

**REPORT
OF THE
HUMAN RIGHTS COMMITTEE**

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-SECOND SESSION

SUPPLEMENT No. 40 (A/42/40)



UNITED NATIONS

New York, 1987

NOTE

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

[28 August 1987]

CONTENTS

<u>Chapter</u>	<u>Paragraphs</u>	<u>Page</u>
I. ORGANIZATIONAL AND OTHER MATTERS	1 - 25	1
A. States parties to the Covenant	1 - 3	1
B. Sessions and agendas	4 - 5	1
C. Membership and attendance	6 - 8	
D. Solemn declarations	9	2
E. Election of officers	10 - 11	2
F. Working groups	12 - 14	2
G. Miscellaneous	15 - 24	3
H. Adoption of the report	25	5
II. ACTION BY THE GENERAL ASSEMBLY ON THE ANNUAL REPORT SUBMITTED BY THE COMMITTEE UNDER ARTICLE 45 OF THE COVENANT	26 - 32	6
III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT	33 - 390	8
A. Submission of reports	33 - 51	8
B. Consideration of reports	52 - 390	10
1. Second periodic report	53	11
2. States parties	54 - 390	11
Poland	55 - 104	11
Tunisia	105 - 148	25
El Salvador	149 - 180	40
Senegal	181 - 223	46
Congo	224 - 255	59
Zaire	256 - 293	65

CONTENTS (continued)

<u>Chapter</u>	<u>Paragraphs</u>	<u>Page</u>
Romania	294 - 345	74
Iraq	346 - 390	86
IV. GENERAL COMMENTS OF THE COMMITTEE	391 - 392	103
A. General	391	103
B. Work on general comments	392	103
V. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL	393 - 410	104
A. Progress of work	394 - 396	104
B. Issues considered by the Committee	397 - 410	105
1. Procedural issues	399 - 405	105
2. Substantive issues	406 - 410	107

Annexes

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 24 JULY 1987	111
A. States parties to the International Covenant on Civil and Political Rights (86)	111
B. States parties to the Optional Protocol (38)	114
C. States which have made the declaration under article 41 of the Covenant (21)	115
II. MEMBERSHIP OF THE HUMAN RIGHTS COMMITTEE, 1987-1988	116
III. AGENDAS OF THE TWENTY-NINTH AND THIRTIETH SESSIONS OF THE HUMAN RIGHTS COMMITTEE	117
IV. SUBMISSION OF REPORTS AND ADDITIONAL INFORMATION BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT DURING THE PERIOD UNDER REVIEW	118
A. Initial reports	118
B. Second periodic reports of States parties due in 1983	119
C. Second periodic reports of States parties due in 1984	120
D. Second periodic reports of States parties due in 1985	121

CONTENTS (continued)

	<u>Page</u>
E. Second periodic reports of States parties due in 1986	122
F. Second periodic reports of States parties due in 1987 (within the period under review)	122
V. STATUS OF REPORTS CONSIDERED DURING THE PERIOD UNDER REVIEW AND OF REPORTS STILL PENDING BEFORE THE COMMITTEE	124
A. Initial reports	124
B. Second periodic reports	124
C. Additional information submitted subsequent to examination of initial reports by the Committee	125
D. Additional information submitted subsequent to examination of second periodic reports by the Committee	125
VI. STATEMENT ON THE SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION ADOPTED BY THE COMMITTEE AT ITS 725TH MEETING, ON 8 APRIL 1987	126
VII. LETTERS FROM THE CHAIRMAN OF THE COMMITTEE CONCERNING OVERDUE REPORTS	128
A. Letter dated 7 April 1987 from the Chairman of the Committee to the Ministers for Foreign Affairs of States parties whose initial reports were overdue	128
B. Letter dated 24 July 1987 from the Chairman of the Committee to the Ministers for Foreign Affairs of States parties whose second periodic reports had been overdue since 1983	128
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	130
A. Communication No. 155/1983, Eric Hammel v. Madagascar (Views adopted on 3 April 1987 at the twenty-ninth session)	130
B. Communication No. 172/1984, S. W. M. Broeks v. the Netherlands (Views adopted on 9 April 1987 at the twenty-ninth session)	139
C. Communication No. 180/1984, L. G. Danning v. the Netherlands (Views adopted on 9 April 1987 at the twenty-ninth session)	151
D. Communication No. 182/1984, F. H. Zwaan-de Vries v. the Netherlands (Views adopted on 9 April 1987 at the twenty-ninth session)	160
E. Communication No. 198/1985, R. D. Stalla Costa v. Uruguay (Views adopted on 9 April 1987 at the thirtieth session)	170

CONTENTS (continued)

	<u>Page</u>
IX. DECISIONS OF THE HUMAN RIGHTS COMMITTEE DECLARING COMMUNICATIONS INADMISSIBLE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS	174
A. Communication No. 192/1985, S. H. B. v. Canada (Decision of 24 March 1987, adopted at the twenty-ninth session) .	174
B. Communication No. 209/1986, F. G. G. v. the Netherlands (Decision of 25 March 1987, adopted at the twenty-ninth session) .	180
C. Communication No. 217/1986, H. v. d. P. v. the Netherlands (Decision of 8 April, 1987, adopted at the twenty-ninth session) .	185
X. LIST OF COMMITTEE DOCUMENTS ISSUED DURING THE REPORTING PERIOD	187
A. Twenty-ninth session	187
B. Thirtieth session	187

I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Covenant

1. As at 24 July 1987, the closing date of the thirtieth session of the Human Rights Committee, there were 86 States parties to the International Covenant on Civil and Political Rights and 38 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 24 July 1987, 21 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 that 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 document CCPR/C/2/Rev.1.

B. Sessions and agendas

4. Because of the financial crisis of the United Nations, the Human Rights Committee was obliged to cancel the session scheduled to be held from 20 October to 7 November 1986 and therefore has held only two, instead of the customary three, sessions since the adoption of its last annual report. The work of the Committee suffered some regrettable delays as a result. The twenty-ninth session (702nd to 729th meetings) was held from 23 March to 10 April 1987 and the thirtieth session (730th to 757th meetings) from 6 to 24 July 1987. Although the Committee's spring session is usually held at United Nations Headquarters, New York, the Committee agreed, in view of the financial crisis, that the venue of its twenty-ninth session should be changed to the United Nations Office at Geneva. The thirtieth session was also held at Geneva.

5. At the 753rd meeting, members of the Committee recalled that 10 years had passed since the Committee had begun its work. They noted with appreciation that the Committee's efforts during that period to fulfil its obligations under the Covenant had met with the approval of the General Assembly and other organs of the United Nations. In their view, the accomplishment of the Committee's tasks to date was the result of the general support of States parties to the Covenant, the constructive approach of the entire membership, including the effective contributions made by former members, as well as the assistance provided by the staff of the Centre for Human Rights.

C. Membership and attendance

6. At the 9th meeting of States parties, held at United Nations Headquarters, New York, on 12 September 1986, nine members of the Committee were elected, in accordance with articles 28 to 32 of the Covenant, to replace those whose terms of

office were to expire on 31 December 1986. The following members were elected for the first time: Mr. Nisuke Ando (Japan), Miss Christine Chanet (France), Mr. Omran El-Shafei (Egypt), Mr. Joseph A. Mommersteeg (Netherlands) and Mr. Bertil Wennergren (Sweden). Messrs. Cooray, Dimitrijevic, Ndiaye and Prado Vallejo, whose terms of office were to expire on 31 December 1986, were re-elected. A list of the members of the Committee in 1987 is given in annex II.

7. At its 729th meeting, the Committee expressed its appreciation to former members, some of whom had been on the Committee since its inception, for the great dedication and competence with which they had discharged their functions and for their invaluable contribution to the work of the Committee.

8. All the members attended the twenty-ninth and thirtieth sessions.

D. Solemn declarations

9. At the 702nd meeting, twenty-ninth session, members of the Committee who were elected or re-elected at the 9th meeting of States parties to the Covenant made a solemn declaration, in accordance with article 38 of the Covenant, before assuming their functions.

E. Election of officers

10. At its 702nd meeting, held on 23 March 1987, the Committee elected the following officers for a term of two years in accordance with article 39, paragraph 1, of the Covenant:

Chairman: Mr. Julio Prado Vallejo

Vice-Chairmen: Mr. Joseph A. L. Cooray
Mr. Birame Ndiaye
Mr. Fausto Pocar

Rapporteur: Mr. Vojin Dimitrijevic

11. The Committee expressed its deep appreciation to Mr. Andreas Mavrommatis, the outgoing Chairman, for his leadership and outstanding contributions during the Committee's first 10 years of existence, which had been vital to the Committee's successful development and to ensuring the proper discharge of its mandate.

F. Working groups

12. As a temporary economy measure, the Committee decided that, instead of the customary two pre-sessional working groups, only one should be established, in accordance with rules 62 and 89 of its provisional rules of procedure, to meet prior to the twenty-ninth and thirtieth sessions.

13. The Working Group was entrusted with the tasks of making recommendations to the Committee regarding communications under the Optional Protocol, preparing concise lists of issues or topics concerning second periodic reports scheduled for consideration at the Committee's twenty-ninth and thirtieth sessions, and

considering any draft general comments that might be put before it. At the twenty-ninth session, the Working Group's members were Mrs. Higgins and Messrs. Movchan, Prado Vallejo and Wako. The Working Group met at the United Nations Office at Geneva from 16 to 20 March 1987. Mr. Prado Vallejo was elected Chairman/Rapporteur. At the thirtieth session the Working Group was composed of Messrs. Cooray, Dimitrijevic, El-Shafei, Pocar and Prado Vallejo. It met at the United Nations Office at Geneva from 29 June to 3 July 1987. Mr. Pocar was elected Chairman/Rapporteur for matters relating to communications and Mr. Cooray for those relating to article 40 of the Covenant.

14. In addition, in view of the cancellation of the Committee's fall session and the need to deal on an urgent basis with certain communications received under the Optional Protocol, a Special Working Group, consisting of the then Chairman of the Committee, Mr. Mavrommatis, and Messrs. Graefrath and Pocar, met at the United Nations Office at Geneva from 8 to 10 December 1986.

G. Miscellaneous

Twenty-ninth session

15. The Assistant Secretary-General for Human Rights informed the Committee of the General Assembly's special plenary meeting, held on 3 November 1986, to commemorate the twentieth anniversary of the adoption of the International Covenants on Human Rights. He conveyed to the Committee the laudatory comments made by the Secretary-General on that occasion regarding the Committee's pioneering role in opening a new path in international co-operation on behalf of human rights and regarding its significant contributions to the further elaboration of international human rights law. He noted that at its forty-third session the Commission on Human Rights had also expressed satisfaction with the Committee's work and had particularly welcomed its efforts to develop uniform standards for implementing the provisions of the Covenant.

16. The Assistant Secretary-General drew attention to the increasing importance of providing Governments with advisory services and technical assistance in the field of human rights to facilitate their efforts to implement international human rights norms. Whereas advisory services had hitherto been conceived as being mostly of a general or promotional character, he noted that experience had revealed an acute need for a more practical, action-oriented approach. Against that background, he informed the Committee of the adoption by the Commission on Human Rights at its forty-third session of resolution 1987/38, in which the Commission had requested the Secretary-General "to establish and administer in accordance with the Financial Regulations and Rules of the United Nations a voluntary fund for advisory services and technical assistance in the field of human rights". In that resolution the Commission emphasized that the objective of such a voluntary fund would be the provision of "additional financial support for practical activities focused on the implementation of international conventions and other international instruments on human rights" and authorized the Secretary-General to receive and solicit voluntary contributions to the fund for such purposes from Governments, intergovernmental and non-governmental organizations and individuals. The Committee took note with satisfaction of the foregoing information, as well as of Commission resolution 1987/37, in which the Commission invited the Committee "to make suggestions and proposals for the implementation of advisory services".

17. The Assistant Secretary-General further informed the Committee that two additional pilot training programmes dealing with the preparation and submission of reports by States parties to the various international human rights conventions, sponsored by the Centre for Human Rights and the United Nations Institute for Training and Research (UNITAR), had been held since the Committee's twenty-eighth session: a course for francophone West African countries held at Dakar in September/October 1986, in co-operation with the Institute for Human Rights and Peace of the University of Dakar and the Université des Mutants de Gorée, and a course held at Manila in December 1986, in collaboration with the University of Manila Law Centre and the Presidential Commission on Human Rights, for the benefit of countries in South-East Asia and the Pacific - both with the participation of present or former members of the Committee.

18. In addition, the Assistant Secretary-General for Human Rights informed the Committee of General Assembly resolution 41/94 of 4 December 1986, concerning the Second Decade to Combat Racism and Racial Discrimination, in which the Assembly requested the Secretary-General, inter alia, to submit to the Economic and Social Council a report outlining a proposed plan of activities for the remaining years of the Decade: 1990-1993. A statement of the Committee's views, adopted in response to the Secretary-General's request, is contained in annex VI.

19. The Committee also noted with satisfaction that the first session of the newly established Committee on Economic, Social and Cultural Rights had been held from 9 to 27 March 1987.

20. The Committee expressed its great appreciation to Mr. Kurt Herndl, the departing Assistant Secretary-General for Human Rights, for his unfailing interest in the Committee's work and for the effective support and assistance he had provided to the Committee to help it carry out its tasks.

Thirtieth session

21. The Under-Secretary-General for Human Rights, who was addressing the Committee for the first time in his new capacity, assured the Committee of the Secretary-General's deep commitment to the promotion of universal respect for human rights, as well as of his own determination to do everything possible to strengthen the efficiency of the Centre for Human Rights. Recalling that progress in the field of human rights had been seen from the inception of the United Nations as an important contribution to the maintenance and strengthening of peace, he paid tribute to the Committee's valuable efforts over the past 10 years to encourage the protection of fundamental civil and political rights. Pointing to the important role of the media, both in providing information about human rights and in helping to create a constructive world public opinion for the cause of human rights, he announced his intention to establish a section for external relations in the Centre, one of whose duties would be to foster public awareness of the Committee's activities. He also stated that he intended to strengthen and further develop contacts with non-governmental organizations, universities and other academic institutions, as well as to encourage the development of positive forms of assistance to Governments, including technical assistance and advisory services designed to help them to improve their national human rights protection systems and, where necessary, to establish an effective national human rights infrastructure.

22. In that connection the Under-Secretary-General for Human Rights noted that, pursuant to Commission on Human Rights resolution 1987/38, the Secretary-General had set up the voluntary fund for advisory services and technical assistance in the field of human rights and would shortly be inviting contributions to the fund from potential donors, including Member States, intergovernmental organizations and individuals. In addition, he informed the Committee that the Centre would continue its co-operation with UNITAR in carrying out regional training activities designed to assist States parties to meet their reporting obligations under the various international human rights instruments, and that he would also be recommending to the Secretary-General that a meeting of the Chairmen of the various supervisory bodies should be convened during the second half of 1988 to discuss problems relating to the reporting obligations of States parties under international human rights instruments.

23. The Committee took note with satisfaction of the entry into force on 26 June 1987 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46, annex, of 10 December 1984) and the establishment under that Convention of a 10-member expert committee to monitor implementation of the Convention and to receive communications. In connection with the election of the members of that Committee by States parties, which was to take place prior to 26 December 1987, the Committee also noted the provision in article 17, paragraph 2, of the Convention to the effect that "States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture".

24. The Committee also took note of the adoption by the Economic and Social Council, of resolution 1987/4 of 26 May 1987, in which, inter alia, the Council welcomed "the continuing efforts of the Human Rights Committee to strive for uniform standards in the implementation of the International Covenant on Civil and Political Rights" and appealed "to other bodies dealing with similar questions of human rights to respect those uniform standards, as expressed in the general comments of the Human Rights Committee". It also noted with satisfaction that in paragraph 14 of that resolution the Council had requested the Secretary-General "to ensure that the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, which have important and specific tasks entrusted to them, are provided with the necessary sessions and summary records".

H. Adoption of the report

25. At its 755th to 757th meetings, held on 23 and 24 July 1987, the Committee considered the draft of its eleventh annual report covering its activities at the twenty-ninth and thirtieth sessions, held in 1987. 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

26. At its 725th meeting, held on 8 April 1987, the Committee considered that item in the light of the relevant summary records of the Third Committee and of General Assembly resolutions 41/119, 41/120 and 41/121 of 4 December 1986 and 41/32 of 3 November 1986.

27. The Committee noted with gratification that the General Assembly at its forty-first session had given extensive consideration to matters relating to the Committee's activities and had adopted a number of decisions supporting the Committee's work and its approach to various problems, including those stemming from the United Nations financial crisis. The explicit support of the Third Committee for maintaining the normal pattern of the Committee's meetings and for avoiding action that could adversely affect the proper discharge of the Committee's functions was particularly appreciated by the members.

28. The Committee discussed the relevant resolutions adopted by the General Assembly at its forty-first session. With regard to resolution 41/119, members took note with satisfaction of various provisions addressed to States parties to the International Covenants on Human Rights, particularly the emphasis placed by the Assembly on the importance of strict compliance by States parties with their obligations, including the observance of the agreed conditions and procedures for derogation, and of avoiding the erosion of human rights by derogation. They also welcomed the provisions encouraging further progress with respect to the publication in bound volumes of the Committee's official public records and giving more publicity to the Committee's work. In that connection, it was noted that the publication of a first volume of selected decisions by the Committee under the Optional Protocol had already been of great value to government departments, researchers and the general public and the hope was expressed that work on such essential publications would continue in the future.

29. Members of the Committee also expressed interest in the General Assembly's constructive approach in its resolution 41/120 to international standard setting in the field of human rights. In the light of the proliferation of international instruments relating to human rights, some members considered the guidelines set out in paragraph 4 of that resolution particularly helpful. Satisfaction was also expressed over the acknowledgement, in that resolution and similar earlier resolutions, that United Nations human rights instruments had added a new dimension to international law and it was noted that the human rights institutions created under such instruments were now the subject of study in the international law curricula of many universities.

30. With regard to General Assembly resolution 41/121, relating to reporting obligations under United Nations instruments on human rights, members particularly welcomed the emphasis placed on the importance of fulfilling such obligations in a timely manner and of co-operating with the various bodies set up to supervise the implementation of such instruments to make the best use of their meeting time. In discussing some of the points raised in paragraph 4 of the resolution, members observed, *inter alia*, that, while it might not be too difficult to harmonize the reporting guidelines it would not be easy to ensure that that would not result in mere repetition. In addition, it was noted that certain similarities in reporting requirements in areas such as torture, where both the Convention against Torture

and other: Cruel, Inhuman or Degrading Treatment or Punishment and article 7 of the International Covenant on Civil and Political Rights were relevant, might make it difficult to avoid at least some duplication. At the same time, members considered paragraph 6 of the resolution, calling for a meeting in 1988 of the Chairmen of the various supervisory bodies to discuss possible remedies for such problems as proliferation, duplication, delayed submission and periodicity, to be especially important. The Committee agreed that a sessional working group would be established to elaborate practical guidelines and suggestions for use by the Chairman of the Committee when attending such a meeting.

31. The Committee also attributed special importance to paragraph 9 of General Assembly resolution 41/121, in which the Assembly endorsed the Secretary-General's proposals to arrange training courses for regions experiencing serious difficulties in meeting reporting obligations. Members noted in that connection that the training courses of that type already held in Barbados, the Philippines and Senegal had been well attended and that most participants had been persons responsible for drafting national documentation relating to human rights. The Committee, some of whose members had personally participated in the previously held training courses, expressed the hope that measures pursuant to paragraph 9 of the resolution would be undertaken in the near future and stressed its readiness to co-operate fully in such endeavours.

32. The Committee also took note with great satisfaction of General Assembly resolution 41/32 concerning the twentieth anniversary of the adoption of the International Covenants on Human Rights.

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

A. Submission of reports

33. 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.

34. 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 content of initial reports. 1/

35. 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. 2/ 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. 3/

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

37. The action taken, information received and relevant issues placed before the Committee during the reporting period (twenty-ninth and thirtieth sessions) are summarized in paragraphs 38 to 51 below.

Twenty-ninth session

38. The problem of overdue reports, which has been a matter of growing concern to the Committee, was discussed at considerable length at its 704th meeting. The Committee noted in that connection that less than half of the initial reports due for submission during the past five years (7 out of 18) had actually been submitted, and that only about 30 per cent of the second periodic reports that had become due (22 out of 58) had been received. It was further noted that third periodic reports would be due in 1988 from a number of States parties that had not yet submitted their second periodic reports.

39. In discussing the reasons for the failure to comply with obligations relating to both initial and periodic reports, members noted that the circumstances differed from country to country, but that, in general, non-submission or late submission of reports was not due to bad faith.

40. In connection with initial reports, the Committee emphasized that the submission of such reports was an international legal obligation of States parties under article 40, paragraph 1 (a), of the Covenant. It was further noted that the problem of overdue reports was not confined to the Committee but also affected various other human rights supervisory bodies and that the General Assembly had been discussing the matter since 1984. The Committee's response to the General Assembly's most recent overall approach to assisting States parties in dealing with difficulties relating to reporting, as reflected in General Assembly resolution 41/121, is referred to in paragraphs 30 and 31.

41. With reference to the specific problems confronting the Committee, members proposed a number of possible remedies. Regarding overdue initial reports, it was agreed that the Chairman should communicate directly, on behalf of the Committee, with the Ministers for Foreign Affairs of the countries concerned, drawing attention to the basic legal obligation of States parties under article 40 of the Covenant and to the important part that reporting played in improving the implementation of the provisions of the Covenant. A letter along those lines was sent to States parties as indicated in paragraph 45 below. (The text of the letter is reproduced in annex VII A.) There was also general agreement within the Committee that, where possible, personal contacts by members of the Committee in their respective regions should be pursued to encourage the early submission of both initial and second periodic reports that were overdue. Some members considered that bilateral contacts could also be very useful. It was further suggested that the Chairman should make himself available, in New York or in Geneva, for contacts with representatives of the States parties concerned.

42. Members also noted with satisfaction that the Commission on Human Rights, at its forty-third session, had endorsed the use of technical assistance and advisory services, including training seminars of the type that had already been organized by the Centre for Human Rights in co-operation with UNITAR, to assist States parties to human rights instruments in meeting their reporting obligations.

43. The Committee considered the desirability and usefulness of bringing the situation relating to overdue reports to the attention of the States parties to the Covenant at their tenth meeting, to be held in the fall of 1988. However, no conclusion was reached on the matter.

44. With regard to reports submitted since the twenty-eighth session, the Committee was informed that the initial report of Zaïre and the second periodic report of Colombia had been received.

45. As discussed in paragraph 41 above, a special letter from the Chairman to the Ministers for Foreign Affairs of States parties whose initial reports had been overdue for more than a year was sent to Belgium, Bolivia, Cameroon, the Central African Republic, Gabon, Saint Vincent and the Grenadines, Togo, Viet Nam and Zambia. In addition, the Committee decided to send a first reminder to the Government of San Marino, whose initial report was due on 17 January 1987, and to send a special reminder to the Government of Guinea, whose new initial report had been due on 31 October 1985. The Committee also decided to send reminders to the Governments of the following States parties whose second periodic reports were overdue: Australia, Barbados, Bulgaria, Costa Rica, Cyprus, Dominican Republic, France, Gambia, Guyana, India, Iran (Islamic Republic of), Italy, Kenya, Lebanon, Libyan Arab Jamahiriya, Jamaica, Japan, Jordan, Madagascar, Mali, Mauritius, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Panama, Sri Lanka, Suriname, Syrian Arab Republic, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland (with regard to its dependent territories), United Republic of Tanzania, Uruguay and Venezuela.

Thirtieth session

46. The Committee was informed that Zambia had submitted its initial report and that second periodic reports had been received from Australia, Barbados, France, Portugal, Trinidad and Tobago and Rwanda.

47. At its 733rd meeting, the Committee again discussed the problem of overdue reports, focusing particularly on problems relating to second periodic reports that had been outstanding for several years. The Committee decided to establish an in-session working group to consider various reporting problems and to recommend appropriate measures.

48. The Committee reiterated that its decision on periodicity, as adopted at its thirteenth session, should be adhered to, as a general rule. However, it noted that, where special circumstances so required, the Committee could, at the conclusion of the consideration of a State party's report, take a special decision concerning the date on which the next periodic report of the State party concerned would have to be submitted.

49. Pursuant to the recommendations of the in-session working group, the Committee decided at its 755th meeting that a special letter should be sent by the Chairman to the Islamic Republic of Iran, the Libyan Arab Jamahiriya, Madagascar, Mauritius and Uruguay, whose second periodic reports had been overdue since 1983 and whose third periodic reports would become due, in accordance with the Committee's decision on periodicity, in 1988. (The text of the letter is reproduced in annex VII B.) The Committee also decided that reminders should be sent to Bulgaria, Cyprus, the Syrian Arab Republic and the United Kingdom of Great Britain and Northern Ireland (with regard to its dependent territories), whose second periodic reports had been overdue since 1984. It was further decided that members of the Committee who were in a position to do so should establish personal contacts with representatives of the States parties in their respective regions whose reports had been outstanding since 1983 or 1984.

50. The Committee decided that special reminders should be sent to Lebanon and Panama urging that their overdue second periodic reports should be submitted as rapidly as possible and indicating that the third periodic reports from those States parties would be due in 1988. With respect to the submission of third periodic reports by Ecuador and Zaire, the Committee decided that the date for submission of Ecuador's third periodic report would be reviewed at the conclusion of the consideration of the State party's second periodic report at the Committee's thirty-second session in the spring of 1988 and that the question of the date for submission of Zaire's third periodic report would be decided when Zaire's second periodic report, which was to be submitted by 1 February 1989, was considered.

51. The Committee took note with appreciation of the supplementary information submitted by Finland and Sweden subsequent to the consideration of their second periodic reports.

B. Consideration of reports

52. During its twenty-ninth and thirtieth sessions, the Committee considered the initial reports of the Congo and Zaire, a supplementary report from El Salvador, as well as second periodic reports from Poland, Tunisia, Senegal, Romania and Iraq. The second periodic report of Ecuador was not considered at the Committee's twenty-ninth session as scheduled, because the Government, owing to a recent natural catastrophe, was unable to send a representative to participate in its consideration. The status of reports considered during the period under review and of reports still pending consideration is indicated in annex V below.

1. Second periodic report

53. 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-ninth and thirtieth sessions, with reviewing the reports and information submitted by the Governments of Poland, Tunisia, Senegal, Romania, Iraq and Ecuador (see para. 52) 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 States 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.

2. States parties

54. 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-ninth and thirtieth sessions. These sections are 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 4/ and in the summary records referred to.

Poland

55. The Committee considered the second periodic report of Poland (CCPR/C/32/Add.9 and Add.13) at its 708th to 711th meetings, held on 26 and 27 March 1987 (CCPR/C/SR.708-711).

56. The report was introduced by the representative of the State party, who drew attention to the fact that a far-reaching reconstruction of Poland's legal system had been undertaken since 1980 with a view to bringing it into line with changing political, economic and social relations. Although the reform process was not yet concluded, an essential step forward had already been taken. The representative noted, in that connection, that a number of steps had been taken to complement the existing system of institutional guarantees for the protection of human rights, including the establishment of the Supreme Administrative Court, the Constitutional Court and the Tribunal of State and the enactment of new laws on common courts of law and on the Supreme Court. Positive developments had also taken place in the area of guaranteeing the enjoyment of specific rights or groups of rights, as exemplified by new regulations concerning the exercise of freedom of speech and freedom of the press, which had reduced the scope of limitations on such rights to a minimum. Limitations on the right to travel abroad and to return to the country were also being progressively reduced.

57. As part of the continuing reform process, there was wide-ranging public discussion in Poland of a proposal to establish the office of spokesman for citizens' rights, who would be the equivalent of an ombudsman, and the Sejm was

currently considering a draft law on social consultation and referendum that would enhance the participation of citizens in public affairs.

58. Referring to the period of martial law (13 December 1981-22 July 1983), the representative stressed that Poland had fulfilled all relevant obligations arising under article 4 of the Covenant.

Constitutional and legal framework within which the Covenant is implemented

59. With reference to that issue, members of the Committee wished to receive information about significant changes relevant to the implementation of the Covenant since the previous report, the role of the Patriotic Movement of National Rebirth and its impact, if any, on the implementation of the Covenant, the steps envisaged under the Law of 29 April 1985 for initiating proceedings before the Constitutional Court, and the efforts that had been made to disseminate information about the Covenant. Members also wished to know about any special factors and difficulties affecting the implementation of the Covenant, including in particular those stemming from the period of the state of emergency. In the latter regard, they requested additional information about the circumstances surrounding the imposition of martial law and asked whether any of the powers existing under the state of martial law had been transferred elsewhere - to the judiciary or the police, for example - when martial law was lifted on 22 July 1983. In addition, it was asked whether there was any concrete legislative provision relating to the declaration of martial law and providing for the protection of rights during any future state of emergency.

60. Members also requested further information concerning the Law of 14 July 1983 on the Ministry of Internal Affairs, asking in particular whether the activities and powers conferred were investigative or preventive and whether they could also be applied to acts viewed as posing a threat to state security or to public order that were already fully covered under various articles of the Penal Code. It was also asked whether legal remedy could be sought on the basis of alleged violations of the Covenant that might not be recognized under domestic law. Furthermore, some members requested additional information concerning measures aimed at strengthening the independence of judges, including measures relating to their recruitment, tenure of office and removal, the planned establishment of an office equivalent to that of ombudsman, and the concrete measures taken, as indicated in paragraph 25 of the report (CCPR/C/32/Add.9), to extend civil rights and freedoms.

61. In his reply, the representative of the State party pointed out that the details of significant changes relevant to the implementation of the Covenant had been provided in the report. As indicated, a number of fundamental laws in the field of public administration had been changed, limitations on the enjoyment of certain rights and freedoms had been reduced and guarantees of the enjoyment of other rights had been expanded. The reform of administrative law had taken place at three levels: in the organization of the state administrative apparatus, in connection with rules governing procedure, and through the introduction of judicial controls. In addition, the participation of citizens in public affairs had been expanded through the introduction of self-government in a variety of fields. Regarding the Patriotic Movement of National Rebirth, the representative said that it was an open social and political movement, whose tasks included ensuring the effective participation of citizens in the running of public affairs and maintaining a dialogue with a view to reconciling contradictory trends in Polish society. The Movement was also active in the juridical sphere. It did not possess

any power of authority and carried out its programme exclusively on the basis of the support it received from society at large. The Movement had significantly influenced the development of electoral law, the setting up of the Constitutional Court, the extension of the competence of courts of law and the introduction of self-government. Membership was open to both organizations and individuals, support for the Movement's programme being the sole requirement for membership.

62. Concerning the initiation of proceedings before the Constitutional Court, the representative said that proceedings could be instituted if the matter fell under the general provisions of article 19 (1) of the Law establishing the Court, if the object of the proceedings was appropriate - for example, national security or defence, and if a group of citizens engaged in a given profession or occupation sought court action bearing upon some aspect of their professional activities. Proceedings could also be started on the Court's own initiative. In addition, the Court could be requested to consider the constitutionality of legislative acts or to provide an interpretation of such acts. Regarding special difficulties affecting implementation of the Covenant, the representative referred to a Ministry of Health regulation requiring the admission to the Academy of Medicine of men and women in equal numbers and the problem resulting from the fact that more women than men were passing the qualifying examinations. The legal issue had been settled by the Constitutional Court, which declared the regulation unconstitutional, but the social and professional problem remained. He also stated that, in view of rising crime rates, it had been necessary to pass two new laws to stiffen penal sanctions.

63. On the dissemination of information concerning the Covenant, the representative said that such information had been published in Polish, English and French, had appeared as an annex to the Journal of Laws, and had featured in a pamphlet and a number of monographs as well as in a book on human rights by a leading scholar. Other examples of dissemination of the text were the coverage given to it by the media and legal bodies and its discussion at a special conference convened by the Polish Academy of Sciences in 1986 on the twentieth anniversary of the promulgation of the International Covenants. The contents of the Covenants were also made known in schools and students who chose law as an option in the secondary education syllabus became familiar with all international and regional human rights instruments as part of their international law studies.

64. Concerning the circumstances leading to the imposition of martial law, the representative said that an attempt had been made to give a fairly full account in the report. The period in question had been one of the most difficult experienced by Poland since the Second World War. An appeal by the President of the Council of Ministers for "90 days of public calm" had been followed by widespread unrest: sit-ins in public buildings and what was described in Poland as "strike-terrorism", namely the use of strikes as a part of the political struggle. Whereas up to the conclusion of the Gdansk agreement in August 1980 the demands of workers to correct economic mismanagement had been just, later the idea that Solidarity should be allowed to do whatever it liked by exerting political pressure had gained currency. It had become essential to impose martial law in order to protect the nation's interests and prevent civil war.

65. Responding to other questions raised by members of the Committee, the representative of the State party explained that there was no direct relationship between the lifting of martial law and the Law of 14 July 1983, since the latter did not include regulations in force during the period of martial law. The rights

and duties of officials concerned with security were defined in articles 6 and 7 of the Law of 14 July 1983, the underlying idea of the Law itself being the elimination of previous inconsistencies in the regulations governing direct enforcement measures. Persons of all shades of political opinion were represented on the Consultative Council of the President of the Council of State, including those who did not co-operate with the Patriotic Movement for National Rebirth, the Catholic Church and Solidarity activists. The legislative basis for any future declaration of emergency was contained in a law dated 5 December 1983, which provided that a state of emergency could be declared in the event of natural disaster or an internal threat to the security of the State. Such a declaration could be made by the Council of State or, in urgent cases, by the President or the Council of State, acting on the advice of the Council of Ministers or of the National Defence Board, or on his own initiative.

66. With reference to the possibility of seeking redress for alleged violations of rights covered by the Covenant but not recognized under domestic law, the representative pointed out that the provisions of the Covenant, while not a direct source of law, were included in domestic legislation and provided important guidelines for the interpretation of domestic laws. In a decision relating to the illegal arrest of a citizen, for example, the Supreme Court had cited the Covenant. Citizens who considered that their rights had been violated could have recourse to the civil law courts or to the Supreme Administrative Court. Officials were punishable under the Penal Code if criminal offences were involved. Measures to ensure the independence of the judiciary had already been enacted in the inter-war period. The 1985 law on the organization of the common courts of law reinforced the immunity of the bench. Judges could not be the object of penal or administrative sanctions, although they were subject to professional disciplinary action. In that connection, the role of the two judicial collegiate bodies - the General Assembly and the College of Judges - had been extended, together with that of the colleges of voivodship judges in each province. Judges could be removed from office only in accordance with the law on the organization of the courts. Removal of judges for cause was exceptional - only three judges had been so removed during the period 1982-1985. While the establishment of an office of ombudsman was still at a preliminary stage of consideration, public opinion appeared to favour such a step. The office, if established, would probably be attached to the Sejm, with ombudsmen perhaps being eventually attached to local voivodship courts. The question of the scope of the office was important, and it was clear that, while the social context should be broad, the official concerned should not be overwhelmed by a mass of individual complaints that could be otherwise dealt with. Finally, the representative stated that the report provided ample illustration of how human rights had been expanded in Poland. Other examples included the reduction of passport restrictions and restrictions on the press and the theatre, and increased control and oversight of administrative decisions by the judicial authorities.

Non-discrimination and equality of the sexes

67. With regard to that issue, members of the Committee wished to know whether there was any legal basis for ensuring non-discrimination on grounds of political opinion, in what respects the rights of aliens were restricted as compared with those of citizens, and what actual or planned activities were being undertaken by the Plenipotentiary for Women's Affairs to ensure, in practice, the equality of the sexes.

68. In his reply, the representative of the State party said that there was no discrimination in Poland based on political opinion, nor was there any legal basis for such discrimination. Aliens were accorded the same rights as citizens except in such areas as voting and eligibility for public office. The Office of the Plenipotentiary for Women's Affairs had been created specifically to ensure the real equality of women, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women. A programme aimed at improving the situation of women had also been adopted by the Council of Ministers.

Right to life

69. With reference to that issue, members of the Committee wished to know whether the death penalty had been pronounced since 1980 for any crimes other than those involving homicide. If so, appropriate statistical data were requested. Members also wished to know what courts were empowered to pronounce the death penalty and whether the improper use of force by security personnel or the police had resulted in any loss of life, particularly during the period of martial law and, if so, what measures had been taken to prevent or to punish such abuses.

70. In replying to the questions raised by members of the Committee, the representative explained that the death penalty was an extraordinary measure that could not be resorted to except for the most serious crimes. Under the Penal Code currently in effect only 10 death sentences had been imposed, and during 1980-1986 no such sentences had been pronounced for crimes other than homicide. Military tribunals had imposed the death sentence in nine cases involving treason and espionage, but in eight of those cases the sentence had been pronounced in absentia and in the ninth case it had been commuted to 25 years in prison. Only military and voivodship courts could pronounce the death sentence, which was appealable to the Supreme Court. Police or security forces were authorized to resort to the use of force only in accordance with applicable laws and each case involving loss of life was carefully investigated under the jurisdiction of a prosecutor. Such an investigation had been conducted in the case of Father Popieluszko and had resulted in the conviction of four officials. Such cases were rare but they did occur. The actions of security forces under martial law had resulted in 14 deaths, all of which had been investigated. A total of 983 persons had been injured as a result of rioting, including 814 members of the police.

Liberty and security of person

71. With regard to that issue, members of the Committee requested information on the law and practice relating to detention in institutions other than prisons and regarding the concept of a "warrant charge". They also wished to know how soon after arrest a person could contact a lawyer, how quickly after arrest a detainee's family was informed, whether there were any limits upon the repeated use of permitted 48-hour detention, whether there was a maximum limit on the length of preliminary detention prior or subsequent to court ordered prolongations, what controls were used to ensure that the period of pre-trial detention did not exceed the prescribed limits, whether preliminary detention as practised in Poland was compatible with article 9, paragraph 3, of the Covenant, and how the right of detainees to challenge the lawfulness of their detention before a court, as provided in article 9, paragraph 4, of the Covenant, had been affected by the Law of 10 May 1985 on Special Penal Liability and the Supreme Court resolution of 10 November 1986 concerning preventive detention.

72. Members of the Committee also asked what percentage of persons in preventive detention were ultimately tried and why the repeated extension of the 48-hour maximum limit on detention was still authorized although martial law had been lifted. One member expressed anxiety that the combined effects of the Law of 14 July 1983 and the repeated use of the 48-hour detention procedure gave the State broader powers than under martial law. Noting that the practice of obliging certain persons to perform labour "in the general interest" was found to be inconsistent with the provisions of the Forced Labour Convention, 1930 (No. 29) of the International Labour Organisation, one member requested clarification as to whether such a practice was consistent with article 8, paragraph 3 (c) (iii), of the Covenant.

73. In his reply concerning detention in institutions other than prisons, the representative explained that courts could order alcoholics to undergo treatment at special establishments for up to two years, that drug addicts could be held for treatment for up to two years at the request of their families, that detainees or convicts could be sent to a mental institution for up to six months by a judge or procurator upon the advice of two psychiatrists, and that minors convicted of illegal acts could be detained upon court order in a correctional institution. A "warrant charge" was a judicial procedure to which courts might resort, provided that the circumstances for doing so were appropriate and the guilt of the accused was clearly evident. The only authorized punishments under the procedure were certain restrictions on liberty and fines. Such judgements were subject to appeal, which, if successful, led to the annulment of the warrant charge and the reinstatement of the ordinary procedure.

74. Responding to other questions, the representative explained that detainees could contact a lawyer shortly after being arrested, but rarely did so since they could not be held for more than 48 hours. The Law of 14 July 1983 on the Ministry of Internal Affairs provided that the family of any arrested person and, if requested, also the employer, must be notified without delay. The possibility of repeatedly extending the 48-hour limit on preventive detention was restricted by the requirement that the detention must be justified. Without such justification, the detainee had to be released and could not be rearrested for the same reason. The Law of 14 July 1983 provided that any suspicion regarding the intention of a detainee to commit a crime or disturb public order, if released, must be objective. The maximum period of preventive detention under the powers of the voivodship procurator was three months, extendable in exceptional cases to six months. Only courts could prolong preventive detention beyond six months. All decisions relating to detention could be appealed to the appropriate courts and some 8 per cent of such appeals had been successful. The process of detention was under strict judicial control, particularly with regard to the prolongation of the detention period. Persons awaiting trial were generally not placed in preliminary detention: during the period 1979-1986, 75 to 85 per cent of convicted criminals did not undergo such detention. The Law of 10 May 1985 on special penal responsibility did not affect the right of detainees to challenge the lawfulness of their detention before a court. Any detainee could, at any time, request an end to his detention unless he was charged with serious crimes, such as homicide, rape or armed robbery, which were punishable by more than three years imprisonment, and even in such cases preliminary detention could be waived if it might jeopardize the life or health of the individual concerned or harm his family. The Supreme Court had ruled that any person who had been unjustly arrested had the right to sue for damages before a civil court. With regard to the application of article 8 of the Covenant, the representative stated that the Law of 21 July 1983, relating to

compulsory labour designed to deal with the effects of the socio-economic crisis, had not been in force since 1 January 1986. However, the Law of 26 October 1982, which prescribed measures to be applied to persons who refused to work, was still in effect.

