedures. This phrase in the view of the Committee refers, with regard to identical parties, to the complaints advanced and facts adduced in support of them. Thus the Committee finds that the matter that is before the Committee now is in fact the same matter that was examined by the European Commission. While fully understanding the circumstances which have led the author to make a communication under the Covenant, the Committee finds that the State party's reservation operates to preclude it from examining the communication.

5. The Human Rights Committee therefore decides:

The communication is inadmissible.

Notes

a/ Pursuant to rule 85 of the Committee's provisional rules of procedure, Mr. Torkel Opsahl did not participate in the consideration of this communication or in the adoption of this decision on admissibility.

ANNEX XX

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights - twenty-fifth session

concerning

Communication No. 175/1984

Submitted by: N. B. [name deleted]

Alleged victim: N. B.

State party concerned: Sweden

Date of communication: 21 March 1984

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

Meeting on 11 July 1985,

adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 21 March 1984 and further letters dated 9 July and 28 November 1984 and 15 February 1985) is N. B., an Argentinian national who enjoyed political asylum in Sweden from 1978 to 1984. He has now returned to Argentina. While in Sweden he married an Argentinian woman with whom he already had two children. Divorce proceedings were initiated in December 1981 and custody of the children was awarded to the mother.

2.1 The author lodges his complaint against Swedish authorities, who allegedly conspired to ruin his family life because they did not like his political ideas, claiming that on three occasions his two children were "kidnapped" by the authorities. He gives the following details:

- In January 1980, the social welfare service in Malmö, Sweden, without a judicial order, allegedly "obliged" his wife and children to leave their home. They were allegedly kept 25 days in a hotel. The author sees this event as an arbitrary and illegal interference in his private life.

- In 1981 the author and his family travelled to Spain. The author's intention was to request asylum at the UNHCR office in Spain in order not to live any longer in Sweden. On 20 October 1981 his family allegedly "disappeared" while staying at the office of the Red Cross in Barcelona. The author believes that they were kidnapped by an ex-policeman from Argentina (name is given) who took them back to Sweden.

- In Malmö they were put under the supervision of the Swedish welfare service. The author alleges that this second event amounts to violations of articles 17, paragraphs 1 and 2, 23, paragraphs 1 and 4, and 24, paragraph 1, of the Covenant. He further alleges that in 1982, despite an interim court decision stipulating that he could see his children for two hours every 15 days, the local Swedish welfare service never allowed him to do so.

- On 16 September 1983, the tribunal in charge of the divorce proceedings decided to give the children's custody exclusively to their mother. On 21 December 1983 the author took his two children to the Argentinian Embassy in Denmark. There he renounced his status as political refugee in Sweden and requested to be sent back with his children to Argentina. He alleges that the same day his children were "kidnapped" by the Swedish police, taken from the Embassy in Denmark and returned to Sweden, where they are at present living.

2.2 On 22 December 1983, the author was arrested by the Danish police and extradited to Sweden. There he allegedly remained incommunicado for 15 days without any judicial order. He was tried at first instance and sentenced to four months of imprisonment for acting in an unlawful and arbitrary manner in relation to his children. Article 14, paragraph 3 (a), (c) and (e), of the Covenant was allegedly disregarded, but no further details are given, in that respect. On 8 May 1984, on appeal, the Court of Trelleborg confirmed the judgement of first instance and ordered that the author be expelled from Sweden and excluded from re-entering the country at any time before 1 May 1987. The decision was allegedly taken in violation of the following articles of the Covenant:

- of article 2, paragraph 3 (a), (b), and (c), because the author was allegedly denied an effective remedy;

- of article 16 because he was allegedly not recognized as a person before the law;

- of article 14, paragraph 3 (d), because he was allegedly obliged against his will to choose an ex officio lawyer;

- of article 14 paragraph 3 (e), no details are given.

The author adds that his ex officio lawyer refused to appeal against the expulsion order.

3. By its decision of 16 October 1984, the Working Group of 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.

4.1 Apart from disputing the author's description of the facts and rejecting the allegations as unfounded, the State party in its rule 91 submission, dated 14 January 1985 objects to the admissibility of the communication on the ground that the author has failed to exhaust domestic remedies with respect to decisions made by the Swedish Courts and other authorities. The State party summarizes the facts as follows:

N. B. and S. C. arrived in Sweden in 1978 from Argentina as political refugees together with their children, N. J. and S. V., who were minors. After a short time problems arose in the relations between the couple and S. C. wanted them to separate. She "disappeared" together with the children on one occasion in January 1980, staying with the children at a hotel.

