

**REPORT
OF THE
HUMAN RIGHTS COMMITTEE**

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-FIRST SESSION

SUPPLEMENT No. 40 (A/41/40)



UNITED NATIONS

27.

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New York, 1986

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Covenant

1. As at 25 July 1986, the closing date of the twenty-eighth session of the Human Rights Committee, there were 83 States parties to the International Covenant on Civil and Political Rights and 37 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 25 July 1986, 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 and/or the Optional Protocol. These reservations and other declarations are set out verbatim in documents of the Committee (CCPR/C/2 and Add.1-9). By a note of 29 March 1985, the Government of Finland notified the Secretary-General of the withdrawal of its reservations to articles 13 and 14, paragraph 1, of the Covenant.

B. Sessions and agendas

4. The Human Rights Committee has held three sessions since the adoption of its last annual report. The twenty-sixth session (625th to 649th meetings) was held at the United Nations Office at Geneva from 21 October to 8 November 1985; the twenty-seventh session (650th to 675th meetings) was held at United Nations Headquarters, New York, from 24 March to 11 April 1986; and the twenty-eighth session (676th to 701st meetings) was held at the United Nations Office at Geneva from 7 to 25 July 1986. The agendas of the sessions are shown in annex III.

C. Membership and attendance

5. The membership remained the same as during 1985. A list of the members of the Committee is given in annex II. Except for the absence of Mr. Errera at the twenty-seventh session, all the members attended the three sessions.

D. Working groups

6. In accordance with rules 89 and 62 of its provisional rules of procedure, the Committee established working groups to meet before its twenty-sixth and twenty-seventh sessions.

7. The Working Group established under rule 89 was entrusted with the task of making recommendations to the Committee regarding communications under the Optional

Protocol. At the twenty-sixth session it was composed of Mr. Cooray, Mrs. Higgins and Messrs. Pocar and Prado Vallejo. It met at the United Nations Office at Geneva from 14 to 18 October 1985 and elected Mr. Prado Vallejo as its Chairman/Rapporteur. At the twenty-seventh session the Working Group was composed of Mr. Graefrath, Mrs. Higgins and Mr. Prado Vallejo. It met at United Nations Headquarters, New York, from 17 to 21 March 1986. Mrs. Higgins was elected Chairman/Rapporteur.

8. The Working Group established under rule 62 was mandated to prepare concise lists of issues or topics concerning second periodic reports scheduled for consideration at the Committee's twenty-sixth and twenty-seventh sessions, to make recommendations to the Committee as to how, in general, supplementary reports should be dealt with, 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. At the twenty-sixth session its members were Messrs. Aguilar, Dimitrijević, Movchan and Ndiaye. It met at the United Nations Office at Geneva from 14 to 18 October 1985. At the twenty-seventh session the Working Group was composed of Mrs. Higgins, Messrs. Aguilar, Graefrath and Ndiaye. It met at United Nations Headquarters, New York, from 17 to 21 March 1986. Mr. Ndiaye was elected Chairman/Rapporteur on both occasions.

9. As a temporary economy measure necessitated by the current financial crisis of the United Nations, the Committee established only one working group to meet before the twenty-eighth session. In addition to making recommendations to the Committee regarding communications under the Optional Protocol, that Working Group was mandated to prepare concise lists of issues concerning second periodic reports scheduled to be taken up for consideration at the twenty-eighth session and to consider any draft general comments that might be put before it. The Working Group was composed of Messrs. Movchan, Ndiaye, Pocar and Prado Vallejo. Mr. Prado Vallejo was elected Chairman/Rapporteur for matters regarding communications and Mr. Pocar for those regarding article 40.

E. Miscellaneous

Twenty-sixth session

10. During the course of the twenty-sixth session, held in October/November 1985, several special activities were undertaken by the Bureau and members of the Committee in connection with the commemoration of the fortieth anniversary of the United Nations, including meetings between the Bureau and the press and representatives of non-governmental organizations. On those occasions, members of the Bureau highlighted the fundamental role accorded to human rights by the United Nations throughout its 40 years of existence, how that had eventually been reflected in the adoption of the International Covenant on Civil and Political Rights and its Optional Protocol and the establishment of the Human Rights Committee, and how the Committee was currently carrying out its duties relating to the implementation of the Covenant and its Optional Protocol by States parties.

11. Several members of the Committee also participated actively in a colloquium entitled "Human rights on the fortieth anniversary of the United Nations", held from 4 to 7 November 1985, which had been organized by the Centre for Human Rights in co-operation with the Geneva Graduate Institute for International Studies.

12. The Committee noted with particular satisfaction that, in his annual report to the General Assembly at its fortieth session, the Secretary-General had re-emphasized the central place of human rights in the activities of the United Nations. Members were especially gratified with the Secretary-General's call for renewed efforts to promote the unimpeded application of the Universal Declaration of Human Rights and the International Covenants and his appeals to all States to ratify the Covenants and to support, strengthen and take part in the procedures that had been established to examine violations and to ensure the protection of human rights.

13. The Committee noted that, pursuant to its request, arrangements had been made by the Secretariat to make available to the Committee, on a regular basis, reports submitted under the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

Twenty-eighth session

14. The Assistant Secretary-General for Human Rights informed the Committee of the General Assembly's decision, by its resolution 40/114 of 13 December 1985, to convene a plenary meeting of the Assembly during its forty-first session to commemorate the twentieth anniversary of the adoption of the International Covenants on Human Rights. He also briefed the Committee concerning a two-week training course, held at La Paz, Bolivia, in May 1986, noting that the course, which had focused primarily on the application in Bolivia of the international conventions on human rights had been the first of its kind at a national level and that the participants had included some 40 senior officials from Bolivia's national administration and from non-governmental organizations. In the same connection, he expressed appreciation to one of the members of the Committee, Mr. J. Prado Vallejo, who had participated in the training course at the invitation of the Bolivian Government and had made a valuable contribution to its success.

15. The Assistant Secretary-General informed the Committee of two additional initiatives that were currently being undertaken with a view to assisting States in furthering the implementation of the international human rights instruments, namely, the preparation of a draft handbook describing model national and local institutions for the promotion and protection of human rights, and the development of a human rights teaching manual, which could be adapted for use in different parts of the world.

16. The Assistant Secretary-General further informed the Committee that, at its first regular session in May 1986, the Economic and Social Council had elected the 18 members of the Committee on Economic, Social and Cultural Rights, which was to hold its first session in March 1987, and had adopted resolution 1986/5 of 21 May 1986 concerning the twentieth anniversary of the adoption of the International Covenants on Human Rights, at that same session.

17. The Committee was visited by a high-level delegation of Brazilian officials, led by the Secretary-General of the Ministry of Justice, who expressed interest in familiarizing themselves more fully with the Committee's role and activities.

18. The Committee noted that the two bound volumes of its Yearbook covering 1977-1978 had been issued in French and would be issued shortly in English. With regard to the bound volumes of the Yearbook covering 1979-1980, the Committee

further noted that volume I had been submitted to the printing section of the United Nations and that work on volume II had also reached an advanced stage. The Committee expressed the belief that it was extremely important that the publication of the Yearbook should proceed at all due speed, so that the attempt to bring it up to date was not irretrievably lost.

F. Future meetings of the Committee

19. At its twenty-eighth session, the Committee confirmed its calendar of meetings for 1987 and 1988, as follows: twenty-ninth session to be held at the United Nations Office at Geneva (see para. 432 (b)) from 23 March to 10 April 1987, thirtieth session at the United Nations Office at Geneva from 6 to 24 July 1987, thirty-first session at the United Nations Office at Geneva from 26 October to 13 November 1987, thirty-second session at United Nations Headquarters from 21 March to 8 April 1988, thirty-third session at the United Nations Office at Geneva from 11 to 29 July 1988, and thirty-fourth session at the United Nations Office at Geneva from 24 October to 11 November 1988, and that in each case a working group would meet during the week preceding the opening of each session.

G. Adoption of the report

20. At its 699th, 700th and 701st meetings, held on 24 and 25 July 1986, the Committee considered the draft of its tenth annual report covering its activities at the twenty-sixth, twenty-seventh and twenty-eighth sessions, held in 1985 and 1986. 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

21. At its 670th meeting, held on 8 April 1986, the Committee considered this item in the light of the relevant summary records of the Third Committee and General Assembly resolutions 40/114, 40/115 and 40/116 of 13 December 1985.
22. Members of the Committee welcomed the exchange of views regarding the Committee's work that had taken place in the Third Committee and expressed gratification at the high degree of interest shown by the General Assembly, which was reflected, in particular, in resolution 40/115. It was understood that the members of the Committee, notwithstanding their capacity as independent experts, would bear in mind, in the exercise of their functions, the observations made by delegations.
23. The Committee noted with satisfaction the inclusion, in General Assembly resolution 40/114, of a reference to the fact that 1986 marked the twentieth anniversary of the adoption of the International Covenants on Human Rights and that the General Assembly had decided to convene a plenary meeting on 16 December 1986 to commemorate that anniversary. It further noted in that connection that 1986 also marked the tenth anniversary of the entry into force of the two Covenants.
24. Members of the Committee also welcomed the adoption of resolution 40/114 from a substantive standpoint, noting that the interdependence of economic, social, cultural, civil and political rights was becoming increasingly important and that recognition of their indivisibility was essential in promoting the development of friendly relations among peoples.
25. As requested by the General Assembly in paragraph 9 of resolution 40/116, the Committee gave particular attention to the report of the Secretary-General concerning the reporting obligations of States parties to the United Nations conventions on human rights (A/40/600 and Add.1). Members of the Committee were also gratified to note that the General Assembly in the same resolution had decided to consider, at its forty-first session, the convening, in 1987, of another meeting of the chairmen of the supervisory bodies entrusted with the consideration of reports submitted under United Nations conventions on human rights, and of the Commission on Human Rights, since they considered it essential that the work of those bodies be adequately co-ordinated.
26. Noting that States parties were not always fully aware of reporting obligations when they acceded to various human rights instruments, and that many countries found it difficult to fulfil those obligations, some members considered that the preparation of uniform guidelines for the submission of the reports required under various human rights instruments could be useful and that the idea of including a general introduction in each report was especially interesting. At the same time, however, it was recalled that States had different obligations under the instruments and that uniform guidelines could therefore only be indicative in nature. Thus, if uniform guidelines were drawn up, the fact that there could not be any "all-purpose" report, and that States could not draw up virtually identical reports for all bodies, should be made perfectly clear. With regard specifically to the guidelines adopted by the Human Rights Committee (A/40/600/Add.1, annex, sect. II), some members felt that, since the Committee's general comments provided indications regarding both the interpretation of articles of the International

Covenant on Civil and Political Rights and the information the Committee wished to receive, a more explicit reference to those general comments should be included.

27. Concerning the International Year of Peace, the Committee took note with appreciation of a letter dated 6 December 1985 addressed to the Chairman on behalf of the Secretary-General on that subject, as well as of General Assembly resolutions 40/3 and 40/10. Members expressed wholehearted support for all efforts to maintain and strengthen international peace. They recalled that the Committee's work for the promotion of human rights, under the International Covenant on Civil and Political Rights, constituted, as a whole, a contribution to the creation of conditions of stability and well-being which were necessary for peaceful and friendly relations among nations. The Committee further noted that, in its general comments Nos. 6 (16) 1/ and 14 (23), 2/ it had drawn the attention of States parties to the Covenant to the fact that the right to life "is basic to all human rights" and that "States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. Every effort they make to avert the danger of war, especially thermonuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life".

28. The Committee agreed to request the Chairman to send an appropriate response on its behalf to the Secretary-General, taking into account the views expressed during the discussion. The text of the Chairman's letter can be found in annex VII to this report.

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

A. Submission of reports

29. States parties have undertaken to submit reports in accordance with article 40, paragraph 1, of the International Covenant on Civil and Political Rights within one year of the entry into force of the Covenant for the States parties concerned and thereafter whenever the Committee so requests.

30. In order to assist States parties in submitting the reports required under article 40, paragraph 1 (a), of the Covenant, the Human Rights Committee, at its second session, approved general guidelines regarding the form and contents of initial reports. 3/

31. Furthermore, in accordance with article 40, paragraph 1 (b), of the Covenant, the Committee, at its thirteenth session, adopted a decision on periodicity requiring States parties to submit subsequent reports to the Committee every five years. 4/ At the same session, the Committee adopted guidelines regarding the form and content of periodic reports from States parties under article 40, paragraph 1 (b), of the Covenant. 5/

32. 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).

33. The action taken, information received and relevant issues placed before the Committee during the reporting period (twenty-sixth, twenty-seventh and twenty-eighth sessions) are summarized in paragraphs 34 to 45 below.

Twenty-sixth session

34. The Committee was informed that Ecuador and Mongolia had submitted second periodic reports.

35. The Committee decided to send reminders to the Governments of Belgium, Cameroon, the Central African Republic, Gabon, Saint Vincent and the Grenadines, Toqo, Viet Nam, Zaire and Zambia, whose initial reports were overdue. The Committee also decided to send reminders to those Governments whose second periodic reports were overdue, namely: Bulgaria, Colombia, Costa Rica, Cyprus, Gambia, India, Iran (Islamic Republic of), Iraq, Libyan Arab Jamahiriya, Madagascar, Mauritius, New Zealand, Romania, Senegal, Suriname, Syrian Arab Republic, Trinidad and Tobago, Uruguay and Zaire.

Twenty-seventh session

36. The Committee was informed that the new initial report that the Government of the Congo had promised to submit in place of its earlier report had been received and that Romania had submitted its second periodic report. It was also informed of the receipt of the final version of Tunisia's second periodic report, which replaced a report submitted earlier by the State party.

37. The Committee decided to send reminders to the Governments of Belgium, Bolivia, Cameroon, the Central African Republic, Gabon, Saint Vincent and the Grenadines, Toqo, Viet Nam, Zaire and Zambia, whose initial reports were overdue.

The Committee also decided to send reminders to those Governments whose second periodic reports were overdue, namely: Bulgaria, Colombia, Costa Rica, Cyprus, Denmark, Dominican Republic, El Salvador, Gambia, India, Iran (Islamic Republic of), Iraq, Italy, Kenya, Lebanon, Madagascar, Mali, Mauritius, New Zealand, Senegal, Suriname, Syrian Arab Republic, Trinidad and Tobago, United Republic of Tanzania, Venezuela and Zaire.

38. The Committee further decided to invite representatives of States parties, whose reports had been overdue for three years or longer, to a meeting to discuss the reasons or difficulties that had prevented their countries from submitting the reports and how such obstacles might be overcome. The meeting, which was held at United Nations Headquarters on 10 April 1986, was attended by the representatives of Bolivia, the Central African Republic, Guinea, the Islamic Republic of Iran, Madagascar, Saint Vincent and the Grenadines, Viet Nam and Zaire. The representatives made brief statements describing the problems that had been encountered in fulfilling their countries' reporting obligations. In general, they indicated that, despite the persistence of certain problems, progress had been achieved and that every effort was being made by their Governments to complete the reports as soon as possible. However, the representative of the Islamic Republic of Iran explained that his Government was not in a position to submit a report, since it was in the process of reviewing, in its entirety, the legal situation arising from its interpretation that there were numerous contradictions between the Covenant and Islamic law.

39. Members of the Committee urged States parties that were encountering difficulties, regardless of their nature, not to delay submitting their reports for such reasons or because they considered that the reports would be flawed. What was important was that countries should be willing to implement the principles set forth in the Covenant and to maintain a dialogue with the Committee. They recalled, in that connection, that the Committee's task was not to serve as a court but rather to provide an opportunity for dialogue and the exchange of views between itself and States parties, thereby enabling the Committee to carry out its functions under the Covenant.

40. Useful discussions were also held with several representatives concerning possible measures to assist countries with the preparation of their reports.

Twenty-eighth session

41. The Committee was informed that Denmark, Iraq and Senegal had submitted second periodic reports and that additional information had been received from Finland and Sweden, supplementing their second periodic reports, which had been considered at the Committee's twenty-sixth session. In addition, the Committee was informed that El Salvador had submitted additional information required to enable the Committee to conclude its consideration of that State party's initial report.

42. The Committee decided to send reminders to the Governments of Belgium, Bolivia, Cameroon, the Central African Republic, Gabon, Guinea, Saint Vincent and the Grenadines, Togo, Viet Nam, Zaire and Zambia, whose initial reports were overdue. The Committee also decided to send reminders to those Governments whose second periodic reports were overdue, namely: Bulgaria, Colombia, Costa Rica, Cyprus, Dominican Republic, El Salvador, Gambia, India, Iran (Islamic Republic of), Italy, Kenya, Lebanon, Libyan Arab Jamahiriya, Madagascar, Mali, Mauritius, New Zealand, Nicaragua, Suriname, Syrian Arab Republic, Trinidad and Tobago, United

B. Consideration of reports

1. Introduction

43. During its twenty-sixth, twenty-seventh and twenty-eighth sessions, the Committee considered the initial report of Luxembourg and second periodic reports from Sweden, Finland, Mongolia, the Federal Republic of Germany, Czechoslovakia and Hungary. The initial report of the Congo and the second periodic report of Tunisia could not be considered at the Committee's twenty-eighth session as scheduled because the Governments were unable to send representatives to participate in their consideration. The status of reports considered during the period under review and of reports still pending consideration is indicated in annex V below.

2. Second periodic reports

44. The Committee's procedure for considering second periodic reports during the period under review remained basically unchanged. Working groups were entrusted by the Committee, prior to its twenty-sixth, twenty-seventh and twenty-eighth sessions, with reviewing the reports and information submitted by the Governments of Sweden, Finland, Mongolia, the Federal Republic of Germany, Czechoslovakia, Hungary and Tunisia (see para. 43) in order to identify those matters that could most usefully be discussed with the representatives of the reporting States. The working groups prepared lists of issues to be taken up during the dialogue with the representatives of each of the States parties. The lists, supplemented by the Committee whenever it was deemed necessary, were transmitted to the representatives of the State parties concerned prior to their appearance before the Committee, together with appropriate explanations on the procedure to be followed. It was stressed that the lists of issues were not exhaustive and that members could raise other matters. The representatives of the States parties were asked to comment on the issues listed, section by section, and to reply to additional questions raised by members, if any.

3. Additional information

45. At its twenty-sixth session, the Committee agreed on the following procedure for handling any additional information submitted by States parties and for dealing with cases where additional information had been promised but not submitted:

(a) Whenever additional information is received at the same time as the next periodic report or shortly before the next periodic report is due, to consider the additional information together with the periodic report;

(b) When additional information is received at other times, to decide, on a case-by-case basis, whether it should be considered, and to notify the State party concerned of any eventual decision to examine the additional information;

(c) Where promised additional information has not been received, the Bureau of the Committee will consider sending appropriate reminders to the States parties. The Secretariat, in corresponding with States parties concerning the date

for submission of their next periodic reports, is also to remind them of their promise, during consideration of their previous reports, that additional information would be supplied to the Committee.

4. States parties

46. 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-sixth, twenty-seventh and twenty-eighth 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 6/ and in the summary records referred to.

Luxembourg

47. The Committee considered the initial report of Luxembourg (CCPR/C/31/Add.2) at its 628th, 629th and 632nd meetings, on 23 and 25 October 1985 (CCPR/C/SR.628, 629 and 632).

48. The report was introduced by the representative of the State party who noted that the protection of civil and political rights in his country was ensured by such international instruments as the Covenant, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Convention on the Elimination of All Forms of Racial Discrimination, as well as by the Constitution of Luxembourg and national legislation. The provisions of international instruments were directly applicable and enjoyed precedence over domestic law.

49. Turning to specific articles of the Covenant, the representative stated, with regard to article 1, that his Government's policy was to respect the right of other peoples to self-determination on the basis of the promotion of human rights throughout the world, irrespective of political considerations. The right of self-determination of the people of Luxembourg was specifically enshrined in the Constitution, particularly in the provisions regarding elections and equality before the law.

50. In connection with article 2 of the Covenant, the representative explained that there was an unlimited right to take legal action against public officials accused of human rights violations and that, under the Penal Code, the fact that a violation had been committed by persons acting in an official capacity was often considered as an aggravating circumstance.

51. With regard to article 3 of the Covenant, the representative noted that, while the principle of equality between men and women had been largely incorporated into domestic law as a result of reforms adopted in 1972 and 1974 relating to the marriage system and the rights and duties of spouses, there were two remaining problems. One was a five-year residency requirement prior to naturalization, which was applicable only to male spouses. The other related to the inequalities of rights between legitimate and illegitimate children. However, legislative reforms were currently under consideration to eliminate both types of inequality.

52. The representative of the State party informed the Committee, with reference

to article 6 of the Covenant, that legislation dealing with the repression of genocide had entered into force on 8 August 1985.

53. Regarding article 17 of the Covenant, the representative noted that under article 15 of the Constitution the home was inviolable, and that articles 443 et seq. of the Penal Code provided for the punishment of attacks against honour.

54. Concerning article 23 of the Covenant, the representative pointed out that, in the case of the dissolution of a marriage, the children involved were doubly protected. Article 217 (b) of the Civil Code established an emergency procedure to ensure that matters relating to the children's welfare were taken into account and decided upon by the court at the time of filing a divorce petition. The welfare of the children was again considered at the time of final judgement when the court addressed such issues as permanent custody, visiting rights, financial support and education.

55. Referring, in conclusion, to article 26 of the Covenant, the representative noted that equality before the law was enshrined in article 11 of the Constitution and that that right had also been extended, by virtue of case law, to aliens. He further noted that racial discrimination was specifically punishable under article 455 of the Penal Code of Luxembourg.

56. Members of the Committee welcomed Luxembourg's recent ratification of the Covenant and expressed satisfaction over the submission of the report. While some members commented upon the clarity, relevance and objectivity of the report, others were of the view that it was too succinct, did not take account of the Committee's general comments and would have conveyed a less abstract picture of the human rights situation in the country if it had provided more information on the actual functioning of the legal process and details concerning actual human rights practices, particularly in areas where the provisions of the Covenant were not being applied.

57. With regard to article 1 of the Covenant, members requested information about Luxembourg's position on apartheid as well as the right of the Palestinian and Namibian people to self-determination. In that connection, it was asked whether Luxembourg had become a party to the International Convention on the Suppression and Punishment of the Crime of Apartheid, and whether it had prohibited its nationals from taking part in economic and commercial activities in South Africa. One member requested clarification on how the right of self-determination within Luxembourg could be reconciled with the Constitution's broad conferral of executive powers upon the Grand Duke and the provision that the Crown was hereditary in the family of Nassau.

58. Regarding article 2, members expressed satisfaction that international norms enjoyed preference over national norms in Luxembourg's legal system and that the provisions of the Covenant could be directly invoked before courts and administrative tribunals. In that connection, however, members wondered to what extent the Covenant actually enjoyed such precedence in practice and asked whether there had been any cases where international norms had been upheld over national legislation or the Constitution. Further clarification was sought in respect of the principle of popular sovereignty and whether referenda, mentioned in the report, had been held in practice. Noting that aliens, particularly migrant workers, were often subject to de facto and even de jure discrimination in various countries, it was asked whether any problems or difficulties had been encountered

in the Grand Duchy in implementing the provisions of the Covenant in that area and particularly whether there had been any actual cases in which the rights of aliens had been adversely affected.

59. In connection with article 3 of the Covenant, members expressed satisfaction that the report made reference to shortcomings in current legislation with respect to the transmission of the family name to children and the acquisition of nationality by marriage, noting that article 40 of the Covenant expressly provided for reporting factors or difficulties affecting the implementation of the provisions of the Covenant, and they welcomed the statement of the representative of the State party indicating that appropriate legislative reforms to correct those irregularities were under consideration. While also welcoming the fact that men and women in Luxembourg enjoyed complete equality in respect of political rights, they requested additional information, including statistical information, on the status and situation of women in society, for example, in such respects as the number of women at various levels of the social hierarchy or in government posts.

60. With regard to article 4 of the Covenant, members requested information on legislation, if any, which permitted the suspension of certain rights at a time of public emergency.

61. Regarding article 6 of the Covenant, members noted with satisfaction that the death penalty had been abolished in 1979. However, they felt that the report did not provide sufficient information concerning the protection of the right to life and asked for further elaboration on that point along the lines of the general comments on the subject (Nos. 6 (16) and 14 (23)) that had been adopted by the Committee.

62. With reference to articles 7 and 10 of the Covenant, members stressed the importance of adopting active measures and safeguards - such as a prison inspection system - to prevent torture, recalling the Committee's views as expressed in general comment No. 7 (16) 1/ that the mere prohibition of torture was insufficient. Since the report did not address that aspect, they asked for information concerning measures and safeguards that ensured respect for articles 7 and 10 of the Covenant by the police and by institutions where individuals were detained against their will. Members also expressed concern and asked for further information regarding Luxembourg's interpretative declaration on the principle of separation of juvenile from adult delinquents.

63. Referring to article 8 of the Covenant and remarking that the notes on the interpretation of the International Labour Organisation (ILO) Forced Labour Convention of 1930 (No. 29), 7/ were similar in scope to that article, one member asked whether any steps had been taken by Luxembourg since 1983, the date of the most recent ILO review, to repeal existing legislation that was inconsistent with that Convention.

64. Regarding article 9 of the Covenant, members requested information concerning the observance of the provisions of that article in cases of deprivation of liberty for reasons other than the suspected commission of a crime, such as in the case of psychiatric patients, aliens and minors, which were not dealt with in the report. Additional information was also requested on regulations and practices relating to pre-trial detention and it was asked whether there was a maximum time-limit for such detention.

65. With regard to article 12 of the Covenant, members welcomed the prospective deletion of the provision in the Penal Code under which judges could prohibit persons released from custody but subjected to special police surveillance from appearing in certain places. Noting that the reference to that article in the report only addressed the question of freedom of movement within the national territory and of choice of residence, one member requested information concerning passport regulations and any applicable guarantees ensuring the freedom to leave the country.

66. With reference to article 13 of the Covenant, members noted that the procedure for appealing an expulsion order appeared to favour nationals of member States of the European Economic Community instead of applying equally to all aliens. It was noted further that under that regulation the Advisory Commission on Police Procedures in Respect of Aliens apparently made rulings in advance of the issuance of a ministerial expulsion order, whereas article 13 required that aliens be given the possibility of having an expulsion order reviewed after it had been issued. It was also unclear whether the rulings of the Advisory Commission were merely advisory or had effective force.

67. Members of the Committee requested information, in connection with article 14 of the Covenant, on several aspects of Luxembourg's judicial structure and procedures which were not covered in the report. They asked, inter alia, about the conditions of recruitment, promotion and transfer of magistrates; whether any measures were envisaged to ensure stricter application of article 14, paragraph 1, of the Covenant, and whether there were any safeguards to ensure that accused persons enjoyed the right to be presumed innocent, as provided in article 14, paragraph 2, of the Covenant and as further elaborated in the Committee's general comment No. 13 (21). 8/ With regard to the right of equal access to justice by aliens, one member of the Committee noted that article 14 of the Civil Code of Luxembourg seemed discriminatory. He also asked whether in the judicial precedents of Luxembourg - as in those of France - resident aliens would be given preferential treatment over non-resident aliens. He expressed surprise that the right of aliens to institute proceedings concerning civil or commercial matters in Luxembourg was determined by the national law of the person concerned. Another member expressed satisfaction that Luxembourg was preparing to adopt legislation allowing it to withdraw its reservation concerning article 14, paragraph 5, of the Covenant and praised the State party for having adopted legislation establishing objective liability for torts committed by an organ of the public authorities, thus setting an example to be followed.

68. In connection with article 17 of the Covenant and noting that under the Act of 26 November 1982 the police could be authorized to use technical means of control and surveillance, members of the Committee referred to the possibility that resort to such measures might lead to unlawful interference in the private life of an individual. Consequently, they requested additional information about the legislation in question and about the scope of such technical means. Information about safeguards that ensured the implementation of rights recognized under article 17 was also requested.

69. Concerning article 18 of the Covenant, members questioned the compatibility with the Covenant - both articles 18 and 19 - of the law, mentioned in paragraph 79 of the report, under which ministers of religion were made liable to special penalties for any direct attacks on the Government or particular pieces of legislation or administrative acts. Members of the Committee also requested clarification of the relationship between Church and State in Luxembourg. Some

members questioned the assertion that such relations were based on the principle of mutual independence in view of the existence of the special penal law to which ministers of religion could be subjected and the provision for the payment by the State of the salaries and pensions of ministers of religion.

70. Referring to the State party's reservation with respect to article 19 of the Covenant, members asked whether action taken under that reservation depended upon legislation or was left to the discretion of the authorities; and specifically, why the State party felt it necessary to extend the coverage under the reservation to the licensing of film companies. Regarding other aspects of the rights covered by article 19, members asked for additional information or clarification on the types of offences, committed in the course of the exercise of the freedom to express opinions or freedom of the press, that were subject to repression under article 21 of the Constitution; they also asked whether the constitutional prohibition of censorship was confined to printed material or also extended to the performing arts, and whether specific legislative provisions had been introduced to protect freedom of the press and of opinion. Members also requested information on the practice of linguistic pluralism in government, education and the media.

71. Concerning article 20 of the Covenant, members of the Committee asked whether the penalties provided under the Act of 9 August 1980 also applied to persons discriminating against others on account of their political or other opinions, and whether penalties comparable to those provided under that Act were available to protect persons from discrimination in the exercise of all of the rights embodied in the Covenant. Referring to Luxembourg's reservation to article 20, paragraph 1, of the Covenant, members reiterated the continuing importance they attached to the prohibition of war propaganda and asked why Luxembourg had made that reservation and whether the Government of Luxembourg had considered withdrawing it.

72. With reference to article 21 of the Covenant, members requested clarification of the restrictions on the right of assembly cited in article 25 of the Constitution. It was noted in that regard that all countries applied some restrictions to public meetings in the open air to protect public order or State security but that the State party's report did not cite such grounds for the restrictions. One member asked whether any remedy existed for citizens who had been arbitrarily prevented by the police from holding a meeting in the open air. Another member asked for further clarification of the legal guarantees protecting the right of assembly of aliens.

73. Regarding article 22 of the Covenant, members noted that under article 26 of the Constitution "the establishment of any religious corporation must be authorized by law". To some members that requirement seemed to constitute an unwarranted restriction of a right whose assertion should not be made dependent on the will of national legislatures. One member wondered, in that connection, whether the term "religious corporations" had some special meaning; otherwise, if it merely meant "religious associations", there seemed to be no reason to require prior authorization for their establishment. Other members asked whether such authorization had ever been withheld and whether any remedies were available to persons denied such authorization. Regarding trade-union rights, members wished to know how such rights were guaranteed and whether foreign workers enjoyed the same trade-union rights as workers from the European Economic Community.

74. With reference to article 23 of the Covenant, members agreed with paragraph 96 of the report, which acknowledged that, inasmuch as the existing legislation limited the transmission of nationality to the father, it constituted a problem.

The State party's intention to address that discriminatory provision during its current review of legislation bearing on the equality of sexes was welcomed.

75. Regarding article 25 of the Covenant, it was noted that, whereas under article 53 of the Constitution persons serving a term of imprisonment lost their right to vote, the terms of article 25 of the Covenant were not restrictive. It was asked how the Government of Luxembourg reconciled that divergence.

76. Concerning article 27 of the Covenant, members asked for further clarification of the statement, in paragraph 116 of the report, that there were no ethnic, religious or linguistic minorities in Luxembourg, in the sense in which those words were used in the Covenant. In that connection, one member referred to the presence in Luxembourg of large national groups - Portuguese, Italians, French, Germans and Belgians - and asked how, in the circumstances, it could be asserted that there were no minorities in Luxembourg. Another member stated that the existence of minorities within the meaning of article 27 seemed to be implied, if, as indicated in the report, "the majority of the inhabitants of the Grand Duchy regard themselves as members of the Roman Catholic Church".

77. Referring to questions raised by members, the representative of the State party explained that Luxembourg was a representative democracy in the form of a constitutional monarchy with sovereignty residing in the nation and exercised through elected representatives of the people. The people could also be consulted directly by referendum, as provided in article 51 of the Constitution, and that had happened several times. Under its system, executive, legislative and judiciary powers were separated.

78. Referring to questions concerning his country's position on respect for self-determination, the representative emphasized that Luxembourg had clearly demonstrated its firm commitment to that principle by its votes in the General Assembly on decolonization and the questions of Namibia and the Near East. His country had also officially condemned apartheid, which it rejected totally and unreservedly.

79. In response to questions raised by members on how the principle of precedence of international over domestic law was applied in Luxembourg, the representative explained that under that principle national norms could only be interpreted by the Government and by the courts in conformity with international obligations. Thus, in the event of a conflict between the two norms, international treaty provisions prevailed over national laws. Also, in situations where domestic law was silent on a specific point, a relevant regulation from an international treaty was applicable. International conventions were an integral part of national legislation and their provisions could be directly invoked by private individuals before the courts dealing with civil, commercial, social or criminal matters or before administrative tribunals. In accordance with criteria established by case law, while international conventions were not applicable in their entirety, provisions expressly stating an individual right or imposing clear, precise and unconditional obligations were directly applicable.

80. Regarding the right of aliens to equality before the law, the representative noted that that right was guaranteed under both article 111 of the Constitution and case law, save for such expressly specified exceptions as the right to vote and access to public office and the teaching profession. Aliens also had the same right to institute legal proceedings as nationals of Luxembourg, except that an

alien's right to bring civil and commercial suits was normally determined by the national law of the person concerned.

81. With reference to questions raised under article 3 of the Covenant, the representative of the State party said that the equality of men and women in the social sphere was governed by community law, implying equality in employment, vocational training and working conditions.

82. Responding to questions relating to the possible suspension of certain rights during a time of public emergency, the representative noted that Luxembourg had no specific legislation regarding the proclamation of a state of emergency or the suspension of rights and freedoms, and that there had been no such emergencies in the past. He added that article 113 of the Constitution provided that no provision of the Constitution might be suspended.

83. Regarding the request of members of the Committee for more details concerning the actions being taken by Luxembourg to protect the right to life, the representative stated that he had taken note of the comments that had been made, but that his Government would prefer to treat the question of preventive measures to be taken, along the lines of the Committee's general comments, when it submitted its second periodic report. Referring specifically to general comment No. 14 (23), 2/ he stated that Luxembourg neither possessed nor manufactured nuclear weapons and was a party to the Treaty on the Non-Proliferation of Nuclear Weapons. Responding to other questions, he said that the death penalty could not be reintroduced in Luxembourg once the Sixth Protocol to the European Convention on Human Rights was ratified, in view of the primacy of international norms over national norms; and he explained that the specific enactment into domestic law of a provision of an international convention did not prejudice the general principle of according primacy to international law.

84. With reference to questions raised by members concerning safeguards and active measures to ensure respect for rights covered under articles 7 and 10 of the Covenant, the representative of the State party explained that prisoners were in constant contact with magistrates responsible for carrying out sentences as well as with the Social Defence Commission, which was made up of social workers and psychologists engaged in activities designed to reintegrate prisoners into society. Prison conditions were also monitored by some non-governmental organizations. He also pointed out that Luxembourg had been one of the first States to sign the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46), which was in the process of being ratified, and had also participated in preparing a Council of Europe convention on torture. As to Luxembourg's reservation concerning article 10, the representative stated that the reservation had been entered in view of his country's legislation relating to the protection of young persons - which was neither criminal nor repressive in nature. His country was of the view that in some cases, for example, in the case of vocational training, it was useful for young inmates to be in contact with older prisoners. In actual practice, accused persons in prison were segregated from those who had been convicted and prisoners were also segregated according to the gravity of their offences.

85. With regard to article 8 of the Covenant, the representative stated that his country had ratified the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 9/ as well as the ILO Convention concerning Abolition of Forced Labour, of 1957 (No. 105). 7/

86. In responding to questions raised by members of the Committee with respect to article 9 of the Covenant, the representative explained that his country followed the principle of allowing total individual freedom except where the law or regulations expressly prescribed otherwise. Regarding pre-trial detention, he noted that the maximum period of such detention was not established by law. However, pre-trial detention orders had to be based on the public interest and could be appealed.

87. Responding to a member's question concerning passport regulations, the representative of the State party said that passports could not be denied by the authorities to anyone who had applied for them except, for example, in the context of a judicial investigation or hearing, where such a document was withheld to ensure the accused person's continued presence in the country.

88. Regarding the questions raised in connection with preferential treatment accorded to nationals of the European Economic Community in appealing expulsion orders, the representative stated that any member State of the European Economic Community could provide preferential conditions to the nationals of other Community members. As to the role of the Advisory Commission, he explained that the Commission made a ruling before any expulsion decision was taken and that the Commission's ruling was usually followed by the authorities. Administrative tribunals also monitored the legality of the expulsion procedure.

89. Regarding the questions raised under article 14 of the Covenant, the representative noted that, while the presumption of innocence was not based on a specific legal provision, it was a general principle of law, reflected in specific decisions. The burden of proof was upon the Public Prosecutor, with doubt resulting in acquittal. Luxembourg's reservation to article 14, paragraph 5, he explained, resulted from concern that a literal interpretation of that provision might imply the existence of a higher level of appellate jurisdiction beyond that of the courts of appeal. That would have been in conflict with the principle of Luxembourg law that a decision by an appeals court could not be subjected to further appeal. Currently, appeals against the verdicts of the Assize Court or courts of appeal could only be lodged before the Court of Cassation. However, a bill to reform the Assize Court system was in preparation and it was envisaged that provision would be made under the new procedure for substantive - not merely formal - review of Assize Court decisions.

90. Responding to questions raised by members concerning the protection of the right to privacy, the representative explained that the law of 26 November 1982 authorizing the use of technical means of control and surveillance had been adopted following a judicial decision to the effect that the lack of relevant regulations was incompatible with the European Convention on Human Rights. The law provided that any decision authorizing such surveillance had to be taken by a magistrate, had to be especially well founded, could be appealed, and was restricted to a period of one month, extendable up to one year only. A complaint lodged against that law before the European Commission of Human Rights in Strasbourg had been rejected as unjustified. Under the law of 14 August 1982 on the protection of privacy, magistrates were empowered to take preventive and repressive measures to protect privacy and penalties were prescribed against any person who deliberately or systematically harassed another person by telephone or letter.

91. With reference to article 18 of the Covenant, the representative stated that the antiquated provision prohibiting members of the clergy from attacking the Government was no longer applied in practice and would be deleted from the

Penal Code when the Code was revised. Freedom of religion in Luxembourg was complete, which implied the freedom not to have any religion. Religious education was optional, pupils were free to choose religious education, ethical or neither subject. As to the mutual independence of Church and State, the representative explained that, although the salaries and pensions of ministers of the three most representative religions - Roman Catholic, Reformed and Judaism - were paid by the State, that did not encroach on their autonomy, since religious communities were entirely at liberty to appoint their own ministers and to have any other source of income or property that would ensure their financial independence. If a new religious community of any size were to develop the State would consider the possibility of conferring on it a status similar to that of the other three communities.

92. In his reply to questions raised by members concerning article 19 of the Covenant, the representative of the State party noted that the constitutional prohibition of censorship was applicable not only to the written word but also to all audio-visual information media and that no restrictions were in use except for age-limits established for certain films to protect the young. Licensing requirements in connection with films were not related to the nature of the film shown but only to such matters as safety standards in cinemas or conditions for engaging in trade. As to freedom of expression, he said that only the abuse of that right was punishable, such as in the case of slander, libel or the disturbance of public order. The case law regarding press offences was extremely restrictive, providing that only private individuals could bring charges, which had to be filed within a period of three months of the date of the alleged offence. The residence requirement applicable to publishers was not a discriminatory measure but one relating to the establishment of the chain of responsibility - from author to distributor to printer, and lastly to the publisher. Concerning linguistic pluralism, he explained that, although Luxembourgish was established in recent legislation as the national language, government services would also continue to use French and German, with Italian and Portuguese often being used for correspondence, especially in the larger towns where most members of those two important expatriate communities lived.

93. Regarding article 20, paragraph 1, of the Covenant, the representative explained that his country's reservation had been entered because the authorities considered that the provision posed too great a danger to freedom of expression and did not indicate clearly whether war propaganda was to be prohibited by a general law or on a case-by-case basis. Concerning the Act of 9 August 1980, he indicated that the law had been adopted as a measure for implementing the International Convention on the Elimination of All Forms of Racial Discrimination and was aimed at areas such as the procurement of goods and services and the publication and expression of ideas - spheres in which there was the greatest likelihood of discrimination.

94. Responding to questions by members relating to the right of assembly, the representative noted that open-air meetings were not subject to any prior authorization except for the need to observe such communal regulations as those relating to traffic, security, public health and public order.

95. In connection with article 22 of the Covenant, the representative stated that the provision requiring legal authorization for the establishment of religious corporations applied to organizations directly engaged in worship and not fringe associations, but indicated that it was a very old provision, which would be amended when the Penal Code was revised. Regarding the protection of trade-union

rights, he noted that Luxembourg was a party to the ILO Convention concerning Freedom of Association and Protection of the Right to Organise, of 1948 (No.87). 7/ In the absence of any comprehensive regulations the form of trade-union organization remained free. Union membership could be comprised of both nationals and aliens.

96. Regarding article 25 of the Covenant, the representative explained that the deprivation of civil and political rights was a penalty provided for in the Penal Code in cases of particularly serious anti-social offences entailing sentences to hard labour in excess of 10 years.

97. Responding to questions raised by members of the Committee concerning article 27 of the Covenant, the representative stated that Luxembourg had no minorities within the meaning of the Covenant, but did have a large alien population, constituting more than 25 per cent of the total. Measures had been taken in education, audio-visual techniques and cultural life to promote their integration and to safeguard their cultural identity, including radio and television programmes in Italian and Portuguese and the establishment of cultural and sporting associations. Aliens were associated with public life through an Immigration Council.

98. Several members thanked the representative for having answered most of the questions, but felt that some of them had not been answered or needed a more detailed answer. They therefore expressed the hope that the Government could provide further information in a supplementary or a subsequent report.

99. In conclusion, the representative of the State party thanked the members of the Committee for their kind reception of his delegation and expressed the hope that the open and fruitful dialogue that had been initiated between Luxembourg and the Committee would continue. He had taken note of the request by several members of the Committee for additional information on a number of points in advance of the date of submission of his country's second periodic report and would transmit the request to his authorities.

100. The Chairman expressed appreciation to the representative of Luxembourg and requested him to inform his Government of the Committee's gratitude for the spirit of co-operation that had prevailed during the consideration of his country's report.

Sweden

101. The Committee considered the second periodic report of Sweden (CCPR/C/32/Add.6 and 8) at its 635th to 638th meetings, from 29 to 30 October 1985 (CCPR/C/SR.635-SR.638).

102. The report was introduced by the representative of the State party who said that the same concept of basic human rights which inspired the Covenant also underlay his country's Constitution and that, therefore, Sweden had had to make only marginal adjustments to its legislation upon its accession to the Covenant. He recalled, however, that Sweden had entered a reservation relating to three points: the separation of young offenders from adults in prison, the prohibition against war propaganda, and the reopening of completed criminal proceedings when new evidence had come to light. Noting that Sweden had made the declaration under article 41 of the Covenant and had acceded to its Optional Protocol, he expressed regret that more States parties had not yet done likewise.

Constitutional and legal framework for the application of the Covenant

103. Members of the Committee wished to receive information concerning substantive changes relevant to the implementation of the Covenant that had been introduced since the submission of the previous report, including specific steps to ensure that laws and regulations were consistent with the Covenant. In the latter connection, they wished to know how recent amendments to the Constitution provided better protection against the limitation of rights and freedoms proclaimed in the Covenant and whether Swedish law contained any provisions inconsistent with or derogating from the Covenant. They also asked how the Committee's desire for specific, more detailed information on legislation and regulations giving effect to the Covenant had been taken into account in the second periodic report, regarding both pre-existing and new laws and regulations. Additional information was also sought about activities furthering implementation of the Covenant and promotion of public awareness of its provisions and about factors and difficulties - at least those that were most obvious - affecting the implementation of the Covenant.

104. Noting that the provisions of the Covenant could not be directly invoked before Swedish courts, members wondered whether the Covenant could be used at least as a basis for interpretation by the judiciary and State institutions and whether judges were acquainted with its provisions or had ever referred to them in their rulings. Members asked further, in that regard, whether there was any procedure for questioning Swedish legislation on the ground that it was in conflict with the Covenant and whether anybody was empowered to consider the conformity of such laws with the Covenant. Referring to statements in the report, members also requested clarifications concerning a new constitutional provision, under which proposals affecting human rights were to remain pending for a specified period, and the procedure for review of new legislative proposals by a special Law Council, to verify their conformity with international agreements; they also asked whether there were any effective domestic remedies - in the area of racial discrimination, for example - if the Government or the parliament were to adopt provisions contravening the Constitution or the Covenant. One member also asked whether the ombudsman had jurisdiction to investigate alleged breaches of fundamental rights guaranteed under the Swedish Constitution or the Covenant.

105. Replying to questions raised by members of the Committee, the representative of the State party explained that it was difficult for Sweden, because of its legislative traditions, to implement international conventions by incorporating them directly into the legislative framework. Before acceding to the Covenant, Sweden had developed a thorough system to ensure that its laws and regulations were consistent with that instrument and that system had been supplemented over the years, for example, through the establishment of the Equal Opportunities Ombudsman and the reorganization of the Parliamentary Ombudsman's Office. Pre-existing laws and regulations had been modified as necessary upon Sweden's accession to the Covenant and Swedish law contained no provisions that were inconsistent with the Covenant except in the areas where reservations had been entered. Individuals claiming that Swedish legislation was not in accordance with the Covenant's provisions could invoke such provisions directly before the courts, with the latter being obliged to take account of any such disparities in applying the law. Some cases of alleged conflict between Swedish legislation or judicial practice and the Covenant had been adjudicated by the Supreme Court or referred to the European Court of Human Rights. Sweden also willingly accepted the individual complaint procedures established under the Covenant and other human rights instruments.

106. Swedish courts and other authorities were required to consider the fundamental rights and freedoms laid down in the Covenant, but only indirectly, by virtue of their obligation to take account of the Constitution - which contained a lengthy chapter devoted to human rights equivalent to those set forth in the Covenant. Similarly, the ombudsman had a right to consider complaints alleging human rights violations - whether or not they were covered under the Covenant - but only against the background of Swedish legislation and allegations of the unconstitutionality of that legislation. Beyond recourse to the ombudsman system and the appellate courts, effective remedies could also be sought by referring cases to the Human Rights Committee or the European Commission of Human Rights. As to specific remedies against racial discrimination - which was a particularly important area of human rights - the subject had been dealt with by a Commission on Ethnic Prejudice and Discrimination, which had submitted a report in 1984. As a result, consideration was being given, among other things, to the possible appointment of an ombudsman on racial or ethnic discrimination, with functions similar to that of the Equal Opportunities Ombudsman.

107. The provisions of the Covenant were well known to judges and to all Swedish authorities and a knowledge of human rights instruments was required in law schools. All proposals for a change of legislation or for new legislation were subject to review by a special Law Council, which had a duty to ensure that the proposal, if enacted, would be in conformity with Sweden's obligations under international agreements. The special procedure relating to postponement of consideration of any legislative proposal that could restrict the rights and freedoms set forth in the Constitution was intended to discourage possible infringement of such rights by enabling a group of only 10 members of parliament to delay action on the proposal unless overruled by a five-sixths majority.

108. Activities through which Sweden furthered the implementation of the Covenant included the use in Swedish schools of human rights information received from the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the establishment of an Institute of Human Rights at a Swedish university. All basic human rights texts were available in Sweden and were distributed on Human Rights Days, which offered an opportunity for publicizing what had been done and what still needed to be done in the human rights field.

Self-determination

109. With regard to that issue, members of the Committee wished to know Sweden's position on apartheid and the right to self-determination of the peoples of Namibia and Palestine. Expressing satisfaction over the fact that Sweden regarded apartheid as a crime and spoke out against it, one member asked about measures taken by the Government to prevent its citizens, and corporations established under its laws, from having economic relations with or conducting any other type of activity in South Africa that would amount, in effect, to participation in that crime and to helping to perpetuate that system. Another member wondered why, given Sweden's opposition to apartheid, it had not ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid.

110. In his reply to the questions raised by members of the Committee, the representative of the State party said that the Nordic Governments had been participating in a joint programme of action against the South African régime since 1978, a programme that had been further elaborated and strengthened at a recent meeting in Oslo of Nordic Foreign Ministers. His Government believed that the Security Council should take wider mandatory sanctions against South Africa.

Sweden's failure to ratify the International Convention on the Suppression and Punishment of the Crime of Apartheid, did not reflect any unwillingness on its part to participate in measures designed to bring the abhorrent system of apartheid to an end. It had to do solely with the way the International Convention was formulated, which, in Sweden's view, entailed international legal obligations that could not be fully understood or implemented.

Non-discrimination and equality of sexes

111. With reference to that issue, members of the Committee wished to receive information on how the provisions of article 2, paragraph 1, of the Covenant, which prohibited discrimination with respect to the rights recognized in the Covenant "without discrimination of any kind", were given effect under Swedish law and regulations. It was asked, in that regard, which constitutional and legislative provisions specifically reflected or reverted to the wording of article 2, paragraph 1, of the Covenant. Referring to certain proposals by the Swedish Commission on Ethnic Prejudice and Discrimination, mentioned in paragraph 6 of the report, one member asked for specific information regarding the problem of ethnic discrimination in the labour market that the Commission's proposal sought to address, and regarding the posts, currently reserved for Swedish citizens, which might in the future also be opened to aliens under the Commission's proposal. The member also asked whether aliens who were easily identifiable as such were exposed to greater discrimination than others and wished to have more details concerning ethnic discrimination in housing. Also with regard to ethnic discrimination, it was asked whether the Equal Opportunities Ombudsman and the Equal Opportunities Commission were empowered to deal with that type of discrimination.