Treatment of prisoners and other detainees

75. With regard to that issue, members of the Committee wished to know the circumstances under which solitary confinement was resorted to during pretrial detention or imprisonment, whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with, and whether the relevant rules and regulations were known to the prisoners and accessible to them. One member requested further information in the latter connection in the light of allegations that such regulations were not made available at some prisons to all prisoners and that prisoners asking to consult them had been punished. Referring to allegations of relatively frequent beatings or mistreatment of persons during interrogation, preventive detention or imprisonment, the same member also asked how many cases involving such abuses had been brought to court. Members of the Committee also requested clarification of the provisions of the Law of 14 July 1983 on the Ministry of Internal Affairs, which authorized the use of force, including firearms, by state organs and asked for additional information regarding the supervision of prisons, including the role of social penitentiary councils and procedures for handling complaints.

76. In his reply, the representative of the State party explained that solitary confinement could be imposed under two circumstances: up to 14 days for attempted escape or repeated violations of prison rules, and from one to six months for grave violations of prison discipline, refusal to work, self-mutilation or inciting or abetting self-injury by other detainees. The latter punishment was not resorted to during preventive detention and must be approved in advance by the prison judge. Such judges, as well as prison procurators, were attached to voivodship courts and their main responsibility was the supervision and control of prisons and the examination of complaints from inmates. Of some 8,200 complaints examined during 1986, 7.4 per cent had been found to be justified. In general, prison personnel carried out their duties appropriately but every case of alleged mistreatment was investigated. During the period 1979-1985, seven prison guards had been dismissed for maltreating prisoners, some of them had also been sentenced to terms in gaol. The United Nations Standard Minimum Rules for the Treatment of Prisoners were generally observed with few exceptions, such as those relating to the isolation of prisoners at night. Prisoners must be informed of relevant regulations, which must be posted. The main tasks of the social penitentiary councils, established in 1981, were examining the reports of prison directors on the activities of their institutions and assisting inmates and their families with various personal problems.

77. The use of force, including firearms, by state organs was regulated under the Law of 14 July 1983, article 8 of which defined the circumstances under which, for example, vehicles might be stopped or clubs, dogs or firearms used. The law prohibited the use of force except in case of necessity.

Right to a fair trial

78. With regard to that issue, members of the Committee wished to receive additional information concerning the organization of the judiciary, particularly the Law of 20 June 1985 on the organization of the common courts of law, legal

guarantees regarding the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal, relevant rules and practices concerning the publicity of trials, the public pronouncement of judgements and the admission of mass media, accelerated court procedures and the extent to which they conformed with article 14, paragraph 3 (b) and (c), of the Covenant and with the Supreme Court judgement of 31 July 1979, the organization and functioning of the bar, and the operation of legal aid or advisory schemes, if any. Members also wished to know whether the judgements of special courts were appealable to the Supreme Court, what conditions governed the appointment of judges by the Council of State and for what period judges were appointed, on what grounds the Ministry of Justice could oppose the admission of lawyers to the bar, whether the interpretations of laws by judges were subordinated to those of the Council of State, how frequently judges had been transferred or demoted during the period covered by the report, and whether trials involving alleged defamation of the State were held in camera.

79. Concerning the practice of accelerated court procedures, one member expressed concern and wished to know whether the relevant criminal investigations were carried out by the police alone, without judicial intervention, whether charges were formulated only verbally, whether the accused had sufficient opportunity to prepare their defence, and whether such procedures were resorted to in political as well as criminal cases.

80. In his reply, the representative of the State party confirmed that appeals against the judgements of the special courts, including the military tribunals, could be brought before the Supreme Court. Indeed, all courts in Poland were subject to the jurisdiction of the Supreme Court, to which questions regarding the interpretation of laws were also submitted. Judges of the Supreme Court were appointed for terms of five years, all other judges were appointed for indefinite terms that, in practice, amounted to appointments for life. Judges were appointed by the Council of State, on the advice of the Ministry of Justice, which was empowered to raise objections to such appointments but did so only infrequently. Regarding admissions to the bar, the Ministry of Justice had raised objections to admission in 15 cases during 1986. The Council of State had the theoretical right to pronounce upon legal interpretations made by the courts, but did not do so in practice. Judges could not be sanctioned by demotion or transfer to inferior jurisdictions, but only by removal. Administrative practices relating to the transfer of judges did not compromise the independence of the judiciary. Trials were held in public when the question of defamation did not arise; trials involving the defamation of the State were also held in public.

81. Responding to questions concerning accelerated court procedures, the representative explained that such procedures were applicable only to cases specifically defined by law and could not be applied to persons detained by decision of the Public Prosecutor or to recidivists. Under the accelerated procedure, persons arrested at the scene of a crime were immediately taken before a court and charged, without any formal inquiry by an investigating magistrate. All relevant evidence had to be submitted by the arresting authority at that time, including statements by witnesses. Accused persons were informed of their right to counsel before their case was considered by the court and the defence had the right to examine the evidence and to challenge its validity. Courts were obliged to assure themselves of the admissibility of such evidence under the provisions of the Code of Criminal Proceedings. Under article 3 (2) of the Code of Criminal Proceedings, accused persons had a right to the presumption of innocence and mere

presence at the scene of a crime could not be adduced as proof of guilt. Their position was therefore no different from that under ordinary proceedings. Appeals against verdicts under the accelerated procedure could be lodged with the voivodship courts.

Freedom of movement and rights of aliens

82. With regard to that issue, members of the Committee requested clarification of the law prohibiting persons from leaving areas to which they had been restricted without police authorization, of the reference, in paragraph 136 of the report (CCPR/C/32/Add.9), to persons deprived of Polish citizenship after 5 May 1956, of the documentation required of passport applicants and of the charges such applicants had to pay. It was also asked whether there were any restrictions on the freedom of movement of aliens and whether appeals against expulsion orders had a suspensive effect. Members also wished to have additional information concerning passport regulations, including reasons for refusing passports and procedures for appeal against such decisions, and concerning the penalty of "restriction of liberty", referred to in paragraph 128 of the report (CCPR/C/32/Add.9).

83. In his reply, the representative of the State party said that there was no general legal provision imposing compulsory residence in any area. Compulsory residence could be imposed only by court order, in accordance with the Code of Criminal Proceedings, in cases where persons were suspected of wrongdoing on the basis of substantial evidence. Such persons could not change their permanent residence without specific authorization of the court and, if not completely restricted, were required to inform the police of their travel plans and expected date of return. A decision on restriction of liberty was subject to appeal. The date referred to in paragraph 136 of the report (CCPR/C/32/Add.9) should be 9 May 1945 and not 9 May 1956, in other words the relevant provision applied to persons who had been deprived of Polish citizenship in the aftermath of the Second World War. Such persons, living abroad, had acted disloyally and against Polish interests. There had been few such cases in practice, and the records showed that it was mainly persons condemned for treason who had been affected. Citizens applying for passports had to fill in an official questionnaire and submit an application with two photographs. The accuracy of the information provided had to be confirmed by the applicant's employer. Students or military personnel had to obtain authorization from the appropriate authorities. Persons not employed were required to provide information regarding their financial resources. Applicants intending to stay with persons abroad had to produce certified letters of invitation. A major liberalization of the rules governing travel abroad by Polish citizens had been in progress since 1981. Some 4,320,000 persons had travelled abroad during 1986. The proportion of refusal of passport applications was 5.9 per cent, 6.1 per cent and 4.6 per cent in 1984, 1985 and 1986, respectively. Grounds for the refusal of a passport included the applicant's being the subject of penal procedure, reasons of state security, national defence or the preservation of state secrets (as listed in para. 131 of the report (CCPR/C/32/Add.9)), but refusal was not automatic and the authority of first instance was required to state in writing the precise reason for the refusal. Citizens returning from abroad were required to return their passports to the issuing authority and to reapply for them on each subsequent occasion. Under a measure currently being introduced, travellers to other socialist countries would be able to keep their passports at home.

84. Concerning the freedom of movement of aliens, the representative noted that no special restrictions had been placed on that freedom, but that aliens were obliged to register their presence on Polish territory within 48 hours of entry. Aliens could be expelled only by the competent authorities who were required to establish a time-limit for the expulsion. Immediate expulsion was ordered only in cases involving significant public interest. In general, courts of first instance were not deemed competent to order such expulsions.

Right to privacy

85. With reference to that issue, members of the Committee wished to receive additional information concerning protection against arbitrary and unlawful interference with privacy, the family and home, particularly with regard to postal and telephone communications and the placement of hidden microphones in the home, the act of "insult" and how it differed from defamation and libel, and the reported dismissal from their jobs of some 100 persons for political reasons during the previous six months.

86. In his reply, the representative of the State party explained that rights were protected not only against acts committed by individuals but also against unlawful state action. State organs had no generalized prerogatives beyond those expressly provided by law and there was no legal basis for placing hidden microphones in the homes of citizens. The tapping of telephones could be ordered only by the courts or the Public Prosecutor, in accordance with the Law of 10 May 1983. The act of "insult" was punishable if committed in the victim's presence or if committed publicly in such a manner that it came to the victim's knowledge. Whereas insult caused undeserved distress, defamation caused actual harm at work or in the victim's public or private life. Dismissal of workers with a valid contract was possible only on the authority of the director of the enterprise concerned and with the consent of the trade union concerned. Appeals were possible against dismissals and there had been two such instances of appeal since 1 July 1985.

Freedom of religion and expression

87. With reference to that issue, members of the Committee wished to receive information concerning the law and practice relating to the recognition of religious denominations and their functioning, the controls exercised on the freedom of the press and the mass media, the circumstances under which persons could be arrested or detained for expressing political views and the incidence, if any, of actual cases of such detention, and the compatibility of Act No. 18 of December 1982 with articles 18 and 19 of the Covenant.

88. Members of the Committee also wished to have additional information on the mandate and functions of the Office for the Control of Publications and Performances, the scope and implementation of article 2 of the Law of 31 July 1981, the scope of the Press Law of 26 January 1984 and of the requirement for requesting authority to publish, the extent to which foreign publications and broadcasts were available and any restrictions on imports and sales of foreign periodicals, the implementation of article 271 of the Penal Code, which prohibited the spreading of "false information damaging to the Republic", the number of foreign correspondents in Poland and the nature of the restrictions, if any, placed on their activities, and the number of challenges of censorship decisions that had been brought before the courts and the outcome thereof. It was also asked whether the denial of a licence to publish was appealable and, if so, under what provision of law.

89. Noting that the Law of 31 July 1981 on the control of publications and performances, which had relaxed some press controls, had been amended following the lifting of martial law, that previous restrictions had been reintroduced, and that the Press Law of 26 January 1984 also contained restrictions impinging upon the freedom of journalists and the independence of the press, one member requested additional information on the action of the Office for Press Control, the amendments to the Law of 31 July 1981 as well as the Press Law of 26 January 1984, and the compatibility of various prohibitions contained in that legislation, particularly the prohibition of alleged actions to "revile, deride or humiliate the constitutional system of the Polish People's Republic or incite its overthrow", with article 19 of the Covenant. In the foregoing connection, information was also sought as to the application of the new code of misdemeanours and regarding the scrutiny and dismissal of academics.

90. Responding to the questions raised by members of the Committee, the representative of the State party explained that the legal status of religious denominations was governed primarily by the law relating to the formation of associations and that there were 38 different denominations in the country, which produced some 100 publications. Control of publications was exercised by a body established under the Law of 31 July 1981 and censorship was very limited, with only 3,075 cases in 1985 and some 2,500 cases in 1986; censorship decisions could be appealed to the Supreme Administrative Court, which had reversed such decisions in 4 out of the 16 cases it had considered during 1985-1986. No one could be arrested or detained in Poland for peaceful expression of political views and no one was currently being held on such grounds; such restrictions of the exercise of freedom of expression as were in effect, as described in paragraph 214 of the report (CCPR/C/32/Add.9), were in conformity with the provisions of the Covenant. Act No. 18 of December 1982, which in effect banned strikes and certain protest demonstrations, had been adopted under the state of martial law as an ad hoc measure and was no longer in force.

91. In his reply to other questions, the representative stated that the Office for the Control of Publications and Performances, established under the Law of 31 July 1981, was subordinate to the Council of State, which reviewed the Office's activities at least once a year with the assistance of the Presidents of the Supreme Court and the Supreme Administrative Court. The Office dealt with both press matters and cultural manifestations. The grounds for or the practices relating to the application of press censorship had not changed in recent years. All censorship activity was under the control of the Supreme Administrative Court and the Supreme Court. Authorization prior to publication was necessary to assure conformity with existing laws and regulations, including access to print and paper, which were in short supply. Of 459 requests received in 1985, some 394 had been granted and during 1986 some 471 out of 503 requests (94 per cent) had been approved. Only a few appeals against denials of authorization had been lodged with the Supreme Administrative Court. A large number of foreign publications were available in Poland - over 13,000 different titles - and only a few titles were unavailable. While the dissemination of false information prejudicial to state interests was illegal, prosecutions were extremely rare - only five in 1985 and none in 1986. Foreign correspondents were entirely free to exercise their profession subject only to considerations of professional ethics, truth and respect for the law. A total of 137 foreign correspondents were currently accredited and in all some 1,000 correspondents paid temporary visits to Poland annually.

92. Concerning other questions raised with regard to press censorship, the representative stated that press censorship in Poland was applied with a view to preserving freedom of expression while at the same time affording protection to the State and to individuals. The law adopted in 1983 only made previous censorship slightly more restrictive. The Press Law of 26 January 1984 was in no way intended to limit the plurality of press opinion or the dissemination of information but, rather, represented progress toward greater press freedom. Its provisions included the requirements that state organs must inform the public effectively, that journalists must serve the public as well as the State and must respect the ethics of their profession, and that the interests and reputations of individuals must be protected. Accordingly, the law was fully compatible with article 19 of the Covenant. Regarding misdemeanours, the new law, adopted in 1986, reflected the normalization of the situation in Poland. It dealt with infractions that were less serious than those covered under the Penal Code, such as the dissemination of prohibited publications, and provided for lesser sanctions, such as confiscation of the vehicle used to transport the publication or a fine - the maximum fine being 40,000 zlotys. As to the dismissal of academics, in 1985 only 1 per cent of the personnel involved with higher education had failed to meet the requirements of the law on higher education, and it should be borne in mind that all workers, not just academics, were obliged to undergo periodic evaluations.

Freedom of assembly and association

93. With regard to that issue, members of the Committee wished to know whether the right to establish voluntary organizations, pursuant to the Law on Associations of 27 October 1932, as subsequently amended, included the right to establish political parties and associations or groups to promote human rights, whether any attempts had been made to establish new political parties, and whether any political parties had been prohibited. They also asked whether the registration of applications of non-governmental organizations wishing to help promote human rights had been refused and, if so, on what grounds, and whether there were currently any non-governmental human rights organizations in Poland. Information was requested on the scope of the expression "factual situation", mentioned in section 12 of the Council of Ministers Order dated 15 October 1982, which specified that a trade union was not to be registered if "registration is incompatible with the provisions in force or the factual situation", and it was asked whether any trade unions had been refused registration under the foregoing provision of law and, if so, how many and on what specific grounds, and what the term "implementing thereby the postulates of the trade unions", used in connection with the Law of 24 July 1985 amending the Law of 8 October 1982 on trade unions, meant (see CCPR/C/32/Add.13, para. 30). It was also asked whether the provision authorizing the authorities to prohibit meetings on the ground that they were contrary to the "public interest" was not incompatible with article 21 of the Covenant, which did not admit of restrictions of the right of assembly on such grounds but only on grounds of "public safety" or "public order".

94. With reference specifically to legislation relating to trade unions and to the actual situation in Poland in respect of trade unions, members of the Committee also wished to know whether, inasmuch as the Law of 8 October 1982 recognized the leading role of the United Polish Workers' Party, existing trade unions had to espouse the views of that party as distinct from other parties, whether political, judicial or administrative bodies were responsible for determining that a strike was "political" and hence prohibited and whether such prohibitions could be appealed. They also wished to know whether there was a time-limit on the

transitional period mentioned in paragraph 251 of the report (CCPR/C/32/Add.9), what the structural differences were between the current trade-union movement and that envisaged under the Law of 1949, superseded by the Law of 8 October 1982, whether that Law, under which only one trade union could be established in a given enterprise or institution, was not in fact incompatible with ILO Convention No. 87 and with article 22 of the Covenant, what the rationale was behind the distinction, made in paragraph 249 of the report, between the right to strike, which was an individual right of the employee, and the right to organize a strike, which was the right of trade unions, and whether the drop in the number of union members in Poland from some 14 million in December 1981 to some 5 million currently was due to the fact that the right to form and to join trade unions, in conformity with article 22 of the Covenant, had been abrogated or restricted on grounds not authorized under that article.

95. In his reply, the representative of the State party explained that the right of association, including the establishment of political parties, was freely exercised in Poland subject only to the prohibition, in paragraph 3 of article 84 of the Constitution, of associations "whose aims are incompatible with the political and social régime or the legal order of the Polish People's Republic". Article 2 of the Law of 27 October 1932 also prohibited the establishment of organizations that were illegal or a threat to public order or to state security. Nothing in the law prevented the creation of political parties provided that the principles embodied in the law were respected. The representative was not aware of the existence of non-governmental organizations dealing exclusively with human rights or of attempts to create such organizations. However, there were numerous non-governmental organizations working for the realization of rights in general, including human rights, such as the Association of Polish Jurists. The procedures for the registration of trade unions set out in section 12 of the Council of Ministers Order dated 15 October 1982 were based entirely on the Law of 8 October 1982 on trade unions. That Law provided for the registration of new trade unions after each case was examined by the court from both a factual and a legal standpoint. There had never been any problem in applying the procedures envisaged under section 12 of the Order, which were identical to those contained in article 3, paragraph 2, of the Code of Civil Procedure.

96. With reference to the question relating to information contained in paragraph 30 of the addendum to the report (CCPR/C/32/Add.13), he stated that, as envisaged in the Law of 1982 itself, the implementation of the law had been reviewed by the Council of State three years after its entry into force. The Law of 24 July 1985 contained modifications resulting from that review. Polish trade unions were established autonomously and had legal status. There were currently some 15 national unions and 134 federations of local unions. Regarding freedom of assembly, the Law of 29 March 1962, as amended, provided for the refusal of authorizations to assemble where such assembly was contrary to the law or the public interest, as well as to public order and safety, but refusals were rare and usually related to questions of public order.

97. Responding to specific questions raised by members of the Committee concerning laws and practices relating to trade unions, the representative pointed out that the Law of 8 October 1982 provided for the complete independence and autonomy of trade unions with respect to their activities and the methods of selecting their leadership. They must, of course, respect the principles enunciated in the Constitution. The autonomous character of trade unions had been explicitly recognized at the Tenth Congress of the United Polish Workers' Party. Currently,

there were some 6 million trade-union members in Poland. Some 14 million workers had belonged to trade unions at the end of December 1981 because at that time every worker had been affiliated to a union. It was now up to each worker to decide whether or not to join a union. A trade union itself had the power to decide whether or not to organize a strike, but a politically motivated strike was not permissible. The Procurator-General could bring suit before the voivodship court of Warsaw against any union that engaged in illegal activities and the latter had then to conform to the legislation in force within three months. It was a fact that, during the current period of transition, the establishment of more than one union was prohibited under the law. That interdiction had been made necessary by the social, political and economic situation in Poland and would remain in effect until the Council of State decided otherwise.

Right to participate in the conduct of public affairs

98. With regard to that issue, members of the Committee wished to know whether there were any restrictions on the exercise of political rights, whether legislation existed regarding access to public office and, if so, how such legislation was implemented, and whether Polish law recognized the notion of "discretionary employment". One member asked why detainees who had not been duly judged or sentenced were deprived of their right to vote.

99. In his reply, the representative of the State party explained that under the new electoral law, which had just been promulgated, all citizens over 18 years of age, regardless of race, sex or social origin, had the right to vote. Electoral rights were denied only to the mentally incompetent, those who had been deprived of civil rights by virtue of a court decision and those sentenced by a State court. More than 5,000 persons had been deprived of their voting rights during 1985, mostly as a result of criminal convictions. The law made a distinction between those who had been stripped of their civil rights and those who had no right to participate in elections. Thus, for example, offenders who had been sentenced to imprisonment had no right to participate in elections but had not lost their civil or electoral rights. Access to public office, under Polish law, was unrestricted and did not depend on one's beliefs or membership in a political party. Candidates for public office must have Polish nationality, be entitled to the enjoyment of civil rights, have the necessary qualities of character for the proper discharge of the functions of office, and be in good health. The notion of "discretionary employment" did not exist in Poland.

Rights of minorities

100. With regard to that issue, members of the Committee wished to know whether there were any special factors or difficulties concerning the effective enjoyment by minorities of their rights in accordance with article 27 of the Covenant.

101. In his reply, the representative stated that, as indicated in the report, no special difficulties were being encountered in Poland in assuring the effective enjoyment by minorities of their rights under that article.

General observations

102. Members of the Committee expressed appreciation for the thoroughness of the report and for the spirit of co-operation, competence and courtesy, with which the representative of the State party had responded to the numerous questions raised.

They considered that the representative's patient and practical approach had made it possible to establish a very useful and constructive dialogue with the Committee. It was recognized that the State party's second periodic report had been presented following a difficult and troubled period in Poland, during the course of which numerous incidents relating to human rights had occurred that had given rise to considerable concern both within Poland and in the outside world. Against that background, the representative's efforts to provide explanations and clarifications were especially appreciated.

103. Some members noted, however, that some civil and political rights were still restricted in Poland and that, despite the progress achieved since the lifting of martial law, problems still remained to be solved. In the foregoing connection, they referred to their continuing concerns regarding the right to return to one's country, freedom of expression and of assembly, the practice of accelerated procedures, censorship of publications, and restrictions on trade unions whose procedures and objectives were not subject to government regulation.

104. In concluding the consideration of the second periodic report of Poland, the Chairman thanked the Polish delegation once again for its co-operation, expressing the hope that the Polish Government would continue in the future the efforts it was already undertaking to improve the human rights situation in Poland.

Tunisia

105. The Committee considered the second periodic report of Tunisia (CCPR/C/28/Add.5/Rev.1) at its 712th to 715th meetings, held on 30 and 31 March 1987 (CCPR/C/SR.712-715).

106. The report was introduced by the representative of the State party who expressed his Government's support for the work being carried out by the Committee. The Tunisian people had a particularly keen awareness of human rights and Tunisia had been pursuing the aims of the Covenant even before ratifying it in 1968. A great deal had been accomplished during the 30 years since national independence was achieved, including the promulgation of the Code of Personal Status, which granted to women rights that they did not enjoy in many other countries, and the enactment of laws relating to elections, freedom of association, the press, and the rights of religious and other minorities. The Tunisian Government and legislature were determined to continue promoting individual freedoms by means of further legal instruments. Draft legislation was in preparation or under consideration to liberalize regulations relating to police custody and pre-trial detention and to prohibit any political party from claiming to represent a particular religion, race, region or ethnic group, advocating violence or fanaticism, or attacking the rights conferred by the Code of Personal Status.

Constitutional and legal framework within which the Covenant is implemented

107. With regard to that issue, members of the Committee wished to receive information concerning the relationship between the Shariah and Tunisian law. They asked whether the Covenant could be enforced directly and whether any court decisions had been directly based on its provisions or if any laws had ever been disregarded on the ground that they were incompatible with the Covenant. Questions were also raised concerning promotional activities and publicity for the Covenant and the extent of public awareness of its provisions, and the factors and

difficulties, if any, affecting the implementation of the Covenant. Inquiries were made about the activities of the Tunisian League for Human Rights, and examples of collaboration between the League and the public authorities were requested. It was asked whether the League was consulted regularly with respect to draft legislation, what its powers were with regard to the investigation of complaints of violations, whether the public was aware of its activities, and whether there were other non-governmental organizations besides the League whose purpose was to promote human rights. Members also wished to know about the status of pending bills relating to police custody, pre-trial detention, political parties and amendments to the Penal Code, and they asked what restrictions had been placed on the freedom of action of political parties. It was also asked what arrangements there were for providing an effective remedy in cases of alleged violations of rights under the Covenant and whether such procedures were the same as those involving breaches of ordinary law, whether administrative decisions had ever been rescinded by the courts on grounds of non-conformity with the Covenant, whether any periodic human rights conferences or seminars had been held for the legal profession, whether the public was aware that Tunisia's report was currently being considered by the Committee, and whether the Committee's reports and general comments were available in Tunisian libraries or were otherwise distributed to judges, lawyers and others. Members also wished to know whether there was any special machinery to ensure the full force of constitutional provisions guaranteeing the rights enshrined in the Covenant, whether the shariah was considered to be the most fundamental law of the land or could be modified by constitutional provisions or ordinary laws and whether a conflict between the Covenant and the shariah could arise and, if so, how such a conflict would be resolved. Several members inquired whether Tunisia was considering ratifying the Optional Protocol to the Covenant.

108. In his reply to questions raised by members of the Committee, the representative of the State party recalled that Islam was a way of life as well as a religion and closely paralleled the reasoning and ethics underlying modern law. The International Congress on Comparative Law, meeting at The Hague, the Netherlands, in 1952, had recognized Islamic law as based on the principles of justice and universality. While historically the shariah had been a source of law and social progress, it could not supplant positive law and could not be applied as a measure having the force of law. The Constitution proclaimed Islam to be the state religion in Tunisia and established a number of state obligations in that regard, including the requirement, in article 38, that the President had to be a Muslim. At the same time, the Constitution also provided that all citizens had the same rights and duties and were equal before the law, and stipulated that such equality was without discrimination on religious grounds. Religious considerations played no role in fundamental matters such as the acquisition of nationality (which was based on parentage and place of birth) or the right to vote or to stand for public office. All restrictions on personal status that had affected non-Muslims had been removed since the enactment of the Code of Personal Status. Constant efforts were being made to liberalize that Code further, such as the provision in article 54 of the revised Code, pursuant to which de jure guardianship of children immediately passed to the mother upon the death of the father.

109. All the provisions of the Covenant were directly enforceable since duly ratified treaties formed an integral part of domestic legislation. In the absence of an internal law giving effect to a provision of the Covenant the provision itself would suffice. Thus, for example, a judge would be obliged, pursuant to article 14, paragraph 6, of the Covenant, to give effect to a claim for damages in a case of miscarriage of justice, even though the Penal Code provided only for the

annulment of a wrongful conviction. Pursuant to their obligations under article 2, paragraph 2, of the Covenant, the legislature and Government had taken a number of measures to give effect to the rights recognized therein and explicit references were made to the Covenant in domestic legislation, such as the Medical and Scientific Experimentation Act, which contained a reference to article 7 of the Covenant. The problem of a law being contrary to a provision of the Covenant had not arisen, but in such a case a judge would be bound to respect the superior status of the Covenant, which was tacitly, if not formally, acknowledged. The ratification of the Covenant by Tunisia had been reported in all the mass media and the text of the Covenant had been reproduced in its entirety in the Journal officiel. The Head of State had issued numerous official statements on various occasions reaffirming Tunisia's attachment to the United Nations ideals of peace and human rights. The Government had also helped to organize public exhibitions and lectures on United Nations human rights activities, the mass media had carried relevant special features, and civics and history teachers had been requested to give special lessons about human rights. There was a chair of public liberties in the law faculties of the Universities at Tunis and Sousse where the provisions of the Covenant were studied in detail. Copies of the Covenant were available in libraries and wherever the Journal officiel was sold. In practice, there were no difficulties in implementing the provisions of the Covenant, except in the matter of rights of succession and inheritance, in respect of which Tunisian society was not yet prepared to accept full equality between men and women.

110. With reference to questions relating to the Tunisian League for Human Rights, the representative explained that the League had been set up on 7 May 1977 with the assent of the Minister of the Interior, in accordance with Act No. 59-154 of 7 November 1959 relating to associations. The League had four objectives, namely to defend and protect the fundamental freedoms set out in the Constitution and laws of Tunisia and the Universal Declaration of Human Rights, to assist private individuals whose rights had been threatened, to defend democratic freedoms and social justice and work for measures to ensure a just peace between nations, and to oppose any form of arbitrariness, violence, intolerance or discrimination. Membership of the League was open to all citizens. In accordance with article 2 of its charter, it was independent of the Government and of political parties. In 1985, at the time of its second congress, it had had 3,500 members. The League published and disseminated without restrictions a monthly newsletter and also a bulletin in French or Arabic. There was genuine co-operation between the League and the authorities; it had been associated with the consideration of the bills on police custody and pre-trial detention and consulted on the draft regulations concerning the rights and duties of prisoners; members of the Committee of Management were periodically received by the Head of State and the Minister of the Interior; and it had investigated complaints from relatives about the ill-treatment of prisoners and had been allowed to examine the prisoners concerned and to publish the findings of medical experts. The Government did not control the League's activities or publications and always gave careful consideration to its views and recommendations. The League was affiliated to the International League for Human Rights. The Government also consulted other non-governmental organizations and trade unions about matters relating to their fields of interest.

111. Responding to other questions, the representative stated that the draft bill reforming the provisions of the Penal Code relating to police custody and pre-trial detention was seen as a measure of liberalization in the interest of promoting individual rights. It had been submitted to the Chamber of Deputies but not yet enacted. The draft bill relating to political parties was also awaiting enactment,

which was expected in the near future. That bill, which would supersede the Associations Act of 1959, had been designed to regulate political parties so as to facilitate their participation in political life and in elections - functions which went beyond the role played by associations - and to enshrine their rights as public entities. The obligations imposed on political parties were designed not to restrict their freedom but to maintain the progress that had been made since independence in the area of human rights and the dignity of the citizen. For example, political parties could not be tied to a particular ethnic group or religion; to be authorized, they had to show that their purpose was in keeping with the provisions of the Constitution and therefore the Covenant. Appeals against the abuse of administrative powers could be filed before the Administrative Tribunal, which had received 1,768 such appeals during the period 1972-1986 and had ruled on 1,375 of them. In 193 cases the Tribunal had annulled the relevant administrative decisions. There was no mechanism in Tunisia for verifying the constitutionality of laws, but the annulment of administrative decisions by a tribunal could have the effect of negating certain laws through non-enforcement.

Self-determination

112. With regard to that issue, members of the Committee requested information concerning Tunisia's position with respect to apartheid and the right to self-determination of the peoples of Namibia and Palestine.

113. In his reply, the representative of the State party said that his country had always been opposed to apartheid and to the racist régimes in southern Africa and firmly supported the right of peoples to self-determination, freedom and independence. Tunisia was a party to the International Convention on the Suppression and Punishment of the Crime of Apartheid and had played an active role in seeking action by the Security Council following the Sharpeville massacre and Steve Biko's death. Tunisia firmly condemned the illegal occupation of Namibia by South Africa, supported the United Nations Council for Namibia and a settlement of the Namibian problem on the basis of Security Council resolution 435 (1978), and recognized the South West Africa People's Organization (SWAPO) as the only legitimate representative of the Namibian people. Regarding Palestine, his country had always insisted that Israel recognize the legitimate and inalienable rights of the Palestinian people and considered that the Palestinian problem could be solved only through recognition of the Palestinian people's right to self-determination and independence under the leadership of the Palestine Liberation Organization (PLO), its sole legitimate representative.

State of emergency

114. With regard to that issue, members of the Committee asked which measures, provided for under Decree No. 78-50, had actually been applied after the proclamation of the state of emergency by Decree No. 84-1 of 3 January 1984. Members inquired specifically as to whether the circumstances had been sufficiently grave to justify the declaration of a state of emergency, particularly since, as indicated in the report, it was possible to apply the emergency measures "flexibly" and in a manner "more symbolic than real"; they also asked whether the National Assembly had a role to play in the promulgation or prolongation of a state of emergency.

115. In responding to questions raised by members of the Committee, the representative explained that the riots had started in the southern part of the

country and later spread to the north and had become so serious that public safety and the orderly operation of public institutions could no longer be guaranteed. It had therefore become necessary to take certain emergency measures as provided in Decree No. 78-50. Since the authorities had been able to regain control of the situation rather quickly, it had been possible to avoid resort to all of those measures. Action had been essentially limited to the imposition of a curfew, prohibition of public demonstrations, and limited searches aimed at recovering public and private property that had been taken by pillagers. In addition, three theatres and three amusement halls for young people had been closed. No restrictions had been placed on freedom of opinion or expression nor had anyone been placed under house arrest. Decree No. 78-50 provided, inter alia, for consultations between the President of the Republic, the Prime Minister and the President of the Chamber of Deputies concerning any state of emergency.

Non-discrimination and equality of the sexes

116. With regard to that issue, members of the Committee wished to receive information on affirmative action to overcome discrimination, particularly any action by the Ministry of the Family and Women's Affairs to promote full equality of the sexes, the participation of women in public life, implementation of articles 2 and 26 of the Covenant -- given the absence of a general provision on non-discrimination in the Constitution, the treatment of aliens, particularly with respect to the extent of restrictions on their rights as compared to those of citizens, and the acquisition of nationality, in relation to the equality of sexes. Members wished to know whether foreign women married to Tunisian men also received immediate legal custody of their children upon the death of their husbands and whether any initiatives had been taken to modify the Code of Nationality so that children could also acquire Tunisian nationality through their mothers.

117. In his reply, the representative of the State party reaffirmed that important progress had been made by Tunisia during the past 30 years with respect to the emancipation of women and in ensuring their participation in the process of development. The Code of Personal Status, adopted on 13 August 1956, had abolished polygamy and forced marriage, established a minimum age for marriage, instituted a legal basis for divorce and improved the status of women with respect to inheritance rights. Important measures had also been adopted to make access to education, employment and public life easier for women. The gains in education were particularly striking, the proportion of girls in primary school having grown to 48 per cent by 1984; in secondary school from 22 per cent in 1955 to 38.6 per cent in 1983; and in higher education from 7 per cent in 1956 to 35 per cent in 1983. Some 400,000 women were now working, constituting about 20 per cent of the labour force. Women held some 5.5 per cent of civil service posts, 110 posts in the judiciary, with two seats being reserved for women on the Higher Council of the Judiciary. Women occupied many posts in teaching, medicine and the law, and were even to be found in the armed forces and the police. There were also women members of the Chamber of Deputies and one woman had recently been appointed as a sub-prefect.

118. The participation of women in public affairs had also increased significantly over the years. There were currently 14 women members of the Destourian Socialist Party's Central Committee, seven women members of the Chamber of Deputies -- some 5 per cent of the total -- and 478 female municipal counsellors. Women were also playing increasingly important roles through such organs as the National Union of Tunisian Women, the Women's Affairs Commissions of the Destourian Socialist Party

and the General Union of Tunisian Workers. While there was no general non-discrimination provision in the Constitution, the basic human rights contained therein were guaranteed without any discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, wealth or birth. Furthermore, the International Covenant on Civil and Political Rights, ratified by Tunisia by virtue of Act No. 68-30 of 29 December 1968, formed an integral part of the country's judicial system, ranking below the Constitution but above ordinary domestic laws. Its provisions, including the prohibition of discrimination contained in articles 2 and 26, were part of Tunisia's positive law. Foreign women enjoyed the same rights regarding the custody of children as Tunisian women.

119. Tunisian nationality could be transmitted to children by either the father or the mother. The fact that transmission through the mother was limited to cases where the father was unknown, stateless, or of unknown nationality did not constitute discrimination but merely reflected the father's status as head of the family. A further illustration of that point was provided by the fact that, under article 25 of the Code of Nationality, if a mother acquired Tunisian nationality after being widowed, she automatically transmitted such nationality to her minor unmarried children. While there might be minor differences or problems relating to the modalities of application of such provisions, in the representative's view the legislation in that area was essentially fair. Nationality by marriage could be passed on by Tunisian spouses of either sex. Citizenship could be acquired by foreign women through a simple declaration after two years of residence and by men through naturalization. For humanitarian reasons, article 13 of the Code of Nationality provided for the acquisition of Tunisian nationality immediately upon marriage by women who, under their national laws, automatically lost their own citizenship upon marriage to a foreigner. Such dispositions were in conformity with the Convention on the Nationality of Married Women, which Tunisia had ratified in 1967.

120. Responding to questions concerning the treatment of aliens, the representative stated that Tunisian law did not discriminate against foreigners except in civic matters relating to the sovereignty of the Tunisian people, such as voting or holding public office. The Constitution specifically guaranteed to foreigners such rights as freedom of conscience and religion, freedom of opinion, assembly and association (including trade-union rights), the confidentiality of correspondence, and the presumption of innocence. Foreigners could not be extradited for political offences, for violating their military service obligations, or if they faced possible execution. Foreigners subjected to extradition proceedings benefited from all legal safeguards and could be extradited only after the issuance of a presidential decree.

Right to life and integrity

121. With regard to that issue, members of the Committee wished to receive information concerning positive action to reduce infant mortality, statistical data relating to the application of the laws on abortion, protection against medical experiments without consent and the status of efforts to revise Act No. 22 of 8 March 1978 relating to civilian labour service. Members of the Committee also wished to know how many executions had taken place since 1985 and what crimes had been committed by the five persons executed in 1985, whether persons who performed abortions or assisted in procuring an abortion were liable to punishment and who had the ultimate responsibility for deciding whether or not a pregnancy should be

terminated, whether, under Tunisian law, life was considered to exist from conception or only from birth and in the former case whether an aborted foetus enjoyed protection from medical experimentation. It was also asked how many individuals had been killed as a result of the use of firearms by the security forces against demonstrators, pursuant to articles 21 and 22 of Act No. 69-4, what measures had been taken to avoid abuses of that Law and how many investigations had been effected or punishments meted out in connection with such abuses, whether law enforcement officials were given appropriate instruction regarding the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Code of Conduct for Law Enforcement Officials, whether allegations of torture or similar offences were promptly and independently investigated, and whether any law enforcement officials had ever been charged with such violations and appropriately punished. In addition, members of the Committee inquired as to the status of draft amendments to the Code of Penal Procedure, which, inter alia, reduced the period of pre-trial detention to a minimum and gave detainees the right to request a medical examination during or on expiry of a period of police custody. Referring to the assertion in the report that civilian service under Act No. 78-22 of 8 March 1978 differed from forced labour in that the person performing it received remuneration, one member expressed doubt that the fact of receiving remuneration automatically removed the forced character of the labour. Another member drew attention to the Committee's general comment on article 6 (No. 6 (16)), 5/ which stressed that, although the abolition of the death penalty was not expressly stipulated in the Covenant, the wording of the article strongly suggested that abolition was desirable.

122. In his reply, the representative of the State party explained that infant mortality had decreased from 200 per 1,000 in 1952 to between 50 and 60 per 1,000 currently with a further reduction to between 18 and 28 per 1,000 expected by the end of the century. Among the measures that had led to such impressive results, he cited the requirement for pre-marital medical certificates, the establishment of a minimum marriageable age of 17 for women and 20 for men, the pursuit of maternal and child health protection policies that had led to the creation of some 119 mother and child care centres between 1966 and 1985, the establishment of a preventive paediatrics department at the Medical Faculty of the University, a multi-pronged effort to combat malnutrition through the improvement of living standards and through nutrition education, legislation to promote breast-feeding and to regulate the production and sale of food for infants, and a complete programme of compulsory vaccination. In addition, an extensive preventive health and vaccination programme had been undertaken by the Government in the schools.

123. Abortion was regulated under the Penal Code, particularly article 214 as amended in 1973. Under that law, abortion was punishable by from two to five years imprisonment and fines of up to 10,000 dinars. However, pregnancies might be terminated artificially within the first three months, in authorized clinics or hospitals, by doctors legitimately exercising their profession. Beyond three months, abortions might be carried out only in cases where the health or mental state of the mother was endangered or where the child risked grave illness or infirmity if born. There had been a total of 20,860 "social abortions" in 1984 as compared with 19,248 in 1979 - thus the number of such operations had essentially remained stable. The performance or abetting of abortions was punishable only in cases where it was carried out illegally, such as when it was performed at an unauthorized facility. The woman concerned always had the final say about having an abortion. The fact that abortion was basically prohibited was a reflection of

the Tunisian philosophy of respect for the human being from the time of conception. While abortion was permitted in certain cases for birth control purposes it was expected that the abortion rate would drop as other methods of birth control came into greater use.