Despite the dissension between the parties, S. C. and N. B. married in April 1980. On 14 December 1981, the wife, however, applied to the District Court of Malmö (Malmö tingsrätt) for a divorce. On 2 February 1982, the Court issued a provisional order that the mother should have the custody of the children and that the father was to have the right to see them once a fortnight at the office of the Malmö social welfare service in the presence of social welfare personnel. However, on some occasions, the mother did not allow the children to see their father.

In this situation the Administrative Court of the Province of Malmö, considering that the wife had no acceptable grounds for her refusal, ordered her in its ruling of 12 October 1982, to bring the children to see their father in accordance with the order issued by the Malmö District Court in its ruling of 2 February 1982.

On 19 October 1982, the Malmö District Court granted the application for the divorce of the spouses. As no appeal was lodged, the Court's ruling gained legal force. Later on, in a ruling issued on 16 September 1983, the Court ordered that the mother be given the custody of the children, as N. B. had consented to her claim in that respect. This ruling against which no appeal was lodged also gained legal force.

Following an agreement between the mother and N. B., the father collected the children at Trelleborg on 20 December 1983 in order to have them with him for part of the Christmas holiday. The children were to be returned to their mother on 25 December 1983. However, N. B. took the children with him to Denmark, where he went to the Embassy of Argentina there, with a view to obtaining visas for his children to travel to Argentina. The Embassy informed the mother about this request, since she had the custody of the children under the Court ruling. The mother reported this to the police authorities in Sweden who contacted the Danish police.

On 22 December 1983, N. B. was arrested by the Danish police. On the following day he was remanded in custody by a decision of the District Court of Copenhagen. He was extradited to Sweden on 1 February 1984 and on 2 February 1984 - a detention order was issued by the District Court of Trelleborg. On 15 February 1984, N. B. was sentenced to four months' imprisonment for having committed child abduction in a manner considered as grave.

The District Court also decided that the time during which N. B. had been deprived of liberty (as from 22 December 1983; 55 days) was to be deducted from the term of imprisonment. The Prosecutor's petition that N. B. be expelled from Sweden was dismissed by the District Court.

However, the Prosecutor appealed against this judgement to the Court of Appeal of the Province of Skane and Blekinge. The Court of Appeal confirmed the judgement of the District Court as to the sentence and also granted the Prosecutor's petition for expulsion. N. B. did not appeal against this judgement to the Supreme Court, a course he was entitled to take. Consequently, the judgement of the Court of Appeal gained legal force.

4.2 As regards the author's assertion that the Swedish welfare service had obliged the mother and her children to leave their and N. B.'s home in January 1980, the State party contends that the real situation was that the mother had left the home on her own initiative due to dissension between her and N. B. and had been staying for some time with the children at a hotel. The Swedish authorities had certainly not obliged the mother to act in this way. Moreover, the Swedish authorities had made considerable efforts to persuade the mother to let the children see their father. It was thus not the authorities but the mother who did not allow the children to see their father. In that situation the Administrative Court of the Province of Malmö ordered the mother to give N. B. access to his children.

With regard to N. B.'s arrest in Denmark on 22 December 1983, it should be noted that he was detained by a Danish Court on 23 December 1983. Thus, there was an appropriate judicial order effective already on the day after the arrest. After N. B.'s extradition to Sweden on 1 February 1984, he was immediately - on 2 February - brought before a Swedish judge (the District Court of Trelleborg). It should be noted that N. B. had the possibility to appeal against the detention order at all times, but he did not.

4.3 As regards the expulsion of N. B. from Sweden, the State party recalls in the first place that he did not appeal to the Supreme Court against the judgement of the Court of Appeal, and furthermore, that it is possible in Sweden to appeal through administrative channels against the actual enforcement of an expulsion order. The State party notes in this context that N. B. had stated in writing that he was no longer a political refugee.

5.1 In his further letters of 28 November 1984 and 15 February 1985, the author contends that the reason why the Swedish welfare service allegedly violated his rights "was to destroy me as a political agent and the purpose of prohibiting me from living with or even seeing my own children was to attempt, through constant mental torture, to 'neutralize' my political activities and to prevent me from following my usual, human approach of always trying to solve mankind's problems and of fighting for the right of all persons to live a better life."