112. Another member wished to have more detailed information on the protection of individuals against discrimination on political grounds, noting in that connection that the scope of articles 2, 3 and 12 of the Constitution - which were more recent than the Covenant - appeared to be more restrictive than the relevant provisions of the Covenant. He also asked whether measures had been taken to enable migrant workers in Sweden to enjoy all their rights under the Covenant. Still another member of the Committee wished to know what shortcomings there were in implementing the principle of non-discrimination in Sweden. Additional information was also requested concerning the application of section 27 of the 1980 Aliens Act, which provided for restriction of the residence of aliens to "within a specific part of Sweden" and regarding the duration of such restrictions. Referring to the fact that discrimination was often aimed at groups rather than individuals, one member asked whether it was possible, under Swedish law, for associations involved in the struggle against racial discrimination to replace individuals in bringing charges for acts of discrimination.

113. Members of the Committee also wished to have further information concerning the status of women, especially relevant statistical data. Clarification of the term "positive special treatment", mentioned in the 1980 Act concerning Equality between Men and Women, was also requested. Noting that hundreds of cases of discrimination had been submitted immediately after the establishment of the Equal Opportunities Ombudsman, it was also asked how many such cases were being submitted currently, what allegations of discrimination were made and what results were achieved through the Ombudsman's interventions.

114. Responding to questions raised by members of the Committee, the representative of the State party said that the basic provisions against discrimination were contained in chapter 2, articles 15 and 16, of the Swedish Constitution, which were

translated into prescriptions covering a wide range of legislation. As examples of the latter, he mentioned provisions in the Penal Code prohibiting defamation and agitation against ethnic groups, the prohibition of threats or contempt against ethnic, national or religious groups, contained in chapter 7, section 4, of the Freedom of the Press Act, the Act concerning Equality between Men and Women at Work, and the creation of the Equal Opportunities Ombudsman and Equal Opportunities Commission.

115. Turning to questions relating to the proposals of the Swedish Commission on Ethnic Prejudice and Discrimination, the representative explained that new legislation on ethnic discrimination would not be oriented exclusively to the job market but would also encompass other aspects of social life. Accordingly, the Swedish authorities were currently working on proposals to establish a new post of ombudsman, the incumbent of which would be empowered to negotiate with employers, initiate discussions with various social groups on discrimination issues, give advice, and otherwise play an active role, particularly in the field of education. He would also be responsible for taking cognizance of complaints and would be assigned powers similar to those of the Equal Opportunities Ombudsman, although each would have a clearly defined field of competence. The draft under preparation also envisaged the establishment of a racial discrimination council and a system of fines payable by employers who disregarded the recommendations of the ombudsman or the council. In addition, the system of sanctions applicable for acts of hostility against ethnic groups would be expanded and strengthened.

116. Regarding ethnic discrimination in housing, there was no doubt that Swedish property owners were sometimes less than forthcoming in their dealings with certain ethnic groups. Nevertheless, they were required by law to accept tenants regardless of their background, failing which the matter could be taken before a housing board or tribunal. Restrictions on the residence of aliens, which applied only in cases where residence permits were issued for a limited period, related mainly to military security areas and sometimes also applied to Swedish citizens. Thus, the distinction between aliens and citizens in that connection was not a very broad one. As to whether certain associations could replace individuals in filing charges of discrimination, that was not possible since, under Swedish tradition, only an individual could do so.

117. With respect to equality of the sexes, women comprised nearly half of the labour force and had the legal right to employment in all occupations, including military careers except for certain branches. Education was open to both girls and boys without restriction and an equal number of girls and boys went on to secondary education after the comprehensive schools. In 1983, 56 per cent of first-year students at Swedish universities and colleges were women, and they comprised 45 per cent of law and 43 per cent of medical students. On the negative side, 75 per cent of gainfully employed women worked at a total of only 30 types of jobs, most of which were low on the wage scale. In 1982, women working in manufacturing earned only 90 per cent of men's wage rates, which, although an improvement over the past, was still not satisfactory. Disputes in the area of the equality of the sexes were referred to the labour courts by the Equal Opportunities Ombudsman. A Cabinet Minister associated with the Ministry of Labour had final responsibility for government action relating to equality. The term "positive special treatment" used in the Act concerning Equality between Men and Women at Work referred to measures taken in various areas to favour the underrepresented sex - whether men or women - for example, making technology and home economics courses compulsory for both boys and girls, in order to stimulate the interest of girls in non-traditional female employment fields. In 1982 and 1983, the Ombudsman had been notified of

100 cases of discrimination per se, 81 cases classified as "lack of active measures", and 109 cases classified as encompassing various other aspects of job discrimination. Often the Ombudsman had held that the rights of plaintiffs had not been infringed, but in other cases suits had been filed with the labour courts - a total of 23 in 1984.

Right to life

118. Members of the Committee wished to know, with reference to the right to life, what practical measures Sweden had taken concerning the points raised in the Committee's general comments Nos. 6 (16) 1/ and 14 (23) 2/, what controls and instructions were in effect governing the use of weapons and other forcible measures by the security forces and the police.

119. In replying, the representative of the State party stressed that the death penalty had been abolished in Sweden long ago, the last execution having taken place in 1911. In various United Nations and other bodies, Sweden had striven to promote the gradual abolition of the death penalty and would continue to do so despite seemingly stiffening resistance. Sweden had also acceded to the Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260 A (III)). In connection with the points raised in general comments Nos. 6 (16) and 14 (23) Sweden had, among other things, taken the initiative of elaborating a United Nations expert study on the relationship between disarmament and development. It had also followed up that study, as recommended by the General Assembly, by carrying out a national study on the economic and social effects of conversion from military to civilian production - the only Member State to have followed that recommendation thus far. It had supported the International Conference on the Relationship between Disarmament and Development, scheduled to be held in Paris in 1986, by participating in the work of the Preparatory Committee for the Conference. It had also, together with others, submitted draft resolutions urging, inter alia, a nuclear-weapon freeze and a comprehensive nuclear-test ban and had taken an active part in the Conference on Disarmament. In addition, Sweden had actively engaged in work on a convention on the prohibition of the development, production and stockpiling of chemical weapons and on their destruction, and had proposed measures banning the use of radiological weapons and attacks on nuclear facilities. It was a party to the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (General Assembly resolution 31/72) and also attached great importance to disarmament and development issues.

120. Regarding the use of weapons by security forces, the representative noted that the mission of the military forces was restricted to the defence of Swedish territory. Only the police had civilian functions in maintaining public order; they were authorized to resort to the use of force, but only under circumstances that were clearly defined, primarily involving self-defence.

Liberty and security of person

121. With reference to that issue, members of the Committee wished to know about the circumstances and periods for which persons could be held in preventive detention without being charged with a criminal offence; about practices relating to preventive detention in institutions other than prisons or for reasons unconnected with the commission of a crime; what remedies were available to persons, and their relatives, who believed they were being wrongfully detained and how effective such remedies were; and how article 9, paragraphs 2 and 3, of the

Covenant, particularly regarding prompt judicial control of conditions of arrest and detention, were being observed. Other questions concerned the maximum period of pre-trial detention, the adequacy of contact between arrested persons and lawyers, the limits placed on the discretionary authority of the police or immigration officials in case of temporary detention of aliens, and the promptitude with which the families of arrested persons were informed. Clarification was also sought as to the reasons for Sweden's reservation concerning article 10, paragraph 3, of the Covenant and as to whether the provisions of the Code of Attachment of 1 January 1982, relating to the detention on remand of debtors, was consistent with article 11 of the Covenant. Members also sought additional information on the alternatives to detention on remand, provided for in the amendments of 1 January 1982 to the Code of Judicial Procedure, including information on the reasons for having extended the group of persons subject to supervision rather than detention.

122. Noting that aliens could be detained, in cases of refusal of entry or expulsion, for up to two months - a very long period - and for up to two weeks in other cases, one member asked whether the maximum period of detention had ever been exceeded, and requested statistics regarding the average length of detention in such cases and the number of foreigners currently in administrative detention. Clarification was also sought as to why, in the Swedish Constitution, the rights of aliens were limited and separately enumerated (in chap. 2, sect. 20) despite the provision in article 2, paragraph 1, of the Covenant which required that rights be respected and ensured "to all individuals within [each State party's] territory".

123. With reference to chapter 2, section 9, of the Constitution, members requested clarification concerning the procedure used in cases where persons were being detained by administrative authorities, and asked whether it was not generally difficult for Swedish courts to review cases where rulings had been made by the National Immigration Board or the Government or a minister. It was also asked whether there was a legislatively stipulated maximum period of detention beyond which release of the individual could be ordered, and whether there was any procedure similar to that of habeas corpus or amparo, which would ensure that an accused person's arrest and detention was brought to the attention of a judge for review. It was also asked whether prison staff were acquainted with the international instruments that safeguarded the rights of detainees, such as the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169).

124. In replying, the representative of the State party explained that the maximum period of preventive detention was five days, with court proceedings having to be initiated within a further four days. A new proposal, which might be in force by July 1986, provided for court notification to be given by the public prosecutor within three days of detention and for the initiation of court proceedings within the succeeding three days. Regarding detention in institutions other than prisons, he stated that Swedish law provided for the detention of individuals in psychiatric institutions and establishments reserved exclusively for certain categories of detainees such as alcoholics, juveniles and aliens. In the case of children under 15 who had been arrested, the police were obliged to return them immediately to their parents or guardians or to hand them over to a social welfare unit. Those detained for psychiatric reasons had their cases reviewed by two councils, composed of legal and psychiatric experts and independent of the public authorities, which could decide either to release the persons concerned or to commit them to a psychiatric institution.

125. With reference to article 9, paragraphs 2 and 3, of the Covenant, the provisions of the Code of Judicial Procedure ensured prompt judicial control of recourse procedures. The maximum period of detention pending trial was 14 days until the trial began; thereafter the court had to be convened to decide on the issue of detention every 14 days. There were no restrictions on the opportunity for an arrested person to contact a lawyer. Families of arrested persons were informed of the circumstances as rapidly as possible. Restrictions were imposed in that regard only where there was a likelihood of complicity or of obstruction of the normal course of justice by the individual concerned through his contacts with members of his family or with his friends. Chapter 2, section 9, of the Constitution related to conditions affecting detention and not to procedures relating to trial on substantive charges. While detention could theoretically be extended any number of times beyond the initial 14-day period, statistics showed that in the overwhelming majority of cases trials began during the first two-week period. The question concerning habeas corpus could best be treated in Sweden's next periodic report since it related to the current process of reform of the entire judicial procedure in Sweden, including the status and functions of public prosecutors.

126. In clarification of Sweden's reasons for entering a reservation to article 10, paragraph 3, of the Covenant, the representative explained that, in the main, the Swedish Government endorsed the principle of separating young offenders from adults in prison. However, the Act containing Special Provisions on Young Offenders provided that young offenders should, whenever possible, be placed in local institutions close to their homes rather than in national institutions. Local institutions being very small, it was not possible to avert all contact between young offenders and older detainees. In 1983, there had been only 24 persons under 18 years of age in prison, most of them sentenced to terms of only one to three months. With regard to the detention of debtors, it was stressed that persons could not be detained, under the Code of Attachment, for inability to fulfil contractual obligations. Detention could be ordered only in case of refusal to disclose all relevant information concerning one's financial situation and assets and only when the creditor had been granted an enforceable title, by court order.

127. As to alternatives to detention on remand, the representative explained that her Government wished to avoid, as far as possible, resort to deprivation of liberty, which, in its view, constituted a violation of the integrity of the person. One possibility being studied would involve releasing certain accused persons from detention and placing them instead under "supervision" - meaning that they could live and work at home while awaiting trial. Prison staff were instructed on a continuing basis about how to deal with offenders or suspects and were acquainted with the provisions of the Code of Conduct.

128. Turning to questions relating to the treatment and detention of aliens, the representative stated that it was unfortunately not possible, at the Committee's current session, to supply statistics on the periods of detention, but that the issue would be treated in Sweden's next periodic report. Section 50 of the Aliens Act had been amended on 1 January 1985 in order to limit the number of cases of provisional detention of aliens. It was further provided, in section 52 of the Aliens Act, that aliens could be taken into custody only for reasons specified by the law and could seek release from detention by appealing to the courts. The protection concerning court proceedings, conferred upon citizens under chapter 2, section 9, of the Constitution, was also extended to aliens, under the Aliens Act. The proviso "unless otherwise provided by special rules of law", relating to the

equality of treatment of aliens, was necessary since, for example, an alien claiming refugee status had to be questioned about his political views for the purpose of determining his status, whereas such questioning would be prohibited by the Constitution if applied to citizens.

Right to a fair trial and equality before the law

129. With reference to that issue, members of the Committee wished to know how the rights set forth in article 14, paragraph 1, of the Covenant were respected when civil or criminal proceedings were held in camera or in the absence of the accused and, specifically, who decided that a trial should be held in camera and what conditions governed the holding of trials in absentia; what restrictions were placed on communication between detainees and their freely chosen lawyers and what other limitations or suspensions of procedural rights applied in the case of proceedings in camera; how the removal or rejection of defence counsel by the courts could be justified from the standpoint of the Covenant; and how the procedural rights of minors, mentioned in paragraph 67 of the report, were actually secured in practice. Additional information was also sought concerning the reasons for Sweden's reservation to article 14, paragraph 7, of the Covenant, which contained a universally acknowledged principle of law. Sweden's observations on the Committee's general comment No. 13 (21) 8/ were also solicited. Furthermore, one member asked for clarification of the powers of administrative authorities to deny public inquiries under section 60 of the Aliens Act. Another member inquired as to the maximum period of pre-trial detention.

130. Responding to the questions raised by members of the Committee, the representative of the State party explained that the rights of the accused in a criminal trial, as established in the Code of Judicial Procedure, applied equally in the case of in camera proceedings. Such proceedings were aimed at protecting the accused and/or injured party, and the documents in the case, unless classified under the Secrecy Act, were open to the public. The procedural rights of minors during the course of such hearings were fully protected under rules specifically applicable to them. The decision as to whether a trial should be held in camera was exclusively within the jurisdiction of the courts. Hearings in absentia were held with respect to offences punishable by fines only and when the accused had failed to respond to numerous summonses. As to restrictions on communications between detainees and their freely chosen lawyers, no such restrictions were practised in Sweden. The possibility for courts in Sweden to reject or remove defence counsel arose from the fact that under the Swedish judicial system anyone could act as counsel, even those without legal training. Where the person selected as counsel was manifestly unsuitable, the courts had to reject him, in accordance with criteria established by law. Such rules were not aimed at barristers or other members of the legal profession who normally served as defence counsel.

131. As to Sweden's position regarding the Committee's general comment No. 13 (21), the representative stated that Sweden fully adhered to it. In connection with Sweden's reservation to article 14, paragraph 7, of the Covenant, the representative reiterated Sweden's intention to limit the application of the provision permitting the reopening of cases to rare instances, such as where judicial misconduct had affected the original judgement. In other cases, the public prosecutor wishing to have a case reopened had to meet certain strict procedural requirements. In short, the option had been kept open only to allow for dealing with cases where the nature of the evidence that came to light after the trial might be such as to damage the credibility of the judicial system unless a retrial was ordered.

132. In replying to questions concerning the maximum length of pre-trial detention, the representative said that hearings had to take place no later than one week after charges had been filed by the public prosecutor, except in cases involving a travel prohibition, where the period was extendable to one month. Generally, judgements had to be pronounced immediately after the main hearing and, in any case, not later than two weeks thereafter.

Freedom of movement; expulsion of aliens

133. With reference to that issue, members of the Committee wished to have additional information on the specific grounds for the expulsion of aliens mentioned in paragraphs 57 and 61 of the report. Referring to the fact that under section 43 of the Aliens Act "illicit sexual relations" and leading "a grossly disorderly way of life" were listed as reasons for expulsion, one member asked for clarification of the legal definition of such terms and asked how such charges were applied in practice. In addition, questions were raised concerning the grounds for expulsion, the legal remedies available and their general effectiveness. Members also wished to know what limits there were on the discretion of the relevant authorities in respect of the issuance of passports, the control of the movement of aliens and orders for their expulsion, as well as how the activities of the authorities in the foregoing fields were monitored.

134. One member, while welcoming the information provided in the report concerning the provisions of the Swedish Passport Act, requested clarification about the right of appeal against withdrawal of a passport in cases where the holder had been ordered to return it. Another member noted that the Committee found it helpful for countries to explain any difficulties they were encountering and expressed surprise that the report made no mention of the group of Kurds in Sweden who were regarded as a threat to national security. Recalling that an expulsion order had been issued in their regard - without being executed since there was no safe place for them to go - and noting that the authorities had resorted to controlling the group's movements, the member asked whether the controls had been instituted under section 27 of the Aliens Act and whether such a measure could continue to be applied indefinitely without a judicial review.

135. With regard to the refusal of entry of aliens into Sweden, it was noted that although entry was supposedly refused only if it did not involve any risk for the alien concerned, it seemed that a harder line had been pursued since 1984. In that connection, it was asked how, under current practice, it was ensured that individuals were not endangered, and what the normal period for reaching a decision on asylum was. With regard to the detention, prior to expulsion, of aliens lawfully in the country, it was asked what the maximum period for keeping such aliens in custody was under section 50 of the Aliens Act, and what appeal procedure was available against such a custody order. It was further asked whether an alien could be refused permission to leave Sweden. Regarding refusal of entry, it was noted that the most common reason for such refusal was lack of a passport and entry permit or the money for the individual's upkeep and fare home. In that connection, it was asked whether an alien who was found outside the area to which his permit had been restricted was considered as lacking a permit, and what the criteria were for determining whether or not an alien had enough money for his upkeep.

136. In replying to the questions posed by members of the Committee concerning grounds for the expulsion of aliens, the representative of the State party noted that there were four main grounds upon which expulsion could be ordered: lack of passport or residence permit, criminality, anti-social behaviour, and terrorism.

With regard specifically to the term "illicit sexual relations" mentioned in section 43, the reference was mainly to relations that were not punishable by law as such but where it was suspected, for example, that economic gain was involved. Since no cases had been brought under that heading, it was not possible to provide concrete examples. As to the division of functions among the various authorities in respect of expulsions, the representative explained that cases involving aliens lacking passports and entry permits were heard by the National Immigration Board, with appeals being heard by the Government itself; criminal cases were dealt with by the courts, which had the power to order expulsion as part of the penalty for the crime and whose decisions were governed by the Code of Judicial Procedure - with appeals being heard by the Court of Appeals and subsequently by the Supreme Court; cases of anti-social behaviour were decided by the county administrative courts and could be appealed to the Administrative Court of Appeal and ultimately to the Supreme Administrative Court; and cases involving terrorists were handled by the Swedish Government itself. Regarding detention, the authority that handled the substantive issue in the case also decided on detention. All decisions concerning passports could be appealed except where the revocation order had become final and the enforcement stage had been reached.

137. Regarding refusal of entry, the representative stated that there were exceptions to refusal of entry under the Aliens Act in cases where a person claimed that he ran the risk of political persecution or of being sent to a theatre of war. The only case in which the police were not obliged to refer the matter to the National Immigration Board would be one in which it was apparent that the alien's claim was without foundation. If an alien holding a restricted permit went outside the community to which the permit related, the National Immigration Board would review the situation and, if necessary, refer the case to the county administrative court. Information regarding appeals against expulsion orders would be included in Sweden's next report. It was hoped that information regarding the average length of time it took to reach decisions on political asylum cases - which could not be estimated at present - could also be included in the next report.

138. In connection with questions raised regarding the case of the Kurds, the representative stated it was a very complex case, which did not fall within the purview of article 13 of the Covenant. Regarding permission to leave the country, those sentenced to a term of imprisonment were obliged to serve out that term before being allowed to depart. An alien who was detained but had committed no crime was free to leave the country as soon as transport could be arranged.

Interference with privacy or the family

139. With reference to that issue, members of the Committee wished to have information about measures taken to ensure protection against arbitrary or unlawful interference with privacy - by means of electronic surveillance or misuse of data - on the part of administrative or police officials and about the legal régime governing telecommunications, including its legal basis, authorization, and administrative and judicial control. It was asked in that connection whether, in national security cases, the authorities could engage in telephone tapping without there being any legal basis for such activities; whether adequate safeguards existed to prevent unauthorized persons from gaining access to information contained in data banks; and whether there was any immediate remedy, such as writ of prohibition, available to a victim of unlawful interference with privacy. Another member wished to have additional information on reported security police practices of registering people holding radical political views or belonging to

radical political movements, and of responding to 100,000 requests for information concerning such individuals annually.

140. In connection with the right of families to live together, members asked whether any distinctions were made between men and women or single and married persons in the Aliens Act and the Passport Act of 1980. Members also wished to know about the conditions under which parents could be deprived of the custody of their children, whether in that connection children could be forced to adopt a different faith from that of their parents, and whether the children of immigrants had ever been taken away from their families. One member also asked how the welfare authorities were informed that a child was not properly cared for, what the exact composition of the Social Welfare Committees was, and what the term "in danger of developing in an undesirable direction", cited in the Young Persons Act, was interpreted to mean.

141. Responding to the questions raised by members of the Committee, the representative stated that under the Swedish Constitution interference with privacy was prohibited unless otherwise specified by law. The only exception authorized by legislation concerned telephone tapping to investigate particularly serious offences, such as drug trafficking, or when State security was endangered.

142. Regarding data banks, the representative stated that the only record covering the entire population in Sweden was a register of names and addresses. Sweden had acceded to several international agreements designed to ensure that personal privacy was not invaded. The problem of possible infringements of that right was kept under constant review by the Data Inspection Board. Under the law, most data were confidential and could not be used for purposes other than those for which they had been gathered. However, in certain instances, such as an investigation under the Penal Code, the police or other authorities could gain access to data files.

143. With reference to questions relating to the right of families to live together, the representative stated that no distinctions were made in the Aliens Act and the Passport Act of 1980 between men and women or between single and married persons. As to safeguards concerning the welfare of adopted children, the representative noted that permission to adopt was granted by courts only after a thorough investigation into the ability of the prospective parents to raise the child, both financially and from the point of view of the family environment, and, in the case of foreign children, after all the adoption formalities had been completed in the country of origin.

144. The representative explained that public care of a child could be decided upon, in the case of those under 18, only after all other measures had been exhausted, and whenever the lack of care or any other condition in the home entailed dangers to the child's health or development, and, in the case of those under 20 years of age, if the individual gravely endangered his own life or development by drug abuse, delinquency or similar behaviour.

Freedom of opinion, conscience and religion

145. With reference to that issue, members of the Committee wished to receive information on protection from religious discrimination and the guarantee of equal treatment of all religions, particularly in view of the existence in Sweden of an official religion. They also asked whether the privileges and financial advantages enjoyed by the Church of Sweden did not, in fact, constitute discrimination since

other religions did not possess such advantages; whether religions other than that of the Lutheran State Church were taught in religious instruction classes at school and whether, for example, prisoners were visited by ministers of religions other than those of the State Church; whether Swedish law contained any reference to the right not to profess any religion; whether educational institutions offered compulsory religious instruction and, if so, whether parents could have their children exempted from such instruction; and whether the Church of Sweden was subsidized.

146. One member wondered whether a provision in the Act on Freedom of Religion of 1981 prohibiting the practice of a religion if it "caused public indignation" imposed restrictions beyond those permitted under article 18, paragraph 3, of the Covenant. Noting that proposals had been made in parliament for radical changes in the status of the Church of Sweden as the State Church, and that the Covenant contained no provision requiring the separation of Church and State, it was asked what action, if any, had been taken on such proposals.

147. In his reply, the representative stated that article 2 of the Constitution provided for protection against discrimination as well as protection for ethnic, linguistic, or religious communities. The right not to profess any religion was also guaranteed although that was not covered by a separate provision. The fact that there was a State Church in Sweden did not mean that there was an official religion. The Church's establishment reflected administrative arrangements dating back to the fifteenth and sixteenth centuries concerning the registration of individuals, and the Church of Sweden continued to perform certain administrative functions at the municipal level. Swedes were free to leave the Church of Sweden and could do so by merely asking to have their names removed from the register.

148. The representative acknowledged that the Lutheran State Church was financed by local taxes; its economic position was therefore distinct from that of other religious communities. He stated, however, that fears of discrimination on that or any other account were not justified by the facts, which showed that religions that were not dependent on the State were flourishing. Concerning religious instruction, the representative explained that religious instruction as such was not provided in the schools but could be made available in parishes on the initiative of the parents. A "survey of religions" course, designed to teach the history and basic theological features of a great variety of religions in the world, was compulsory on the same basis as history or geography.

149. Proposals to separate the Church from the State had been discussed at length in Sweden. The issue tended to be very emotional and to date all proposals for change had been rejected.

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

150. With reference to those issues, members of the Committee wished to receive information, inter alia, on the control of the media, including the right of ownership and influence on the media. In that connection, it was asked whether, in addition to the State radio and television monopolies, any private companies were currently broadcasting programmes; whether the expression of differing points of view was allowed in the State corporations; why an activist of a pacifist movement had been denied access to the media; whether the press was in the hands of a monopoly or hidden forces which controlled the media; whether the Government had applied any penalties in cases where newspaper articles had allegedly offended

public morality; and to what extent private radio and television stations could be controlled if their programmes were morally offensive.

151. In addition, members of the Committee wished to know whether there were any controls on the production and sale of videotapes; whether there was censorship of the State-controlled media, or similar practices, and, if so, what the composition of the controlling bodies was; whether there had been any cases of arrest or detention for the expression of political views or any prosecutions for statements against nuclear weapons and in favour of peace; how article 20, paragraphs 1 and 2, of the Covenant was actually implemented in practice; and why several neo-Nazi groups could propagate their ideas and were not prohibited. With reference to the Committee's general comments Nos. 10 (19) and 11 (19) 10/ it was asked whether, in the light of the Committee's statement in general comment No. 11 (19) that articles 19 and 20 were fully compatible, Sweden intended to withdraw its reservation concerning article 20, paragraph 1. It was also asked whether Sweden considered adopting laws against racial discrimination and against propaganda for war.

152. In his reply, the representative stated that the media were governed by the Freedom of the Press Act, which guaranteed freedom of the press. The right to own newspapers was subject to certain nationality and residence requirements. The production of videotapes was not subject to any control, but sales of such tapes were taxed. Censorship and other similar practices did not exist in Sweden.

153. Although radio and television stations were State-owned, they were independent entities, which took their own decisions concerning their activities and programmes and were not censored in advance. Television had a pre-screening procedure to avoid the broadcasting of violent or pornographic films; that was, however, an internal procedure and it was not governed by a law. An ethics board also made decisions concerning the nature of the programmes that were broadcast. Although different political parties were represented on the boards of Directors they did not play a dominant role in the choice of radio and television programmes. The public could lodge complaints with the Radio and Television Ethics Board concerning programmes that were allegedly biased or lacking in impartiality. No one had ever been or would ever be arrested or detained for having expressed political opinions or hostility towards nuclear weapons or for having made statements in favour of peace. Responsibility for the control of press articles lay with editors.

154. Replying to questions concerning Sweden's reservation in respect of article 20, paragraph 1, of the Covenant, the representative explained that the Swedish authorities continued to believe that paragraph 1 of article 20 was in conflict with article 19 of the Covenant. In addition, the Swedish parliament, which had thoroughly examined the question, considered that it was better to allow groups that advocated war to expose themselves.

Freedom of assembly and association

155. With reference to that issue, members of the Committee asked why meetings, organizations or activities of a racist or neo-Fascist character were not prohibited by law. One member asked for information regarding the possibilities, under the Constitution and the Penal Code, for opposition to activities that encouraged racial discrimination and hatred. Regarding trade-union membership, it was asked whether there was a closed-shop system in Sweden.

156. In his reply, the representative said that under chapter 2, article 14, of the Constitution, freedom of association could be restricted where the activities of such associations were of a military or similar nature or involved the persecution of persons of a particular race, colour or ethnic origin. Racist activities of that kind were also prohibited under chapter XVI, article 8 of the Penal Code. In addition, the Freedom of the Press Act prohibited threats or any expression of contempt against a group of persons of a particular race, skin colour, national or ethnic origin or religion. The question whether certain associations should be prohibited was under constant discussion in Sweden but, for the time being, there were no associations of that type that were of any importance. As to trade-union membership, the representative stated that Sweden did not have a closed-shop system and that membership of a party or trade union was not compulsory.

Political rights

157. Regarding that issue, members of the Committee wished to receive information with respect to the exercise of and restrictions on political rights and concerning legislation and practice relating to access to public office.

158. In reply, the representative stated that all citizens could take part in the democratic process as soon as they reached adulthood, at the age of 18. Foreigners who had been living in the country for at least three years could take part in local and regional elections and had also been able to vote in a national referendum on nuclear energy. Under the Constitution, the posts and functions of heads of government agencies and diplomats could be held only by Swedish nationals and military service was also so reserved.

Rights of minorities

159. In connection with that issue, more detailed information was requested on the implementation of article 27 of the Covenant, particularly on possible threats to the environment and life-style of indigenous populations. Information was also requested regarding the measures being taken, especially in the areas of education and information, to allow minorities residing in the territory to preserve their own language and culture.

160. Responding to the foregoing questions, the representative of the State party said that the rights of minorities were guaranteed under chapter 1, article 2, of the Constitution and that, in practice, immigrants had the same rights as Swedes. The State encouraged the cultural activities of immigrants and ethnic and linguistic minorities, for example, by subsidizing the publication of foreign works and providing financial assistance for a magazine for immigrants which was published in 12 languages and had over 50,000 subscribers. The children of immigrants had the possibility of studying their mother tongue in schools and, since 1977, all municipalities had been required to offer courses in the various mother tongues. The Government encouraged minorities to maintain their identity, but mixed marriages were common and differences would probably be less marked in the future. In the near future, Sweden would be submitting a report, containing a great deal of additional information on the subject, to the Committee on the Elimination of Racial Discrimination.

General observations

161. Members of the Committee thanked the representatives for presenting Sweden's second periodic report objectively and sincerely and for providing useful

information in response to the Committee's questions and comments. Since it had not been possible for the representatives to provide full and detailed answers to a number of questions, the hope was expressed that the requested information could be provided in a supplementary report within a reasonable period of time.

162. The representative of Sweden, in turn, thanked all the members of the Committee for their patience and understanding of the time constraints which had faced his Government. All the additional information that had been requested would be made available as soon as the summary records of the Committee's meetings could be studied.

163. Additional information was received on 1 July 1986 (CCPR/C/32/Add.12).

Finland

164. The Committee considered the second periodic report of Finland (CCPR/C/32/Add.7) at its 643rd to 646th meetings, from 4 to 5 November 1985 (CCPR/C/SR.643-SR.646).

165. The report was introduced by the representative of the State party who explained that the implementation of the Covenant, in the period since the submission of Finland's initial report, had continued on the basis of both existing legislation and specific legislative and administrative measures that had been taken following consideration of the initial report. Rather than repeat information provided earlier, in preparing its second periodic report his Government had concentrated on providing information concerning the new legislative and administrative measures and on responding to questions raised by the Committee earlier that had not yet been fully answered.

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

166. Members of the Committee wished to receive information concerning new measures affecting the implementation of the Covenant since the consideration of the supplementary report on 13 and 14 August 1979, as well as relationships between constitutional norms and the provisions of the Covenant. In the latter regard, clarification was requested as to whether it was possible to question, in the courts, the conformity of the Constitution Act or specific legislation with the Covenant, and whether the courts could apply the Covenant in preference to domestic laws. Members also wished to know whether there were guarantees ensuring that the permitted exceptional measures did not limit the application of the Covenant; whether domestic legislation had been enacted to implement all the rights under the Covenant, thus ensuring that all such rights could be protected by the courts; and whether the Supreme Court and the Supreme Administrative Court could examine the constitutionality of laws. In addition, they asked what impact petitions addressed to the Chancellor of Justice or the Ombudsman had on the implementation of the Covenant's provisions, how the Bill of 15 February 1985 concerning pre-trial investigation would affect Finland's reservations to the Covenant, and what measures had been taken to disseminate information about the Covenant and its Optional Protocol. In the latter connection, one member noted that it might be useful to provide the legal profession and the judiciary with greater access to the Committee's work through its general comments and its annual reports.

167. In his reply to the questions raised by members of the Committee, the representative of the State party drew attention to the fact that the reservation

concerning article 13 of the Covenant, as well as that concerning article 14, paragraph 1, had been withdrawn. In addition, the Government had introduced a bill in parliament concerning pre-trial investigation, which if enacted would make the reservations concerning the provisions of article 9, paragraph 3, and article 14, paragraph 1 (d), of the Covenant unnecessary. Two or three additional reservations were technical in nature and did not conflict with the spirit of the Covenant, and his Government might consider the possibility of withdrawing them. As to the status of the Covenant, he noted that its provisions were incorporated into Finnish law through a blanket Act based on article 33, paragraph 1, of the Finnish Constitution, which did not recapitulate the individual provisions but gave them all legal force. The Covenant, together with the Act bringing it into force, had been published in the Official Gazette.

168. The rights recognized in the Covenant were given the strongest possible guarantee since the Finnish legislature had no power unilaterally to modify or derogate from international human rights instruments. The Covenant supplemented the Constitution and the Government was internationally bound to ensure that the rights contained in it were protected. In addition, protection of the rights enshrined in the Covenant was ensured by the court system and by the institutions of the Chancellor of Justice and the Parliamentary Ombudsman. As indicated in Finland's initial report, legislation had been enacted guaranteeing each of the rights laid down in the Covenant. There was also a procedure to ensure, prior to enactment, that any new bill was not contrary to the Covenant. There was nothing to prevent the direct application of the provisions of the Covenant if that was considered necessary. Whenever strict application of a particular law would lead to an inequitable result, it had to be interpreted in the spirit of the Constitution and of the Covenant in order to avoid such a result.

169. Neither the Supreme Court nor the Supreme Administrative Court were authorized to examine the constitutionality of laws. However, their advisory opinions could be requested by the Constitutional Committee of parliament.

170. With regard to questions concerning the role of the Ombudsman or the Chancellor of Justice, the representative explained that each office was independent from the other and could act on its own initiative. Any citizen or alien in Finland was entitled to lodge a petition with either office. Should the Ombudsman deem a petition to be well founded the matter would be pursued with the appropriate authorities. In serious cases, the authorities in question could be prosecuted and the petitioner would have a right to compensation.

171. As to the pending legislation concerning pre-trial investigation, he stated that, as soon as the proposed Bill was enacted, Finland's reservations in respect of article 9, paragraph 3, and article 14 paragraph 3 (d), of the Covenant would be withdrawn.

172. With reference to the dissemination of information, the representative said that the Covenant and the Optional Protocol had been published in the two national languages, Finnish and Swedish, in the Official Gazette and the Statute Book, which was always at hand to every judge in the country, as well as in pamphlets which were distributed to schools and non-governmental and other organizations. More could be done to make the provisions of the Covenant known to the general public, however, and that point would be included in his report to the Government.

State of emergency

173. In connection with that issue, members of the Committee wished to know what effect Act No. 407 of 17 June 1979, which related to assuring the subsistence of the population and the security of the country's economic life in exceptional circumstances, had on the implementation of the Covenant's provisions. They wondered whether persons could be detained without trial under a state of emergency declared pursuant to that Act and, if so, whether there was a procedure similar to habeas corpus or amparo, providing for the immediate presentation of the person concerned before the court so that the lawfulness of the detention could be examined.

174. In his reply, the representative explained that Act No. 407 authorized the Government to provide, by administrative decree, for certain short-term measures - covering such areas as currency regulations and the export, import, production or distribution of goods - to ensure the continuity of the country's economic life and defensive preparedness. It did not confer any powers of detention. Under the Act on a State of War, a person could be held in detention for the duration of the war without having been sentenced for a crime, if the suspicions leading to his arrest were deemed plausible and if his release was seen as detrimental to public security or to the defence of the country. The application of that provision was a matter of past history.

Self-determination

175. With reference to that issue, members of the Committee wished to receive information concerning Finland's position on apartheid, Namibia and Palestine, and asked whether the Åland Islanders considered the local autonomy they had been granted as constituting the implementation of the right to self-determination, whether they had been consulted with regard to that matter, and whether the Finnish Government intended to consult the inhabitants of the Åland Islands about their wishes with respect to becoming totally independent.

176. In his reply, the representative stated that Finland was opposed to apartheid and had condemned the policy based on it in many contexts. Finland had also provided humanitarian aid in many forms to those fighting for their rights. It had historic ties with Namibia, where Finnish missionaries had established hospitals and schools, and it would be prepared to contribute to a peace-keeping force, if so requested, once the Territory had attained independence. Finland had consistently supported United Nations resolutions on the rights of the Palestinian people to self-determination and to the establishment of their own State.

177. Turning to questions regarding the status of the Åland Islands, he explained that Finland had granted partial autonomy to the Åland Islands. The relevant Act had been replaced by the Act of 28 December 1951, under which the inhabitants enjoyed far-reaching autonomy, including their own provincial Diet, their own legal administration with limited power to legislate in economic, social and cultural fields, their own flag and their own stamps. A new Act, further developing autonomy and replacing the Act of 1951, was being prepared. As a whole, the system of autonomy had been considered satisfactory both by the approximately 25,000 inhabitants of the Islands and by the rest of the country, and all questions had been settled in a friendly atmosphere. The Islanders had ample opportunities, for example, through the mass media and elections to their provincial parliament, to express their desire for independent statehood and to take steps in that

direction. So far they had not done so and seemed to consider that the current situation met their needs.

Non-discrimination and equality of the sexes

178. With reference to that issue, members of the Committee wished to receive information on measures taken to ensure equality of the sexes in the enjoyment of the rights specified in the Covenant and the results of such measures; the extent to which women enjoyed equality with respect to the family; and the extent of women's participation in public employment. Members also wished to know whether affirmative action measures had been resorted to in Finland to redress inequality; what type of army, police and prison service posts were restricted; and whether there were any barriers, in practice, to women becoming members of parliament or ministers; to what body the Equality Council addressed its proposals and whether it had ever considered the question of equal treatment of men and women in obtaining Finnish citizenship; whether action had been taken to adopt new regulations regarding recruitment, promotion and pay, which were needed to enable Finland to accede to the Convention on the Elimination of All Forms of Discrimination against Women; whether it was true that the courts declined to hear testimony from plaintiffs in cases of alleged discrimination in municipal or civil service hiring and dismissals; and whether there were still difficulties in ensuring the equality of the sexes, with a great many legislative provisions still needing to be changed. It was also asked whether women had the right to terminate a pregnancy in sanitary and safe conditions; whether the Aliens Act of 1 March 1984 ensured equal protection of aliens and Finnish nationals; and whether the rights of linguistic minorities were protected.

179. Responding to the questions raised by members of the Committee, the representative stated that, although equality of the sexes was already a reality in Finland, every effort was being made to improve the situation still further. Finland intended to ratify the Convention on the Elimination of All Forms of Discrimination against Women and was currently studying the legislative changes that might be needed to enable it to do so. One of the difficulties in that regard, for example, concerned the preparation of a new law on family names. The Equality Council, which provided advisory opinions to any authorities that requested them - particularly the Council of State - was working on the identification of modifications that might be required for Finnish ratification of the Convention.

180. With regard to salary disparities, parity existed in the public sector but had unfortunately not quite been achieved in the private sector. As to the problem of recruitment, a bill under preparation provided that recruitment criteria should be the same for men and women, which would, in effect, prohibit specifying a given sex in job offers. Nevertheless, certain exceptions could be made in cases where the completion of compulsory military service was a requirement.

181. One fourth of the members of parliament were women and there were many women serving in the judiciary and in the administration, including the Foreign Service, which comprised among other women officials at least three or four ambassadors. In general, no measures of affirmative action were applied in Finland and there was no quota system. While the participation of women in public bodies was increasing, dramatic changes could not take place overnight. As indicated in Finland's initial report, the Act of 19 December 1975 had abolished all legal restrictions on access by women to certain offices previously considered unsuitable.

182. Under the Marriage Act, no distinction was made between man and wife regarding the legal effects of marriage and the rights and obligations of the spouses. Both spouses were to contribute to the family's maintenance, both parents were the statutory guardians of their children and each spouse had the right to own and dispose of property.

183. Concerning the question of the acquisition of Finnish nationality, the representative informed the Committee that the formulation in article 4 of the Constitution: "Finnish citizenship belongs to every person born of Finnish parents and to every woman of foreign nationality who was married to a Finnish citizen" had been amended to read: "The rights of Finnish citizenship belong to every person born of Finnish parents". If a Finnish man or woman married a foreign man or woman, he or she retained his or her nationality, and, conversely, the acquisition of Finnish nationality was not automatic. Residence or work permits were also not accorded automatically to the non-Finnish spouse, although marriage was certainly an argument that weighed heavily in the decision to grant such permits. By a law of 1984, the Finnish authorities had also attempted to ensure a just balance in the transmission of nationality to the child, keeping in mind the requirements set out in international instruments. Marriage was a decisive factor in that regard, whereas in the absence of marriage the decisive factor was the nationality of the mother.

184. With reference to the protection of the rights of aliens and minorities, the representative noted that fewer than 6 per cent of Finland's 4.9 million inhabitants had Swedish as their mother tongue, and most of those persons were bilingual. Both Swedish and Finnish were recognized as the national languages, for historical reasons, and all official documents appeared in both languages. There were also small Lapp and Gypsy minorities, with written languages, and children having Lapp as their mother tongue received elementary school education in their own language. The new Aliens Act covered the right of asylum. Formerly, decisions on expulsion had not been open to appeal but that rule had now been changed and the provisions of the new law were in line with the Covenant as well as the Convention relating to the Status of Refugees. 11/

Right to life

185. With reference to that issue, members of the Committee wished to receive information regarding measures taken by Finland in relation to the Committee's general comments Nos. 6 (16) 1/ and 14 (23) 2/ and to have Finland's observations, if any, thereon. In addition, members wished to know what instructions had been given to the police regarding the treatment of prisoners; what conditions governed the use of firearms by the police; what measures had been taken to reduce infant mortality; and whether pollution of the environment was punishable. Noting that the Finnish Constitution referred only to the rights and freedoms of Finnish citizens, one member also asked whether the rights of aliens were adequately protected in Finland and whether the recently enacted Aliens Act had affected their status.

186. In his reply, the representative noted that there was no discrepancy between Finnish legislation and the Covenant with respect to the matters covered in general comments Nos. 6 (16) and 14 (23). The use of weapons by the police was strictly regulated by exact orders. Although police officers had the right to use firearms in extreme cases, they were cautious in doing so because of the great responsibility entailed in any excessive use of force. Torture was punishable under a special provision of chapter 5, article 11, of the Penal Code. Regarding

infant mortality, there was an entire body of legislation in Finland concerning public health and the social welfare of families and children.

Treatment of persons, in particular prisoners and other detainees

187. With regard to that issue, members of the Committee wished to know whether there had been any cases of cruel, inhuman or degrading treatment, particularly since the adoption of the Act of 19 July 1974 amending the Penal Code and abolishing forced labour. They also asked about measures to ensure the social rehabilitation of detainees and the results achieved through the activities of the Ombudsman and the Inspector of Prisons.

188. In his reply, the representative stated that there might have been some minor cases involving mistreatment by police of persons being held in custody for a few hours, but those responsible had always been duly prosecuted in conformity with the law, which was quite clear on the subject. The Ombudsman was responsible for inspecting prisons and was able to talk privately with detainees who had complaints. All cases of ill-treatment were carefully examined and the Ombudsman took all the appropriate measures so that no systematic abuses were possible. When legislation was not being fully respected, the Ombudsman intervened to ensure that it was enforced. The prison director could authorize a detainee to leave the prison for a limited period of time when the detainee had emergency family or personal matters to take care of. Detainees had the opportunity to participate in religious ceremonies which took place in the prisons and they could talk to representatives of their religious community, and to anyone else, when they deemed it necessary for conducting their personal affairs. There was also a national association in charge of helping former prisoners to readjust to life in society, especially to find housing or work.

Liberty and security of the person

189. With reference to that issue, members of the Committee wished to receive information regarding the conditions of solitary confinement, the maximum duration of police custody and of detention pending investigation and trial, the average period of pre-trial detention, circumstances relating to detention in institutions other than prisons or for reasons other than penal reasons (for example, in psychiatric institutions or social rehabilitation centres), and the reasons why a bail system did not exist in Finland. Noting that warrants for arrest or detention could be issued by county governments, police authorities and public prosecutors, and that, to bring Finnish legislation into conformity with article 9 of the Covenant, a government bill had been prepared for presentation to parliament, members of the Committee wished to know the current status of that bill.

190. In addition, it was asked how compliance with the provisions of article 9, paragraphs 1 and 2, of the Covenant was ensured; whether, in cases of abuse, individuals could invoke the Optional Protocol; whether the conditions of police custody were in practice different for aliens and nationals and, if so, what the basis for such a distinction was; whether there were any procedures similar to that of habeas corpus or amparo guaranteeing that a detainee was brought before a judge immediately; and whether Finland intended to withdraw its reservation to article 9, paragraph 3, of the Covenant.

191. Responding to the question raised by members of the Committee regarding solitary confinement, the representative of the State party explained that solitary confinement as a disciplinary measure could be imposed only as a last resort. The

prison director could authorize solitary confinement for up to seven days only, and the board of directors was authorized to impose solitary confinement for a maximum of 20 days. The detainee had a right to be heard before he was placed in solitary confinement.

192. Turning to questions concerning police custody and pre-trial detention, he stated that, currently, a person who had been arrested was generally brought before the prosecutor within three days, although the police could extend that period up to 14 days in difficult cases. Under the proposed new legislation, the maximum period of police custody would be limited to three days. If convinced that there were solid grounds for bringing charges against a suspect, the prosecution could seek to have the person indicted and placed in temporary detention, at which point the court took over responsibility for keeping the individual in detention. On average, pre-trial detention lasted weeks or some months - never as long as a year. As to the length of trials, he noted that, in particular, the prosecution of so-called economic crimes required a lot of time. As soon as a trial was completed, however, the judgement had to be rendered without delay.

193. Pre-trial detention was not resorted to in all criminal cases by any means and it could only be ordered by the courts under conditions expressly stipulated by law, such as when it was feared that the suspect might flee the country, continue his felonious activities, evade justice or destroy evidence. The court was bound at all times to re-examine the grounds for detention in order to make sure that it was still necessary to detain the individual. It was most unlikely that arbitrary arrest or detention could occur. The institution of the Ombudsman, who periodically visited prisoners and to whom prisoners could send letters, provided an extra guarantee. Every accused person could immediately appeal against his detention. Judicial control was therefore generally very strict.

194. When administrative detention was ordered by an appropriate administrative authority, the person in question had the right to appeal to higher instances and ultimately, to the Supreme Administrative Court. The Ombudsman could also intervene in such cases, and if it was established that the administrative authority had acted in error, the victim had the right to sue the authority in an ordinary court and to seek compensation. The bill designed to bring Finnish legislation into line with article 9 of the Covenant was currently being examined by parliament. After its enactment the right to issue arrest and committal warrants would be taken away from administrative authorities and transferred to the courts.

195. Regarding bail, the representative explained that Finland had not adopted the bail system because it was felt to be discriminatory toward persons without means. However, it could be said that a system of personal bail did exist, in a sense, since the court could decide to release an accused person on his own recognizance in cases where the offence was not extremely serious and the suspect had a fixed abode, a job and a family.

196. With regard to the mentally ill, all districts in the country had psychiatric hospitals with specialized staff. Unless a particular danger existed, no one could be confined to a psychiatric hospital without his consent. Persons who could not be integrated into society despite receiving assistance from local authorities, including hospital care, if required, and help in finding housing and employment, could be detained for reasons unrelated to criminal activities. Such persons could be placed under supervision for up to two years and could be detained in a specialized establishment for a maximum period of six months, particularly if they

were deemed to pose a danger to themselves or to others. Social rehabilitation measures were also provided for certain drug addicts.

Right to a fair trial and equality before the law

197. With reference to those issues, members of the Committee wished to know the causes of unduly lengthy trial procedures; they also asked about planned measures to ensure that verdicts were rendered without undue delay, whether there was a remedy available in the case of excessive delays, whether interpretation was available in court proceedings from Swedish to Finnish and vice versa, whether Finnish law ensured compliance with the procedural guarantees contained in article 14 of the Covenant in cases involving offences that had been decriminalized, and whether the right of the accused to be informed of the charges against him was adequately protected. Clarification was sought as to the reasons for excluding the public from a trial.

198. Regarding legal assistance, members wished to know whether accused persons were accorded the right, under Finnish law, to be informed of their right to legal assistance and, if so, whether that right was ensured in practice, whether a defendant was assured of obtaining legal aid in all rural and urban communes, and whether he could choose his own lawyer. It was also asked how the planned reorganization of the judiciary would affect the status of judges, especially the possibility of their being transferred from one post to another without their consent. Another member requested further information regarding the organization of the legal profession, asking, in particular, how many private attorneys there were in Finland.

199. Members also inquired whether Finland had any observations to make in respect of the Committee's general comment No. 13 (21), 8/ which concerned article 14 of the Covenant. It was asked whether civilians could be tried before military courts and what safeguards existed to ensure that the outcome of trials was not prejudged by the authorities.

200. In his reply to questions raised by members of the Committee concerning unduly lengthy judicial proceedings, the representative of the State party cited certain reasons for delays, such as changes in the rules of evidence, the ability of defendants to seek adjournments in order to collect counter-evidence, and the practice of holding collective trials of members of criminal associations at which each accused person was defended by separate counsel and each offence had to be cleared up separately. In addition, the claims for damages for victims of such criminality were heard in conjunction with the trial of the defendants. Defendants who had been acquitted after a lengthy trial and who had suffered economic or other hardship could file claims for compensation from the Government. Interpreters were always available in legal proceedings, as necessary, in connection with the use of Finland's two official languages, as well as for other languages if aliens were involved. The record of the court proceedings was published in the official language used by the defendant.

201. Responding to various questions from members of the Committee regarding rights protected under article 14, paragraph 3, of the Covenant, the representative noted that accused persons had to be informed of charges against them as well as of their right to legal counsel. The new bill under consideration provided even clearer protection in those regards, including the right to counsel from the beginning of the pre-trial period. As a result, Finland would be able to withdraw its reservation to article 14, paragraph 3, of the Covenant after enactment of the

bill. A criminal defendant's right to be present at his trial was fully respected in Finland, but in minor cases he could, if he wished, stay away and be represented by counsel. Guarantees were also respected in cases involving offences that had been decriminalized. Legal aid offices had been established in every commune or federation, subsidized by the State to the extent that any commune needed such subsidy. In addition, under the "free trial" system in Finland, any defendant without means could be represented by counsel of his choice at State expense.