124. Regarding medical experimentation, the representative recalled that, under article 2 of Act No. 73-496 of 20 October 1973, respect for human life was the primary duty of doctors under all circumstances. Medical experimentation was covered under articles 57 to 69 of the Act, which provided, inter alia, that any such experiments had to be in conformity with moral and scientific principles, had to be carried out at public hospitals by scientifically qualified personnel under medical supervision, and that the benefits sought had to correspond to the risks to which the patient was being exposed. Medical experimentation could not be introduced into therapy unless it contributed to the treatment. As indicated earlier, article 7 of Act No. 85-91 of 22 November 1985 provided, inter alia, that medical or scientific experiments had to be conducted in conformity with the relevant provisions of the Covenant. Regarding efforts to amend Act No. 78-22, an interdepartmental committee was shortly to present a final draft text to the Council of Ministers for approval and subsequent transmission to the Chamber of Deputies. Tunisia had always been willing to review its domestic legislation to ensure that it conformed to international agreements and was ready to do so also in that instance. It should also be noted that all of the civilian service assignment committees and civilian service centres had been closed since 1981.

125. Responding to other questions raised by members, the representative acknowledged that, in view of the increase in violence against women, which had unfortunately accompanied their growing emancipation, it had been necessary to extend the death penalty to cover rape. Three persons had been executed for rape since the enactment of the new law in 1985 - for crimes that were particularly abominable. The death penalty was seldom carried out; there had been no executions in 1983, only seven in 1984 and only five in 1985. Eight persons sentenced to death in 1984 had been pardoned. The use of weapons by security personnel was under strict control. Firearms could be used only in cases of serious disturbance of public order and after several warnings had been given. The use of firearms had been authorized during the 1984 riots only after four days of serious disturbances, including looting and 30 incidents of violence. Law enforcement officials in Tunisia were given a special course in civil liberties at which all international conventions and pertinent laws were explained. The practice of torture by law enforcement officials was subject to punishment and a number of offenders had been sentenced to hard labour in 1981. The draft amendment to the Code of Penal Procedure restricting the period of police custody was expected to be adopted by the Chamber of Deputies at its current session.

Liberty and security of person

126. With regard to that issue, members of the Committee wished to receive information on the duration of preventive detention, the observance of article 9, paragraph 4, of the Covenant, particularly in relation to detention in institutions other than prisons, solitary confinement, laws and practices concerning the treatment of persons in custody and pending trial, and the conditions of hard labour and control of institutions in which persons sentenced to hard labour were detained. Members also wished to know whether remedies such as habeas corpus or amparo existed, what the actual permissible period of pre-trial detention was and whether it could be extended at the express request of the examining magistrate,

when and through what procedure detainees could contact a lawyer, what arrangements had been made to ensure compliance with the Standard Minimum Rules for the Treatment of Prisoners and to afford prisoners the opportunity to lodge complaints and obtain a medical examination, and whether a claim for compensation for illegal detention or imprisonment could be made by the victim only against the official concerned or also against the State. Several members drew attention to the importance of the Committee's general comment (No. 8 (16)) 5/ on article 9 of the Covenant and pointed out that it called, inter alia, for the prompt presentation of a detained person in court. Attention was also drawn to the need to extend the provisions of article 9, paragraph 4, to all relevant categories, such as illegal immigrants, vagrants and drug addicts.

127. In his reply, the representative of the State party said that regulations relating to preventive detention were contained in the Code of Penal Procedure. Paragraph 84 of the Code provided that the measure was an exceptional one, to be decided upon by an examining magistrate who could order detention only in cases of gross crimes, to prevent further offences, to ensure execution of a sentence or to guarantee the authenticity of the information that had been provided. When less serious offences were involved the detainee could be held only for a maximum of five days. Detention was always temporary and subject to revocation. As indicated earlier, the Chamber of Deputies was expected to act in the near future on a draft bill that, inter alia, stipulated the maximum period of detention for various crimes and offences and that afforded detainees more effective remedies. The tabling of that bill showed that the Tunisian Government wished to give full effect to the provisions of the Covenant. Regrettably, some delays had occurred in the Chamber of Deputies but the Government was striving to enact the text as swiftly as possible. The period of investigative custody by the judicial police varied between 4 and 48 days, unless otherwise authorized by the Public Prosecutor or the examining magistrate. The draft bill currently before the Chamber of Deputies would limit the period of custody to a maximum of four days, which would correct any problems caused currently by protracted administrative procedures.

128. Detention in hospitals or psychiatric wards was ordered only in cases where the person's mental condition was deemed detrimental to individual safety or public order. Within 10 days of the issuance of such an order, the detainee or a person acting on his behalf could have recourse to a medical legal commission, which acted on a case-by-case basis. While the findings of that commission were not subject to appeal, they could be challenged before the Administrative Tribunal on the grounds that the commission had exceeded its authority. A person could also be deprived of liberty as part of a re-educative work decision pursuant to Decree-Law No. 62-17 of 15 August 1962. Re-educative work was carried out on state farms, separate from prisons. Solitary confinement was applied chiefly as a result of a decision by an examining magistrate in the interests of the inquiry or as a disciplinary measure decided by the prison disciplinary board, which consisted of the deputy director of the prison, a welfare worker, the reporting warder and an inmate representing the detainee. Abuses relating to solitary confinement were rare and subject to severe administrative sanctions against the prison officials concerned. Persons in custody pending trial were kept separate from prisoners serving a sentence, could freely contact a lawyer or correspond with him or with the court, and receive meals from the outside or family visits when authorized by a judge. Persons serving sentences of hard labour were subject to the same penitentiary system as other prisoners, but served their sentences either in high-security prisons or special areas in regular prisons. No special system prevailed for women sentenced to hard labour, who served their sentences in a separate cell block in the women's prison

at Manouba. Since 1965 convicted persons had ceased to be shackled or put to arduous work such as stone-breaking.

129. With regard to prison conditions, the representative noted that, while surveys of detention centres, particularly that carried out in 1977 by the Tunisian League for Human Rights, indicated that efforts had been made to treat delinquents humanely and to rehabilitate them, it was planned to improve conditions further through the introduction of new internal regulations stipulating the rights and obligations of detainees in prisons and educational action centres. The Tunisian League for Human Rights had reviewed the draft of the proposed new regulations and found them satisfactory. They were to be put into effect through an administrative circular as soon as the views of other relevant bodies had been received. Finally, he explained that compensation of the sort envisaged in article 9, paragraph 5, of the Covenant was provided for under the Code of Obligations and Contracts. In cases of petty offences the State assumed responsibility, but in serious cases the official was himself liable. The State was under no legal liability to make restitution, but in practice it did so if the official concerned was unable to do so.

Right to a fair trial

130. With regard to that issue, members of the Committee wished to receive additional information concerning the modalities for the appointment of judges, the functions of the Higher Council of the Judiciary and the appointment of its members as well as the scope of the Code of Military Justice. In that connection it was asked whether that Code was also applicable to civilians. Members also wished to know how soon after arrest a person could contact a lawyer, what remedies were envisaged under the draft bill relating to pre-trial detention for appealing against the rejection of an application for release, whether administrative regulatory decrees issued by the President could be annulled if considered unlawful and, if so, under what procedures, whether there were any special courts in Tunisia other than military tribunals and whether such courts were bound by the ordinary rules of civilian and military procedure, whether accelerated procedures under common law were applicable to felonies and how petty offences were handled, whether the independence and impartiality of judges of the Administrative Tribunal were secured in the same way as those of other judges, and whether it was possible to appeal against a decision of the Administrative Tribunal in cases involving the State and against a sentence of the military court. In addition, referring to article 128 of the Code of Penal Procedure, which apparently precluded the possibility of appeal against a criminal court decision and therefore seemed to be incompatible with article 14, paragraph 5, of the Covenant, one member requested clarification of the statements dealing with the matter in paragraph 102 of the report (CCPR/C/28/Add.5/Rev.1).

131. In his reply, the representative of the State party explained that the appointment of judges was governed by Act No. 67-29 of 14 July 1967 and that of administrative judges by Act No. 72-67 of 1 August 1972, as amended in 1983. Judges were recruited by competition from among law graduates who had also successfully completed a course at the Higher Judicial Institute. They were appointed by the President of the Republic after their qualifications had been studied by the Ministry of Justice and assessed by the Higher Council of the Judiciary. Senior lecturers and lecturers in the Faculty of Law and lawyers with at least 10 years experience could be appointed without undergoing a competition. Administrative judges were recruited mainly from among candidates who had

successfully completed the higher course of the National School of Administration; however, at least 25 per cent of the vacancies were filled by an examination open to civil servants with a degree or equivalent qualification in law or economics and five years of relevant experience. Such judges were appointed by Presidential Decree on the recommendation of the Prime Minister. They enjoyed the same immunities as other judges and could be disciplined only for professional misconduct. Their Higher Council, which was similar to the Higher Council of the Judiciary, was chaired by the Prime Minister. The Higher Council of the Judiciary was presided over by the Head of State, with the Minister of Justice serving as Vice-President and senior judges, including the first presidents of the Court of Cassation and of the Tunis Court of Appeal and the President of the Land Court, serving as ex officio members. Four elected representatives of the judiciary also served on the Council, two of whom had to be women. The Permanent Military Court, consisting of four military judges and a civilian president, was competent to deal both with infractions of military discipline and criminal cases involving members of the armed forces, but could not hear civil cases, which had to be referred to the regular courts. Its judgement could be reviewed by the Court of Cassation with one military judge added to the bench. A Court of National Security, established in 1968 to deal with cases of internal or external security, was also still in existence, but had not functioned for several years since such cases were dealt with, in practice, by the regular courts.

132. Responding to other questions raised by members, the representative explained that, pursuant to article 79 of the Code of Penal Procedure, a person detained under an arrest warrant had to be brought before a court within three days of his admission to a public prison. The examining magistrate could not receive any statement from a detainee at his first hearing until he had been informed of his right not to reply except in the presence of a lawyer of his choice. Thus, a detainee could contact a lawyer within three days of his arrest at the latest. Article 70 of the Code provided that a detainee charged with a crime could communicate at any time with his lawyer immediately after his first appearance and that in no case could contact with a lawyer be prohibited. However, a detainee in criminal police custody could not communicate with his lawyer, although the latter could make representations on the prisoner's behalf to the Public Prosecutor, under whose authority the detainee was being held, or to the examining magistrate. The liberalization relating to release from pre-trial detention, envisaged under the draft amendments to the Code of Penal Procedure, would allow detainees to appeal to the court, within four days, against the rejection by an examining magistrate of a request for release and would provide for a definitive ruling by the court on the appeal within a maximum of eight days. Regarding the possibility of appeals against presidential administrative decrees, he stated that such decrees could not be appealed on substantive grounds, but their implementation could be challenged on grounds of unlawfulness. To avoid that problem the President always sought and acted upon the advice of the Administrative Tribunal as to the lawfulness of the regulations that were to be promulgated through such decrees. Accelerated procedures were not used in felony cases and petty offences were dealt with by the cantonal courts. All criminal sentences were subject to review, in accordance with the modalities described in article 77 of the Code of Penal Procedure.

Freedom of movement and rights of aliens

133. With regard to that issue, members of the Committee wished to know whether the travel restrictions in Act No. 75-40 of 14 May 1975 were compatible with

article 12, paragraph 3, of the Covenant, and whether the period of assigned residence under Act No. 68-7 of 8 March 1968 could be prolonged indefinitely.

134. In his reply, the representative stated that restrictions regarding the issuance, renewal or extension of passports, contained in articles 13 and 15 of Act No. 75-40, were in complete conformity with article 12, paragraph 3, of the Covenant. They related only to minors, persons liable for military service and persons being sought by the Public Prosecutor in connection with judicial proceedings, and to the refusal of passports for reasons of public order, national security or injury to Tunisia's good name. Passports could be withdrawn only if the holder had lost Tunisian nationality or for reasons of irregularity or national security. All such grounds were interpreted restrictively so as to minimize any possible interference with individual liberties. Those to whom passports had been refused could appeal to the Administrative Tribunal and ultimately to the Minister of the Interior, with whom the final decision rested. Assigned residence under article 19 of Act No. 68-7 only affected an alien who was unable to leave Tunisia immediately. Its duration was thus limited to the period during which the alien was unable to leave.

Right to privacy

135. With regard to that issue, members of the Committee wished to receive information concerning protection against arbitrary or unlawful interference with privacy, the family and home, particularly with regard to postal and telephone communications, and to know whether information obtained through the tapping of telephones was considered admissible as evidence by the courts.

136. In his reply, the representative stressed that privacy, the home and family enjoyed ample protection under Tunisian law. He referred in that regard to a number of provisions of the Press Code and the Code of Penal Procedure, including those providing for the imposition of fines or imprisonment for divulging information concerning proceedings relating to libel, paternity, divorce or abortion. In libel proceedings even the truthfulness of the allegation was not admitted as a defence if the allegation related to private life. Persons who, without authorization, divulged the contents of correspondence, whether transmitted through the mail or by optical or electromagnetic means, were also subject to fines or imprisonment, as was anyone who disclosed confidential information of a private character obtained through a professional relationship. Similarly, unauthorized and unjustified entry into a person's home by law enforcement agents was punishable under the Penal Code. Entry or search was lawful only when undertaken pursuant to authorization by an examining magistrate or to prevent the commission of a crime or in a case of in flagrante delicto. Telephone lines could be tapped with court authorization for grave reasons but information so obtained was not admissible as evidence.

Freedom of religion and expression

137. With regard to that issue, members of the Committee wished to receive additional information concerning religious freedom, particularly in the light of the fact that Tunisia had a state religion, and regarding the application of the Press Code, with special reference to the refusal to register new periodicals and to the practice relating to the prohibition of foreign periodicals. Members also wished to know whether it was permissible in Tunisia for a person, including a Muslim, to change his religion, and why the designation of the Grand Rabbi was

subject to the issuance of a decree. It was asked whether the requirement, under the Press Code, for prior notification of publications to the Ministry of the Interior was compatible with article 19 of the Covenant and whether refusal of an authorization to publish could be appealed, whether allegations concerning the suppression of a number of opposition publications and periodicals, including a French-language book by Mr. Moncef Marzouqi, were correct, whether government assistance to publishers was subject to political conditions, whether publications other than newspapers or magazines were also subjected to the requirement of prior notification or to any form of censorship and whether such works could be banned for reasons other than those applicable to the press. Members also asked whether all individuals or only registered publishers were free to publish, whether regulations affecting radio and television provided adequate guarantees to ensure the public's right freely to receive, seek and impart information and ideas of any kind, whether official refusal of authorization to publish or failure to respond to an application could be appealed to the Administrative Tribunal on any grounds other than misuse of authority, and whether the duration of suspension of a periodical was fixed by law or could be extended indefinitely by the judicial authorities. One member, considering that the general requirement for prior notification regarding new publications resulted in a degree of government control over opinion and expression beyond the limits prescribed in article 19, paragraph 3 (b), of the Covenant, asked whether the review of the Press Code planned for the 1986 session of the legislature had actually taken place. Another member, noting that the line between religious or racial hatred, which the Tunisian Government had made laudable efforts to prevent, and war propaganda was thin, expressed the hope that the legislature would consider the possibility of also outlawing the latter.

138. In his reply, the representative of the State party explained that, although Islam was Tunisia's state religion, article 5 of the Constitution guaranteed freedom of conscience and protected the free exercise of religion. As the religion of nearly all Tunisian citizens, Islam received assistance from the State for the building and maintenance of mosques and for the salaries of religious auxiliaries. The free exercise of Judaism was guaranteed under Act No. 57-78 of 11 July 1958, and of Catholicism by an international agreement with the Holy See concluded on 27 June 1964. Other religions could also be practised freely and there was no law against changing one's religion. The Grand Rabbi, like the Mufti, was a high dignitary having access to the Head of State. He was appointed by decree upon nomination by the Jewish community.

139. Regarding freedom of opinion and of the press, he stated that, since the adoption of the Press Code in 1975, there had been only one case of refusal of authorization of a new publication, a decision which had subsequently been upheld by the Administrative Tribunal. Local or foreign periodicals could circulate freely and only two foreign periodicals had been seized within the past five years. During 1986 a total of 13 locally published books or writings, which were contrary to public morals or had defamed the Head of State, had been seized and there had been three such cases during the first three months of 1987. As indicated earlier, refusal of authorization of a periodical could be appealed on grounds of abuse of power, which comprised the concept of violation of a right. Some of the periodicals mentioned as having been suppressed as opposition publications were not, in fact, opposition papers and had not been suspended but had voluntarily ceased publication. The maximum period of suspension of a periodical was six months and such suspensions were appealable. All publications received the same type of assistance and advantages from the Government without

discrimination. The publication of books was not subject to any requirement of prior authorization nor were publications other than periodicals subject to prior controls or to censorship of any kind. No foreign-language book had been prohibited or seized in recent years.

Freedom of assembly and association

140. With regard to that issue, members of the Committee wished to receive information on the application of restrictions to the right of peaceful assembly established by law, on the current status of the proposed new act relating to the formation and functioning of political parties, and on articles of the Labour Code concerning the relationship between domestic and foreign trade unions and restrictions relating to the position of foreign workers in trade unions. Members of the Committee also wished to know how many political parties had participated in the most recent elections and how many were currently represented in the legislature, how it was possible to ensure that democratic principles were respected within the internal processes of political parties and whether the judiciary had a role to play in that regard, whether trade unions could be organized only along professional lines or also at the level of a particular industry or enterprise, in accordance with ILO Convention No. 87, whether the prohibition of foreign unions in Tunisia also precluded the affiliation of Tunisian trade unions to world-wide labour organizations, and whether trade-union leaders, including the Secretary-General of the General Union of Tunisian Workers (UGTT), were being detained and, if so, on what charges and under what penal régime. With reference to the draft bill concerning the organization of political parties, discussed in paragraph 132 of the report, clarification was requested of provisions relating to conditions for the issuance of authorizations to form political parties, particularly the requirement of respect for democratic principles within the internal functioning of political parties and the prohibition of parties basing themselves on racial, religious or ethnic ties, as well as the exclusion from political life of persons who had served prison terms.

141. In his reply, the representative of the State party explained that, under Act No. 69-4 of 24 January 1969, the authorities must receive prior notice of the time, place, purpose and object of public meetings, which normally had to end at midnight. Meetings regarded as posing a threat to public order or security could be prohibited by the authorities, but only by written order that was subject to appeal to the Administrative Tribunal on grounds of abuse of power. Such restrictions applied only to public meetings in which anyone could participate. Private meetings, including trade-union assemblies, could be held freely without any restrictions. Marches and street demonstrations were subject to restrictions similar to those relating to public meetings and could be prohibited for the same reasons. Aliens were free to join any Tunisian trade union and could hold positions of leadership therein with the approval of the Minister of Labour. National trade unions were entirely free to affiliate to regional or international trade-union federations and the UGTT was in fact affiliated to several such federations, including the International Confederation of Free Trade Unions. However, for historical reasons dating back to the period of the French Protectorate, foreign trade unions were prohibited from establishing local chapters. Under the Labour Code, which was the only legislation regulating trade-union activity, it was possible to establish a union freely, the only requirement being a simple notification to the authorities to inform them of the organization's existence. Any detained union leaders were in that situation for violations of ordinary laws and not on account of their union-related activities.

The former Secretary-General of a trade-union federation had benefited from measures of clemency, such as access to newspapers, television, and visits from family members and others, including a recent visit by Mr. Blanchard, Director-General of the International Labour Organisation. Regarding the participation of political parties in the elections held on 2 November 1986, three parties - the Destourian Socialist Party, the Communist Party and the United Popular Force Party - had presented candidates on separate lists but as part of a common National Front. There had also been some independent candidates, notably in Sfax, but only the National Front candidates had been elected.

142. Responding to questions concerning the draft legislation relating to political parties, the representative emphasized that it was still at the stage of a draft and subject to change. Thus, provisions such as those relating to the possible disqualification of convicted former politicians were not yet definitive and, in any case, there was no question of disqualification for reasons other than clearly specified infractions, such as embezzlement or corruption. The general thrust of the draft bill was clearly in favour of greater pluralism and democracy in the country's political life. There was no intention whatsoever to prevent parties from existing and presenting themselves at elections, the question was simply to find the best way of providing a legal underpinning for political pluralism. The conditions and measures of control currently under discussion were considered as a necessary minimum to ensure responsible participation in political and public life. Thus, the prohibition of political parties based on religious or ethnic considerations was desirable precisely in order that political pluralism could flourish.

Right to participate in the conduct of public affairs

143. With regard to that issue, members of the Committee wished to receive information on the exercise of and restrictions on political rights, particularly for non-Muslims, and on legislation and practice regarding access to public office, including the possibility of a non-Muslim attaining high public office.

144. In responding, the representative of the State party said that, under the Constitution and laws of his country, the exercise and enjoyment of political rights was accorded to all Tunisian citizens without distinction, including non-Muslims. Non-Muslims were eligible, as were all other qualified citizens, to vote or to hold public office. Any mention in a public official's dossier of his political, philosophical or religious opinions was prohibited by law. Non-Muslims could also accede to high administrative or political office and examples of that fact were too numerous to mention. The sole exception was the constitutional requirement that the Head of State had to be a Muslim, which reflected the eagerness of the country's leadership at the time of independence to preserve the national identity and the cultural and religious values of the Tunisian people.

Rights of minorities

145. With regard to that issue, members of the Committee wished to receive information concerning the application, in practice, of article 27 of the Covenant.

146. In his reply, the representative of the State party explained that, owing to certain historical and geographical factors that reinforced the laws and practices guaranteeing the rights covered in article 27 of the Covenant, such as the exposure of Tunisia to various civilizations and peoples, including the Berbers,

Non-discrimination and equality of the sexes

192. With regard to that issue, members of the Committee wished to receive information concerning non-discrimination on grounds of political opinion, language, property or other status, restrictions on the rights of aliens compared with those of citizens, difficulties encountered with regard to the effective enjoyment of equal rights by women provided for under the Constitution and elsewhere and affirmative action taken to promote equality of the sexes, the compatibility of articles 152 to 154 of the Family Code with article 3 of the Covenant, and, in relation to equality of the sexes, concerning the acquisition of Senegalese nationality.

193. In his reply, the representative of the State party said that the Constitution of Senegal prohibited and condemned discrimination in all its forms. While only certain forms of discrimination were specifically enumerated in article 1 of the Constitution, that enumeration was not at all limitative and the Constitution and laws had to be seen as a whole. Thus, for example, article 7 of the Constitution prohibited discrimination on the basis of birth, status or family, and article 20 prohibited discrimination at work on the basis, inter alia, of "opinion". The fact that the Covenant was itself a part of Senegal's internal juridical order was also worth noting in that connection. Regarding the rights of aliens, he recalled that under article 7 of the Constitution all human beings were equal before the law. Citizens and aliens therefore enjoyed the same basic rights, except for certain civic rights reserved to citizens, in conformity with article 25 of the Covenant. Restrictions placed on aliens were few in number and were intended more as measures of protection than of exclusion. Article 7 of the Constitution also provided for equality of the sexes before the law and the Government of Senegal had constantly sought to promote such equality further. While much undoubtedly remained to be done to ensure the equal rights of women, considerable progress had been made. Many women were now performing the same functions as men in various fields of social and economic activity and were serving as ministers, legislators, members of the Economic and Social Council and as Supreme Court Counsellors. There were also many women judges, lawyers and business executives.

194. Responding to questions concerning the Family Code, the representative acknowledged that articles 152 to 154 of that Code attributed certain rights and duties to the husband. However, the special marital and parental rights accorded to the husband by society were not attributed on the basis of his being a male, but only in order to ensure family cohesion and harmony. If abused, such rights could be taken away and, in any case, married women continued to enjoy all their civil rights. If the place of residence selected by the husband in his capacity as head of family was not suitable, the wife could seek legal authorization to change her domicile. Similarly, notwithstanding a husband's opposition, a married woman could exercise a profession, provided that the interests and welfare of the children were not harmed thereby. It was important to realize that African and Senegalese society were different from Western society. Seen in that context, it was clear that the various provisions of the Family Code, including the one relating to polygamy, were not incompatible with article 3 of the Covenant. At the same time, the representative pointed out that there was a certain divergence of opinion with respect to such matters in Senegal and that a special committee was to meet shortly to address the various issues. That committee could also be invited to consider whether those provisions of the Family Code were compatible with article 3 of the Covenant.

which some 600 leaders of the Christian Democratic Party had been killed by extremists of the left or right, legislative elections had been held in 1984 followed, in 1985, by presidential elections. Thus, the democratic process had been consolidated in El Salvador. Since 1980, a number of successful agrarian and economic reforms had been undertaken to assist the less favoured sections of the population, particularly the peasants. Despite such positive developments and the unity of the whole civilian population in its desire for peaceful progress, the destabilizing activities of both right- and left-wing extremists had continued and the country was still facing a situation of terror and intimidation. The representative wished to stress that his Government had never refused to co-operate with United Nations organs or representatives dealing with situations affecting human rights in his country.

152. Turning to the report, the representative drew attention to the new Constitution, which had been adopted in 1983 after wide-ranging discussions. He pointed out that its first two chapters were centred not on the State, as was customary, but on the human person and individual rights and fundamental guarantees. His delegation had come before the Committee with the intention of co-operating fully with it and was eager to hear the Committee's recommendations.

153. Members of the Committee, while recognizing the great difficulties posed by El Salvador's troubled history and the problems that had been faced since 1979 in establishing a pluralistic democratic régime, regretted that the report did not follow the guidelines established by the Committee. It was very difficult for the Committee to discharge its responsibilities under article 40 of the Covenant on the basis of the supplementary report submitted by the State party, which merely cited articles of the Constitution that corresponded to various articles of the Covenant. A Constitution only provided a general framework, whereas the Committee also needed to know about the laws that gave effect to the Covenant and the concrete measures relating to its implementation or the reasons for its non-implementation. Members noted that the report was particularly deficient in information about practical difficulties and problems, such as the prevalence of torture and disappearance, whose importance had been stressed by members in 1983 when the earlier report submitted by the State party had been considered.

154. Some members of the Committee, while agreeing that it was not satisfactory to have detailed information only on the subject of the Constitution and very little on the enabling legislation and its practical implementation, nevertheless considered that, given the difficult circumstances prevailing in El Salvador, the attitude of the State party had been positive and left no doubt of the Government's attachment to human rights. They hoped that the Government of El Salvador would do everything possible to provide the information needed for the proper discharge of the Committee's duties under article 40 of the Covenant.

155. With regard to article 2 of the Covenant, members of the Committee requested additional information about the administrative and juridical régime in El Salvador, which guaranteed the exercise of human rights, and asked whether the provisions of the Covenant could be invoked in the courts. They also asked about measures taken to promote awareness of and respect for the provisions of the Covenant, especially among administrative and law enforcement officials, and about the role played by the Salvadorian Human Rights Commission, mentioned in paragraphs 22 and 23 of the report. Noting the statement in paragraph 49 of the report that, in an action of unconstitutionality, the final judgement of the Supreme Court of Justice was binding "as a rule", one member wondered whether that phrase implied possible exceptions and, if so, what such exceptions might be.

156. With reference to article 4 of the Covenant, members of the Committee noted that there seemed to be two different juridical régimes in El Salvador, one based on the Constitution of 1983 and the other on the special legal order established under the state of emergency, which corresponded to the reality that people actually experienced in their daily lives. For example, criminal procedures under the state of emergency (Decree No. 50) were entirely different from those prescribed under the constitutional system. It was therefore difficult for the Committee to understand the situation in El Salvador with respect to the implementation of the Covenant, and its problems were compounded by the fact that the supplementary report did not provide detailed information concerning the practical application of the state of emergency and the suspension of constitutional rights. The report also failed to make clear the precise extent to which rights covered in the Covenant had been affected by the state of emergency.

157. Regarding the declaration of the state of emergency and its duration, members of the Committee wished to know specifically how many times article 29 of the Constitution had been invoked since its entry into force in 1983 and whether the Government had on each occasion duly notified the Secretary-General of the United Nations, pursuant to its obligations under article 4, paragraph 3, of the Covenant, how often the state of emergency had been extended by the action of the Legislative Assembly and the Council of Ministers, respectively, how long the suspension of constitutional guarantees was expected to last, and whether the state of emergency was, in fact, still in force, either de jure or de facto. Regarding the application of the state of emergency, members asked whether persons deprived of their rights during a state of emergency were able to have recourse to the remedy of habeas corpus or amparo, what the powers and functions of the Salvadorian Human Rights Commission were during a state of emergency, and under what circumstances human rights workers, including members of the Human Rights Commission, had been arrested in May 1986. One member commented that, to fulfil its role properly, the Committee would need to be given additional information about the situation in El Salvador with respect to almost every area covered by the Covenant, notably, the right to life, liberty and security of person, the right to a fair trial, freedom of movement, freedom of expression and freedom of assembly.

158. In connection with article 6, members expressed concern over the continuation of political violence in the country, including assassinations, murders, torture and disappearances of union leaders and others, and referred to reliable reports indicating that more than 1,800 civilians had been killed and 300 persons had disappeared in 1986. While the number of cases of killings and disappearances had decreased from previous levels, the situation could hardly be considered satisfactory. Recalling that the representative of the State party had admitted during the discussion of the initial report that his Government lacked the capacity to cope with investigations of deaths caused by political violence, one member wondered what improvements had been made in the system of investigation since 1983. In the same connection, he noted that nothing was said in the supplementary report about the possible establishment of an independent body for investigating such deaths, which had at one time been contemplated by the Government, and asked whether any persons had been brought to justice for political killings. It was also asked whether any law had been enacted to prevent extrajudicial executions, including deaths caused by firing on demonstrators, and whether inquiries had been pursued with a view to ending such abuses by sectarian forces.

159. Regarding the death penalty, members wished to know whether any crimes of the sort referred to in paragraph 68 of the report carried the death penalty, what

offences under military legislation carried the death penalty and whether that penalty also applied to civilians tried under military law, and how the restrictions relating to the imposition of the death penalty on minors and pregnant women, as provided in article 6, paragraph 5, of the Covenant, were being observed, particularly in view of the state of emergency.

160. With reference to article 7 of the Covenant, members noted that, despite the prohibition of torture and degrading treatment under article 27 of the Constitution, information from various sources indicated that detainees were frequently tortured, often during pre-trial detention. Noting further that some 90 per cent of the former detainees who had been examined by experts after their release had been found to carry traces of torture, members asked how many cases of the use of torture by prison or police authorities there had been, how many investigations had been carried out, in how many cases those responsible had been punished, how many formal convictions of torturers had been pronounced by the courts, and what compensation had been provided to torture victims. It was also asked whether the prohibition of torture and ill-treatment of prisoners featured in the training of law enforcement officials.

161. In connection with article 9 of the Covenant, members noted that violations of the rights covered under that article were still being reported and that the number of cases of arrest and detention, under Decree No. 50 of February 1984, had risen to more than 1,000 during 1986. In that regard details were requested as to the number of political and other detainees, the trends with respect to the number of arrests and the length of periods of detention. Further, it was observed that the provisions of Decree No. 50, under which it was possible to hold a person in administrative detention for eight days and to deny him access to relatives or legal counsel for up to 15 days, were not compatible with the Covenant.

162. Regarding article 10 of the Covenant members wished to know what measures had been taken by the Government to prevent the mistreatment of detainees, what controls had been established over the action of the police forces and over the administration of detention centres, particularly establishments under military administration, and how the rights of persons arrested under article 243 of the Code of Penal Procedure (arrest without a warrant) were guaranteed. The representative was also asked to comment on a television broadcast that had shown detainees signing confessions - an event that suggested a lack of adequate safeguards of the persons concerned. Members also noted that the General Assembly, in its resolution 41/157, had expressed the view that continuing violations of human rights were taking place in El Salvador and that the judicial system was unable to rectify matters and punish those responsible. In that regard they wished to know specifically what medical services were available to detainees and to what extent officials received instruction about the Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials. They also requested details of specific cases illustrating actual practice relating to the treatment of detainees.

163. With reference to article 14 of the Covenant, one member stated that he would welcome the representative's comments on the observation that the report was silent about the administration of justice and that the judiciary appeared to be ineffective. Another member wished to know what powers were still wielded by the military authorities following the lifting of the state of emergency and on what legal basis.

164. Regarding article 17 of the Covenant, one member wondered what measures the Government had taken to provide protection against arbitrary or unlawful interference with privacy, family, home or correspondence and against unlawful attacks against honour and reputation.

165. In connection with article 18 of the Covenant, one member referred to the apparent lifting of the prohibition against political propaganda by the clergy or criticism of the Government during religious services - which he characterized as a positive development. He asked how that change had been reflected in practice if the prohibition had, indeed, been removed.

166. In connection with article 19 of the Covenant, one member wished to know what possible justification there could have been for restricting freedom of opinion during the state of emergency. In his view, the situation did not warrant any derogation from the provisions of article 19, paragraph 1, of the Covenant. Attention was also drawn to the Committee's general comment relating to article 19 (No. 10 (19)), 7/ which stressed that the right to freedom of opinion should never be restricted or suppressed. Another member wondered why the emergency provisions had been formally extended to the rights set forth in article 19 at all, since it was clear that those rights were being exercised in practice.

167. In connection with article 25 of the Covenant, one member referred to a reported strike by 27 members of the Legislative Assembly in El Salvador and asked for an explanation of that incident. He also wished to have additional information concerning participation in political activity and the progress made in the exercise of political rights.

168. With reference to article 26 of the Covenant, one member wished to know why article 3 of the Constitution contained no specific safeguard against discrimination on the grounds of political or other opinion. It was also observed that the provisions relating to adultery in the Penal Code were discriminatory with regard to women and therefore not compatible with the Covenant.

169. Replying to questions raised by members concerning article 2 of the Covenant, the representative of the State party said that, under article 144 of the Constitution, international treaties were integrated into domestic law and could be invoked before the courts. In case of conflict between a treaty provision and domestic law, the former prevailed. The rights inscribed in the Constitution were being taught to members of the armed forces, and a first training course of that type had been held for 5,000 members of the police force on 25 November 1986. It was planned that by October 1987, some 85 per cent of the members of the security forces would have been given such training, which was being organized in co-ordination with the International Committee of the Red Cross, the Catholic Church and the Salvadorian Human Rights Commission.

170. Responding to questions raised by members of the Committee with respect to Decree No. 50 and the state of emergency, the representative said that the state of emergency had been lifted on 12 January 1987. Decree No. 50 had been abrogated and would be replaced by a new law relating to penal procedures during a state of emergency. It was also planned to create a new office of Procurator-General for Human Rights, to be elected by the Legislative Assembly. During the state of emergency the guarantees relating to freedom of movement, expression, association and non-interference with correspondence had been suspended. Freedom of assembly

had also been restricted except for religious purposes. The state of emergency had not affected freedom of opinion, nor had the status or careers of judges been affected.

171. Regarding the arrest of certain activists during the state of emergency, the representative said that Luz Janet Alfaro, Vilma Sayonara Alfaro and Dora Angélica Campos had all admitted participation in terrorist activities and had subsequently been amnestied and freed. They had made a trip to Europe at the beginning of 1987 and had left a dossier with the Centre for Human Rights, which could be consulted. Trade-union representatives who had been detained had engaged in illegal or terrorist acts and had not been arrested for their trade-union activities. Following a meeting in 1985 between President Duarte and the Director-General of ILO, a contact group had been sent to El Salvador in January 1986 to look into the situation relating to trade unions, but the number of alleged cases of violation of trade-union rights referred to the ILO Committee on Freedom of Association had been very low.

172. In connection with questions raised under article 6 of the Covenant, the representative said that the Government under President Duarte had demonstrated its determination to put an end to grave violations of human rights by co-operating with the competent organs of the United Nations and the Organization of American States. Immediately upon taking power, the Government had dismantled the G-2 Section of the Policía de Hacienda, which had been implicated in such violations and those responsible had been brought to trial. In all, more than 1,000 members of the armed forces or security forces had been charged with human rights violations and those involved in such well-known cases as the murder of four American nuns and two agricultural advisers had been condemned and were currently in prison. However, it was often difficult to prove such violations in court and trials were often delayed by administrative shortcomings. A commission was currently undertaking a study of the judicial system with a view to improving the implementation of relevant constitutional and treaty provisions. In carrying out that task, El Salvador was counting on technical assistance from the United Nations and from friendly countries, such as Spain.

173. With reference to articles 7 and 10 of the Covenant, the representative acknowledged that abuses of detainees had been very frequent at an earlier stage of the crisis, but said that such abuses had diminished greatly since the start of the democratization process. He stated that the practice of torture was not resorted to in Salvadoran detention centres - a fact that had been confirmed by the most recent report of the Special Representative of the Commission on Human Rights. After learning of incidents of maltreatment, the authorities had instituted a system of medical examinations and of filming the interrogations of detainees so as to preclude the possibility of their recurrence. Detention centre personnel were employees of the Ministry of Justice. Their duties were defined precisely and they operated under strict supervision. Detainees could receive medical care at clinics placed at the disposal of the detention centre administration.

174. Regarding article 9 of the Covenant, the representative said that the security forces and armed forces had received precise orders concerning the manner in which arrests were to be carried out. Pursuant to an agreement concluded between the Government and the International Committee of the Red Cross, the name, date and place of arrest, and place of detention of all persons who had been taken into custody were communicated to the International Committee of the Red Cross. Red Cross delegates and members of the Salvadorian Human Rights Commission were authorized to visit detainees at any of the centres.

175. Regarding article 14 of the Covenant, the representative explained that the judicial system of El Salvador comprised the Supreme Court of Justice and courts of first and second instance. Judges of the Supreme Court of Justice and of the courts of second instance were civil servants elected by the Legislative Assembly to serve terms of five and three years respectively. Judges and magistrates were independent and in the exercise of their functions were subject only to the Constitution and the laws. An effort was currently under way, under the aegis of a special reform and revision commission, to improve the penal system from the administrative, technical and legal standpoint.

176. Responding to questions raised concerning article 25 of the Covenant, the representative stated that, in order to strengthen the rule of law and broaden political participation to include the entire population and with a view to the legislative elections scheduled in 1988 and presidential elections in 1989, a thorough effort was being made to revise and update the electoral lists.

177. With reference to article 26 of the Covenant, the representative explained that the inequality in the treatment of men and women with respect to adultery would be corrected under a planned revision of the Penal Code.

178. Finally, the representative of the State party explained that any errors and omissions found in the supplementary report had been due to his country's inexperience and to the lack of qualified personnel. He was confident, however, that, with the help that the Centre for Human Rights would be able to provide pursuant to General Assembly and Commission on Human Rights resolutions, El Salvador's future reports would be more complete and would conform better to the provisions of the Covenant. His Government was determined to continue to co-operate, to the best of its ability, with the Committee and with other organs dealing with human rights.

179. Although deeply concerned by the human rights situation in El Salvador, members of the Committee expressed their appreciation to the representative of the State party for the additional information he had provided and for having made available a number of additional documents relating to the human rights situation in his country. However, they felt that the sum of information provided to the Committee by the Government of El Salvador did not amount to a full initial report. Members nevertheless expressed satisfaction about the State party's readiness to conform more closely in the future to the Committee's guidelines for the preparation of reports.

180. The Committee requested the State party to submit another supplementary report before the end of 1988 so as to enable the Committee to consider it together with the second periodic report of El Salvador. The deadline for the submission of the latter was set for 31 December 1988.

Senegal

181. The Committee considered the second periodic report of Senegal (CCPR/C/37/Add.4) at its 721st to 724th meetings, on 6 and 7 April 1987 (CCPR/C/SR.721-724).

182. The report was introduced by the representative of the State party who said that his country was fully committed to the promotion and protection of human rights, which it considered essential for development. Since the consideration by

the Committee of Senegal's initial report in 1980, many legal reforms had been undertaken by the Government of Senegal and in that process the observations of members of the Committee had been taken carefully into account. Certain changes, such as the laws adopted in 1981 relating to the abolition of restrictions on the number of political parties and the elimination of all administrative and financial restrictions on the right to leave the national territory, were a direct response to the concerns expressed by the Committee.