5.2 The author also encloses a statement signed by two Swedish social workers, indicating that they assisted the author's ex-wife to settle in Trelleborg, away from him. The social workers describe the reason for the separation in detail: the wife believed that her husband suffered from an acute persecution complex, which had worsened since 1981; she allegedly endured physical abuse from her husband and feared for her safety. The author rejects the social workers' description which, he claims, depicted him as being mentally ill.

6. Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7. The Human Rights Committee has carefully reviewed the Communication submitted by N. B., including the supporting documentation, and finds that the author has failed to exhaust domestic remedies that were available to him under Swedish law.

8. As the communication fails to fulfil the requirements of article 2 and article 5, paragraph 2 (b), of the Optional Protocol, the Human Rights Committee decides:

The communication is inadmissible.

ANNEX XXI

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights - twenty-fifth session

concerning

Communication No. 185/1984

Submitted by: L. T. K. [name deleted]

Alleged victim: L. T. K.

State party concerned: Finland

Date of communication: Undated, received on 18 October 1984

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

Meeting on 9 July 1985,

adopts the following:

Decision on admissibility

1. The author of the communication (undated), received on 18 October 1984, is L. T. K., a Finnish citizen residing in Finland. He claims to be a victim of a breach by Finland of articles 18 and 19 of the International Covenant on Civil and Political Rights, stating that his status as conscientious objector to military service has not been recognized in Finland and that he has been criminally prosecuted because of his refusal to perform military service.

2.1 The facts, which are not in dispute, are described by the author and the State party as follows: On 25 April 1982, L. T. K. informed the competent authorities that, for serious moral considerations based on his ethical convictions, he was unable to perform military service. Instead of military service, armed or unarmed, he offered to do alternative service. On 22 October 1982, the Military Service Examining Board decided that it had not been proved that serious moral considerations based on an ethical conviction prevented the author from performing armed or unarmed military service and ordered that he should perform armed service. The author appealed to the Ministry of Justice, which by a decision of 21 January 1983, ordered him to perform unarmed military service. On 10 June 1983, he was called up for service. Upon arrival at his assigned military unit the author refused to perform any military service. Court proceedings were initiated against him and the Valkeala District Court sentenced him on 9 August 1983 to nine months' imprisonment for refusal to perform compulsory military service. The author then appealed to the Kouvola Court of Appeal, which upheld the decision of the District Court on 11 September 1984. The Supreme Court rejected his application for permission to appeal on 30 November 1984.

2.2 In the meantime, the author had again, on 20 February and 10 June 1983, informed the authorities of his ethical convictions and of his desire to perform only alternative service. The Examining Board, however, decided on 1 July 1983 that it had not received sufficient proof of his convictions. The author then appealed to the Ministry of Justice, which again ordered him, on 13 September 1983, to perform unarmed service. An application was filed by the author with the Supreme Administrative Court, alleging that a procedural fault had been made by the Military Service Examining Board. On 6 June 1984, the Supreme Administrative Court declared the application inadmissible and referred the matter to the Ministry of Justice, where it is pending for consideration.

2.3 On 16 September 1983, the author became 30 years old. Paragraph 2 of article 3 of the Unarmed and Alternative Service Act No. 132/69 provides that a man who has been ordered to perform unarmed military service or alternative service and has not entered the service before reaching the age of 30 is thereafter not obligated to do so. As a consequence, after a person has reached the age of 30, ethical conviction cannot be examined by the Military Service Examining Board or by any other public authority.

3.1 The author further argues that the application of an age limit to alternative service now prevents him from substituting military service by alternative service and makes him a victim of discrimination on the basis of age. If, however, the Examining Board would re-examine his case and recognize his ethical convictions, he believes that he would be pardoned.

3.2 The author states that his case has not been submitted to another procedure of international investigation or settlement.

4.1 By its decision of 22 October 1984, the Working Group of 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. The State party was also requested to provide the Committee with copies of any court orders or decisions relevant to this case.

4.2 In its reply, dated 28 January 1985, the State party did not raise objections to the admissibility of the communication. It indicated specifically that the author had exhausted available domestic remedies in the matter complained of, as required under article 5, paragraph 2 (b), of the Optional Protocol. As requested, the State party provided the Committee with copies of the relevant administrative and judicial decisions.