202. Regarding the right to a public hearing, he noted that the Act on Publicity of Jurisdiction had not yet been tested in the courts but that an attempt had been made by his Government, when preparing that Act, to harmonize its provisions with those of the Covenant. It was up to the courts to decide, in all cases, whether or not a trial would be held behind closed doors.

203. Replying to other questions, the representative stated that access to the courts in Finland was unlimited and available to everyone. Military courts had been abolished and military offences were tried in the ordinary courts. The reorganization of the court system currently under way, which would result in the merger of the existing dual system of city courts and district courts into a single type of court, might involve the transfer of some judges, but in all cases their status and salaries would remain unchanged. The legal profession in Finland had an organization corresponding to a bar association. The association had disciplinary powers and could expel a member for unprofessional conduct. However, it was not necessary to be a member of the Bar Association or to possess legal qualifications in order to be able to practice law in Finland since anyone who enjoyed a good reputation could assist parties at any stage of a legal proceeding, including hearings before the Supreme Court.

Freedom of movement and expulsion of aliens

204. With reference to the freedom of movement of aliens, members of the Committee observed that certain provisions contained in the Decree on Aliens of 1958, such as the provision allowing the Aliens Bureau to restrict the right of an alien to choose his place of residence, appeared to be contrary to article 12 of the Covenant, since they were not based on law and were not consistent with other rights recognized in the Covenant, particularly the right of equality before the law. It was further asked whether the new Aliens Act of 1984, superseding the Decree on Aliens, had abolished the restrictions in the 1958 Decree on Aliens and, if so, whether the new Aliens Act contained a specific provision extending to aliens a right to freedom of movement that was comparable to the right enjoyed by Finnish citizens. Referring to the possibility that passports could be withheld from "persons who are likely to engage in activities prejudicial to the security of the State or who are believed to intend to engage in criminal activities abroad", members of the Committee requested clarification as to how that concept was interpreted or defined by the Finnish authorities and the courts.

205. Regarding the expulsion of aliens, members noted that, under the new Aliens Act any expulsion decision by the Ministry of the Interior could be appealed before the Supreme Administrative Court. It was asked, in that connection, whether such an appeal had the effect of halting the execution of the expulsion decree; whether an alien could also lodge an appeal if his work or residence permit was withdrawn, since such measures generally had the same effect as an expulsion decree; and whether the Finnish authorities had taken into account the need to ensure that a person who was about to be expelled would not be placed in a situation where his

rights under the Covenant as a whole - especially the rights to life and liberty - would be threatened.

206. In his reply, the representative confirmed that the Aliens Act, which had come into force on 1 March 1984, entirely superseded the former Decree on Aliens. Under that Act, the movement of aliens was subject to no restrictions other than those concerning aliens about to be expelled from Finnish territory. Restrictions on freedom of movement were limited to the frontier zone and applied to Finns as well as foreigners. With regard to the issuance of passports, the representative stated that the current regulations - based on a decree - were not satisfactory and would be replaced by a law that was currently being prepared. Under the present regulations, passports could be refused only to persons implicated in extremely serious cases of international criminality such as trafficking in drugs and prohibited merchandise, espionage and high treason. Refusal to issue a passport was an administrative matter and those affected by that measure could approach the competent Minister for redress and could ultimately take their case to the Supreme Administrative Court. The current restrictions regarding passport issuance would be eliminated under the new law.

207. Regarding the expulsion of aliens, he reiterated Finland's intention to withdraw its reservation to article 13 of the Covenant, since the new Aliens Act had brought Finnish legislation into conformity with the provision requiring observance of the right of appeal in cases of expulsion. That Act also extended the right of asylum to aliens who had plausible reasons for requesting it, such as the fear of being persecuted in their country of origin or residence or the refusal of asylum in another country. The grounds for expulsion of an alien lawfully in Finnish territory were set forth in detail in article 18 of the Aliens Act. Refugees could be expelled only on grounds of engaging in sabotage, espionage or certain acts which jeopardized State security, or for committing a particularly heinous crime, but even in such cases they could not be returned to a territory where their life or security would be in danger.

Interference with privacy

208. With reference to that issue, members of the Committee wished to receive information regarding measures to prevent arbitrary or illegal interference with privacy, the legal régime governing interference with telecommunications, and the adequacy of care provided to children being raised in institutions for the protection of children. They also wished to know what guarantees existed to ensure that privacy was not invaded in cases where the Government made available information on individuals to potential employers in the private sector; what conditions governed the release of such information to private sector employers and whether the person in question was informed that such information had been supplied; whether an individual had the right to verify the accuracy of the data contained in Government files; whether telephone conversations could be monitored under a court order; and whether there were any remedies, other than complaints to the authorities or to the Ombudsman, in cases of illegal searches.

209. In his reply, the representative of the State party said that, under article 12 of the Constitution Act, the secrecy of postal, telegraphic and telephonic communications was inviolable, except as otherwise provided by law, and that the relevant legislative provisions had been explained in Finland's initial report. In criminal investigations, the same authorities who had the power to issue arrest warrants could also issue search warrants for the purpose of seeking evidence. Victims of illegal searches had a right to sue for damages. Under the

law, everyone had the right to know what information was in his official files. The keeping of private "black lists" on workers by employers was unlawful and any employee dismissed for political or other inappropriate reasons could seek redress through the courts.

Freedom of thought, conscience and religion

210. With reference to those issues, members of the Committee wished to know whether there were any restrictions applicable to minors in respect of freedom of thought, conscience and religion, and whether the right to speak for or against religion was protected. They also asked what the differences were between the status of the Evangelical Lutheran Church, the Greek Orthodox Church and the other religious communities in Finland, how many religious communities had registered under the Act on Freedom of Religion, and whether prisoners were afforded free access to religious services. In addition, members wished to know how conscientious objection was given recognition under Finnish legislation.

211. In his reply, the representative of the State party explained that, under the Act on Freedom of Religion, minors were members of the religious community of their parents. However, after reaching the age of 15 they could no longer be obliged to follow their parents in changing a religion, and after achieving adulthood they were free to join another religious community if they wished to do so. Freedom of worship was fully protected in Finland, as was the right of atheist organizations, such as the Freethinkers' Society, to defend their points of view in meetings and publications. Such organizations had to refrain, however, from blasphemy or insulting the religious feelings of others, and did not engage in anti-religious propaganda.

212. Regarding the situation of Churches in Finland, he indicated that for historical reasons the Evangelical Lutheran Church and the Orthodox Church had attained the status of national institutions to the effect that their administration was regulated by law and that their bishops were paid by the State, whereas the salaries of the lower-ranking clergy were paid by the Church. The Orthodox Church had historical roots in the eastern part of the country, but had only about 61,000 members. Some 90 per cent of the Finnish population belonged to the Evangelical Lutheran Church. The other religious communities of the country were treated as juridical persons enrolled in the official register of religions. They had legal capacity which enabled them to collect funds for their maintenance. Some 5 per cent of the population did not belong to any religious community. Obviously, the small religious communities were not on an equal footing with the national Churches but they were free to function and to organize their services and meetings as they wished. The representative stressed that Finland was basically a secular State, with daily life being regulated by secular and not by religious laws.

213. Under the 1969 Act on Military Service and Civil Service, conscientious objection, on grounds of religious or moral convictions, was recognized. The Act stipulated that conscientious objectors could perform unarmed service for a period 90 days longer than regular service, or civil service for a period 120 days longer than the normal period of military service. Determining the genuineness of an objector's convictions had proved to be difficult and there was a particular problem with Jehovah's Witnesses, who refused to accept any kind of service. A new law, enacted in July 1985, eliminated the necessity for objectors to pass before an examination board charged with determining the genuineness of their beliefs, but doubled the length of the extra period of alternative civil service from 120 to 240 days.

Freedom of opinion and expression; prohibition of propaganda for war and advocacy of racial and religious hatred

214. With reference to those issues, members of the Committee wished to know Finland's current position with regard to the possible withdrawal of its reservation to article 20, paragraph 1, of the Covenant. They also asked whether there were any restrictions on freedom of expression or information, whether the State controlled media were subject to censorship and, if so, what the composition of the controlling bodies was, and whether measures had been taken to enable ethnic, religious, or linguistic groups to express their opinions through the media on social, political or religious questions.

215. Referring to paragraph 32 of the report, members requested clarifications concerning the concept and the application of the provision in the Penal Code prohibiting abuses of freedom of expression which amounted to "defamation of a foreign State thereby endangering the relations of Finland and the foreign State". They wished to know how that provision had been interpreted by the courts and whether people had actually been tried and convicted for defaming a foreign State.

216. In connection with censorship, members requested information regarding the role and powers of the Board of Film Censors and clarification of the term "an ethical view of life and a sound way of life" employed in paragraph 38 of the report, and of any criteria elaborated by the Council of State to ensure that licensees complied with that stricture.

217. In his reply to the questions raised by members of the Committee concerning article 20, paragraph 1, of the Covenant, the representative stated that Finland, which had voted against that paragraph at the time of adoption of the Covenant by the General Assembly on the grounds that it limited the freedom of expression, had decided to maintain its reservation. Like other Scandinavian countries, Finland had endeavoured to find a formula for an appropriate provision to be inserted in the Penal Code - but without satisfactory results. While certain acts of the nature of war propaganda were already punishable under chapters 11 and 12 of the Penal Code and some provisions of the Freedom of the Press Act could also be used to prevent such acts, Finland believed that the objectives of article 20, paragraph 1, of the Covenant could best be attained through information, education and cultural activities.

218. Concerning censorship, the representative noted that freedom of expression and freedom of information were guaranteed by article 10 of the Constitution Act and that the remedies available against the infringement of those rights were the same as for other rights and freedoms. The governing bodies of the Finnish Broadcasting Company included parliamentary representation and ensured that an appropriate balance was maintained in radio and television programmes. The role of the Board of Film Censors was to review all films imported into Finland to ensure that obligations arising under international instruments to which Finland was a party, particularly in relation to pornography, were complied with. In view of the radical changes that had occurred in standards relating to public morality, the Board had been carrying out its tasks with great flexibility. The reference to "an ethical view of life and a sound way of life" in the rules approved by the Administrative Council for radio and television broadcasts related, *inter alia*, to the treatment of problems such as drug and alcohol abuse and excessive violence. The Council exercised its discretionary powers in that area on a case-by-case basis. As to the possibilities for expression afforded to ethnic, religious or linguistic groups, all mass media were available to such groups and television

programmes depicting their lives had been shown, for example, in order to highlight their special needs.

219. Responding to questions concerning article 4 of the Penal Code, which prohibited offences against the dignity of a foreign State, the representative explained that that offence, along with such other offences as slander, instigation to treason and incitement to crime, was seen as an abuse of the freedom of expression. To the best of his recollection, however, no cases of defamation of a foreign State had been brought before the courts.

Freedom of assembly and association

220. With reference to those issues, members of the Committee wished to know what justification there was for the provision authorizing the police to interrupt public meetings organized by aliens and whether aliens had the right to organize such meetings or not. Concerning the implementation of article 22 of the Covenant, one member noted that, apparently, only Finnish citizens had the right to join a political party. Another member wished to know whether the Finnish Government considered trade unions to be associations of a political nature and whether aliens were afforded the opportunity to form or join trade unions.

221. In his reply, the representative stated that aliens were fully entitled to participate in public meetings, whether or not such meetings were political. The provision of the Association Act restricting the participation of aliens in political associations originated from the early days of Finland's independence and was obviously meant to prevent any revolutionary activities by aliens. Trade unions were not considered to be political associations. Associations could be formed in Finland by any three persons but had to be registered in order to obtain legal status as a juridical person. During the registration process the authorities ascertained that the association's by-laws were in conformity with the law and good morals.

Right of minorities to enjoy their own culture

222. With reference to that issue, one member requested additional information regarding the implementation of the provisions of article 27 of the Covenant in respect of the Lapp people and asked for clarification of the functions of the Lapp parliament.

General observations

223. Members of the Committee thanked the representative of Finland for presenting the report and for orally supplementing the gaps therein. While some additional information and clarifications were still needed - which members hoped the Finnish Government would supply as soon as possible - the exchanges had been fruitful and had facilitated the Committee's work.

224. The representative of the State party expressed appreciation to members of the Committee for their understanding and assured them that he would transmit the Committee's request for additional information to his Government.

225. Additional information was received on 4 June 1986 (CCPR/C/32/Add.11).

Mongolia

226. The Committee considered the second periodic report of Mongolia (CCPR/C/37/Add.2) at its 657th to 660th meetings, held from 31 March to 1 April 1986 (CCPR/C/SR.657-SR.660).

227. The report was introduced by the representative of the State party who drew attention to several important political and economic developments that had taken place in his country since the submission of Mongolia's initial report in 1980, as well as to certain practical measures taken to incorporate the provisions of the Covenant into domestic legislation and to strengthen the State's legal framework.

228. He noted in particular that Mongolia's gross national product had almost doubled since 1980 and that improvements had occurred in the fields of education and health. Legislation relating to human rights included the Act on the Conclusion and Implementation of International Treaties and the Public Education Act. The latter contained provisions establishing equal access to education for all citizens without discrimination on the basis of sex, race or religion and established the right to education in one's mother tongue. Changes had also been made in the administration of justice and in regulations covering industrial relations and the system of pensions.

Constitutional and legal framework within which the Covenant is implemented

229. With reference to that issue, members of the Committee wished to receive information on the Covenant's legal status vis-à-vis the Constitution and domestic law, on efforts being made to disseminate information about the Covenant, and on practical difficulties that might have arisen in the course of implementation of the Covenant. Members also requested clarification concerning the respective powers of the Presidium of the Great People's Khural and the Supreme Court in interpreting the provisions of the Covenant, in particular, whether the arrangements were consistent with the requirements of the Covenant with respect to the establishment of independent and impartial tribunals, and regarding the substance and workings of the People's Control Act. Members also wished to know whether the death penalty for theft had been abolished; whether the State party's report had been translated into the Mongolian language and given wide distribution; whether the Committee's current consideration of Mongolia's report had been publicized; whether certain functions had already been transferred by the State to the Association of Communist Workers, in conformity with article 94 of the Constitution; and whether any customary norms existed that had a bearing on the enjoyment of human rights.

230. In his reply, the representative of Mongolia stated that all the rights and freedoms covered by the Covenant had already been recognized and guaranteed under the Constitution and the laws of Mongolia prior to ratification of the Covenant. However, the Covenant was recognized as an international instrument. Any eventual conflicts with domestic law were subject to resolution in accordance with the procedure established in article 24 of the Act on the Conclusion and Implementation of International Treaties. The Great People's Khural received reports from the Supreme Court each year and dealt with matters relating to the judicial branch, but its opinions and decisions were of a general character and did not address in detail the matters that had been treated by the judiciary. The Supreme Court, as well as the lower courts, acted with full autonomy and independence in administering the laws. The right to interpret the Constitution was vested in the Presidium of the Great People's Khural.

231. As to the dissemination of information concerning the Covenant and the Committee's activities, the representative explained that a wide variety of methods was used to provide the population with basic legal knowledge, including, in particular, the public educational system as well as the mass media and the practice of holding weekly half-hour meetings at work places. Mongolia's second periodic report had been originally written in Mongolian, for example, and the people had been informed in the newspapers, periodicals and other media, about the entire process of the preparation of the report. The public would also be apprised of the outcome of the Committee's consideration of the report after his delegation returned home. Regarding the question concerning the People's Control Act, he explained that each state or public body had an organ of control whose size varied according to the size of the institution and whose members were elected by their colleagues at general meetings.

232. Responding to other questions, the representative of the State party explained that the possibility of abolishing the death penalty for the two categories of crime to which that punishment was applicable was still under consideration. Since the submission of Mongolia's initial report, the death sentence had been carried out only in cases involving aggravated homicide - on average one or two cases a year. Customary law did not exist in Mongolia but respect and protection of cultural values, personal relations and children were ensured through a legal institution. As to when State functions could be transferred to the people, as envisaged under the theory of the State's disappearance embodied in the Constitution, the representative stated that such a transfer might be realized after various further stages of society's evolution had been traversed.

Non-discrimination, equality of the sexes and equality before the law

233. With regard to that issue, members of the Committee wished to receive information as to whether men and women were able to retire at the same age; whether discrimination on the grounds of political opinion was prohibited; whether persons convicted of particularly dangerous State crimes were in fact political prisoners who were isolated from other prisoners to mark them for harsher treatment; and whether there was a specific legal prohibition against incitement to racial hatred. With reference to the status of aliens, it was asked whether the fact that aliens could not become members of the Mongolian People's Revolutionary Party adversely affected their civil rights and whether the ethnic Chinese living in Mongolia had been granted citizenship after independence; whether aliens who married a citizen of Mongolia could acquire Mongolian citizenship if they wished to do so; and whether aliens had the same rights in relation to the Covenant as citizens. Regarding the equality of the sexes, one member wished to know about some of the main difficulties that had had to be surmounted in order to reach the high standard of equality that prevailed in Mongolia. Another member wished to have further information as to why the number of women studying in educational institutions had apparently decreased since the submission of Mongolia's initial report and why the percentage of women among the members of the Mongolian People's Revolutionary Party had remained more or less the same.

234. Responding to the questions raised by members of the Committee, the representative of the State party noted that the age of retirement was governed by the Parliament Act of 1958 and the Agricultural Workers' Retirement Act. Men generally retired at the age of 60 and women at 55, but under certain circumstances the retirement age was lowered to 50 and 45 respectively. The Constitution did not explicitly ban discrimination on the grounds of opinion, but there were many constitutional provisions prohibiting discrimination of any kind and none condoning

discrimination on the basis of an individual's opinions. Similarly, although not explicitly employing the term "racial discrimination", the Penal Code and other laws made such acts a criminal offence. The principle of equality was the paramount factor in considering the issue of discrimination, and racial inequality did not exist in Mongolia. As for the isolation of some prisoners, the reasons for separating some prisoners from others were penal reasons relating to the dangerousness of their crimes and such persons were not held in special penal settlements but in the prisons. There were no political prisoners in Mongolia.

235. On the questions relating to aliens, the representative stated that the ethnic Chinese who had been citizens before the Revolution had been allowed to keep their citizenship, those who wished to acquire citizenship after the Revolution had done so, and those who wished to remain aliens could do so. Ethnic Chinese who were aliens had their own schools, where courses were taught in Chinese, and maintained their own national traditions and cultural centres. There was no difference between the rights of Mongolian citizens and of aliens except that the rights set out in article 25 of the Covenant were reserved for citizens, and that aliens could not serve in the armed forces, discharge certain judicial functions or become members of the Revolutionary People's Party of Mongolia. There were many laws that safeguarded equality of rights between aliens or stateless persons and citizens of the Republic, including the 1971 and 1972 Land Tenure Acts, the Act on the Use of Woodlands and Water Resources and the Public Health Act. Equal rights were also safeguarded in relation to education, access to professional institutions and establishments of higher education and the application of the Civil and Penal Codes and of legal procedure. While article 5 of the Nationality Act provided that marriage between a Mongolian citizen and a citizen of another State or a stateless person did not affect the latter's citizenship, article 6 of the same Act provided that citizenship could be extended to aliens or stateless persons without regard to race, national origin or religious opinion.

236. With reference to the role and status of women, the representative explained that the process of emancipation of women and the assurance of their equal rights with men had required a great deal of work. Women had to be made aware that they were citizens with full rights and full participants in the social and political life of the country. Organizations of Mongolian women set up by the Party and other social organizations had done much to educate women and give them that awareness. At first women had not been much involved, but little by little the concept of their equality had taken hold and women were now active members of society with full rights. On the legal side, women's equality had been provided for under the first Constitution after the Revolution and subsequent legislation had further expanded and safeguarded such rights. As to why there had been no increase in recent years in the percentage of women Party members, the representative stated that there could be various reasons, including the possibility that fewer women had sought to join the Party during that period.

Right to life and prohibition of torture

237. With reference to that issue, members of the Committee wished to receive information on the likely nature of the criminal charges that could be brought against an official who had unlawfully deprived a person of his life; the frequency of imposition of the death penalty within the past seven years; the authorities to whom applications for review of sentence or for clemency might be made; the extent to which infant mortality had been reduced; whether evidence obtained under torture was admissible in court; the extent to which the functions of the Procurator's Office provided protection against violations of the right to life; and the penal

policy concerning the sentencing and treatment of the criminally insane. Members also wished to know how the list of offences subject to the death penalty could be regarded as compatible with article 6, paragraph 2, of the Covenant. In that connection, one member suggested that consideration should be given by the Mongolian Government to eliminating from that list offences such as the misappropriation or theft of property, which in his view did not justify the imposition of the death penalty.

238. In his reply, the representative of the State party said that all officials, including those responsible for maintaining public order and members of the people's militia, were liable to severe punishment if they attacked someone and would be brought up on criminal charges and prosecuted if they took someone's life. The death penalty was rarely imposed except for particularly heinous murders and it had been resorted to less frequently in the past seven years than in the preceding 10-year period. In revising the Penal Code, the Government had taken into account the provisions of the Covenant, as well as the comments made by members of the Committee during the discussion of Mongolia's initial report. The Government was convinced that the manner in which the death penalty was applied in Mongolia was in no way contrary to the provisions of the Covenant.

239. Responding to other questions, the representative explained that a person convicted of a crime could apply to a higher court to have his sentence reviewed or to a court of appeal or higher organ of State power and administration, including the Great People's Khural; that infant mortality had been reduced ninefold since the Revolution; that testimony obtained by means of torture was illegal and could not be used as evidence in a court of law; and that those who committed socially dangerous acts but were not mentally responsible were given compulsory psychiatric treatment, while those who became mentally irresponsible after the commission of a crime were obliged to serve out their sentences after they had been given effective psychiatric treatment. On the role of the Procurator's Office in protecting life, he explained that the Office's special powers extended to supervision of compliance with the law by all ministries, state enterprises, local Khurals, co-operative and social organizations, places of detention, officials and citizens, and that it also monitored the work of investigative bodies, the implementation of court decisions, the activities of corrective labour organs and the prosecution of criminal offences.

Security of the person

240. With reference to that issue, members of the Committee wished to receive clarification of the respective role of the courts and of the Procurator regarding arrest or authority to arrest and the determination of the lawfulness of detention, as well as concerning the compatibility with the Covenant of the system of measures of restraint described in the report. They also wished to know how long a person could be held prior to trial once the Procurator had determined that his detention was lawful and, in that connection, whether it was true that a person could be detained for up to nine months even in the absence of factors such as the possibility that further crimes might be committed or that the detainee might abscond or interfere with witnesses. They asked whether the law allowed deprivation of liberty in non-criminal cases, such as those involving mental health, contagious disease, drug abuse, minors or proceedings for expulsion, and, if so, whether the safeguards required by article 9 of the Covenant existed. They also asked whether any summary remedy such as habeas corpus or amparo was available to persons who had been deprived of their liberty.

241. In his reply, the representative stated that, under the Constitution, persons could be arrested only on the basis of a court decision or with the sanction of the Procurator. The latter was required by law to order the immediate release of anyone determined to have been illegally deprived of his freedom. An individual could also be released from detention by order of a court or the Procurator in cases where his alleged offence was punishable by less than one year's imprisonment. Detention in custody as a measure of restraint was strictly controlled and its proper application was guaranteed by the Code of Criminal Procedure. Examples of circumstances under which detention could be ordered included situations involving serious offences or the possibility of the commission of further crimes - such provisions were therefore not incompatible with the Covenant. A criminal suspect could be detained without charge for a maximum of two weeks after which he must be either accused or released. The maximum length of pre-trial detention after a person had been charged was nine months. Detainees had the right to resort to any legal means, including recourse to the courts, the Procurator or higher authorities, to seek a review of the lawfulness of their detention, and such appeals were made frequently. Detention in cases other than those involving criminal activities fell within the responsibility of other authorities, such as the health authorities in the case of persons considered to be a danger to themselves or to society who refused treatment.

Treatment of persons deprived of their liberty

242. With reference to that issue, members of the Committee wished to receive information on how the political education of prisoners was organized and controlled; the rights of convicted persons to receive visits and whether they were free to write to their lawyers; the differences in the legal régime for convicted and for accused persons; whether minors were separated from adult detainees and convicts; whether the law provided for different treatment for convicted aliens compared with convicts who were citizens and what the reasons were for keeping them separated; whether the group of stateless or alien convicts included any ethnic Chinese; whether solitary confinement or the restriction of food could be used as measures of punishment in Mongolia's prison system; and whether prisoners had the opportunity to practice their religion. Members also wished to have more details about the early release programme provided for by the Act of 1983 and about the results achieved in reintegrating convicts, especially minors, into Mongolian society. More information was also requested concerning the methods and principles used in the selection and training of the personnel of penal and correctional institutions and about the number of prisons, inmates and cases of complaints against prison officials for mistreatment of prisoners.

243. Replying to the questions raised by members regarding prison conditions, the representative of the State party explained that the general purpose of political education was to inculcate a responsible attitude to work and strict observance of the law, while raising the prisoners' cultural level and encouraging them to take constructive initiatives. Political education was arranged by the administration of each corrective labour facility, with the involvement of representatives from the public and from economic and other organizations. Its basic forms included corrective labour, explanations of Mongolian law, group instruction and propaganda, mass cultural activities, and sports activities - the precise method depending on the nature of the offender's crime, his age, and his educational and professional background. Detainees were entitled to receive either short or long visits, lasting up to 4 hours or 72 hours respectively, from relatives or others, with long visits being restricted to close family members. They were also entitled to legal assistance and to see lawyers, in private, at the request of either the offender or

the lawyer. On the other hand, those in preventive detention pending preliminary investigation could only exercise their right to receive visits at the discretion of the Procurator's Office. The régime for convicted persons was different from that applying to those detained pending investigation or those simply under suspicion, and was generally stricter. There was no special legislation governing the treatment in prison of stateless or alien offenders, including ethnic Chinese, but for practical reasons, such as the presence of language barriers which prevented normal communication with other prisoners - and for their own benefit - it was considered necessary to segregate them. Solitary confinement was only applied when a prisoner had committed acts of extreme gravity or resisted prison discipline, and only upon issuance of a court order. Dietary regulations for prison inmates were based on the average daily caloric requirements established by the Ministry of Health, and the diet of offenders being held incommunicado was no different from that of other prisoners. Such offenders also retained their right to receive visits, send letters, lodge complaints and submit petitions through their lawyers, and could be released from solitary confinement if they gave evidence of good behaviour. While prisons had no separate facilities for religious observances, any prisoner who wished to pray, for example, was free to do so. Certain prisoners could be released early by court order under a work-release programme made possible by an amendment to the Penal Code adopted by the Great People's Khural in 1983. Such persons were obliged to work at designated jobs for a period of from two to five years, but could live with their families and earn normal wages.

244. Regarding the treatment of minors, he stated that minors under 16 were not subject to criminal prosecution, while those between 16 and 18 who were under investigation were rarely placed in detention, as they were normally released in the custody of their parents, schools or work collectives. All law enforcement agencies gave priority to the speedy adjudication of cases involving minors. The result of efforts to reform and rehabilitate juvenile offenders varied, depending on the circumstances. The chances for success were obviously much higher when dealing with young people who had committed minor offences than with adults. However, the reintegration of adult offenders was also given high priority in Mongolia; in particular, efforts were made to ensure that the ex-convict was reinstated in his old job or was helped to find a new one. The law provided strict sanctions against employers who refused to hire former convicts and everything possible was done by the competent bodies at the local level to combat their social rejection.

245. Turning to other questions, the representative explained that the prison supervisory commissions comprised members of the local Khurals as well as representatives of trade unions, workers' collectives and other bodies. Their functions, set out in the Corrective Labour Code and other legislation, consisted mainly of monitoring - but not regulating - the work of the authorities responsible for the execution of sentences, imprisonment, internal and external exile and corrective labour. The training of officials and officers employed in prisons was the responsibility of the Ministry of Public Security, which spared no effort to ensure that such personnel were familiar with the laws, rules and regulations applicable to the situation of prisoners. Seminars, refresher courses and round-table conferences were held frequently within the penitentiaries themselves or in specific areas of prison work. To be appointed to work as prison officers, applicants had to have legal training and were obliged to take oaths of duty. They were evaluated frequently and were subject to disciplinary action or dismissal for misconduct. The representative was not in a position to supply precise figures on the current prison population in Mongolia but thought that, compared to other

countries, it was relatively small, particularly in view of the frequent general amnesties and early releases for good behaviour.

Right to a fair trial and equality before the law

246. With reference to that issue, members of the Committee wished to receive information concerning the procedural measures adopted to ensure the provision of justice to Mongolia's partly nomadic population; the stage at which the accused could have access to a defence lawyer; the status of the College of Lawyers and the number of lawyers and judges in Mongolia; and the role of State arbitration and its relationship to the work of the courts. They also asked whether the holding of court hearings in the collective or in camera was compatible with the provisions of article 14 of the Covenant, whether recourse to the courts was also available in cases of alleged violations of civil rights, such as the right to a pension or social security, and whether recourse could be had against a law on grounds of unconstitutionality. In connection with the structure and operation of the judicial system, members sought further clarification as to the Supreme Court's precise relationship to the Great People's Khural and its Presidium, the composition of the various courts, the system of legal aid, and the independence of judges and the procedure for their removal from office. One member wondered whether Mongolia's legal system provided for procedural safeguards such as habeas corpus or the granting of injunctions and whether there was any machinery designed to ensure the supremacy of the Constitution.

247. In his reply, the representative of the State party said that each region had to have a certain number of people's courts, depending on the size of the territory and the situation and size of the population, so as to ensure that judicial activities and services could be carried out under optimal conditions. Access to a defence lawyer was available as soon as the preliminary investigation had been completed and the defendant had been informed of the charges. Defendants had a right to defence counsel of their own choice when appearing in court, whether or not a preliminary investigation had been conducted. Minors and persons incapable of undertaking their own defence were provided with a defence lawyer through the Procurator's Office. The College of Mongolian Lawyers was a voluntary social organization composed of a network of several hundred lawyers established for the purpose of ensuring the protection of the legitimate rights of citizens and organizations. It also acted in arbitration proceedings and provided assistance to persons and organizations by strengthening the rule of law and expanding the legal knowledge of the citizenry. Under a payments system established by the Ministry of Justice in co-ordination with the Ministry of Finance, members of the College of Lawyers received guaranteed salaries as well as a percentage of their earnings from legal fees.

248. Regarding the role of State arbitration, the representative explained that the legal functions of bodies concerned with State arbitration were governed by the provisions adopted by the Council of Ministers in 1978 and were discharged under strict supervision and control. Such bodies functioned rather like administrative tribunals in settling various types of economic disputes between organizations. Any economic dispute could be submitted to arbitration and the procedure could be used to modify or annul commercial contracts or to impose fines.

249. The role of social organizations and work collectives in the administration of justice was explicitly envisaged under both the Penal Code and the Code of Criminal Procedure. The conditions and rules for such participation were established by the

Great People's Khural and such participation neither impaired the court's impartiality nor violated the principle of equal justice. Under article 19 of the Code of Criminal Procedure the courts were authorized to hold hearings in camera only in certain circumstances, such as when dealing with cases involving State secrets, sexual offences or offences involving minors under 16. A person who had a grievance regarding his pension rights could bring the matter before the local Khural. If the case could not be settled at that level, but had merit, it could be taken before the courts. Where an apparent violation of the Constitution had occurred, a court could either resolve the matter, if it fell within its area of competence, or report it to the bodies responsible for monitoring the Constitution's implementation. Ultimately, possible constitutional violations could be referred to the Supreme Court, to its plenary, or to the Presidium of the Great People's Khural.

250. Turning to questions raised by members with respect to the structure of Mongolia's judicial system, the representative observed that the structure of the Mongolian State differed in some ways from that of some Western or developing countries. For example, State power was not divided into individual legislative, executive and judicial branches but was exercised through the local Khurals and the Great People's Khural, whose Presidium held the supreme authority in between the latter's sessions. While the Supreme Court was the highest State organ under the Constitution for the administration of justice, it was clearly subordinate to the Great People's Khural and accountable to its Presidium. However, its accountability was related to the overall administration of justice rather than to judgements in individual cases. Any citizen over 23 years of age who was eligible to vote and had a clean record was eligible to serve as a judge. City judges were elected by the local Khurals for three-year terms while the members of people's courts were elected by the people in each region in direct, general and secret elections. There was a unified system of military tribunals which, with certain exceptions, had responsibility for trying all crimes committed by military personnel. The independence of the judiciary, which involved a basic democratic principle, was assured under article 71 of the Constitution as well as articles 9 and 294 of the Code of Criminal Procedure, which provided that the exercise of judicial power could not be subjected to any influence outside the law itself. The fact that the terms of office of judges were limited did not in any way undermine their independence but probably discouraged abuse of power. An individual who suffered harm through the actions of any organ of authority or official was entitled to compensation from the same organ or official, in accordance with article 54 of the Civil Code.

Freedom of movement and rights of aliens

251. With reference to that issue, members of the Committee wished to receive information concerning regulations governing the issuance of passports and departure from the country; the legal basis of the decision-making powers of local administrative authorities with respect to freedom of movement and of residence and its compatibility with the provisions of article 12, paragraph 1, of the Covenant; the right of aliens to freedom of movement and of residence; and the possibility of recourse by aliens against expulsion orders. With reference to reports of large-scale expulsions of ethnic Chinese from Mongolia since 1983, members asked for clarification concerning the practical aspects of that problem; they wished to know whether legal proceedings had been initiated in accordance with article 13 of the Covenant, how many individuals had been able to contest the expulsion orders, and whether those availing themselves of recourse had been allowed to remain in Mongolia. They also asked whether ethnic Chinese could become Mongolian citizens.

Referring to the statement in paragraph 146 of the report that "norms of criminal law have retroactive force if that is specifically indicated in the law", one member requested a clarification in view of the apparent incompatibility of that provision with article 15 of the Covenant.

252. In responding to the questions raised by members of the Committee, the representative of the State party noted that entry into and departure from Mongolia were governed by regulations that had been issued by the Council of Ministers. Under those regulations, passports and visas were issued for such purposes as visits to relatives, friends or sick persons, and for reasons of health, travel and tourism. Legal residents of the country, whether citizens or aliens, could move freely within Mongolia and decide freely where to reside, except that local administrative authorities could impose some restrictions on movement - for reasons of public health or when a census was being conducted, for example - or some administrative restrictions with respect to the choice of residence for reasons such as the rapidity of urban growth. In neither case did such restrictions conflict with the principle of freedom of movement and of residence or involve discrimination against aliens. Aliens facing expulsion orders could seek redress under various procedures, depending on the reasons for the order and the issuing authority. Regarding the issue of retroactivity of norms of criminal law, he noted that the statement in paragraph 146 of the report was an obvious translation error, since such retroactivity did not exist in Mongolian law either in theory or in practice.

253. Replying to questions relating to the alleged expulsions of ethnic Chinese from Mongolia, the representative explained that some 4,000 ethnic Chinese citizens of Mongolia had chosen to resettle in the People's Republic of China and had been permitted to emigrate on the basis of a mutual agreement between the two countries. There had been no expulsions and those ethnic Chinese who wished to remain in Mongolia had been able to do so. There were approximately 2,000 ethnic Chinese currently living in Mongolia. Such persons could obtain Mongolian citizenship freely and several hundred of them had done so.

Privacy, family, correspondence, honour and reputation

254. With reference to that issue, members of the Committee wished to receive information concerning the scope of the punishment for "insult" and asked how that offence differed from slander or libel and whether slander against the State was a punishable offence.

255. In his reply, the representative explained that "insult", under Mongolian penal law, was a deliberate act, spoken or written, to impugn a person's honour and was punishable by up to six months' corrective labour. If the act involved the deliberate dissemination of printed falsehoods, it was punishable by a term of up to one year of corrective labour or a fine of up to 300 tughrig. Slander was also a punishable offence in Mongolia.

Freedom of religion, expression and assembly

256. With reference to that issue, members of the Committee wished to know whether there were any religious groups in Mongolia other than Buddhists and what controls were maintained by the State over the press at either the national or the local level. Regarding the right of assembly, members asked who had authority to restrict that right, whether the convening of a meeting required prior authorization from the authorities, whether informal meetings could be held without

prior notification, and whether meetings could be held for purposes unconnected with public or political life. Noting that there was only one Buddhist monastery in Mongolia and one Buddhist school with only 16 students, one member wondered whether the establishment of other monasteries would be lawful. The same member also wished to know whether religious literature could be circulated or imported on the same basis as anti-religious propaganda. Another member asked whether any action was envisaged to satisfy the provision contained in article 22, paragraph 3, of the Covenant.

257. In his response, the representative of the State party said that 95 per cent of the population of Mongolia were Buddhists - although only a small proportion of them were believers - and that the remaining 5 per cent were Muslims belonging to the Kazakh ethnic group. While the Mongolian Constitution provided for the separation of Church and State and of religion and education, citizens enjoyed full religious freedom and could, if they wished, establish private schools where religion could be taught. Constitutional guarantees extended also to religious organizations, which could train clergy, publish religious literature and attend religious symposia. Religious books, including imported books that did not violate customs regulations, could be distributed without any restriction on grounds of religion. The establishment of a new Buddhist temple, in addition to the existing operating temple, was a matter to be considered by believers themselves. There were many more than 16 students attending the religious school attached to the temple, including many foreign students. As to freedom of expression, article 87 of the Constitution provided for the broad enjoyment by citizens of freedom of speech and freedom of the press and mass information. Some 37 newspapers and 19 magazines as well as some 600 books were published in Mongolia annually. The press was monitored only by the editors themselves and there were no State controls.

258. With regard to the setting-up of trade unions, the representative stated that Mongolia was in full compliance with the relevant provisions of the Covenant and that there were more than 30 associations in the country, ranging from unions to friendship associations. Concerning freedom of assembly, he explained that Mongolians had full freedom to hold meetings without requesting permission from the local authorities; informal meetings could be held without prior notification and any person could call a meeting. Meetings could be held on public or political issues as well as on other issues, such as unsatisfactory working conditions. Mongolians were prohibited only from holding meetings that were detrimental to national security or public safety, public order, the protection of public health or morals, or the rights and freedoms of others. In practice, no such restrictions had had to be imposed. If they proved necessary, however, the competent authorities would decide on them.

General observations

259. Members of the Committee expressed their appreciation for the State party representative's helpful and co-operative manner in the very constructive dialogue with the Committee. They noted with particular satisfaction that Mongolia's high-level delegation had been in a position to respond to questions immediately and comprehensively, and expressed the hope that the representative would report in detail to the Mongolian authorities on the discussions that had taken place.

260. In concluding the consideration of the second periodic report of Mongolia the Chairman also thanked the representative for his active co-operation, observing that the open exchange of views had generated many ideas that would help Mongolia to take a fresh look at its law and practice.

Federal Republic of Germany

261. The Committee considered the second periodic report of the Federal Republic of Germany (CCPR/C/28/Add.6 and Corr.1) at its 663rd to 667th meetings, on 3, 4 and 7 April 1986 (CCPR/C/SR.663-SR.667).

262. The report was introduced by the representative of the State party who reaffirmed his Government's strong support for the Committee's work, particularly since the promotion and strengthening of human rights throughout the world was one of his country's key foreign policy objectives. The representative drew special attention to the progress made in his country in ensuring the right to privacy, which was threatened by the growth of modern data-processing systems and computer technology. He referred to the increasing problem caused by the growing influx of refugees and applicants for asylum. The representative of the State party stressed that the fact that it had responded to particular questions in the second periodic report should not be interpreted to mean that his Government accepted the Committee's interpretation of the relevant article.

The Covenant and national law

263. With reference to that issue, members of the Committee wished to know whether the Covenant had any distinct role to play in the domestic legal order apart from that provided for by the Basic Law and whether it could be invoked directly at the level of common courts as if it were a national law. They requested further information on the composition of the Federal Constitutional Court and the influence of political parties on the nomination and election of judges as well as on the rôle of the Federal Constitutional Court in deciding on the compatibility of a law with obligations under the Covenant and asked whether that question had ever been addressed by the Court. They also asked how it was determined that certain groups had totalitarian ideologies and therefore should not enjoy the rights protected under the Covenant, and whether the Federal Constitutional Court had examined the constitutionality of the laws on extremism and if, as a result of those laws, anyone had been barred from teaching. Information was requested on factors and difficulties, if any, affecting the implementation of the Covenant; they asked, in particular, whether the long-standing unemployment of more than 2.5 million workers was not tantamount to social discrimination. Members also wished to have clarification concerning the practical importance of article 25 of the Basic Law in relation to human rights and the role of the Länder in implementing the relevant provisions of the Covenant, as well as the extent of publicity given to the report of the Federal Republic of Germany. It was asked whether resident aliens had been informed of their rights and how far the study of human rights contained in international instruments such as the Covenant was included in the curricula of elementary and secondary schools. One member also asked for clarification of a statement by the representative of the State party in the Third Committee of the General Assembly to the effect that the Committee, in its general comment No. 14 (23) 2/ had clearly deviated from its mandate. Another member wished to know whether the Federal Republic of Germany had any plans for ratification of the Optional Protocol.

264. In his reply, the representative of the State party noted that his Government had conducted a study, prior to the ratification of the Covenant, to ascertain whether its provisions were adequately reflected in domestic law and had found that to be the case. The Federal Republic had thus been able to ratify the Covenant without having to make any significant reservations. Only those provisions of the Covenant which were self-executing, for example, article 7, were directly

applicable under domestic law. A review of court rulings handed down in 1981 and 1982 indicated a slight tendency to apply articles of the Covenant directly. In general, the provisions of the Covenant were considered comparable with domestic legislation and only the Basic Law took precedence over them.

265. The representative explained the composition of the Federal Constitutional Court and stated that, while political parties had some influence on the election process, the requirement of a two-thirds majority for the election of judges tended to create the possibility of broad agreement. The Court did not rule directly on the compatibility of laws with the Covenant, confining itself to determining their compatibility with the Basic Law. In that process, and in determining the adequacy of the Federal Republic's compliance with its international obligations in a given case, the Court could take the provisions of the Covenant into account indirectly when interpreting the provisions of the Basic Law, although it was not known whether that had actually occurred. The competence to determine whether a person had abused a basic right set out in the Basic Law and whether a political party should be prohibited for reasons of its unconstitutionality was vested exclusively in the Federal Constitutional Court under articles 18 and 21 of the Basic Law. The determination of a political party's unconstitutionality depended upon the behaviour of its members - for example, whether they attempted to undermine or abolish the democratic order or to endanger the existence of the Federal Republic of Germany. Associations other than political parties could be declared illegal by the Minister of the Interior or the highest authority of a Land if their objectives or activities were in violation of the Penal Code or if they opposed the constitutional order or the idea of mutual understanding between peoples. Legal recourse was available against such decisions. The Federal Constitutional Court could also review the constitutionality of decisions taken by the Government to reject left-wing or right-wing candidates for public service. No difficulties had been encountered in implementing the provisions of the Covenant, and areas where such difficulties could be anticipated had been made the subject of reservations, such as in the case of article 14, paragraph 3 (c). The laws of the Länder placed no restrictions on the implementation of the Covenant.

266. With regard to questions concerning publicity and the study of human rights, the representative stated that human rights had been given a prominent place in the curricula of secondary schools in all Länder. Particular emphasis was placed on the relevant international instruments and the Covenants on Human Rights. As to the Federal Republic's intentions with respect to the Optional Protocol, he explained that the Government had not been able to decide upon ratification owing to the existence of a number of difficult legal and political questions. In deciding whether to ratify the Optional Protocol, his Government would also consider the Committee's interpretation of the provisions of the Covenant, the practice of the Committee and its general comments. His Government sought to avoid a broad interpretation of the provisions of the Covenant. Matters such as drug abuse and measures against infant mortality fell more appropriately within the framework of the International Covenant on Economic, Social and Cultural Rights.

Self-determination

267. With reference to that issue, members of the Committee wished to receive information on the Federal Republic's position in relation to the right to self-determination of the Palestinian and Namibian peoples and on measures taken by the Federal Republic to prevent public and private support for the apartheid régime of South Africa. With regard to South Africa, members also wished to know whether the State party would be able to accept sanctions that might be imposed against

South Africa under Article 42 of the Charter of the United Nations or to support the use of force in eliminating apartheid, whether it was co-operating with South Africa to increase the latter's defence capabilities, what the Government's position was concerning Decree No. 1 for the Protection of the Natural Resources of Namibia, enacted by the United Nations Council for Namibia, 12/ and whether it was true that the branches of some German corporations were operating in South Africa without paying minimum salaries or conforming to the guidelines that had been adopted by the European Community. Referring to article 20, paragraph 4, of the Basic Law, one member also wished to know whether the right of resistance encompassed the right to resort to force if necessary and whether it would be recognized also for the black people in South Africa.

268. In his reply, the representative of the State party said that his country considered the right to self-determination to be one of the basic legal principles of the international community, which applied to all the peoples of the world, including the Palestinian people. Only the Palestinian people themselves could decide how that right would ultimately be implemented. The Federal Republic of Germany and the other member States of the European Community had repeatedly expressed their willingness to contribute to a comprehensive, just and peaceful settlement of the Middle East question. As to the question of Namibia, his country supported the implementation of Security Council resolution 435 (1978). Article 20, paragraph 4, of the Basic Law - which was a source of pride since very few countries had such a protective clause in their constitution - was not applicable outside the Federal Republic of Germany.

269. Responding to members' questions and comments concerning South Africa, the representative stated that his country had consistently and unequivocally condemned South Africa's policy of apartheid as an unacceptable offence against basic human rights. Consequently, his Government strictly observed the arms embargo that had been imposed against South Africa by the Security Council, as well as the restrictive measures implied in the European Community decision of 10 September 1984. By so doing, his Government had taken active steps to prevent public and private support for the apartheid régime of South Africa. It was also in permanent contact with organizations struggling for self-determination in South Africa and was trying as far as possible to bring about peaceful changes in the abominable situation in that country. The representative categorically rejected, as baseless, the allegation that his Government provided South Africa with weapons and nuclear technology.

Non-discrimination and equality of the sexes

270. With reference to that issue, members of the Committee wished to know what measures had been taken to eliminate de facto discrimination against women and whether the Federal Republic of Germany had ratified the Convention on the Elimination of All Forms of Discrimination against Women. Concern was expressed as to whether the practice of Berufsverbot was compatible with article 2 of the Covenant; it was felt that the German authorities were violating the right to non-discrimination by refusing civil service posts and civil service training to citizens on political grounds. It was asked whether any Länder other than the Saarland had discontinued the practice of Berufsverbot, and whether any compensation had been granted to persons who had suffered damages as a result of that practice.

271. In his reply concerning the equality of the sexes, the representative of the State party noted that a 1980 law on the equal treatment of men and women in the

workplace sought to translate into reality the principle of equal treatment with respect to civil law relations between employers and employees. Under the Civil Code, employers were prohibited from discriminating against employees, inter alia, on the basis of sex, when drawing up work contracts. There were also provisions guaranteeing men and women equal pay for equal work and establishing sanctions against employers who did not adhere to those provisions. Since the subject also fell within the framework of the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women, it would be more fully treated in reports to be submitted under those instruments. He suggested that, in the future, it would be more appropriate not to refer in the Committee to questions covered by other conventions. As to Berufsverbot, he explained that that term referred to a measure that was sometimes imposed by the courts in criminal judgments in order to prevent a convicted person from abusing his professional position in the future to the detriment of his clients or other persons. There were no other government-imposed prohibitions on the exercise of professions. The requirements applicable to employment in the civil service, such as those regarding training, nationality and loyalty to basic constitutional principles stipulated in civil service legislation, were equally applicable to all persons and were therefore fully consistent with article 2, paragraph 1, of the Covenant. Complaints could be lodged before the administrative courts or the Federal Constitutional Court, which also guaranteed the application of article 2, paragraph 3, of the Covenant. The relevant decision of the Federal Constitutional Court concerning so-called Berufsverbot that had been requested would be transmitted to the Committee. The authorities of his country believed that there was no place in the civil service for either left-wing or right-wing extremists, and they did not want to see a return to Nazi conditions in the country.

Right to life

272. With reference to that issue, members of the Committee wished to receive information concerning control procedures for ensuring proper observance by the police of the regulations governing the use of firearms, drug abuse, education efforts designed to reduce the incidence of drug-related crimes, and infant mortality data relating to the various strata of the population. Regret was expressed that the Federal Republic of Germany had decided to disregard the Committee's general comments Nos 6 (16) and 14 (23), which the Committee had adopted in order to counter a narrow interpretation of the right to life. Referring to the statement, in paragraph 41 of the report, indicating that 136 persons had been killed by police using firearms during the period 1974-1983, one member asked whether there had been an official inquiry into the circumstances of each of those cases, whether officers who had acted improperly had been prosecuted and punished, and whether the families of those killed had received compensation, where appropriate.

273. In his reply, the representative of the State party noted that the use of firearms by law enforcement agents was strictly limited under domestic law, the restrictions being based upon the principles described in paragraph 42 of the report. An inquiry was mandatory in all cases of death resulting from any conflict situation and the families of any victims of breaches of the law by police officers had been given compensation. As for drug abuse, his Government had taken numerous initiatives to inform the population at large about the problem, using brochures, the media and schools. Its efforts had helped to keep the figures for drug abuse at a steady level of 50,000, while deaths from drug abuse had declined from 620 in 1979 to 320 in 1984. Many groups were engaged in caring for and providing therapy

to drug addicts and those prone to drug use. It had been found that close co-operation between physicians, psychologists and social workers helped greatly in the treatment of drug users and in preventing them from returning to drugs.

274. Concerning infant mortality, he noted that a comprehensive range of pre-natal and post-natal medical services and care was available to prevent infant mortality and still births; infant mortality had declined from 21.1 per thousand children in the first year of life in 1974 to 9.6 per thousand in 1984. Detailed information on that subject would be included in the second periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights, which was due for submission in September 1986.

275. Concerning the general comments on the right to life, the representative explained that the Federal Republic of Germany could agree with general comment No. 6 (16) 1/ regarding the prevention of war and the legitimate use of force, but believed that, in general comment No. 14 (23), the Committee had deviated from its mandate and that the question dealt with in that comment fell rather within the competence of other United Nations organs.