183. Among the other reforms in the legislative sphere to which the representative drew attention were far-reaching changes in Senegal's criminal procedure, which involved measures to decentralize the judiciary, speed up judicial procedures and provide more effective protection of the right to defence. Legislation had also been adopted to restructure the bar, improve the status of judges and strengthen their independence and liberalize the 1979 Press Organs and Journalism Act. The Penal Code and the Code of Civil Procedure were also being modified. In addition, measures had been taken to promote human rights through the dissemination of information in popularized form and through education and training activities.

Constitutional and legal framework within which the Covenant is implemented

184. With regard to that issue, members of the Committee wished to receive information concerning any significant changes made since the consideration of the previous report that would affect the implementation of the Covenant and any problems encountered, the functions of the Higher Council of the Judiciary and the Supreme Court with respect to the unconstitutionality of laws and the way in which the functions of the two bodies differed, the status of the Covenant under article 79 of the Constitution, specific steps taken to ensure that domestic laws and regulations were consistent with the Covenant, the possibility of provisions of the Covenant being directly invoked by individuals before the courts or State institutions on the grounds that the relevant rights were not covered by domestic law, and efforts to disseminate information about the Covenant and the Optional Protocol.

185. Members also wished to know the meaning of the term "fundamental guarantees accorded to civil servants and military personnel", in article 56 of the Constitution, what arrangements existed to provide access to the courts for people in relatively remote areas, whether there were any legal aid schemes to assist the less advantaged sectors of society, how many officials had lost their civil rights, pursuant to article 6, paragraph 1, of the Penal Code and for what length of time such rights had been forfeited. It was also asked what recourse was available to private individuals when a law violated a right provided for under the Constitution, whether the Council of State or bodies other than the Supreme Court had any role in resolving conflicts of jurisdiction between the executive and legislative powers, whether information about the Covenant and related legislative measures had been made available in national languages other than French, whether the powers of the President of the Republic extended to the domain of the rights and duties of citizens allowing him to issue normative decrees, and whether any special state body existed to deal with problems relating to civil and political rights. Members also wished to know whether the reciprocity provisions in article 79 of the Constitution applied not just to bilateral but also to multilateral agreements and, if so, whether the Government could invoke that provision in case of non-compliance with the Covenant by other States parties, what role, if any, the Supreme Court had in cases concerning the constitutionality of a treaty after it had been ratified, and whether the publication of duly approved and promulgated legislation in the Journal officiel was governed by law.

186. In his reply to questions raised by members of the Committee, the representative of the State party said that the legislative changes adopted by Senegal since 1980, including those referred to in his introductory statement, had been in keeping with the provisions of the Covenant and therefore did not present any particular problems of implementation. Under article 82 of the Constitution, the Supreme Court had responsibility for ruling on the constitutionality of laws at the drafting stage, as well as for determining their unconstitutionality under article 63, provided it had been requested to do so within six days of final enactment either by the President of the Republic or by one tenth of the membership of the National Assembly. Article 82 also conferred on the Supreme Court the right to decide about conflicts of jurisdiction between the executive and legislative powers. The Higher Council of the Judiciary was an advisory body on the French model with the President of the Republic serving as Chairman and the Minister of Justice as Vice-Chairman. It concerned itself with such matters as the appointment, tenure and discipline of judges and the exercise of the right of pardon by the President of the Republic and had no role at all with respect to the determination of the constitutionality of laws. Under article 79 of the Constitution, ratified international treaties took precedence over relevant domestic laws and formed part of the corpus of Senegalese law without requiring any enabling legislation. An individual could invoke the provisions of the Covenant, as had already occurred in a case involving a Ministry of the Interior order challenged in court on the basis of article 4 of ILO Convention No. 87. Continuing efforts were being made in Senegal to harmonize domestic legislation with the provisions of the Covenant, including the repeal of a law that had restricted the right to leave the country; that action had been taken specifically in response to the Committee's comments on the initial report.

187. Regarding the dissemination of information about the Covenant, the representative explained that, although the Covenant had not yet been translated into the national languages, its publication in the Journal officiel had been an important step, since the Journal officiel had a wide circulation in government ministries and other official bodies and among the French-speaking population. The media also played an important role in keeping the public informed of legislative debates and developments and there were government-sponsored television programmes concerning human rights. The Senegalese Committee for Human Rights, the Institute for Human Rights and Peace, and the African Institute of Human Rights were involved with such activities as the dissemination of human rights information, both in French and in the national languages, holding seminars, conferences and symposia, and providing instruction and training. Their efforts were effectively reinforced, particularly in rural areas, by non-governmental organizations concerned with providing legal advice.

188. Responding to other questions, the representative pointed out that the reference in article 56 of the Constitution to guarantees to military and civilian personnel related to legislation adopted in 1961 defining the public service. The guarantees concerned, inter alia, recruitment, remuneration, trade-union rights, protection against threats and slander, the right to hold political and philosophical opinions, advancement according to procedures defined by statute, disciplinary sanctions subject to certain rules, annual leave, resignation and retirement. As a result of the decentralization of the judicial system, including the replacement at the département level of magistrates courts by two or three departmental courts with broader competence, access to the courts for Senegalese citizens had been made easier. Legal aid was available in certain cases under a system introduced by a colonial ordinance in 1911. Loss of civil rights was

imposed for certain criminal offences and involved the loss of civic, political and even family rights (such as the right of legal guardianship). It was similar in its implications to the former penalty of banishment. Civil rights could be restored under an act of amnesty, and that had occurred in a number of cases. In Senegal individuals could not challenge the constitutionality of laws or administrative acts and could seek their abrogation only on grounds of abuse of power.

189. The second section of the Supreme Court dealt with administrative matters and was similar in function to the Conseil d'Etat (State Council) in France. The High Court of Justice was a specialized political body, composed of members of the National Assembly. It had responsibility for judging crimes, such as high treason, committed by members of the Assembly or by ministers in the performance of their functions. Under article 56 of the Constitution, powers relating to the rights and duties of citizens were reserved to the National Assembly; regulatory powers, which encompassed all matters not reserved to the competence of the legislature, were exercised by the President of the Republic. The President could act in areas reserved to the National Assembly only in cases where the latter had adopted appropriate enabling legislation that specified the scope and duration of such delegation of authority. The reciprocity provision in article 79 of the Constitution applied essentially to bilateral commercial or other agreements and could not be invoked by Senegal in case of non-compliance with the Covenant by another State party. The Supreme Court ruling rejecting an appeal based on ILO Convention No. 87, which had been ratified by Senegal, was not inconsistent with article 79 of the Constitution, which gave precedence to duly ratified treaties. The rejection of that appeal was based solely on the fact that the text of that Convention had no legal effect since, contrary to article 2 of the Law of 1970 concerning the applicability of laws and regulations, it had not been published in the Journal officiel.

Self-determination

190. With regard to that issue, members of the Committee wished to know what Senegal's practice was with regard to self-determination in internal affairs, including, in particular, the claim to autonomy that had been raised in Casamance, and whether groups claiming such rights could be qualified as "peoples", in the sense of article 1 of the Covenant.

191. In his reply, the representative stated that Senegal's support for peoples struggling for self-determination, notably the people of South Africa, Namibia and Palestine, had been amply illustrated in the report. The right of self-determination was an evolving concept that encompassed not only the right to freedom from colonial domination and to national independence but also the right of people freely to determine their internal political régime and freely to assure their economic, social and cultural development. Regarding the events in Casamance, he explained that the overwhelming majority of residents in the region, which was one of the 10 regions in Senegal but was separated geographically from the rest of the country by Gambia, considered themselves to be Senegalese and had no desire to secede from the Republic. Only a few individuals, who were members of one of eight local ethnic groups, had rebelled, first against local authorities and later against the central Government. The eight ethnic groups living in Casamance were so intermingled that the small group in question could scarcely be considered as constituting a people having the right to self-determination under article 1 of the Covenant.

Non-discrimination and equality of the sexes

192. With regard to that issue, members of the Committee wished to receive information concerning non-discrimination on grounds of political opinion, language, property or other status, restrictions on the rights of aliens compared with those of citizens, difficulties encountered with regard to the effective enjoyment of equal rights by women provided for under the Constitution and elsewhere and affirmative action taken to promote equality of the sexes, the compatibility of articles 152 to 154 of the Family Code with article 3 of the Covenant, and, in relation to equality of the sexes, concerning the acquisition of Senegalese nationality.

193. In his reply, the representative of the State party said that the Constitution of Senegal prohibited and condemned discrimination in all its forms. While only certain forms of discrimination were specifically enumerated in article 1 of the Constitution, that enumeration was not at all limitative and the Constitution and laws had to be seen as a whole. Thus, for example, article 7 of the Constitution prohibited discrimination on the basis of birth, status or family, and article 20 prohibited discrimination at work on the basis, inter alia, of "opinion". The fact that the Covenant was itself a part of Senegal's internal juridical order was also worth noting in that connection. Regarding the rights of aliens, he recalled that under article 7 of the Constitution all human beings were equal before the law. Citizens and aliens therefore enjoyed the same basic rights, except for certain civic rights reserved to citizens, in conformity with article 25 of the Covenant. Restrictions placed on aliens were few in number and were intended more as measures of protection than of exclusion. Article 7 of the Constitution also provided for equality of the sexes before the law and the Government of Senegal had constantly sought to promote such equality further. While much undoubtedly remained to be done to ensure the equal rights of women, considerable progress had been made. Many women were now performing the same functions as men in various fields of social and economic activity and were serving as ministers, legislators, members of the Economic and Social Council and as Supreme Court Counsellors. There were also many women judges, lawyers and business executives.

194. Responding to questions concerning the Family Code, the representative acknowledged that articles 152 to 154 of that Code attributed certain rights and duties to the husband. However, the special marital and parental rights accorded to the husband by society were not attributed on the basis of his being a male, but only in order to ensure family cohesion and harmony. If abused, such rights could be taken away and, in any case, married women continued to enjoy all their civil rights. If the place of residence selected by the husband in his capacity as head of family was not suitable, the wife could seek legal authorization to change her domicile. Similarly, notwithstanding a husband's opposition, a married woman could exercise a profession, provided that the interests and welfare of the children were not harmed thereby. It was important to realize that African and Senegalese society were different from Western society. Seen in that context, it was clear that the various provisions of the Family Code, including the one relating to polygamy, were not incompatible with article 3 of the Covenant. At the same time, the representative pointed out that there was a certain divergence of opinion with respect to such matters in Senegal and that a special committee was to meet shortly to address the various issues. That committee could also be invited to consider whether those provisions of the Family Code were compatible with article 3 of the Covenant.

195. Regarding the transmission of nationality, the representative drew attention to the fact that Act No. 61-10 of 7 March 1961 had been superseded by a law adopted in 1986. Pursuant to the principle of jus soli, under the new law Senegalese nationality could be transmitted either through the father or through the mother to any child born in Senegal. The principle of equality of sexes was also respected in the case of transmission of nationality in accordance with the principle of jus sanguinis, in that all children born to a Senegalese father, or to a Senegalese mother where the father was of unknown nationality or stateless, were considered Senegalese. Children born out of wedlock acquired the nationality of the parent who first acknowledged them; thus, a Senegalese mother could transmit her nationality even to a child born out of wedlock.

State of emergency

196. With regard to that issue, members of the Committee wished to know whether the provisions of Acts Nos. 69-29 and 69-30, both of 29 April 1969, had ever actually been applied, what the composition of the advisory control commission mentioned in paragraph 69 of the report was and whether its decisions could be appealed to the courts, under what circumstances a state of emergency, which involved the use of emergency powers by civilian authorities, would be declared, as opposed to a state of siege, when such powers would devolve upon the military authorities, whether guarantees of civil rights were adequately protected during states of emergency, and whether remedies existed to compensate persons who had been illegally arrested during a state of emergency.

197. In his reply, the representative of the State party pointed out that articles 47 and 58 of the Constitution contained basic provisions concerning states of emergency but that no enabling legislation had been enacted until 1969 when Acts Nos. 69-29 and 69-30 had been adopted. Those laws had enabled the National Assembly to specify in detail the modalities relating to the proclamation and application of a state of siege or state of emergency with a view to averting abuses, but they had never been invoked. The advisory control commission envisaged in Act No. 69-29 had not been established and it was therefore not possible to answer questions about how it would actually function in practice. A state of emergency could be declared in cases where there was a serious threat to public order or internal security, whereas a state of siege could be invoked in case of an external threat to the country. Article 58 of the Constitution and the relevant laws provided very effective control of executive action by the National Assembly during states of siege or emergency and ensured that the Constitution and laws would not be abused.

Right to life

198. With regard to that issue, members of the Committee wished to know which offences were subject to the death penalty, how often that penalty had been imposed by the courts and whether its abolition was being considered, what progress had been made in reducing infant mortality, under what circumstances law enforcement officials were permitted to resort to the use of force, and how many law enforcement officials had been charged under the relevant criminal statutes prohibiting unnecessary resort to violent methods.

199. In his reply, the representative said that, while a number of violent crimes, such as premeditated murder and infanticide, as well as espionage were punishable by death under the Penal Code, no death sentences had ever been imposed for armed

robbery, infanticide or espionage. Although the death sentence had been imposed a number of times for other crimes, it had actually been carried out in only two instances since Senegal became independent in 1960. As elsewhere, the possibility of abolishing the death penalty was also under discussion in Senegal, with opinions on the subject differing rather widely. Law enforcement officials, if found guilty of crimes of sufficient gravity, would not be exempt from sanctions set forth in the Penal Code, including the death penalty. While there had been occasional confrontations between the police and university students during public demonstrations, only one death was alleged to have been caused by police violence, that of a student who had been injured at a demonstration and who had subsequently died in hospital. Senegal had sought to reduce infant mortality through a variety of programmes designed to provide maternal and child health training and services to pregnant women and mothers, particularly in rural areas. Senegal was also serving as a pilot country for a primary health care programme sponsored by the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF) and was participating in a vaccination programme, also jointly sponsored by WHO and UNICEF, which had already resulted in the vaccination of more than 75 per cent of all children up to 23 months of age against seven serious communicable diseases.

Freedom from torture: treatment of prisoners and other detainees

200. With regard to those issues, members of the Committee wished to know the findings of the State Security Court concerning the allegations of torture it had considered in connection with the trials of November 1985. They also asked what measures had been instituted by the Government to ensure not only that torture was prohibited by law but also that it did not occur in practice, how many persons had died in police custody during the period under review and what investigations had been instituted in such cases, what measures existed under Decree No. 66-1081 of 31 December 1966, or elsewhere, to ensure the treatment of prisoners in a manner consistent with article 10 of the Covenant and whether the Standard Minimum Rules for the Treatment of Prisoners were applied. It was asked whether illegal medical or scientific experiments on human beings were specifically prohibited by law and whether any cases relating to such practices had been brought before the courts, whether there were any standard instructions or codes of conduct relating to the treatment of individuals during arrest, detention and interrogation, what arrangements existed for the inspection and supervision of prisons and places of detention, whether there were written regulations for the reception and prompt investigation of complaints by detainees of cruel or inhuman treatment by police and gendarmerie officials, how many such complaints had been received in 1985 and 1986, and how many prosecutions of police or prison officers there had been in recent years under article 288 of the Penal Code.

201. In his reply, the representative of the State party explained that, while some of the so-called separatists who had been brought to trial in November 1985 before the State Security Court had alleged that they had been tortured during the pre-trial interrogation period, no medical or other proof had been produced in support of those allegations either before the examining magistrate or the State counsel. Thus, there had been no grounds for submitting the case to the State Security Court under the provisions of the Code of Criminal Procedure relating to allegations of torture. Torture was almost unknown in Senegal and its use in connection with the commission of any crime was deemed an aggravating circumstance. Sanctions against its use were provided for, inter alia, under articles 59 and 288 of the Criminal Code, the former also providing for sanctions in cases of torture during interrogation. Allegations of torture were always

carefully examined, and whenever an official had been convicted of such an act the courts had been extremely severe. While there was a general prohibition of torture in the Constitution, to which reference was made in some articles of the Penal Code, there was no formal law against torture. In August 1986, Senegal had signed and ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the provisions of which would be scrupulously applied. Only two persons had died in police custody during the past 20 years. Strict inquiries by experts appointed by the legal authorities had established that the deaths had not been attributable to mistreatment.

202. Responding to questions raised by members of the Committee concerning the treatment of prisoners and detainees, the representative said that, pursuant to article 698 of the Penal Code, the internal system in prison establishments was determined by Decree No. 66-1081 of 31 December 1966. Articles 20 to 29 of that Decree conformed as closely as possible to all the instruments containing minimum rules to which Senegal had subscribed and the Decree itself clearly stipulated that its provisions constituted minimum rules. Members of the judiciary helped to instruct prison staff in the minimum rules. The implementation of that Decree, which had been revised twice, was subject to strict surveillance. The Inspector-General of the Courts, who was responsible for ensuring that the prison régime aimed first and foremost at social rehabilitation, received regular reports from the Director of Prison Administration. Regarding detainees, he said that there was protection against their ill-treatment at various levels: examining magistrates could receive complaints from detainees at any time, they could also submit complaints to the Inspector-General of Courts and Tribunals, which they did quite frequently, and there was a control at the level of the Indictments Division of the Public Prosecutor's Office, which had jurisdiction over the conduct of examining magistrates. The police authorities were also very attentive to the treatment of detainees. Overall, it was difficult for the police or prison guards to violate the rights of detainees and the incidence of ill-treatment was low.

Liberty and security of person

203. With regard to that issue, members of the Committee wished to know whether there was a maximum limit on the length of pre-trial detention resulting from renewal orders by the examining magistrate, what controls were exercised to ensure that pre-trial detention did not, in fact, exceed the prescribed limits, how soon after arrest the individual concerned was allowed to contact a lawyer, and how soon his family was informed of his arrest.

204. In his reply, the representative of the State party explained that, since the adoption of judicial reforms in 1984, liberty had become the rule and detention the exception. For that reason, the term "pre-trial detention" had been changed to "temporary detention". Although an examining magistrate could renew a detention order at six-month intervals, in correctional matters carrying a maximum penalty of two years or less it was unusual for a magistrate to detain a person for a very long time. There were several controls to ensure that the detention period did not exceed the prescribed limits: the accused could be released by the governor of the prison after the expiry of the initial six-month period if the detention order had not been renewed, the detainee could apply to the examining magistrate for conditional release and, if the latter failed to rule on such an application, he could appeal directly to the Indictments Division; if the Indictments Division failed to act within one month of receipt of a dossier from the Public Prosecutor's Office, the accused was automatically released from detention. Detainees could

contact a lawyer immediately after arrest but the latter could intervene only after the judicial procedure had begun. An arrested person's family was notified not later than 24 hours after the individual had been taken into custody. Prohibition of communication with a detainee could be ordered only by the examining magistrate and such prohibition could not exceed 10 days.

Right to a fair trial

205. With regard to that issue, members of the Committee wished to receive information concerning laws and practices guaranteeing public trials and the public pronouncement of judgements, in accordance with article 14, paragraph 1, of the Covenant, as well as the circumstances under which the press could be excluded from a trial. They also asked about the organization and functioning of the bar, the number of lawyers in private practice, the way in which they were organized and the regulation of their fees, arrangements for the provision of legal aid or advice, the composition and jurisdiction of the Court of State Security, and any actual cases considered by that Court since entry into force of the Covenant in respect of Senegal. Members also wished to know whether the verdict in a case was subject to review as to the facts under article 3 of Order No. 60-16 of 3 September 1960 and whether the phrase "all courts", used in that article, also covered the assize court, whether "pupil lawyers" were qualified lawyers or merely in the process of qualifying, and, in the latter case, whether they met the requirement in article 14, paragraph 3 (d), of the Covenant when serving as defence counsel in criminal cases, how the panel of advocates from which defendants could select their counsel was established, and whether the phrase "suffering from a disability", which appeared in article 101, paragraph 4, of the Code of Criminal Procedure, was meant to include persons with insufficient means.

206. In his reply, the representative of the State party said that the codes of both criminal and civil procedure stipulated that trials should be held in public except in respect of matters involving public order or the safeguarding of public morals. Journalists were authorized to attend all public trials and to publicize legal proceedings. A law adopted on 4 January 1984 had replaced the 1960 decree under which the bar had been governed. Lawyers in Senegal were independent and free of governmental control. They could practise individually or in partnership with others. Their fees were not regulated but an indicative scale had been established by the Ministry of Justice that could be referred to in case of dispute. Disputes over fees that could not be amicably resolved were submitted for arbitration. The activities and professional interests of lawyers were managed under the direction of the Bar Council, chaired by the President. The 1984 Act had strengthened the Bar Council by giving it legal status and financial autonomy, as well as by lengthening the terms of office of the President and members of the Council so as to provide greater stability and continuity. Legal assistance was governed by a decree, dating from 1911, which was still in force and which provided for the appointment of a defence lawyer by the President of the Bar Council, upon request, as well as for the allocation of funds to cover legal costs. The Court of State Security was presided over by a judge assisted by two assessors and a government representative. It also comprised several examining magistrates. From 1973 to 1985, the court had tried approximately 10 cases of minor importance, in addition to the case tried in November 1985, which had been discussed earlier. A number of persons convicted in 1984 of attempting to disturb the peace in a neighbouring country had received rather light sentences.

207. Responding to other questions, the representative explained that there were two appeals procedures, ordinary and extraordinary. Through the ordinary remedy, which applied to both criminal and civil cases, it was possible to appeal convictions imposed by courts of summary jurisdiction for minor offences to the Division of Summary Jurisdiction Appeals of the Court of Appeals, which reviewed the proceedings from the standpoint of both fact and points of law. Similarly, decisions by examining magistrates could be appealed to the Indictments Division of the Public Prosecutor's Office. However, criminal convictions by the assize court, which ranked as a court of appeal and whose decisions were regarded as an expression of the sovereign will of the people, since citizens chosen by lot sat with the bench, could be appealed only through the power of cassation exercised by the Supreme Court. Under that procedure the facts of the case were treated as judged and were not reviewed. The term "pupil lawyer" referred to a lawyer in pupillage, i.e. a person who had finished his legal studies and had been admitted, on the basis of the results of a competitive examination, to the chambers of a senior lawyer for a three-year period of apprenticeship. Such a person could plead only in certain cases in lieu of his "pupil master" and under the latter's responsibility. A lawyer in pupillage could in no circumstances act regularly on behalf of a client. The panel of advocates was drawn up independently by the Bar Council: the major panel included in order of seniority all fully qualified practising lawyers; the minor panel was composed of lawyers still in pupillage. The term "suffering from a disability" referred to handicapped persons and had nothing to do with insufficient means.

Freedom of movement and rights of aliens

208. With regard to that issue, members of the Committee wished to know whether any limitations had been imposed by law on the right of citizens to move freely or to settle anywhere in Senegal, what special provisions and regulations, if any, pertained to the expulsion of aliens other than those holding refugee status, and whether the Act of 7 March 1961 relating to naturalization, under which it was possible to rescind the naturalization of an alien within 15 years of granting it if his behaviour was incompatible with the status of a Senegalese citizen, was still in force. One member also asked for clarification of the terms of articles 7 and 8 of Act No. 68-27, which seemed somewhat inconsistent.

209. In his reply, the representative said that both citizens and aliens enjoyed the right to freedom of movement and of establishment set out in Article 11 of the Constitution. Any restriction of such rights was exceptional and could be applied only pursuant to laws enacted by parliament in the interests of public order, security or public health. The conditions of entry and residence of aliens were regulated under the Act of 25 January 1971, which provided for expulsion on grounds such as interference in the country's internal affairs or the commission of offences punishable by imprisonment. Any administrative measures taken against an alien could be appealed to the Supreme Court. It was envisaged that the provision under which an alien serving a prison sentence could be expelled upon completing his prison term would be dropped in the planned new code. The Act of 7 March 1961 relating to naturalization had been amended twice, in 1970 and again in 1985, to take account of changing circumstances and policies. The granting of naturalization was regarded by public opinion as something of a favour to an alien and the citizenship status of a naturalized person was therefore somewhat delicate. If such a person committed acts, such as a criminal offence, for which he could have been imprisoned and expelled had he remained an alien, he could be deprived of citizenship and subsequently expelled. However, the regulations

relating to such cases had been drafted very carefully and were applied fairly. Regarding the provisions relating to refugees in articles 7 and 8 of Act No. 68-27, he explained that article 7 provided for "most favoured foreign national" treatment of refugees in respect of the exercise of a profession, whereas article 8, under which aliens enjoyed the same treatment as nationals, related to a broader group of benefits including the basic right to work.

Right to privacy

210. With regard to that issue, members of the Committee wished to know whether any restrictions had been imposed by law on the inviolability of correspondence and communications, and which authorities, other than judges, could authorize a house search and under what circumstances. It was also asked whether telephone-tapping could be authorized by law during an emergency.

211. In his reply, the representative stated that the guarantee of the inviolability of correspondence and other communications embodied in article 10 of the Constitution was rigorously enforced, and only a few exceptions were authorized, for example an examining magistrate might require a prison governor to send him the correspondence of a detainee whose case was under investigation. Correspondence from a lawyer to his client, however, was strictly inviolable. The interception or suppression of correspondence was punishable by imprisonment ranging from three months to five years. House searches, other than those carried out by the criminal police, acting under the authority of the Public Prosecutor's Office, were authorized only in the case of persons arrested in flagrante delicto. The police were prohibited from divulging information about any papers or documents seized. Professional secrecy and the right of defence were also protected under the Code of Criminal Procedure and, for example, the chambers of a lawyer could be searched only in his presence and with the authorization of the appropriate batonnier. Telephone-tapping was unknown in Senegal; however, during a state of emergency or a state of siege, the law authorized the administrative authorities to control all postal, telegraphic or telephonic communications.

Freedom of expression

212. With regard to that issue, members of the Committee wished to know whether newspapers, other than the newspapers of authorized parties, had to be registered and, if so, how many applications for registration had been approved or refused, whether the publication and dissemination of foreign press publications could be prohibited by joint action of the Ministry of the Interior and the Ministry of Information and, if so, under what circumstances, whether foreign journalists were subjected to restrictions that were different from those imposed on Senegalese journalists, whether there were any private radio and television stations in Senegal, and whether it was possible, notwithstanding state control, to express various opinions about religious, social and political questions on radio and television, including criticisms of government action or policy and, if so, whether there were any established norms or directives in that regard. Referring to article 255 of the Penal Code, which prohibited the publication and dissemination of inaccurate reports, members of the Committee wished to know whether journalists who had published erroneous information in good faith were subject to prosecution under that article, whether any person had been actually charged under that article and, if so, on what grounds, whether it was the responsibility of the accused to prove the truth of the published statement, and whose responsibility it was to decide that the publication of a given report actually constituted an incitement to

law-breaking. Some members pointed out that, in their view, the provisions of that article could be so broadly construed as to interfere with the ability of journalists to carry out their duties in a responsible manner. With reference to articles 259 to 261 of the Penal Code, relating to libel, it was asked why libel against public officials was punished more severely than libel against private individuals.

213. In his reply, the representative of the State party explained that article 13 of the new Press Law adopted in 1986 stipulated that newspapers and periodicals could be published without authorization, provided that the Public Prosecutor's Office in Dakar was duly notified. Publication could be prohibited by the Press Commission, with written justification, but such decisions could be appealed on grounds of illegality (cassation). No newspapers had been banned since 1979. There were only two or three newspapers favouring the Government and the majority were either privately owned or were organs of various political parties. A foreign publication could, in fact, be banned by joint decision of the Ministries of Information and of the Interior for reasons of security or to protect public morals, but any such decision had to be justified and could be appealed to the Supreme Court on grounds of abuse of power. Only one such appeal was known to have been filed, in a case involving a French-language newspaper printed in France, Le Communiste, and the appeal in that instance had been upheld. There were no private radio or television stations in Senegal, which was a developing country. Although such media were State owned, a large place therein was reserved for discussion of the various problems confronting society and such debates were entirely free of any censorship or control. Those taking part had only to exercise self-discipline so as not to give offence to others. The radio and television stations were independent of any political party and were open to the expression of all shades of opinion. The dissemination of false information, in the meaning of article 255 of the Penal Code, presupposed malicious intent to incite lawlessness, offend public morals or discredit public institutions. Thus, there could be no question in such cases of claiming to have acted in good faith. At a certain period a number of abuses of that type had been committed and there had been two convictions involving newspapers that had clearly acted with malice. Libel was in a different category of offence and was punishable only if the allegation was proved false. Even in such a case a journalist could seek to prove that he had acted in good faith in making or disseminating the libellous statement. However, the person who had been libelled also had the right, in such cases, to attempt to prove the contrary. Libel against public officials was punishable more severely since officials had less opportunity to defend themselves and the difference in degree of punishment was slight.

Freedom of association

214. With regard to that issue, members of the Committee wished to have further information concerning the requirement of prior authorization of political parties and to know how many requests for such authorization had been refused in the period under review.

215. In his reply, the representative of the State party said that, under the Code of Civil and Commercial Obligations, political parties were subject to the regulations relating to associations. The Code provided that associations could be freely established after prior notification had been filed and registered with the administrative authorities. As specified in the Code, registration could be refused only for such reasons as illegality of purpose, grave presumption of danger

to public morals, or attempted reconstitution of an association previously prohibited under article 816 of the Code. Any such refusal by the public authorities had to be justified and could be appealed to the Supreme Court on grounds of abuse of power. Prior to the adoption of Act No. 81-17 of 6 May 1981 relating to political parties, the Supreme Court had upheld the refusal of registration of one political party, the Rassemblement national démocratique (RND). Since 1981, that party had come into existence together with 15 other political parties and no applications for registration had been refused.

Right to participate in the conduct of public affairs

216. With regard to that issue, members of the Committee wished to receive information concerning indirect as opposed to direct suffrage, the loss of the right to vote by persons sentenced in absentia, the scope of the term "adults without legal capacity" in the context of the right to vote, the age limit for administrative appointments, in the light of article 25 (c) of the Covenant, and the meaning of a term, used in paragraph 187 of the report, in legislation relating to equality of the sexes in the public service, which seemed to make such equality subject to "special provisions". One member wondered whether the laws relating to loss of the right to vote were not too rigorous, since such an important right should not be taken away except for grave reasons and then only for a limited period rather than for life.

217. In his reply, the representative stated that, while both direct and indirect suffrage were recognized under the Constitution, in practice all elections held to date had been on the basis of direct suffrage. The loss of the right to vote if convicted in absentia related only to persons convicted for crimes (condamnation par contumace). Persons convicted in absentia for civil offences (condamnation par défaut) were not subjected to loss of the right to vote. The term "adults without legal capacity" referred to persons, other than minors, who had been found mentally incompetent by a doctor and placed under guardianship. Article 20 of Act No. 61-33 of 15 June 1961, relating to the status of civil servants, limited eligibility for appointment to the civil service to persons between the ages of 18 and 30. However, under certain conditions it was possible to waive the upper limit on age. The "special provisions" mentioned in paragraph 187 of the report referred only to regulations governing the conditions of work of women, particularly those intended to protect the health of pregnant women, and in no way constituted discrimination on the basis of sex. Regarding loss of the right to vote, the representative stressed that such a measure was taken only in extremely serious cases involving criminals condemned by the assize court, fugitives from justice, recidivists, and those who were permanently mentally disabled.

Rights of minorities

218. With regard to that issue, members of the Committee wished to know whether there were any special factors or difficulties involved in the effective enjoyment by minorities of their rights under article 27 of the Covenant and why, in the absence of religious or ethnic conflict in Senegal, it had appeared necessary to prohibit political groupings based on ethnic or religious affiliation in article 3 of the Constitution.

219. In his reply, the representative of the State party explained that the population of Senegal was so intermingled ethnically and culturally that many

Senegalese did not quite know which of the seven ethnic groups in the country they belonged to. Religious tolerance had reached a level where Catholics and Muslims readily celebrated each other's religious holidays. Under such circumstances the application of article 27 did not present any difficulties. The Constitution recognized the equality of all citizens without distinction as to race, origin or religion and prohibited ethnic or religious propaganda and politics. Its purpose, which was fully consistent with the purposes of article 27 of the Covenant, was to prevent the growth of ethnic or religious strife.

General observations

220. Members of the Committee expressed their warm appreciation to the delegation of Senegal for its co-operation and for the competence it had shown in responding to questions and providing explanations concerning the implementation of the Covenant in Senegal. The report and the delegation's responses had clearly shown that the Government and people of Senegal were deeply attached to the principle of respect for human rights. The submission by a developing country, such as Senegal, of its initial and second periodic reports with only minor delays was also seen as a clear demonstration of the State party's commitment to meeting its obligations.

221. Members were of the view that, in general, the laws and practices relating to civil and political rights in Senegal were in conformity with the requirements of the Covenant. While some areas of concern remained, including those relating to the rights of women and to the loss of voting rights, the discussion had indicated a genuine desire on the part of Senegal for further progress. The Committee noted with special satisfaction that a number of changes had been introduced, notably in the Criminal Code, following the consideration of the State party's initial report, and expressed the hope that the comments made by members with respect to the second periodic report would be similarly taken into account.

222. The representative of the State party thanked the Committee for its comments and the consideration it had shown to his delegation and assured it that the Committee's observations on the report would be attentively examined by the competent legal authorities in his country, with a view to introducing further legislative improvements.

223. In concluding the consideration of the second periodic report of Senegal, the Chairman once again expressed the Committee's thanks for the report and for the delegation's participation and said that the constructive dialogue that had taken place between the delegation and members of the Committee had been useful to both parties.

Congo

224. The Committee considered the initial report of the Congo (CCPR/C/36/Add.2) at its 732nd, 733rd and 736th meetings, on 7 and 9 July 1987 (CCPR/C/SR.732, 733 and 736).

225. The report was introduced by the representative of the State party, who referred to the main provisions of the Congolese Constitution of 1979, as amended in 1984, guaranteeing rights and fundamental freedoms in his country. He also outlined Congolese legislation on civil and political rights, in particular, and mentioned the support that his country was giving at the international level to efforts to combat apartheid and to national liberation movements.

226. The members of the Committee welcomed the fruitful dialogue that had recently been initiated between the Congolese Government and the Committee. They nevertheless noted that the report of the Congo was limited to references to the text of articles of the Constitution and laws, and did not contain sufficient information on the practical implementation of legal and constitutional provisions in the Congo or on their interpretation by the competent judicial and administrative organs. They stated that it would be useful for the Committee to have examples of case-law and administrative and judicial decisions in order to be able to assess the extent to which the Covenant was implemented in the Congo. It would also be helpful if the Congolese Government could provide information on cultural, economic and social factors that might affect implementation of the Covenant in the Congo, and on any other institutional or legal difficulty encountered in efforts to attain the objectives of the Covenant. In addition, the report referred to the amendments made to the Congolese Constitution in 1980 and 1984; it would be helpful if the Committee could be told what those amendments were.

227. Referring to article 2 of the Covenant, the members of the Committee asked what the actual situation of the Covenant was the actual situation of the Covenant in the Congolese legal system and, in the event of a discrepancy between a law and the Covenant, which of the two texts was applied and what measures had been taken in the Congo to publicize the rights that could be exercised by private individuals. They also asked whether schoolchildren and members of the police and armed forces received training on that subject, whether the text of the Covenant had been translated into languages other than French, whether a private individual could directly invoke the provisions of the Covenant in the courts or whether that possibility was subject to the gradual incorporation of those provisions within the Constitution, and whether courts had handed down decisions concerning provisions of the Covenant that had not yet been incorporated within domestic Congolese law. It was noted that almost all provisions of the Congolese Constitution referred to the rights of citizens and it was asked whether or not the rights provided for in the Covenant were extended to aliens in the Congo. It was also noted that, under article 119 of the Congolese Constitution, the Constitutional Council could declare a treaty commitment to be unconstitutional, and it was asked whether such a case had already arisen and whether there was a time-limit for the denunciation of an international instrument, as provided for in the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. 8/

228. In connection with article 3 of the Covenant, members of the Committee asked what percentage of women in the Congo were members of the People's National Assembly and the various judicial bodies, taught in schools and universities, and worked in undertakings, what the conditions limiting the right to vote in accordance with the law were and whether specific examples could be given of the equality of men and women in the family, divorce proceedings, labour legislation and remuneration for work.

229. Referring to article 4 of the Covenant, members of the Committee asked in what circumstances the President of the Congo could proclaim a state of emergency or a state of siege, what the nature of the special powers that were conferred on him in such a situation was, what monitoring powers were held by the People's National Assembly concerning the duration of the state of emergency or state of siege, and whether there was a habeas corpus procedure or other remedies against violations of Covenant provisions during that period. It was also asked whether a state of

emergency had ever been declared in the Congo and, if so, what rights had been restricted.

230. In connection with article 6 of the Covenant, members of the Committee inquired what crimes carried the death penalty in the Congo, how many persons under sentence of death had been executed during the past five years, what the infant mortality rate in the Congo was and what measures had been taken to combat epidemics or food shortages. Reference was made to the information that a defendant under the age of 16 could be acquitted and handed over to his parents, depending on the circumstances in question, and it was asked how responsibility for corrective measures could be transferred to the parents and what the judicial practice was in that connection. Clarification was sought on the exact meaning and scope of the text of article 7 of the Congolese Constitution concerning protection of the person.

231. With regard to articles 7 and 10 of the Covenant, members of the Committee asked whether members of the police and armed forces, medical and prison personnel, persons responsible for interrogations and other officials were given instruction in the requirements of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Code of Conduct for Law Enforcement Officials and the Standard Minimum Rules for the Treatment of Prisoners. They also asked what administrative, legislative and other measures were in effect to prevent torture, whether any cases of torture had been reported, whether allegations of torture were the subject of an independent investigation, whether confessions obtained under torture were admissible in the courts, and whether police or prison personnel had been prosecuted for such violations of human rights. In addition, the members of the Committee asked what regulations were in force in places of detention, what organ supervised places of detention, in what circumstances detainees could be subjected to rigorous imprisonment, what the most severe punishments imposed in places of detention in accordance with the law were and what rules governed visits by relatives and lawyers of detainees.

232. In connection with article 8 of the Covenant, it was recalled that the Congolese practice of forced labour, known as "compulsory labour in the social interest", had prompted ILO to express its concern in 1985 and information was requested on the current situation in that respect. It was also noted that the report of the Congo did not indicate what law prohibited slavery and trafficking in slaves in that country, in the absence of an explicit provision of the Constitution.

233. With regard to article 9 of the Covenant, members inquired whether persons detained without trial, in particular for their political opinions, had remedies similar to habeas corpus or amparo, whether the courts could rule on cases of unlawful detention, and in what circumstances the maximum legal time-limit for custody could be doubled and the time limit for detention extended.

234. In connection with article 11 of the Covenant, it was recalled that the Congolese Government had expressed a reservation on that article; members asked whether the Congolese authorities had considered amending the existing legislation and withdrawing that reservation.

235. In relation to article 13 of the Covenant, members of the Committee noted that an alien could only be expelled from the country following a judicial decision, with the exception of expulsions ordered by the political authorities involving various considerations relating to national sovereignty; they asked what law

applied in that case in the Congo and in which cases expulsion was ordered by the political authorities. They also asked whether the remedy available to aliens in the Congo against an expulsion order had a suspensive effect and what the exact significance of expulsion as an accessory penalty was.

236. In connection with article 14 of the Covenant, the members of the Committee referred, inter alia, to the observations made by the Congo regarding the Committee's general comments on the provisions of that article (CCPR/C/40). They inquired what legal provisions existed in the Congo to ensure the independence and impartiality of judicial bodies and lawyers, whether that independence manifested itself only at the trial stage or whether it also characterized the stages prior to judicial proceedings, by whom and for what reasons judges could be dismissed or transferred, whether magistrates from the Government Attorney's Office received only instructions concerning the case before them or more general guidelines, and in what circumstances special courts could be instituted. They also asked whether special courts had already been set up and in what circumstances, what procedure was followed for the appointment of judges to those courts, whether the special courts followed a particular procedure or whether they applied the Code of Penal Procedure, and whether their decisions were susceptible of appeal or cassation. In addition, further information and explanations were sought about "non-professional" magistrates and the system whereby the promotion roster for judges ceased to be valid at the end of the year for which it had been drawn up and inclusion on eligibility lists was final. Details were also requested concerning the nature of the revolutionary courts. Members inquired whether the Directorate General for State Security was subject to supervision by the judiciary or other independent institutions, what the procedure was for exercising the right to lodge a complaint against state organs, as provided for in article 28 of the Congolese Constitution, and whether a party in a civil or criminal trial was allowed to express himself in a language other than French.