4.3 With regard to the question of exhaustion of domestic remedies, the State party observed, inter alia:

> "As regards the prison sentence passed by the Valkeala District Court, L. T. K. has exhausted all available domestic remedies. He could still seek the annulment of the court decision by bringing the case to the Supreme Court but, taking into account that the Supreme Court has already once considered the case, this extraordinary remedy is unlikely to be effective. ...
>
> "Article 5 of the Unarmed and Alternative Service Act No. 132/69 provides that an order to perform such service is given by the Military Service Examining Board. According to article 6 of the Act the order can be appealed to the Ministry of Justice. A decision by the Ministry is not subject to

appeal, which must be stated in the decision. Such a statement appeared in the texts of the Ministry's decisions of 21 January 1983 and 13 September 1983. Consequently L. T. K. had no further ordinary remedies available. According to the Act on Extraordinary Remedies in Administrative Affairs No. 200/66 L. T. K. could still have sought the annulment of the Ministry's decision and thereby brought about a change in his situation. The alleged procedural fault by the Examining Board, referred to the Ministry of Justice by the Supreme [Administrative] Court, is pending. It would, however, seem unreasonable to require that these extraordinary remedies be taken into account when considering the question of admissibility under article 5 (2) of the Optional Protocol. The conclusion, therefore, is that all available domestic remedies within the meaning of article 5 (2) (b) of the Optional Protocol have been exhausted with respect to the decisions by the Military Service Examining Board."

5.1 Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Human Rights Committee observes in this connection that, according to the author's own account he was not prosecuted and sentenced because of his beliefs or opinions as such, but because he refused to perform military service. The Covenant does not provide for the right to conscientious objection; neither article 18 nor article 19 of the Covenant, especially taking into account paragraph 3 (c) (ii) of article 8, can be construed as implying that right. The author does not claim that there were any procedural defects in the judicial proceedings against him, which themselves could have constituted a violation of any of the provisions of the Covenant, or that he was sentenced contrary to law.

6. The Human Rights Committee, after careful examination of the communication, concludes that the facts which have been submitted by the author in substantiation of his claim do not raise an issue under any of the provisions of the International Covenant on Civil and Political Rights. Accordingly, the claim is incompatible with the provisions of the Covenant.

7. The Human Rights Committee therefore decides:

The communication is inadmissible.

ANNEX XXII

List of Committee documents issued

A. Twenty-third session

CCPR/C/10/Add.12	Supplementary report of the Gambia
CCPR/C/28/Add.4	Second periodic report of the Byelorussian Soviet Socialist Republic
CCPR/C/32/Add.3	Second periodic report of Spain
CCPR/C/32/Add.4	Second periodic report of the Ukrainian Soviet Socialist Republic
CCPR/C/35	Provisional agenda and annotations - twenty-third session
CCPR/C/SR.545-572 and corrigendum	Summary records of the twenty-third session

B. Twenty-fourth session

CCPR/C/2/Add.8	Reservations, declarations, notifications and communications relating to the International Covenant on Civil and Political Rights and the Optional Protocol thereto
CCPR/C/4/Add.9	Supplementary report of Panama
CCPR/C/10/Add.13	Supplementary report of the Cook Islands
CCPR/C/32/Add.5	Second periodic report of the United Kingdom of Great Britain and Northern Ireland
CCPR/C/36	Consideration of reports submitted by States parties under article 40 of the Covenant - initial reports of States parties due in 1985, note by the Secretary-General
CCPR/C/37	Consideration of reports submitted by States parties under article 40 of the Covenant - second periodic reports of States parties due in 1985, note by the Secretary-General
CCPR/C/38	Provisional agenda and annotations - twenty-fourth session
CCPR/C/SR.573-599 and corrigendum	Summary records of the twenty-fourth session

C. Twenty-fifth session

CCPR/C/28/Add.5	Second periodic report of Tunisia
CCPR/C/31/Add.1	Initial report of Afghanistan
CCPR/C/32/Add.6	Second periodic report of Sweden
CCPR/C/32/Add.7	Second periodic report of Finland
CCPR/C/36/Add.1	Initial report of the Congo
CCPR/C/36/Add.2	Initial report of Luxembourg
CCPR/C/37/Add.1	Second periodic report of Hungary
CCPR/C/39	Provisional agenda and annotations - twenty-fifth session
CCPR/C/40	Observations regarding general comments 12(21) (art. 1) and 13(21) (art. 14) submitted by the Congo and Madagascar
CCPR/C/SR.600-624 and corrigendum	Summary records of the twenty-fifth session

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