Torture, inhuman and degrading treatment and punishment

276. With reference to that issue, members of the Committee wished to know what exactly was meant in legal terms by the words "prisoners from the terrorist scene", what crimes such prisoners were accused of, and why they were routinely subjected to a special detention régime rather than only on a case-by-case basis when special detention was found necessary. It was also asked whether the need for special detention measures was determined according to the category of the crime committed or according to the particular circumstances of each individual case; whether a special detention régime could be maintained for an indefinite period, possibly including the entire duration of pre-trial detention; whether there was a maximum time-limit on the period of isolation of detainees; what circumstances determined a convict's detention under a special prison régime, including isolation; how the state of health of prisoners held in isolation was monitored; how decisions relating to visits to detainees were controlled; and which laws ensured the prohibition of medical experiments without the consent of the individual concerned.

277. Furthermore, members asked whether such prisoners were held incommunicado and submitted to conditions of privation of sensory stimulation, whether accusations of violations of article 7 of the Covenant in respect of such detainees had been investigated, and whether prison personnel and other law enforcement officials had received appropriate instructions regarding the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX) and the Code of Conduct for Law Enforcement Officials (resolution 34/169). It was also asked whether the practice of torture was legally prohibited and effectively prevented, whether judges could decline to enforce regulations that seemed to be inconsistent with article 7 of the Covenant, whether prison personnel had ever been subject to punishment for maltreatment of detainees, and whether the reported practice of surgically inducing behaviour modification in prisoners who had consented to such procedures in exchange for the commutation of their sentences had been discontinued.

278. In replying to questions raised by members of the Committee concerning the detention of convicted terrorists, the representative of the State party explained that, like other convicts, such persons were subject to the provisions of the Prison Act of 1976, which permitted the transfer of particularly dangerous,

recalcitrant or unruly prisoners to a suitable high-security area. Because of their fanaticism and their continuing links with accomplices still at large, terrorist convicts clearly fell within that special category. The European Commission of Human Rights, in dismissing a case brought before it in 1978, had confirmed that the conditions of detention of terrorists in the Federal Republic of Germany did not constitute torture or inhuman or degrading treatment. The special detention régime was not the same as solitary confinement or being held incommunicado, since convicted terrorists were able to meet in small groups and could receive visits. An order for special detention under section 85 of the Prison Act of 1976 had no time-limit and remained in effect for as long as the persistence of the danger made it appropriate. Section 109 of the Prison Act provided for the possibility of appeals by prisoners against restrictions imposed under section 85 or other restrictions.

279. The application of special detention measures during pre-trial detention was covered by section 119 of the Code of Penal Procedure, which required the issuance of an appropriate order by a judge. There was no specified limit to the duration of pre-trial detention, but the process was subject to judicial review every three months. Section 89 of the Prison Act provided that solitary confinement could not be imposed unless it was indispensable for reasons inherent to the prisoner himself and, as a rule should not exceed three months. In addition, the Suspension of Communications Act, which had been adopted in 1977 at the height of the wave of terrorism in the Federal Republic, allowed the Federal Government or the Länder governments to issue orders suspending communication between a prisoner and his defence lawyer. That Act had only been applied once, in 1977, but it remained in force because of the continuing danger of terrorism. All measures implementing legal provisions were subject to some form of judicial review and appeals could go as far as the Federal Constitutional Court and the European Commission of Human Rights. Those imprisoned for terrorist crimes had access to all the recourse procedures available to other prisoners.

280. There was no legal definition of terrorism as such, but article 129 (a) of the Penal Code stipulated that any person establishing an association whose purpose was to commit murder, practice intentional mutilation or genocide, violate personal freedoms, or perpetrate crimes that violated public safety, as well as any person who belonged to such an association, spread propaganda on its behalf or supported it, could be sentenced to imprisonment for a period of six months to five years. It was sufficient to prove a suspect's membership in such an association for him to be punishable under article 129 (a). Specific crimes, such as homicide, were of course punishable separately.

281. Regarding torture, the representative stated that that practice was prohibited under domestic laws as well as under the European Convention for the Protection of Human Rights and Fundamental Freedoms and that it was not therefore necessary to invoke the provisions of the Covenant. There was no record in the judicial annals of any prisoners ever having been tortured. It was not possible to state with absolute certainty without consulting the competent authorities that there had not been any case in which penal or disciplinary sanctions had been imposed on a law enforcement officer for violating the rights of a prisoner. Judges in the Federal Republic who believed that a particular federal law was unconstitutional were not only under an obligation to decline to enforce it, but also had to initiate special proceedings before the Federal Constitutional Court with a view to having its constitutional status ascertained.

282. Responding to questions concerning the status of prisoners' health and their protection from non-voluntary medical treatment or experimentation, he explained that, while there was no need to undertake special monitoring of the health of prisoners held in high-security areas, the health of those held in solitary confinement or under special precautions did receive special protection. Except for cases of immediate danger to the life of the prisoner, medical treatment without consent was prohibited under section 101 of the Prison Act and any such treatment that was not justified was punishable as an act of mayhem. Informed consent by the patient for any experimental treatment was therefore necessary and there was no record of certain surgical practices having posed practical problems.

Liberty and security of the person

283. With reference to the issue of pre-trial detention, members of the Committee wished to receive information concerning the maximum period of such detention, pre-trial detention practices in relation to juveniles and the criteria applied by the courts in determining whether pre-trial detention was justified. It was asked whether terrorist suspects were automatically subjected to pre-trial detention and, if so, why, whether pre-trial detention was mandatory in certain cases because of the seriousness of the crime, whether unreasonably long periods of two years or more of pre-trial detention were commonplace, and whether there was any generally applied system of supervision with regard to the duration of pre-trial detention. Members also wished to know, with respect to the issue of liberty and security of the person, whether rapid and efficient procedural remedies such as habeas corpus or amparo were available to detainees; whether there were any arrangements, such as the system of bail, under which detained persons could be released provided that their subsequent appearance in court was adequately ensured; whether the right to have a tribunal decide about the legality of detention of persons deprived of their liberty for reasons unrelated to criminality - such as mental illness, vagrancy, drug abuse or immigration problems - was adequately protected; and whether any studies were available regarding the results of programmes aimed at the reformation of prisoners.

284. In his reply, the representative of the State party noted that the regular upper limit on pre-trial detention was six months, although that period could be prolonged since there was no legally established absolute upper limit. However, a number of measures had been taken, as described in paragraphs 62 to 65 of the report, to avoid excessively long periods of pre-trial detention. The main criteria for judging the need for detention related to the principle of proportionality, which was specifically recognized in the Federal Republic's Constitution. Thus, it was stipulated in the Code of Criminal Procedure that a detention order could be issued only when the accused was suspected of having committed a serious crime, such as murder. No one could be detained for a minor infringement of the law, and the mere fact that a person supported a terrorist organization was not in itself sufficient to justify his detention. In such cases pre-trial detention usually related to justified concerns that the individual would disappear or conceal or destroy evidence if left at liberty. Those principles also applied to the deprivation of freedom of persons with mental problems, to protect their own safety and that of others, and in extradition proceedings, although in both cases the measures were subject to review by the courts.

285. Under section 117 of the Code of Criminal Procedure a person in pre-trial detention had the right, at any time, to appeal to a court to review the justification for his continued detention and the legal system provided a number of other remedies and measures for monitoring pre-trial detention. The pre-trial

detention of minors was covered in section 72 (1) of the Law on Juvenile Courts, which stipulated that such detention could be ordered if its purpose could not be attained through a preliminary order regarding educational measures or through other measures. However, the practical application of that provision had given rise to certain difficulties in view of the time constraints faced by judges, and the matter was currently under review by the judicial authorities in the Federal Republic. Regarding the social readaptation of prisoners, the Federal Government attached great importance to efforts such as the elementary and advanced training programmes in prisons and hoped that positive results were being achieved. Unfortunately, no detailed information or statistics were at hand.

Freedom of movement and rights of aliens

286. With reference to that issue, members of the Committee wished to know whether the reasons for restricting the right of aliens to choose their residence freely were compatible with the Covenant; on what grounds residence permits were restricted and how many such restrictions had been issued annually; why a distinction was made, regarding freedom of residence, between refugees and those who had been granted asylum; whether special decrees removing the suspensive effect of appeals against expulsion had ever been set aside by court order; and the extent to which the rights of aliens under the Covenant were affected by the laws of the Länder. Information was also requested concerning the effect of laws affecting migrant workers, both in terms of their personal welfare and the practice of subcontracting their labour.

287. Members also asked for clarification on the validity of limiting the free movement of aliens on the basis of factors relating to the "personality or conduct of foreigners or special local circumstances". They also asked whether restrictions relating to the residence of aliens in "congested areas" were provided for by law, as required by article 12, paragraph 3, of the Covenant, and were consistent with the permissible limitations enumerated in that paragraph; whether the courts had ever confirmed the correlation between restrictions on freedom of residence of aliens and the maintenance of public order; whether discrimination among aliens of different nationality or origin was practised in the application of restrictions on freedom of movement and choice of residence; whether there were any State or social organs specializing in the protection of aliens; and whether the prohibition on the subcontracting of manpower was imposed because the workers in question did not have work permits or because the terms of the subcontracting violated the provisions of the Labour Code. In connection with the restriction of the right of aliens to leave the country, one member asked for clarification of the meaning of the term "evasion of a public duty", cited in the report as providing grounds for the refusal of permission to depart.

288. In his reply to questions raised by members of the Committee concerning restrictions on the freedom of movement and residence of aliens, the representative stated that his Government was convinced that both the Aliens Act and the related legal practices in the Federal Republic were in conformity with the Covenant. Foreigners with permanent residence permits or nationals of the European Community were not subject to restrictions in their choice of residence and enjoyed full freedom of movement. The problems arose mainly with aliens who did not have permanent residence permits and with illegal aliens and asylum-seekers. In such cases, geographical limitations were imposed with respect to residence for reasons such as prevention of the growth of ghettos in heavily populated areas or prevention of disturbances of public order. In the latter connection, he noted that some 74,000 refugees had entered the Federal Republic during 1985, and that

there would have been no way to provide such a large group with adequate social assistance and health care if they had been allowed to settle wherever they wished. It had been agreed with the Länder that aliens should be distributed over the entire territory. It was not clear that admissible restrictions of the right of freedom of movement contained in article 12, paragraph 3, of the Covenant were really different from those in the Fourth Protocol to the European Convention on Human Rights since, in the opinion of European legal experts, the concept of "public order", mentioned in the Covenant, could be interpreted as covering the notions of "public safety" and "prevention of crime" mentioned in the European Convention. Restrictions for reasons of public order had been applied to perhaps no more than 50,000 persons out of a total alien population in the Federal Republic of 4.5 million.

289. To the extent that distinctions were made in the treatment of aliens they were based on legal criteria, such as whether the alien was legal or illegal or a temporary or permanent resident. The restrictions on residence under the Asylum Procedure Act were aimed at ensuring an equitable distribution of such persons among the different Länder and, in particular, at speeding up the asylum procedures. Some restrictions, such as the housing of asylum-seekers in the same buildings, were imposed for economic reasons; the Länder were spending some \$US 800 million annually for the care and maintenance of asylum-seekers and political refugees.

290. Regarding the expulsion of aliens, the representative explained that orders for the immediate execution of an expulsion order had frequently been set aside by the courts, and the Federal Constitutional Court had handed down a general decision to the effect that, in most cases, an appeal against such an order necessarily had a suspensive effect. It was also possible to have further legal recourse against the immediate enforcement of an expulsion decree, even when the suspensive effect of an appeal had been set aside by the authorities. The rights of aliens were covered under federal legislation and the adoption of administrative regulations to implement such legislation was also a federal responsibility. The Länder were responsible for the actual application of such laws and regulations and had no power of regulation except in areas not already pre-empted by the Federal Government.

291. Turning to other questions, the representative explained that his Government had categorically denounced the practice by unlicensed employment agencies of subcontracting foreign workers without work permits and had made that offence punishable by up to five years' imprisonment. The Federal Labour Institute had established 29 branch offices around the country whose function was to initiate legal proceedings against those engaged in such clandestine labour practices and was planning to establish an additional 28 offices during 1986. In February 1986, a court had imposed severe penalties on two agencies that had engaged in illegal subcontracting of foreign workers. A number of organisations were doing excellent work on behalf of alien workers in the Federal Republic, notably the Red Cross and the Churches. The Government had also appointed a Special Commissioner for Alien Workers who acted as an ombudsman. Concerning freedom to leave the country, he noted that aliens enjoyed great freedom in that regard.

Right to a fair trial

292. With reference to that issue, members of the Committee wished to know what difficulties, if any, had been experienced in implementing section 129 of the Penal Code, which permitted surveillance of written communications between the

accused and his defence counsel; whether such administratively reviewed communications had ever been retained or confiscated by the security police and whether the latter were entitled to confiscate defence papers in the course of the trial or to search defence attorneys; whether the provision in the Code of Criminal Procedure prohibiting a single defence attorney from representing two or more defendants for the same or similar offences did not amount to interference with the right of the accused to counsel of his choice; and what crimes against humanity committed during the Second World War continued to be punishable in the Federal Republic. Referring to the excessive length of many criminal proceedings, several members asked whether the various measures adopted in recent years to reduce the duration of trials, including the 1979 Law to Amend Criminal Procedure, had significantly expedited the administration of criminal justice.

293. In his reply, the representative of the State party explained that the surveillance of communications referred to in paragraph 109 of the report was undertaken by a judge and only upon informing both the defendant and his defence counsel. In any event, the accused and his counsel could communicate orally without surveillance or monitoring, which ensured that the effective preparation of the defence was not impaired. The restriction against defence counsel representing two or more clients at a trial was intended to eliminate possible conflicts of interest and to guarantee the right of the accused to a proper defence, in accordance with the provisions of the Covenant. It was recognized that terrorists also had the right to humane treatment and to due process under the law.

294. The representative agreed that the duration of penal proceedings continued to pose a problem. However, the situation had improved in recent years as a result of the adoption of various measures including, for example, the elimination of certain preliminary procedures. His Government would endeavour to provide statistical data regarding the duration of such proceedings in its next periodic report. He also took note of the Committee's interpretation concerning the applicability of the procedural guarantees contained in article 14 of the Covenant to both civil and criminal cases. Regarding crimes committed prior to 1945, he noted that murder and acting as an accomplice to murder were still punishable under the laws of the Federal Republic.

Right to privacy

295. With reference to that issue, members of the Committee wished to receive information concerning certain new security bills, which would apparently permit the exchange of personal computer files, and the Federal Data Commissioner's attitude towards such legislation, as well as the circumstances surrounding the collection by the security services of dossiers on members of the Green Party and the transmission of such dossiers to unauthorized persons. It was asked whether legislation providing protection against unlawful interference with the privacy of correspondence or telephone conversations, in accordance with article 17 of the Covenant, made provision for compensation.

296. In his reply, the representative of the State party said that it would be inappropriate for him to comment in detail on the new security laws since the legislative procedures had not yet been completed. The Federal Data Commissioner had criticized them and amendments to improve them had been proposed. The Committee's questions would be addressed in the Federal Republic's next periodic report, after the draft laws had been adopted. He was also unable to comment on the circumstances under which dossiers had been gathered on members of the Green Party by the security services, since the matter was currently under

investigation by a committee of the Bundestag. However, to the best of his knowledge, the matter related to certain individuals and not to a particular political party.

Freedom of expression

297. With reference to that issue, members of the Committee wished to receive information on prosecutions under section 90 (a) of the Penal Code, which prohibited slander or wilful disparagement of the Federal Republic, its constitutional order, or one of the Länder. They asked whether that section did not, in fact, provide for terms of imprisonment for the non-violent exercise of the right to freedom of expression. They also asked to what extent section 240 of the Penal Code was applied against persons participating in peaceful demonstrations or against members of the peace movement; how many people had been prosecuted during 1985 under section 166 of the Penal Code; whether supporters or members of associations whose purposes were defined in article 129 (a) of the Penal Code, but which were not themselves active in the Federal Republic, were subject to prosecution under that article; whether it was true that in some of the Länder the organizers of peaceful demonstrations were required to bear the costs involved in policing the gathering; and how the Government could justify the practice of Berufsverbot with the provision of article 19 of the Covenant.

298. In his reply, the representative of the State party said that section 90 (a) of the Penal Code was clearly consistent with article 19, paragraph 3, of the Covenant, which permitted the imposition of certain restrictions on the right to freedom of expression, but that convictions under that statute were very rare - only 20 in 1984. Although persons making slanderous assertions about the Federal Republic were generally liable to prosecution under that section, the form in which the statement or assertion was made was of great practical importance in determining whether or not prosecution would be undertaken. The representative agreed with members of the Committee who had stressed the need for great care in applying restrictions to the right to freedom of expression, noting that the Federal Constitutional Court had also held that such restrictions must only be applied in a manner consonant with the general principle of freedom of expression. He hoped it would be possible to deal with the subject in greater detail in the next periodic report. It was true that the prohibitions under section 90 (a) were applicable to non-violent acts but it was precisely such acts that could be restricted under article 19, paragraph 3, of the Covenant. Where violence was employed, the matter no longer fell within the purview of article 19, since freedom of expression was not then the issue.

299. Section 240 of the Penal Code related to the unlawful use of force or the threat of harm to coerce third parties, thereby interfering with their rights and freedoms within the meaning of articles 21 and 19, paragraph 3 (c), of the Covenant. While the right to demonstrate peacefully was clearly a basic right, which was fully respected in the Federal Republic, it was another matter entirely when demonstrators sought to apply coercion to others. There were only 22 recorded convictions in 1984 under sections 166 and 167 of the Penal Code, which prohibited disparagement of religious beliefs and disturbance of religious exercises, respectively. Referring to the practice of so-called Berufsverbot the representative of the State party said that civil servants must be loyal to the principles of the State; others were free to express their opinions.

Advocacy of national or racial hatred

300. With reference to that issue, members of the Committee wished to receive information regarding the Government's concerns about the reported resurgence of neo-nazism and about any positive measures being taken to meet such a threat. One member asked for clarification as to why section 130 of the Penal Code seemed to provide protection against hatred only to the "native part of the population" rather than to all, in accordance with article 20, paragraph 2, of the Covenant.

301. In his reply, the representative of the State party said that the advocacy of national, racist or religious hatred with incitement to discrimination, hostility or use of violence was prohibited by law, and that neo-Nazi activities were kept under strict surveillance by the Office for the Protection of the Constitution. The Federal Minister of the Interior had prohibited two neo-Nazi organizations in 1982 and 1983, under section 3 of the Law on Association, and the Bavarian State Ministry of the Interior had prohibited and dissolved another such organization in February 1984. In April 1985, the Minister of the Interior of Rhineland-Palatinate had prohibited a neo-Nazi group in Koblenz that had been founded only three months earlier. The Federal Government was also promoting research into political extremism and the Ministry of Justice was in the process of finalizing a study relating, *inter alia*, to the personal background of right-wing extremists who had been sentenced for criminal activities during the period 1978-1982. The reference to the term "native part of the population" in paragraph 158 of the report was a mistranslation of the phrase that actually appeared in section 130 of the Penal Code, the correct translation being "part of the population living within the Federal Republic of Germany".

Right to peaceful assembly

302. With reference to that issue, members asked for clarification concerning a 1984 law that apparently subjected participants in political rallies that turned violent to prosecution unless they could show that they had actively tried to prevent violence, and for information concerning any other new laws relating to peaceful assembly that might have been adopted in 1984 or 1985, and their application.

303. In his reply, the representative of the State party explained that it was not true that under a 1984 law a participant in a political rally that became violent could be prosecuted unless he or she could demonstrate an active attempt to prevent the violence. It was true, however, that the provision in the Penal Code penalizing any disturbance of the public peace, and the Law on Assembly, had both been amended by a law of 18 July 1985 prohibiting participants in demonstrations held in the open from carrying weapons designed to offer resistance to the police and from masking themselves with the intent of eluding identification. Offenders against the prohibition were liable to non-criminal punishment, but any armed or masked person mingling with a crowd from the midst of which acts of violence had been committed during a demonstration could be punished as if they had committed a proven act of violence. The amendment was the result of experience with several hundred "professional demonstrators", who rallied from all parts of the country when large demonstrations were held, merely to come to blows with the police and commit other acts of violence. Such people could be distinguished primarily by the fact that they carried weapons and wore masks; punishing them was not only a question of fighting against crime but of protecting the basic right of peaceful demonstration. It was not possible to provide details regarding the application of the new law since it was too recent.

Freedom of association

304. With reference to that issue, members of the Committee asked whether any restrictive measures had been taken against members or supporters of a legal political party and, if so, how such measures could be reconciled with articles 22 and 25 of the Covenant; whether all parties were treated equally, in accordance with article 25, and whether, for example, all parties represented in parliament enjoyed the same rights of participation in parliamentary committees; whether the requirement that civil service applicants should accept the established order on an a priori and absolute basis was compatible with the Covenant; and whether the fact that big corporations could make large secret contributions to political parties did not, in fact, amount to discrimination on the basis of property.

305. In his reply, the representative explained that political parties that had not been prohibited on grounds of unconstitutionality by the Federal Constitutional Court could engage freely in political activities and citizens could belong to or support any such party as long as they did not violate the laws. On the other hand, since the Federal Government did not necessarily seek to ban parties it considered anti-constitutional, it was possible that such political parties could remain operational. Members or active supporters of such parties revealed by their conduct that they did not loyally support the Constitution and could therefore be barred from civil service employment. While there was no discrimination against anyone because of his political views or party affiliations, in view of the country's unfortunate experiences under the Weimar Republic, those who wished to become civil servants were required to demonstrate a high degree of support for the Basic Law and democratic order. Citizens were also free to seek peaceful changes in the Constitution so long as they remained within the norms established under article 79, paragraph 3, of the Basic Law.

306. Regarding the funding of political parties, he said that reforms had been introduced in 1983 so that problems such as those to which members had referred could be avoided in the future. With respect to the question of equality, the representative stated that all parties had an equal right to participate in the country's political life and in the work of parliamentary committees. Where it was not possible for all parties to take part in the work of a particular committee because of its limited size, that did not mean that any parliamentary group was legally barred from participation. The Federal Constitutional Court, in a ruling on 14 January 1986, had confirmed the constitutionality of the system for establishing and regulating parliamentary committees.

Rights of minorities

307. With reference to that issue, members of the Committee wished to have further clarification as to why the Danish ethnic group in Schleswig-Holstein was considered by the State party as being the only minority within the meaning of article 27 of the Covenant. One member of the Committee also wished to know whether any group of foreign workers had acquired permanent residence or citizenship, whether there was an established policy with regard to the granting of such status, and what was being done to promote the enjoyment by such workers of their cultural rights.

308. In his reply, the representative of the State party explained that while there was no legally established definition of the concept of a minority, certain criteria appeared to enjoy wide acceptance. According to such criteria, a minority was a separate or distinct group, strictly defined and long established within a

given area of a State. The only group in the Federal Republic falling within that category was, in fact, the Danish ethnic group in Schleswig-Holstein, which enjoyed all the rights set forth in article 27 of the Covenant. Immigrant workers enjoyed all their cultural and social rights, and nationals from member countries of the European Economic Community also enjoyed certain additional rights. Once they had resided within the Federal Republic for a specified period, all immigrant workers could become fully integrated into society as far as the enjoyment of social and cultural rights was concerned. They were also provided with many incentives to preserve their cultural traditions by municipal authorities and private organizations.

General observations

309. Members of the Committee thanked the delegation of the Federal Republic of Germany for its efforts to answer the questions raised and considered that the discussion of the State party's second periodic report had been thorough and useful. They welcomed the constructive dialogue which had made it possible to obtain further information and clarify important issues.

310. However, some members stressed that not all questions had been answered and that the Government's interpretation of the concept of human rights protected by the Covenant seemed to be too limited. They also noted that they could not agree with the Federal Republic's interpretation of article 5 of the Covenant.

311. Many members explained that their concerns with respect to a number of issues had not been fully allayed. They pointed, inter alia, to the duration of pre-trial detention and of judicial procedures, the nature of certain anti-terrorist measures, the practice of Berufsverbot, the policy vis-à-vis the apartheid régime, the application of certain penal provisions and the struggle against neo-nazism.

312. Members of the Committee explicitly rejected the position of the Federal Republic of Germany that the principle of lex generalis and lex specialis should be strictly applied to the Covenant, that is, that questions covered by other international instruments should not be examined in detail by the Committee.

313. It was hoped that certain outstanding questions would be addressed by the State party prior to the submission of its next periodic report and that the continuing concerns of members of the Committee would be dealt with comprehensively in the third periodic report.

314. The representative of the State party said that his Government had provided detailed comments on the implementation of the Covenant in both its initial and its second periodic report, and had endeavoured to reply in the best possible way to the Committee's questions concerning the latter. He assured the Committee that the questions and suggestions that required further clarification would be transmitted to the competent authorities of the Federal Republic.

Czechoslovakia

315. The Committee considered the second periodic report of Czechoslovakia (CCPR/C/28/Add.7) at its 679th to 683rd meetings, from 9 to 11 July 1986 (CCPR/SR 679 to SR.683).

316. The report was introduced by the representative of the State party who said that Czechoslovakia had always paid great attention to the fulfilment of the

purposes and principles of the Charter of the United Nations. The foreign and domestic policy of the State in the field of human rights was characterized by the fact that it was a party to almost all pertinent international instruments, had concluded bilateral agreements on legal assistance with almost all European States, and was a contracting party to many regional treaties. The Constitution not only proclaimed human rights but also referred to the material conditions that guaranteed the equal enjoyment of those rights.

317. He also stated that, since its initial report to the Committee in 1977, Czechoslovakia had undertaken numerous activities for the continued implementation and promotion of human rights at both national and international levels. In particular, major efforts had been made in his country to improve material conditions, public education and the health and social welfare of the people as well as to promote international co-operation in the field of human rights. He noted, in particular, that new legislative regulations had consolidated and improved State care for the family and child, increasing child benefits and maternity allowances. The representative also drew attention to recent increases in the level of payments for foster care, temporary incapacity to work and pensions. A new School Act had been introduced with the aim of further improving the quality of education. The provisions of the Penal Code, the Labour Code and some other laws had also been amended with the purpose of strengthening the democratic principles of pertinent legislation relating to the rights and liberties of citizens. With the same end in view, other draft laws, dealing with such subjects as safety in the nuclear industry, the rights and duties of labour collectives and citizens' communications, were currently being prepared. He also informed the Committee that a new constitution and a new labour code were under consideration.

Constitutional and legal framework within which the Covenant is implemented

318. With reference to that issue, members of the Committee wished to receive information concerning the division of responsibility between the Federation and the two national Republics concerning the implementation of the Covenant; the factors and difficulties, if any, affecting the implementation of the Covenant, including in particular those stemming from the federal structure; and efforts made to disseminate information about the Covenant and other human rights. They also wished to know whether it was possible to invoke the provisions of the Covenant before the courts in cases of alleged violations and what the legal status of the Covenant was vis-à-vis domestic law; which officials monitored implementation of the provisions of the Covenant; whether constitutional provisions had ever been contravened by legislative acts and what means were available to solve possible contradictions between the Constitution and laws; what the trends toward judicial protection and the strengthening of legality were and what the prospects were for the adoption of new legislative acts aimed at strengthening the protection of human rights; whether remedies were available to individuals who considered their rights to have been violated; and whether it was possible to criticize the socialist system when the penal law was often conditioned by a reference to hostility against the socialist system. Members also requested clarification of the statement in the report that the civil and political rights of citizens in Czechoslovakia were frequently protected to a greater extent than provided for in the Covenant. Finally, members asked for information concerning the views and policies of the State party regarding the self-determination of peoples and the policy of apartheid.

319. In his reply, the representative of the State party said that, according to Czechoslovak law, the provisions of international treaties to which the country was

a party, including the provisions of the Covenant, had to be transformed into domestic law through the adoption of a special legal act. Thus, the provisions of the Covenant were indirectly reflected in the legislation of both the Federation and the Republics. While the Covenant was not itself a source of domestic law, the legal rules of constitutional, criminal, civil and other branches of law corresponded to the pertinent provisions of the Covenant. Citizens of Czechoslovakia could refer to the provisions of the Covenant, but each case had to be treated on the basis of domestic legal rules.

320. Regarding the division of responsibility between the Federation and the two national Republics, the representative indicated that human rights were guaranteed by federal law and that their implementation fell within the responsibilities of the two Republics. No major difficulties had been encountered as a result of the country's federal structure.

321. As to the dissemination of information about human rights in general, and about the Covenant in particular, the representative stated that publicity concerning the Covenant's provisions had been undertaken prior to its ratification and that the full text had subsequently been published in the Collection of Laws as well as in the form of a separate booklet. Human rights were widely discussed in the mass media and there were many publications in that field. The study of the Covenant, within the framework of education concerning the law, was included in the curricula of schools and the text was also at the disposal of universities, legal executives and judicial bodies. The Covenant had been translated into the national languages and was available in the libraries.

322. As to which officials monitored the implementation of the provisions of the Covenant, the representative stated that the commissions of legislative organs and the Office of the Procurator-General were among a number of bodies responsible for monitoring the observance of human rights. The latter had offices in the Republics, provinces and regions and his functions included the supervision of preliminary hearings, with a view to ensuring protection of the accused, and the monitoring of the legal process in the courts as well as conditions of detention. The Procurator-General was independent of both the local authorities and the Minister of Justice. The courts and the people's control committees as well as the national committees, which dealt with issues of administrative law, and special monitoring groups, which visited prisons, were among the other organs that monitored the implementation of human rights.

323. The tendency of the judicial system in his country was toward expanding the rights of citizens as part of a special programme for the improvement and development of socialist legality. Another important aspect of that programme was the enhancement of the State's democratic and popular nature through a fuller initiation of workers into the political system, particularly the organs of State power. The new legislative instruments that were in the process of preparation, including a new draft constitution, were all designed to achieve that purpose. Concerning the remedies available to individuals who considered their rights to have been violated, the representative said that article 29 of the Constitution enshrined the right of petition. However, the Government was not satisfied with the current system of remedies for dealing with such complaints and the scope of that article would be expanded in the new Constitution.

324. Regarding self-determination and apartheid, the representative pointed out that his country did its utmost to promote the right of self-determination and was

one of the first countries to have ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid.

Non-discrimination, equality of the sexes and equality before the law

325. With reference to those issues, members of the Committee wished to know how the principle of non-discrimination referred to in paragraph 20 of the report was actually observed in practice; how the rights of aliens were restricted as compared with those of citizens; and whether women in Czechoslovakia were free to decide to terminate a pregnancy and what the legal requirements were. One member asked why the signatories of Charter 77 had been subjected over the past 10 years to legal, administrative or other measures, including prison sentences against some of them, and what the precise legal justifications were for the proceedings and sentences in 1979 against some members of a committee to assist unjustly prosecuted persons (VONS). Another member wished to know how article 20 (4) of the Czechoslovak Constitution, which not only prohibited discrimination but also provided for equal opportunities for all citizens, was understood and implemented. Members also asked for clarification of section 198 of the Penal Code, which made public defamation of a nation or race punishable, and of the status of foreign workers in Czechoslovakia.

326. Replying to those questions, the representative of the State party noted that equality of the sexes was guaranteed under articles 20 (4) and 25 to 27 of the Constitution, as well as article 11 of the Labour Code and various other laws concerning women and their rights. Women accounted for 45 per cent of the work force and many were in senior positions. Ways to enhance the equality of women and men at work were currently under consideration by the Government.

327. As to the question of the termination of pregnancy, the representative noted that the right of women to have or not to have a child had been expanded and that women could apply to the public commissions attached to the national committees for authorizations to have abortions, which were granted in 90 per cent of cases. Furthermore, a draft law aimed at improving existing regulations in that field was currently under consideration by the Government.

328. Foreigners enjoyed the same legal status as citizens, subject only to a few special requirements, such as registration with the police, and ineligibility for certain positions, such as those of judge and notary or militia member. There were 51,000 workers of foreign nationality in the country, including Yugoslavs, Bulgarians and others. They were well treated and enjoyed the same social rights as nationals.

329. Discrimination on the ground of opinion was explicitly banned under the Constitution and other laws. Groups and individuals expressing different points of view were not subject to criminal prosecution on that account and if some persons were convicted it was solely for specific criminal acts they had committed. Thus, none of the founders of Charter 77 had been prosecuted because they belonged to that group but only because they had committed specific criminal acts; they had all retained their political rights and had taken part in recent elections. No discriminatory measures had been taken against them. Referring to the question concerning section 198 of the Czechoslovak Penal Code, the representative explained that that provision was broader than article 20 of the Covenant since it also provided for punishment of certain criminal acts not covered in article 20.

Right to life

330. With reference to that issue, members of the Committee wished to know which offences were punishable by the death penalty and in how many cases that penalty had been carried out in the last five years.

331. In his reply, the representative of the State party said that the right to life was considered as a fundamental basis of his Government's internal and external policies. His Government supported all efforts to ban the threat of war. In that connection, he referred to Law No. 65, on the protection of peace, and declared that Czechoslovakia endorsed the conclusions of the Committee in its general comments, Nos. 6 (16) 1/ and 14 (23) 2/ the right to life and, in particular, that the production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity. Although the death penalty was still applicable to a number of offences it was resorted to very infrequently, usually only for murder. Only 15 death sentences had been imposed during the last five years and only 10 of them - all involving murder - had actually been carried out. In fact, the death penalty in Czechoslovakia had become a very exceptional measure limited to multiple deaths and particularly odious crimes of violence, but, under the present circumstances, it could not yet be fully abolished.

Liberty and security of the person

332. With reference to that issue, members of the Committee wished to receive information regarding the circumstances under which persons might be held in preventive detention without being charged with a criminal offence and about detention in institutions other than prisons. They also asked whether there was any maximum limit to pre-trial detention and whether the complaint procedure against the decisions of prosecutors concerning pre-trial detention was resorted to frequently and with what results. In addition, they wished to know how soon after arrest a person could contact a lawyer and a person's family was notified, whether, in cases where detainees were not in a position to do so, members of his family could appeal for his release on his behalf, and whether such appeals received rapid consideration by judicial authorities. Members also asked under what circumstances residence in certain areas could be prohibited for a term of one to five years; what the aims and scope of the legislation on internal security forces were; in what manner Law No. 44 of 1973 on the protection of society from antisocial activities of persons was applied; how many persons had been convicted under that law; and whether the surveillance measures permitted under that law for a period of three years were justifiable restrictions under the Covenant.

333. In response to the question regarding the circumstances under which persons might be held in pre-trial detention without being charged with a criminal offence, the representative explained that, under article 57 of the Penal Code, pre-trial detention could be applied only if circumstances justified that measure. For example, if the accused had no fixed residence or employment, had attempted to escape from the authorities or to influence witnesses, intended to continue committing criminal acts or constituted a menace to others. Detention had to be reported to the Procurator within 24 hours and could not exceed 48 hours. According to the statistics available for 1985, the average period of pre-trial detention for serious crimes was about 2.4 months and for minor offences about 1.38 months. Under Law No. 40 of 1975, relating to the rights and duties of National Security Forces, preventive detention could also be imposed as an administrative measure against persons who, for example, were suspected of

preparing to commit an act of terrorism. The Procurator-General had to be advised of detentions within 48 hours or the person had to be released. Remand in custody of such detainees could be extended for an additional two days by the Procurator. Detention in institutions other than prisons was governed by Act No. 40 and other detailed legislation. That Act also extended legal protection to persons endangered by the illegal acts of others, and to anyone against whom action had been taken by security organs. The Act stipulated, *inter alia*, the disciplinary, penal and civil responsibility of any organ that took decisions that were at variance with the law. Prohibition of residence in certain places was applicable only to repeated offenders and was aimed primarily at preventing them from living in large industrial centres where they could commit further crimes. Such measures were part of a general programme to combat crime.

334. In addition, the representative of the State party explained that, in accordance with the law, the families of detained persons were immediately informed of their detention and were also advised of the relevant circumstances. A detainee was permitted to contact a lawyer immediately and could refuse to be interrogated in the absence of his lawyer. Pre-trial detention was applied in only about 15 per cent of cases and about 50 per cent of such detainees lodged appeals. Frequently, a procurator or a court decided to release detainees to allow them to pursue their work and family life. The maximum limit on the length of pre-trial detention resulting from prolongation by a procurator was two months. That limit could be exceeded only by authorization from a superior prosecutor but such decisions could be appealed before a court.

335. Replying to the question concerning the application of Law No. 44, the representative stated that it aimed at facilitating efforts to combat recidivist criminality. Whereas some countries, particularly in Europe, resorted to strict measures against recidivists, Law No. 44 was progressive and sought to create a less strict régime and to give certain persons the possibility of adapting to life in society without being confined. It also provided for post-penitentiary adaptation, for example, by helping former prisoners to reintegrate themselves and to find work and housing. Law No. 44 had never been applied to members of Charter 77. After its entry into force, the number of recidivists who had committed common crimes had declined to 15,000. As to the number of persons imprisoned for different offences, the representative furnished the Committee with a comprehensive statistical report.

Treatment of prisoners and other detainees

336. With reference to that issue, members of the Committee wished to know whether the practice of solitary confinement was resorted to in prisons and, if so, under what circumstances, whether any restrictions had been placed on the right of prisoners to receive visits and to maintain contact with the outside world, how the education of prisoners was organized, whether those who were religious could practise their religion and observe their traditions, whether prisoners could receive printed materials, including material from abroad, what the most severe disciplinary measures were, and whether, and to whom, a prisoner could submit a complaint concerning a prison employee.

337. In his reply, the representative of the State party noted that under a recently enacted law prisoners were divided into three distinct groups, namely, dangerous recidivists, ordinary recidivists and first offenders, with different prison régimes being applied to each of those categories. As to the right of prisoners to visits, he explained that each of the three categories of prisoners

had a right to receive visits from family members, friends or lawyers at intervals of three months, two months or one month, respectively. There were also prisons where first offenders were permitted to pursue cultural and educational activities after work and to see their families. All in all, prisoners in Czechoslovakia were very well treated.

338. In addition, the representative of the State party said that the aim of justice was not merely to punish but to rehabilitate the offender so that in the future he would be reintegrated into socialist society. The main method for achieving that objective involved reformatory, cultural and educational activities, including vocational training. A system of basic school education had been established, with successful participants being granted school-leaving certificates; 80 per cent of prisoners were engaged in vocational training. While prisons had no separate facilities for religious observances, any prisoner who wished to pray, for example, was free to do so. Prisoners could also receive printed material since there was no censorship in Czechoslovakia except for fascist and pornographic material. Disciplinary measures employed in prisons were regulated by article 20 of the law on the execution of prison sentences. Solitary confinement was the most severe sanction, it could be ordered for up to 30 days. Prisoners had the right to submit complaints to the Procurator as well as to the Minister of Justice and the Council of Ministers.

Right to a fair trial

339. With regard to that issue, members of the Committee requested information concerning the organization of the judiciary, existing legal guarantees of the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal, and the 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, including specific rules concerning the admission of mass media to court hearings. They also requested clarification regarding any legal provisions relating to the independence of judges and procedures for their removal, the precise relationship between the Supreme Court and parliament, and the reasons for including the Ministry of Defence as one of the appeals bodies. Members also wished to know whether a law had ever been declared unconstitutional by the Constitutional Court, whether lawyers were independent, how a defendant was able to exercise his right to choose a lawyer in practice, how the College of Advocates was organized and how its members were remunerated. Concern was expressed that, where accused persons had no knowledge of the Czech language, it was not always ensured that they were promptly informed of the charges in a language they understood. It was also asked whether in case of a miscarriage of justice the person who had suffered punishment had a right to compensation and whether a restriction of the legal capacity of a person was possible under Czechoslovak law.

340. In responding to questions concerning the organization of the judiciary, the representative of the State party explained that there were only two types of courts in Czechoslovakia - civil and military - the highest military tribunal being part of the Supreme Court, whereas the civil court system consisted of regional and district courts, the Supreme Courts of each Republic and the Supreme Court of the Czechoslovak Socialist Republic. Trials were public although the law provided that the public might be excluded in specific cases. While the decisions of a court were always made public, no press reports were allowed to be published in criminal cases until judgement had been pronounced.

341. The representative of the State party further said that the independence of judges was a fundamental basis of justice. The Constitution and the law stated that a judge was answerable only to the law and was to be guided only by the law and by the spirit of legal conscience. The reports by judicial bodies to the Federal Assembly did not focus on specific cases, but were intended to provide information concerning the general state of socialist legality, crime prevention and control. Such reports were prepared by the Procurator-General and the Chairman of the Supreme Court, neither of whom could interfere with judicial decisions in specific cases.

342. The reference to the Minister of Defence in paragraph 100 of the report related to that Ministry's involvement in the administration of Military Justice, as well as to the existence of the Military Council of the Supreme Court of the Czechoslovak Socialist Republic.

343. Regarding the Constitutional Court, the representative said that Constitutional Act No. 143 of 1968 provided for the establishment of such a court, but it had not been established since there had been no cases where it would have been necessary to decide whether a law was in conformity with the Constitution. Some were of the view that such functions should be vested in the Constitutional Boards of the Supreme Courts of the Federation and the Republics, while others felt that the matter involved the interpretation of law which should be left to the body from which the law had emanated or to the parliament itself.

344. With reference to questions relating to legal services, he noted that efforts were being made to enhance them so that the law could play a more effective role in the life of society. Professional lawyers were needed if court cases were to be properly handled. In civil proceedings, any person could act in defence of the accused, but in criminal proceedings only a professionally trained attorney could do so. The State had no influence on the remuneration of lawyers. The College of Advocates was an independent, autonomous organization operating under appropriate laws and regulations. The salary of advocates was very high, sometimes exceeding that of a Minister. A defence lawyer was chosen by the accused himself, by his relatives or by the person entrusted with that task, and the choice was entirely free. If a defendant lacked the means to hire counsel, in cases where defence was mandatory, the court appointed a defence counsel. The right to use one's mother tongue was provided for in the Code of Penal Procedure, which stipulated that bodies active in penal procedure should invite an interpreter to the proceedings, but the sentence itself was pronounced only in Czech and Slovak. Compensation for a miscarriage of justice was a basic obligation of the State and the Ministry of Justice was responsible under the law for dealing with the matter; 586,000 Czechoslovak koruny had been disbursed by the Ministry during 1985 in such compensatory payment.

345. The salaries of judges were paid from the official Ministry of Justice budget, with funds being allocated to the presiding magistrates of regional and district courts. Judges were elected by legislative bodies - the Czech and Slovak National Councils - for 10-year terms, which in practice meant a life appointment, and only the National Councils could submit candidates for the magistracy or propose the removal of a magistrate. The system for the removal of judges was very complicated and the representative was personally aware of only one such case. Regarding the legal capacity of citizens discussed in paragraphs 107 and 108 of the report, such capacity began at birth and was absolutely unrestricted. Until the age of 18, a person's legal capacity was exercised through others, the only exception being that

women and men who married at 16 could exercise their legal capacity immediately upon marriage.

Freedom of movement and expulsion of aliens

346. With regard to that issue, the members of the Committee wished to know of any restrictions which applied to the issuance of travel documents and whether such restrictions were in compliance with the provisions of article 12, paragraph 3, of the Covenant, why it was necessary for persons seeking to leave the country to get authorizations from employers and from municipal authorities and what happened if such authorizations were not granted, how many applications to leave the country had been received and how many of them had been granted, how many persons had been detained under article 109 of the Penal Code for having attempted to leave the country and what justification there was for requiring the payment of emigration taxes and for depriving persons of their citizenship. They also wished to know whether there were any restrictions or other rules governing family reunification, whether expulsion orders against aliens could be appealed and, if so, whether the appeal had a suspensive effect, whether there were any restrictions on the movement of aliens, and what limitations could be placed on the freedom of movement of citizens within Czechoslovakia. One member asked whether it was necessary for a citizen of Czechoslovakia living abroad to obtain a visa to re-enter the country. Another member observed that the first and second periodic reports of Czechoslovakia on those matters were virtually identical, despite the questions asked in 1978, and objected to such an attitude. He asked what remedies were available to a person whose right to leave the country had been refused. Regarding protective surveillance, members wished to know where persons who had been released from prisons had to report, what powers the police had to enter the homes of such persons, how protective surveillance measures were enforced, and whether the Government had considered revising the relevant law to bring it into conformity with article 12, paragraph 3, of the Covenant.

347. In his reply, the representative of the State party said that existing laws and regulations were adequate to cope with the sensitive and acute problem of freedom of movement, which was not only of a political nature but also had an economic aspect. Furthermore, the international situation had changed in recent years and the State had had to enact laws and to pursue policies bearing that in mind. Nevertheless, all restrictions on freedom of movement were consistent with the spirit and letter of the Covenant. The provisions of Act No. 63 of 1965 and Government Directive No. 114 of 1969 authorized the restriction of travel when a person's departure was not in the national interest, for example when it involved persons who were subject to criminal proceedings or who, during a previous visit abroad, had acted in a manner detrimental to the country. Over a 15-year period some 22,698 applications to emigrate and renounce citizenship had been filed, mostly by individuals of German origin, and more than 20,000 of those applications had been approved. In 1985 more than 5 million requests to travel abroad, for purposes of tourism and business, had been received, permission had been refused in 58 per cent of the cases, largely because of the scarcity of foreign currency.

348. Under the present international circumstances the Government of Czechoslovakia could not adopt a law establishing a universal right to emigrate, since the country could not afford to train highly skilled specialists for other countries. Moreover, emigrants had a moral responsibility to the State, with regard, for example, to the cost of the education they had received - estimated at about 750,000 koruny - and there were also considerations of the State's defence. Thus, laws and decrees regulating emigration and immigration had to take economic and

international considerations into account. He noted that the regulation on leaving the country without permission would no longer be necessary if the international climate improved. Referring to the form and content of his country's report, the representative stressed that it had been prepared in accordance with the Committee's guidelines.

349. Citizenship was withdrawn only on a case-by-case basis and concerned persons in respect of whom the Government had evidence of involvement with organizations that acted against the interests of the State. About 3,800 emigrants had been tried in absentia under article 109 of the Penal Code, but 96 per cent of them had later been pardoned by the President under Decree No. 340 of 1980, and many had been able to return to the country in recent years. Only a few dozen prosecutions under article 109 of the Penal Code had been brought against persons caught at the border with false papers. Visas were required only for foreigners wishing to enter Czechoslovakia. Citizens residing permanently abroad did not require a visa to re-enter the country but had to comply with an administrative procedure in accordance with Decree No. 340 of 1980; that procedure took about two years.

350. Responding to an inquiry about a specific individual whose right to leave the country had been refused and who had subsequently been refused admission to university, the representative explained that the decision not to admit that person to university had been taken in the light of the competition for the available places; the individual concerned had been granted travel documents and was to continue his education abroad.

351. There were only minimal restrictions on family reunification, which in special cases, particularly those involving minors, was handled through the International Committee of the Red Cross. Under Decree No. 340 of 1980, increased opportunities were provided for visits abroad to relatives who had emigrated.

352. Act No. 87 of 1965 provided that aliens sentenced to expulsion could file appeals to the appropriate court or administrative body, in which case execution of the judgement would be deferred pending a decision on the appeal by the competent authority. Only 36 expulsion orders had been issued during 1985.

Interference with privacy

353. With reference to that issue, members of the Committee wished to receive information concerning protection against arbitrary or unlawful interference with privacy, family and home, particularly with regard to postal and telephone communications; they also wished to know which authorities were meant by the reference to "another State body active in penal proceedings" in paragraph 110 of the report.

354. In his reply, the representative stated that a person or his home could be searched only in criminal cases and in accordance with sections 82 to 85 of the Code of Penal Procedure. The privacy of postal and telephone communications was protected by sections 239 and 243 of the Penal Code.

Freedom of expression and religion

355. With reference to freedom of expression, members of the Committee wished to receive information concerning legal controls on freedom of the press and the mass media and regarding the role of the Publications Control Board. They asked whether a journalist could be barred from exercising his profession and, if so, under what

laws, which foreign newspapers and periodicals were currently prohibited from being imported or distributed under section 23 of Act No. 81 of 1966, why pamphlets expressing opinions could not be freely disseminated and why the dissemination of jokes and cartoons was regarded as an offence. Some members expressed the view that a number of penal provisions, in particular articles 98 (subversion) and 100 (incitement) of the Penal Code, were not compatible with article 19 of the Covenant, because they permitted the prosecution of persons for having expressed political views. It was also asked in that connection, whether there were any such detainees in Czechoslovakia currently. Some members noted that the report did not add any information to the initial report regarding freedom of expression and religion.

356. Some members requested additional information concerning freedom of religion, particularly with reference to the legislation referred to in paragraph 120 of the report. They pointed out that the far-reaching powers of the State in religious matters could hardly be reconciled with article 18, paragraph 3, of the Covenant. In that connection, it was asked, *inter alia*, why the appointment of Roman Catholic bishops needed governmental approval, why, in general, clergymen could exercise their religious activities only after approval by the State and why religious orders had been prohibited. Members asked in addition whether there had been complaints by priests concerning the financing of the Church by the State, and whether a religious community that had been criticized by a semi-official publication could publicly reply to such criticisms.

357. Responding to questions relating to freedom of expression, the representative of the State party said that freedom of the press was protected under Acts Nos. 81 of 1966 and 84 of 1966, and that censorship was prohibited under section 17 of the latter Act. Except for a provision contained in Act No. 81 of 1966, there were no legal barriers preventing a journalist from practising his profession. Some 420 foreign newspapers and periodicals were currently being imported into Czechoslovakia. The importation of publications was prohibited only when such publications violated the interests of society or international agreements, if they clearly aimed at promoting anti-socialist feelings, fascism or neo-fascism, if they advocated violence or contained war propaganda, or if they contained pornographic material. There were no political prisoners in Czechoslovakia. Persons were accused under Law No. 44 for specific acts and not for their convictions.