237. In connection with article 17 of the Covenant, details were requested on the means of legal protection existing in the Congo against intrusion upon privacy and on remedies for victims of human rights violations of that type.

238. On the question of freedom of religion, as embodied in article 18 of the Covenant, members of the Committee requested further information on the meaning of article 18 of the Congolese Constitution providing that religion might not be used "for political ends", on possible cases in which that provision had been implemented and on the existence at least of a law defining the acts in question. They also asked what religions existed in the Congo, whether there were any statistics on those religions, how they were organized and whether the churches were subsidized by the State, whether there were religious minorities in the Congo and, if so, what their legal status was.

239. Several questions were asked about articles 19, 21 and 22 of the Covenant. Members of the Committee asked, in particular, what the conditions determined by law, as referred to in article 16 of the Congolese Constitution were for exercising the freedoms of expression and association, what restrictions were imposed on the formation and organization of political parties and trade unions, whether there were limitations on freedom of expression in the Congo and, in particular, on the dissemination of information by the national and foreign press and by other media, whether there were official censorship organs and, if so, what their powers were, whether they practised preventive or repressive censorship, in particular of national and foreign literature, how many daily newspapers and radio and television

stations existed in the Congo and to whom they belonged or by whom they were controlled, and whether censorship decisions could be challenged in the courts. Some members of the Committee also asked about the compatibility of the establishment of a single-party political system in the Congo with the provisions of article 19, paragraph 1, of the Covenant and of the creation of a trade-union monopoly with the provisions of article 22 of the Covenant, about the role of the masses as referred to in article 3 of the Congolese Constitution and about the way in which the representatives of the people were responsible to the organs of the single party, in accordance with article 5 of the Constitution. They also requested clarification concerning article 29 of the Constitution, in accordance with which Congolese citizens could not exercise rights conferred on them by the Constitution to amend the constitutional order of the People's Republic of the Congo "for anti-democratic purposes".

240. In connection with article 23 of the Covenant, members asked whether the Congolese Government felt that any traditional attitudes that might continue to exist in the Congo created difficulties concerning the equality of the spouses with regard to marriage, during marriage and at the time of its dissolution.

241. In connection with article 25 of the Covenant, members inquired how candidates were chosen for elections to the Congolese People's National Assembly.

242. With regard to article 27 of the Covenant, members of the Committee asked about the composition of the Congolese population by ethnic group, by language and by religious belief.

243. Replying to the questions asked by the members of the Committee, the representative of the State party outlined the efforts and objectives of the Congolese public authorities in the area of social policy and pointed out that the amendments to the 1979 Constitution had related only to the powers of the President of the Republic as Head of Government and to the establishment of a Constitutional Council having powers that had until then been conferred on the Supreme Court.

244. Referring to article 2 of the Covenant he said that the Congo respected the principle that treaties had priority over the law and that the force of the Covenant outweighed that of domestic law. However, it had not yet happened that a citizen had invoked a provision of the Covenant in a Congolese court. The Covenant was publicized in universities, schools and cultural institutions, and radio and television carried programmes describing various concepts of law and public freedoms in French and reported court proceedings in the two national languages. In the courts, "people's legal information centres", composed of judges, lawyers and clerks of the court, provided all necessary information to Congolese citizens or aliens. The information was given in French and in the two national languages. The term "citizen" had been used in the Constitution because that instrument had been drafted primarily for the benefit of the Congolese, but it did not imply discrimination against aliens in judicial matters.

245. On the question of the principle of equality of men and women as set forth in article 3 of the Covenant, he stated that in his country several women occupied senior positions in political life, in public administration, in the army and in the professions, and that the Family Code recognized the joint authority of both parents over children.

246. Referring to article 4 of the Covenant, he said that, in the event of the proclamation of a state of emergency or a state of siege, the powers of the President of the Republic could be conferred in accordance with the Constitution only in exceptional circumstances, but that constitutional provision had never been implemented.

247. With regard to article 6 of the Covenant, he explained that, under the Congolese Penal Code, the death penalty could be pronounced only in cases of assassination, poisoning, patricide, murder - when it had preceded or accompanied another crime - and conspiracy, as practised, for example, by the secret society known as "Andzimba", which pursued criminal purposes. During the past five years, five death sentences had been pronounced in the Congo, but none had been carried out. He also gave explanations on cases in which a person sentenced to death by the Criminal Court could bring his case before the Supreme Court; if the Supreme Court overturned the decision of the Criminal Court, the former had the right to reach a final judgement. Minors under the age of 18 were tried by the juvenile courts, in accordance with the Code of Penal Procedure; minors were answerable for criminal matters, but the father was answerable for civil matters.

248. In connection with article 8 of the Covenant, he explained that the concept of forced labour existed in the Congo only in name, being used in the Penal Code, which was in the process of being revised; in practice, only minor tasks were involved.

249. With regard to article 9 of the Covenant, he referred to the question of custody, which was governed by articles 46 ff. of the Code of Penal Procedure. In urban districts with a court of first instance, where there existed serious and concordant evidence against a person such as to justify his being charged, the police were required to bring him before the Public Prosecutor after not more than 72 hours in custody. That time-limit could be extended by a further 48 hours through written authorization of the Public Prosecutor or the examining magistrate. In places containing divisions of courts of first instance and courts of minor jurisdiction, extension of the time-limit on custody was granted in the light of each case by the divisional judge or the judge of minor jurisdiction. The above-mentioned time-limits were doubled outside urban districts containing a court of first instance, a court of minor jurisdiction or a divisional court. Provisional detention or detention pending trial was governed by articles 111 ff. of the Code of Penal Procedure and was imposed without distinction between Congolese and aliens. Any material error involving the time spent by an individual in provisional detention was susceptible of redress in the sentence. The detainee could be freely visited by his lawyers and relatives and could also receive authorization, issued by the competent judge, to travel to his home.

250. In connection with article 13 of the Covenant, the representative of the Congo said that aliens could be expelled by administrative or judicial order. If an alien was sentenced to a custodial penalty, the court was required to order the principal penalty to be accompanied by the accessory penalty of expulsion from the national territory, which was executed even if the person concerned appealed against the court's decision.

251. Referring to article 14 of the Covenant, he outlined the judicial system of his country as it had been determined by Act No. 53/83 of 21 April 1983. He explained, inter alia, that non-professional magistrates were citizens from all walks of life and all occupations who sat, deliberated and passed judgement

alongside professional judges in all courts, with the exception of military courts, with the aim of democratizing justice. Non-professional magistrates in the Supreme Court were appointed by the People's National Assembly. Judges were appointed by decree of the President of the Republic, but enjoyed very great independence. They were required to observe the law throughout the judicial proceedings and not only at the time of passing judgement. Lawyers, also, enjoyed complete independence and any person could freely choose his defence counsel or secure a court-appointed counsel. The language used during trials was French or the national language of the defendant if that was the only language he knew. Interpreters were available for aliens. All the principles relating to the rights of the defence were guaranteed in emergency courts and decisions handed down by those courts could be the subject of an appeal for pardon to the President of the Republic. The administrative tribunals ruled on appeals against State organs, in accordance with article 28 of the Congolese Constitution.

252. In connection with article 18 of the Covenant, he explained that the constitutional provision forbidding the use of religion for political ends had been prompted by the existence in the Congo of a religious movement that had originated in colonial times and had consistently opposed a number of political or administrative acts by the central authorities. He further informed the Committee that the establishment of cults in the Congo was governed by Act No. 2180 of 10 October 1980. Seven religious movements had been authorized and there were also more than 50 religious sects in the Congo.

253. Referring to articles 19 and 22 of the Covenant, he listed the titles of the national newspapers and foreign publications available in the Congo and said that Congolese radio and television were making a considerable effort to give the public information in French and in the two national languages. For the purposes of creating an association in his country, the statutes of the association must be deposited with the Ministry of the Interior; the association could not be a political party since that would be incompatible with the single-party principle.

254. The members of the Committee thanked the representative of the Congo for his replies to several of their questions. They nevertheless observed that more information was necessary in order to understand more clearly the mechanism for the implementation of the Covenant in the Congo, in particular on the following subjects: the concept of citizenship, the absolute prohibition of torture, the system of appeal on the legality of an arrest or detention, freedom of expression and censorship, and the status of religious minorities.

255. In conclusion, the Chairman said that a constructive dialogue had been started between the Committee and the Congolese Government, in whose second periodic report the Committee hoped to receive further information on those questions on which clarification had been sought and observations regarding the general comments made by the Committee on several provisions of the Covenant.

Zaire

256. The Committee considered the initial report of Zaire (CCPR/C/4/Add.10) at its 734th, 735th, 738th and 739th meetings, on 8 and 10 July 1987 (CCPR/C/SR.734, 735, 738 and 739).

257. The report was introduced by the representative of the State party who said that Zaire had an extensive body of laws relating to human rights, which were being

effectively implemented by the authorities, but that his country was striving to achieve an even higher level of protection of such rights. However, the country's size, its economic development problems, and the weight of custom, particularly in relation to the status of women, made progress in that area rather difficult. Despite such obstacles, there was a sound legal basis for the protection of fundamental rights and freedoms, comprising both a written Constitution, title II of which reflected almost all the rights covered in the Covenant, and a variety of laws.

258. The Constitution also envisaged the establishment of an appropriate institutional framework at various levels to protect individual rights, including a system of independent courts and tribunals, which had been progressively established. Recently, two new departments had been created - the Department of Women's and Family Affairs and the Department of Citizens' Rights and Freedoms, where all the various human rights related functions had now been concentrated. On 1 July 1987, the latter Department had established a committee, comprised of ministers, magistrates and lawyers, for the specific purpose of monitoring Zaire's compliance with its obligations under the International Covenants on Human Rights, preparing periodic reports required under the Covenants as well as responses to alleged violations and recommending measures to give effect to human rights instruments to which Zaire was a party. In addition to governmental organs, private organizations also participated in the protection of human rights in Zaire.

259. Members of the Committee expressed regret over the delays experienced in regard to the submission of Zaire's report and noted that the report, as submitted, contained a number of omissions, particularly with respect to the actual implementation of the Covenant. At the same time, they considered that the report reflected a genuine effort on the part of the authorities to provide information about the legal situation in Zaire and about the implementation of certain articles of the Covenant. They also welcomed the presentation of the report and the presence of the delegation as a demonstration of the State party's readiness to establish a constructive dialogue with the Committee.

260. With regard to article 2 of the Covenant, members requested clarification of the status of the Covenant in relation to domestic law. They asked whether the provisions of the Covenant in fact took precedence over domestic law, as noted in article 109, paragraph 5, of the Constitution and, if so, whether a legal provision contradicting a provision of the Covenant, such as article 8 of the Decree mentioned in paragraph 247 of the report, which clearly discriminated against women, could be challenged in court, whether there was a judicial body competent to deal with such contradictions and whether it was possible for a citizen to invoke a provision of the Covenant directly in court. Referring to the statement in the report regarding the existence of customs which were contrary to some of the provisions of the Covenant, one member requested further information as to the customs that posed the greatest obstacles to progress in implementing the Covenant.

261. Members also requested further clarifications concerning non-discriminatory treatment and equality before the law regarding persons other than citizens of Zaire, noting in that connection that the provisions of articles 12 and 31 of the Constitution were somewhat ambiguous and did not seem to accord fully with article 2, paragraph 1, and article 26 of the Covenant. It was also asked why discrimination on the basis of political opinion, which was prohibited under those two articles of the Covenant, was not also prohibited under article 12 of the Constitution. Regarding remedies, covered under article 2, paragraph 3, of the

Covenant, one member requested clarification of the procedure for challenging the constitutionality of a law before the Supreme Court of Justice, including the question of who was entitled to bring such action and the extent of the powers of the court. It was also asked, in connection with paragraphs 25 and 36 of the report, whether it was possible through recourse to administrative procedures to halt a violation or only to obtain compensation, and whether an individual could challenge an administrative act that had violated his rights. Additional information concerning the powers and role of the newly established Department of Citizens' Rights and Freedoms was also requested; it was asked whether citizens could lodge complaints with that Department, whether the Department could bring suit before the courts on behalf of citizens whose rights had allegedly been violated, how many and what kind of complaints had been filed with the Department and how they had been resolved.

262. Regarding article 3 of the Covenant, members of the Committee noted the State party's intention to eliminate all discrimination against women and requested full details concerning the progress being made to that end. They hoped, in particular, that the new Family Code would help remove some of the obstacles to the emancipation of women that were based on traditions and practices that had kept them in a position of inferiority to men. In that connection, they asked specifically whether the new Code would eliminate the discriminatory treatment of women in some cases. One member also wished to receive information concerning the proportion of women in schools, universities, the public service, the liberal professions and public life.

263. With regard to article 4 of the Covenant, members of the Committee wished to know whether any legislation relating to the proclamation of a state of siege or emergency existed in Zaire other than the constitutional provision empowering the President of the Republic to make such a proclamation. They also wished to know whether the legislature had the power to limit the duration of a state of siege or emergency. One member asked whether a state of emergency had been proclaimed in the past and whether the situation in Shaba, in particular, had led to such action recently. Several members expressed surprise that the right to life, guaranteed by article 6 of the Covenant, was not included under article 52 of the Constitution among the fundamental rights from which no derogation was permitted during a state of siege or emergency.

264. With regard to article 6 of the Covenant, members asked for information and statistical data covering the past five years concerning the number of death sentences that had been pronounced by the courts in Zaire, the reasons for such sentences and the number of executions, grants of amnesty, reprieves and commutations of sentence.

265. With reference to article 7 of the Covenant, members referred to reports alleging the use of torture, particularly at military detention centres and the premises of the national police (gendarmérie nationale) and the National Documentation Agency. They asked, in that connection, whether such places of detention were subject to supervision by higher authorities. One member requested a detailed explanation of the situation in Zaire with regard to the alleged practice of torture and wished to know whether such incidents were isolated or represented a systematic effort at repression. Noting from paragraph 95 of the report that members of a former military intelligence service had been prosecuted for having resorted to torture, another member wished to know whether that service had been definitively dissolved or merely replaced by a different intelligence service with analogous functions.

266. In connection with articles 8, 9 and 10 of the Covenant, members noted that labour "voluntarily accepted by the community concerned" was not covered by the prohibition against forced labour under Act No. 67-130. They wished to know, in that regard, what was meant by the term "community concerned", how such decisions concerning community labour were taken, and whether such decisions could be contested by an individual. Additional information was also requested concerning provisions designed to prevent arbitrary or prolonged detention, the maximum period of preventive custody and pre-trial detention, the basis for decisions relating to administrative detention, the detention of persons without trial on grounds of political opinion, and the functions of the joint control commission, mentioned in paragraph 106 of the report, which supervised the activities of the criminal police in respect of ordinary courts. Concerning the treatment of detainees, members wished to know whether the police and the armed forces as well as prison guards were informed about the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Code of Conduct for Law Enforcement Officials and the Standard Minimum Rules for the Treatment of Prisoners. They also wished to have further information concerning regulations governing visits to prisoners and detainees by family members and lawyers. One member wondered how often prison inspections were carried out, by whom and with what results.

267. In relation to article 12 of the Covenant, questions were raised by members as to the nature of banishment under Zairian law.

268. Members noted, in connection with article 14 of the Covenant, that under article 46 of the Constitution the President of the Republic was the guarantor of the independence of the judiciary, but they wished to know whether there were any objective guarantees in that regard, such as provisions relating to security of tenure and the judicial career system. Referring to the fact that, despite the prohibition of special tribunals under article 16 of the Constitution, there existed in Zaire both a State Security Court and special military tribunals, one member wished to know whether such tribunals were considered to have ordinary jurisdiction and whether they were competent to judge offences committed by civilians. With respect specifically to the State Security Court, another member asked for details about its composition, functions and practical operations and wished to know why the decisions of that Court could not be appealed. He also requested clarification as to why no provision had been made for compensating the victims of wrongful imprisonment, as provided in article 14, paragraph 6, of the Covenant. Members also sought information concerning the right to defence, including the right to the presumption of innocence, as provided in article 14, paragraph 2, of the Covenant, and asked whether accused persons were provided with legal assistance if they could not afford to hire defence counsel.

269. With reference to article 17 of the Covenant, members asked whether article 22 of the Constitution guaranteed the inviolability of the home to Zairian citizens only or also to foreigners. One member considered that articles 150 and 150 (h) of the Penal Code might be used arbitrarily or only for the benefit of certain individuals. Another member, referring to article 75, paragraph 4, of Law No. 344, wondered how it was possible to determine whether sealed correspondence between detainees and their lawyers was actually for the addressees except by opening the letters and examining their contents. Such a practice, however, appeared to violate not only the right to secrecy of correspondence but the right to a fair trial and the right of defence.

270. Regarding article 18 of the Covenant, it was asked how churches or religious sects could obtain legal status. With reference to paragraph 211 of the report, clarification was requested of the term "under the authority" of the People's Movement for the Revolution (MPR), which seemed to inhibit parents' freedom to provide for their children's religious education.

271. With reference to article 19 of the Covenant, members of the Committee noted that, under articles 32 and 33 of the Constitution, MPR was the only political movement in the country and that all citizens of Zaire were automatically its members, and expressed doubt as to whether such a provision was in conformity with articles 19 and 22 of the Covenant. In that same connection, members wondered whether it was possible within MPR to express different ideas or opposing views and how peaceful dissent from the MPR position was treated. Referring to paragraph 213 of the report, members asked for further information concerning restrictions on freedom of expression and asked whether the Constitution afforded any remedies in cases where the right to freedom of expression had been violated. It was also asked whether a person accused of disseminating false and harmful rumours, pursuant to article 199 of the Penal Code, could seek to defend himself on the grounds that he believed the information to have been correct. One member considered that article 191 of the Penal Code limited the possibility of communication between Zairians and foreigners and asked for details concerning legal precedents in that regard, including examples of cases where that provision had actually been applied. It was asked whether articles 2 and 9 of the Penal Code, relating to the dissemination of harmful information from foreign sources, had been invoked in the recent past.

272. Concerning the Musical Censorship Commission, established by Decree of the State Commissioner for Justice in 1967, members wished to have examples and further clarifications as to the functions of that Commission as well as a justification of the necessity for the censorship of music.

273. Noting in connection with article 22 of the Covenant, that the parliamentarians representing the Union for Democracy and Social Progress (UDPS) had returned from banishment, members asked for information about the fate of the rank and file members of that party. It was also asked whether there were any legal provisions restricting the right to freedom of association of foreigners.

274. Concerning article 27 of the Covenant, members expressed the view that, even if, as stated in paragraph 306 of the report, there were no problems in Zaire relating to religious, linguistic or ethnic minorities, it was none the less necessary for the Committee to have additional information concerning the composition of the Zairian population and they asked that relevant data be provided in that regard.

275. Finally, members noted that the Committee had examined a communication under the Optional Protocol to the Covenant involving Zairian nationals and in its final views ^{9/} had considered that a number of rights guaranteed under the Covenant had been violated. Further noting that the Government of Zaire had not extended its co-operation to the Committee at any stage of those proceedings, members expressed the hope that in the future it would be possible to count on co-operation in regard to such matters from the newly established Department of Citizens' Rights and Freedoms. They also hoped that the State party would be prepared to comment on the final views by the Committee and would be in a position to inform it of measures that might have been taken to give effect to the Committee's views in that case.

276. Responding to questions raised by members of the Committee under article 2 of the Covenant, the representative of the State party reaffirmed that the civil and political rights recognized in the Covenant were protected by the Constitution of Zaire. A document providing information on human rights was currently being prepared and would be circulated among the population. Competence for deciding the issue of constitutionality was vested in the Supreme Court of Justice. Although the Constitution was silent as to the procedures for bringing an action of unconstitutionality before that Court, in principle any interested party could do so. The legal system of Zaire reflected a combination of customary law, laws inherited from the colonial period and more recent legislative acts. At the base of the hierarchical structure were "peace tribunals" (tribunaux de paix) followed by the courts of first instance, courts of appeal and, finally, the Supreme Court of Justice. The latter consisted of 9 to 15 counsellors, presided over by a First President. The court was divided into legal, administrative and legislative sections. In addition to its competence for reviewing the constitutionality of laws, the Court was empowered to hear appeals against decisions of the courts of appeal and lower courts and to judge high public officials such as ministers or state commissioners. Appeals against administrative decisions of local (regional) authorities could be brought before a court of appeal, but the effective enjoyment of that right was seriously hampered by the distance that often separated the potential victim from the court of appeal. The representative acknowledged that the Constitution, in guaranteeing certain rights, referred to Zairian citizens, but he pointed out that that did not exclude foreigners from enjoying equal rights and equality before the law. In fact, article 31 of the Constitution specifically extended such protection to foreigners except for rights excluded by law, such as the right to stand for election to public office.

277. Regarding the role and functions of the newly established Department of Citizens' Rights and Freedoms, the representative explained that the Department was responsible for handling complaints from citizens who alleged that they had been injured by judicial, administrative or other governmental decisions, including decisions taken by the Supreme Court. The Department comprised several specialized services, including those dealing with complaints of a legal, administrative, political or international character. At the community or district level, the Department had established offices headed by a principal delegate, who was not necessarily a lawyer, assisted by two lawyers. Complaints that appeared to be well-founded were forwarded by the local offices to the Department, where a final decision was taken. Decisions taken in favour of a complainant had to be applied by the organs or individuals found to have been at fault, failing which the Department could bring the matter before the Permanent Disciplinary Commission established by the Central Committee of MPR or even directly to the President of the Republic. To date some 500 complaints had been received, but as yet few decisions had been taken since the Department was still in the process of organizing itself. The public had been amply informed about the role and functions of the Department.

278. With respect to the equality of sexes, the representative of the State party explained that it was not possible, unfortunately, to change discriminatory customs and traditions, which in the case of some tribes had an almost sacred character, by a stroke of the pen. The new Family Code would undoubtedly lead to some improvements but the force of custom was simply too strong to be ignored. It was also important to bear in mind that in urban areas women were more economically and socially advanced, whereas in the rural areas it was much more difficult to improve their status. Nevertheless, considerable progress had been made in educating

women, who now held from 15 to 25 per cent of the 70,000 higher education diplomas in Zaire. A legal reform commission was currently reviewing both the penal and civil aspects of the rights of women, including such matters as conjugal obligations and the relationship between spouses.

279. Referring to questions concerning the state of emergency, the representative said that, despite severe political difficulties, Zaire had not once declared a state of siege or emergency since 1965.

280. Regarding article 7 of the Covenant, the representative stressed that torture, in the sense of the use of violence to extort information from a detainee, was not practised in his country, and if it had been used, the authorities had had no knowledge of it. The International Committee of the Red Cross had always had access to the places of detention where torture had allegedly been practised, but had found no proof of illegal practices. The non-governmental organization that had made a number of allegations in that regard had been invited several times to visit the country and to observe the situation with respect to the practice of torture, but had not yet done so. Clearly, the use of violence in places of detention was wrong and had to be prohibited. Those found guilty of mistreating detainees had already been severely punished and the representative expressed confidence that there were no places in Zaire where torture was practised systematically.

281. Referring to questions relating to article 8 of the Covenant, the representative noted that the Constitution prohibited forced labour. The only type of compulsory labour permitted, apart from that relating to military service or to criminal convictions, was occasional participation in public works activity ordered by the local authorities, resulting from the community's legal or civic obligations, or work associated with natural disasters, such as fires or floods.

282. Responding to questions concerning liberty and security of person and the treatment of detainees, the representative of the State party said that the maximum period of preventive custody (garde à vue), generally under the control of the criminal police who assisted the public prosecutor, was 24 hours. Detention for a longer period was punishable as an abuse of power. Pre-trial detention, which could be ordered only by a magistrate, was for a maximum period of 15 days but the period could be extended at the judge's discretion. Such detention could be appealed. The Joint Control Commission established in 1984 to monitor the activities of the criminal police was composed of six persons and had been experiencing some practical difficulties in carrying out its duties.

283. Regarding the questions raised with respect to article 14 of the Covenant, the representative noted that while the President was the guarantor of the independence of the judiciary, such independence was also ensured by the Code concerning the judiciary. The posting of judges depended on the needs of the service and transfers were not used as a means of exercising improper pressure on judicial decisions. In view of the severe shortages of judges in the country, transfers were frequent and much reliance was placed on itinerant judges. The State Security Court was responsible for dealing with cases relating to internal and external security and, until recently, with infractions involving precious materials, such as diamonds or cobalt. Members of that Court had to be of particularly high moral character and ability and had to possess degrees in law. Neither that Court nor the military tribunals were special tribunals. The latter were regular courts whose competence extended to military matters and to military personnel. However,

they could also try civilians who were involved in an offence together with military personnel or if their offence related to the military, such as the theft of munitions.

284. Concerning the right to privacy, the representative stressed that the law provided strict punishment for all violations of the inviolability of the home. The law did not envisage any case in which violations of the secrecy of correspondence could be authorized and if anyone violated that right he was punished. That was also true of the right to secrecy of correspondence of detainees with their lawyers. However, in certain cases, such as when clandestine messages or communications between prisoners and lawyers were intercepted, the authorities had to act, even if the correspondence in question was addressed to a lawyer. Articles 136 and 150 (h) of the Penal Code reflected the tradition that elders and those in authority should be treated with respect.

285. With regard to questions relating to freedom of religion, the representative explained that a new religious sect could acquire legal status upon payment of a nominal fee and after furnishing proof that its doctrines were different from those of existing sects and that its leaders possessed appropriate theological credentials. The proliferation of religious groups in Zaïre had reached such proportions by 1978 that the President of the Council of the Judiciary had found it necessary to order the dissolution of 400 such sects. Religious congregations were able to establish schools, pursuant to Act No. 86-005 of 22 September 1986, and parents were entirely free to decide how their children were to be educated. There was no religious discrimination in the schools, where only the content of the syllabus was subject to control and not the religion taught. The reference to the "authority" of MPR in that context meant only that schools operated by the various religious groups were under an obligation to follow the existing curriculum.

286. Responding to questions raised by members of the Committee in connection with article 19 of the Covenant, the representative of the State party explained that the people of Zaïre had chosen the social and political organization of the country freely, in accordance with their right to self-determination. The concept of MPR was evidently different from that of the traditional concept of a "party", as understood either in the Western countries, where political pluralism was considered to be a pre-condition of democracy, or in the socialist countries, where the party was seen as an advance guard with a necessarily limited membership. Based on their own political experience, the people of Zaïre had decided that the best way to organize their society was to unite all elements of society within a single political institution. The rights guaranteed under the Covenant could be as effectively ensured and protected under such a system as under any other. The enjoyment of those rights was also fully compatible with "Mobutisme", which had to be understood simply as the thoughts, actions and teachings of President Mobutu.

287. As to freedom of opinion and expression, the representative explained that publications which touched upon MPR ideology had to be approved by the Central Committee, whereas others could be published lawfully provided that they conformed to considerations relating to public order and public decency. Censorship of music was considered necessary, particularly in view of the great power of expression of musical lyrics, so as to prevent offences against public morals or religious convictions.

288. Regarding the fate of members of UDPS, about which a question had been raised in relation to article 22 of the Covenant, the representative stated that there

were two categories of persons involved - refugees and exiles. Any exile, if he had been amnestied, was free to return to Zaire whenever he decided to do so.

289. With reference to questions raised in connection with article 27 of the Covenant, the representative recalled that there were some 200 different tribes in Zaire, often intermingled to a considerable extent. There was no question of the Government of Zaire interfering in the normal way of life of those tribes or imposing any particular language on them. They were free to use their own dialects except that only four local languages and French were used in the schools. Entry into the public service was based entirely upon educational and professional qualifications. It was therefore difficult to speak of the existence of ethnic minorities in Zaire and those who did so were often acting for political reasons.

290. Responding to the comments made by members of the Committee concerning the Government's failure to co-operate with the Committee during its consideration of a complaint submitted under the Optional Protocol, the representative explained that the events in question had taken place in 1978 and 1979, at a time when his Government had been preoccupied with a number of urgent problems, including external aggression. He also considered that there were extenuating circumstances in respect of the delay in Zaire's appearance before the Committee. In conclusion, the representative reiterated his assurances to the Committee concerning his Government's resolve, despite various political difficulties, to increase respect for human rights in the country.

291. Members of the Committee thanked the delegation of the State party for its co-operation and congratulated the representative for seeking to respond to the questions raised as fully as possible. That had helped the Committee to understand the difficulties that had been and still were being faced by the authorities in implementing the provisions of the Covenant. It was clear that genuine efforts were being made by Zaire to improve the human rights situation, including such encouraging developments as the dissolution of the former military intelligence and action service that had been implicated in the use of torture, the creation of the new Department of Citizens' Rights and Freedoms, termination of the banishment of former parliamentarians, the invitation to non-governmental organizations to visit Zaire, President Mobutu's declaration in October 1986, in which he acknowledged the existence of certain human rights problems in Zaire, and the presence of a Zairian Delegation at the forty-third session of the Commission on Human Rights.

292. At the same time, members expressed continued concern about a number of areas where the laws and practice in Zaire did not seem to conform adequately to the provisions of the Covenant. In that regard they referred to freedom of movement, freedom of expression, arbitrary detention and executions, equality of the sexes, the practice of banishment, repeated extension of the 15-day pre-trial detention periods and the treatment of detainees. Members requested that supplementary information be provided, particularly with respect to the foregoing areas of concern, together with the State party's second periodic report. Several members expressed the hope that the comments made during the consideration of Zaire's report would be taken into account, particularly those concerning the need for clarification of the status of the Covenant in relation to domestic law and for greater efforts to disseminate information to the general public about the provisions of the Covenant and about human rights, the importance of improved training of law enforcement officials and of better supervision of the penitentiary system so as to reduce and discourage torture and maltreatment of detainees, the need for affirmative action to improve the status and condition of women, and the

need to clarify existing legislation relating to the declaration of a state of siege or emergency in regard to article 6 of the Covenant. Several members stressed the importance of co-operation of States parties with the Committee and expressed the hope that the Government of Zaire would inform the Committee of its reactions to the recently adopted final views concerning two cases involving Zairian nationals and would co-operate with it during the further consideration of a case that was currently pending.

293. The Chairman thanked the representative of Zaire for his helpfulness in replying to the questions and concerns of members and expressed satisfaction that a fruitful dialogue had been established between the State party and the Committee. He said that the supplementary information that had been requested should be included in Zaire's second periodic report which, in accordance with the Committee's decision, should be submitted on 1 February 1989.

Romania

294. The Committee considered the second periodic report of Romania (CCPR/C/32/Add.10) at its 740th to 743rd meetings, on 13 and 14 July 1987 (CCPR/C/SR.740-743).

295. The report was introduced by the representative of the State party, who said that Romania had made substantial progress in the implementation of human rights since the submission of its initial report in 1979. At the same time, Romania had an institutional system that facilitated the participation of the population in public and civic life through self-administering and self-managing mechanisms that enabled all citizens freely to express their opinions concerning important problems. He referred to the principles of freedom for all and non-discrimination in the matter of human rights, as enshrined in his country's legislation, and cited percentages concerning the participation of women in key sectors of national life. He pointed out, moreover, that Romanian legislation guaranteed full equality of rights to the co-inhabiting nationalities. Particular attention was given by the Romanian authorities to the problems of young people, their schooling and vocational training. At the international level, the Government of Romania was doing its utmost to ensure the right to life and the right to peace through cessation of the arms race, to further the achievement of better living conditions for young people, to promote the right of peoples to self-determination, and to support the establishment of a new international economic order.

Constitutional and legal framework within which the Covenant is implemented

296. Members of the Committee inquired about the views of the Romanian Government on any important changes affecting implementation of the Covenant that had occurred since the examination of the previous report in 1979. They also requested additional information on the role of the Socialist Unity and Democracy Front and on its possible impact on implementation of the Covenant, as well as an explanation of the differences between the appeals procedure provided for under Act No. 1/1967 and the procedure under the special legislative enactments, of which the most recent was Act No. 1/1978. In addition, they asked what factors and what difficulties, if any, affected the implementation of the Covenant and what steps had been taken, other than those mentioned in the report, to disseminate information concerning the Covenant. Members also requested fuller information on the substance, scope and limits of the various forms of supervision of the activities of administrative bodies in Romania that were additional to the methods

of recourse and control normally encountered in other legal systems, on the bodies responsible for control of the constitutionality of laws, on laws against which appeals might have been lodged on the ground of unconstitutionality, on procedures for such an appeal and the effects of a decision of unconstitutionality, and on the nature of the right of petition and recourse provided for in articles 34 and 35 of the Romanian Constitution. Furthermore, clarification was requested on the meaning of paragraphs 15 and 16 of the report, on whether it was possible for an individual to invoke the Covenant before a court, on whether it was possible to challenge in the courts the legality of a legislative text submitted to the Grand National Assembly because it was claimed to be at variance with the Covenant, on any measures that had been taken to make the Covenant known among the various nationalities that inhabited the territory of Romania, and on whether or not there were non-governmental organizations in the country that might play a role in that regard. Questions were also asked concerning supervision of the implementation of laws in Romania and the position of the Council of State, the relationship between judicial and executive bodies, and the number and results of appeals lodged under Act No. 1/1967.

297. In reply to the questions raised by members of the Committee, the representative of Romania explained that the provisions of the Covenant were incorporated in Romanian legislation and were taken into account, as appropriate, whenever legislative provisions were amended or new ones adopted. There had been no particular change in Romania's legislative framework since the submission of his country's initial report, but the competent bodies had also been guided by the Covenant in continuing to improve the functioning of the State, governmental and social machinery, and the Government had ratified or planned to ratify all international instruments relating to civil and political rights.

298. The representative of the State party explained that the Socialist Unity and Democracy Front constituted a form of political and social life as well as the expression of the social pluralism and political and moral unity of Romania. He reviewed the activities of the Front and observed that, because of its prestige, the Front played a particularly important role in the implementation of the Covenant.

299. The difference between Act No. 1/1967 and Act No. 1/1978 was that the former dealt with a narrow field, whereas the subject of the latter was general. However, even if Act No. 1/1978 was applied, the person concerned could always invoke Act No. 1/1967 and avail himself of its appeal provisions.

300. As to the dissemination of information concerning the Covenant, that international instrument was circulated and studied in schools and universities. The fundamental rights laid down in the Covenant were also dealt with in articles in periodicals and annals, and there was a movement in the country dedicated to studying the legal nature of human rights, as well as radio and television programmes on human rights.

301. The right of petition was defined by a 1978 law. In practice, all socialist "units" had to examine citizens' complaints in accordance with a hierarchical principle, such examination being entrusted to professionals having appropriate experience.

302. As to the meaning of paragraphs 15 and 16 of the report, the representative of Romania stated that, for his Government, all rights were of equal importance, but

the right to life was the prerequisite for the enjoyment of all other rights, and civil and political rights were conceived in the context of the development of the nation and not in an individualistic perspective.

303. The possibility of challenging decisions of courts and administrative bodies was guaranteed by article 12 of the Act No. 1/1967. Such challenge took the form of an ordinary appeal and, pending the result of the appeal, the challenged decision was suspended and could not become operational. With regard to the relationship between Romanian legislation and the Covenant, the representative of the State party explained that internal legislative measures were necessary in Romania to ensure implementation of the provisions of the Covenant and that the rights of Romanian citizens did not derive from international treaties but from Romanian legislation, which, however, was drafted in the light of international commitments. The provisions of the Covenant were included in Romanian legislation and a person injured in respect of rights protected by the Covenant could invoke the text of the relevant law before an authority.

304. The Covenant had been disseminated in the languages of the co-inhabiting nationalities in Romania and it was not necessary for non-governmental organizations to take any action in that respect.

305. Under the Romanian constitutional system, there was no separation of powers: the supreme organ was the Grand National Assembly, which formulated legislation and appointed ministers and Supreme Court judges; the Council of State was a permanent organ headed by the President of the Republic, who supervised the enforcement of the laws and decisions of the Grand National Assembly and the activity of the Council of Ministers; the Council of Ministers was an administrative organ; the Supreme Court was responsible for judicial matters, under the overall supervision of the Grand National Assembly; and the people's councils, whose membership reflected social and national life, performed a supervisory role in all areas of public activity. Under the Romanian system, higher organs had the right to rescind unlawful acts of the organs subordinate to them.

Non-discrimination and equality of the sexes

306. In this connection, members of the Committee observed that article 17 of the Romanian Constitution did not seem to prohibit discrimination based on political opinion; they asked whether there was a legal basis to guarantee the absence of discrimination in that area, in accordance with article 2, paragraph 1, and article 26 of the Covenant, and whether there were other grounds for discrimination. In connection with the treatment of foreigners, they asked in what respects the rights of foreigners were restricted as compared with those of Romanian citizens, how their fundamental rights were protected, why their treatment in criminal matters was more favourable than that of Romanians, what areas were covered by those treaties that established discrimination between various categories of foreigners and whether they concerned rights enunciated in the Covenant, how many aliens were resident in Romania on a permanent or temporary basis, and how they were treated when emergency regulations were in force. Members also inquired whether, in practice, there had ever been candidates for election to the Grand National Assembly who had expressed differing political opinions and how they had fared in the elections, and what the exact proportion of women in academic life was.

307. In his reply, the representative of Romania stated that, when the Constitution had been promulgated in 1975, discrimination in Romania had already been eliminated in practice. As to the treatment of foreigners, there was a special law containing provisions on that question; it related in particular to the entry of foreigners into and their departure from Romania and their recruitment for work. In general, the treatment of foreigners, in particular with regard to residence, ownership of property, employment and social insurance, was no different from that of Romanian citizens, even when emergency regulations were in force. Act No. 25/1969 relating to foreigners provided, in particular, that foreigners in Romania enjoyed all fundamental rights, including civil rights granted to Romanian citizens, with the exception of political rights. Romania avoided making distinctions between foreigners, unless it had concluded a treaty under which Romania and another State had agreed on particular treatment for their citizens. The areas in which such treaties made distinctions regarding certain categories of foreigners were primarily dual taxation, investment guarantees and the abolition of visas. In addition, under Decree No. 24/1970, foreigners could receive more favourable treatment than Romanian citizens in the event of criminal proceedings, including a more rapid trial and the possibility of bail to enable the foreigner to leave Romanian territory within a short period. Lastly, the representative of Romania mentioned the facilities for tourists in his country, and pointed out that the deputies in the Grand National Assembly were not all members of the Romanian Communist Party and included representatives of the various religious faiths.

Right to life

308. With reference to that issue, members of the Committee wished to know how often and for what particular offences the death penalty had been pronounced in Romania and in how many cases it had been carried out in the last eight years. Statistical data were also requested with regard to infant mortality in the country and it was asked whether investigations were carried out by competent and impartial bodies when an official used his powers to deprive someone of his life, what disciplinary measures were taken if the official was found guilty of abuse and whether the family or dependants of the victim could file a suit for compensation.

309. In his reply, the representative of Romania stated that the death penalty currently existed in the legislation of his country only as an exceptional measure for the most serious offences. The alternative penalty of imprisonment for 15 to 20 years further restricted its sphere of application and pardon or commutation of sentence was also granted in many cases. The death penalty could not be imposed on anyone under 18 years of age, pregnant women or women with children under the age of three. During the past year, the infant mortality rate had been reduced to a low level; infant mortality had accounted for 9,181 deaths in 1985 as compared with 26,680 in 1960.

Liberty and security of person

310. With regard to that issue, members of the Committee wished to know under what circumstances and for what periods persons could be held in preventive detention without being charged with a criminal offence, what remedies were available to persons who were arbitrarily deprived of their liberty by arrest or detention, and whether any criminal or disciplinary action had been taken against officials for arbitrarily depriving persons of their liberty. Additional information was requested on the law and practice relating to detention in institutions other than prisons. In addition, it was asked whether there were any prescribed limits in

Romania to repeated resort by a court to 30-day extensions of pre-trial detention, how soon after arrest a person could contact a lawyer, whether a person might be refused access to counsel until the beginning of a trial or immediately before it, how quickly after arrest a person's family was notified, what the relevant decrees were and what care was taken to ensure that administrative measures taken against an accused person conformed to the requirements of security of person under the Covenant, what possibilities for appeal and remedy existed on that matter, and whether there was any remedy whereby a detainee could apply to a court of law for a decision on the lawfulness of his detention.