358. Regarding freedom of religion, the representative stressed that freedom of religion was safeguarded under article 32 of the Constitution and in regulations which already existed in 1978 when the initial report was considered by the Committee and which were in full harmony with the Covenant. There were some 11,000 members of religious orders, thousands of places of worship and 600 students attending the five religious faculties in the country. He noted that there had been a trend in recent years towards using religion for reactionary political ends. The State's policy aimed at creating the necessary conditions for the exercise by believers of their religious faith. Some 50 per cent of the people in Slovakia and 35 per cent of those in the Czech Republic were believers. Paragraphs 1 and 2 of article 32 of the Czechoslovak Constitution guaranteed freedom of conscience, and everyone enjoyed the right to profess a religion or not to profess any religion and to conduct religious worship in accordance with the law. In March 1985, the relationship between Church and State had been examined by representatives of all Churches, and a declaration had been adopted which would dispel the concerns expressed by several members. Articles 196, 198 and 216 of the Penal Code provided protection from restrictions on the freedom of religion as well

as from violence or defamation directed at a group on account of their beliefs. Incitement of hostility or hatred on religious grounds was also prohibited by law.

359. All the laws regulating the relations between the State and the Church had been agreed upon with the Church before they were adopted. The property of the Church having been nationalized, as had other large possessions and estates, the Church required, and had been given, assistance. No complaints had been raised by any Church officials against that system. Furthermore, considerable means were provided for the maintenance of cathedrals and churches; 130 churches had been built in the last 15 years. Priests were members of the National Council; some of them occupied important positions and had been awarded major decorations. Everything necessary to carry out the functions of the Church had been authorized, subject only to the interests of the State and the rights of other citizens. Regarding the appointment of Roman Catholic bishops, it was not the Government but the Vatican that had refused the designated persons. In 1985, 683 religious books and 30 religious newspapers had been published. Religious beliefs were not an obstacle to admission to the public service. In all, there were 18 denominations, testifying to the broad diversity of religious practice in the country.

360. The provisions of the Constitution, article 102 of the Penal Code, and other pertinent laws were consistent with article 18 of the Covenant in that they provided for freedom of religion for individuals while stipulating that religious organizations should not engage in activities other than those required for ministering to the religious needs of believers. Legislation and practice in that regard in Czechoslovakia clearly did not contravene the provisions of the Covenant, although further improvements in the regulations were under consideration.

Freedom of assembly and association

361. With reference to that issue, members of the Committee wished to know whether the right to establish voluntary organizations, pursuant to Act No. 68 of 1951, also included the right to establish political parties and associations or groups to promote human rights. Members also wished to be informed of restrictions on the rights to freedom of assembly and association, and to know what criteria were applied by State authorities when authorizing or refusing the creation of an association.

362. In his reply, the representative stated that the right to freedom of association did indeed exist and that the authorities did not use discriminatory measures against various types of associations. As stipulated in article 5 of the Constitution, workers were able to unite in voluntary public organizations such as trade unions, youth organizations, co-operatives, and other public organizations. Such organizations were participating in managing State and public affairs and had recently become even more active in that regard.

Right to participate in the conduct of public affairs

363. In connection with that issue, members of the Committee wished to receive information concerning the exercise of, and restrictions on, political rights, and legislation and practice with respect to access to public office. In the latter regard, they asked specifically whether access to State service was limited to members of the Communist Party.

364. In responding to questions relating to access to public service, the representative noted that that subject was under discussion within the

International Labour Organisation and that Czechoslovakia's latest report to ILO could be distributed to the members of the Committee. He stated that there was no statutory prohibition of access to State service by non-members of the Communist Party.

Rights of minorities

365. With respect to that issue, members of the Committee wished to know which minorities were included in the group of 51,000 persons referred to in paragraph 165 of the report and what legal provisions related to the protection of the rights of minorities.

366. In his reply, the representative of the State party said that all ethnic minorities were able to use their own languages and to associate in their own cultural alliances. He noted, for example, that the Hungarian cultural alliance had 83,700 members.

367. Newspapers were published in Hungarian and Ukrainian; there were 35 hours per week of Hungarian language broadcasts on the Czech radio, and several hundred books were published in Hungarian every year. Schools, including three institutes of higher learning, had been established for Ukrainians and Hungarians. Most of the persons belonging to the group of 51,000 were foreign workers from Yugoslavia and Bulgaria. Constitutional law No. 144 of 1968 guaranteed them specific rights and enabled them freely to enjoy their ethnic traditions.

General observations

368. Members of the Committee expressed appreciation for the State party representative's co-operation and readiness to engage in a constructive dialogue with the Committee. They acknowledged his efforts to respond to questions both rapidly and authoritatively and to furnish the Committee with detailed information.

369. Some members considered that their concerns, in particular, with respect to rights such as freedom of movement, freedom of religion and freedom of expression of views opposed to those of the Government had not been fully allayed and that further improvement was needed. It was generally felt, however, that Czechoslovakia had made great progress since the devastation of the war. The wish was also expressed that the consideration of the report by the Committee should be widely publicized in Czechoslovakia.

370. In concluding the consideration of the second periodic report of Czechoslovakia, the Chairman thanked the representative of the State party for his active co-operation, observing that the open exchange of views had generated many ideas that would help his country to take a fresh look at its laws and practices.

Hungary

371. The Committee considered the second periodic report of Hungary (CCPR/C/37/Add.1) at its 684th to 688th meetings, from 14 to 16 July 1985 (CCPR/C/SR.684-SR.688).

372. The report was introduced by the representative of the State party, who provided additional information on legislative and other measures taken in Hungary during the reporting period and after the submission of his Government's second periodic report.

373. The representative stated that the most significant event concerning legislation in Hungary was the amendment of the Constitution by Act II of 1983, which had led to the establishment of the Constitutional Law Council and to certain changes in the Hungarian electoral system. He explained that, under the new Electoral Law, the right to nominate candidates for parliament and for local council membership was exercised in the electoral districts by nominating meetings of the constituents, and that members of parliament and councillors were required to meet their electors regularly to report on their work.

374. The representative also provided information on Decree Law No. 17 of 1982 and Decree No. 2/1982 of the Council of Ministers, which contained detailed regulations concerning such matters as births, marriages and deaths. The revision of two major Acts of parliament - Act I of 1973 on Criminal Procedure and Act I of 1974 on Marriage, Family and Guardianship - was also under consideration, the possible changes in Act I of 1973 concerned freedom of movement of aliens and the rules on pre-trial detention, while those in Act I of 1974 concerned the minimum marriageable age for women, special protection for children of divorced parents and the settlement of certain issues relating to property before contracting marriage. He also explained that a new Press Law, enacted by parliament in April 1986 and due to enter into force in September 1986, would deal with the tasks of the press, its statutory limits, certain obligations concerning the dissemination of information, the activity of journalists and the relation between the press on the one hand and State bodies, social and economic organizations and individuals on the other.

375. Finally, the representative informed the Committee that, on 25 June 1986, Hungary had signed the International Convention against Apartheid in Sports (General Assembly resolution 40/64 G, annex), and that the signature of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 39/46) was currently under consideration by the Hungarian authorities.

Constitutional and legal framework within which the Covenant is implemented

376. With reference to that issue, members of the Committee wished to receive additional information concerning the practice of the Constitutional Law Council and its rulings relating to rights covered by the Covenant. They asked, in particular, what the precise legal character of the Council's decisions was; whether, if the Council found a law to be unconstitutional, its decision could render the law null and void, whether certain provisions of the Covenant counted as constitutional, so that the existence of a law conflicting with those provisions could be invoked before the Council, and whether the Council could oppose the adoption of legislative texts which conflicted with the Covenant. The members of the Committee also requested further information on the Council's role, powers and term of office and on its membership and the way its members were elected. They asked how the Council exercised its supervision over legislation, what directives and authoritative rulings the Supreme Court had adopted and what the legal status of those directives and authoritative rulings was.

377. In addition, members of the Committee wished to know whether there had been any judicial decisions in Hungary in which the Covenant had been directly invoked before the courts. They inquired whether the Hungarian judicial authorities habitually referred to international instruments or confined themselves to domestic law, and they asked for further information on the remedies available to persons whose rights or freedoms as recognized in the Covenant had been infringed. They wanted to know, in particular, whether such persons were entitled to ask for a

lawyer, how the lawyers were trained, by whom they were paid and if they were duly familiar with the provisions of the Covenant.

378. Members of the Committee also wished to receive information on factors and difficulties, if any, affecting the implementation of the Covenant and on efforts made in Hungary to disseminate information about the Covenant. They asked whether the text of the Covenant had been brought to the attention of educational institutions and law enforcement authorities and in what languages it had been published.

379. In addition, information was requested as to the meaning and scope of article 19, paragraph 3 (1), of the Constitution. It was noted that the National Assembly could annul decisions taken by State organs that ran counter to the Constitution or the interests of society, and members asked whether the State organs in question also included judicial authorities.

380. In his reply, the representative explained that the Constitutional Council set up in June 1985 was composed of 15 members, nine being chosen from among the members of the National Assembly and the others being highly qualified lawyers. Their term of office was five years. The Council gave opinions on the limits of the legislative power and on the procedure that should govern the amendment or abrogation of rules of law and saw to it that laws, decrees and other legal directives were constitutional. The representative further stated that, in Hungary, the administration of justice was purely a law-enforcing activity and that the courts had no power to create law. The directives and decisions of principle of the Supreme Court were binding on the lower courts, but the Supreme Court had no power to interfere with the jurisdiction of lower courts. On the other hand, the Constitutional Law Council was a body responsible to parliament and its role in supervising statutes, directives and decisions of the Supreme Court and guidelines issued by the Council of Ministers, authorities with nation-wide competence and the Chief Public Prosecutor was similar to that of the permanent committees of the parliament. If texts were found to be unconstitutional, it could suspend them or request the issuing authority to revise them. It also submitted opinions on constitutionality to parliament. Proceedings in the Constitutional Law Council could be initiated by a whole range of bodies, from parliament down to county councils. The parliament had the power to dismiss members of the Constitutional Law Council if they failed to perform their functions.

381. The representative went on to say that the provisions of the Covenant had force of law in Hungary and could be invoked directly before the courts, but that no case of that kind had as yet occurred. Remedies in Hungary consisted of access by all individuals to the courts and other authorities, the right to lodge complaints, protection under the Criminal Code, the right to legal remedy under the Code of Criminal Procedure against decisions of the authorities or their failure to take action, and compensation under both criminal and civil law.

382. The representative also stated that there were no specific difficulties directly affecting the implementation of the Covenant in Hungary. The text of the Covenant had been officially published and disseminated in Hungary, and all officials were expected to be aware of its provisions, which were reflected in the law. In addition, human rights questions were included in the curricula of university law schools and many secondary schools, and, in 1985, the anniversary of the adoption of the Universal Declaration of Human Rights had been actively celebrated in the country.

383. The representative explained that the National Assembly was the supreme organ of the State and that its task was to guarantee the constitutional order of society. It could also amend the Constitution or adopt a new one.

Non-discrimination, equality of the sexes and equality before the law

384. With reference to those issues, members of the Committee wished to receive detailed information concerning the implementation of the principle of non-discrimination referred to in paragraphs 14 to 22 of the report and wished to know in what respects the rights of aliens were restricted, as compared with those of citizens. Noting that the Hungarian Constitution contained no provision explicitly prohibiting political discrimination, some members asked what would happen if a person came before a judicial authority and invoked the Covenant in regard to that issue. They also asked what the proportion of female to male students in primary and secondary schools was; how articles 61 and 62 of the Hungarian Constitution, dealing with non-discrimination, were implemented in practice, since they failed to include certain grounds specified in the Covenant on which discrimination should be prohibited; what the meaning of the words "any prejudicial discrimination" in article 61 (2) of the Constitution was; how the principle that civic rights must be exercised in harmony with the interests of socialist society, in article 54 (2) of the Constitution, was applied by the courts; whether citizens who were not members of the Socialist Workers' Party enjoyed absolute equality with those who were members; and whether persons not members of the National Council of the Patriotic People's Front could nominate candidates for the National Assembly. It was further asked whether only members of the Socialist Workers' Party could be candidates for election to the legislature. Furthermore, members of the Committee wished to know whether a Council of National Defence had been established and, if so, what the powers conferred on the Council under the Constitution were and what restrictions it had applied; to what extent citizens were given effective guarantees of access to various organs of State; and whether the fact that ecclesiastics were members of the National Assembly was the result of a reserved allocation of seats, and, if so, what impact that situation had on the separation between Church and State.

385. In his reply, the representative stated that any citizen, irrespective of whether he was a member of the Hungarian Socialist Workers' Party, could hold any office other than office in the Party itself. He provided statistics concerning the equal access of women and men to the activities of representative bodies of the people, education and vocational training, employment, remuneration, and cultural and social activities. He also stated that aliens enjoyed the same rights and freedoms as Hungarian citizens and that no restrictions had been applied to their rights, with the exception of those concerning participation in elections, access to certain public service posts and ownership of real estate obtained by contract of sale or by donation. The representative pointed out that under Hungarian criminal law, the national authority of an alien accused of a criminal act could be provided with the opportunity to institute criminal proceedings against that person if the act had not already been judged by a Hungarian Court and the sentence had not become final.

386. In addition, the representative pointed out that the requirements of the Covenant with regard to the guarantees of non-discrimination were covered by the declaration in the Constitution regarding the equality before the law of all Hungarian citizens - which made discrimination on any grounds illegal - and by certain provisions of the Criminal Code. Furthermore, everyone could rely on the prohibition of discrimination contained in the Covenant since its provisions were

directly applicable law. Regarding article 54 (2) of the Hungarian Constitution, the representative explained that it meant that, in administering justice and applying the law, State organs, social organizations and courts should respect the principle contained in it. He also explained that, in accordance with the new electoral law, 35 members of the National Assembly were nominated by the Patriotic People's Front on the national list and the others, the majority, were elected by individual constituencies. The majority of the members of parliament were not members of the Hungarian Socialist Workers' Party. The Party had its own rules concerning the rights and duties of its members, but those rules had no legal character. The ecclesiastics who were members of the National Assembly had been elected with the full support of the population. In addition, he made it clear that a Council of National Defence would be set up only in the event of war or a grave threat to the security of the State. The Council would be authorized to impose some restrictions concerning the right of assembly, but it would not be empowered to derogate from the provisions of the Covenant.

Right to life

387. With reference to that issue, members of the Committee wished to know which offences were punishable by the death penalty and in how many cases that penalty had been carried out in the last five years. It was also asked whether any lives had been lost in Hungary as a result of the activities of members of law enforcement agencies and, if so, whether investigations had been conducted in that regard.

388. The representative informed the Committee that the Criminal Code prescribed the death penalty as an exceptional measure for only a few offences of particular gravity: offences against the State, including armed conspiracy, sedition, sabotage, treason and espionage - none of which had been committed in Hungary in the previous decade; offences against humanity, including genocide and war crimes; offences against the person, including homicide when committed with premeditation, out of greed, with particular cruelty or by a confirmed offender; offences against public order, including acts of terrorism or the hijacking of an aircraft when they caused death; and military offences. In the past 10 years, the death penalty had been enforced in 25 cases. All actions by members of law enforcement agencies were strictly regulated in accordance with the relevant provisions of the Criminal Code and no one in Hungary had been killed as a result of those actions.

Liberty and security of the person and treatment of detainees

389. In regard to those issues, members of the Committee wished to receive information on any problems encountered in the application by police authorities of Decree No. 1/1985 issued by the Minister of the Interior and on relevant recourse procedures against alleged abuses. They asked whether there had been any cases in which the total period of detention prior to trial had exceeded 60 days and, if so, what the causes for the delay had been, and how it was determined whether pre-trial detention was justified. Information was also requested on the law and practice relating to detention in institutions other than prisons. In addition, it was asked how soon after arrest a person could contact a lawyer, and a person's family was notified; how protection against mistreatment was ensured for accused or suspected persons; whether a detainee or mental patient was entitled to institute proceedings so that the court might decide without delay on the lawfulness of his detention; and how it was ensured that section 266 of the Hungarian Criminal Code, which made it illegal for a person capable of working to avoid work, did not serve as an instrument for compulsory labour. Members of the Committee wanted to know

what the legal procedure was by which able-bodied persons who were unwilling to work were obliged to do so and whether they were deprived of social security benefits; they also asked for further information on the practice by which such persons were forbidden to leave their place of work of their own free will. They inquired whether there was any special procedure comparable to habeas corpus or amparo as a recourse against arbitrary detention in Hungary.

390. In his reply, the representative stated that Decree No. 1/1985 did not give policemen any more power than they had had under the previous law concerning the police and that he was not aware of problems encountered in applying the Decree. He explained that under the Hungarian Criminal Code and Code of Criminal Procedure, the authorities could take a suspect into custody when he was caught in flagrante delicto, if his identity could not be established, or when there were grounds for confinement on remand. The initial period of custody could not exceed 72 hours, after which the suspect was released unless confinement on remand was ordered in specified cases. A dependant or other person named by the suspect, or, if no such person existed, the State organ, social organisation or co-operative where the suspect worked, was informed without delay of the confinement on remand. The suspect was permitted to confer with counsel for the defence, orally without supervision and under supervision in writing. The representative stated that when the confinement had been ordered or approved by the prosecutor, it lasted until a decision had been taken by the court of first instance, but in any case it did not last more than one month. If the complexity of the case warranted it, the Chief District Prosecutor could extend that period by a further month, and the Chief County Prosecutor by a third month. After the three-month period had elapsed, confinement on remand could be extended solely by the Prosecutor-General, who examined the justification for maintenance of the confinement order. After a period of one year, confinement could be extended only by order of the Supreme Court. During 1985, confinement on remand had been terminated within one month in 35 per cent of cases, and within three to four months in 5.3 per cent of cases. In 96.8 per cent of all cases confinement on remand had been terminated within six months.

391. Responding to other questions, the representative explained the circumstances under which the police were entitled, pursuant to Decree No. 1/1985, to take a person to the police station and how long the duration of custody could be; he also provided information on measures taken by courts, in accordance with the Criminal Code, with regard to forced medical treatment in certain cases, such as when a person committed a violent crime or was a public danger and could not be punished because of his mental state. In addition, he pointed out that the Criminal Code and the Code of Criminal Procedure provided for the protection of offenders and alleged offenders at all stages of the proceedings and that Decree-Law No. 11 of 1979 included provisions for protection against mistreatment of pre-trial detainees. On the question of corrective or educative labour for persons unwilling to work, the representative stressed that the penalty was less severe than deprivation of liberty, that the provisions of the Labour Code also applied to such labour and that the persons concerned continued to receive their social security benefits in the normal way. He also explained that, although habeas corpus did not exist in his country, the public prosecutor responsible for the inquiry in a particular case nevertheless had special powers. When a person was arrested, the public prosecutor had to examine his case within 24 hours and decide whether there were grounds for keeping him in custody or, on the contrary, for releasing him.

Right to a fair trial

392. With reference to that issue, members of the Committee wished to receive information concerning legal guarantees with regard to the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal; rules and practices relating to publicity surrounding trials and the public pronouncement of judgements; specific rules concerning the admission of the mass media to court hearings; and facilities to enable accused persons to obtain legal assistance. They asked, in particular, what a judge's term of office was and in what circumstances he could be removed from office, whether special courts, as provided for in article 45 (2) of the Hungarian Constitution, had been set up and, if so, what cases they had dealt with, and whether the persons concerned enjoyed full legal guarantees when they appeared before such courts. Members of the Committee also asked whether there were excessive delays in the handling of civil cases in Hungary; what measures were taken by the Minister of Justice to regulate the behaviour of the media, particularly as regards observance of the rule of presumption of innocence; how the legal profession was organized and paid and how many lawyers were not officials of the State; what the relationship was between assessors and judges in the performance of their duties and whether assessors had the same rights and obligations as judges with regard to the procedure; whether Hungary had a simplified procedure, criminal or civil, for dealing with minor cases and whether there were full judicial guarantees under that procedure; whether judges could be removed from office solely for disciplinary reasons or also on political grounds; and what penalties there were for minor offences.

393. The representative of the State party said in answer to those questions that in Hungary all citizens were tried by the same courts whatever their nationality and that they could use their mother tongue. He then explained the conditions to be met for the election of judges by the Presidential Council and the cases in which a judge could be removed from office at the decision of a disciplinary council. He added that judges were independent and answerable only to the law and that they enjoyed immunity in the performance of their duties except where the Presidential Council decided otherwise. Their term of office was unlimited. He also referred to the various rules guaranteeing the rights of suspects and accused persons and stated that, under the Constitution, hearings were held in open court except where otherwise provided by law. In addition, Act II of 1986 had authorized the Minister of Justice to establish the rules relating to communication in the context of judicial proceedings and, in collaboration with the Minister of the Interior and the Prosecutor General, the rules governing the inquiry stage of criminal cases. The decree concerning those rules was still being drafted. The representative went on to give information about the provisions of the Constitution and the Code of Criminal Procedure relating to the means by which accused persons could obtain legal assistance. With regard to the special courts that could be set up under article 45 (2) of the Constitution, he explained that they were primarily military courts, which applied certain special rules but otherwise followed the general procedure of the criminal courts. There were also conciliation boards in Hungary for industrial disputes. The civil courts were overloaded and there were not enough judges. In an attempt to improve the situation, the Hungarian authorities had recently decided to raise judges' pay. Regarding observance of the rule of presumption of innocence by the media, the representative stated that the media were generally careful when reporting court hearings and only published information that had been verified. Any mistakes that were made, however, were subject to correction. He also explained that lawyers were organized in associations but were free to exercise their profession as they saw fit and could refuse to act for a defendant, that assessors and judges had the same rights and

obligations, that there were two procedures under the Code, one for serious offences and the other for minor ones, which were dealt with by administrative courts, that judges could not be removed from office because of their political opinions, and that the usual penalty for minor offences was a fine.

Freedom of movement and expulsion of aliens

394. With reference to those issues, members of the Committee wished to receive information on remedies available in Hungary against the rejection of applications for passports to leave the country, restrictions on Hungarian citizens entering their country, special restrictions, if any, on the freedom of movement of aliens and on their choice of residence, and provisions governing the expulsion of aliens and the possibility of appeal against an expulsion order. They asked, in particular, how effective any remedy available against the rejection of applications for passports was and whether such matters were dealt with by the Ministry of the Interior or the Ministry of Foreign Affairs; what conditions Hungarian nationals had to meet in order to be authorized to return to Hungary; and what nature of complaint could be lodged against an expulsion order, with whom it could be lodged and in what way it did not constitute an appeal. They also asked for detailed explanations on the application of Decree No. 4 of 1985 issued by the Minister of the Interior, which authorized district police superintendents to restrict certain persons' freedom of movement, sometimes for two years or even more.

395. In answer to those questions the representative of the State party referred to the provisions of Decree-Law No. 20 of 1978 regulating the travel of Hungarian citizens abroad. He also explained that if a Hungarian citizen's application for a passport was rejected, he could appeal against that decision under Decree No. 6 of 1978 issued by the Ministry of the Interior and that a decision on the appeal had to be taken within 30 days by the authorities immediately superior to those which had rejected the application. He explained that in the last few years 0.9 per cent of the applications for passports had been rejected. In recent years the number of Hungarians living abroad who wished to return to Hungary had increased; the applicant had to provide proof that he had a guaranteed source of livelihood and his application had to be made voluntarily, not because he had been expelled from the country where he was living. He added that all persons legally resident in Hungary enjoyed freedom of movement without discrimination and that there was no restriction on aliens regarding their choice of residence, but that any alien who endangered the security of the State could be expelled without any right of appeal, expulsion orders being administrative acts. A complaint could, however, be lodged and would be considered by a senior official, who would have to decide whether it was justified. Furthermore, he stated that administrative measures provided for by Decree No. 4 of 1985 were necessary to combat crime and were directed against those who persistently behaved in a manner that endangered internal public order and the security of the country.

Right to privacy

396. With reference to that issue, members of the Committee requested clarification concerning the statement in paragraph 65 of the report that "violation of human dignity is also to be considered a violation of personal rights". Information was also requested on protection against arbitrary or unlawful interference with privacy, family and home, particularly with regard to postal and telephone communications. In addition, information was requested on Hungarian legislation with regard to abortion and on penalties for unauthorized abortion.

397. In his reply, the representative referred to the text of section 76 of Act IV of 1977 on the amendment of the Civil Code, which amplified the protection of personal rights as a result of the obligations undertaken by his country in ratifying the Covenant. He also stated that arbitrary or unlawful interference with privacy, whether committed by private individuals or by officials in the course of their duties, was considered to be a criminal act contrary to constitutional and other legal provisions. He added that abortion in Hungary was considered to be an offence. However, therapeutic abortion was permitted subject to authorization. Under the Criminal Code, unauthorized abortion was an offence which normally carried a penalty of deprivation of liberty for up to three years.

Freedom of thought, conscience and religion

398. With reference to those issues, members of the Committee noted that, in Hungary, religion was considered to be a private affair of citizens and asked whether parents could freely decide on the religious education of their children or whether an authorization was required. It was also asked why some religious groups in Hungary were exempt from military service while others were not, whether the Hungarian Government had given any consideration to extending the exemption to groups other than those currently exempted, what the powers of the State Office for Church Affairs were and whether the Church was really independent.

399. In his reply, the representative referred to provisions of the Civil and Criminal Codes, which made it an offence to discriminate against persons on the ground of religion, and to Decree No. 21 of 1957 relating to freedom of participation or non-participation in religious instruction. He stated that religious education was considered to be a private affair of citizens, who were ensured the right to have their children participate or not participate in religious instruction at elementary and secondary schools. In addition, the representative provided information on ecclesiastical educational institutions and publications concerning religion and noted that the State provided the Churches with substantial financial assistance. Furthermore, he stated that unarmed military service was provided for those whose religious creeds truly prohibited taking up arms, but that that measure was not extended to religions which did not contain such a prohibition in their dogma. He added that the purpose of the State Office for Church Affairs was to co-ordinate the relationship between State and Church and its functions were defined by law. Monastic orders were independent and had the power of decision over their own activities.

Freedom of expression

400. Members of the Committee wished to know what controls were exercised on freedom of the press and the mass media in accordance with the law; what restrictions, if any, were imposed by courts or administrative authorities on the expression of political views; whether there had been cases in Hungary where persons might be arrested or detained on account of the political views which they had expressed; whether there were political prisoners who had not undergone trials; and whether peaceful advocacy of change in the socialist order was permitted under the law. In addition, it was asked how the provisions of article 19, paragraph 2, of the Covenant were implemented in Hungary and what means were available to an individual to influence opinion in a manner that could result in an amendment to the Constitution and the development of society. More detailed information was requested on the provisions of the Press Act of 1985 and it was asked, in particular, what justification existed for restricting the publication of periodicals to certain bodies such as State organs.

401. The representative of the State party, in his reply, referred to provisions of the Press Act of 1985 concerning the authorization relating to press publications and, in particular, to section 3 of the Act which stated that information published in the press should not infringe the constitutional order of Hungary, violate human rights or promote discrimination. He further stated that no one could be detained for holding political views. However, the major elements of the social order were laid down in the Constitution and any major change required an amendment to the Constitution. In addition, he explained that criticism of State institutions and the management of State enterprises appeared daily in the mass media and that foreign publications were available, but that their importation was subject to supervision by the President of the Information Office of the Council of Ministers. The Press Act of 1985 made no provision for the publication of periodicals by individuals, but the fact that a periodical had been started by an organization did not mean that the opinions expressed in it were institutional ones.

Freedom of assembly and association

402. With reference to that issue, members of the Committee asked for information on the right to form political parties, trade unions and associations and groups to promote human rights, with particular reference to Decree-Law No. 29 of 1981. They asked, in particular, how it was possible to reconcile the spirit of article 22 of the Covenant with a system based on the principle of a single trade union, whether there were any legal provisions relating to the freedom of assembly, what the legal connotation of the preponderant role of the Hungarian Socialist Workers' Party was, and whether the majority of deputies as well as the head of Government had to come from the Party. They also asked which body was empowered to authorize the establishment of a new party, and what the conditions would be for its functioning.

403. In his reply, the representative stated that policies in Hungary were carried out through representative organs of the State, constituted on an elected basis by both Party and non-Party members. All Party organizations functioned strictly within the framework of the Constitution. The Hungarian Socialist Workers' Party had the right to put forward legislative proposals and played a particularly important role in the adoption and execution of policy decisions. In its basic documents, the Party elaborated the main trends of society's development. However, its decisions and programmes did not have a normative character. Decree-Law No. 29 of 1981 on associations laid down certain requirements and restrictions, in the interests of national security, for the establishment of new parties and associations. Many independent trade unions existed in all major branches of the economic life of Hungary and the Central Council co-ordinated trade-union activities. There were no restrictions on the establishment of new trade unions or human rights groups. Freedom of assembly was guaranteed under the Constitution in a manner conforming to the interests of socialism and the people. No prior permission was required for the holding of assemblies except under the Act on National Defence, dealing with situations that jeopardized the security of the State, or under the Act on Public Health in accordance with which assemblies might be prohibited in time of epidemics. The police were empowered to interfere in an assembly only when it endangered public order.

Right to participate in the conduct of public affairs

404. With reference to that issue, members of the Committee wished to receive information concerning the exercise of, and restrictions on, political rights, and legislation and practice regarding access to public office. It was asked, in particular, whether the Hungarian Government considered Party affairs to be the

same as public affairs and, if so, whether every citizen had the right and opportunity to take part in the conduct of Party affairs, under what circumstances a court might issue an interdiction on participation in public affairs, and whether, in the Hungarian political system, a member of parliament met with his entire electorate at regular intervals or with a committee that had been set up to represent the electorate at large.

405. In his reply, the representative stated that all adult citizens of his country had the right to vote and to be elected and that the most important offices were held by election. Deputies were required to meet with their electorate regularly to report on their work and deputies who did not justify the confidence of their constituencies could be recalled at any time on the proposal of 10 per cent of the electors, provided that the proposal was approved by a vote of more than 50 per cent of the electorate. The main forms of the direct exercise of political rights in Hungary involved participation in the activities of the Socialist Workers' Party, social organizations, or work collectives as well as in public affairs management. The rules governing the handling of proposals concerning the public interest were set forth in Act I of 1977. A person did not have the right to vote if he was insane, had been prohibited from participating in public affairs by a court, or was serving a term of imprisonment. In accordance with the Criminal Code, interdiction from public affairs was a supplementary punishment and could be applied only together with a principal punishment. Posts in the public administration were held by nomination and recourse to labour arbitration committees was available to those who were refused access to or removed from public office. Certain conditions, which were laid down in the organizational regulations of the Party, had to be met for membership in the Hungarian Socialist Workers' Party.

Rights of minorities

406. With reference to that issue, members of the Committee asked how the rights provided for in article 27 of the Covenant were ensured and requested relevant statistics. They also asked how large the minority population and each major group were and, in particular, whether Hungary had any special laws setting forth the rights of minorities, what the situation was for religious minorities such as the Jews and ethnic minorities such as the Gipsies, and whether a citizen who did not speak Hungarian was entitled to use his own language in court.

407. In reply, the representative of the State party referred to the provisions of article 61 of the Hungarian Constitution and the Criminal Code, which guaranteed respect for the rights of nationalities, but he explained that there was no specific law on minorities. He also gave information on the latest Hungarian population census, which had been conducted in 1980, on the groups of the population that spoke a language other than Hungarian, on a study by the Ministry of Education and Culture concerning the educational and cultural needs of such groups, on the various nationalities in Hungary that were grouped in national federations, and on the Hungarian Government's legislative measures and development plans designed to ensure equal rights for all nationalities and to preserve their identity as national groups. In addition, he gave detailed information on the Gipsies and the measures taken by the Government to improve their living conditions. As far as the Jews in Hungary were concerned, he observed that they could not be regarded as a minority, but merely as representatives of a religion, and that their situation was governed by other articles of the Covenant rather than article 27. He assured the Committee that citizens belonged to the different

nationalities were entitled to use their own languages in court and to have the assistance of an interpreter.

General observations

408. Members of the Committee thanked the Hungarian delegation for its co-operation and for its detailed answers, which had provided substantial information demonstrating the achievements of Hungary in implementing the Covenant. They welcomed the frank and constructive approach of the representative of the State party, who had replied with great clarity and precision. The fruitful dialogue that had been established with the Committee on the occasion of the consideration of the second periodic report of Hungary had enabled the Committee to become better acquainted with the specific means and measures applied in Hungary in the implementation of the provisions of the Covenant.

409. While sharing that appreciation, some members continued to have doubts regarding the implementation of certain articles of the Covenant and the effectiveness of certain legislation in practice. They expressed the wish that in future more information should be provided on the practical application of the laws. Other members stressed that the dialogue with Hungary had been helpful for the Committee in developing a better understanding of the implementation of the Covenant within a socialist country.

410. Concluding the Committee's consideration of the second periodic report on Hungary, the Chairman expressed the hope that the dialogue established with that State party would serve as an example for the Committee's future work.

IV. GENERAL COMMENTS OF THE COMMITTEE

A. Choice of subjects

411. At its twenty-sixth session, the Committee considered, on the basis of recommendations made by its Working Group under article 40 of the Covenant, how subjects for possible elaboration in future general comments should be selected. It was agreed that individual members should be encouraged, as in the past, to take the initiative in suggesting topics or elaborating drafts for consideration by the Working Group. The Committee also agreed that the decision to proceed with further work on draft general comments at the level of the Working Group should be guided by the following considerations: the relevance of the proposed subjects to the problems being encountered by States parties in implementing the Covenant; the topicality of the proposed subject; and the prospects for reaching consensus within the Committee on the eventual draft general comments. The Committee's actions with respect to specific general comments are described below.

B. Work on general comments

1. Draft general comment on article 27

412. After preliminary exchanges of views at its 590th, 607th and 618th meetings on the draft general comment prepared by its Working Group, the Committee decided, at its 533rd meeting, that further consideration of the draft should be suspended pending the gathering of more information on the subject. To that end, the Committee agreed that particular attention would be devoted to article 27 during the consideration of reports from States parties in the future.

2. General comment on the position of aliens under the Covenant (No. 15 (27))

413. On the basis of a draft provided by its Working Group, the Committee discussed a general comment on the position of aliens at its 639th, 641st, 652nd, 655th, 656th and 670th meetings, and adopted a text in English at its 671st meeting. That text was further discussed at the Committee's 678th meeting and revised at its 696th meeting. The Committee approved revised texts in all the languages at the same meeting.

V. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

A. Introduction

414. 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-seven of the 83 States that 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, the Niger, Norway, Panama, Peru, Portugal, Saint Vincent and the Grenadines, San Marino, 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.

B. Progress of work

415. Since the Committee started its work under the Optional Protocol at its second session in 1977, 211 communications concerning 22 States parties have been placed before it for consideration (189 of these were placed before the Committee from its second to its twenty-fifth sessions; 22 further communications have been placed before the Committee since then, that is, at its twenty-sixth, twenty-seventh and twenty-eighth 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. ^{13/} A volume containing selected decisions from the seventeenth to the twenty-eighth sessions is forthcoming. The Committee believes it extremely important that the publication of this second volume should proceed at all due speed.

416. The status of the 211 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: 72;

(b) Concluded in another manner (inadmissible, discontinued, suspended or withdrawn): 106;

(c) Declared admissible, but not yet concluded: 12;

(d) Pending at pre-admissibility stages: 21 (20 thereof transmitted to the State party under rule 91 of the Committee's provisional rules of procedure).

417. During the twenty-sixth to twenty-eighth sessions the Committee examined a number of communications submitted under the Optional Protocol. It concluded consideration of four cases by adopting its views thereon. These are cases Nos. 138/1983 (Ngalula Mpandanjila et al. v. Zaire), 137/1983 (Lucia Arzuaga v. Uruguay), 156/1983 (Luis Alberto Solorzano v. Venezuela) and 157/1983

(André Alphonse Mpaika-Nauau v. Zaïre). The Committee also concluded consideration of five cases by declaring them inadmissible. These are cases Nos. 112/1981 (Y.L. v. Canada), 118/1982 (J.B. et al. v. Canada), 165/1984 (J.M. v. Jamaica), 170/1984 (E.H. v. Finland), and 184/1984 (H.S. v. France). The texts of the views adopted on the four cases as well as of the decisions on the five cases declared inadmissible are reproduced in annexes VIII and IX to the present report. Consideration of nine other cases was discontinued. 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). Secretariat action was requested on other pending cases.

C. Issues considered by the Committee

418. For a review of the Committee's work under the Optional Protocol from its second session in 1977 to its twenty-fifth session in 1985, the reader is referred to the Committee's annual reports for 1984 and 1985, which, inter alia, contain a summary of the procedural and substantive issues considered by the Committee and of the decisions taken. 14/ 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.

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

1. Procedural issues

420. Under rule 93, paragraph 4, of the Committee's provisional rules of procedure, the Committee may 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. As in a prior case (No. 113/1981, C.F. et al. v. Canada), the Committee at its twenty-seventh session had opportunity to review its admissibility decision in case No. 165/1984 (J.M. v. Jamaica). Having established on the basis of new information submitted by the State party that the author had failed to exhaust domestic remedies, the Committee set aside its prior decision and declared the communication inadmissible (see annex "X C").

421. The Committee also terminated the examination of several cases without issuing a formal decision, where the authors had failed to respond to the Committee's request for additional information and had not reacted to the Committee's reminders.

2. Substantive issues

422. Whereas most of the Committee's decisions on admissibility during the period covered by this report did not go beyond the Committee's previous case law, two decisions declaring cases inadmissible merit special attention. In case No. 112/1981 (Y.L. v. Canada) the Committee had occasion to elucidate one aspect of article 14, paragraph 1, of the Covenant.

"In the view of the Committee the concept of a 'suit at law' ... is based on the nature of the right in question rather than on the status of one of the parties (governmental, parastatal or autonomous statutory entities), or else on the particular forum in which individual legal systems may provide that the

right in question is to be adjudicated upon, especially in common law systems where there is no inherent difference between public law and private law and where the courts normally exercise control over the proceedings either at first instance or on appeal specifically provided by statute or else by way of judicial review."

An individual opinion signed by three members of the Committee, expressing a different view of the meaning of a "suit at law" is appended to the decision (see annex IX A and appendix).

423. When discussing the question of admissibility of case No. 118/1982 (J.B. et al. v. Canada) the Committee had occasion to consider whether the prohibition of the right to strike for municipal employees (civil servants) amounts to a violation of article 22 of the International Covenant on Civil and Political Rights. In interpreting the scope of article 22 of the Covenant, the Committee first gave attention to the ordinary meaning of each element of the article in its context and in the light of its object and purpose, and also had recourse to supplementary means of interpretation by perusing the travaux préparatoires of the Covenant. The Committee could not deduce therefrom that the drafters of the Covenant on Civil and Political Rights intended to guarantee the right to strike.

"The conclusions to be drawn from the drafting history are corroborated by a comparative analysis of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Article 8, paragraph 1 (d), of the International Covenant on Economic, Social and Cultural Rights recognizes the right to strike, in addition to the right of everyone to form and join trade unions for the promotion and protection of his economic and social interests, thereby making it clear that the right to strike cannot be considered as an implicit component of the right to form and join trade unions. Consequently, the fact that the International Covenant on Civil and Political Rights does not similarly provide expressly for the right to strike in article 22, paragraph 1, shows that this right is not included in the scope of this article, while it enjoys protection under the procedures and mechanisms of the International Covenant on Economic, Social and Cultural Rights, subject to the specific restrictions mentioned in article 8 of that instrument."

An individual opinion signed by five members of the Committee who could not agree with this analysis is also appended (see annex IX B and appendix).

424. Among the Committee's views under article 5, paragraph 4, of the Optional Protocol, two were adopted without the benefit of any submissions from the State party. In case No. 138/1983 (Nqulua Mpandanjila et al. v. Zaire) concerning 12 imprisoned Zairian parliamentarians, the Committee found, inter alia, violations of article 12, paragraph 1, of the Covenant, "because they were deprived of their freedom of movement during long periods of administrative banishment" and of article 25, "because they were deprived of the right equitably to take part in the conduct of public affairs" (see annex VIII A). In case No. 157/1983 (André Alphonse Mpaka-Nsumu v. Zaire) the Committee found, inter alia, violations of article 12, paragraph 1, "because he was banished to his village of origin for an indefinite period" and of article 25, "because, notwithstanding the entitlement to stand for the presidency under Zairian law, he was not so permitted" (see annex VIII D).

VI. CONSIDERATION OF THE FINANCIAL CRISIS OF THE UNITED NATIONS
AND ITS IMPACT ON THE WORK OF THE COMMITTEE

A. Twenty-seventh session

425. The Committee was informed of the current financial crisis of the United Nations by the Chairman and by the Under-Secretary-General for Political and General Assembly Affairs at the opening of its twenty-seventh session. Two letters from the Secretary-General addressed to the Chairman of the Committee requesting support in reducing expenditures, dated 24 January and 19 March 1986, were also circulated to members of the Committee.

426. Members of the Committee expressed concern over the Organization's financial difficulties and readily agreed to co-operate in seeking to reduce expenses wherever it was possible to do so without impairing the functioning of the Committee or the proper discharge of its mandate under the Covenant. Various possible alternatives for achieving cost reductions were referred to by Committee members and a decision was taken to reduce from two to one the number of pre-session working groups that were to meet prior to the twenty-eighth session. The Committee agreed to revert to the subject at that session, by which time information was expected to be available concerning the Secretary-General's recommendations and the General Assembly's action thereon at the resumed fortieth session.

427. On 21 May 1986, the Chairman of the Committee informed the members by cable of decision 40/472 of 9 May 1986, taken at the resumed fortieth session of the General Assembly, to defer one of the Committee's two remaining sessions in 1986 and requested them to inform the Chairman as to whether the next session should be held in the summer or the fall. The Committee decided that its twenty-eighth session should be held from 7 to 25 July 1986, as originally scheduled in the calendar of conferences, and left the question of the fall session (scheduled from 20 October to 7 November 1986) to be formally decided during the July session.

B. Twenty-eighth session

428. At the twenty-eighth session, members of the Committee noted with concern that the financial crisis had become so extensive, and reaffirmed their readiness to co-operate in every possible way in the effort to overcome it. They noted, however, that the Human Rights Committee, as a treaty body, had the responsibility to decide independently on its programme of work and meeting schedule. They recalled that the Committee's obligation under the Covenant in respect of the implementation of the comprehensive set of civil and political rights contained therein, as well as regarding the examination of individual complaints alleging that such rights had been or were being violated, entailed a complex and difficult variety of functions which could only be accomplished through an in-depth examination. They noted further that the existing pattern of holding a three-week session in the spring, summer and fall of each year, which had been in effect since 1978, when the Committee's work-load had begun to increase significantly to its present level, was designed to allow the Committee to cope with both the high volume of periodic reports submitted by 83 States parties to the Covenant and its other work-load, as well as to ensure that timely action, as required by the Optional Protocol, was taken on complaints submitted by individuals, which were frequently of an urgent nature. It was particularly emphasized that the Optional

Protocol itself imposed certain time-limits on the Committee and on the States parties concerned, which could not be modified even by Committee decisions. Accordingly, in the light of the Committee's current work-load, which included the consideration of a large number of State party reports and of the limited number of reports that could be taken up at each session, the Committee considered that the existing pattern of three three-week sessions per annum was barely adequate and could not be further reduced without severely impairing its ability to discharge its duties under the Covenant.

429. The Committee expressed deep regret that the lack of budgetary resources would prevent the holding of its scheduled session in the fall of 1986. It considered that the 30 per cent reduction in the resources allocated to Committee meetings for 1986 was significantly higher than that affecting a number of United Nations bodies. The decision to cancel that session could be taken by the Committee only with the utmost reluctance as an exceptional and drastic measure.

430. In discussing the various possibilities for achieving cost reductions during 1986, the Committee noted that the General Assembly had requested certain treaty bodies, including the Committee, to consider dispensing with summary records for all of their meetings. Members of the Committee stressed, however, that summary records played an essential role in the Committee's proceedings and that without them it would not be possible to perform some of the Committee's main functions. In particular, summary records were absolutely necessary to reflect the consideration of State party reports, which was a central function of the Committee under the Covenant. Without such records, the Committee's efforts to assist States parties in the implementation of the provisions of the Covenant would reach neither the public at large nor the public or individuals in the States parties concerned. Moreover, they were indispensable not only for the preparation of the Committee's annual report, but also for States parties themselves when preparing additional information and subsequent reports. Summary records were also needed during the process of preparing admissibility decisions and final views on communications received under the Optional Protocol. Reaching such decisions required consideration of the various submissions by the parties concerned, as well as an in-depth study of the legal situation and the scope of the provisions of the Covenant. That process normally extended over several sessions and took more than a year. In order to revert to considerations that had taken place long ago, members of the Committee, in particular, new members, needed the summary records to recall what had happened or to become acquainted with a specific case. Therefore, in preparing the decisions referred to earlier, summary records were indispensable. Nevertheless, in order to be as responsive as possible to the General Assembly's request, the Committee agreed to curtail the use of summary records in respect of some of its activities and to organize its work in such a way that it needed summary records during only two weeks of its three-week sessions, thereby reducing the volume of summary records by 30 per cent.

431. The Committee also considered the suggestion that its future spring sessions should be held at Geneva instead of New York; however, it had reservations concerning that suggestion in view of the importance of maintaining periodic contacts with State party delegations and other bodies located in New York for the effectiveness of its work.

432. In the light of the foregoing and pursuant to the appeals of the Secretary-General and the General Assembly for support in connection with the current financial crisis of the United Nations, the Committee decided, at its 696th

meeting, on 22 July 1986, to adopt, for the duration of the financial crisis, the following temporary measures:

- (a) To cancel the session scheduled to take place from 20 October to 7 November 1986;
- (b) To agree to a change in the venue of its twenty-ninth session from New York to Geneva;
- (c) To reduce the number of pre-sessional working groups from two to one, composed of four members;

(d) To dispense with summary records for the last two days of its twenty-eighth session. The Committee also decided that at future sessions the use of summary records would be limited to two weeks per session, during the consideration of State party reports and admissibility decisions or final views relating to communications;

(e) To discontinue the practice of including the texts of decisions on communications in the bound volumes of the Committee's Yearbook, replacing such texts with appropriate references to the relevant annual report and the volume of Selected Decisions under the Optional Protocol; 13/

(f) To reduce the volume of its annual report to the General Assembly by 10 per cent forthwith.

413. The Committee noted that the purpose of those measures, as stated by the Secretary-General, was to "generate short-term savings in order to help alleviate the immediate and critical cash flow situation, and in so doing provide more time for comprehensive considerations and action by Member States in addressing the fundamental issues". It also noted assurances given on behalf of the Secretary-General that the measures would not be applied any longer than necessary.

414. The Committee considered that any further measures to reduce expenditures beyond those indicated above would constitute a serious impediment to the effective discharge of its mandate under the Covenant and the Optional Protocol and reiterated, in that connection, the exceptional importance it attached to the maintenance of its customary schedule of meetings, namely, three three-week sessions per annum.

Notes

1/ See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V.

2/ Ibid., Fortieth session, Supplement No. 40 (A/40/40), annex VI

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.

Notes (continued)

- 6/ 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 that are being issued, beginning with the years 1977 and 1978.
- 7/ International Labour Organisation, International Labour Conventions and Recommendations, 1919-1981 (Geneva, 1982).
- 8/ See Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), annex VI.
- 9/ United Nations, Treaty Series, vol. 266, No. 3822.
- 10/ See Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40), annex VI.
- 11/ United Nations, Treaty Series, vol. 189, No. 2545, p. 137.
- 12/ See Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 24 (A/35/24), vol. I, annex.
- 13/ United Nations publication, Sales No. E.84.XIV.2. Available in English only; other language versions are in preparation. A second volume is to be published.
- 14/ See Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40), paras. 569-625; and id., Fortieth Session, Supplement No. 40 (A/40/40), paras. 690-706.

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 25 July 1986

A. States parties to the International Covenant on
Civil and Political Rights (83)

<u>States parties</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
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	19 February 1972	23 March 1976
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983 (a)	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

<u>States parties</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Gabon	21 January 1983 (a)	21 April 1983
Gambia	22 March 1979 (a)	22 June 1979
German Democratic Republic	8 November 1971	23 March 1976
Germany, Federal Republic of	17 December 1971	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	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	2 March 1980 (a)	12 June 1980
Niger	7 March 1986 (a)	7 June 1986
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	28 April 1978	28 July 1978
Poland	18 March 1977	18 June 1977
Portugal	15 June 1978	15 September 1978

<u>States parties</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Romania	9 December 1974	21 March 1976
Rwanda	16 April 1975 (a)	21 March 1976
Saint Vincent and the Grenadines	9 November 1981 (a)	9 February 1982
San Marino	18 October 1985 (a)	18 January 1986
Senegal	13 February 1978	13 May 1978
Spain	27 April 1977	27 July 1977
Sri Lanka	11 June 1980 (a)	11 September 1980
Sudan	18 March 1986 (a)	18 June 1986
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 (37)

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

<u>States parties</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Colombia	29 October 1969	23 March 1976
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
Niger	7 March 1986 (a)	7 June 1986
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
San Marino	18 October 1985 (a)	18 January 1986
Senegal	13 February 1978	13 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 1976	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 (18)

<u>States parties</u>	<u>Valid from</u>	<u>Valid until</u>
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 1991
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

<u>Name of member</u>	<u>Country of nationality</u>
Mr. Andrés AGUILAR**	Venezuela
Mr. Nejib BOUZIRI*	Tunisia
Mr. Joseph A. J. 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. Rajsomer LALLAH**	Mauritius
Mr. Andreas V. MAVROMMATIS**	Cyprus
Mr. Anatoly P. MOVCHAN**	Union of Soviet Socialist Republics
Mr. Birame NDIAYE*	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.

Agendas of the twenty-sixth, twenty-seventh and twenty-eighth sessions
of the Human Rights Committee

Twenty-sixth session

At its 625th meeting, on 21 October 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-sixth 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.

Twenty-seventh session

At its 650th meeting, on 24 March 1986, 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-seventh session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Action by the General Assembly at its fortieth session on the annual report submitted by the Human Rights Committee under article 45 of the Covenant.
4. Submission of reports by States parties under article 40 of the Covenant.
5. Consideration of reports submitted by States parties under article 40 of the Covenant.
6. Consideration of communications under the Optional Protocol to the Covenant.
7. Future meetings of the Committee.

Twenty-eighth session

At its 676th meeting, on 7 July 1986, 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-eighth 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. Future meetings of the Committee.
7. 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

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of written reminder sent to States whose reports have not yet been submitted</u>
Belgium	20 July 1984	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 1985 (3) 6 May 1986
Bolivia	11 November 1983	NOT YET RECEIVED	(1) 17 May 1985 (2) 5 August 1985 (3) 6 May 1986
Cameroon	26 September 1985	NOT YET RECEIVED	(1) 15 November 1985 (2) 6 May 1986
Central African Republic	7 June 1982	NOT YET RECEIVED	(1) 23 November 1983 (2) 17 May 1985 (3) 13 August 1985 (4) 15 November 1985 (5) 6 May 1986
Conqo	4 January 1985	12 February 1986 b/	-
Gabon	20 April 1984	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 1985 (3) 15 November 1985 (4) 6 May 1986
Guinea	31 October 1985 c/	NOT YET RECEIVED	-
Saint Vincent and the Grenadines	8 February 1983	NOT YET RECEIVED	(1) 10 May 1984 (2) 15 May 1985 (3) 13 August 1985 (4) 15 November 1985 (5) 6 May 1986
Togo	23 August 1985	NOT YET RECEIVED	(1) 15 November 1985 (2) 6 May 1986
Viet Nam	23 December 1983	NOT YET RECEIVED	(1) 22 May 1985 (2) 9 August 1985 (3) 18 November 1985 (4) 6 May 1986

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of written reminder sent to States whose reports have not yet been submitted</u>
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 (8) 13 August 1985 (9) 12 December 1985 (10) 6 May 1986
Zambia	9 July 1985	NOT YET RECEIVED	(1) 8 August 1985 (2) 15 November 1985 (3) 6 May 1986
B. <u>Second periodic reports of States parties due in 1983</u>			
Zaire	30 January 1983	NOT YET RECEIVED	(1) 20 May 1985 (2) 13 August 1985 (3) 12 December 1985 (4) 6 May 1986
Libyan Arab Jamahiriya	4 February 1983	NOT YET RECEIVED	(1) 10 May 1984 (2) 15 May 1985 (3) 13 August 1985 (4) 18 November 1985 (5) 6 May 1986
Tunisia	4 February 1983	27 February 1986 <u>d/</u>	-
Iran (Islamic Republic of)	21 March 1983	NOT YET RECEIVED	(1) 10 May 1984 (2) 15 May 1985 (3) 13 August 1985 (4) 18 November 1985 (5) 6 May 1986
Uruguay	21 March 1983 <u>e/</u>	NOT YET RECEIVED	(1) 10 May 1984 (2) 17 May 1985 (3) 14 August 1985 (4) 20 November 1985 (5) 6 May 1986
Madagascar	3 August 1983	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of written reminder sent to States whose reports have not yet been submitted</u>
Mauritius	4 November 1983	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986

C. Second periodic reports of States parties due in 1984

Bulgaria	28 April 1984	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986
Romania	28 April 1984	29 January 1986	-
Cyprus	18 August 1984	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986
Syrian Arab Republic	18 August 1984	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986
United Kingdom of Great Britain and Northern Ireland - dependent territories	18 August 1984 f/	NOT YET RECEIVED	-
Poland	27 October 1984	25 October 1985	-

D. Second periodic reports of States parties due in 1985

Trinidad and Tobago	20 March 1985	NOT YET RECEIVED	(1) 5 August 1985 (2) 18 November 1985 (3) 6 May 1986
New Zealand	27 March 1985	NOT YET RECEIVED	(1) 5 August 1985 (2) 18 November 1985 (3) 6 May 1986
Iraq	4 April 1985	21 April 1986	-
Mongolia	4 April 1985	2 August 1985	-
Senegal	4 April 1985	9 June 1986	-

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of written reminder sent to States whose reports have not yet been submitted</u>
Gambia	21 June 1985	NOT YET RECEIVED	(1) 9 August 1985 (2) 18 November 1985 (3) 6 May 1986
India	9 July 1985	NOT YET RECEIVED	(1) 9 August 1985 (2) 18 November 1985 (3) 6 May 1986
Colombia	2 August 1985	NOT YET RECEIVED	(1) 20 November 1985 (2) 6 May 1986
Costa Rica	2 August 1985	NOT YET RECEIVED	(1) 20 November 1985 (2) 6 May 1986
Suriname	2 August 1985	NOT YET RECEIVED	(1) 18 November 1985 (2) 6 May 1986
Denmark	1 November 1985	15 July 1986	-
Italy	1 November 1985	NOT YET RECEIVED	(1) 18 November 1985 (2) 6 May 1986
Venezuela	1 November 1985	NOT YET RECEIVED	(1) 20 November 1985 (2) 6 May 1986

E. Second periodic reports of States parties due in 1986 (within the period under review) a/

El Salvador	28 February 1986	NOT YET RECEIVED	10 May 1986
Lebanon	21 March 1986	NOT YET RECEIVED	10 May 1986
Dominican Republic	29 March 1986	NOT YET RECEIVED	6 May 1986
Kenya	11 April 1986	NOT YET RECEIVED	10 May 1986
Mali	11 April 1986	NOT YET RECEIVED	10 May 1986
United Republic of Tanzania	11 April 1986	NOT YET RECEIVED	10 May 1986
Nicaragua	11 June 1986	NOT YET RECEIVED	-

Notes

a/ From 26 July 1985 to 25 July 1986 (end of the twenty-fifth session to end of the twenty-eighth session).

b/ This report replaces an earlier report submitted on 8 December 1984.

c/ Having considered the initial report of Guinea at its twentieth session, without State party representation, the Committee decided to request the Government of Guinea to submit a new report. The deadline for submission of the new report was 31 October 1985.

d/ This report is the final version of Tunisia's second periodic report and replaces its earlier second periodic report.

e/ By a note of 25 November 1985 the State party informed the Committee that an interministerial working group had been established to prepare Uruguay's second periodic report.

f/ When introducing the second periodic report of the United Kingdom at the Committee's twenty-fourth session, the representative of the State party assured the Committee that the remaining part of the report, relating to the dependent territories, would be submitted as soon as possible.

g/ For a complete list of States parties whose second periodic reports are due in 1986, see CCPR/C/42.

ANNEX V

Status of reports considered during the period under review
and of reports still pending before the Committee

A. Initial reports

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Meetings at which considered</u>
Luxembourg	17 November 1984	1 July 1985	628th, 629th, 632nd (twenty-sixth session)
Congo	4 January 1985	2 February 1986 a/	NOT YET CONSIDERED

B. Second periodic reports

Sweden	27 October 1984	14 November 1984	630th-638th (twenty-sixth session)
Finland	18 August 1984	18 June 1985	643rd-646th (twenty-sixth session)
Mongolia	4 April 1985	2 August 1985	657th-660th (twenty-seventh session)
Germany, Federal Republic of	3 August 1983	17 July 1985	663rd-667th (twenty-seventh session)
Czechoslovakia	4 February 1983	22 July 1985	679th-683rd (twenty-eighth session)
Hungary	2 August 1985	8 July 1985	684th-688th (twenty-eighth session)
Tunisia	4 February 1983	27 February 1986 b/	NOT YET CONSIDERED
Ecuador	4 November 1983	14 August 1985	NOT YET CONSIDERED
Poland	27 October 1984	25 October 1985	NOT YET CONSIDERED
Romania	28 April 1984	29 January 1986	NOT YET CONSIDERED
Iraq	4 April 1985	21 April 1986	NOT YET CONSIDERED
Senegal	4 April 1985	9 June 1986	NOT YET CONSIDERED
Denmark	1 November 1985	15 July 1986	NOT YET CONSIDERED

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

<u>States parties</u>	<u>Date of submission</u>	<u>Meetings at which considered</u>
Kenya <u>c/</u>	4 May 1982	NOT YET CONSIDERED
France <u>c/</u>	18 January 1984	NOT YET CONSIDERED
Gambia <u>c/</u>	5 June 1984	NOT YET CONSIDERED
Panama <u>d/</u>	30 July 1984	NOT YET CONSIDERED
El Salvador <u>e/</u>	19 June 1986	NOT YET CONSIDERED

D. Additional information submitted subsequent to examination of second periodic reports by the Committee

Finland	4 June 1986	NOT YET CONSIDERED
Sweden	1 July 1986	NOT YET CONSIDERED

Notes

a/ This report replaces the initial report submitted by the Government of the Congo on 8 December 1984.

b/ This report is the final version of Tunisia's second periodic report and replaces the report submitted by that State party on 28 June 1983.

c/ At its twenty-fifth session (601st meeting), the Committee decided to consider the report together with the State party's second periodic report.

d/ 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.

e/ At its twentieth session, the Committee decided to suspend consideration of the State party's initial report pending the receipt of additional information.

General comments a/ under article 40, paragraph 4, of the
International Covenant on Civil and Political Rights b/ c/

General comment 15 (27) d/ (The position of aliens under the Covenant)

1. Reports from States parties have often failed to take into account that each State party must ensure the rights in the Covenant to "all individuals within its territory and subject to its jurisdiction" (art. 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.
2. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof. This guarantee applies to aliens and citizens alike. Exceptionally, some of the rights recognized in the Covenant are expressly applicable only to citizens (art. 25), while article 13 applies only to aliens. However, the Committee's experience in examining reports shows that in a number of countries other rights that aliens should enjoy under the Covenant are denied to them or are subject to limitations that cannot always be justified under the Covenant.
3. A few constitutions provide for equality of aliens with citizens. Some constitutions adopted more recently carefully distinguish fundamental rights that apply to all and those granted to citizens only, and deal with each in detail. In many States, however, the constitutions are drafted in terms of citizens only when granting relevant rights. Legislation and case law may also play an important part in providing for the rights of aliens. The Committee has been informed that in some States fundamental rights, though not guaranteed to aliens by the Constitution or other legislation, will also be extended to them as required by the Covenant. In certain cases, however, there has clearly been a failure to implement Covenant rights without discrimination in respect of aliens.
4. The Committee considers that in their reports States parties should give attention to the position of aliens, both under their law and in actual practice. The Covenant gives aliens all the protection regarding rights guaranteed therein, and its requirements should be observed by States parties in their legislation and in practice as appropriate. The position of aliens would thus be considerably improved. States parties should ensure that the provisions of the Covenant and the rights under it are made known to aliens within their jurisdiction.
5. The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.
6. Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the Covenant.

7. Aliens thus have an inherent right to life, protected by law, and may not be arbitrarily deprived of life. They must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; nor may they be held in slavery or servitude. Aliens have the full right to liberty and security of the person. If lawfully deprived of their liberty, they shall be treated with humanity and with respect for the inherent dignity of their person. Aliens may not be imprisoned for failure to fulfil a contractual obligation. They have the right to liberty of movement and free choice of residence; they shall be free to leave the country. Aliens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law. Aliens shall not be subjected to retrospective penal legislation, and are entitled to recognition before the law. They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. They have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association. They may marry when at marriageable age. Their children are entitled to those measures of protection required by their status as minors. In those cases where aliens constitute a minority within the meaning of article 27, they shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language. Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant.

8. Once an alien is lawfully within a territory, his freedom of movement within the territory and his right to leave that territory may only be restricted in accordance with article 12, paragraph 3. Differences in treatment in this regard between aliens and nationals, or between different categories of aliens, need to be justified under article 12, paragraph 3. Since such restrictions must, inter alia, be consistent with the other rights recognized in the Covenant, a State party cannot, by restraining an alien or deporting him to a third country, arbitrarily prevent his return to his own country (art. 12, para. 4).

9. Many reports have given insufficient information on matters relevant to article 13. That article is applicable to all procedures aimed at the obligatory departure of an alien, whether described in national law as expulsion or otherwise. If such procedures entail arrest, the safeguards of the Covenant relating to deprivation of liberty (arts. 9 and 10) may also be applicable. If the arrest is for the particular purpose of extradition, other provisions of national and international law may apply. Normally an alien who is expelled must be allowed to leave for any country that agrees to take him. The particular rights of article 13 only protect those aliens who are lawfully in the territory of a State party. This means that national law concerning the requirements for entry and stay must be taken into account in determining the scope of that protection, and that illegal entrants and aliens who have stayed longer than the law or their permits allow, in particular, are not covered by its provisions. However, if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13. It is for the competent authorities of the State party, in good faith and in the exercise of their powers, to apply and interpret the domestic law, observing, however, such requirements under the Covenant as equality before the law (art. 26).

10. Article 13 directly regulates only the procedure and not the substantive grounds for expulsion. However, by allowing only those carried out "in pursuance of a decision reached in accordance with law", its purpose is clearly to prevent arbitrary expulsions. On the other hand, it entitles each alien to a decision in his own case and, hence, article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions. This understanding, in the opinion of the Committee, is confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by and to be represented before the competent authority or someone designated by it. An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one. The principles of article 13 relating to appeal against expulsion and the entitlement to review by a competent authority may only be departed from when "compelling reasons of national security" so require. Discrimination may not be made between different categories of aliens in the application of article 13.

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 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, paras. 541-557). 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; *ibid.*, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V; *ibid.*, Thirty-eighth Session, Supplement No. 40 (A/38/40), annex VI; *ibid.*, Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), annex VI; and *ibid.*, Fortieth Session, Supplement No. 40 (A/40/40), annex VI. Also issued separately in documents CCPR/C/21 and Add.1-4.

b/ The English version was adopted by the Committee at its 671st meeting (twenty-seventh session), held on 9 April 1986, and revised at its 696th meeting (twenty-eighth session), held on 22 July 1986, at which time the Committee also approved revised texts in all the languages.

c/ Also issued separately in CCPR/C/21/Add.5/Rev.1.

d/ The number in parenthesis indicates the session at which the general comment was adopted.

ANNEX VII

Letter dated 9 April 1986 from the Chairman of the Human Rights Committee to the Secretary-General on the International Year of Peace

I have the honour to refer to the letter of 6 December 1985, concerning the International Year of Peace and to General Assembly resolutions 40/3 and 40/10, which were noted with appreciation by the Human Rights Committee.

The Committee wishes to recall that its work under the International Covenant on Civil and Political Rights for the promotion of human rights, as a whole, is to be considered as a contribution to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations.

The Committee wholeheartedly welcomes every effort to maintain and strengthen international peace. In its general comments Nos. 6 (16) and 14 (23) which are appended to this letter, the Human Rights Committee drew the attention of States parties to the Covenant to the fact that the right to life "is basic to all human rights" and that "States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. Every effort they make to avert the danger of war, especially thermonuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life". The Committee shares the concern expressed during successive sessions of the General Assembly that "the development and proliferation of increasingly awesome weapons of mass destruction ... 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".

In that same connection, the Committee also expressed the view that "the production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crime against humanity".

The Committee would appreciate it if the Secretary-General would kindly distribute general comments Nos. 6 (16) and 14 (23) to all States Members of the United Nations.

The Committee hopes that more States will accede to the International Covenant on Civil and Political Rights. As one of the corner-stones of the International Bill of Human Rights, the Covenant secures peace among nations. In view of this lofty goal, it would be highly desirable that the Covenant attain universality as soon as possible.

(Signed) Andreas V. MAVROMMATIS
Chairman of the
Human Rights Committee

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

A. Communication No. 138/1983, Ngalula Mpandanjila et al. v. Zaire
(Views adopted on 26 March 1986 at the twenty-seventh session)

Submitted by: Ngalula Mpandanjila et al. (represented by Maitrea Eric Verquawen
and Robert-Charles Goffin)

Alleged victims: Ngalula Mpandanjila et al.

State party concerned: Zaire

Date of communication: 3 March 1983 (date of initial letter)

Date of decision on admissibility: 9 July 1985

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

Meeting on 26 March 1986;

Having concluded its consideration of communication No. 138/1983 submitted to
the Committee by Ngalula Mpandanjila et al. under the Optional Protocol to the
International Covenant on Civil and Political Rights;

Having taken into account all written information made available to it by the
authors of the communication and noting that no information has been received
from the State party concerned;

adopts the following:

VIEWS UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL

1. The communication was initially submitted to the Human Rights Committee by two
Belgian lawyers, Eric Verquawen and Robert-Charles Goffin (initial letter of
3 March 1983) on behalf of their 13 Zairian clients, Messrs. Ngalula, Tshise,
Makanda, Kapita, Kyunqu, Lumbu, Kanana, Kasala, Lusanqa, Dia, Naoy and Kibassa,
former Zairian members of parliament, and Mr. Birindwa, a Zairian businessman. At
the time of the initial submission (3 March 1983), all 13 individuals were detained
in various prisons in Zaire and were allegedly unable to present their cases to the
Committee themselves. As evidence of their authority to act, the lawyers furnished
a copy of a letter, dated 2 September 1982, signed by the wives of the 12 former
parliamentarians, requesting them to submit the cases of their husbands to the
Human Rights Committee. The lawyers' submissions further show that they also
represented the thirteenth alleged victim, the businessman Mr. Birindwa, in
connection with the steps taken to exhaust remedies before the domestic courts,
prior to the submission of the communication to the Human Rights Committee under
the Optional Protocol to the International Covenant on Civil and Political Rights.

2.1 The facts, as described by the lawyers in the initial and further submissions are as follows: in 1980, the parliamentarians sent an "open letter" to President Mobutu, which was subsequently held by the Central Committee of the Mouvement populaire de la révolution (MPR) to be grossly improper both in form and content. In consequence, the Party stripped them of their membership of parliament and deprived them of their civil and political rights, including their right to hold public office, for a period of five years, with some of them being subjected, as of December 1980, to detention, or house arrest, or an administrative banning measure, the effect of which was to relocate them to a distant region against their will. Although these latter measures were the subject of a decree of amnesty of 17 January 1981, the amnesty did not become effective until 4 December 1981, at which time the individuals concerned were able to return to their homes.

2.2 During February 1982, while the former parliamentarians were negotiating with representatives of the President of Zaire concerning the establishment of a new political party, the Union pour la démocratie et le progrès social (UDPS), seven of them were arrested and subsequently all 12 were brought to trial before the State Security Court on charges of plotting to overthrow the régime and planning to establish a political party. The businessman, Mr. Birindwa, was also brought to trial before the State Security Court on charges of having secreted documents concerning the establishment of UDPS.

2.3 The trial of the 13 accused took place on 28 June 1982. On 1 July 1982, they were sentenced to 15 years' imprisonment, with the exception of Mr. Birindwa, who was sentenced to 5 years' imprisonment. The two lawyers, who assisted their defence at the trial, alleged that due process of law had not been observed by the magistrates (three accused were not heard at the pre-trial stage, no summonses were served on two others, the trial was not held in public, etc.).

2.4 On 7 July 1982, the lawyers filed appeals with the Supreme Court of Justice (pourvoi en cassation) on behalf of their clients against the judgement of 1 July 1982. By a decision of 26 October 1982 (ordonnance de classement sans suite), the Supreme Court declined to consider the appeals, because the court fees had not been paid. In this connection, the lawyers point out that they had taken steps to ensure that the requirement of payment of the court fees be complied with. They state that, since their clients were scattered among several detention centres and it was impossible to communicate with them, a Zairian lawyer, Maître Mukendi, bâtonnier of Kinshasa, was asked to carry out the necessary formalities for depositing the fees. By a letter dated 15 September 1982, they urged Maître Mukendi to contact Mrs. Birindwa (the wife of one of the alleged victims), who was supposed to collect the necessary funds. At the same time, they wrote to the Chief Justice of the Supreme Court to inform the Court of the steps taken to comply with the necessary formalities. It later transpired that Mrs. Birindwa had not been in Kinshasa at the time in question and that the intended collection and payment of the court fees had not been made. The lawyers contend, however, that the efforts made to comply with the formalities, although unsuccessful, should be considered as satisfactory, in particular as the decision not to take action on the appeals was taken relatively shortly after the Supreme Court was informed of the efforts being made to collect and deposit the court fees. They submit that, since the decision of the Supreme Court not to consider the appeals could not be challenged under Zairian law, domestic remedies had been exhausted within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. They further point out in this context that under article 33 of the Code of Procedure for the Supreme Court of Justice, the President of the Court could have waived the deposit.

2.5 At this stage in the presentation of the communication, the lawyers alleged that the State party had violated a number of articles of the International Covenant on Civil and Political Rights, as follows:

Article 14. The Central Committee of MPR, which was not an independent and impartial tribunal, took disciplinary measures of a penal character against the parliamentarians; the State Security Court, which rendered the judgement of 1 July 1982, was also not an independent and impartial tribunal since its judges were members of MPR; the trial was not held in public; no summonses were served on two of the accused; and in three cases the accused were not heard at the pre-trial stage;

Article 19. The parliamentarians were punished solely because of their opinions;

Article 22. The criminal proceedings before the State Security Court resulted from the defendants' attempts to establish a political party (a right implicit in the right to freedom of association);

Article 15. The order, issued by the Central Committee of MPR, to strip the parliamentarians of their parliamentary mandate was based on internal regulations adopted only on 7 January 1981, i.e., after the date of the alleged offence - the sending of the "open letter" - which occurred in 1980;

Articles 9 and 12. The measures of arrest, internal exile or house arrest to which the parliamentarians were subjected in December 1980 continued until 4 December 1981, although an amnesty had been decreed on 17 January 1981, and therefore constituted arbitrary arrests and detentions; these measures were also contrary to the provisions of article 12, paragraph 1;

Articles 7 and 10. The alleged victims were subjected to ill-treatment in detention.

2.6 By a letter dated 23 June 1983, the lawyers informed the Human Rights Committee that the alleged victims had all benefited from a new amnesty decree, promulgated on 21 May 1983. They therefore asked that consideration of the communication be suspended to allow them time to contact their clients for further instructions. Consideration of the communication was, accordingly, suspended temporarily.

2.7 By a letter dated 9 January 1984, the lawyers requested the Committee to resume consideration of the communication. As to the developments after the amnesty of May 1983, they stated that the President had adopted "an administrative banning measure" against their clients and that they had been deported along with their families to different parts of the country. They further conveyed the concern of their clients' family members living in Belgium, who had been unable to contact the alleged victims since the deportation.

2.8 By a letter dated 24 January 1984, the lawyers reiterated their request that consideration of the communication be resumed, alleging that the current situation of their clients constituted a violation by the State party of article 9 of the Covenant. In substantiation, they enclosed a copy of a letter of 25 December from

Mrs. Ngalula, the wife of one of the alleged victims, describing the situation of some of the alleged victims. She, however, mentioned that two of the lawyers' clients, namely Mr. Ngoy Mukendi and Mr. Kapita Shabangi, had rejoined the government party (MPR) and that they were now working for that party.

2.9 In a further letter, dated 19 June 1984, the lawyers stated that the banning order against their clients, being of a purely administrative nature, could not be subject to any judicial control and that the deprivation of liberty of their clients constituted violations by the State party of articles 9 and 12 of the Covenant. In substantiation, they enclosed a copy of a letter addressed to them on 18 June 1984 by Mrs. Marie-Claire Ngalula-Mbomba, the eldest daughter of the alleged victim Ngalula Mpandanjila, describing the situation as follows:

"As soon as he was arrested and banned to the village of Tshilunde, my father was joined by the rest of his family, who had also been arrested and forcibly brought to the same village. The banned family members include children still of elementary-school age, adolescent boys and girls who are now prevented from continuing their studies, and married brothers who are heads of families and whose wives have been left at Kinshasa alone with small children and without any means of support.

"All the news that has reached me gives evidence of:

"Deprivation of the minimum needed to live. They are not allowed to obtain the money they need for their survival or for their housing, and no one, not even a member of the family, is allowed to help them;

"Total deprivation of medical attention. They are therefore at the mercy of all kinds of diseases and are the ideal targets of malnutrition. The closest town is 65 kilometres from the place to which they have been exiled. There is no road infrastructure for rapidly evacuating the sick in case of need;

"Deprivation of liberty. Victims of an arbitrary banning measure, they are deprived of liberty even within the locality. A large security force has been installed all around the locality to prevent any contact with the outside. The inhabitants of the village are prohibited, under pain of imprisonment, from speaking to the banned persons (who are to consider themselves as being in prison) even concerning problems connected with the very administration of the village. The customary chief of the village was arrested for having allowed villagers to communicate with the family during the first few days of their exile to the village.

"My father, who was deported with 17 persons, is living under conditions that could not be more precarious. Most of the children sleep on the tables of the little local market's stalls, which they must leave at dawn to make room for the traders, while others must make do with secretly borrowed mats and cloths spread on the ground under the open sky.

"As if all these violations and humiliations were not enough, our main house in Kinshasa has been robbed and the managers of businesses have been arrested, so as not to leave any resources, however small, that would enable them to live 'decently' in the place to which they have been exiled.

"I consider it important to point out:

"That they were covered by the general amnesty of 19 May 1983;

"That no charge justifies these new measures against them and still less against small children;

"That these measures are not based on any judicial decision;

"That is the situation of my family at this time;

"As to the other members of the Group of Thirteen, I can state that their situation is similar to that of my family."

3.1 Consideration of the communication was resumed at the Committee's twenty-second session and on 5 July 1984 the Working Group of the Human Rights Committee decided that the communication be transmitted, 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 the case.

3.2 The time-limit for the State party's submission under rule 91 of the provisional rules of procedure expired on 14 October 1984. At the time of adoption of the decision on admissibility on 9 July 1985, no submission had been received from the State party.

4.1 Before deciding on the admissibility of the communication, the lawyers were asked to clarify for the Committee, which of the initial 13 alleged victims still wished to pursue the matter before the Human Rights Committee. By a telegram dated 26 February 1985, the lawyers stated that they had received no instructions from Kapita Shabangi, Ngoy Mukendi, Dia Oken and Kasala Kalomba, and that, although they had not been able to contact the other petitioners directly, they understood from their friends and families that it was their intention to pursue the matter.

4.2 In the light of the above clarification, the Human Rights Committee decided to continue consideration of the communication with respect to the cases of nine of the initial 13 alleged victims and that Messrs. Kapita Shabangi, Ngoy Mukendi, Dia Oken and Kasala Kalomba were no longer deemed to be parties to the communication.

5.1 Before considering a communication on the merits, the Committee must ascertain whether it fulfils all conditions relating to its admissibility under the Optional Protocol. With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee 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.

5.2 Regarding the requirement of exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol, the Committee observed with regard to events prior to 26 October 1982 (the day on which the Supreme Court decided not to take action on the alleged victims' appeals) that the Supreme Court's decision rendered the remedy of appeal ineffective, at a time when the Supreme Court had been informed that steps were being taken on behalf of the alleged victims to collect and to deposit the required court fees. The Committee noted the particular difficulties facing the authors, who were allegedly scattered among different

tion centres, in paying their court fees in timely fashion. The Committee also noted the speed of the Supreme Court's decision, against which there was no appeal, to dismiss the cases on that ground, and found that local remedies could not be deemed not to have been exhausted. In the circumstances, the Committee concluded that the communication was not inadmissible in that respect by virtue of article 5, paragraph 2 (b), of the Optional Protocol. Regarding the events said to have taken place after the amnesty decree of 21 May 1983, the State party did not refute the contention that the banning order imposed on the alleged victims, being purely of an administrative nature, was not subject to any judicial review. The Committee was therefore unable to conclude that there were effective remedies available to the alleged victims which they had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible by virtue of article 5, paragraph 2 (b), of the Optional Protocol in that respect.

6. On 9 July 1985 the Human Rights Committee therefore decided:

1. That the communication was admissible in so far as it related to Messrs. Ngalula Mpandanjila, Tshisekedi Wa Mulumba, Makanda Mpinga Shambuyi, Kyungu Wa Ku Mwanga, Lumbu Maloba Ndobu, Kanana Tshion Go, Lusanga Ngiele, Kibassa-Maliba and Birindwa;

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 the decision, written explanations or statements clarifying the matter and the remedy, if any, that might have been taken by it.

7.1 The time-limit for the State party's submission under article 4, paragraph 2, of the Optional Protocol expired on 1 February 1986. No submission was received from the State party.

7.2 No further submission has been received from the authors following the Committee's decision on admissibility.

8.1 The Human Rights Committee, having considered the present communication in the light of all the information made available to it by the authors as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts, which, in the absence of any submission from the State party, are uncontested.

8.2 The authors are eight former Zairian parliamentarians and one Zairian businessman. In December 1980, they were subjected to measures of arrest, banishment or house arrest on account of the publication of an "open letter" to Zairian President Mobutu. The eight parliamentarians were also stripped of their membership of parliament and forbidden to hold public office for a period of five years. Although they were covered by an amnesty decree of 17 January 1981, they were not released from detention or internal exile until 4 December 1981. They were subsequently brought to trial before the State Security Court on 28 June 1982 on charges of plotting to overthrow the régime and planning the creation of a political party, and of secreting documents concerning the establishment of said party. The trial was not held in public; no summonses were served on two of the accused; and in three cases the accused were not heard at the pre-trial stage. The accused were sentenced to 15 years' imprisonment with the exception of the businessman, who was sentenced to 5 years' imprisonment. The authors were released pursuant to an amnesty decree promulgated on 21 May 1983, but they were then

subjected to an "administrative banning measure" and deported along with their families to different parts of the country. The banned family members include children still of elementary-school age, adolescent boys and girls and married brothers who are heads of families and whose wives have been left in Kinshasa alone with small children and without any means of support. The authors were subjected to ill-treatment during the period of banishment and deprived of adequate medical attention.

9. In formulating its views, the Human Rights Committee also takes into account the failure of the State party to furnish any information and clarifications necessary for the Committee to facilitate its tasks. In the circumstances, due weight must be given to the authors' 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. The Committee notes with concern that, despite its repeated requests and reminders and despite the State party's obligation under article 4, paragraph 2, of the Optional Protocol, no submission whatever has been received from the State party in the present case.

10. 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, with respect to:

Article 9, paragraph 1, because the authors were subjected to arbitrary arrest and detention and were not released until 4 December 1981, despite an amnesty decree on 17 January 1981;

Article 10, paragraph 1, because they were subjected to ill-treatment during the period of banishment;

Article 12, paragraph 1, because they were deprived of their freedom of movement during long periods of administrative banishment;

Article 14, paragraph 1, because they were denied a fair and public hearing;

Article 19, because they suffered persecution because of their opinions;

Article 25, as to the eight former members of the Zairian parliament, because they were deprived of the right equally to take part in the conduct of public affairs.

11. The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations that the authors have suffered, to grant them compensation, to conduct an inquiry into the circumstances of their ill-treatment, to take action thereon as appropriate and to take steps to ensure that similar violations do not occur in the future.

B. Communication No. 147/1983, Lucía Arzuaga Gilboa v. Uruguay
(Views adopted on 1 November 1985 at the twenty-sixth session)

Submitted by: Felicia Gilboa de Reverdito on behalf of her niece,
Lucía Arzuaga Gilboa, who later joined as co-author

Alleged victim: Lucía Arzuaga Gilboa

State party concerned: Uruguay

Date of communication: 5 July 1983 (date of initial letter)

Date of decision on admissibility: 12 April 1984

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

Meeting on 1 November 1985;

Having concluded its consideration of communication No. 147/1983, originally submitted to the Committee by Felicia Gilboa de Reverdito 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:

IEWS UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL

1. The original author of the communication (initial letter dated 5 July 1983 and further letters of 26 September 1983, 20 March and 15 September 1984) is Felicia Gilboa de Reverdito, a Uruguayan national living in France at the time of submission and now residing again in Uruguay. She submitted the communication on behalf of her niece, Lucía Arzuaga Gilboa, a 26-year-old Uruguayan citizen and university student, who was detained in Uruguay from 15 June 1983 until 3 September 1984 and who was at the time of submission not in a position to present her case herself before the Human Rights Committee. She joined as co-author of the communication after her release (letters of 2 March and 14 October 1985). Felicia Gilboa de Reverdito alleged that her niece was a victim of violations of the following articles of the International Covenant on Civil and Political Rights: 7; 9, paragraphs 1 and 4; 10, paragraphs 1, 2 (b) and 3; 14, paragraphs 1, 2 and 3 (a), (c), (d) and (q); 15, paragraph 1; 17, paragraph 1; 18, paragraph 1; 19, paragraphs 1 and 2; 22, paragraphs 1 and 2; 25 and 26.

2.1 Felicia Gilboa de Reverdito described the relevant facts as follows: her niece was arrested in Montevideo on 15 June 1983. She was kept incommunicado until 30 June 1983 and during that period her whereabouts were unknown. On 30 June 1983 she reappeared at the Police Headquarters in Montevideo, having been brought to trial (procesada) on charges of "subversive association".

2.2 Regarding the circumstances of her niece's arrest, Mrs. Reverdito pointed out that she had been involved in students' activities, that since June 1983 many

arrests of students had taken place in Montevideo, that more than 30 such cases were already known and that it was the Government's policy to suppress any attempt to form students' associations.

2.3 Mrs. Reverdito stated that Lucía Arzuaga Gilboa suffered from the consequences of meningitis contracted in 1982 and required special medical treatment.

2.4 Mrs. Reverdito further claimed that there were no effective domestic remedies available to her niece because:

(a) Habeas corpus was not available for those arrested under the "prompt security measures";

(b) The entire procedure before the military courts was in violation of article 14 of the Covenant and therefore remedies available under criminal military law were equally defective;

(c) The remedy of appeal against the indictment (apelación contra el auto de procesamiento) was in fact inapplicable since the Supreme Court of Justice had never accepted such an appeal.

2.5 Mrs. Reverdito finally stated that her niece's case had not been submitted to another procedure of international investigation or settlement.

3. By its decision of 27 July 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 admissibility of the communication and asking 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 Lucía Arzuaga Gilboa. The author was also requested to furnish detailed information in support of her allegations of violations of the Covenant, including the complaint that "the entire procedure before the military courts is in violation of article 14 of the Covenant and therefore remedies available under military criminal law are equally defective".

4.1 In response to the Working Group's request, Mrs. Reverdito, on 26 September 1983, furnished additional information which she claimed had not been in her possession at the time when she had submitted the initial letter.

4.2 With respect to article 14 of the Covenant, Mrs. Reverdito made detailed submissions on the provisions which she claimed were violated by proceedings before Uruguayan military courts. Moreover, she claimed that pursuant to a decree of June 1973 the publication of any judgements of military courts was expressly prohibited.

4.3 With respect to alleged violations of articles 7 and 10, paragraph 1, of the Covenant, Mrs. Reverdito claimed that her niece had been subjected to torture and various forms of cruel and degrading treatment:

"This happened almost continuously during the period when she was held incommunicado, i.e., from her arrest until the submission of her case to the military court, a period of 15 days. This period was devoted wholly to subjecting the large group of young university students arrested with my niece to the most cruel treatment, with a view to extracting 'confessions' concerning political activities or concerning adherence to persecuted

ideologies. All the interrogations and all the 'documents' which the authorities attempted to force them to sign dealt exclusively with questions of this type.

"I am now in a position to describe in some detail the main types of ill-treatment to which my niece has been subjected.

"(a) Physical violence was a constant part of the treatment, beginning at the time of arrest. My niece was brutally beaten at that time, in the street itself and in full view of passers-by;

"(b) The 'electric prod', particularly in the genital region;

"(c) Stringing up. My niece was strung up, handcuffed, by the chain of her handcuffs. This was carried out in an open yard, in mid-winter, with the victim naked, and happened only once. As a result, she lost consciousness, so that she is unable to say how long she was kept in that position;

"(d) Various forms of continuous degradation and violence, such as always having to remain naked with the guards and torturers, threats and insults and promises of further acts of cruelty.

"I am unable to state specifically the effect and result of this treatment in the case of my niece, because it has not yet been possible to obtain any clinical information or to have her examined by a reliable doctor. However, there are a number of symptoms which give cause for alarm in this regard. After being strung up, as described above, my niece suffered attacks of vomiting and other symptoms, as a result of which she was taken on a number of occasions, after her trial and transfer to her current place of imprisonment, for examinations, the nature and results of which it has not been possible to ascertain. It is known, however, that some of the examinations involved electro-encephalograms. In this regard, it should be borne in mind that, as I stated in my initial communication, my niece contracted meningitis last year. The blows to the head which she received were therefore particularly dangerous in her case."

4.4 Mrs. Reverdito further claimed that her niece was held at the political prison for women at Punta de Rieles (Military Detention Establishment No. 2), 13 kilometres from Montevideo, that the treatment which she was receiving there was in gross violation of the standards provided for in the Covenant (and in the Uruguayan Constitution). The methods used were allegedly intended gradually to destroy the personalities of detainees by continuously assaulting their psychological equilibrium and undermining their physical integrity: "The means employed there do not involve direct brutal torture, but are calculated to work slowly, gradually and cumulatively. They involve deliberately arbitrary treatment, continuous harassment, inadequate nutrition, physical labour and other forms of harsh treatment which produce long-term effects."

5. In its submission under rule 91, dated 31 January 1984, the State party commented on the author's initial communication and also on her further submission of 3 November 1983, and informed the Committee that Lucía Arzuaga Gilboa had been brought to trial for the offence of "subversive association", provided for in article 60 (V) of the Military Criminal Code, and that no judgement had yet been rendered at first instance. "Consequently, the Government of Uruguay, in accordance with article 5, paragraph 2 (b), of the Optional Protocol to the

International Covenant on Civil and Political Rights, opposes the admissibility of the communication in question on the grounds that, given the stage which the trial proceedings have reached, remedies are still available under the relevant internal legislation. The Committee is informed, however, that the state of health of Arzuaga Gilboa is good."

6. In a further letter dated 20 March 1984, Mrs. Reverdito reiterated that there were no internal remedies which could have been applied effectively and that the military criminal proceedings themselves constituted a breach of the guarantees laid down in article 14 of the Covenant.

7.1 When considering the question of admissibility of the communication, the Committee found, on the basis of the information before it, that it was not precluded by article 5, paragraph 2 (a), of the Optional Protocol from considering the communication, as the author's indication that the same matter had not been submitted to another procedure of international investigation or settlement was not contested by the State party.

7.2 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee took note of the State party's assertion that remedies were still available under the relevant Uruguayan legislation. The Committee also noted however, that Mrs. Reverdito's allegations concerned not only possible irregularities in the pending trial proceedings, but also instances of torture and ill-treatment as to which the State party had not contended that there were available remedies. Moreover the Committee had established in numerous other cases that domestic remedies must be effective and "available" within the meaning of article 5, paragraph 2 (b), of the Optional Protocol (R.16/66, R.21/84, etc.). This entails that procedural guarantees for "a fair and public hearing by a competent, independent and impartial tribunal" must be scrupulously observed. With respect to alleged violations of article 14 of the Covenant, the Committee considered the author's submissions in substantiation of her allegation that "the entire procedure before the military courts is in violation of article 14 of the Covenant", but it found that, in view of the fact that the trial proceedings had not yet been completed, it could not be claimed at that stage that Lucía Arzuaga Gilboa had already personally become a victim of violations of that article. With respect to alleged violations of articles 7 and 10, paragraph 1, of the Covenant, the Committee noted that Mrs. Reverdito had made specific allegations as to instances of torture and ill-treatment which Lucía Arzuaga Gilboa had purportedly endured; in this connection the Committee recalled numerous other cases where the authors had made specific allegations of torture and the State party failed to establish that there were effective remedies available. Similarly, in the instant case, the State party had not informed the Committee which were the remedies available to Lucía Arzuaga Gilboa with respect to her allegation of being a victim of torture. The Committee stressed, moreover, that it was implicit in the Covenant and in the Optional Protocol that the State party had the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities. Accordingly, with respect to the allegations of violations of articles 7 and 10, paragraph 1, of the Covenant, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (b), of the Optional Protocol. The Committee observed that its decision 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 claimed to have been available to the alleged victim, together with evidence that there would be a reasonable prospect that such remedies would be

effective. The Committee also observed that other alleged breaches of various articles of the Covenant had not been satisfactorily substantiated.

8. On 12 April 1984 the Human Rights Committee therefore decided:

1. That the communication was admissible with respect to allegations of violations of articles 7 and 10, paragraph 1, of the Covenant;

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 in so far as allegations of violations of articles 7 and 10, paragraph 1, of the Covenant are concerned 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.

9. In a further letter of 15 September 1984, Mrs. Reverdito informed the Committee that her niece had been released from detention in Uruguay on 3 September 1984. She stated, however, that her niece continued to suffer from restrictions upon her rights, in particular her political rights. She requested the Committee to continue consideration of the case and to adopt its views on the substance of the matter.

10. By a letter dated 2 March 1985, Lucía Arzuaga confirmed that it was her wish that the Committee continue consideration of her case. In a further letter, dated 14 October 1985, she confirmed the description of the facts, set out in paragraphs 2.1 to 2.4 and 4.2 to 4.4 above.

11. In its submission under article 4, paragraph 2, of the Optional Protocol dated 28 September 1984, the State party confirmed that Lucía Arzuaga had been provisionally released on 3 September 1984. It offered no further details.

12. When adopting its decision on admissibility on 12 April 1984, the Committee observed that the decision could be reviewed in the light of further explanations which the State party might submit under article 4, paragraph 2, of the Optional Protocol with respect to the allegations of violations of articles 7 and 10, paragraph 1, of the Covenant. The Committee notes in this regard that no details have been furnished to it of any domestic remedies claimed to have been available to the alleged victim at the material time. The Committee therefore sees no reason for reviewing its decision on admissibility.

13.1 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.

13.2 Lucía Arzuaga Gilboa was arrested in Montevideo on 15 June 1983 and kept incommunicado at an unknown place of detention until 30 June 1983. During this period she was subjected to torture (beatings, "electric prod", strapping up) and

her whereabouts were unknown. On 30 June 1983 she reappeared at the Police Headquarters in Montevideo. She was charged with the offence of "subversive association" and taken to the prison of Punta de Rieles (Military Detention Establishment No. 2). She was released on 3 September 1984.

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 the facts as found by the Committee, disclose violations of the Covenant, in particular:

Article 7, because Lucía Arzuaga Gilboa was subjected to torture and to cruel and degrading treatment in the period between 15 and 30 June 1983; and

Article 10, paragraph 1, because she was held incommunicado for a period of 15 days and subjected to inhuman prison conditions for 14 months until her release in September 1984.

15.1 The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy the violations which Lucía Arzuaga has suffered and to grant her compensation.

15.2 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 expresses its satisfaction at the measures taken by the State party towards the observance of the Covenant and co-operation with the Committee.

C. Communication No. 156/1983, Luis Alberto Solórzano v. Venezuela
(Views adopted on 26 March 1986 at the twenty-seventh session)

Submitted by: Katy Solórzano de Peña on behalf of her brother,
Luis Alberto Solórzano, who later joined as co-author

Alleged victim: Luis Alberto Solórzano

State party concerned: Venezuela

Date of communication: 8 August 1983 (date on which the initial letter was received)

Date of decision on admissibility: 26 October 1984

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

Meeting on 26 March 1986;

Having concluded its consideration of communication No. 156/1983, originally submitted to the Committee by Katy Solórzano de Peña, under the Optional Protocol to the International Covenant on Civil and Political Rights;

Having taken into account all written information made available to it by the authors of the communication and by the State party concerned;

adopts the following:

VIEWS UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL a/

1.1 The original author of the communication (initial letter, undated, received on 8 August 1983 and further letters of 9 September 1983 and 16 February 1984) is Katy Solórzano de Peña, a Venezuelan citizen, living in Caracas, Venezuela. She submitted the communication on behalf of her brother, Luis Alberto Solórzano, stating that he was imprisoned at the San Carlos military barracks (Cuartel San Carlos) in Venezuela and that he was unable to submit the communication himself. Mr. Solórzano was released by virtue of a Presidential Decree of 21 December 1984. In a letter to the Committee (undated), received on 27 June 1985, he joined as co-author of the communication.

1.2 Katy Solórzano stated that her brother (born on 8 November 1952) had been arrested at his home on 28 February 1977 without any warrant of arrest and that his house had been searched without a search warrant. She further stated that he had been subjected to severe torture and gave the names of five officers allegedly responsible, all of them members of the Dirección de los Servicios de Inteligencia y Prevención (DISIP). These events, as well as some of those described below, occurred before the entry into force of the Covenant and the Optional Protocol for Venezuela (10 August 1978).

1.3 Soon after Mr. Solórzano's arrest, a military tribunal had ordered his detention on charges of having joined in armed rebellion. On 12 December 1977 he had been indicted. In that connection, the prosecutor affirmed the existence of a clandestine armed movement, called "Grupo de Comandos Revolucionarios", aiming at

the overthrow of the Government of Venezuela through guerrilla warfare and which was responsible for the kidnapping of a citizen of the United States of America, William Frank Niehaus, allegedly undertaken to obtain funds for the promotion of the Group's political activities. Katy Solórzano did not contest her brother's links with the Group but only his participation in the kidnapping of Mr. Niehaus.

1.4 In a summary of the legal issues, Mr. Solórzano's defence lawyer observed that after December 1977, Salóm Meza Espinoza and David Nieves, two individuals whose cases were linked with the case of Mr. Solórzano, had been elected deputies to the Venezuelan Congress. On the basis of their new parliamentary immunity, both of them had requested their release, which had been subsequently ordered by a court martial. The military prosecutor had appealed the decision before the Supreme Court of Justice, to which the case had been transferred in mid-1979. All proceedings in the case, including those against Mr. Solórzano, had been adjourned pending a ruling of the Supreme Court on the question of the legality of the release of the two deputies.

1.5 Katy Solórzano alleged that there had been various irregularities in the proceedings against her brother. She indicated that:

Her brother, a civilian, had been tried by a military tribunal, although that was contrary to the Venezuelan Constitution;

The evidence presented by her brother and his lawyer had been disregarded by the military tribunal; in particular, the lawyer could not obtain the attendance and examination of witnesses on her brother's behalf;

Her brother's trial had been defective since, for example, false declarations had been admitted in evidence. In that connection, Mr. Decaril, Mr. Solórzano's lawyer, had stated that, inter alia, his client's detention and the charges against him had been based on declarations, made by policemen and other witnesses, which for one reason or another should have been considered invalid.

1.6 Katy Solórzano claimed that her brother had been subjected to inhuman prison conditions, that in February 1983 he had been severely beaten at the Cuartel San Carlos (the name of the responsible officer was given), that after those incidents and similar ones in other prisons, political detainees all over the country, including her brother, had carried out a month-long hunger strike to obtain better conditions of detention, that, due to the above-mentioned events, her brother had required medical treatment and his transfer to a hospital had been recommended, but that the prison authorities had not heeded the recommendation.

1.7 It was claimed that Mr. Solórzano was a victim of violations of articles 7, 9, paragraphs 1 and 4, 10, paragraph 1, and 14, paragraph 3 (c) and (e) of the International Covenant on Civil and Political Rights, and that no domestic remedies were available in the case.

1.8 Katy Solórzano further indicated that the present case was not being examined under another procedure of international investigation or settlement.

2. By its decision of 20 October 1983, the Working Group of the Human Rights Committee, having decided that Katy Solórzano was justified in acting on behalf of the alleged victim, 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 court decisions concerning Mr. Solórzano.

3.1 In a submission dated 16 January 1984, the State party informed the Committee that Luis A. Solórzano had been arrested in the course of the criminal proceedings instituted in connection with the kidnapping of a United States citizen, William Frank Niehaus, by "an armed movement consisting of a group of persons forming a paramilitary organization known as Grupo de Comandos Revolucionarios, Operación Arzimiró Gabaldón". Following pre-trial detention by the police authorities, as authorized in article 60.1, third paragraph, of the Constitution, an order confirming his detention had been issued on 7 March 1977 by the Permanent Second Military Court of First Instance of Caracas, after the Court had determined the existence of military rebellion and had found that there was firm evidence of guilt on the part of Mr. Solórzano, as required by article 182 of the Code of Criminal Procedure and article 202 of the Code of Military Justice. The State party submitted that Mr. Solórzano's arrest had been effected in accordance with the Constitution and relevant criminal laws, and therefore it could not be described as arbitrary and that the allegation of violation of article 9, paragraph 4, of the Covenant was similarly inadmissible, "since the remedies of complaint and/or appeal against a detention order are provided for in article 190 of the Code of Criminal Procedure and article 203 of the Code of Military Justice and should have been duly utilized, even if they would have been unsuccessful".

3.2 The State party further submitted that the allegations of torture had not been accompanied by any supporting evidence, while the allegations of maltreatment of detainees "could well refer to acts of prison mutiny, which are quite outside the scope of the Covenant". The State party added that it would seem unlikely that those allegations of maltreatment and torture were true, particularly as they had been investigated by the Public Prosecutor's Department.

3.3 The State party observed that the author's allegations regarding irregularities in the proceedings (both, apparently, at the pre-trial stage and after the trial started with the indictment of the alleged victim on 12 December 1977), legal manoeuvres to delay proceedings and obstruction regarding the cross-examination of witnesses could not be taken seriously since Mr. Solórzano's lawyer had stated that "the investigation then proceeded normally until the indictment was made. The period for giving evidence was observed, and some of the witnesses summoned to appear by the court were cross-examined".

3.4 The State party also rejected the allegation that the trial of Mr. Solórzano had been delayed to prevent his release. In that connection, it stated that, in the decision handed down on 22 February 1979, the Court had ordered the unconditional release of Salóm Meza Espinoza and David Nieves, who had been charged along with Mr. Solórzano and another person for military rebellion and other offences; that was because they had been elected deputies to the National Congress and consequently enjoyed parliamentary immunity under article 143 of the Constitution. In the same decision, the above-mentioned Military Court had ruled that the Permanent Military Court of Caracas should forward the dossier to the Supreme Court of Justice for the purposes laid down in article 215 (2) of the Constitution, which stated that one of the powers of the Supreme Court of Justice was "to declare whether or not there are grounds for the trial of members of Congress". The State party had further stated that while the case was being heard by the full Court, a presidential pardon had been granted on 28 November 1983 to

Deputy Salóm Meza Espinoza, and, on 4 December 1983, David Nieves had been re-elected a deputy to the National Congress.

"At this point, on 16 December 1983, the Government Attorney requested the Supreme Court of Justice to effect a separation of the case and to transfer the dossier to the Permanent Military Court of Caracas for the continuation of the proceedings against Luis A. Solórzano and others for the offences already mentioned. The Supreme Court of Justice acceded to this request in an order dated 21 December 1983 referring the dossier to the Permanent Military Court of Caracas to enable the proceedings in question to continue. ...

"As far as the allegations considered here are concerned, the most important consideration is that the proceedings against Luis Alberto Solórzano again followed the normal course, once the question of the special status of his co-defendants had been resolved."