311. In his reply, the representative of the State party drew the Committee's attention, in particular, to articles 143, 146 and 148 of the Romanian Code of Criminal Procedure establishing the various circumstances under which pre-trial custody was applied. Preventive detention could be ordered for a maximum of 24 hours and extended only after questioning and when the person had been notified of the offence with which he was charged and the grounds for the detention. Article 141 of the Code of Criminal Procedure prescribed remedies for persons arbitrarily deprived of their liberty through arrest or detention; article 278 of the Code provided for appeal against pre-trial detention and Act No. 60/1968 dealt with inquiries on the legality of detention by judicial authorities. A victim of arbitrary detention was entitled to compensation by the State under article 504 (2) of the Code of Criminal Procedure and unlawful detention or arrest was punishable by imprisonment of six months to three years. The Code did not set a limit on repeated resort by a court to 30-day extensions of pre-trial detention, but, in practice, repeated extensions were rare and administrative measures could be taken in the event of failure to settle cases with due speed.

312. Article 31 of the Romanian Constitution and articles 6, 7 and 172 of the Code of Criminal Procedure guaranteed the right to defence counsel both during pre-trial proceedings and during the proper trial. The family of an arrested person was immediately notified of his arrest. Convicted persons serving their sentences through the performance of correctional labour under Decree No. 218/1977 were not incarcerated. With respect to administrative measures against an accused person when a criminal offence involved labour relations, the rules applicable were those of labour law, not of penal law. In the case of abuse by an administrative body, Act No. 1/1967 provided for the possibility of raising objections to arbitrary measures before a court.

Treatment of persons, including prisoners and other detainees

313. In connection with that issue, members of the Committee asked how many court orders had been issued under Act No. 25/1976 concerning compulsory labour for persons leading a parasitic life and whether such court orders were appealable, whether prison sentences normally comprised compulsory labour and, if so, what kind of labour was involved, what the meaning of the term "political prisoner" was in Romanian law as interpreted by the Romanian authorities, whether the Standard Minimum Rules for the Treatment of Prisoners were made known and accessible to prisoners, and what procedures existed for receiving and investigating complaints by detainees. With reference to the Application of Penalties Act No. 23/1969, it was asked how the conditions of detention of persons awaiting trial differed from those of already convicted persons.

314. Additional information was also requested on the supervision of prisons and other places of detention, the number of complaints of torture received, the number

of persons detained in connection with accusations of parasitism and the application of the Standard Minimum Rules for the Treatment of Prisoners in the prisons of Aiud and Glava.

315. Moreover, it was asked whether the fact that there were no political prisoners in Romania was a result of the 1986 amnesty or whether it was more generally true that there were no prisoners in the category of political prisoners, under what special circumstances a prisoner could be permitted to leave prison for a brief period, whether evidence of the subjection of accused persons to cruel, inhuman or degrading treatment was admissible in court, what remedies were available to victims of abuses by police authorities, what instructions were given to security forces in order to avoid the imposition of cruel, inhuman or degrading treatment, whether access by or to representatives of religion was granted to prisoners of the same religion, and what guarantees existed in Romania to protect a person against being deprived of liberty without the necessary safeguards. Clarification was also requested on the relationship between Decree No. 153/1970 on parasitism and Act No. 25/1976, and on the extent to which Acts No. 24/1976 and 25/1976 were applied.

316. In his reply, the representative stated that prison sentences did not comprise compulsory labour under Romanian legislation. Corrigational labour for convicted persons was a means of applying a penalty with re-educational and humanitarian objectives and it was not to be confused with compulsory labour, which was applied in the case of a person who, in spite of the assistance given by public institutions, refused to engage in any work or vocational training and continued to lead a parasitic life. There was no appeal against decisions taken under Act No. 25/1976, but the number of persons who refused to work was very small and very few orders under that Act had been issued.

317. Under Romanian legislation, no distinction was made between political and common offences, but political offences were generally understood to mean offences against State security and in that sense there were no political prisoners in Romania. The Standard Minimum Rules for the Treatment of Prisoners were reflected in Romanian penal legislation and prison regulations were brought to the attention of prisoners at the time of their imprisonment. The president of the court or a judge delegated by him had the right of access to the place of detention and conditions of detention were supervised by delegates of relevant bodies. Persons in pre-trial detention were detained separately from convicted persons and enjoyed more favourable conditions. Victims of abuses by the police or other authorities were entitled to redress and places other than prisons were not used in Romania to deprive a person of his liberty. Regarding Acts Nos. 24/1976 and 25/1976, they were both designed to give the persons concerned the opportunity to recognize their error and engage in useful activities. Over six decrees had been issued in Romania during the past eight years offering measures of clemency and amnesty for offences of a less serious nature.

Right to a fair trial

318. With reference to that issue, members of the Committee requested information on legal guarantees with regard to the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal and on the right of an accused to obtain the attendance and examination of witnesses on his behalf at his trial. Information was also requested on relevant rules and practices concerning the publicity of trials and the public pronouncement of judgements, as required by

article 14, paragraph 1, of the Covenant, specific rules concerning the admission of the mass media to court hearings, and facilities for accused persons to obtain the services of a lawyer and legal aid in cases of need.

319. Furthermore, members of the Committee asked for what reasons the Ministry of Justice could propose that a judge should be relieved of his duties with a view to his election in another department and to what extent that prerogative of the Ministry of Justice affected the independence and impartiality of judges. In addition, further information was requested on the composition of the People's Councils and the election of their members and on the various circumstances under which it was possible to request that judges should be relieved of their duties. Clarification was requested on the provisions of article 64 (6) of the Romanian Constitution. With reference to issues concerning the independence of the judiciary, it was asked for what purposes the publication or circulation by the press of information concerning ongoing proceedings was prohibited, whether a judge could be re-elected at the end of his five-year term of office, what happened to a Supreme Court judge if he was not re-elected, what was meant by the term "socialist morality" in relation to the provisions of article 229 of the Code of Criminal Procedure and by the term "serious misconduct" in relation to the dismissal of justices of the peace or judges of the departmental courts, and whether military courts were competent to try civilians.

320. Replying to questions raised by members of the Committee, the representative stated that equality for all in the administration of justice was provided for in Act No. 58/1968 and that the principles of competence, independence and impartiality of the tribunal were guaranteed, as was the right to appeal against violation of such principles, by the relevant provisions of the Code of Criminal Procedure. Article 229 of the same Code provided for a public hearing and specified the cases in which proceedings should be held in camera. In accordance with article 310 of the Code, judgements had to be publicly announced and, therefore, there was no particular reason to have specific rules relating to the admission of the media. Article 6 of the Code made provision for the accused to be defended. A judge was relieved of his duties often at his own request for personal or other reasons. The Minister of Justice could propose that a judge should be relieved of his duties, but the People's Council, which was composed of persons belonging to all sectors of Romanian society, was the body empowered to approve or to reject the proposal. Respect of the principle of the independence of judges was assured by the regulations governing the organization and activities of legal bodies. Judges in Romania were eligible for re-election. If a judge was not re-elected, an alternative employment was available in some related sphere. Judges could be removed from office for serious misdemeanours. The term "socialist morality" referred to the morality of Romanian society, in which people were respectful of the law and relationships were founded on social justice. Military courts were competent to try military personnel.

Freedom of movement and rights of aliens

321. On that point, the members of the Committee wished to know what restrictions, if any, could be imposed on the freedom of movement of citizens in Romania and on the right to leave the country, which authority was competent to review decisions refusing the issue of a passport or visa, what the exact meaning of the term "visa" was, whether Romanian citizens in possession of a valid passport were required to obtain an exit visa and, if so, on what grounds such a visa might be refused, whether there were any special restrictions on the freedom of movement of aliens

and on their choice of residence, whether there were any restrictions on the right of family reunification or any other regulations in that field, and which authority was responsible for reviewing expulsion orders. It was also asked whether there were any grounds other than those enumerated in Romania's report for the refusal of a passport or visa, how many appeals had been lodged against such refusals of a passport, and what proportion of favourable decisions had been delivered.

322. Some members of the Committee wished to refer to a specific case that concerned the practical application in Romania of the right to leave one's country: that of Mr. Liviu Bota, former Director of the United Nations Institute for Disarmament Research. They reminded the Committee that Mr. Bota, an international civil servant, who had returned to Romania for consultations at the end of 1985, had been held there ever since and they pointed out that, under article 12, paragraphs 2 and 3, of the Covenant, everyone was free to leave any country, including his own, subject to the restrictions provided by law and necessary only to protect national security, public order (ordre public), public health or morals. They pointed out further that Romania had ratified the Convention on the Privileges and Immunities of the United Nations (General Assembly resolution 22 A (I) of 13 February 1976). They asked how Romania could reconcile its legislative situation with refusal to allow Mr. Bota to leave the country and, in more general terms, what explanation could be given for refusal to issue a passport to a Romanian citizen on the grounds that his departure abroad could damage the interests of the Romanian State or affect that State's good relations with other States. It was observed that those grounds for refusal to issue a passport were not among the restrictions provided for in article 12, paragraph 3, of the Covenant, and it was asked how many applications for a passport had been rejected pursuant to that provision, whether persons who had been denied a passport on those grounds could lodge an appeal before a court; and how the courts interpreted the clause in question.

323. In that connection it was felt that it would be useful to communicate to the Committee the content of all the decrees regulating freedom of movement in Romania and, in particular, that of the provisions setting a six-month period of validity for exit visas and authorizing only one journey abroad every two years. It was also asked how long it took to obtain a passport, what the cost of obtaining a passport meant in relation to the average monthly wage earned by Romanians, whether it was true that some Romanian citizens sometimes had to pay a certain sum in order to make it easier to obtain permission to travel, whether there were any provisions guaranteeing that persons seeking permission to leave Romania would not be subjected to sanctions designed to discourage them, and whether the restrictions on movement within the country applied only to aliens. It was further inquired whether the criminal penalties incurred by persons who emigrated illegally were accompanied by other, supplementary penalties such as being forbidden to return, exactly what the penalty of banishment mentioned in Romania's report consisted of, whether persons deprived of their nationality ipso facto forfeited the right to remain in Romanian territory, and whether competence to issue passports was vested in the executive or the legislative power.

324. In his reply, the representative of the State party said that all Romanian citizens were free to travel within the country without restriction and could establish their domicile anywhere they wished. Citizens intending to travel abroad were required to obtain a visa which could be refused in the cases referred to in Decree No. 156/1970. The authority competent to review decisions to refuse the issuance of a passport or visa was the Passport and Visa Commission of the Council

of Ministers. In accordance with Decree No. 156/1970, passports were issued by the competent Romanian authorities, but in order to travel abroad a citizen was required to obtain a visa that contained more information than was given in a passport. The reasons for refusing a visa were the same as those mentioned in connection with the refusal of a passport. Aliens intending to spend more than 120 days in Romania were required to inform the Ministry of the Interior of their intention on arrival and to keep the Ministry of the Interior informed of their place of residence. There were no restrictions or other rules governing family reunification in Romania. In the case of an alien who committed an offence, expulsion was decided on by the court in accordance with article 117 of the Penal Code, and in certain cases expulsion could be ordered by the Ministry of the Interior; in either case the person concerned could appeal against such decisions to the competent State bodies in accordance with Act No. 1/1978.

325. With regard to the questions asked concerning Mr. Liviu Bota, the representative stated that he was not familiar with the file on the case and had nothing to add to the explanations given by the Ambassador of Romania at the forty-first session of the General Assembly. He considered, however, that in principle any citizen, even if he had the status of an international civil servant, was always bound by certain inescapable obligations to the country of which he was a national. He also stated that the restrictions imposed by Romanian law on the right to leave the country were in keeping with article 12, paragraph 3, of the Covenant. As an example of a departure abroad that might affect the State's good relations with other States, he mentioned the case of persons who had applied for a passport for travel abroad but who still had to wait for a visa from the host country. If a passport or visa was refused either by the competent authorities or by the Commission established under the Council of Ministers, then in so far as the person concerned could prove that the action of the administrative body was unlawful and harmful, he could resort to Act No. 1/1967.

326. The representative then gave some figures concerning tourism and emigration by Romanian citizens in recent years. He explained that the reason why Romanians could go abroad only once every two years was that the countries that received foreign tourists wanted a guarantee that they could support themselves. In a socialist country it was the State that provided the financial resources, and the State could not give the category of citizens who wished to travel privileges over society as a whole. With regard to emigration, too, a developing country like Romania could not allow itself to let its workers, or its managers whom society had made great sacrifices to train, go abroad.

Right to privacy

327. On that subject, additional information was requested concerning protection against arbitrary and unlawful interference with privacy, the family, the home or correspondence. It was asked, in particular, whether it was true that there was a decree restricting contacts between Romanians and foreigners, whether that decree placed Romanians under an obligation to report to the authorities all their contacts with foreigners, whether Romanians were forbidden to provide foreigners with shelter as private guests, and lastly for what reasons Romanians were required to obtain official authorization before being allowed to own a typewriter.

328. In his reply, the representative of Romania drew the Committee's attention to the constitutional and legislative provisions of his country that protected individuals against any form of interference with privacy. As to contacts between

Romanians and foreigners, he referred to the good relations that were being forged in the country between Romanians and tourists. He added that the law required a landlord housing a foreigner to inform the Ministry of the Interior of the fact and that Romanian citizens were required to inform the authorities of any discussions they had with foreigners during official contacts.

Freedom of religion and expression

329. On that subject, the members of the Committee asked for additional information concerning the legislation applicable to the recognition and activities of religious denominations. They asked, in particular, in what cases recognition of a religious denomination might be refused or withdrawn, whether any appeal lay from a decision taken on those lines, and how article 18, paragraph 4, of the Covenant was applied in Romania. They also inquired what legislative and administrative control was exercised over freedom of opinion and expression, including the freedom of the press and information media, whether peaceful campaigns in favour of reform of political, social and economic institutions were permitted by law, what the scope of the limitations mentioned in paragraph 202 of Romania's report was, how the provisions of article 69 of Act No. 3/1974 had been applied by the Romanian courts and what judicial decisions had been delivered in that field, whether the provisions of article 317 of the Penal Code had already been applied and, if so, how many times.

330. With regard specifically to freedom of expression, it was observed that the scope of the limitations prescribed in Romania in the Constitution, in Act No. 3 of 1974 concerning the press and in the Romanian Penal Code seemed to go beyond the restrictions allowed by article 19, paragraph 3, of the Covenant. Detailed explanations of the practice followed in the country in that respect were requested, for the information supplied by the Romanian Government was not sufficient to enable the Committee to understand whether the system in force in the country was compatible with article 19 of the Covenant. Again, with regard to freedom of worship, article 30 of the Romanian Constitution did not seem to be consistent with article 18, paragraph 4, of the Covenant and it would be interesting to know how that freedom was secured in practice, to what extent the authorities intervened in denominational activities, whether the Government intended to amend the existing legislation on religious matters, many of whose provisions were dated, and whether the liberty of parents to ensure the religious education of their children in conformity with their own convictions was not limited to being able to take them to church, to the temple or to the synagogue.

331. In addition, members of the Committee wished to know to what extent foreign newspapers and journals were available in Romania and whether there were any restrictions on the work of foreign press correspondents, how the Romanian authorities had reacted with regard to the allegations of religious oppression in Romania made by non-governmental organizations and other bodies, including the alleged destruction and poor distribution of religious books, what exactly the situation was with regard to the destruction of churches in Bucharest, whether there had been any new applications for recognition by religious denominations in Romania since 1979 and, in the case of refusal, on what grounds the decision had been taken, and what criteria were applied in granting assistance to a particular church for the construction of a new place of worship.

332. Replying to the questions put to him by the members of the Committee concerning freedom of religion, the representative of Romania stated that in his

country religious denominations could organize and function freely provided that they did not violate the law or threaten public safety and order. The conditions for the practice of religion were laid down in detail, in particular, in Decrees Nos. 177/1948, 410/1959 and 150/1974. The religions practised in Romania were all equal before the law and no church was privileged. The Roman Catholic Church was not recognized because it did not accept Romanian law. The State contributed financially to the maintenance of churches, and a total of 14 denominations were carrying on their activities on the basis of statutes adopted in agreement with the State. The representative then gave some statistical information concerning the size of the congregation for each of the principal Churches and the number of religious publications circulating in Romania. He added that denominations were recognized or ceased to be recognized by decree of the Council of State, and gave some information on the institutes at which clergy were trained and the agreements with the churches concerned with regard to the publication of the Bible.

333. In addition, he stated that parents were free to provide religious education for their children outside school. In Romania, 471 orthodox churches had been rebuilt after the Second World War and between 1975 and 1986 a total of 420 churches of various denominations had been built or rebuilt. During the past five years, as a result of massive urban reconstruction, a number of churches in Bucharest and other cities had been moved to other locations.

334. With regard to freedom of the press, the representative stated that censorship had been abolished in Romania but that restrictions on the freedom of the press were provided for in article 69 of Act No. 3/1974. With regard to peaceful campaigns for the reform of institutions, he said that in his country the reality of the socialist régime was such that that question was no longer relevant.

Freedom of assembly and association

335. Members of the Committee requested additional information concerning legislation relating to freedom of assembly and association, including the right to establish political organizations as well as examples of how such laws had been applied in practice. Clarification was requested on the operation and the legal, social and political nature of trade unions and their constitutional position. It was also asked how trade-union rights were guaranteed in keeping with the Covenant and with ILO Conventions Nos. 87 and 98 to which Romania was a party.

336. In his reply, the representative of Romania referred to the constitutional and other legislative provisions concerning freedom of assembly and association mentioned in his Government's report and stated that the question of establishing political parties did not arise in his country since it was a single-party State. Nevertheless, the people participated in political opinion-forming bodies throughout the country, such as the Romanian Communist Party, the Socialist Unity and Democracy Front, the Socialist Unity and Democracy Organization, trade-union bodies, the Union of Communist Youth and women's committees. All workers could form and join trade unions as long as certain legal requirements were fulfilled. All professional trade unions were encompassed within the General Union of Trade Unions, and the presidents of various trade unions and organizations were members of the Government. The right of petition against a decision to prohibit a meeting was guaranteed by legal provisions.

Protection of the family and children

337. With reference to that issue, members of the Committee wished to know whether the law permitted a Romanian citizen to marry a foreigner and whether there was any discrimination between men and women in that regard, why the authorization of the President of the Republic was necessary for a mixed marriage, whether any possibility of recourse or appeal existed when the President of the Republic denied the authorization, whether a foreign man or woman who married a Romanian had to renounce his or her citizenship and whether he or she had the right to residence and to work in Romania, and why there had been delays of up to three years in the granting of authorizations for foreigners to marry Romanians. It was also asked whether there was a particular legal status provided for children born out of wedlock, under what conditions and on whose initiative the establishment of affiliation could be requested, and whether under the nationality regulations anyone born within the territory was granted Romanian nationality.

338. In replying to those questions, the representative of Romania stated that the requirements governing the authorization of mixed marriages were the same for men and women. An appeal could be lodged against a rejection and delays occurred because it took time to determine the sincerity of requests. Between 1980 and 1981, 5,460 mixed marriages had been authorized. After a marriage to a foreigner, a Romanian was entitled to retain or renounce his or her citizenship. The foreign spouse could acquire Romanian citizenship if the couple decided to settle in Romania. The principle of jus sanguinis applied to the nationality of children. Adultery was unlawful but the position and respectability of a child born out of wedlock, whose affiliation had been recognized by the father or by a judicial decision, was no different from that of a child born to a married couple.

Right to participate in the conduct of public affairs

339. In regard to that issue, members of the Committee asked whether the right to nominate candidates to the Grand National Assembly and the People's Councils could be reconciled with article 25 of the Covenant. Information was also requested on legislation and practice regarding access to public service and it was asked whether access to public office was only open to those who belonged to the Communist Party of Romania. In addition, it was asked how the nominating process was carried out by the Socialist Unity and Democracy Front and whether all persons submitting candidatures were given a fair hearing. In connection with statistics showing that a high proportion of deputies had been elected unopposed, it was asked whether any measures existed to guarantee more than one candidate per constituency and what the conditions laid down by law were for the submission of complaints against the admission or rejection of a candidature.

340. In his reply, the representative of Romania referred to the provisions of the Romanian Constitution and of the Electoral Act that regulated the participation of all citizens in the election of representative bodies of State power. He said that, although no legislation existed providing for access to public service, it was a common practice in Romania to ensure proportionally equal representation of all social categories, men and women, and citizens of all co-inhabiting nationalities. In addition, nominations for inclusion in the list of candidates for election were made by the community on the basis of merit and the National Assembly represented all social categories and reflected the ethnic composition of the population.

Rights of minorities

341. With reference to that issue, members of the Committee wished to know what subjects were taught in the Romanian language in primary and secondary schools for co-inhabiting nationalities, whether those subjects were taught only in Romanian and, if so, whether that could have detrimental effects on the entrance examinations of students belonging to the co-inhabiting nationalities with regard, in particular, to testing in the language of their nationality. It was also asked why in Romania no census figures relating to the Serb and Croat minorities had been available since 1979 and why cultural and educational facilities for the Hungarian national minority appeared to have diminished in recent years.

342. In his reply, the representative of Romania referred to the subjects that were taught in the Romanian language in primary and secondary schools attended by students of co-inhabiting nationalities and stated that, in accordance with the Romanian Education Act, knowledge of Romanian was necessary to give young people of co-inhabiting nationalities the opportunity to participate fully in Romanian society and to ensure effective equality before the law for all citizens. He also stated that the total school population of Romania was 5,532,000, of whom 323,236 were students of co-inhabiting nationalities, and that there were 28,917 teaching institutions in Romania, 2,997 of which dispensed instruction in the languages of co-inhabiting nationalities.

General observations

343. Members of the Committee thanked the representative of Romania for the efforts he had made to reply to the questions that had been raised. However, it was noted that some of the many questions posed had not been answered or had only been partially answered. Members also regretted that the comments and questions raised by the Committee when the State party's initial report had been considered had not been fully taken into account in preparing the second periodic report.

344. In that connection, members requested that the State party's next periodic report should address questions relating to the practical implementation of the various rights guaranteed under the Covenant, including, in particular, liberty and security of persons, freedom of movement and freedom of conscience, religion and expression. More detailed information was also requested concerning the availability of effective remedies in cases of abuse or ill-treatment by officials, conditions of detention in prison, the concept of social parasitism, and legislation and practice relating to the issuing of visas and passports. It was also emphasized that the Covenant contained not only general principles but also specific rights.

345. In concluding the consideration of the second periodic report of Romania, the Chairman again thanked the representative of the State party and noted that the dialogue between the Committee and the delegation of Romania had been constructive and mutually beneficial.

Iraq

346. The Committee considered the second periodic report of Iraq (CCPR/C/37/Add.3) at its 744th to 748th meetings, from 15 to 17 July 1987 (CCPR/C/SR.744-748).

347. The report was introduced by the representative of the State party, who said that the second periodic report was limited to new data collected since the presentation of the initial report. Iraq was very much aware of the need to implement human rights and to develop them in a sustained manner, despite the Iranian aggression that had started on 4 September 1980. Since the beginning of the war, Iraq had not declared a state of emergency nor had it suspended any human rights covered by its obligations under the Covenant. In fact, it had continued to improve the material, economic and social conditions of life and on that basis to develop the human rights of its citizens. Iraq also continued to carry out a national campaign on education. It had held democratic elections to the National Assembly in 1984 and to the Legislative Council of the Autonomous Region of Kurdistan in 1983 and 1986. Iraq had always been in favour of peace in the region and of ending the war being waged against it by the Islamic Republic of Iran. He recalled in that connection the five principles for peace that the President of Iraq had announced, namely, withdrawal of troops beyond the recognized frontiers, exchange of prisoners, conclusion of a non-aggression treaty, non-intervention in domestic affairs, and the engagement of both countries in ensuring stability in the region.

Constitutional and legal framework within which the Covenant is implemented

348. With reference to that issue, members of the Committee wished to receive information about the relationship between the shariah and Iraqi law, and any changes relevant to the implementation of the Covenant made since the submission of the previous report, including those instituted pursuant to Act No. 35 of 1977. They asked whether the provisions of the Covenant were directly enforceable and, if so, whether there had been any actual cases in which court decisions had been based directly on the provisions of the Covenant, and they asked about factors and difficulties affecting the implementation of the Covenant. They also wished to receive additional information concerning the activities of the Iraqi Human Rights Association and Iraq's attitude towards the Arab Organization for Human Rights which had applied for consultative status with the Economic and Social Council. They asked whether the Iraqi legislature took into account the provisions of the Covenant in the law-making process. Examples were requested in relation to paragraphs 6 and 13 of the report, which stated that provisions of the Covenant could be invoked before the courts. Further clarification was requested concerning the relationship between the Covenant and domestic legislation, in particular as to the place of the Covenant in the hierarchy of Iraqi law, and it was asked whether in the case of a conflict between domestic law and the Covenant the latter would prevail, and whether there were any judicial precedents concerning the statement in the report that it was "prohibited for any court to abstain from delivering judgement on grounds such as ambiguity of the law or the lack or incompleteness of a textual provision". It was also asked whether human rights were taught to the young, whether there was any procedure similar to amparo or habeas corpus, whether the provisions of the Covenant were gradually being implemented, whether it was possible to appeal against the decisions of administrative tribunals in court, what was meant by the statement that the shariah was a "source" of law, and what the procedure was for determining the constitutionality of a law and its compatibility with the provisions of the Covenant. Finally, information was requested on the measures Iraq was taking to stop the war.

349. In his reply, the representative of the State party explained that the shariah was the primordial and basic law and article 4 of the Constitution affirmed that

Islam was the religion of the State. The shariah contained two elements - one concerned purely religious practice and the other the organization of social and commercial relations among the people. The philosophy and principles of the shariah were incorporated into positive law, particularly the Civil Code and the Family Code. For example, inheritance rights were based on the shariah and the legislator had no right to transgress the shariah.

350. The Legal System Reform Act (Act No. 35 of 1977) summarized many principles and legal theories and presented suggestions for law making and the function of law. The laws relating to organization of the judiciary, judicial procedure and social protection were adopted on the basis of Act No. 35. Treaties when adopted and promulgated became an integral part of the domestic legal system and acquired the force of law. Iraq had ratified both the International Covenants on Human Rights in 1970 and they had been published in an official newspaper. All Iraqi legislation was compatible with the principles of the Covenant and Iraqi courts applied both the letter and the spirit of the Covenant. There were a number of cases in which the Covenant could be invoked in court. As for the place of the Covenant in the hierarchy of Iraqi laws, it was on the same footing as the domestic law and did not take precedence over it. So far, there had been no problems or contradictions between the Covenant and domestic legislation, nor had there been any difficulties in implementing the Covenant. Any difficulties that could impede the implementation of the Covenant were connected mainly with interpretations, since the Covenant, like the Constitution, contained general provisions that had to be made explicit in concrete laws. There was no special body empowered to determine the constitutionality of laws. Any ministry that was of the opinion that a given law contradicted the Constitution could request the National Council to rescind or modify it.

351. Responding to other questions, the representative stated that the Iraqi Human Rights Association was an unofficial body set up under Act No. 1 of 1969 and was active in human rights matters. It published articles in newspapers and magazines and used other mass media and organized seminars and actively participated in the celebration of international holidays relating to human rights. The Lawyers' Union and the Board of Barristers also engaged in such activities. Human rights was a subject taught at all levels of the educational system in Iraq, particularly in universities and other centres for higher education. Regarding the ending of hostilities in the region, Iraq had always wished to maintain good relations with the Islamic Republic of Iran and had made persistent and sincere efforts in that direction. Following repeated Iranian violations, which posed a direct threat to the independence and integrity of Iraq, his country had been obliged to exercise its legitimate right to self-defence on 21 September 1980 and had continued to do so to date. Iraq had responded positively to all peace initiatives.

Self-determination

352. With regard to that issue, members of the Committee requested clarification of the actual state of the relationship between the Government and the Kurds in the light of the fact that a number of different agreements had been concluded between them. It was also asked whether Iraq's claim to sovereignty over natural resources extended beyond oil.

353. In his reply, the representative of the State party referred to article 5 of the Constitution, which recognized the ethnic rights of the Kurdish people as well

as the legitimate rights of all minorities. Since Kurds were part and parcel of the Iraqi people, there could be no agreements between different ethnic groups. The relationship between any two ethnic groups was decided by various acts and laws. As to sovereignty over natural resources, efforts were being made to strengthen sovereignty over water resources, since Iraq was an agricultural country, and over sulphur, sulphate, iron and other mineral deposits. Abroad, the principle of permanent sovereignty over natural resources was upheld by Iraq in Arab and international forums.

State of emergency

354. With regard to that issue, members of the Committee wished to receive information on the impact of the war on the Government's efforts to respect the various provisions of the Covenant. Members also requested clarification of the content of paragraphs 123, 124 and 189 of the report concerning limitations and restrictions of various rights.

355. In responding to questions raised by members of the Committee, the representative stated that clear rules existed in Iraq for the declaration of a state of emergency. However, despite the circumstances resulting from Iranian aggression, Iraq had not made such a declaration. The enjoyment of human rights in general had not suffered from the war and in fact had been reinforced by the creation of more favourable economic and social conditions. Despite the war, a number of laws and measures relating to basic human rights had been introduced. Firstly, the Social Welfare Act had made the State responsible for securing a reasonable standard of living for all citizens. Secondly, the Welfare and Protection of Juveniles Act was designed to prevent delinquency and to provide for proper treatment of juvenile offenders. Thirdly, the Public Health Act assured human beings of humanitarian protection from conception until death. The State also provided free health care and a sophisticated hospital system. Fourthly, Iraq had instituted a wide-ranging national campaign against illiteracy at the primary level. The courts continued to operate normally and no exceptions had ever been resorted to because of the war. The representative further replied that no contradiction existed between paragraph 123 and other paragraphs of the report since the basic principles of human rights as enshrined in the Covenant had not undergone any change in Iraq. Nevertheless, it could not be denied that a state of war had some negative consequences. The most basic human right was the right to life and in regions where Iraqi citizens were repeatedly exposed to attacks by the Islamic Republic of Iran resulting in heavy casualties human rights obviously suffered. Emergency measures were sometimes administrative measures and were always linked to specific circumstances. Iraqi citizens were not barred from travelling outside the Republic but such travel was organized in a manner in keeping with Iraq's present circumstances. Similarly, foreigners in Iraq were prohibited from residing in certain areas, such as military regions close to hostilities.

Non-discrimination and equality of the sexes

356. With regard to that issue, members of the Committee wished to receive information concerning non-discrimination on grounds of political opinion, restrictions of the rights of aliens compared with those of citizens, and legislation contemplated with regard to the removal of any discrimination based on sex. Members also wished to know whether the fact that women retired five years

earlier than men meant that women enjoyed less favourable pension rights, what the proportion of women at all levels of education was, whether the conditions of dissolution of a marriage contract were less favourable for women than for men, whether the provisions of the Personal Status Act referred to in paragraphs 70 and 71 of the report were aimed at eliminating existing discrimination based on sex, and whether the article quoted in paragraph 70 of the report meant that women were either excluded from succession or could receive only residual inheritance. They also requested clarification as to whether the property of children was administered by both parents or only by the father, whether priority was accorded to the father in matters concerning education and relations between parents and children, whether there was a specific hierarchy in the family unit and who was generally considered to be the head of the family. Information was requested concerning the practical difficulties, if any, that had been encountered in implementing legislation aimed at ensuring equality of the sexes, particularly in the fields of employment, female membership in trade unions and education. Finally, it was asked whether the legislation governing family matters and the position of men and women had changed since the initial report had been prepared, whether there was any contradiction between the provisions of the Constitution and recent legislation governing family matters, whether a religious ceremony of marriage was compulsory in Iraq, and whether an atheist could conclude a marriage contract.

357. In his reply, the representative of the State party said that the principle contained in article 19 of the Constitution was a general one of equality of citizens before the law without discrimination on grounds of sex, language, social origin or religion. Another legal basis for ensuring non-discrimination was found in article 26 of the Constitution, which guaranteed freedom of opinion, expression and assembly and also freedom to hold demonstrations and to establish political parties, trade unions and associations in conformity with the objectives of the Constitution and within the limits of the law. Furthermore, the Constitution committed the State to providing the necessary conditions for ensuring enjoyment of those freedoms. Iraqi legislation in general did not depart from the long-held principle that citizens had specific rights that were not shared with aliens, including, for example, the right to enter public or military service.

358. He reiterated that there was no discrimination whatsoever on the basis of sex and noted that Iraq had acceded to the Convention on the Elimination of All Forms of Discrimination against Women. While it was true that if a woman retired at 55 she received a smaller pension, the law did not force or oblige women to retire at that age. Primary education was compulsory and ensured equality in education up to the age of 10 years. Education at the secondary and higher levels was free of charge for all students of both sexes. He did not know the exact percentage of female students in higher education establishments, but could assure the Committee that the figure was very high. With regard to marriage and divorce, he explained that the Personal Status Act was based on the Islamic shariah. In the eyes of the law, marriage was a contract entered into between a man and a woman. In Iraq, shariah courts were called personal status courts and were not religious courts. A marriage contract had to be concluded before the competent authority, namely a shariah court. It was not simply a religious measure, it was a legal measure. Non-believers or non-Muslims were dealt with either under the competent institutions of their religion or under aspects of the Personal Status Act. Divorce was allowed because it was a necessary although undesirable solution to ending married life. Divorce was primarily a male prerogative, but it could also

be delegated to the woman. It was sufficient simply to declare a divorce for it to take place. Either spouse could request legal divorce or separation from the court. As for inheritance, the shariah clearly decided how it was divided and who would inherit - that was laid down in the Koran and it was mandatory.

359. The Social Welfare Act No. 126 of 1980 stipulated that either the husband or the wife or, in the event of the death of both parents, the eldest son, could be regarded as the head of the household. It was stressed that Iraq had lived for some six centuries under continuous foreign occupation, which had had a negative impact on social development where equality of the sexes was concerned. There was cultural resistance to accepting equality of the sexes, particularly in rural areas. However, the impact of the mass media and changes in socio-economic status were helping to alter traditional views on the place of women in society, particularly in regard to education and participation in public life. Concerning female employment, certain sectors were more appropriate for females than others. For example, teaching attracted a large proportion of women in Iraq and many were working in the medical profession and in the pharmaceutical field.

Right to life

360. With regard to that issue, members of the Committee wished to know which offences were subject to the death penalty, how often that penalty had been pronounced for "ordinary" or "political" offences during the past seven years and how often it had actually been carried out. Clarification was requested concerning the references in paragraph 131 of the report to "political offences" and to the commutation of death sentences imposed for such offences to life imprisonment. It was noted that Iraq's report contained a long list of offences for which the death penalty could be imposed. In that connection, it was asked whether the death penalty had been imposed in cases involving membership in Zionist or Masonic institutions. Members of the Committee also requested clarification of information contained in the report concerning, in particular, the death penalty for conspiring against the State and its security, and for members of outlawed political parties. They wished to know further whether all of the numerous offences listed in the report as punishable by death corresponded to the limitations of article 6 of the Covenant, which offences fell within the competence of the Revolutionary Court and how many offences carrying the death penalty were judged by that tribunal, whether the murder of the President of the Republic or of any of his deputies was deemed to constitute a political crime or conspiracy for which the death penalty was imposed and whether such penalty was subject to commutation, whether the act of insulting the President of the Republic or the Revolutionary Council under aggravating circumstances was an offence punishable by death and what the significance of resolution 840 of the Revolutionary Council was in that respect. It was also asked what the fields of competence of the Revolutionary Command Council were in legislating and to what extent they excluded those of the National Council, whether a law had been enacted by the Revolutionary Command Council or the National Council under which a member of the Baath Party who defected to another political movement was liable to the death penalty and, if so, whether it had ever been applied, and whether it was established in the Constitution that the President could issue a special amnesty or commute a penalty.

361. Several members of the Committee recalled the general comment of the Committee according to which the right to life was one of the rights of the Covenant from which no derogation was permitted. While the Covenant did not oblige a country to

eliminate the death penalty it did state that "sentence of death may be imposed only for the most serious crimes". They also found it disturbing that even the long list contained in the report was not exhaustive since new offences had recently been added. One member asked whether there were prosecutions on a retroactive basis, and whether measures had been taken to investigate cases of shooting of demonstrators and other persons without trial and deaths during detention under remand. He noted that resolution 461 of the Revolutionary Command Council provided for prosecution on a retroactive basis and that that contravened the provisions of article 6, paragraph 2, and article 15 of the Covenant. As for arbitrary or summary executions, he said that the Special Rapporteur on that question had obtained information relating to the execution of 200 Kurds in northern Iraq, some of whom had been tortured before being killed. However, the Special Rapporteur had received no response to his inquiries from the Iraqi Government. The member asked what action the Government was taking to investigate that serious matter. Another member asked whether the delegation would be able to provide statistics on the number of death sentences imposed and carried out and, if not, whether it would be able to explain why the Government chose to keep such information secret. It was also pointed out that the Legal System Reform Act provided for a reduction in the number of offences punishable by the death penalty.

362. Some members of the Committee stated that, in their opinion, the list of offences punishable by the death penalty contained in the report was not exhaustive, and they therefore requested clarification of the acts specified in article 163, paragraph 3, article 165, paragraph 9, article 174, paragraphs 1 and 3, articles 200 and 225 of the Penal Code. One member asked if the death penalty could be imposed, in accordance with resolution 120 adopted by the Revolutionary Command Council on 29 January 1987, for forgery of a passport or financial or other documents.

363. In his reply, the representative of the State party referred to paragraphs 131 to 134 of the report, which gave details of offences punishable by the death sentence. Article 20 of the Penal Code divided offences into ordinary offences and political offences, the death sentence being commuted to life imprisonment in the case of political offences. It defined a political offence as one that had political motivation, with the exception of crimes that might have had a political motivation but were committed out of selfishness, such as premeditated murder, theft, embezzlement and bribery. He did not have statistics covering the number of death sentences imposed for "ordinary" offences during the past seven years and stated that the death penalty was no longer imposed for "political" offences. The basic outlook on the question of punishment in Iraq was that the penalty should serve to deter the recurrence of further criminal acts and also to help rehabilitate the criminal. Penalties were not applied categorically but in a flexible way, with a range of punishments from which the judge could choose the most appropriate. Attenuating as well as aggravating circumstances had to be taken into account and the sentence adjusted accordingly. The list in the report of crimes punishable by the death penalty was exhaustive and was intended to provide as full a picture as possible in that area. The crime of conspiring against the State and its security was considered to be among the most serious crimes for it threatened the citizen and society. An attempt to participate in such a crime meant that the person concerned had intended to participate therein and that was no less serious than actual participation. There was no prosecution on a retroactive basis. The principle of non-retroactivity of laws was incorporated in article 21 of the Constitution which stated that "no penalty shall be imposed, except for acts

criminalized by the law, while they are committed". The only exception to that principle was the case when a law was more favourable for an accused. No law had been adopted to impose the death penalty on members of outlawed political parties.

364. Concerning arbitrary disappearances and summary executions, Iraq was not a party to the Optional Protocol and therefore was not required to respond to communications in that field. However, since the 1968 revolution it had been seeking to develop and make progress in all walks of life. It was seeking to achieve economic independence hand in hand with political independence. There were so many allegations propagated by the enemies of Iraq that he was not surprised that there were unfounded claims alleging summary executions, firing on crowds and so forth. Iraq was concerned at such allegations and always sought to clarify them and to answer communications on such matters in detail. The sources making such allegations were never able to provide sufficient details for the cases to be studied and resolved.

365. Military crimes were totally separated from civil offences and were dealt with by military courts. A death penalty imposed by a military court could not be implemented without the approval of the President. As for Freemasons or Zionists or those who propagated their principles, Iraq was in reality punishing advocates of a policy which even the United Nations had characterized as racist. So far no death penalty had been applied in such cases. No law had been adopted to punish members who left the Baath Party. It was totally untrue to say that political activities outside the Party were prohibited. There were other political parties in the country. Article 57 (m) of the Constitution stated that the President of the Republic issued "special amnesty" and ratified judgements of capital punishment". Concerning crimes against the person of the President, he said that, as they were political crimes, the death penalty would be commuted to a lesser punishment. The death penalty was implemented in accordance with the law and it was not carried out in public. As for those who publicly insulted or denigrated the President, capital punishment was not imposed. The maximum might be imprisonment for life. However, aggravating circumstances such as conspiracy or selfishness had to be taken into account and might lead to imposition of the death penalty. In fact many death penalties were commuted to imprisonment or the persons convicted were amnestied. The Government of Iraq had informed the Special Rapporteur on summary or arbitrary executions that there was no basis whatsoever for the allegation concerning killings of children. The Government was investigating the other allegations concerning the reported summary executions in northern Iraq and would report on its findings. The judicial system of Iraq was changing, many death penalties were commuted, and amnesties had been proclaimed and carried out.

366. The representative also declared that articles of the Penal Code that defined offences punishable by death were complemented by laws that defined the offences more precisely and the procedure for applying such laws. As to resolution 865 concerning the members of the Baath Party who were members of other parties, they were not punished for political opinion but for infiltration in the Baath Party while being a member of another party. Everybody was free to leave a party and join another one. Resolutions 840 and 120 of the Revolutionary Council were not mentioned in the report because they had been adopted after the report had been submitted. The forgery of a passport or financial documents was not an offence subject to the death penalty since it did not aim at jeopardizing the military, political or economic situation of Iraq in time of war, as stipulated in

article 164 of the Penal Code. In other cases the maximum sentence for such offences was seven years.

Liberty and security of person and treatment of prisoners and other detainees

367. With regard to those issues, members of the Committee wished to receive information on detention in institutions other than prisons and for reasons unconnected with the commission of a crime. It was also asked what the maximum length of pre-trial detention was, how soon after arrest a person could contact a lawyer, and how quickly after arrest the person's family was informed. Clarification was requested of the categories in which inmates and juvenile detainees were classified after their arrival at a social reform institution. Additional information was requested with respect to the composition of the Public Authority for Social Reform and its relationship to the courts, access of inmates to prison regulations and rules, and procedures for receiving and investigating complaints relating to article 7 of the Covenant. It was also asked whether independent boards or individuals were permitted to visit penal establishments to inspect them and to interview detained persons.

368. Committee members expressed satisfaction that the Government was co-operating in procedures to investigate allegations of summary or arbitrary executions. One member stressed that it was also important to investigate and resolve complaints relating to disappearances and incidents in which people had been expelled to the Islamic Republic of Iran. He therefore wondered whether any machinery existed in Iraq for the investigation of alleged cases of disappearances, particularly those for which officials might have been responsible. Another member asked what the competence of the security forces empowered to arrest civilians was, how often recourse procedures were instituted in cases of torture and ill-treatment and whether punishment was imposed in such cases. Concern was also expressed over the regulation under which an individual could be held in pre-trial detention for up to one quarter of the length of the sentence that could be imposed for his crime, as that seemed to cast doubt on the principle that an accused person was innocent until proved guilty. One member asked whether there had been any cases of investigation and punishment carried out under articles 322 and 324 of the Code of Criminal Procedure relating to action to be taken in case of abuse of prisoners by a government employee or a public servant. Clarification of regulations relating to torture was requested and it was asked whether individuals found guilty of the practice were brought to account, whether a confession obtained under torture could be used as evidence in court, whether there had been any cases of officials brought to account for the use of torture or ill-treatment, whether independent persons or organizations visited places of detention to see for themselves that the Standard Minimum Rules for the Treatment of Prisoners were being applied, and whether a recourse procedure was available to persons who alleged that they were being wrongfully detained.

369. In his reply, the representative of the State party said that in Iraq there was no detention in institutions other than prisons and for reasons unconnected with the commission of a crime. According to article 109 and some other articles of the Code of Criminal Procedure, the maximum length of pre-trial detention, which ranged from no more than 15 days on any one occasion to up to 6 months and beyond, depended on the maximum imposable sentence. A person could contact his lawyer and family at any point after arrest. Iraqi law did not contain provisions prohibiting a person from contacting a lawyer and, in accordance with article 57 of the Code of Criminal Procedure, he could ask to be acquainted with all the documents connected

with his case. Prisons in Iraq were called "social reform institutions". Inmates younger than 18 were transferred to rehabilitation institutions of two types, one for children from 9 to 15 and the other for adolescents from 16 to 18. There was also an institution for young adults from 19 to 22. They could study even in higher schools and universities. Men and women were detained in separate institutions. The representative of the State party stated that the laws and principles governing the treatment of inmates and detainees sought to ensure their reintegration in society and he described the various institutions and programmes set up with that objective. For example, Iraq was currently carrying out an experiment whereby willing inmates could work in a factory outside the institution, earn wages similar to those of regular workers and return to the reform institution after work. Institution rules and regulations were available to and well-known by inmates. Iraqi legislation contained numerous provisions aimed at preventing torture or cruel and inhuman treatment, as well as prohibiting medical experiments on inmates. There were various procedures for receiving and investigating complaints, even by telephone, and on certain days people could complain directly in person to the President. There were several cultural and sports facilities for inmates, including libraries, television and cinema. Administrative organs attached to the Ministry of Justice worked in close collaboration with the Ministry of Labour and Social Affairs, which inspected penitentiaries and visited detained persons. The Procurator General personally supervised that activity.

370. Responding to additional questions raised by members, the representative said that individuals who had been deported from Iraq to the Islamic Republic of Iran were Iranian citizens residing in Iraq who had failed to comply with the obligations of foreigners with respect to the host country. The allegations raised by the deported Iranians were totally unfounded statements made for propaganda purposes. He agreed that legal provisions alone were insufficient to guarantee the right to protection against torture and ill-treatment unless measures were taken to ensure their implementation. In Iraq, all officials were directly responsible for the application of the law and for respecting not just the letter but also the spirit of the law. They were required to submit monthly reports to the President of measures taken to deal with complaints and petitions received from citizens. Although there was no single body responsible for cases of disappearance, arbitrary arrest or other ill-treatment, such cases were routinely handled by responsible bodies within the overall legal system. Those bodies investigated all forms of illegal action, not just disappearances. Concerning the existence of human rights organizations in Iraq, there was an association of lawyers for the defence of human rights and the Iraqi Lawyers' Union was also active in that area. As for detention centres, there had been one for political detainees called Salman under the monarchy, but it had been closed down after 1958. There was a place of detention in Baghdad by the name of Udheiliya which encompassed a women's prison and a juvenile rehabilitation centre, and the main prison of Abu Ghraib stood on the outskirts of that city. Complaints against officials were frequently made by citizens. In the case of a well-founded claim, competent bodies took the necessary measures, ranging from administrative penalties to legal proceedings, and the results of those steps were made public.

371. Regarding the right to legal counsel, any accused person without means was entitled to a lawyer without charge provided by the Lawyers' Union or the court. As for extension of the detention period, Iraq believed in the innocence of the accused until he was proved guilty. Accordingly, Iraqi law established that, if there were extenuating circumstances, detention should not be extended. The pre-trial detention period could not exceed 15 days and with legal justification

could be extended for a similar period but the total number of extensions could not exceed six months. During that period, the accused could be freed on bail and at all times had the possibility of appealing against the decision of the examining magistrate. In certain justified circumstances the competent criminal court could permit the examining magistrate to extend the detention period beyond six months, but in no case could it exceed one quarter of the maximum sentence. All those measures were designed to avoid arbitrary extension of the detention period. In that connection, he noted that all courts and legal bodies in Iraq were under a time constraint to settle cases, which was a further safeguard against such arbitrariness. The accused or his representative had the right to attend the investigation proceedings and acquire copies of all documents relating to the case. Furthermore, the Lawyers' Union was obliged to provide an advocate for those who could not afford one.

372. Beyond the guarantees provided by article 22 of the Constitution and the provisions of the Penal Code, the Iraqi Government took a firm stand against all those who practised torture or harmed others. Article 127 of the Code of Criminal Procedure prohibited the use of unlawful means, including threats or intimidation, to obtain confessions. In cases where a victim lodged an appeal, the court could take a decision to review the case, and it had full discretion to accept or reject confessions that could have been obtained under torture. Furthermore, statements of the accused could not be considered as evidence against him but only against others. The directives of the President of the Republic to the competent law enforcement officers were material proof of the importance his Government attached to human rights. They reflected the Iraqi conception of human rights, which was a dual one of rights balanced against obligations. The security forces were instructed to respect the dignity of the human person, in return for which individuals had an obligation to respect the principles of the revolution. There was no contradiction between that conception and the provisions of the Covenant. Concerning visits to detainees, individuals were able to visit prisons for educational or research purposes or to collect statistical data. Naturally, relatives were also able to visit inmates; such visits were carefully regulated and usually took place on a periodic basis on weekends and holidays. Visits were carefully organized since it was not practical for penal institutions, which, because of their nature, had specific regulations, to open their doors to all citizens. With regard to grievances, inmates had the possibility of lodging complaints with the administrative staff of the prison. If not satisfied, they could then complain to any other organ they deemed appropriate.

Right to a fair trial

373. With regard to that issue, members of the Committee wished to receive additional information on the organization of the judiciary, including the Revolutionary Court and any special courts. They also asked what provisions had been made pursuant to Act No. 160 of 1979 to guarantee the independence of judges, what legal guarantees existed with regard to the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal, what the relevant rules and practices were concerning the publicity of trials and the public pronouncement of judgements as required by article 14, paragraph 1, of the Covenant and whether there were specific rules concerning the admission of the mass media. Clarification was requested of the statement in paragraph 145 of the report in relation to article 14, paragraph 5, of the Covenant and article 27, paragraph 2, of Act No. 66 of 29 July 1985. Members also wished to receive additional information concerning the composition and functioning of the Lawyers' Union.

374. In his reply, the representative of the State party said that the basis of the legal system in Iraq was not a dual one, in that there was no independent administrative branch. Two types of courts existed, civil and criminal. The civil courts consisted of primary courts, labour courts, personal status courts and appeals courts. The criminal courts consisted of investigatory courts, correctional courts, juvenile courts and criminal courts proper. Both categories of courts were headed by the Court of Cassation, which was the highest legal body in Iraq. Litigants in any case could lodge appeals against the judgements of the primary courts. In civil cases, there were two levels of remedies - appeal and cassation. In criminal cases, however, there was no appeal stage, but sentences were reviewed directly by the Court of Cassation. One principle enshrined in Act No. 160 was that of the independence of the judiciary. Judges were competent to judge all physical and moral, private and public persons, and all trial proceedings were conducted in public unless the court decided otherwise for reasons of protection of security or morality. In all cases pronouncement of judgements was public. The law detailed the various obligations and duties of judges and laid down rules governing their appointment, promotion and transfer, as well as disciplinary sanctions which could be applied against them. There was only one Revolutionary Court, which had been established by Act No. 180 of 1968 and which was composed of three members, one of whom represented the Public Prosecutor. In all its proceedings, the Revolutionary Court applied the Code of Criminal Procedure in the same way as the other criminal courts in the country, which meant that an accused person enjoyed all legal guarantees. The accused had the right to be assisted by a lawyer who was provided by the Revolutionary Court if he was unable to afford one. The Revolutionary Court was competent to examine and pronounce judgement in all cases related to the external security of the State, as well as drug cases and cases of embezzlement of state funds. It was true that decisions of the Revolutionary Court were not subject to review. However, death sentences handed down by the Court were reviewed by a legal advisory bureau in the Office of the President, consisting of judges of the Court of Cassation seconded to the Office of the President, judges of the primary courts and experienced jurists. When that Office had handed down its opinion, the file was transmitted to the President who decided, in the light of the legal bureau's opinion, whether or not to endorse the sentence. The legal bureau therefore provided additional guarantees to those ensured through the normal procedure before the courts. In many cases, death sentences handed down by the Revolutionary Court had been commuted to life imprisonment by the legal bureau, and in others, a special pardon had been granted by the President of the Republic.

375. Regarding legal guarantees of a fair and public hearing, Iraqi legislation offered all guarantees of a fair and impartial trial; reference had been made earlier to the public nature of court hearings. The various procedural codes delimited the jurisdiction of each court in terms of time and place, and the principle of the independence of the judiciary was firmly established in article 63 of the Constitution. If a person felt that a sentence against him was unduly harsh, he could avail himself of various remedies laid down by law. The principle of public trials was enshrined in article 5 of the Constitution, and Iraqi legislation was in full conformity with the provision of article 14, paragraph 1, of the Covenant. In keeping with the principle of public trials, the Iraqi mass media, particularly television, broadcast trial sessions concerning certain serious crimes, while respecting the rights of the accused. The daily press also gave thorough coverage to certain trials of interest to the public. The Lawyers' Union was one of the oldest professional unions in Iraq and was governed by Act No. 163 of 1965. The objective of the Union was to organize the profession, establish its

code of conduct and defend its members. It was obliged to provide the services of a lawyer for any person requiring them who could not provide them for himself. The Council of the Union supervised branches of lawyers' offices in courts, protected lawyers' rights and the dignity of the profession and ensured professional conduct. A considerable number of amendments had been introduced in the original legislation governing the Union, including Act No. 66 of 1958, which established the right of a lawyer to examine the evidence for the prosecution and all documents related to any case with which he was entrusted. The law made it an obligation for all courts and official bodies to permit the lawyer to exercise his rights and ensure that he was allowed to carry out his duties properly. Any person who, wilfully or otherwise, prevented a lawyer from exercising his profession correctly was liable to prosecution.

376. Responding to other questions raised by members, the representative stated that judges in Iraq were trained in the Legal Institute, which was organized on similar lines to the French Ecole de la magistrature. The names of students who passed the final examination of the Legal Institute were submitted to the President of the Republic, who issued a presidential decree appointing them as judges. Judges of the Court of Cassation were also appointed by presidential decree. He explained the important role of the Council of Justice in the Ministry of Justice in guaranteeing the independence of judges. The Council of Justice was presided over by the Minister whose deputy was the President of the Court of Cassation; other members included the Public Prosecutor, the Chairman of the State Council and the Director-General of the Ministry of Justice. The Council of Justice had two functions: the general policy of the Ministry of Justice and the organization of the judiciary. Only members of the Council of Justice who were judges were empowered to carry out the judicial functions of the Council. They were responsible for disciplinary matters relating to judges. The fact that judges were independent did not mean that they were above the law, and their decisions were subject to review by higher judicial organs. Act No. 160 of 1979 set forth the basic legal philosophy of the Republic of Iraq. It contained principles for the appointment of judges and also proposed the establishment of people's committees, at the factory level for example, to deal with minor disputes or offences. The relationship between those people's committees and other judicial organs had still to be properly defined, but it was hoped that the people would be able to participate in the administration of justice through membership of the committees. Judges should apply the law in a revolutionary social spirit, but that did not mean that they had to be members of the Baath Party. The work of the Revolutionary Court was governed by the normal Code of Criminal Procedure, but it was an exceptional court in that it was able to expedite legal proceedings. There were certain situations where justice demanded a speedy decision and that was the reason for the existence of the Revolutionary Court. Its decisions were not subject to review by the Court of Cassation, but death sentences passed by the court were not carried out until they had been approved in a decree promulgated by the President of the Republic. Members of the Revolutionary Court were not required to be members of the Baath Party. The proceedings of that Court were conducted in public in most cases, even those concerned with the security of the State. There were no special courts in Iraq.

Freedom of movement and rights of aliens

377. With regard to that issue, members of the Committee wished to know whether expulsion orders against aliens could be appealed and, if so, whether the appeal had suspensive effect. It was also asked whether aliens residing in Iraq had to request permission to change their residence.

378. In his reply, the representative declared that tribunals in his country could examine all questions relating to aliens. Therefore, every individual had a recourse procedure available concerning matters of freedom of movement, residence or expulsion. The competent authorities had to be informed of the change of residence of a citizen or an alien as a purely formal matter; foreigners who changed their residence had to inform the authorities within 48 hours.

Right to privacy

379. With regard to that issue, members of the Committee wished to receive information concerning the protection guaranteed in law and practice against arbitrary and unlawful interferences with privacy, the family and the home, particularly with regard to postal and telephone communications. It was also asked what means were used by the authorities to investigate the violations of rights covered in articles 22 and 23 of the Constitution and whether telephone-tapping and surveillance were forbidden.

380. In his reply, the representative stressed that, in accordance with article 22 of the Constitution, the inviolability of the home was guaranteed in the broadest sense. A judge could order a search; however, every violation committed by an official was subject to punishment. Any interference with privacy by other State officials was also punishable. Article 23 of the Constitution guaranteed the secrecy of means of communications by mail, telegram and telephone, except for considerations of justice and security, in accordance with the rules prescribed by the law. Act No. 97 of 1973 concerning post and telecommunications provided for sanctions for violation of privacy. The Penal Code provided for more severe sanctions. The law categorically prohibited any kind of telephone-tapping or surveillance. If a person had a suspicion that his house had been entered or was under surveillance, he could lodge a complaint. Legal authorities would investigate the case and send it to the court where sanctions would be applied.

Freedom of religion and expression

381. With regard to that issue, members of the Committee wished to know whether there were religions other than those officially recognized in Iraq and, if so, whether such religions could be freely practised and on what legal basis official recognition was accorded. They asked about cases, including recent ones, where persons had been arrested or detained on account of political views and about legislation and practice relating to the press and mass media, and they inquired whether there was censorship and, if so, how it was administered in time of war. One member requested information on the prohibition of the dissemination of any atheistic ideas and on the situation of atheists. It was asked if an atheist could become President of the Republic, Vice-President or a minister. Another member asked whether an Iraqi citizen had access to the foreign press, what restrictions were imposed on foreign correspondents and whether it was necessary to register photocopying machines. Several members requested clarification of the powers of the Censorship Committee of the Baath Party in that area and asked whether publications were subjected to government authorization. Another member requested supplementary information on the measures taken to guarantee freedom of opinion, expression and research, and to compile and disseminate information abroad, as well as on authorized restrictions on those matters. Other members expressed their concern in that regard. One member asked whether religion had any influence on eligibility for public service.

382. In his reply, the representative of the State party referred to article 25 of the Constitution, which guaranteed freedom of religion, faith and the exercise of religious rights in accordance with the rules of the Constitution and the laws and in compliance with morals and public order. He also referred to article 26 of the Constitution, which guaranteed freedom of opinion, publication, assembly, demonstrations and the formation of political parties. The press and mass media as a whole were effective means of disseminating information and creating cultural awareness in Iraq. In accordance with Act No. 206 of 1968, when a person was harmed by a publication or by other mass media he could exercise his right to recourse concerning the protection of his private life. Despite the war the press was not obliged to submit all information for censorship. The representative of Iraq further declared that all freedoms had to be organized and regulated. The Constitution was born of the conscience of the Iraqi people and the deep bonds between Iraq and the Arab nation. The choice of believing or not believing in a religion was a personal question, consequently legislation did not deal with that matter. The law intervened during demonstrations in favour of atheism, for the question of faith was securely anchored in the Arab soul. Public service was open to everyone with the required competence, on the basis of equality of opportunity. In that regard, religion had no influence on eligibility. It was, however, unimaginable that an atheist could obtain the highest offices in Iraq, for which it was necessary to pronounce the kind of oath referred to in articles 39 and 59 of the Constitution. However it was possible to take an oath in court without mentioning the name of God.

383. Foreign press correspondents could exercise their profession in complete freedom, in conformity with the legislation applied in Iraq. Restrictions of their movement were intended to protect them from dangers that could arise in the war zones. Photocopying machines were subject to registration. According to the Iraqi concept of public order, freedom of expression did not mean the freedom to say anything without any limitation, whether it concerned the press or the cinema. Major foreign newspapers and certain publications were accessible to every Iraqi citizen. The necessity of maintaining public order made some regulation in the field of publication and the cinema necessary to protect individual rights. Therefore, a committee on censorship of foreign films and publications had been created at the Ministry of Culture and Information. Nevertheless many well-known foreign publications and books were sold and available at libraries.

Freedom of assembly and association; protection of the family; right to participate in the conduct of public affairs; rights of minorities

384. With regard to those issues, members wished to receive information on restrictions, if any, on the right to freedom of assembly and association, on information regarding legislation governing the establishment and operation of associations, including political parties, on recent legislation designed to strengthen the role of trade unions, on the exercise of and restrictions on political rights, on legislation and practice regarding access to public office, and on equality of rights and the responsibilities of spouses before and during marriage and at its dissolution. It was also asked whether legal provisions concerning minorities related to all minorities in Iraq. Members of the Committee also wished to know whether there was a contradiction between paragraphs 249-251 of the report and the provisions of the Legal System Reform Act concerning the possibility of a person who was hostile to the existing state system obtaining a public service appointment, whether there were cases of violations of the rights of the Kurdish minority, whether members of the National Assembly were independent,

how the people participated in the elections to the Revolutionary Command Council and in the consideration and adoption of the national budget, and whether a person who did not belong to the National Progressive Front could be elected to the National Council and other State bodies.

385. In his reply, the representative of the State party explained that associations were registered according to Act No. 1 of 1960. If an application for registration was rejected, an association could lodge a complaint with the Court of Cassation whose decision was final. The same procedure was applicable for political parties. The Iraqi Government permitted a single trade union for state employees. As far as protection of the family was concerned, the spouses were considered to be equals and the consent of the two parties was necessary for a marriage contract. The husband was obliged to maintain his wife, even if she had an independent income. The shariah regulated divorce and the husband had the right to initiate it but could delegate that right to his wife at the time of their marriage. The exercise of political rights was guaranteed to the Iraqi citizen without consideration of social position. The elections of 1981 and 1984 to the National Council in time of war bore witness to the democratization of the country. The rights of minorities were defined in article 5 of the Constitution. All minorities had equal rights. There were no contradictions between the provisions of the report and those of the Legal System Reform Act because the latter was being introduced gradually.

386. Minorities enjoyed all the rights contained in Iraqi legislation as they belonged to the Iraqi people. Concerning the teaching of Arabic and Kurdish, Iraq's nationalist concept was one of civilization based on the rich heritage of the whole Arab nation and Arab thought. That concept did not include any fanaticism or any closed position vis-à-vis others, their aspirations or beliefs. That also applied to all the minorities in Iraq. The Iraqi Constitution spoke of the creation of a "national" generation, not an "Arab" generation. There were 250 constituencies. In each of them from 2 to 10 candidates were nominated. There was universal, secret and equal suffrage. A citizen was eligible for nomination when he reached the age of 25.

387. The Revolutionary Command Council was the supreme institution in the State. Its composition and functions were defined by the Constitution. There were also the National Council and the National Assembly. The Revolutionary Command Council issued laws and decrees having the force of law and the decisions needed to apply the rules of the enacted laws. When a session of the National Assembly was not convened the Council used its legislative competence. If the Revolutionary Command Council and the National Assembly had different points of view they convened joint sessions and adopted laws by a two-thirds majority. The Revolutionary Command Council ratified the draft general budget. The members of the Council were also elected to the National Assembly.

General observations

388. Members of the Committee welcomed the high level of the members of the delegation of Iraq, who represented all the Ministries involved with human rights, as well as the detailed report that, as many members noted, had been prepared and presented despite the difficult circumstances in which Iraq currently found itself. Appreciation was expressed for Iraq's efforts to promote the implementation of human rights despite the war. It was noted that the introductory remarks by the representative of the State party had shed some light on the

legislation giving effect to the provisions of the Covenant and on the manner in which Islamic law was compatible with human rights. The report, however, was found lacking in information on the difficulties encountered in giving effect to the provisions of the Covenant.

389. It was noted that in general the report did not give equal attention to the various articles of the Covenant; one third of the entire report was devoted to equality between the sexes while other articles received very brief coverage. Furthermore, the report did not take due account of the general comments elaborated by the Committee on various aspects of the Covenant. Some members felt that there were important omissions, particularly regarding laws or decrees relating to new offences punishable by death and to freedom of thought and expression promulgated before the period covered by the report, i.e. before 31 December 1985. A number of concerns also remained in connection with the right to life, in particular the considerable number of cases in which the death penalty could be applied, the lack of information on the number of cases in which that penalty had been applied or implemented, the right to security of person, independence of the courts, and freedom of expression or opinion. One member observed that the large amount of time spent by the Committee on the right to life reflected the importance and concern it attached to that question. Most Committee members indicated that they were well aware that the country was going through a difficult period, but expressed the hope that that period would soon come to an end and that some of the concerns that had been expressed, especially those relating to the Penal Code, could therefore be met.

390. In concluding the consideration of the second periodic report of Iraq, the Chairman also thanked the delegation for its co-operation and for having engaged in an open and constructive dialogue with the Committee.

IV. GENERAL COMMENTS OF THE COMMITTEE

A. General

391. As stated in paragraph 24 above, the Economic and Social Council, in its resolution 1987/4 welcomed the continuing efforts of the Human Rights Committee to strive for uniform standards in the implementation of the International Covenant on Civil and Political Rights, as expressed in the general comments. The Committee recalled in that connection that States parties to the Covenant were urged, in the Committee's guidelines on the form and content of periodic reports (CCPR/C/20), to take the general comments duly into account when preparing such reports. Members of the Committee noted that that requirement had not been adequately met by many States parties. In view of the important bearing that the general comments had on the implementation of a number of articles of the Covenant, members expressed the hope that the general comments would be more fully reflected in future periodic reports.

B. Work on general comments

392. On the basis of a draft provided by its Working Group, the Committee discussed a general comment relating to article 17 of the Covenant at its 749th, 751st and 752nd meetings. After thorough consideration, the Committee decided to refer the draft general comment to the Working Group that was to meet prior to its thirty-first session for further consideration and revision in the light of the comments and proposals advanced by members at its thirtieth session.

V. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

393. 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. Of the 86 States that have acceded to or ratified the Covenant, 36 have accepted the competence of the Committee to deal with individual complaints by ratifying or acceding to the Optional Protocol (see annex I, sect. B). 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.

A. Progress of work

394. Since the Committee started its work under the Optional Protocol at its second session in 1977, 236 communications concerning 23 States parties have been placed before it for consideration (211 of these were placed before the Committee from its second to its twenty-eighth sessions; 25 further communications have been placed before the Committee since then, that is, at its twenty-ninth and thirtieth sessions, covered by the present report). A volume containing selected decisions under the Optional Protocol from the second to the sixteenth session (July 1982) was published in 1985. ^{10/} A volume containing selected decisions from the seventeenth to the thirtieth sessions is forthcoming. The Committee believes it extremely important that the publication of this second volume should proceed at all due speed. The postponement of the Committee's twenty-ninth session from the fall of 1986 to the spring of 1987, due to the difficult financial situation of the United Nations, entailed a delay in the consideration of a number of communications under the Optional Protocol. The Committee's Working Group on Communications was, however, convened in Geneva from 8 to 10 December 1986 in order to deal with urgent cases.

395. The status of the 236 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: 77;

(b) Concluded in another manner (inadmissible, discontinued, suspended or withdrawn): 110;

(c) Declared admissible, but not yet concluded: 15;

(d) Pending at the pre-admissibility stage: 34 (16 thereof transmitted to the State party under rule 91 of the Committee's provisional rules of procedure).

396. During the twenty-ninth and thirtieth sessions, the Committee examined a number of communications submitted under the Optional Protocol. It concluded consideration of five cases by adopting its views thereon. These are cases Nos. 155/1983 (Eric Hammel v. Madagascar), 172/1984 (S. W. M. Broeks v. the Netherlands), 180/1984 (L. G. Danning v. the Netherlands), 182/1984 (F. H. Zwaan-de Vries v. the Netherlands), and 198/1985 (R. D. Stalla Costa v. Uruguay). The Committee also concluded consideration of three cases by declaring

them inadmissible. These are cases Nos. 192/1985 (S. H. B. v. Canada), 209/1986 (F. G. G. v. the Netherlands) and 217/1986 (H. v. d. P. v. the Netherlands). The texts of the views adopted on the five cases as well as of the decisions on the three cases declared inadmissible are reproduced in annexes VIII and IX to the present report. Consideration of one case was discontinued. Procedural decisions were adopted in a number of pending cases (under rules 86 and 91 of the Committee's provisional rules of procedure or under article 4 of the Optional Protocol). Secretariat action was requested on other pending cases.

B. Issues considered by the Committee

397. For a review of the Committee's work under the Optional Protocol from its second session in 1977 to its twenty-eighth session in 1986, the reader is referred to the Committee's annual reports for 1984, 1985 and 1986, which, inter alia, contain a summary of the procedural and substantive issues considered by the Committee and of the decisions taken. 11/ 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.

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

1. Procedural issues

(a) The requirement that a communication be declared admissible before it is examined on the merits (rule 93)

399. Although under rule 91 of the Committee's provisional rules of procedure States parties are requested to furnish information and observations only with regard to the question of the admissibility of a communication, frequently they also make extensive submissions at that stage on the merits of the case. Submissions from States parties under rule 91 are transmitted to the authors for comments, who sometimes make further extensive submissions on matters of substance. Thus, even before the adoption of a decision on the admissibility of a communication, the Committee may have before it all the information it needs in order to adopt a final decision on the merits. Under the rules of procedure, however, the Committee cannot adopt views under article 5, paragraph 4 of the Optional Protocol, until it has declared the case admissible and given the State party, pursuant to article 4, paragraph 2, of the Optional Protocol, six months to submit "written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State". In order to expedite the procedure when appropriate, the Committee has developed a new practice. Thus, in the admissibility decision concerning communication No. 198/1985 (R. Stalla Costa v. Uruguay), adopted at the Committee's twenty-ninth session in April 1987, the Committee noted:

"... that the facts of the case, as already set out by the author and the State party, are sufficiently clear to permit an examination on the merits. At this stage the Committee must, however, limit itself to the procedural requirement of deciding on the admissibility of the communication. Should the State party, nevertheless, wish to add to its earlier submissions within six

months of the transmittal to it of the present decision, the author of the communication will be given an opportunity to comment thereon. If no further explanations or statements are received from the State party under article 4, paragraph 2, of the Optional Protocol, the Committee will proceed to adopt its final views in the light of the written information already submitted by the parties."

400. The Committee therefore decided:

"That any further explanations or statements which the State party may wish to submit to clarify the matter and the measures taken by it, should, in accordance with article 4, paragraph 2, of the Optional Protocol, reach the Human Rights Committee within six months of the date of transmittal to it of this Decision. Should the State party not intend to make a further submission in the case, it is requested to so inform the Committee as soon as possible to permit an early decision on the merits."

The State party responded, accordingly, that it would make no further submission in the case, thus enabling the Committee, at its thirtieth session in July 1987, to proceed to the adoption of views under article 5, paragraph 4, of the Optional Protocol (see annex VIII E).

(b) The standing of the author under article 2 of the Optional Protocol

401. With respect to the standing of authors who have submitted communications to the Committee claiming to be victims of a violation of the right of self-determination enshrined in article 1 of the Covenant, the Committee held in an admissibility decision adopted at its twenty-ninth session:

"... that the author, as an individual, cannot claim to be a victim of a violation of the right of self-determination enshrined in article 1 of the Covenant. Whereas the Optional Protocol provides a recourse procedure for individuals claiming that their rights have been violated, article 1 of the Covenant deals with rights conferred upon peoples, as such."

402. Similarly, in a decision adopted at its thirtieth session in respect of a communication submitted by an individual acting on his own behalf and claiming to act on behalf of others, the Committee reaffirmed

"... that the Covenant recognizes and protects in most resolute terms a people's right of self-determination and its right to dispose of its natural resources, as an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. However, the Committee observes ... that the author, as an individual, cannot claim under the Optional Protocol to be a victim of a violation of the right of self-determination enshrined in article 1 of the Covenant, which deals with rights conferred upon peoples, as such."

The Committee decided, however, that the communication could be considered, in so far as it might raise issues under article 27 and other articles of the Covenant.

(c) The requirement of State jurisdiction under article 1 of the Optional Protocol

403. The requirement in article 1 of the Optional Protocol that an individual be subject to the jurisdiction of the State party was further elucidated by the Committee in its decision declaring communication No. 217/1986 (H.v.d.P. v. the Netherlands) inadmissible. In that case the author, an international civil servant with the European Patent Office, had claimed to be a victim of discrimination in the promotion practices of that organization. He contended that the Human Rights Committee was competent to consider the case, since five States parties to the European Patent Convention (France, Italy, Luxembourg, the Netherlands and Sweden) were also parties to the Optional Protocol to the International Covenant on Civil and Political Rights. The author, a national of the Netherlands, submitted his communication against the Netherlands. The Committee observed, however:

"... that it can only receive and consider communications in respect of claims that come under the jurisdiction of a State party to the Covenant. The author's grievances, however, concern the recruitment policies of an international organization, which cannot, in any way, be construed as coming within the jurisdiction of the Netherlands or of any other State party to the International Covenant on Civil and Political Rights and the Optional Protocol thereto. Accordingly, the author has no claim under the Optional Protocol." (See annex IX C, para.3.2).

(d) Interim measures under rule 86

404. The authors of a number of cases currently before the Committee are convicted persons who have been sentenced to death and are awaiting execution. These authors claim to be innocent of the crimes of which they were convicted and further allege that they were denied a fair hearing. In view of the urgency of the communications, the Committee has requested the two States parties concerned, under rule 86 of the Committee's provisional rules of procedure, not to carry out the death sentences until "the Committee has had the opportunity to render a final decision in this case" or "the Committee has had an opportunity to consider further ... the question of admissibility of the present communication." Stays of execution have been granted in this connection.

405. Rule 86 was also invoked by the Committee at its thirtieth session in a case concerning a group of persons, in respect of whom the State party was requested to take steps to avoid irreparable damage.

2. Substantive issues

(a) Equality before the law, equal protection of the law (art. 26 of the Covenant)

406. In the absence of a general comment on article 26 of the Covenant, the Committee has discussed the scope of this article extensively in connection with its examination of communications under the Optional Protocol. One of the unresolved questions before the Committee was whether the principle of non-discrimination enunciated in article 26 applied only with respect to the rights enshrined in the International Covenant on Civil and Political Rights, or whether non-discrimination constituted an autonomous right applicable to civil and

political rights not protected in the Covenant or even to economic, social and cultural rights, which might be protected by other international instruments, such as the International Covenant on Economic, Social and Cultural Rights. While States parties have argued for a restrictive interpretation of article 26 on the basis that the two Covenants established two different monitoring systems and that provision was made for an individual complaints procedure only with respect to the International Covenant on Civil and Political Rights, the Committee decided at its twenty-ninth session with regard to communications Nos. 172/1984, 180/1984 and 182/1984 (see annex VIII B, C and D) that it could examine an allegation of discrimination with regard to economic, social and cultural rights. In all three cases, the Committee observed:

"For the purpose of determining the scope of article 26, the Committee has taken into account the 'ordinary meaning' of each element of the article in its context and in the light of its object and purpose (art. 31 of the Vienna Convention on the Law of Treaties). The Committee begins by noting that article 26 does not merely duplicate the guarantees already provided for in article 2. It derives from the principle of equal protection of the law without discrimination, as contained in article 7 of the Universal Declaration of Human Rights, which prohibits discrimination in law or in practice in any field regulated and protected by public authorities. Article 26 is thus concerned with the obligations imposed on States in regard to their legislation and the application thereof.

"Although article 26 requires that legislation should prohibit discrimination, it does not of itself contain any obligation with respect to the matters that may be provided for by legislation. Thus it does not, for example, require any State to enact legislation to provide for social security. However, when such legislation is adopted in the exercise of a State's sovereign power, then such legislation must comply with article 26 of the Covenant."

407. After deciding on its own competence to consider cases of alleged discrimination with regard to social security rights, the Committee examined whether certain facts constituted discrimination within the meaning of article 26 of the Covenant. In case No. 182/1984 (*F.H. Zwaan-de Vries v. the Netherlands*) the Committee found a violation of article 26:

"The right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26.

"It therefore remains for the Committee to determine whether the differentiation in Netherlands law at the time in question and as applied to Mrs. Zwaan-de Vries constituted discrimination within the meaning of article 26. The Committee notes that in Netherlands law the provisions of articles 84 and 85 of the Netherlands Civil Code imposes equal rights and obligations on both spouses with regard to their joint income. Under section 13, subsection 1 (1), of the Unemployment Benefits Act (WWV) a married woman, in order to receive WWV benefits, had to prove that she was a 'breadwinner' - a condition that did not apply to married men. Thus a differentiation which appears on one level to be one of status is in fact one of sex, placing married women at a disadvantage compared with married men. Such a differentiation is not reasonable, ..." (see annex VIII D).

408. Similarly, in case No. 172/1984 (S.W.M. Broeks v. the Netherlands), which involved the application of the same law in a comparable factual situation, the Committee also made a finding of a violation of article 26 (see annex VIII B).

409. In case No. 180/1984 (L.G. Danning v. the Netherlands), the Committee found that the facts did not support a finding of a violation of article 26:

"In the light of the explanations given by the State party with respect to the differences made by Netherlands legislation between married and unmarried couples ..., the Committee is persuaded that the differentiation complained of by Mr. Danning is based on objective and reasonable criteria. The Committee observes, in this connection, that the decision to enter into a legal status by marriage, which provides, in Netherlands law, both for certain benefits and for certain duties and responsibilities, lies entirely with the cohabiting persons. By choosing not to enter into marriage, Mr. Danning and his cohabitant have not, in law, assumed the full extent of the duties and responsibilities incumbent on married couples. Consequently, Mr. Danning does not receive the full benefits provided for in Netherlands law for married couples. The Committee concludes that the differentiation complained of by Mr. Danning does not constitute discrimination in the sense of article 26 of the Covenant." (See annex VIII C).

(b) Protection of aliens under article 13 of the Covenant

410. At its twenty-seventh session, the Committee adopted the text of a general comment on the position of aliens under the Covenant. 12/ At its twenty-ninth session, the Committee concluded its examination of communication No. 155/1983 (Eric Hammel v. Madagascar). Maître Eric Hammel, a French national and resident of France, had been a practising attorney in Madagascar until his expulsion in February 1982. He had represented three persons before the Committee who alleged that they had been victims of violations of their rights by Madagascar. The Committee had adopted views in those three cases at its eighteenth and twenty-fourth sessions. 13/ In his own case, Maître Hammel claimed that his expulsion from Madagascar constituted a violation of article 13 of the Covenant. In its views under article 5, paragraph 4, of the Optional Protocol, the Committee elucidated the scope of article 13 of the Covenant, making express reference to its general comment:

"The Committee notes that, in the circumstances of the present case, the author was not given an effective remedy to challenge his expulsion and that the State party has not shown that there were compelling reasons of national security to deprive him of that remedy. In formulating its views the Human Rights Committee also takes into account its general comment 15(27), on the position of aliens under the Covenant, and in particular points out that '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 Committee further notes with concern that, based on the information provided by the State party ..., the decision to expel Eric Hammel would appear to have been linked to the fact that he had represented persons before the Human Rights Committee. Were that to be the case, the Committee observes that it would be both untenable and incompatible with the spirit of the International Covenant on Civil and Political Rights and the Optional Protocol

thereto, if States parties to these instruments were to take exception to anyone acting as legal counsel for persons placing their communications before the Committee for consideration under the Optional Protocol."

Thus the Committee found that article 13 had been violated, "because, for grounds that were not those of compelling reasons of national security, he [Maître Hammel] was not allowed to submit the reasons against his expulsion and to have his case reviewed by a competent authority within a reasonable time." (See annex VIII A).

Notes

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

2/ Ibid., Thirty-sixth Session, Supplement No. 40 (A/36/40), annex V.

3/ Ibid., annex VI.

4/ 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.

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

6/ Ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40), paras. 68-94.

7/ Ibid., Thirty-eighth Session, Supplement No. 40 (A/38/40), annex VI.

8/ United Nations, Juridical Yearbook 1969 (United Nations publication, Sales No. E.71.V.4), p. 140.

9/ See Official Records of the General Assembly, Forty-first Session, Supplement No. 40 (A/41/40), annex VIII A and D (communications Nos. 138/1983, Ngulula Mpandanjila et al v. Zaire, and 157/1983, André Alphonse Mpaka-Nausu v. Zaire).

10/ United Nations publication, Sales No. E.84.XIV.2.

11/ See Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40), paras. 569-625; ibid., Fortieth Session, Supplement No. 40 (A/40/40), paras. 609-706; and ibid., Forty-first Session, Supplement No. 40 (A/41/40), paras. 418-424.

12/ See Official Records of the General Assembly, Forty-first Session, Supplement No. 40 (A/41/40), annex VI.

13/ Ibid., Thirty-eighth Session, Supplement No. 40 (A/38/40), annex XI (communication No. 49/1979, Dave Marais Jr. v. Madagascar); and Ibid., Fortieth Session, Supplement No. 40 (A/40/40), annex VIII (communication No. 115/1982, John Wight v. Madagascar) and annex IX (communication No. 132/1982, Monja Jaona v. Madagascar).