3.5 The State party contended that domestic remedies had not been exhausted "since the trial is entering the phase of summing-up and sentencing at first instance. This leaves all the second instance procedure untouched, as well as the appeal to set aside the judgement, in accordance with the procedural legislation in force".

4.1 In a further submission dated 16 February 1984, Katy Solórzano commented on the State party's submission and reiterated that her brother's detention was unlawful for the following reasons:

"He was arrested more than one year after the kidnapping of the American citizen, so that there is no question of flagrante delicto, which is an exception provided for in article 60, paragraph 1, of the Constitution;

"He is being detained without any written order by the competent official."

4.2 Katy Solórzano alleged that her brother's right to defend himself had not been respected. In particular she mentioned that the right to cross-examine witnesses had been denied (names were given). She added that "the court failed to take any firm action when the only witness to appear voluntarily, on being cross-examined, admitted that she had made her statement against Luis Alberto Solórzano because DISIP (Political Police) had threatened her with imprisonment if she did not do so, and also retracted her earlier statement against him. The name of this witness is Aurora Alonso de Sánchez, and the text of her statement can be found in the record of proceedings". As to the State party's contention that Mr. Solórzano's lawyer had conceded that procedural guarantees were observed and some witnesses cross-examined, Katy Solórzano stated that that had been done in order to secure her brother's release.

4.3 Katy Solórzano stressed that article 68 of the Venezuelan Constitution stipulated that the right to a defence was an inviolable right at every stage and level of proceedings and she recalled that her brother had been deprived of a trial for more than five years. In that connection she commented:

"While it is proper for the Supreme Court to take the proper time to issue a decision, nevertheless, the fact that this proper time should already have extended over more than five years surely defies all logic."

4.4 The author reiterated that her brother had been subjected to brutal ill-treatment in February 1983 resulting in injuries to the head and other parts of the body and that he - as well as other detainees - had undertaken a hunger strike in protest against the maltreatment inflicted on many of them. In March and April 1983, agreements had been signed by a mediation commission (composed of civilian and military attorneys, members of Parliament and representatives of prisoners - among them Mr. Solórzano) in order "to guarantee and ensure observance of the physical and moral integrity of persons on trial".

5.1 Before considering any claims contained in a communication, the Human Rights Committee must decide, in accordance with rule 87 of its provisional rules of procedure, whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 Article 5, paragraph 2, (a), of the Optional Protocol precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement. The Committee noted that there was no indication that that applied in the present case.

5.3 Article 5, paragraph 2, (b), of the Optional Protocol precludes the Committee from considering a communication if all available domestic remedies have not been exhausted. The Committee therefore examined whether the authors' various claims met that requirement.

5.4 As to the claim that Mr. Solórzano was a victim of a violation of article 9, paragraphs 1 and 4, of the Covenant, the Human Rights Committee observed that the arrest had taken place prior to the entry into force of the Covenant and the Optional Protocol for Venezuela. The claim, in so far as it related to the alleged victim's initial arrest and detention was therefore found to be inadmissible ratione temporis. In so far as the communication might be understood as implying that the continued detention of Mr. Solórzano (after 10 August 1978) constituted, as such, a violation of article 9, paragraphs 1 and 4, of the Covenant, the Committee referred to the observations of the State party set out in paragraph 3.1 above and concluded that the issue was also inadmissible, because of non-exhaustion of domestic remedies.

5.5 In so far as the claim concerning the alleged torture and mistreatment of Mr. Solórzano, in violation of articles 7 and 10, paragraph 1, of the Covenant, related to events said to have taken place prior to 10 August 1978, the Committee observed that it was inadmissible ratione temporis. In so far as the claim related to events alleged to have taken place in February 1983 (para. 1.6 above), the Committee noted the observations of the State party (para. 3.2 above) and the author's comments thereon (para. 4.4 above). It was established that inquiries into the events in question had taken place and had led to an agreement signed, among others, by Mr. Solórzano. The implications of that agreement, which might have constituted a remedy in regard to the ground of complaint, were not clear. The Committee found that that part of the claim, therefore, belonged to the examination of the case on the merits and was not inadmissible.

5.6 In so far as Katy Solórzano claimed that the prolonged delays in the court proceedings affecting Mr. Solórzano constituted a violation of article 14, paragraph 3 (c), of the Covenant, the Committee observed that the claim also concerned article 9, paragraph 3, of the Covenant (which provided for the right to trial within a reasonable time or to release from detention). The continued detention of Mr. Solórzano since 28 February 1977, without trial, clearly raised an

issue under both of those provisions, which had to be examined on the merits. The Committee noted in that connection that the trial of Mr. Solórzano was, according to the State party, entering the phase of summing-up and sentencing at first instance and that that left all the second instance procedure untouched, as well as the appeal to set aside the judgment in accordance with the procedural legislation in force (para. 3.5 above). That seemed to imply that considerable time might still pass until a final judgment was rendered. The Committee noted, furthermore, that in fact the proceedings in the case had been adjourned between February 1979 and December 1983. The Committee finally noted that, in the mean time, a considerable effort, although in vain, had been made to obtain the release of Mr. Solórzano and that no particulars had been submitted by the State party to show that other remedies might have been available, either to expedite the proceedings or to obtain his release. In those circumstances, the Committee concluded that such remedies either did not exist, or could not be shown to be effective in his situation, and in any event that their application was being unreasonably prolonged. Accordingly, the Committee found that the claim was not inadmissible under article 5, paragraph 2, (b), of the Optional Protocol.

5.7 As to Katy Solórzano's claim that Mr. Solórzano had been denied the right to examine, or have examined, the witnesses against him in violation of article 14, paragraph 3 (e), of the Covenant, it appeared that she related that claim both to the period of pre-trial investigation (which ended with an indictment on 12 December 1977, i.e., before the Covenant entered into force for Venezuela) and to the trial period which followed thereafter (including some months from the entry into force of the Covenant for Venezuela on 10 August 1978, until the trial proceedings were adjourned in February 1979). Considering that she did not indicate any dates in support of her claim that article 14, paragraph 3 (e), had not been respected and taking into account the other information before it in regard to the claim, the Human Rights Committee concluded that it should be deemed inadmissible. The issue might, however, be seen as subsumed in the claim that Mr. Solórzano was a victim of a breach of article 14, paragraph 3 (c), which was to be considered on the merits.

6. On 26 October 1984, the Human Rights Committee therefore decided:

1. That the communication was admissible in so far as it related to alleged ill-treatment of Mr. Solórzano in February 1983 and in so far as it related to the duration of the judicial proceedings;

2. That the communication was inadmissible in respect of the other claims raised by the author.

7. In its submission under article 4, paragraph 2, of the Optional Protocol, dated 25 April 1985, the State party informed the Committee that "Dr. Jaime Lusinchi, President of the Republic of Venezuela, undertook, through Presidential Decree No. 441, of 21 December 1984 ... the dismissal of the proceedings against Luis Alberto Solórzano", and that Mr. Solórzano had been released. The State party thus requested the Committee to close the case.

8.1 Before taking further action, the Committee instructed the Secretariat to ascertain from Mr. Solórzano whether he wished the Committee to continue consideration of the case and, if so, to confirm the facts of the case as presented by his sister and to correct any inaccuracies in that respect.

8.2 In a reply (undated) received on 27 June 1985, Mr. Solórzano requested the Committee to continue consideration of the case, confirmed the information submitted to the Committee by his sister and added the following observations:

"... this dismissal of proceedings against me for military rebellion, which had been continuing since 1977, demonstrates that:

"1. Since there is no judgement against me, no civilian or military entity or authority is legally in a position to take a decision on presumed guilt or innocence.

"2. In other words, I was detained for almost eight years, during which this trial did not culminate in a judgement, a fact which shows the arbitrary and irregular character of the proceedings to which I was subjected.

"3. Because the same characteristics attached to my release, it may be stated that my country's Government interfered in the proceedings as it pleased, refusing me the right to defence throughout the period when the trial was paralysed."

9. By a note dated 24 September 1985, the State party observed that:

"The Permanent Third Military Court of First Instance of Caracas issued a detention order against Luis Alberto Solórzano, who was presumed to have committed the offence of military rebellion, which is punishable under article 476 of the Code of Military Justice. The fact is that the Venezuelan legal system includes dismissal as one of the means of staying trials or proceedings. In this case, the President of the Republic, pursuant to the terms of article 54, paragraph 3, of the Code of Military Justice and in keeping with Presidential Decree No. 441 of 31 December 1984, published in Official Gazette of the Republic No. 33131 of the same date, ordered dismissal of the proceedings against Luis Alberto Solórzano. In the opinion of the Government of Venezuela, the case brought against Luis Albert Solórzano has come to a complete end in accordance with the above. In any event, under our legal system, citizen Luis Alberto Solórzano is entitled to bring any legal action he deems appropriate against any person, natural or legal, before the competent courts. In the present instance, his intentions are against the Venezuelan Government, which would, in the event of legal action by Solórzano, be represented by the Attorney-General of the Republic, who, under article 202, paragraph 1, of the Constitution, is assigned the task of court or out-of-court representation and defence of the interests of the Republic."

10.1 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 are either uncontested or are contested by the State party only by denials of a general character offering no particular information or explanations.

10.2 Mr. Luis Alberto Solórzano was arrested on 28 February 1977 on suspicion of participation in armed rebellion, brought before a military tribunal and kept in detention until his release by virtue of a Presidential Decree of 21 December 1984, that is, after more than seven years of detention. Although he was indicted on 12 December 1977 by the Permanent Military Court of Caracas, proceedings were interrupted in 1979 because two co-defendants had been elected deputies to the

National Congress, and their cases remained pending until severed by order of the Supreme Court of Justice in December 1983. At the time of his release in December 1984, no judgment had been passed against Mr. Solórzano. He was subjected to ill-treatment during detention, particularly in February 1983 when he suffered injuries to the head and other parts of the body.

11. In formulating its views, the Human Rights Committee also takes into account the failure of the State party to furnish certain information and clarifications necessary for the Committee to facilitate its tasks, in particular with regard to the treatment in February 1983 of which Mr. Solórzano has complained. In the circumstances, due weight must be given to the authors' allegations. 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. In no circumstances should a State party fail to investigate duly and to inform the Committee properly of its investigation of allegations of ill-treatment when the person or persons allegedly responsible for the ill-treatment are identified by the author of a communication. A denial of the authors' allegations in general terms and the reference to an unsubmitted investigation by the Public Prosecutor's Department are not sufficient. The Committee would need precise information and reports, inter alia, on the questioning of prison officials accused of maltreatment of prisoners.

12. 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 Covenant with respect to:

Article 10, paragraph 1, because of the ill-treatment that Mr. Solórzano suffered during detention, in particular in February 1983;

Articles 9, paragraph 3, and 14, paragraph 3 (c), because he was not brought promptly before a judge nor tried within a reasonable time, and because he was kept in detention without judgment for over seven years.

13. The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations that Mr. Solórzano has suffered and to grant him compensation, to investigate said violations, to take action thereon as appropriate and to take steps to ensure that similar violations do not occur in the future.

Notes

a/ Pursuant to rule 85 of the provisional rules of procedure, Mr. Andrés Aquilar did not participate in the consideration of this communication or in the adoption of the views of the Committee under article 5, paragraph 4, of the Optional Protocol in this matter.

D. Communication No. 157/1983, André Alphonse Mpaka-Nsusu v. Zaïre
(Views adopted on 26 March 1986 at the twenty-seventh session)

Submitted by: André Alphonse Mpaka-Nsusu

Alleged victim: The author

State party concerned: Zaïre

Date of communication: 15 August 1983 (date of initial letter)

Date of decision on admissibility: 28 March 1985

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

Meeting on 26 March 1986;

Having concluded its consideration of communication No. 157/1983 submitted to the Committee by André Alphonse Mpaka-Nsusu 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 noting that no substantive information has been received from 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 15 August 1983 and further letters dated 8 January and 8 May 1984) is André Alphonse Mpaka-Nsusu, a Zaïrian national at present living in exile. He claims to be a victim of breaches by Zaïre of articles 1, 9, 14 and 26 of the International Covenant on Civil and Political Rights. He is represented by an attorney.

1.2 The facts as described by the author are as follows: on 21 November 1977 he presented his candidacy for the presidency of the Mouvement populaire de la révolution (MPR) and, at the same time, for the presidency of Zaïre in conformity with existing Zaïrian law. After the rejection of his candidacy - which he alleges was in contravention of law No. 77-029 (concerning the organization of presidential elections) - Mr. Mpaka-Nsusu, on 31 December 1977, submitted a proposal to the Government requesting recognition of a second, constitutionally permissible, party in Zaïre, the Federal Nationalist Party (PANAFE).

1.3 He claims that he acted in accordance with article 4 of the Constitution of 24 June 1967 which envisages a two-party system, but despite this he was arrested on 1 July 1979 and detained without trial until 31 January 1981 in the prison of the State Security Police (CNRI). He claims that his detention was based on unfounded charges of subverting State security. After being released from prison, he was banished to his village of origin for an indefinite period. This banishment ended de facto on 15 February 1983 when he fled the country.

1.4 The author states that although he filed a suit on 1 October 1981 before the Supreme Court of Justice of Zaire ((i) contesting the legality of the institutionalization of MPR as sole party as being counter to the dual party structure set out in the Constitution; (ii) therefore requesting that parts of laws No. 74-020 of 15 August 1974 and No. 80-012 of 15 November 1980 be declared unconstitutional (modifying by ordinary law constitutional provisions); and (iii) seeking reparation for damages suffered during detention), the Supreme Court of Justice refused to consider it. Furthermore, the author notes that individuals have no access to the Constitutional Court of Zaire. Accordingly, the author contends that he has exhausted all domestic remedies available to him.

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 concerned, requesting information and observations relevant to the question of admissibility of the communication in so far as it might raise issues under articles 9, 25 and 26 of the Covenant. The Committee also requested the State party to transmit to the Committee any copies of court orders or decisions relevant to the case. Furthermore, the Committee requested the author to provide more detailed information concerning the grounds for alleging violations of article 1 of the Covenant.

3. In response to the Committee's request, the author, by a letter dated 8 January 1984, explained that the people of Zaire, in a constitutional referendum held from 4 to 24 June 1967, had declared themselves in favour of a bipartisan constitutional system. He asserted that it was contrary to the Constitution of Zaire, in particular article 39, to prohibit the establishment of a second political party, and that he had been a victim of persecution because of his political activities as leader of PANAFÉ.

4. By a note dated 18 January 1984, the State party informed the Committee that an inquiry into the case of Mr. Mpaka-Nzusu was in progress in Zaire and that a reply would be forwarded to the Committee by the end of February 1984. By a note dated 6 April 1984, the State party informed the Committee that the inquiry had not yet been completed and that a reply would be submitted by the end of April. No further submission from the State party has been received, despite repeated reminders.

5. Before considering a communication on the merits, the Committee must ascertain whether it fulfils all conditions relating to its admissibility under the Optional Protocol. With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee 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. 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. Accordingly, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

6. On 28 March 1985, the Human Rights Committee therefore decided that the communication was admissible, and in accordance with article 4, paragraph 2, of the Optional Protocol, requested the State party to submit to the Committee, within six months of the date of the transmittal to it of the Committee's decision, written explanations or statements clarifying the matter and the remedy, if any, that might have been taken by it.

7.1 The time-limit for the State party's submission under article 4, paragraph 2, of the Optional Protocol expired on 2 November 1985. No submission has been received from the State party.

7.2 No further submission has been received from the author.

8.1 The Human Rights Committee, having considered the present communication in the light of all the information made available to it, as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts, which have not been contested by the State party.

8.2 Mr. André Alphonse Mpaka-Nausu is a Zairian national at present living in exile. In 1977, he presented his candidacy for the presidency of Zaire in conformity with existing Zairian law. His candidacy, however, was rejected. On 1 July 1979, he was arrested and subsequently detained in the prison of the State Security Police without trial until 31 January 1981. After being released from prison he was banished to his village of origin for an indefinite period. He fled the country on 15 February 1983.

9.1 In formulating its views, the Human Rights Committee also takes into account the failure of the State party to furnish any information and clarifications necessary for the Committee, to facilitate its tasks. In the circumstances, due weight must be given to the author's allegations. 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. The Committee notes with concern that, despite its repeated requests and reminders and despite the State party's obligation under article 4, paragraph 2, of the Optional Protocol, no submission has been received from the State party in the present case, other than two notes of January and April 1984 informing the Committee that an inquiry into the case of Mr. Mpaka-Nausu was in progress.

9.2 The Committee observes that the information before it does not justify a finding as to the alleged violation of article 1 of the Covenant.

10. 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, with respect to:

Article 9, paragraph 1, because André Alphonse Mpaka-Nausu was arbitrarily arrested on 1 July 1979, and detained without trial until 31 January 1981;

Article 12, paragraph 1, because he was banished to his village of origin for an indefinite period;

Article 19, because he suffered persecution for his political opinions;

Article 25, because, notwithstanding the entitlement to stand for the presidency under Zairian law, he was not so permitted.

11. The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to provide Mr. Mpaka-Nausu with effective remedies, including compensation, for the violations that he has suffered, and to take steps to ensure that similar violations do not occur in the future.

Decisions of the Human Rights Committee declaring communications inadmissible under the Optional Protocol to the International Covenant on Civil and Political Rights

A. Communication No. 112/1981, Y.L. v. Canada
(Decision of 8 April 1986, adopted at the
twenty-seventh session)

Submitted by: Y.L. [name deleted]

Alleged victim: Y.L.

State party concerned: Canada

Date of communication: 7 December 1981 (date of initial letter)

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

Meeting on 8 April 1986,

adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 7 December 1981 and further letters dated 26 June 1982, 27 February 1983, 10 June 1983, 13, 14, 19 and 20 June 1984, 9 December 1984, 6 and 30 January 1985, 8 and 14 February 1985 and 27 May 1985) is a Canadian citizen, living at present in Cowansville, Province of Quebec, Canada, alleging that he is a victim of a breach by Canada of articles 14, paragraph 1, and 26 of the International Covenant on Civil and Political Rights. The main facts underlying the author's claims are as follows:

2.1 On 1 July 1967, at the age of 36, the author was dismissed from the Canadian Army after 19 years of service. It was alleged by the competent authorities that he suffered from mental disorders. Requests by the author for more specific information about the medical diagnosis were repeatedly declined by the Army.

2.2 Even before he had been officially discharged, the author applied for a "disability" pension. This request was rejected by the Canadian Pension Commission by a decision of 17 July 1967. The Commission held that the author's disability neither arose out of, nor was directly connected with, his military service, as required by the Pension Act (1952). On appeal, this decision was confirmed on 31 March 1969.

2.3 After the Pension Act was amended in 1971, the author renewed his request for a pension. Again, he was unsuccessful. Two consecutive applications to the Canadian Pension Commission were rejected. As a next step in the proceedings, the author applied to an Entitlement Board of the Commission which, on 9 November 1977, also gave a negative decision. Finally, the author appealed to the Pension Review Board which, after a hearing on 10 July 1979, confirmed the earlier rulings in its

decision of 15 August 1979. The author, who had been represented before the Pension Review Board by Maître R. A. Pinsonnault, c.r., a member of the Bureau of Pensions Advocates (a government agency made up of civil servants), was not provided with a copy of the Board's decision. Instead, as the State party explained, a copy was transmitted to his lawyer with the indication that it was up to him to decide whether he should show the text to his client. Only in January 1983 did the author receive the full text of the decision.

2.4 Since the author had never had access to his medical records, he asked to be provided with all relevant information after his appeal had been definitively rejected. On 7 December 1979, 270 pages of documents were sent to him. However, the relevant medical information had been excluded. Some elements of the medical file were later made available to the author in January 1983, after he had submitted the communication to the Human Rights Committee. To date, however, the author has not had the opportunity to see his medical dossier in its entirety. All his applications to that effect were unsuccessful.

3.1 The author now challenges the proceedings that took place before the Pension Review Board as violating guarantees under article 14, paragraph 1, of the Covenant. He maintains that for several reasons he was not granted "a fair public hearing by a competent, independent and impartial tribunal" in the sense contemplated by that provision. He claims that, first of all, he should have been informed in detail of the exact nature of the mental disease from which he was alleged to be suffering. In addition, he states that he was not allowed to attend the hearing before the Board. His lawyer, who had been appointed and paid by the Canadian Government, also refused to discuss fully with the author the medical aspects of the case. Finally, the author asserts that the Board does not qualify as an independent and impartial tribunal since it is made up of civil servants of the executive branch of government.

3.2 The author claims that the refusal to grant him access to his medical file amounts to a violation of article 26 of the Covenant.

4. The Canadian Government requests that the communication be declared inadmissible. As far as the proceedings before the Pension Review Board are concerned, it contends primarily that the complaints of the author are outside the scope of application of the Covenant ratione materiae because those proceedings did not constitute a "suit at law" as envisaged under article 14, paragraph 1, of the Covenant. In addition, and also with regard to the alleged violation of a right to access to the complete personal dossier, it claims that domestic remedies have not been exhausted. It states that the decision of the Pension Review Board could have been challenged before the Federal Court of Appeal, under article 28 (1) of the Federal Court Act. Finally, the Government rejects as unfounded the author's objections to the proceedings before the Pension Review Board.

5. The Working Group of the Human Rights Committee, meeting during the Committee's twenty-third session on 9 November 1984, considered that, despite the detailed information provided by the author and by the State party, the Committee did not yet have at its disposal all the legal and factual elements required for its decision on the admissibility of the communication. In particular, it considered that the decision might require a finding as to whether the claim which the author pursued in the last instance before the Pension Review Board was a "suit at law" within the meaning of article 14, paragraph 1, of the Covenant. The Working Group of the Committee therefore requested the author and the State party to respond to the best of their abilities to the following questions:

(a) How does Canadian domestic law classify the relationship between a member of the Army and the Canadian State? Are the rights and obligations deriving from such a relationship considered to be civil rights and obligations or rights and obligations under public law?

(b) Are there different categories of civil servants? Does Canada make a distinction between a statutory régime (under public law) and a contractual régime (under civil law)?

(c) Is there a distinction, in Canadian domestic law, between persons employed by private employers under a labour contract, and persons employed by the Government?

(d) (i) Has any decision of the Pension Review Board ever been challenged before the Federal Court of Appeal?

(ii) What has been the outcome of such proceedings, if any?

(iii) Do decisions rendered by the Pension Review Board explicitly mention that they may be challenged before the Federal Court of Appeal?

(iv) Did the decision of the Pension Review Board of 15 August 1979 in the present case contain such an indication?

(v) Did the counsel appointed by the Government of Canada to protect the author's interests know that the remedy provided for in article 28 (1) of the Federal Court Act could be resorted to in the proceedings under consideration?

6.1 In its submission of 22 January 1985, in reply to the Committee's interim decision, the State party explained that within the Canadian legal system the relationship between a member of the armed forces and the Crown was classified as a matter of public law. Soldiers were placed under a statutory régime as opposed to a contractual arrangement. This meant, inter alia, that members of the armed forces could not recover their pay through the ordinary courts.

6.2 In regard to the actual exercise of the remedy granted under article 28 (1) of the Federal Court Act, the State party points out that, since 1970, 10 decisions of the Pension Review Board have been the subject of applications for review. Six of those appeals had been referred to the Federal Court of Appeal in 1984 and were still pending, but in one case (War Amputations of Canada v. Pension Review Board, [1975] C.F. 447) a decision had been handed down in 1975.

6.3 In addition, the State party states that Maître R. A. Pinsonnault, c.r., who was representing the author in the proceedings before the Pension Review Board, was well aware of the remedy under article 28 (1) of the Federal Court Act. As to the reason why Maître Pinsonnault had not suggested that the author avail himself of that remedy, the State party points out that the members of the Bureau of Pensions Advocates are not entitled to represent parties before the Federal Court of Appeal.

7.1 Responding to the interim decision of the Committee, the author transmitted a letter from the National Defence Headquarters, dated 7 February 1985, in which it was indicated that the rights and obligations of the members of the armed forces "relate to public law as opposed to private civil law".

7.2 Concerning the remedy provided for under article 28 (1) of the Federal Court Act, the author furnished the Committee with the letter dated 15 August 1979, by which the Pension Review Board itself informed him of the outcome of the proceedings before that body. As to the legal force of the decision of 15 August 1979 and as to available remedies, the letter contained a paragraph which read as follows:

"It is to be noted that the decisions of the Board are final and enforceable for the purposes of the Pension Act. However, the Pension Review Board may, if new facts are brought to its attention or if it discovers an error in the exposition of the facts or in the interpretation of a rule of law, quash or amend that decision."

7.3 In letters which the author received from Maître Pinsonnault (dated 22 August 1979) and which his lawyers received from the Chief Pension Advocate of the Bureau of Pensions Advocates (dated 17 September 1979) after the final decision of the Pension Review Board, no mention was made of the possibility of an appeal to the Federal Court of Appeal. Both of these letters confined themselves to discussing the possibilities of reopening the proceedings before the Pension Review Board.

8. Before considering the merits of any claim contained in a communication, the Human Rights Committee must determine whether the communication is admissible under the Optional Protocol to the Covenant.

9.1 With regard to the alleged violation of the guarantees of "a fair and public hearing by a competent, independent and impartial tribunal established by law", contained in article 14, paragraph 1, of the Covenant, it is correct to state that those guarantees are limited to criminal proceedings and to any "suit at law". The latter expression is formulated differently in the various language texts of the Covenant and each and every one of those texts is, under article 53, equally authentic.

9.2 The travaux préparatoires do not resolve the apparent discrepancy in the various language texts. In the view of the Committee the concept of a "suit at law" or its equivalent in the other language texts is based on the nature of the right in question rather than on the status of one of the parties (governmental, parastatal or autonomous statutory entities), or else on the particular forum in which individual legal systems may provide that the right in question is to be adjudicated upon, especially in common law systems where there is no inherent difference between public law and private law and where the courts normally exercise control over the proceedings either at first instance or on appeal specifically provided by statute or else by way of judicial review. In this regard, each communication must be examined in the light of its particular features.

9.3 In the present communication, the right to a fair hearing in relation to the claim for a pension by the author must be looked at globally, irrespective of the different steps which the author had to take in order to have his claim for a pension finally adjudicated.

9.4 The Committee notes that the author pursued his claim successively before the Canadian Pension Commission, an Entitlement Board of the Commission and, finally, the Pension Review Board. It is clear from the observations made by the State party on the author's communication that the Canadian legal system subjects the proceedings in those various bodies to judicial supervision and control, because

the Federal Court Act does provide the possibility of judicial review in unsuccessful claims of this nature. It would be hazardous to speculate on whether that Court would or would not have, first, quashed the decision of the Board on the grounds advanced by the author and, secondly, directed the Board to give the author a fair hearing on his claim. The fact that the author was not advised that he could have resorted to judicial review is irrelevant in determining the question whether the claim of the author was of a kind subject to judicial supervision and control. It has not been claimed by the author that this remedy would not have complied with the guarantees provided in article 14, paragraph 1, of the Covenant. Nor has he claimed that this remedy would not have availed in correcting whatever deficiencies may have marked the hearing of his case before the lower jurisdictions, including any grievance that he may have had regarding the denial of access to his medical file.

9.5 In the view of the Committee, therefore, it would appear that the Canadian legal system does contain provisions in the Federal Court Act to ensure to the author the right to a fair hearing in the situation. Consequently, his basic allegations do not reveal the possibility of any breach of the Covenant.

10. The Committee, therefore, concludes that the author has no claim under article 2 of the Optional Protocol and decides:

The communication is inadmissible.

Appendix

INDIVIDUAL OPINION

Submitted by Messrs. Bernhard Graefrath, Fausto Pocar
and Christian Tomuschat concerning the admissibility
of communication No. 112/1981, Y.L. v. Canada

1. We concur in the view expressed by the majority of the Committee that the communication is inadmissible. But we do not share the reasons on which that view is based.
2. The majority view stresses in paragraph 9.4 that the Canadian legal system, in accordance with article 14, paragraph 1, of the Covenant, provides sufficient protection for a claim of the kind pursued by the author, because an appeal could be made to the Federal Court of Appeal. However, the availability of this legal remedy cannot be held against the author. In the letter by which the Pension Review Board informed the author of its decision as being final and enforceable, no mention was made of the possibility of such an appeal to a judicial body. Moreover, the lawyers who acted for the author and who are civil servants specifically appointed to represent claimants before the Pension Review Board did not advise the author accordingly. Under these circumstances, Canada is estopped from asserting that either, procedurally, the author has failed to exhaust local remedies or that, substantively, the requisite guarantees under article 14, paragraph 1, of the Covenant have been complied with.
3. However, the dispute between the author and Canada does not come within the purview of article 14, paragraph 1, of the Covenant. The guarantees therein contained apply to the determination both of any criminal charge and of rights and obligations in a suit at law. Whereas this phrase in its English and Russian versions refers to proceedings, the French and the Spanish texts rely on the nature of the right or obligation which constitutes the subject-matter of the proceedings concerned. In the circumstances of the present case, there is no need to clarify the common meaning to be given to the different terms used in the various languages which, under article 53 of the Covenant, are equally authentic. It is quite clear from the submissions of both the State party and the author that in Canada the relationship between a soldier, whether in active service or retired, and the Crown has many specific features, differing essentially from a labour contract under Canadian law. In addition, it has emerged that the Pension Review Board is an administrative body functioning within the executive branch of the Government of Canada, lacking the quality of a court. Thus, in the present case, neither of the two criteria which would appear to determine conjunctively the scope of article 14, paragraph 1, of the Covenant is met. It must be concluded, therefore, that proceedings before the Pension Review Board, initiated with a view to claiming pension rights, cannot be challenged by contending that the requirements of a fair hearing as laid down in article 14, paragraph 1, of the Covenant have been violated.

Bernhard Graefrath

Fausto Pocar

Christian Tomuschat

B. Communication No. 118/1982, J.B. et al. v. Canada
(Decision of 18 July 1986 adopted at the
twenty-eighth session)

Submitted by: J.B., P.D., L.S., T.M., D.P. and D.S. [names deleted]
(represented by the Alberta Union of Provincial Employees through
legal counsel)

Alleged victims: The persons mentioned above

State party concerned: Canada

Date of communication: 5 January 1982 (date of initial letter)

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

Meeting on 18 July 1986,

adopts the following:

Decision on admissibility

1.1 The authors of the communication (initial letter dated 5 January 1982 and
seven subsequent letters) are J.B., P.D., L.S., T.M., D.P. and D.S., in their
personal capacities and as members of the executive committee of the Alberta Union
of Provincial Employees, Canada. They are represented by the Alberta Union of
Provincial Employees through legal counsel.

1.2 The authors refer to the prohibition to strike for provincial public employees
in the Province of Alberta under the Alberta Public Service Employee Relations Act
of 1977 and claim that such prohibition constitutes a breach by Canada of
article 22 of the International Covenant on Civil and Political Rights.

2.1 The facts of the claim have been described as follows. In 1977, the
Legislature of the Province of Alberta, Canada, adopted the Public Service Employee
Relations Act, mainly with a view to consolidating a number of existing legislative
enactments covering provincial public employees. The Act, which entered into force
on 22 September 1977, prohibits persons within its scope from striking and imposes
penalties in cases of contravention (sections 93 and 95 of the Public Service
Employee Relations Act, 1977). The 40,000 members of the Union are said to be
adversely affected by these provisions.

2.2 In November 1977, the Canadian Labour Congress, on behalf of the Alberta Union
of Public Employees, lodged a complaint with the Committee on Freedom of
Association of the International Labour Organisation (ILO) that the general
prohibition of strikes for public employees contained in the Alberta Public Service
Employee Relations Act was not in harmony with article 10 of ILO Convention
No. 87 a / "... since it constituted a considerable restriction on the opportunities
open to trade unions to further and defend the interests of their members". The
complaints added that "such a limitation is an impairment of articles 3 and 8 of
Convention No. 87 ...". In its report as approved by the ILO Governing Body in
November 1978 (case No. 893), the Committee on Freedom of Association suggested
that ... to Government [of Alberta] consider the possibility of introducing an

amendment to the Public Service Employee Relations Act so that in cases where strikes are prohibited, this be confined to services which are essential.

2.3 In 1979, a second complaint was lodged with ILO by the same complainant, on behalf of the Union. In its observations, submitted by the Government of Canada, the Government of Alberta voiced disagreement with the ILO recommendation of 1978 arguing that "... although some services might be more essential than others, the public service generally provides to the people of Alberta services for which, in the main, there is no reasonable alternative ...". In its second report the Committee on Freedom of Association repeated its recommendation contained in its first report, with the following reasoning: "The Committee has taken note of this information. Under article 3 of Convention No. 87, trade-union organizations, as organizations of workers for furthering and defending their occupational interests (art. 10), have the right to formulate their programmes and organize their activities. It is on the basis of the right which trade unions are thus recognized as possessing that the Committee has always considered their right to strike as a legitimate - and indeed essential - means by which workers may defend their occupational interests. The Committee has recognized that strikes may be restricted, and even prohibited, in the public service, essential service or a key centre of a country's economy because - and to the extent that - a work stoppage may cause serious harm to the national community. Accordingly, the Committee holds the view that it is inappropriate in the present case to place all public establishments covered by the Public Service Employee Relations Act of 1977 on the same footing as regards the prohibition of the right to strike. To take only the example quoted by the complainants, the Alberta Liquor Board is not a service in which strikes should be prohibited ...".

2.4 In 1980, a third complaint in the matter was submitted to the ILO Committee on Freedom of Association by the Canadian Labour Congress. The Committee on Freedom of Association again recommended to the Governing Body that it suggest to the Government of Canada that the Government of Alberta

"consider the possibility of introducing an amendment to the Public Service Employee Relations Act in order to confine the prohibition of strikes to services which are essential in the strict sense of the term". b/

In 1983, as a result of this decision, the Public Service Employee Relations Act was amended to exclude from its ambit the Alberta Liquor Board, the only publicly-owned undertaking to which express reference was made by the Committee on Freedom of Association in its examination of the above-mentioned Act. c/

2.5 The Union also commenced court action in Edmonton, Alberta, at an unspecified date, in 1979 or in the beginning of 1980. The Union filed an application with the Alberta Court of the Queen's Bench, with a view to having certain sections of the Public Service Employee Relations Act of 1977 held to be contrary to international law and to be thus void and of no effect. This application was introduced by way of an Originating Notice of Motion for the determination mainly of the following questions:

(a) Whether the Public Service Employee Relations Act S.A. 1977 was, in whole or in part, in violation of Canada's international legal obligations;

(b) Whether the Province of Alberta was empowered to legislate in violation of Canada's international legal obligations;

(c) Whether the Public Service Employee Relations Act was ultra vires the legislature of the Province of Alberta.

2.6 During hearings preceding the judgment, the representatives of the Union and of the Government of Alberta presented their arguments in the case. On 25 July 1980, judgment was rendered by the Learned Trial Judge of the Court of the Queen's Bench of Alberta in answer to the questions raised by the Originating Notice of Motion. It was determined by the Judge that the Public Service Employee Relations Act was neither in whole nor in part in violation of Canada's international obligations: that the Act was not ultra vires the legislature of the Province of Alberta; and that in view of the foregoing it was not necessary to answer the question whether Alberta was empowered to legislate in violation of Canada's international obligations. The Union appealed the decision of the Learned Trial Judge to the Alberta Court of Appeal. The appeal was dismissed on 21 September 1981. The Union then sought leave to appeal the decision of the Alberta Court of Appeal to the Supreme Court of Canada. On 23 November 1981 the Supreme Court of Canada refused leave to appeal.

2.7 The Alberta Union of Provincial Employees maintained (at the time of the submission of the communication on 5 January 1982) that all available domestic remedies had been exhausted.

3. By its decision of 8 July 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.

4.1 Under cover of the note dated 6 August 1984 the State Party, inter alia, submitted that:

"the Human Rights Committee must consider a communication inadmissible if:

- (a) It is incompatible with the provisions of the Covenant;
- (b) The same matter as that dealt with in it is being examined under another procedure of international investigation or settlement; or
- (c) The communicant has not exhausted all available domestic remedies.

The Government of Canada, after consultation with the Government of the Province of Alberta, is of the view that the present communication fails to meet these requirements and should therefore be found inadmissible by the Committee."

4.2 With respect to the compatibility of the communication with the provisions of the Covenant, the State party argued:

"Article 3 of the Optional Protocol to the International Covenant on Civil and Political Rights provides that the Human Rights Committee 'shall consider inadmissible any communication under the present Protocol ... which it considers ... to be incompatible with the provisions of the Covenant'. The Government of Canada is of the view that article 22, paragraph 1, of the International Covenant on Civil and Political Rights does not guarantee the right to strike and that as a result the present communication is inadmissible ratione materiae."

"No mention of the right to strike is made in article 22, paragraph 1, of the International Covenant on Civil and Political Rights. The Government of Canada considers that this silence is of import, especially in light of article 8, paragraph 1 (d), of the International Covenant on Economic, Social and Cultural Rights which does recognize the right to strike. ...

"... Thus, so long as a State party meets its basic requirements under article 22, paragraph 1, of the Covenant, which is to permit and make possible trade-union action aimed at protecting the occupational interests of trade-union members, there is no breach of the Covenant. In giving effect to this obligation, a State party is free to choose the means which it considers appropriate. Therefore, if a State party meets its basic obligations under article 22, paragraph 1, any communication which aims at forcing it to accept a given method of compliance in preference to another would clearly be incompatible with the Covenant.

"In the present case, the communicant's sole argument is that the Public Service Employee Relations Act enacted by the legislature of the Province of Alberta violates article 22, paragraph 1, of the Covenant by forbidding strikes in the provincial public service. It makes no argument as to why, apart from prohibiting strikes, the Alberta scheme would fail adequately to safeguard the occupational interest of trade-union members. It is asking the Committee to recognize that article 22, paragraph 1, of the Covenant confers a right to strike and as a result does away with the discretion which States possess to choose the means they consider the most appropriate to implement article 22, paragraph 1. In this respect, the communication is incompatible with the provisions of article 22, paragraph 1, of the Covenant. Not only does this article not recognize a right to strike, it allows a State party to choose how it will give effect to the 'right [of everyone] to form and join a trade union for the protection of his interest'. Therefore, the Government of Canada considers the present communication inadmissible on the basis of incompatibility with the Covenant."

4.3 With respect to the issue of lis pendens, the State party argued:

"Article 5, paragraph 2 (a), of the Optional Protocol to the International Covenant on Civil and Political Rights provides that 'the Committee shall not consider any communication from an individual unless it has ascertained that ... the same matter is not being examined under another procedure of international investigation or settlement'. The Government of Canada considers that the proceedings initiated on behalf of the Alberta Union of Public Employees before the Committee on Freedom of Association of the International Labour Organisation result in lis pendens since proceedings before that Committee imply the use of another procedure of international complaint or settlement and since the matter dealt with by the Committee is the same as that on which the Human Rights Committee is asked to express its views ...

"For article 5, paragraph 2 (a), of the Optional Protocol to apply a communication to the Committee on Freedom of Association of the International Labour Organisation must be considered to be another procedure of international investigation or settlement. In the view of the Government of Canada, the special machinery for the protection of freedom of association established by the International Labour Organisation (or ILO) in 1950 following an agreement with the United Nations Economic and Social Council is such a procedure ...

"... This procedure, like that under which the Human Rights Committee operates, implies that complaints are received, investigations made and recommendations issued. There are differences between the two systems but these do not affect the nature of the International Labour Organisation's special procedure. ...

"Even if proceedings are being carried on before two international investigative bodies, a communication is only inadmissible under article 5, paragraph 2 (a), of the Optional Protocol if these two bodies are examining the same matter. It is the view of the Government of Canada that this is the situation in the present case. ...

"In its complaint now before the Committee on Freedom of Association [see para. 5.2 below], the communicant is alleging that the Public Service Employee Relations Act in force in the Province of Alberta fails to set up an impartial conciliation and arbitration procedure as an alternative to strikes and that as a consequence the Government of Canada is in breach of the obligations under Convention No. 87. In its communication in respect to article 22, paragraph 1, of the Covenant, it seeks a recognition that this article confers a right to strike and that therefore the Public Service Employee Relations Act is in breach of Canada's international obligations. The aims of these two communications are identical. In both cases, the communicant seeks a recognition of the right to strike although in one case, its method is direct and in the other indirect. ...

"In the view of the Government of Canada, if the issue raised by the communicant were debated before the Human Rights Committee, it would in fact be dealing with the same matter as is currently before the Committee on Freedom of Association. As previously indicated, it is the view of the Government of Canada that the Covenant does not recognize the right to strike. If the Committee did not dismiss the present communication on the ground of incompatibility with the Covenant, the communicant would have to show why and how the Public Service Employee Relations Act contravened article 22, paragraph 1, of the Covenant. To do this, it would almost inevitably have to resort to the same arguments it is invoking in the other forum. For this reason, the Government of Canada, after consultation with the Government of the Province of Alberta, considers that there is in this case lis pendens and that the communication should be found inadmissible under article 5, paragraph 2 (a), of the Optional Protocol."

4.4 With respect to the issue of exhaustion of domestic remedies, the State party argued:

"The communicant, before it made the present communication, had challenged the constitutional validity of the no-strike provisions of the Public Service Employee Relations Act of the Province of Alberta before the Court of the Queen's Bench of the Province of Alberta. d/ A reading of the decision of Sinclair C.J.Q.B. in Re Alberta Union of Provincial Employees et al., and the Crown in Right of Alberta shows that this challenge was based on the notion of division of powers between the federal and provincial levels of government within the Canadian federation. Basically, the plaintiff was arguing that international law recognized to all persons employed in the public service save those employees engaged in essential services the right to strike and that under the Canadian Constitution only the Federal Government could

legislate in breach of international law. e/ No mention is made of the provision of the Alberta Bill of Rights which protects freedom of association. ...

"When the communicant sought leave to appeal to the Supreme Court of Canada the decision of the Court of Appeal, it should be noted that it did invoke the freedom of association provisions of the Alberta Bill of Rights as one of the grounds of appeal. It argued that the Alberta Bill of Rights ought to be interpreted in light of Canada's international obligations which, in its view, recognized to employees of non-essential publicly-owned undertakings the right to strike. It did not argue that freedom of association as recognized in the Bill conferred by itself the right to strike. f/ Further, in its pleadings, the communicant also narrowed the focus of its appeal. It no longer challenged the no-strike provisions of the Public Service Employee Relations Act as they applied to the entire public service, but rather it limited its challenge to their application to the non-essential employees of the Crown-owned undertakings. g/ Clearly when the communicant made its communication it had not exhausted local remedies. ...

"The Government of Canada has indicated that the communicant is currently proceeding with a challenge against the no-strike provisions of the Public Service Employee Relations Act under subsection 2 (d) of the Canadian Charter of Rights and Freedoms [see para. 5.3 below]. This provision reads as follows:

'2. Everyone has the following fundamental freedoms:

'...'

'(d) Freedom of association.' h/

"The issue of whether freedom of association confers to trade unions and their members a right to strike is a matter which was not litigated before the Supreme Court of Canada and which does not appear to have been dealt with by lower courts under the Canadian Bill of Rights or the Alberta Bill of Rights. However, under the Charter the relationship between freedom of association and the right to strike is a question which has been submitted to the courts for adjudication at both the federal and provincial levels. i/ Because of the importance of the matter and of conflicting judicial interpretation, it is likely that the Supreme Court of Canada, which is in the Canadian federation the court of last resort for both the federal and provincial jurisdictions, will be given an opportunity to render judgement on this question.

"Since the Alberta Union of Public Employees failed to exhaust domestic remedies before it submitted a communication to the Human Rights Committee and since it is currently pursuing proceedings before the Alberta Court of Queen's Bench on the same matter, the Government of Canada considers that its communication should be found inadmissible under article 5, paragraph 2 (b), of the Optional Protocol to the International Covenant on Civil and Political Rights."

5.1 In their comments under rule 91, dated 2 June 1986, the authors address the three main objections of the State party with regard to the admissibility of the communication. First, they submit that the communication is indeed compatible with the provisions of the Covenant and refer to the relevance of article 22, paragraph 3, which provides that "Nothing in this article shall authorize States

Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize [Convention No. 87] to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention". It is implied, they argue, that a denial of the right to strike would prejudice the guarantees of ILO Convention No. 87. Moreover, an interpretation of article 22, paragraph 1, of the Covenant would also have to take into consideration other international instruments, including ILO Convention No. 87, which is an elaboration of the principles of freedom of association in international law. It is submitted that in a series of decisions the Committee on Freedom of Association of ILO has determined that the right to strike derives from article 3 of ILO Convention No. 87 and that it is an essential means by which workers can promote and defend their occupational interests. In particular, the authors point out that, in four cases, the Committee on Freedom of Association has considered the provisions of the Alberta Public Service Employee Relations Act and has found that the statute does not comply with the guarantee of freedom of association contained in Convention No. 87. The Committee on Freedom of Association has accordingly requested the Canadian Government "to re-examine the provisions in question in order to confine the ban on strikes to services which are essential in the strict sense of the term". The ILO Committee of Experts on the Application of Conventions and Recommendations, it is argued, has also reaffirmed the importance of the right to strike in the non-essential public service.

5.2 With regard to the State party's objection that the matter is being examined under another procedure of international investigation or settlement (para. 4.3 above), the authors submit that the complaint submitted by the Canadian Labour Congress, on behalf of the Alberta Union of Provincial Employees, to ILO is no longer under examination since the ILO investigation was concluded in 1985 and recommendations for resolving the differences have been made by the Committee on Freedom of Association and affirmed by the Governing Body of the International Labour Office. These recommendations, the authors add, have been ignored by the Government of the Province of Alberta.

5.3 With regard to the question of exhaustion of domestic remedies, the authors submit that all available domestic remedies have indeed been exhausted. In particular, the authors dispute the relevance of the State party's contention (para. 4.4 above) that their argument before the Canadian courts was narrower than that before the Human Rights Committee, explaining that "since the Canadian courts decided that there was no right to strike [for public employees in the Province of Alberta], the question of the entitlement of persons like the complainants was never reached". With regard to the State party's contention that the Alberta Union of Provincial Employees is pursuing this matter under the Canadian Charter of Rights and Freedoms, the authors point out that, at the time of submission of the present communication to the Human Rights Committee on 5 January 1982, the Charter of Rights and Freedoms had not come into force. After the Charter was proclaimed on 17 April 1982, the Alberta Union of Provincial Employees, however, commenced an action in the Court of Queen's Bench of Alberta for a declaration that certain provisions of the Public Service Employee Relations Act, including the strike prohibition, were contrary to the guarantee of freedom of association contained in section 2 (d) of the Charter. On 29 February 1984, the Province of Alberta referred certain questions to the Court of Appeal of Alberta for an advisory opinion and obtained a stay of the proceedings that had been launched by the Alberta Union. On 17 December 1984, the Court of Appeal of Alberta certified its opinion on a number of points, while declining to issue an opinion on the question here in dispute. The Alberta Union therefore appealed to the Supreme Court of

Canada, which heard argument on the appeal on 28 and 29 June 1985. After argument, the Supreme Court of Canada reserved judgement on the appeal and to date has not rendered judgement. The authors conclude that, "while the Human Rights Committee may wish to postpone further consideration of this complaint until the Supreme Court of Canada has made its decision, it is respectfully submitted that the complaint should not be ruled inadmissible for the reason that some domestic remedy has not been exhausted".

6.1 Before considering any claim contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether the communication is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights.

6.2 The question before the Committee is whether the right to strike is guaranteed by article 22 of the International Covenant on Civil and Political Rights. Article 22, paragraph 1 provides:

"Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."

Since the right to strike is not expressis verbis included in article 22, the Committee must interpret whether the right to freedom of association necessarily implies the right to strike, as contended by the authors of the communication. The authors have argued that such a conclusion is supported by decisions of organs of the International Labour Organisation in interpreting the scope and the meaning of labour law treaties enacted under the auspices of ILO. The Human Rights Committee has no qualms about accepting as correct and just the interpretation of those treaties by the organs concerned. However, each international treaty, including the International Covenant on Civil and Political Rights, has a life of its own and must be interpreted in a fair and just manner, if so provided, by the body entrusted with the monitoring of its provisions.

6.3 In interpreting the scope of article 22, the Committee has given attention to the "ordinary meaning" of each element of the article in its context and in the light of its object and purpose (article 31 of the Vienna Convention on the Law of Treaties). 1/ The Committee has also had recourse to supplementary means of interpretation (article 32 of the Vienna Convention on the Law of Treaties) and perused the travaux préparatoires of the Covenant on Civil and Political Rights, in particular the discussions in the Commission on Human Rights and in the Third Committee of the General Assembly. The Committee notes that in the course of drafting the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, the Commission on Human Rights based itself on the Universal Declaration of Human Rights. The Universal Declaration, however, does not refer to the right to strike. At its seventh session in 1951 the Commission adopted the text of a single "draft covenant on human rights" comprising 73 articles (E/1952, annex). The relevant draft articles 16 ("the right of association") and 27 ("the right of everyone, in conformity with article 16, to form and join local, national and international trade unions") did not provide for the right to strike. In the course of the discussions of these articles at the Commission's eighth session in 1952, article 27 was dealt with first. An amendment to article 27 providing for the inclusion of the right to strike was rejected by 11 votes to 6, with 1 abstention. Three weeks later the Commission discussed article 16 and adopted it with minor amendments, without, however, any proposal or amendment being tabled with a view to including the right to strike in that

article. Pursuant to General Assembly resolution A/543 (VI), the single draft covenant on human rights was split into a draft covenant on civil and political rights and a draft covenant on economic, social and cultural rights. Article 16 was assigned to the draft covenant on civil and political rights, eventually being renumbered as article 22. Article 27, on the other hand, was assigned to the draft covenant on economic, social and cultural rights, eventually being renumbered as article 8. Five years after the adoption of draft articles 16 and 27 by the Commission on Human Rights, the Third Committee of the General Assembly again discussed the draft covenants. Whereas an amendment to the new draft article 8 of the Covenant on Economic, Social and Cultural Rights was adopted, including "the right to strike, provided that it is exercised in conformity with the laws of the particular country", no similar amendment was introduced or discussed with respect to the draft covenant on civil and political rights. Thus the Committee cannot deduce from the travaux préparatoires that the drafters of the Covenant on Civil and Political Rights intended to guarantee the right to strike.

6.4 The conclusions to be drawn from the drafting history are corroborated by a comparative analysis of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, Article 8, paragraph 1 (d), of the International Covenant on Economic, Social and Cultural Rights recognizes the right to strike, in addition to the right of everyone to form and join trade unions for the promotion and protection of his economic and social interests, thereby making it clear that the right to strike cannot be considered as an implicit component of the right to form and join trade unions. Consequently, the fact that the International Covenant on Civil and Political Rights does not similarly provide expressly for the right to strike in article 22, paragraph 1, shows that this right is not included in the scope of this article, while it enjoys protection under the procedures and mechanisms of the International Covenant on Economic, Social and Cultural rights subject to the specific restrictions mentioned in article 8 of that instrument.

6.5 As to the importance which the authors appear to attach to article 22, paragraph 3, (para. 5.1 above) of the Covenant on Civil and Political Rights, the Committee observes that the State party has in no way claimed that article 22 authorizes it to take legislative measures or to apply the law to the detriment of the guarantees provided for in ILO Convention No. 87.

7. In the light of the above, the Human Rights Committee concludes that the communication is incompatible with the provisions of the Covenant and thus inadmissible ratione materiae under article 3 of the Optional Protocol. In the circumstances the Committee does not have to examine further the question of the admissibility of the communication under article 5, paragraph 2 (a) and (b), of the Optional Protocol, or the question whether an alleged breach of a collective right, such as the right to strike, can be the subject of a claim submitted by individuals pursuant to articles 1 and 2 of the Optional Protocol.

8. The Human Rights Committee therefore decides:

That the communication is inadmissible.

Notes

a/ International Labour Organisation, International Conventions and Recommendations, 1919-1981 (Geneva, 1982).

b/ International Labour Office; "Complaint presented by the Canadian Labour Congress against the Government of Canada (Alberta): Case No. 893" in Reports of the Governing Body Committee on Freedom of Association (203rd, 204th and 205th), (1980) LXIII Official Bulletin, Series B, No. 3, p. 28, para. 134 (b).

c/ Public Service Employee Relations Act, Schedule, section 6 as added by the Labour Statutes Amendment Act, 1983, S.A. 1983, c. 34, subsect. 5 (13).

d/ When this challenge was initiated, there existed no constitutional protection of freedom of association in Canada. Such a protection came into existence only on 17 April 1982 with the coming into force of the Canadian Charter of Rights and Freedoms. However, the Alberta Bill of Rights, R.S.A. 1980, c. A-16, did protect various basic rights and freedoms including freedom of association. The Bill, was, however, not constitutionalized.

e/ Re Alberta Union of Provincial Employees et al., and the Crown in Right of Alberta, 120 Dominion Law Reports, pp. 592-622. See in particular, p. 592 for a summary of the matters in litigation, p. 609 for the employees covered by the plaintiff's arguments and pp. 621-622 for the conclusion of Sinclair C.J.Q.E.

f/ The Alberta Union of Provincial Employees et al. v. The Crown in Right of Alberta: Motion for leave to appeal, 25 November 1981, pp. 10, 20 and 21.

g/ Ibid., pp. 10 and 21.

h/ Rights protected by the Canadian Charter of Rights and Freedoms are not absolute. Section 1 provides that the rights and freedoms set out in the Charter are guaranteed subject "to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

i/ Apart from the proceedings initiated by the communicant, mention ought to be made of Re Service Employees' International Union, Local 204 and Broadway Manor Nursing Home et al. and two other applications, (1984) 44 O.R. 392 (Ontario High Court of Justice, Divisional Court), Public Service Alliance of Canada v. The Queen et al., Federal Court of Canada, Trial Division, 21 March 1984 (unreported) and Dolphin Delivery Ltd. v. Retail, Wholesale and Department Store Union, Local 580 et al., 5 March 1984 (unreported). All of the decisions have been appealed, the last one to the Supreme Court of Canada.

j/ Official Records of the United Nations Conference on the Law of Treaties, Vienna, 26 March-24 May 1968 and 9 April-22 May 1969 (United Nations publication, Sales No. E.70.V.5), p. 287.

INDIVIDUAL OPINION

Submitted by Mrs. Higgins and Messrs. Lallah, Mavrommatis, Opsahl and Wako concerning the admissibility of communication No. 118/1982, J.B. et al. v. Canada

1. In its decision the Committee states that the issue before it is whether the right to strike is guaranteed by article 22 of the International Covenant on Civil and Political Rights; and, finding that it is not, it declares the communication inadmissible.
2. We regret that we cannot share this approach to the issues in this case. We note that in Canada, as in many other countries, there exists, in principle, a right to strike, and that the complaint of the authors concerns the general prohibition of the exercise of such right for public employees in the Alberta Public Service Employee Relations Act. We believe that the question that the Committee is required to answer at this stage is whether article 22 alone or in conjunction with other provisions of the Covenant necessarily excludes, in the relevant circumstances, an entitlement to strike.
3. Article 22 provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests." The right to form and join trade unions is thus an example of the more general right to freedom of association. It is further specified that the right to join trade unions is for the purpose of protection of one's interests. In this context we note that there is no comma after "trade unions", and as a matter of grammar "for the protection of his interests" pertains to "the right to form and join trade unions" and not to freedom of association as a whole. It is, of course, manifest that there is no mention of the right to strike in article 22, just as there is no mention of the various other activities, such as holding meetings, or collective bargaining, that a trade-unionist may engage in to protect his interests. We do not find that surprising, because it is the broad right of freedom of association which is guaranteed by article 22. However, the exercise of this right requires that some measure of concerted activities be allowed; otherwise it could not serve its purposes. To us, this is an inherent aspect of the right granted by article 22, paragraph 1. Which activities are essential to the exercise of this right cannot be listed a priori and must be examined in their social context in the light of the other paragraphs of this article.
4. The drafting history clearly shows that the right of association was dealt with separately from the right to form and join trade unions. The travaux préparatoires indicate that in 1952 the right to strike was proposed only for the draft article on trade unions. This is what we would have expected. It was at that time rejected. They show also that in 1957, when the right to strike (subject to certain limitations, was accepted as an amendment to the draft article on the right to form and join trade unions, such an amendment was neither introduced nor discussed with respect to the draft covenant on civil and political rights. The reason seems to us both clear and correct - namely, that because what is now article 22 of the Covenant on Civil and Political Rights deals with the right of association as a whole, concerning clubs and societies as well as trade unions, mentioning particular activities such as strike action would have been inappropriate.

5. We therefore find that the travaux préparatoires are not determinative of the issue before the Committee. Where the intentions of the drafters are not absolutely clear in relation to the point at hand, article 31 of the Vienna Convention also directs us to the object and purpose of the treaty. This seems to us especially important in a treaty for the promotion of human rights, where limitation of the exercise of rights, or upon the competence of the Committee to review a prohibition by a State of a given activity, are not readily to be presumed.

6. We note that article 8 of the International Covenant on Economic, Social and Cultural Rights, having spoken of the right of everyone to form trade unions and join the union of his choice, goes on to speak of "the right to strike, provided that it is exercised in conformity with the laws of the particular country". While this latter phrase gives rise to some complex legal issues, it suffices for our present purpose that the specific aspect of freedom of association which is touched on as an individual right in article 22 of the Covenant on Civil and Political Rights, but dealt with as a set of distinctive rights in article 8, does not necessarily exclude the right to strike in all circumstances. We see no reason for interpreting this common matter differently in the two Covenants.

7. We are also aware that the ILO Committee on Freedom of Association, a body singularly well placed to pronounce authoritatively on such matters, has held that the general prohibition of strikes for public employees contained in the Alberta Public Service Employees Relations Act was not in harmony with article 10 of ILO Convention No. 87 "... since it constituted a considerable restriction on the opportunities open to trade unions to further and defend the interests of their members." While we do not at this stage purport to comment on the merits, we cannot fail to notice that the ILO finding is based on the furtherance and defence of interests of trade-union members; and article 22 also requires us to consider that the purpose of joining a trade union is to protect one's interests. Again, we see no reason to interpret article 22 in a manner different from ILO when addressing a comparable consideration. In this regard we note that article 22, paragraph 3, provides that nothing in that article authorizes a State party to ILO Convention No. 87 to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

8. We cannot see that a manner of exercising a right which has, under certain leading and widely ratified international instruments, been declared to be in principle lawful, should be declared to be incompatible with the Covenant on Civil and Political Rights.

9. Whereas article 22, paragraph 1, deals with the right of freedom of association as such, paragraph 2 deals with the extent of the exercise of the right which necessarily includes the means which may be resorted to by a member of a trade union for the protection of his interests.

10. Whether the right to strike is a necessary element in the protection of the interests of the authors, and if so whether it has been unduly restricted, is a question on the merits, that is to say, whether the restrictions imposed in Canada are or are not justifiable under article 22, paragraph 2. But we do not find the communication inadmissible on this ground.

11. It is therefore necessary for us to see whether the communication is rendered inadmissible on other grounds. With regard to the State party's objection that the matter is being examined under another procedure of international investigation or

settlement (see para. 4.3 of the Committee's decision), we note that the ILO investigation is concluded. Without pronouncing upon whether reference to the ILO Committee on Freedom of Association and to its Governing Body constitutes examination under another procedure of international investigation or settlement within the terms of article 5, paragraph 2 (a), of the Optional Protocol, we note that the terms of article 5, paragraph 2 (a), cannot be applicable to the facts before us.

12. With regard to the issue of exhaustion of local remedies, we find that all relevant local remedies available to the authors at the time of the submission of the present communication have been exhausted.

13. We would therefore consider the communication admissible.

Rosalyn Higgins

Rajsomer Lallah

Andreas Mavrommatis

Torkel Opsahl

Amos Wako

C. Communication No. 165/1984, J.M. v. Jamaica
(Decision of 26 March 1986, adopted at the
twenty-seventh session)

Submitted by: J.M.

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 18 January 1984

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

Meeting on 26 March 1986,

Setting aside an earlier decision on admissibility, now adopts the following:

Decision on admissibility

1.1 The author of the communication, dated 18 January 1984, is J. M., who claims to be a Jamaican citizen born in Kingston, Jamaica, in 1954. He is represented by Rev. Yves-Jean Gabel, the Director of the Foyer évangélique universel (FEU) in Brussels, Belgium, where he resided without a residence permit at the time of the submission of the communication. It is alleged that, after losing his passport in Paris on 22 June 1983, he has been unsuccessful in obtaining a new passport and also unable to return to his home country, Jamaica. A one-page letter signed by J. M. authorizing Rev. Gabel to represent him before the Human Rights Committee is enclosed with the communication.

1.2 The facts are described as follows: upon losing his passport on 22 June 1983 J.M. obtained, on the same day, a certificate from the Jamaican Consulate in Paris confirming his identity. The certificate was issued for the purpose of facilitating his travel to the Jamaican Embassy in Brussels, Belgium, where he hoped to obtain a new passport. On 7 July 1983, J.M. was denied a new passport at the Jamaican Embassy in Brussels as he was not in possession of a birth certificate. He allegedly requested the responsible officer at the Embassy to contact the competent services in Kingston in order to provide a birth certificate. Allegedly, however, the Jamaican Embassy had him evicted from the Embassy and he was arrested by the Belgian police. From 8 to 27 July 1983, he was detained in various prisons in Belgium and then deported to France. He went back to the Jamaican Consulate in Paris which, at that stage, also refused to help him and had him arrested by the French police, who kept him under detention for two days. On 18 August 1983, he flew back to Kingston, Jamaica, but he was refused entry, because he did not have a passport and, allegedly, because the only documents in his possession were in French, and not in English. He was then made to board an Aeroflot flight to Moscow. The following day, having landed at Moscow airport, he was put on a flight to Luxembourg, from where he flew to Paris. On 23 August 1983, he returned to Brussels and was given refuge at FEU. All his subsequent efforts during the months of August to December 1983 and in January 1984 to obtain a passport, including the intervention of a Belgian attorney, were in vain.

1.3 It is claimed that J.M. is a victim of a violation of article 12 of the Covenant, in particular of article 12, paragraph 4.

1.4 With respect to the exhaustion of domestic remedies, it is alleged that no internal recourse could be filed because of lack of co-operation of the Jamaican consular authorities in Paris and Brussels. J.M. reports that on 24 November 1983 he addressed a registered letter to the Ambassador of Jamaica in Brussels, to which he has received no reply.

1.5 It is stated that the same matter has not been submitted to any other procedure of international investigation or settlement.

2. By its decision of 22 March 1984, the Working Group of the Human Rights Committee, through a note verbale from the Secretary-General dated 16 May 1984, transmitted the communication under rule 91 of the provisional rules of procedure to the Permanent Mission of Jamaica to the United Nations Office at Geneva, requesting from the State party information and observations relevant to the question of admissibility of the communication. The deadline for the State party's submission under rule 91 expired on 16 July 1984. There was no reply from the State party before the adoption of the Committee's decision on admissibility on 26 March 1985.

3. On the basis of the information before it, the Committee found that it was not precluded by article 5, paragraph 2 (a), of the Optional Protocol from considering the communication, as the author's indication that the same matter had not been submitted to another procedure of international investigation or settlement had remained uncontested by the State party. 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. Accordingly, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

4. On 26 March 1985, the Human Rights Committee therefore decided that the communication was admissible and requested the State party, in accordance with article 4, paragraph 2, of the Optional Protocol, 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 might have been taken by it. The State party was asked to explain, in particular, why the author had been subjected to the treatment he allegedly suffered, which might raise issues under articles 7 and 12 of the Covenant.

5.1 By a note dated 23 October 1985, the State party contended that the decision of the Committee to declare the communication admissible was invalid, claiming that it had never received the Secretary-General's note of 16 May 1984 transmitting the Working Group's rule 91 decision and the text of the author's communication. The State party argued that "this non-receipt by the Jamaican Government of the Secretary-General's note of 16 May 1984 is important ... since rule 91, paragraph 2, of the provisional rules of procedure prohibits a declaration of admissibility of a communication in circumstances where a State party concerned has not received the text of the communication and been given an opportunity to comment on it ... The effect of non-receipt of [J.M.'s] communication was to deprive the Government of Jamaica of an opportunity to comment on the fulfilment of the pre-conditions set out in article 5, paragraph 2, of the Optional Protocol for the Committee's consideration of [J.M.'s] communication".

5.2 As to the substance of the author's claim, the State party explained that "although the onus would clearly be on a person claiming to be a citizen of a country to furnish evidence in support of that claim, the Government has carried out the most intensive investigations possible with a view to discovering whether [J.M.] was born in Jamaica. This search of the relevant records does not disclose the registration of the birth of [J.M.] in Jamaica. A search of relevant records does not disclose that a Jamaican passport was ever issued to [J.M.]".

5.3 The State party further explained that J.M. "arrived in Jamaica on 18 August 1983 and was refused leave to land because he was unable to substantiate his claim that he was a Jamaican". The State party added "that [J.M.], who said he had lost his Jamaican passport and also told the Immigration Officers that he had lived in Jamaica up to three years prior to the date of his arrival in Jamaica, was unable to provide even the most basic information about Jamaica. For example, he could not say where he was born, where he had lived prior to leaving Jamaica, what school he had attended or give the names of anybody who knew him".

5.4 The State party submitted that the suggestion that J.M. had been subjected to treatment which, in the words of paragraph 2 of the decision "may raise issues under article 7", strained credulity since that article provided protection from cruel, inhuman or degrading treatment or punishment, and it was difficult to see how there could be any reasonable basis for even hinting that the Government of Jamaica might somehow be in breach of that article. The fact was that on one of the occasions of J.M.'s visits to the Jamaican Consulate in Paris he had behaved boisterously, installed himself in the main entrance of the building, lying on the carpet, and so conducted himself that it was necessary to call the police who took charge of him. Clearly in such circumstances there was nothing to substantiate even a suggestion that J.M. had been subjected to cruel, inhuman or degrading treatment by the Jamaican Government. On one of the occasions of J.M.'s visits to the Jamaican Embassy in Brussels he had become noisy and aggressive and had spent several hours sitting in the reception area quarrelling boisterously. He had been abusive, had shouted and had vigorously shaken the door leading to the Embassy. After several hours of pleading with J.M. by the staff of the Embassy, who had asked him to leave quietly, it had been necessary to call in the police who came and took charge of him. In those circumstances, any suggestion of conduct on the part of the Government of Jamaica constituting a breach of article 7 would be baseless.

5.5 As far as remedies available to J.M. are concerned, the State party indicated that "he could have applied to the relevant Minister of Government under section 10 of the Jamaican Nationality Act to exercise the discretion which the law gives him to issue a certificate of citizenship in cases of doubtful citizenship. He could also have instituted proceedings in the Supreme Court for a declaration that he was a citizen of Jamaica and therefore entitled to enter Jamaica as well as for the issue of the prerogative writ of mandamus compelling the Government to allow him to enter Jamaica on the ground that he is a citizen of Jamaica".

6.1 On 21 November 1985, the text of the State party's submission was transmitted to the author's representative for comments under rule 93, paragraph 3, of the Committee's provisional rules of procedure. In the circumstances, a copy of the Secretary-General's note of 16 May 1984, transmitting to the State party the text of the Working Group's rule 91 decision of 22 March 1984 together with the text of the communication in question, was also transmitted to the author's representative.

6.2 The deadline for the author's comments under rule 93, paragraph 3, expired on 2 January 1986. No comments have been received, despite the State party's rebuttal, in particular concerning the question of J.M.'s nationality.

7. Pursuant to rule 93, paragraph 4, of its provisional rules of procedure, the Human Rights Committee has reviewed its decision on admissibility of 26 March 1985. On the basis of the information provided by the State party, the Committee concludes that the author has failed to establish that he is a Jamaican citizen and has failed to substantiate his allegation that he is a victim of violations of the provisions of the Covenant by the State party.

8. In the light of the above considerations, the Committee finds that it is precluded under articles 2 and 3 of the Optional Protocol from considering the merits of the case and decides:

1. The decision of 26 March 1985 is set aside.
2. The communication is inadmissible.

D. Communication No. 170/1984, E.H. v. Finland
(Decision of 25 October 1985, adopted at the
twenty-sixth session)

Submitted by: E.H. [name deleted]

Alleged victim: E.H. [name deleted]

State party concerned: Finland

Date of communication: 16 April 1984

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

Meeting on 25 October 1985,

adopts the following:

Decision on admissibility

1. The author of the communication, dated 16 April 1984, is Mrs. E.H., a member of the 4,000 strong Romany minority in Finland. She is represented by Mr. E.W., a journalist and magazine editor.
2. It is alleged that Mrs. E.H. is a victim of racial discrimination in violation of article 26 of the International Covenant on Civil and Political Rights, because she received a heavier sentence for a criminal offence than that meted out to another Finnish woman in a similar case. It is submitted that the offence for which the other woman was found guilty was graver than that for which Mrs. E.H. was convicted. Both cases concerned tax evasion and usury and were concluded in 1983 before different trial courts. On 25 May 1983, the Supreme Court of Finland upheld the decision of the lower court in the case of Mrs. E.H.
3. The author has not furnished the Committee with copies of any judicial decisions relevant to the matter complained of, although repeatedly given an opportunity to do so.
4. 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. A thorough examination of the communication has not revealed any facts in substantiation of the author's claim that on the ground of belonging to the Romany minority in Finland she received a heavier sentence than another accused person in a similar case in violation of the rights protected by the Covenant. The Committee, accordingly, concludes that the author has no claim under article 2 of the Optional Protocol.
6. The Human Rights Committee therefore decides:

The communication is inadmissible.

E. Communication No. 184/1984, H.S. v. France
(Decision of 10 April 1986, adopted at the
twenty-seventh session)

Submitted by: H.S. [name deleted]

Alleged victim: The author

State party concerned: France

Date of communication: 4 September 1984 (date of initial letter)

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

Meeting on 10 April 1986,

adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 4 September 1984 and further letters of 23 and 24 April, 24 June, 20 August and 21 November 1985) is H.S., who currently resides in France. He submitted the communication on his own behalf.

2.1 In his initial letter (dated 4 September 1984), the author alleged that he had been arbitrarily deprived of his French nationality. He stated that he had been born in Mauritania in 1944, at that time a French colony, that he had entered France in 1959 as a French national, and that he had lived there since. When Mauritania became independent in 1960, the author claimed to have requested that he retain his French nationality in accordance with the French Nationality Code (Law No. 60-752 of 28 June 1960). Many years later (the author claimed that this took place in 1979), he had allegedly been informed by the relevant French authorities that, pursuant to a decision of the Ministry of Justice, he was no longer regarded as a French national and that consequently he was required to return his French identity papers. In August 1979, the author initiated proceedings before the Tribunal de grande instance of Bobigny with a view to securing recognition of his French nationality. These proceedings were, however, still pending at the time of the submission of the communication.

2.2 The author stated that his wife (born in Mali) and his six children were suffering from the situation. He mentioned that on 18 November 1983, the authorities had declined to renew his wife's residence permit and that they had no place to live.

2.3 The author enclosed a copy of his French identity card (No. 3531769, issued by the Prefect of Police of Paris on 22 October 1973) and a copy of his card as reservist in the French army (issued on 5 December 1983).

3. By its decision of 17 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 Working Group

also requested the State party to provide the Committee with copies of any court orders or decisions relevant to this case.

4.1 In a submission dated 26 March 1985, the State party provided information on the existing legislation and regulations concerning French nationality, in particular in respect of individuals from the former French overseas territories. It further submitted information, including a detailed chronology of legal decisions, concerning the author's legal status and objected to the admissibility of the communication on the ground that domestic remedies had not been exhausted. It also noted that the author had not invoked any specific provision of the International Covenant on Civil and Political Rights in support of his allegations and that his communication therefore did not meet the requirements of article 1 of the Optional Protocol.

4.2 Regarding the principles established by the French Nationality Code in respect of persons from former overseas territories (Mauritania had the status of an overseas territory of the French Republic on 31 December 1946 and became independent on 28 November 1960), the State party submitted that:

"The Act of 28 July 1960 and the subsequent Act of 9 January 1973 make a distinction between persons who are automatically French and persons whose French nationality is subject to recognition in accordance with the criterion of geographical origin. To this end, the legislator differentiated between those who are from and those who are not from the territory of the French Republic.

(a) French persons from the territory of the French Republic, as it was constituted on 28 July 1960, and domiciled, on the date on which a State previously having the status of overseas territory of the French Republic attained independence, in the territory of that State retained French nationality (art. 152);

(b) French persons not from the territory of the French Republic, on the other hand, lost French nationality when their country of origin gained its independence.

"However, persons were entitled to retain French nationality:

(a) Automatically, if on the date on which a former overseas territory became independent they were not domiciled in that territory. The solution derives e contrario from the new article 153, which subjects to a formal procedure only persons who were not from the territory of the Republic and who were domiciled at the time of independence in the territory of the State that became independent;

(b) In other cases, by the making of a statement of recognition of French nationality after their domicile was transferred to France. The Act of 9 January 1973 subsequently removed this option and replaced it by an authorization for the making of a statement to restore French nationality, which is regulated by the new articles 153, 156 and 157. Restoration of nationality may be denied on the ground of unworthiness (indignité) or failure to be assimilated.

"Minor children under 18 years of age on the date of independence of the territory where their parents were domiciled take the nationality of the parents.

"Consequently, the persons to which these texts apply, in order to establish their French nationality, must:

(a) Prove that they were French prior to independence;

(b) Show that they have retained French nationality in the aforementioned conditions."

4.3 The State party further submitted that the following rules were applicable regarding proof and contentious proceedings:

"French nationality is evidenced in cases of difficulty by a certificate issued by the juge d'instance of the place of domicile of the applicant. The juge d'instance draws up the certificate in the light of the applicant's civil status, which attests to the date and place of birth and the parentage (art. 149).

"If the juge d'instance refuses to issue the certificate, the person concerned may apply in a non-contentious procedure to the Minister of Justice (art. 151).

"He may also 'institute proceedings before the Tribunal de grande instance with the primary and direct object of obtaining a judgement as to whether or not he possesses French nationality' (art. 129). The judgement of that court is appealable to the Cour d'appel, then to the Cour de cassation.

"Moreover, French persons who have lost their French nationality and who wish to recover it must, under the procedure established in 1973, make a statement before the juge d'instance of their place of domicile after receiving authorization to do so from the Minister responsible for naturalization (currently the Minister of Social Affairs and National Solidarity; in 1977, the Minister of Labour) (art. 153).

"The Minister's refusal to authorize the making of a statement can be contested in non-contentious or contentious proceedings.

"In the former case, the party concerned may request the Minister to reconsider his decision and to authorize the making of a statement for the restoration of nationality.

"In the case of contentious proceedings, the party concerned may bring the matter of the Minister's refusal before the tribunal administratif, and may subsequently appeal to the Conseil d'état."

4.4 The State party observed that the determination of the author's nationality was a problem that had been rendered complex by the fact that he had given two different dates of birth:

"Up until 1973, [H.S.] claimed to have been born in 1923. As he would thus have been 37 years of age when Mauritania became independent, and as he was domiciled in France in 1960, he could originally have been considered to be French.

"From 1973 onwards, however, he has claimed that he was born in 1944. This would mean that he was a minor in 1960. If so, he could have retained French nationality only if his parents had themselves retained it but he apparently has not submitted proof thereof.

"Furthermore, the inquiries that were conducted during the various proceedings revealed that there were doubts, not only as to [H.S.'s] civil status (date and place of birth, parentage), but with regard to his actual identity in relation to other individuals having the same name. These questions had of necessity to be settled before a decision could be taken in respect of this applicant's nationality."

4.5 The State party lists the following decisions and other measures concerning the author's legal status:

"23 February 1959. A decision having the legal validity of a birth certificate was issued by the Tribunal de premier degré at Sélibaby, at the oral request of [H.S.], stating that he had been born at Massi-Chaggor, Mauritania, in 1923.

"21 February 1967. In the light of the above decision, a certificate of French nationality was issued to [H.S.] by the Tribunal d'instance du 20ème arrondissement de Paris on the ground that he had been domiciled in France in 1960 (art. 13, para. 1, of the ordinance of 19 October 1945, in the 1960 version: '... persons domiciled in the ceded territories lose French nationality unless they effectively establish their domicile outside those territories').

"3 March 1967. A French national identity card, No. 1513223-YN 7707, was issued by the Prefect of Police of Paris.

"24 August 1973. At [H.S.'s] request, the Procureur de la République, in Paris, had the birth certificate amended to state that [H.S.] was born in 1944, not 1923.

"5 October 1973. The Juge d'instance du 19ème arrondissement de Paris issued [H.S.] a new certificate of French nationality in the light of the change in the date of his birth.

"22 October 1973. A new identity card, No. 353 1769-BU 668 H, was issued by the Prefect of Police of Paris.

"1975. [H.S.] again applied to the Juge d'instance du 19ème arrondissement for a certificate of nationality.

"23 March 1976. The Garde des Sceaux, Ministry of Justice, sent a notice to the Juge d'instance du 19ème arrondissement de Paris, stating that [H.S.] was to be considered a foreigner. In fact, if the party concerned had been born in 1944, as he claims, he would have been only 16 years old when Mauritania became independent and could not, under those circumstances, be considered domiciled in France for purposes of nationality, since his status was dependent on that of his father or surviving mother and he had at no time submitted evidence of their living in France at that time.

"28 October 1976. At the request of the Ministry of Justice, [H.S.] returned the two certificates which had been wrongfully issued, in accordance with the official statement prepared by the Tribunal d'instance at Aulnay-sous-Bois on 28 October 1976.

"late 1976. [H.S.] applied to the Ministry of Labour for the statement of restoration of French nationality provided for in article 153 of the Nationality Code.

"8 March 1977. The Ministry of Labour rejected the application on the ground that [H.S.] had provided false information.

"1979. [H.S.] applied to the Juge d'instance at Aulnay-sous-Bois for a new certificate of nationality.

"25 May 1979. [H.S.] returned his national identity card to the Blanc-Mesnil police station.

"26 June 1979. The Minister of Justice sent a notice identical to that of 23 March 1976 to the Juge d'instance, stating that the certificate of nationality should be withheld.

"3 July 1979. [H.S.] was notified of the refusal to issue a certificate of nationality.

"August 1979. [H.S.] applied to the Tribunal de grande instance of Bobigny with a view to securing recognition of his French nationality (arts. 128-136).

"9 August 1979. As required under the Code of Civil Procedure, [H.S.'s] lawyer forwarded a copy of the summons to the Ministry of Justice.

"12 October 1979. The lawyer again notified the Chancellerie, the form of the first summons having been irregular.

"19 December 1979. The Ministry of Justice gave the following instructions to the Procureur of the Tribunal de grande instance of Bobigny:

(a) The lawyer was to be informed that the new and currently prepared summons had been filed with the Ministry of Justice;

(b) Since [H.S.] had successively provided two birth dates in the documents which he had submitted for the proceedings, the court was to be requested to rule on the applicant's civil status.

"29 January 1980. [H.S.] was given a hearing by the procureur at Bobigny concerning the authenticity of the documents that he had placed in the file. It became apparent that the testimony submitted to the Parquet de Paris in support of the change of date of birth under the decision of 24 August 1973 had been prepared by [H.S.] himself because the witnesses were unable to write. This renders spurious the certificate issued on 5 October 1973.

"12 March 1980. The Minister of the Interior consulted the Minister of Justice with regard to the status of an individual named [A.S.], who purportedly was born at Sokodiandi, Ma , in 1936, but whose birth certificate had never been transmitted.

"14 August 1980. Since comparison of the files of [H.S.] and [A.S.] gave ground for assuming that these two individuals were using the same certificates and documents, the Minister of Justice then asked the Minister of the Interior to order a thorough inquiry in order to identify each of the persons concerned and to investigate if they were making use of certificates or documents belonging to another person.

"2 December 1980, 30 January 1981, 6 and 17 February 1982. Several telegrams were sent to INTERPOL (Nouakchott) about the identity of [H.S.].

"9 December 1982. Request by the Ministry of Justice for an inquiry into a third individual, also called [A.S.]. In this connection, INTERPOL (Bamako) was likewise asked several times to state whether this third individual was a twin brother of the previous one.

"14 September 1983. Hearing of the detainee, [H.S.], by an investigator of the Poissy police department.

"10 October 1983. Application by the wife of [H.S.], born in Mali, for permission to stay in France.

"18 November 1983. Notification to Mrs. [H.S.] that her application was refused.

"29 March 1984. Preparatory hearing. The judge responsible for preparing the proceedings of the Bobigny tribunal ordered Maître Eugène B. Yesso, [H.S.'s] new lawyer, to establish his client's physical identity with the individual said to have entered France in 1959 and to have been there on 28 November 1960, the date on which Mauritania attained independence.

"2 June 1984. [H.S.'s] application for the restoration of his French nationality addressed to the President of the French Republic. This application was transmitted to the Minister of Social Affairs and National Solidarity for action.

"28 August 1984. Request by the Ministry of Social Affairs and National Solidarity to the Prefect of Seine and Marne (where [H.S.] was detained) for an inquiry under article 153.

"7 August 1984. Report of the inquiry by the Ministry of the Interior communicated to the Ministry of Justice.

"13 August 1984. Transmission of the above report to the procureur at Bobigny.

"16 October 1984. Transmission of the report of the inquiry by the Prefecture of Seine and Marne to the Ministry of Social Affairs.

"7 November 1984. New preparatory hearing for the case before the Tribunal de grande instance of Bobigny.

"9 November 1984. Order to [H.S.'s] lawyer renewed.

"6 February 1985. Further preparatory hearing at the request of [H.S.] who had chosen another counsel; postponement until 24 April 1985. Order renewed."

4.6 The State party also mentioned that since May 1980, the author had been serving a seven-year term of imprisonment for a breach of the legislation on narcotic drugs.

4.7 The State party contended that the author had not exhausted all available domestic remedies before the competent French administrative and judicial authorities, not only with regard to the issuing of a certificate of French nationality by the juge d'instance (art. 149 of the Nationality Code), but also with regard to the procedure for the restoration of French nationality (art. 153 of the Nationality Code), because, first, the author had failed to pursue certain courses of action within the time-limits allowed to him and, secondly, because several remedies were still available to him. In that connection the State party gave the following details:

(a) With regard to the issuing of a certificate of French nationality by the juge d'instance (art. 149), H.S. was refused the certificate on 3 July 1979. He started legal proceedings in August 1979 before the Tribunal de grande instance of Bobigny. The proceedings proved to be extremely complicated because of the doubts concerning the author's person and civil status. In the course of 1984, the judge responsible for preparing the case at Bobigny ordered H.S.'s lawyer, without success, to establish his client's identity (orders dated 29 March 1984, 9 November 1984 and 6 February 1985). The matter was subsequently postponed until the hearing on 24 April 1985, at the request of the applicant himself. In these circumstances, the prolongation of the procedural period was the responsibility of the author. In any event, it was for the Tribunal de grande instance of Bobigny to pronounce on the application of H.S. for recognition of French nationality. H.S. would be able to appeal against the judgement and then, if there was occasion, to submit his case to the Cour de cassation.

(b) With regard to the procedure for the restoration of French nationality (art. 153 of the Nationality Code): first, H.S. neither applied to the competent Minister, nor instituted proceedings before the administrative tribunals with a view to the overturning of the negative decision of the Minister of Labour, dated 8 March 1977. Those remedies could have been sought simultaneously, as mentioned above. Secondly, a new application was currently under examination at the Ministry of Social Affairs and National Solidarity, H.S. having again, in 1984, requested authorization to make a declaration of French nationality before the competent juge d'instance. Should the Minister of Social Affairs and National Solidarity turn down the application, again all of the aforementioned remedies could be sought by H.S. by contentious and non-contentious means alike.

5.1 In further submissions dated 23 and 24 April 1985 the author commented on the State party's submission and reiterated that he had been arbitrarily deprived of his French nationality in 1979 and that since then, despite all his efforts and the procedures to which he had applied, he remained in the same situation.

5.2 Concerning his date of birth, the author stated that he had been born in Mauritania in 1944, that his father had died during the Second World War fighting for France, that his mother had died in 1958, that in 1959 he had decided to travel to France. In order to obtain a birth certificate he had gone to the Tribunal de premier degré at Sélibaby, Mauritania. A decision, having the legal validity of a birth certificate, had been issued by the tribunal on 23 February 1959 stating that he had been born at Massi-Chaqqor, Mauritania, in 1923. The author further stated that the Haut commissariat de l'Afrique occidentale française, on the basis of that decision, had issued to him an identity card with which he had travelled to France. He had used the card for employment purposes, to pay his social insurance,

etc., until 21 February 1967. On that day he had been issued a certificate of French nationality by the Tribunal d'instance du 20ème arrondissement de Paris and on 3 March 1967, he had been given a French national identity card by the Prefect of Police of Paris. He stressed that at no time had he submitted false information and that he could not be held responsible for an error (concerning his date of birth) made in the decision taken by the tribunal of Sélibaby. The author mentioned, however, that in 1973 he had requested a change in his date of birth because he had been born in 1944 and not in 1923. On 5 October 1973, he had been issued a new certificate of French nationality by the competent judge and on 22 October 1973 he had received a new identity card.

5.3 The author contested the whole process by which he had been deprived of his French nationality. In particular he contested the reasoning of the Garde des Sceaux on 23 March 1976 (see para. 4.5) because he had been domiciled in France since 1959. He argued that even if, in 1960, he had been a minor, his status could not have been dependent on that of his parents. He recalls that they both died prior to the independence of Mauritania in 1960. Therefore, he saw himself as a victim of discrimination. The author claimed that the State party's assertions that "the proceedings have proved to be extremely complicated because of the doubts concerning the author's person and civil status" (see above para. 4.7 (a)) were not valid and that the application of domestic remedies in that regard had been unreasonably prolonged within the meaning of article 5, paragraph 2 (b) of the Optional Protocol. He argues that there could be no doubt about his person and status, since he had lawfully lived and worked in France since 1959, he had no brothers and he did not know of any person having his name. He added that there were approximately 1 million individuals with his family name in West Africa. With regard to the procedure for the restoration of French nationality (art. 153 of the Nationality Code), he argued that he had never applied to the competent minister nor initiated proceedings before the administrative tribunals for the simple reason that he was French and had always been French. In particular, he denied that on 2 June 1984 he had written to the President of the French Republic "for the restoration of his French nationality" (see para. 4.5). He had written a letter merely to request due process of law in his case.

5.4 Regarding his detention, the author reiterated that in 1979 he had been obliged to return his national identity card. He stated that at that time he had become afraid that he might be dismissed from his job at Air France because of lack of legal documents. Believing that his situation was precarious, he had felt that he had no choice but to agree, when approached in the presence of his supervisor, to be involved in drug trafficking. That had brought about his arrest in March 1980. He alleged discrimination because his supervisor, a white man, had never been tried while he himself and three other black colleagues had been sentenced to several years of imprisonment. He mentioned that he had been sentenced by a French tribunal as "French" and that during his trial for drug trafficking the question of his nationality had not been put into question. However, subsequently - as shown in a copy of a letter dated, it appears, in June 1983, addressed by the Préfecture des Yvelines (Foreigners Department) to the Director of the Poissy prison - the prison authorities were informed that H.S. "who has declared that he is a French national is in fact Mauritanian" and that the criminal record of this "foreigner" should be forwarded to the Préfecture.

5.5 Regarding his family, the author enclosed copies of birth certificates of his six children (one born in Mali, the others in France). It appears that he has three wives (two from Mali, one from Senegal). He submitted copies of certificates of French nationality regarding three of his children. His wife, M. M., mother of

these three children, was allowed, in January 1985, to stay in France, but according to the author, she is not allowed to work or to receive social security allowances. He recalled that in 1983 she had been requested to leave France and enclosed a copy of a letter dated 18 November 1983 from the Préfecture de Police to that effect.

6. At the twenty-fifth session of the Human Rights Committee in July 1985, the State party was requested to submit further information concerning the author's legal situation and, in particular, the State party was asked to indicate when a final decision concerning the author's nationality might be expected, if he pursued the matter in a timely fashion. At the same time, the author was requested to specify which provisions of the Covenant had allegedly been violated in his case.

7.1 By a further letter dated 20 August 1985, the author claimed to be a victim of violations of the following provisions of the International Covenant on Civil and Political Rights: articles 2, paragraphs 1 and 3 (b); 5, paragraph 2; 7; 9, paragraph 4; 15, paragraph 1, 16; 17, paragraphs 1 and 2; 23; 24 and 26. He offered the following clarifications in substantiation of his claims:

(a) That articles 2, paragraph 3 (b), 9, paragraph 4, and 16 had been violated because a complaint which he had lodged against two judges of the Bobigny jurisdiction in February 1985, for allegedly acting against his interests and rights, had not been properly considered;

(b) That articles 7, 9, paragraph 4, and 15, paragraph 1, had been violated because he had been allegedly unjustly convicted and sentenced to seven years of imprisonment in 1981 and because the French authorities, in general, and the judges, in particular, were bent on harming him;

(c) That articles 2, paragraph 1, 5, paragraph 2, 17, 23, 24 and 26 had been violated because he has suffered discrimination in the sense that, despite all his efforts, the case concerning his nationality has been pending before the courts since 1979 and because his honour and reputation had been undermined, his family had not received social security allowances and his children had been deprived of proper education.

7.2 By a further letter dated 21 November 1985, the author transmitted to the Human Rights Committee a copy of submissions dated 15 and 23 October 1985 from his lawyer, Maître Tourrette, to the Tribunal de grande instance of Bobigny. In his submissions, the lawyer, after a lengthy description of his client's case, requested that the court:

(a) Take note that his client had proven that he was the H.S. born in 1944 and present in France before 28 November 1960, the date when Mauritania had acceded to independence;

(b) State that H.S., born in 1944, orphaned in 1959, the date of his arrival in France, retained nationality by filiation and also because of his presence on the territory in the Republic of France prior to the independence of Mauritania;

(c) Recognize that H.S. had possessed French status for more than 10 years. He considered it of lesser importance that, if the Court considered the application to be insufficiently well-founded, it should order any additional information or any hearing of witnesses ready to furnish information both on the family of H.S. and his presence in France before the independence of Mauritania.

8.1 By way of additional observations, submitted under cover of a letter from the Permanent Representative of France to the United Nations dated 2 December 1985, the State party noted that, in the legal proceedings instituted before the Tribunal de grande instance of Bobigny (Court of Major Jurisdiction) by the author with a view to securing recognition of his French nationality, he had recently changed his lawyer once again. He had also applied for full legal aid, which had been granted to him. The State party confirmed that Maître Tourrette, the author's new lawyer, had made his written submission on 23 October 1985, and it stated that the pre-trial judge at Bobigny had been obliged to refer the papers in the case for final consideration on 4 December 1985. The State party added that following this hearing, the case could be brought before the Tribunal on 19 December 1985 (see para. 8.7).

8.2 The State party reiterated that the prolongation of time-limits continued to be, as was the case earlier, the responsibility of the author and that he had not exhausted all the remedies available under domestic law. For the State party it seemed obvious that his communication ought to be rejected in accordance with the provisions of article 5, paragraph 2 (b), of the Optional Protocol.

8.3 The State party observed that the author, in his further letter of 20 August 1985 (see para. 7.1), had referred to proceedings instituted by himself after he had submitted his communication relating to the question of his nationality to the Human Rights Committee and it stated that those proceedings concerned other issues than that of his nationality. It further stated that the proceedings consisted of an interim relief procedure instituted following imprisonment for non-payment of a customs fine and of complaints filed against judges of the Tribunal de grande instance of Bobigny. Those proceedings, according to the State party, could be summarized as follows:

"(a) The proceedings concerning imprisonment for debt

"On 15 July 1985, [H.S.] made an application to the President of the Tribunal de grande instance of Bobigny challenging the imprisonment for debt.

"On 31 July 1985, the President issued an interim relief order referring the case to the competent criminal court for a final decision.

"On 13 September 1985, the order was served on him by a bailiff.

"On 30 August 1985, a declaration of lack of jurisdiction was issued, after the author had made a further application to the President of the Tribunal which virtually repeated the arguments adduced in his application of 15 July 1985.

"In conclusion, since the Customs Administration is currently considering a settlement with [H.S.], he might be released.

"(b) Complaints against judges

"On 27 March 1985, [H.S.] filed a complaint against the senior examining magistrate of Bobigny together with a proposed civil action for damages, couched in terms that did not specify the precise nature of the grievances he intended to develop and that he refused to clarify. The Public Prosecutor of Bobigny nevertheless made an application to the Criminal Chamber of the Cour de cassation for a court to be appointed to investigate the matter, since the

Bobigny tribunal did not have jurisdiction to investigate a case against one of its own judges.

"On 3 August 1985, the Cour de cassation made an order stating that there was no ground for appointing such a court, since it was not in a position to determine whether one or several persons were liable to be charged.

"H.S. was notified of this decision on 24 September 1985.

"On 6 October 1985, [H.S.] made further complaints to the senior examining magistrate of the Tribunal de grande instance of Bobigny concerning one of the examining magistrates of that court. The latter magistrate had on 29 March 1980 charged [H.S.] with breaking the law on narcotics and smuggling in contraband goods, then ordered that he should be detained provisionally. On 10 February 1981, he had referred him, with three co-accused, to the Correctional Court to be tried on those above-mentioned counts."

8.4 With regard to the author's allegations that his family had not received social security allowances, the State party observed that his children had been taken into care by the departmental Social Assistance Office of Bobigny and placed in a home, their mother being of no fixed abode; that Act No. 75-551 of 2 June 1975 protected the families of prisoners in respect of sickness benefits and maternity and that thus far H.S.'s wife had not applied to the Caisse primaire d'assurance maladie for social benefits. The State party further observed that:

"All these grievances thus invoked by the applicant are not only tardy, but do not fall within the scope of the consideration of this communication, which is concerned solely with existing legal and administrative procedures relating to the question of his nationality. They should therefore be kept separate."

8.5 With regard to the alleged violations of articles 7 and 17 of the Covenant, the State party noted that the author had offered no justification in support of his allegations. It further noted that it failed to see how the author could have been subjected to inhuman and degrading treatment or subjected to attacks on his honour and reputation in connection with the legal proceedings before the Tribunal de grande instance of Bobigny, the purpose of which was to resolve the complex legal problem of his nationality and to do so at his own request. In alleging violations of articles 7 and 17 of the Covenant in this respect, the State party affirmed, he was in error.

8.6 Finally, the State party emphasized that, contrary to what the author would appear to maintain, no provision of the International Covenant on Civil and Political Rights obliged a State to confer nationality on individuals who applied for it. It reiterated that the right of every State to determine who were its nationals so far as its international obligations were concerned was an uncontested principle of public international law.

8.7 By a letter dated 28 March 1986, the author informed the Committee that the Tribunal de grande instance of Bobigny had handed down a decision in the case on 13 March 1986, denying him recognition of French nationality; that he had filed an appeal against that decision and that he intended, as a last resort, to bring his case before the Cour de cassation, if so warranted.

9.1 Before proceeding to the merits of the case, the Committee must determine whether the same matter was being examined under another procedure of international investigation or settlement. There is no indication that that is the case. The Committee must also determine whether the communication fulfils other admissibility criteria under the Optional Protocol, including the condition relating to exhaustion of domestic remedies, set out in article 5, paragraph 2 (b), of the Optional Protocol. In this connection, the Committee has endeavoured to elicit from the State party clarifications regarding the apparent prolonged delays in the court proceedings related to the question of the author's nationality.

9.2 The Committee notes that the State party has maintained that the inquiries that were conducted during the various proceedings revealed that there were doubts not only as to the author's civil status (date and place of birth and parentage), but also with regard to his actual identity in relation to other individuals having the same name and that these questions had of necessity to be settled before a decision could be taken in respect of the author's nationality (see para. 4.4). The Committee further notes the State party's assertion that the author has not exhausted all the domestic remedies available before the competent French administrative and judicial authorities, not only with regard to the issuing of a certificate of French nationality by the juge d'instance (art. 149), but also with regard to the procedure for the restoration of French nationality (art. 153 of the Nationality Code) (see para. 4.7).

9.3 The Committee observes that the present case concerns solely Mr. H.S.'s efforts to have his nationality, as that of a French citizen, recognized anew by the French authorities. H.S. maintains that his nationality was not in dispute when he entered France. Later, on 23 March 1976, the Ministry of Justice made it known that H.S. should be regarded as a foreigner. He was required to surrender two certificates of French nationality, issued to him in 1967 and 1973, respectively, and to hand in his national identity card. After unsuccessful attempts to persuade the Ministry of Justice to "restore" his French nationality and to obtain a new "certificate of nationality" from the competent judge, H.S., in Luquat 1979, applied to the Tribunal de grande instance of Bobigny for "recognition" of his French nationality. Upon completion, those proceedings are appealable, first, to the Cour d'appel and, secondly, to the Cour de cassation.

9.4 The Committee is aware that the proceedings before the Tribunal de grande instance of Bobigny lasted for more than six and a half years. However, the Committee finds that the delays in the proceedings in 1984 and 1985 were caused by the author himself. For that reason the Committee is unable to conclude that the domestic remedies, which, according to both parties, are in progress, have been unduly prolonged in a manner that would exempt the author from exhausting them under article 5, paragraph 2 (b), of the Optional Protocol. a/

9.5 In the light of the observations set out in paragraphs 9.3 and 9.4 above, the Committee is obliged to conclude that, even assuming that the facts of the case might have raised issues under the Covenant, the requirement of exhaustion of domestic remedies, under article 5, paragraph 2 (b), of the Optional Protocol, had not been met by the author at the time of the submission of the communication in September 1984 and that this requirement has still not been met.

9.6 U.S. has introduced other issues in the case, mostly after the communication was transmitted to the State party for observations on the question of admissibility. These issues are either unsubstantiated or fall outside the scope of the International Covenant on Civil and Political Rights and will, therefore, not be examined by the Committee.

10. The Human Rights Committee therefore decides:

1. That the communication is inadmissible;
2. That the decision shall be communicated to the author and to the State party.

Notes

a/ The Committee notes that although there is agreement between the parties that the court proceedings for the "recognition" of the author's nationality were initiated in 1979 and are still in progress, the parties do not agree on the question of whether the separate administrative procedure for the "restoration" of the author's nationality was invoked by him in 1984.

List of Committee documents issued during the reporting periodA. Twenty-sixth session

- CCPR/C/32/Add.8 Second periodic report of Sweden: additional information
- CCPR/C/37/Add.2 Second periodic report of the Mongolian People's Republic
- CCPR/C/41 Provisional agenda and annotations: note by the Secretary-General
- CCPR/C/42 Consideration of reports submitted by States parties under article 40 of the Covenant: second periodic reports of States parties due in 1986: note by the Secretary-General
- CCPR/C/SR.625-649
and corrigendum Summary records of the twenty-sixth session

B. Twenty-seventh session

- CCPR/C/2/Add.9 Reservations, declarations, notifications and communications relating to the International Covenant on Civil and Political Rights and the Optional Protocol thereto: note by the Secretary-General
- CCPR/C/28/Add.5/Rev.1 Second periodic report of Tunisia
- CCPR/C/28/Add.6 and
Corr. 1 Second periodic report of the Federal Republic of Germany
- CCPR/C/28/Add.7 Second periodic report of Czechoslovakia
- CCPR/C/28/Add.8 Second periodic report of Ecuador
- CCPR/C/32/Add.9 Second periodic report of the Polish People's Republic
- CCPR/C/32/Add.10 Second periodic report of Romania
- CCPR/C/36/Add.2 Initial report of the People's Republic of the Congo
- CCPR/C/37/Add.2/Corr.1-2 Second periodic report of the Mongolian People's Republic
- CCPR/C/43 Provisional agenda and annotations: note by the Secretary-General
- CCPR/C/SR.650-675 and
corrigendum Summary records of the twenty-seventh session

C. Twenty-eighth session

CCPR/C/32/Add.11 Second periodic report of Finland: additional information

CCPR/C/32/Add.12 Second periodic report of Sweden: additional information

CCPR/C/37/Add.3 Second periodic report of Iraq

CCPR/C/44 Provisional agenda and annotations: note by the
Secretary-General

CCPR/C/SR.676-698
and corrigendum Summary records of the twenty-eighth session

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