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 24 July 1987

A. States parties to the International Covenant on Civil and Political Rights (86)

<u>State party</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
Argentina	8 August 1986	8 November 1986
Australia	13 August 1980	13 November 1980
Austria	10 September 1978	10 December 1978
Barbados	5 January 1973 (a)	23 March 1973
Belgium	21 April 1983	21 July 1983
Bolivia	12 August 1982 (a)	12 November 1982
Bulgaria	21 September 1970	23 March 1976
Byelorussian Soviet Socialist Republic	12 November 1973	23 March 1976
Cameroon	27 June 1984 (a)	27 September 1984
Canada	19 May 1976 (a)	19 August 1976
Central African Republic	8 May 1981 (a)	8 August 1981
Chile	10 February 1972	23 March 1976
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983 (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
Democratic Yemen	9 February 1987 (a)	9 May 1987
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

<u>State party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Finland	19 August 1975	23 March 1976
France	4 November 1980 (a)	4 February 1981
Gabon	21 January 1983 (a)	21 April 1983
Gambia	22 March 1979 (a)	22 June 1979
German Democratic Republic	8 November 1973	23 March 1976
Germany, Federal Republic of	17 December 1973	23 March 1976
Guinea	24 January 1978	24 April 1978
Guyana	15 February 1977	15 May 1977
Hungary	17 January 1974	23 March 1976
Iceland	22 August 1979	22 November 1979
India	10 April 1979 (a)	10 July 1979
Iran (Islamic Republic of)	24 June 1975	23 March 1976
Iraq	25 January 1971	23 March 1976
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Japan	21 June 1979	21 September 1979
Jordan	28 May 1975	23 March 1976
Kenya	1 May 1972 (a)	23 March 1976
Lebanon	3 November 1972 (a)	23 March 1976
Libyan Arab Jamahiriya	15 May 1970 (a)	23 March 1976
Luxembourg	18 August 1983	18 November 1983
Madagascar	21 June 1971	23 March 1976
Mali	16 July 1974 (a)	23 March 1976
Mauritius	12 December 1973 (a)	23 March 1976
Mexico	23 March 1981 (a)	23 June 1981
Mongolia	18 November 1974	23 March 1976
Morocco	3 May 1979	3 August 1979
Netherlands	11 December 1978	11 March 1979
New Zealand	28 December 1978	28 March 1979
Nicaragua	12 March 1980 (a)	12 June 1980
Niger	7 March 1986 (a)	7 June 1986
Norway	13 September 1972	23 March 1976

<u>State party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Panama	8 March 1977	8 June 1977
Philippines	23 October 1986	23 January 1987
Peru	28 April 1978	28 July 1978
Poland	18 March 1977	18 June 1977
Portugal	15 June 1978	15 September 1978
Romania	9 December 1974	23 March 1976
Rwanda	16 April 1975 (a)	23 March 1976
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 (38)

<u>State party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Argentina	8 August 1986 (a)	8 November 1986
Barbados	5 January 1973 (a)	23 March 1976
Bolivia	12 August 1982 (a)	12 November 1982
Cameroon	27 June 1984 (a)	27 September 1984
Canada	19 May 1976 (a)	19 August 1976
Central African Republic	8 May 1981 (a)	8 August 1981
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983 (a)	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 (a)	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 (a)	25 April 1985

Date of receipt of
the instrument of
ratification or
accession (a)

Date of entry
into force

State party

Suriname	28 December 1976 (a)	28 March 1977
Sweden	6 December 1971	23 March 1976
Trinidad and Tobago	14 November 1980 (a)	14 February 1981
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Zaire	1 November 1976 (a)	1 February 1977
Zambia	10 April 1984 (a)	10 July 1984

C. States which have made the declaration under article 41
of the Covenant (21)

State party

Valid from

Valid until

Argentina	8 August 1986	Indefinitely
Austria	10 September 1978	Indefinitely
Belgium	5 March 1987	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
Philippines	23 October 1986	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, 1987-1988 a/

<u>Name of member</u>	<u>Country of nationality</u>
Mr. Andrés AGUILAR*	Venezuela
Mr. Nisuke ANDO**	Japan
Ms. Christine CHANET**	France
Mr. Joseph A. L. COORAY**	Sri Lanka
Mr. Vojin DIMITRIJEVIC**	Yugoslavia
Mr. Omran EL-SHAFEI**	Egypt
Mrs. Rosalyn HIGGINS*	United Kingdom of Great Britain and Northern Ireland
Mr. Rajsoomer LALLAH*	Mauritius
Mr. Andreas V. MAVROMMATIS*	Cyprus
Mr. Joseph A. MOMMERSTEEG**	Netherlands
Mr. Anatoly P. MOVCHAN*	Union of Soviet Socialist Republics
Mr. Birame NDIAYE**	Senegal
Mr. Fausto POCAR*	Italy
Mr. Julio PRADO VALLEJO**	Ecuador
Mr. Alejandro SERRANO CALDERA*	Nicaragua
Mr. S. Amos WAKO*	Kenya
Mr. Bertil WENNERGREN**	Sweden
Mr. Adam ZIELINSKI*	Poland

Notes

* Term expires on 31 December 1988.

** Term expires on 31 December 1990.

a/ For the membership of the Human Rights Committee until 31 December 1986 see Official Records of the General Assembly, Forty-first Session, Supplement No. 40 (A/41/40), annex II.

ANNEX III

Agendas of the twenty-ninth and thirtieth sessions
of the Human Rights Committee

Twenty-ninth session

At its 702nd meeting, on 23 March 1987, 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-ninth session:

1. Opening of the session by the representative of the Secretary-General.
2. Solemn declaration by the newly-elected members of the Committee in accordance with article 38 of the Covenant.
3. Election of the Chairman and other officers of the Committee.
4. Adoption of the agenda.
5. Organizational and other matters.
6. Action by the General Assembly at its forty-first session on the annual report submitted by the Human Rights Committee under article 45 of the Covenant.
7. Submission of reports by States parties under article 40 of the Covenant.
8. Consideration of reports submitted by States parties under article 40 of the Covenant.
9. Consideration of communications under the Optional Protocol to the Covenant.

Thirtieth session

At its 730th meeting, on 6 July 1987, 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 thirtieth session:

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

ANNEX IV

Submission of reports and additional information by States Parties under Article 40 of the Covenant during the period under review a/

A. Initial reports

<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	4 February 1987	-
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 (6) 8 August 1986 (7) 7 April 1987
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 (6) 8 August 1986 (7) 7 April 1987
Bolivia	11 November 1983	NOT YET RECEIVED	(1) 17 May 1985 (2) 5 August 1985 (3) 6 May 1986 (4) 8 August 1986 (5) 7 April 1987
Viet Nam	23 December 1983	NOT YET RECEIVED	(1) 22 May 1985 (2) 9 August 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 7 April 1987
Gabon	20 April 1984	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 1985 (3) 15 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 7 April 1987
Belgium	20 July 1984	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 1985 (3) 6 May 1986 (4) 8 August 1986 (5) 7 April 1987

<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>
Zambia	9 July 1985	24 June 1987	-
Togo	23 August 1985	NOT YET RECEIVED	(1) 15 November 1985 (2) 6 May 1986 (3) 8 August 1986 (4) 7 April 1987
Cameroon	26 September 1985	NOT YET RECEIVED	(1) 15 November 1985 (2) 6 May 1986 (3) 8 August 1986 (4) 7 April 1987
Guinea	31 October 1985 <u>b/</u>	NOT YET RECEIVED	(1) 8 August 1986 (2) 11 May 1987
San Marino	17 January 1987	NOT YET RECEIVED	(1) 1 May 1987
Niger	9 June 1987	NOT YET RECEIVED	-
Sudan	17 June 1987	NOT YET RECEIVED	-

B. Second periodic reports of States parties due in 1983

Zaire	30 January 1983	NOT YET RECEIVED <u>c/</u>	-
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 (6) 8 August 1986 (7) 1 May 1987 (8) 24 July 1987
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 (6) 8 August 1986 (7) 1 May 1987 (8) 24 July 1987

<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>
Uruguay	21 March 1983 <u>d/</u>	NOT YET RECEIVED	(1) 10 May 1984 (2) 17 May 1985 (3) 14 August 1985 (4) 20 November 1985 (5) 6 May 1986 (6) 8 August 1986 (7) 1 May 1987 (8) 24 July 1987
Madagascar	3 August 1983	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 1 May 1987 (7) 24 July 1987
Mauritius	4 November 1983	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 1 May 1987 (7) 24 July 1987

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 (5) 8 August 1986 (6) 1 May 1987
Cyprus	18 August 1984	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 1 May 1987
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 (5) 8 August 1986 (6) 1 May 1987

<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>	
United Kingdom of Great Britain and Northern Ireland -- dependent territories	18 August 1984 e/	NOT YET RECEIVED	(1)	8 August 1986
			(2)	1 May 1987

D. Second periodic reports of States parties due in 1985

Trinidad and Tobago	20 March 1985	19 May 1987		-
New Zealand	27 March 1985	NOT YET RECEIVED	(1)	5 August 1985
			(2)	18 November 1985
			(3)	6 May 1986
			(4)	8 August 1986
			(5)	1 May 1987
Gambia	21 June 1985	NOT YET RECEIVED	(1)	9 August 1985
			(2)	18 November 1985
			(3)	6 May 1986
			(4)	8 August 1986
			(5)	1 May 1987
India	9 July 1985	NOT YET RECEIVED	(1)	9 August 1985
			(2)	18 November 1985
			(3)	6 May 1986
			(4)	8 August 1986
			(5)	1 May 1987
Colombia	2 August 1985	5 November 1986		-
Costa Rica	2 August 1985	NOT YET RECEIVED	(1)	20 November 1985
			(2)	6 May 1986
			(3)	8 August 1986
			(4)	1 May 1987
Suriname	2 August 1985	NOT YET RECEIVED	(1)	18 November 1985
			(2)	6 May 1986
			(3)	8 August 1986
			(4)	1 May 1987
Italy	1 November 1985	NOT YET RECEIVED	(1)	18 November 1985
			(2)	6 May 1986
			(3)	8 August 1986
			(4)	1 May 1987
Venezuela	1 November 1985	NOT YET RECEIVED	(1)	20 November 1985
			(2)	6 May 1986
			(3)	8 August 1986
			(4)	1 May 1987

E. Second periodic reports of States parties due in 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>
El Salvador	28 February 1986	NOT YET RECEIVED f/	
Lebanon	21 March 1986	NOT YET RECEIVED	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987
Dominican Republic	29 March 1986	NOT YET RECEIVED	(1) 6 May 1986 (2) 8 August 1986 (3) 1 May 1987
Barbados	11 April 1986	24 June 1987	-
Kenya	11 April 1986	NOT YET RECEIVED	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987
Mali	11 April 1986	NOT YET RECEIVED	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987
United Republic of Tanzania	11 April 1986	NOT YET RECEIVED	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987
Nicaragua	11 June 1986	NOT YET RECEIVED	(1) 8 August 1986 (2) 1 May 1987
Panama	31 December 1986 g/	NOT YET RECEIVED	(1) 1 May 1987

F. Second periodic reports of States parties due in 1987 (within the period under review) h/

Jordan	22 January 1987	NOT YET RECEIVED	1 May 1987
France	3 February 1987	19 May 1987	-
Guyana	10 April 1987	NOT YET RECEIVED	1 May 1987
Rwanda	10 April 1987	10 April 1987	-
Mexico	22 June 1987	NOT YET RECEIVED	-

Notes

a/ From 25 July 1986 to 24 July 1987 (end of the twenty-eighth session to end of the thirtieth session).

b/ Having considered the initial report of Guinea at its twentieth session (1983), 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 first set for 30 September 1984 and was later extended to 31 October 1985.

c/ Pursuant to the Committee's decision taken at its 739th meeting, the new date for the submission of Zaire's second periodic report is 1 February 1989.

d/ 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.

e/ 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.

f/ At the Committee's twenty-ninth session, the deadline for the submission of El Salvador's second periodic report was set for 31 December 1988.

g/ At its twenty-fifth session (601st meeting), the Committee decided to extend the deadline for the submission of Panama's second periodic report from 6 June 1983 to 31 December 1986.

h/ For a complete list of States parties whose second periodic reports are due in 1987, see CCPR/C/46.

ANNEX V

Status of reports considered during the period under review and of reports still pending before the CommitteeA. Initial reports

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Meetings at which considered</u>
Zaire	31 January 1978	4 February 1987	734th, 735th, 738th, 739th (thirtieth session)
Congo	4 January 1985	12 February 1986	732nd, 733rd, 736th (thirtieth session)
Zambia	9 July 1985	24 June 1987	NOT YET CONSIDERED

B. Second periodic reports

Tunisia	4 February 1983	27 February 1986	712th-715th (twenty-ninth session)
Ecuador	4 November 1983	14 August 1985	NOT YET CONSIDERED
Romania	28 April 1984	29 January 1986	740th-743rd (thirtieth session)
Poland	27 October 1984	25 October 1985 9 February 1987	708th-711th (twenty-ninth session)
Trinidad and Tobago	20 March 1985	19 May 1987	NOT YET CONSIDERED
Iraq	4 April 1985	21 April 1986	744th-748th (thirtieth session)
Senegal	4 April 1985	9 June 1986	721st-724th (twenty-ninth session)
Colombia	2 August 1985	5 November 1986	NOT YET CONSIDERED
Denmark	1 November 1985	15 July 1986	NOT YET CONSIDERED
Barbados	11 April 1986	24 June 1987	NOT YET CONSIDERED
Portugal	1 August 1986	1 May 1987	NOT YET CONSIDERED
Australia	12 November 1986	14 May 1987	NOT YET CONSIDERED
France	3 February 1987	19 May 1987	NOT YET CONSIDERED
Rwanda	10 April 1987	10 April 1987	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>a/</u>	4 May 1982	NOT YET CONSIDERED
France <u>a/</u>	18 January 1984	NOT YET CONSIDERED
Gambia <u>a/</u>	5 June 1984	NOT YET CONSIDERED
Panama <u>b/</u>	30 July 1984	NOT YET CONSIDERED
El Salvador <u>c/</u>	19 June 1986	716th, 717th, 719th (twenty-ninth session)

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

Finland	4 June 1986	NOT YET CONSIDERED <u>d/</u>
Sweden	1 July 1986	NOT YET CONSIDERED <u>d/</u>

Notes

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

b/ 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.

c/ At its twentieth session, the Committee decided to suspend consideration of the State party's initial report pending the receipt of additional information. On the basis of the additional information subsequently submitted, the Committee reverted to the consideration of the State party's initial report at the twenty-ninth session and decided to request more additional information before the end of 1988.

d/ See para. 51 of the report.

Statement on the Second Decade to Combat Racism and
Racial Discrimination adopted by the Committee at
its 725th meeting, on 8 April 1987

The Human Rights Committee has attached great importance to the Second Decade to Combat Racism and Racial Discrimination. It believes that special efforts should be made to intensify the action of all United Nations organs and related bodies in the second half of that Decade so as to produce meaningful results. Accordingly, the Committee welcomes the decision of the General Assembly, in its resolution 41/94 of 4 December 1986, to continue to give the highest priority to programmes for combating racism, racial discrimination and apartheid during the remaining years of the Decade.

The Committee is also gratified by the General Assembly's renewed affirmation in that resolution of the importance of the principles of equality and non-discrimination. In that connection it may be recalled that the International Covenant on Civil and Political Rights provides guarantees relating to equality and non-discrimination in a number of specific articles, including articles 2, 3, 20, 26 and 27. Indeed, the Covenant is suffused by these two fundamental principles throughout.

In fulfilling its obligations under the Covenant, the Committee has attempted to probe as deeply as possible into the social and legal reasons for discrimination on racial and related grounds and to study the methods used by States parties to eliminate it. As part of this process the Committee plans to formulate general comments on all articles of the Covenant related to discrimination and has already adopted general comments on articles 1, 3 and 20, as well as on the position of aliens under the Covenant.

For these reasons, the Committee considers all international gatherings under the auspices of the United Nations that aim at reviewing the ways and means of eliminating all forms of racial discrimination and apartheid, as well as the operation of various instruments adopted to that effect, to be very important. Members of the Committee stand ready to participate in all global or regional meetings of this kind.

With specific regard to the Secretary-General's forthcoming report outlining a plan of activities for the years 1990-1993, discussed in his note to the Commission on Human Rights (E/CN.4/1987/50), the Committee wishes to offer the following suggestions and comments:

(1) As indicated above, members of the Committee would be pleased to participate in international meetings related to racial and other forms of discrimination and to apartheid, including, in particular, any expert group meeting that might be convened by the United Nations to review the implementation of article 27 of the Covenant (relating to the protection of persons belonging to minority groups).

(2) Consideration should be given to organizing an exchange of views among members of various United Nations or United Nations related bodies, with responsibilities concerning the elimination of racial discrimination, on how their

respective functioning could be improved. Certain problems common to all such bodies (relating, for example, to racial discrimination against members of minority groups, migrant workers or indigenous populations) could also be addressed at such a meeting.

(3) The Committee would be prepared to collaborate with any effort by the United Nations to conduct a survey, on a global basis, of recourse procedures available to victims of racial discrimination.

(4) The Committee would support action to intensify the dissemination of information by the mass media regarding racial discrimination, in particular through the translation into as many languages as possible of the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, and would welcome efforts to survey current means of dissemination of such information with a view to devising further measures and improvements.

ANNEX VII

Letters from the Chairman of the Committee concerning
overdue reports

A. Letter dated 7 April 1987 from the Chairman of the Committee
to the Ministers for Foreign Affairs of States parties whose
initial reports were overdue

On behalf of the Human Rights Committee, which was established under the International Covenant on Civil and Political Rights, I have the honour to invite Your Excellency's attention to a matter to which the Committee attaches special importance.

As Your Excellency may be aware, each State party to the Covenant undertook, under article 40, paragraph 1 (a), of the Covenant, to submit a report, within one year of the entry into force of the Covenant, on the measures taken to implement its provisions. The Covenant entered into force with respect to _____ on _____ and _____ initial report thus became due on _____.

It is a matter of great regret to the Committee that the initial report from the Government of _____ has unfortunately not yet been received.

The submission of such reports is not only a solemn legal obligation assumed by each State party upon ratification of the Covenant, but is also indispensable for carrying out the Committee's basic function of establishing a positive dialogue with the States parties in the field of human rights.

In view of the great importance of this matter, and the delays that have already occurred, it is my most earnest hope that _____'s initial report can be submitted in the near future.

(Signed) Julio PRADO VALLEJO
Chairman of the
Human Rights Committee

B. Letter dated 24 July 1987 from the Chairman of the Committee to
the Ministers for Foreign Affairs of States parties whose second
periodic reports had been overdue since 1983

On behalf of the Human Rights Committee, which was established under the International Covenant on Civil and Political Rights, I have the honour to invite Your Excellency's attention to a matter to which the Committee attaches special importance.

As Your Excellency may be aware, each State party undertook under article 40 of the Covenant to submit reports on the measures it has adopted to give effect to the rights recognized therein. Paragraph 1 (a) of that article provides for the submission of an initial report within one year of the entry into force of the Covenant for the State party concerned, whereas paragraph 1 (b) calls for the submission of subsequent reports "whenever the Committee so requests".

At its thirteenth session, held in July 1981, the Human Rights Committee decided that States parties should submit periodic reports concerning the implementation of the provisions of the Covenant every five years. The due date established for the submission of _____'s second periodic report was _____. Unfortunately, that report has not yet been received and, in fact, according to the above-mentioned decision of the Committee, _____'s third periodic report would be due on _____ 1988.

The submission of such reports is indispensable for continuing the Committee's positive dialogue with the States parties in the field of human rights. The non-submission of _____'s report is therefore a matter of great regret to the Committee.

In view of the importance of this matter and the delays that have already occurred, it is my most earnest hope that _____'s second periodic report will be submitted in the near future.

I would be most grateful if Your Excellency could inform me as soon as convenient of the intentions of the Government of _____ in the foregoing regard.

(Signed) Julio PRADO VALLEJO
Chairman of the
Human Rights Committee

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. 155/1983, Eric Hammel v. Madagascar (Views
adopted on 3 April 1987 at the twenty-ninth session)

Submitted by: Eric Hammel

Alleged victim: the author

State party concerned: Madagascar

Date of communication: 1 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 3 April 1987;

Having concluded its consideration of communication No. 155/1983 submitted to the Committee by Maître Eric Hammel under the Optional Protocol to the International Covenant on Civil and Political Rights;

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

adopts the following:

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

1. The author of the communication (initial letter dated 1 August 1983 and further letters of 12 December 1983, 18 September and 17 October 1985, 30 May and 18 August 1986 and 25 February 1987) is Maître Eric Hammel, a French national and resident of France, formerly a practising attorney in Madagascar until his expulsion in February 1982. He claims to be a victim of violations by the State party of articles 9, 13 and 14 of the International Covenant on Civil and Political Rights. He also alleges a breach of article 2, paragraph 3 (b), of the Covenant.

2.1 Maître Hammel states that he was called to the Madagascar bar in May 1963 and practised law at Antananarivo. He claims to have built up over a period of 19 years one of the best law practices in Madagascar and that he defended the principal leaders of the Malagasy political opposition as well as other political prisoners. He alleges that on two occasions, in 1980 and 1981, he was detained by DGID (Malagasy political police) and released after one day of questioning. On 8 February 1982, the political police arrested him again at his law office, kept him in incommunicado detention in a basement cell of the prison of the political police and subsequently deported him from Madagascar on 11 February 1982, giving him only two hours to pack his belongings.

2.2 With regard to the exhaustion of domestic remedies, the author alleges that on 1 March 1982 he applied to the Malagasy Ministry of the Interior for the abrogation of the expulsion order as illegal and unfounded. In the absence of any response from the Ministry, the author formally applied to the Administrative Chamber of the Supreme Court of Madagascar on 10 June 1982 requesting abrogation of the expulsion order.

2.3 The author alleges certain interference with his correspondence by the Malagasy postal services and governmental interference in various court proceedings in which he was engaged.

2.4 It is claimed that the proceedings started by the author were deliberately paralysed by the Malagasy Government in violation of domestic laws and of the International Covenant on Civil and Political Rights. In this connection the author substantiates his allegations as follows:

"Article 13: After 19 years as a member of the Madagascar bar, I was expelled from Madagascar as a French national by order of 11 February 1982, with 24 hours' notice. I was notified of the order on 11 February 1982 and there was a plane leaving at 8 p.m. I had two hours to pack my baggage at my home under surveillance by political police officers. I thus had no opportunity to avail myself of any of the remedies of appeal against the expulsion order that are provided for by law. When I later applied to the Administrative Chamber of the Supreme Court to have the expulsion order repealed, the proceedings ... were thwarted by the Government."

...

"Article 14, paragraph 1: The Government has prevented the courts and tribunals from reviewing and ruling on the appeals and charges I have filed ..., although the Covenant provides that everyone shall be entitled in a suit at law to a hearing by the competent tribunal."

3. By its decision of 6 April 1984, 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 Committee also requested the State party to forward copies of any court orders or decisions relevant to the case.

4. The deadline for the State party's submission under rule 91 of the Committee's provisional rules of procedure expired on 14 July 1984. No submission was received from the State party prior to adoption of the Committee's decision on admissibility on 28 March 1985.

5.1 With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee noted that it had not received any information that the subject-matter had been submitted to another procedure of international investigation or settlement.

5.2 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee was unable to conclude, on the basis of the information before it, that there were effective remedies which the alleged victim should have pursued.

6. On 20 March 1985, the Human Rights Committee decided that the communication was admissible. In accordance with article 4, paragraph 2, of the Optional Protocol, the State party was requested to submit to the Committee, within six months of the date of the transmittal to it of the decision on admissibility, written explanations or statements clarifying the matter and the remedy, if any, that might have been taken by it.

7.1 By letter dated 18 September 1985, the author submitted further clarification of the facts outlined in his original communication, in particular with respect to his arrest on 8 February and expulsion on 11 February 1982. He describes the search of his law offices carried out by the Malagasy political police on 8 February 1982 and continues:

"On the conclusion of the search, I was taken away by officers of the Malagasy political police and held in a basement cell in the Malagasy political police prison ... I was then informed that, in fact, I was suspected of being an international spy in view of my contacts and communications with Amnesty International and the Human Rights Committee since, according to the Malagasy political police, those contacts constituted the crime of international espionage. Consequently, from 8 to 11 February 1982, I was questioned solely about that alleged crime of international espionage and my contacts with the above-mentioned organizations. During that period, I was detained in the Malagasy political police prison (in an unit, underground cell measuring 1.50 by 2.50 metres with no sanitary facilities and containing only a wooden platform on which to sleep) in the strictest solitary confinement, prohibited from contacting a fellow lawyer, the Catholic chaplain or my family and from receiving, writing or sending letters ... In the early afternoon of 11 February 1982, ... I ... was notified of the expulsion order, No. 737/82 of 11 February 1982, issued against me. ... In the early evening of Thursday, 11 February 1982, I was escorted back to my home and office where I was permitted to pack my belongings under the surveillance of two officers of the Malagasy political police. However, I was forbidden to contact anyone. I was then driven to the airport at Antananarivo in a Malagasy political police (DGID) vehicle guarded by the two police officers (reinforced by four soldiers armed with sub-machine-guns) and was immediately taken on board the aircraft leaving for Paris in the late evening of 11 February 1982. Even the representative of the French Embassy was not allowed to contact me at the airport ... Although I was arrested for so-called conspiracy, I was immediately informed that I was actually suspected of being an international spy. However, I was never indicted or brought before a magistrate on that charge."

7.2 These facts, the author alleges, also constitute a violation of article 9 of the International Covenant on Civil and Political Rights.

8.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 27 September 1985, the State party objected to the admissibility of the communication, arguing that domestic remedies had not yet been exhausted. In particular, the State party rejected the author's allegations that the Government of Madagascar had "deliberately paralysed" (délibérément paralysées), the author's legal proceedings, stating that:

"As regards the two applications lodged with the Administrative Chamber, the application concerning the Postal Administration will be placed on the

case list very shortly. The application for abrogation of the expulsion order is, however, held up at the present time because Maître Eric Hammel has not received the last memoranda from the State. The latter were returned by the French postal service, with the envelopes marked 'not resident at the address indicated 9202'. The Court regards Maître Eric Hammel's reply to those memoranda as essential for the settlement of the dispute ...

"These facts make it quite clear that the inquiries into the cases involving Maître Eric Hammel have always taken a normal course without any move on the part of the Malagasy Government to interfere with them.

"Furthermore, Maître Eric Hammel never took the trouble to find out from the court concerned what stage had been reached in the proceedings instituted by him. If he felt that the court or judge was guilty of gross professional negligence by failing to deal with his application or suit, or that there was a denial of justice, he was free to make use of the procedure for claiming damages for miscarriage of justice as provided for under articles 53 to 63 of the Malagasy Code of Civil Procedure."

8.2 As to the merits, the State party denied the alleged violation of article 13 of the Covenant, arguing that Maître Hammel had been expelled in pursuance of a decision reached in accordance with Malagasy law, i.e., on the basis of an order from the Minister of the Interior acting pursuant to article 14 of Act No. 62-006 of 6 June 1962, which stipulates that "expulsion may be ordered by decision of the Minister of the Interior if the residence of the alien in Madagascar may give rise to a breach of the peace or threatens public security".

8.3 With respect to the requirement of article 13 that an alien subject to expulsion be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority, the State party makes reference to articles 15 and 16 of Act No. 62-006, pursuant to which Maître Hammel could have requested a review of his case:

"At no point, however, did Maître Eric Hammel make any such request. He preferred to make use of the administrative remedy and to apply to the Minister of the Interior. In the absence of any response on the part of the latter, he took his case directly to the Administrative Chamber of the Supreme Court where he was able to make his submissions for the defence without restriction. Under Malagasy administrative case law, the Administrative Chamber of the Supreme Court is competent to question the lawfulness of an expulsion measure not only from the legal standpoint but also from the standpoint of the material facts on the grounds of which the Administration took the measure."

8.4 Concerning the alleged violation of the provisions of article 2, paragraph 3 (b), and of article 14, paragraph 1, of the Covenant, the State party notes:

"This accusation is unfounded and is not substantiated by any evidence. It is not part either of the principles or of the practice of the Malagasy Government to obstruct the course of justice in any way. Not for the first time, or for the last, has an administrative act been the subject of appeal and the Administrative Chamber of the Supreme Court had before it an application for the abrogation of an administrative decision. Since attainin;

independence, the Malagasy State has always upheld the principle of legality and the subordination of the Administration to the law. The Administrative Chamber was established with a view to ensuring supervision of administrative acts; it has not hesitated to order the annulment of irregular measures on a number of occasions."

9.1 In his comments, dated 17 October 1985, the author denies the State party's assertion that he had the possibility of challenging his expulsion before a special commission provided for by Act No. 62-006. After reiterating the circumstances of his arrest and detention, the author indicates that early in the afternoon of 11 February 1982 he was taken from his cell to the offices of the political police, where he was served a notification of his expulsion. He continues:

"I was then taken back to the cell, from which I was removed again at about 6 p.m. and taken home under the supervision of two inspectors of the political police to pack my bags and then taken by the same inspectors, assisted by four soldiers armed with sub-machine-guns, to the airport and placed directly aboard the aircraft about to take off for Paris. In addition, the expulsion order notified to me on Thursday, 11 February 1982, at 2 p.m. provided for a deadline of 24 hours, which was thus to expire on Friday, 12 February at 2 p.m. There is a flight to France on Thursdays at 8 p.m. and another on Saturdays at 8 p.m. I was taken manu militari to the aircraft on Thursday, 11 February, but it would obviously have been impossible for me to take the Saturday flight since the expulsion deadline was 2 p.m. on Friday. It was thus materially impossible for me, as a result of the arrangements made by the political police, to use the remedies provided for by Act No. 62-006, since the period of eight days provided for by that Act would have ended on 19 February 1982 at 2 p.m., whereas the deadline for expulsion was 2 p.m. on 12 February 1982, and I was officially placed aboard the aircraft by the political police on the evening of 11 February 1982 and prevented from communicating with anybody whatsoever from the notification of the expulsion until my departure. The arrangements made by the Malagasy political police had precisely the purpose of preventing me from making use of the remedies against expulsion."

9.2 Finally, with respect to the State party's assertion that the proceedings were delayed by the author's change of address in France, Maître Hammel encloses as evidence copies of seven registered letters with his letterhead and exact address (including a specific indication as to his change of address), four of which are addressed to the President of the Administrative Chamber of the Supreme Court (dated 17 January 1983, 7 April 1983, 2 April 1985 and 10 April 1985) and three addressed to the Dean of the Examining Magistrates of the Antananarivo Court (dated 12 December 1982, 7 April 1983 and 2 April 1985). Maître Hammel alleges that all of these letters have remained unanswered, in some cases for more than three years, and he concludes that:

"From the end of 1982 or the beginning of 1983, the relevant branches of the Malagasy judiciary had my exact address and could have sent me or informed me of any documents, but have done nothing ... These letters are, moreover, requests for information concerning the proceedings in progress and the argument of the Malagasy party that I had never taken the trouble to find out what stage had been reached in the proceedings is thus negated by this evidence which shows, on the contrary, that the Malagasy judiciary was not prepared to inform me of the stage reached in the proceedings I had instituted."

10. In its further observations under article 4, paragraph 2, dated 13 January 1986, the State party again rejects the author's contention that the Government of Madagascar tried to paralyse the judicial proceedings commenced by him and reaffirms the independence of the Malagasy judiciary. According to the State party, the procedural delays in the case are attributable to the fact that the author is outside Madagascar.

11. In an interim decision dated 2 April 1986 the Human Rights Committee, noting the State party's observation that Maître Hammel could have sought review of the expulsion order pursuant to Act No. 62-006, requested the author to clarify further why he did not pursue this remedy from France during the week from 12 to 19 February 1982, i.e. within the time-limit provided for in the law.

12. In a reply dated 30 May 1986 Maître Hammel explains that article 15 of Act No. 62-006 provides for an administrative or voluntary remedy in respect of a contested decision. This, he states, involves the lodging of an appeal with the authorities calling for an administrative review of the decision in question and, under Malagasy law, has the effect of staying execution of the decision, since the aim is to bring about a review of the decision, with a view to its repeal before it is put into effect. The administrative appeal thus provides that the individual concerned is brought before and is heard by a special commission, which gives an opinion, with the final ruling being made by the Minister of the Interior. Once the expulsion has been carried out, the possibility of being heard by the commission no longer exists. Because of the circumstances of his detention and the rapidity of his expulsion, the author states, he was unable to lodge an appeal under Act No. 62-006 before he was expelled on 11 February 1982. Upon his arrival in France on 12 February 1982, he adds, an appeal under Act No. 62-006 had become pointless, as he could no longer be brought before and heard by the commission. Consequently, he opted for contentious appeal before the Administrative Chamber of the Supreme Court to obtain the cancellation of the expulsion order.

13.1 In its interim decision the Committee also requested the State party "to indicate when the proceedings lodged by Maître Eric Hammel before the Administrative Chamber of the Supreme Court are expected to be concluded, if pursued in a timely fashion by the parties" and "further to inform the Committee as to the reasons for Maître Eric Hammel's expulsion at such short notice, without his being able to seek review of the decision to expel him prior to his expulsion."

13.2 By note of 5 July 1986 the State party informed the Committee that a ruling on Maître Hammel's application requesting the cancellation of the expulsion order should be made in July 1986. With regard to the urgency of the enforcement of the expulsion order, the State party submits that, under Malagasy legislation, an order for the expulsion of an alien may be enforced at short notice, that the Minister of the Interior is alone responsible for deciding how soon an expulsion order will be enforced, that a unilateral decision by the Administration is enforceable as soon as it has been signed, and that Maître Hammel's expulsion was linked to a case of conspiracy against the security of the State tried in January 1982.

14. In a letter dated 20 August 1986 the author commented on the State party's reply to the interim decision as follows:

"The Malagasy State acknowledges having expelled me with such haste that I was prevented from pursuing the remedies provided for by law ... The Malagasy State maintains that I was expelled for having been involved in a plot in January 1982 ... I was in fact arrested allegedly because of this

plot, but on my arrival at the political police prison I was informed that I had been arrested on these alleged grounds only in order that I might be detained without limitation of time in the political police prison and that in fact I had been charged with international espionage because of my contacts with Sean MacBride, Chairman of the International Executive Committee of Amnesty International, and with the Human Rights Committee in Geneva ..."

The author further claims that already in February 1980 the chief of the political police, in the presence of witnesses, threatened him with expulsion for "having defended persons accused of political offences and having obtained their discharge ... I was summoned on 1 March 1980 ... by the political police and questioned the whole day, before being released in the evening. I was again summoned by the political police on 4 November 1980 and questioned the whole day before being released."

15. In a further submission dated 13 January 1987 the State party, commenting on the author's allegations, observes that "Maître Hammel continues to make deceitful and tendentious assertions with the intention of discrediting the Malagasy Government and judicial authorities." The State party also enclosed a copy of the text of the decision of the Administrative Chamber of the Supreme Court of Madagascar, dated 13 August 1986. As to the grounds for Maître Hammel's expulsion, the Court observes inter alia as follows:

"Whereas it is apparent from the investigation that Mr. Eric Hammel, making use both of his status as a corresponding member of Amnesty International and of the Human Rights Committee [sic] at Geneva, and as a barrister, of his own free will took the liberty of discrediting Madagascar by making assertions of such gravity that they should have been upheld by irrefutable evidence; whereas this has not always been the case; whereas this is also true of the assertion in his most recent memorandum that the camp of Tsiafaha, situated approximately 20 km south of Antananarivo on the Antsirabe road is obviously a camp for political prisoners, although the person in question has not been able to supply the slightest proof for his allegations that any internment has actually taken place; whereas, in addition, it is apparent from the documents in the case file that the applicant did not fail to inform his acquaintances abroad of the situation in Madagascar, blackening it to his convenience, without any concern for the difficult environment prevailing in the country, regardless of any assessment of the nature of the régime itself.

"Whereas conduct of this type was per se incompatible with the status of an alien and gave rise to the greatest suspicions as to the applicant's real intentions; whereas the Minister of the Interior was therefore right to have considered it his duty to proceed to the expulsion of Mr. Eric Hammel, in so far as his continued presence in Madagascar would have disturbed public order and security."

The court therefore rejected Maître Hammel's application to quash the expulsion order of 11 February 1982 and ordered him to pay costs.

16. In a further letter of 25 February 1987, the author observes that the State party has failed to give any valid reasons for his expulsion and none whatever for such urgency on the grounds of national security as could have justified immediate execution of the expulsion order. He emphasizes the relevance of his prior

allegation that the chief of the political police threatened him with expulsion in 1980 because of his human rights activities and states that, in spite of such intimidation and two arrests by the political police in 1980, he pursued his profession as a human rights lawyer. He denies the State party's submission that he made false assertions about conditions in Madagascar, in particular at the camp of Taiafaha, but admits that he saw it as his duty to bring to the attention of Amnesty International the conditions at Taiafaha camp, which he considered violative of human rights. He further states that the General Assembly of Malagasy Lawyers, in a resolution of 3 April 1982, protested against the conditions of his arrest and expulsion.

17. The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. Before adopting its views, the Committee took into consideration the State party's late objection to the admissibility of the communication, but the Committee can see no justification for reviewing its decision on admissibility on the basis of the State party's contention that the author had not exhausted domestic remedies. It is clear that the author was expelled in circumstances which excluded an effective remedy under Act No. 62-006. The processing of the author's subsequent applications from France by registered communications to obtain the repeal of the expulsion order was delayed for over four years and, thus, was unreasonably prolonged in the sense of article 5, paragraph 2 (b), of the Optional Protocol.

18.1 The Committee therefore decides to base its views on the following facts which are undisputed or have not been refuted by the State party.

18.2 Maître Hammel is a French national and resident of France, formerly a practising attorney in Madagascar for 19 years until his expulsion on 11 February 1982. In February 1980 he was threatened with expulsion and was detained and interrogated on 1 March and again on 4 November 1980 in this connection. On 8 February 1982, he was arrested at his law office in Antananarivo by the Malagasy political police, who took him to a basement cell in the Malagasy political prison and kept him in incommunicado detention until 11 February 1982 when he was notified of an expulsion order against him issued on that same date by the Minister of the Interior. At that time he was taken under guard to his home where he had two hours to pack his belongings. He was deported on the same evening to France, where he arrived on 12 February 1982. He was not indicted nor brought before a magistrate on any charge; he was not afforded an opportunity to challenge the expulsion order prior to his expulsion. The proceedings concerning his subsequent application to have the expulsion order revoked ended with the decision of the Administrative Chamber of the Supreme Court of Madagascar, dated 13 August 1986, in which the Court rejected Maître Hammel's application and found the expulsion order valid on the grounds that Maître Hammel allegedly made "use both of his status as a corresponding member of Amnesty International and of the Human Rights Committee [sic] at Geneva, and as a barrister" to discredit Madagascar.

19.1 In this context, the Committee observes that article 13 of the Covenant provides, at any rate, that an alien lawfully in the territory of a State party "may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority".

19.2 The Committee notes that, in the circumstances of the present case, the author was not given an effective remedy to challenge his expulsion and that the State party has not shown that there were compelling reasons of national security to deprive him of that remedy. In formulating its views the Human Rights Committee also takes into account its general comment 15 (27), a/ on the position of aliens under the Covenant, and in particular points out that "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".

19.3 The Committee further notes with concern that, based on the information provided by the State party (para. 15 above), the decision to expel Eric Hammel would appear to have been linked to the fact that he had represented persons before the Human Rights Committee. Were that to be the case, the Committee observes that it would be both untenable and incompatible with the spirit of the International Covenant on Civil and Political Rights and the Optional Protocol thereto, if States parties to these instruments were to take exception to anyone acting as legal counsel for persons placing their communications before the Committee for consideration under the Optional Protocol.

19.4 The issues raised in this case also relate to article 9, paragraph 4, of the Covenant, in the sense that, during his detention preceding expulsion, Eric Hammel was unable to challenge his arrest.

19.5 The Committee makes no findings with regard to the other claims made by the author.

20. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee disclose violations of the International Covenant on Civil and Political Rights with respect to:

Article 9, paragraph 4, because Eric Hammel was unable to take proceedings before a court to determine the lawfulness of his arrest;

Article 13, because, for grounds that were not those of compelling reasons of national security, he was not allowed to submit the reasons against his expulsion and to have his case reviewed by a competent authority within a reasonable time.

21. 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 which Maître Hammel has suffered and to take steps to ensure that similar violations do not occur in the future.

Notes

a/ Official Records of the General Assembly, Forty-first Session, Supplement No. 40 (A/41/40), annex VI.

B. Communication No. 172/1984, S. W. M. Broeks v. the Netherlands
(Views adopted on 9 April 1987 at the twenty-ninth session)

Submitted by: S. W. M. Broeks (represented by Marie-Kimmie Diepatraten)

Alleged victim: the author

State party concerned: the Netherlands

Date of communication: 1 June 1984 (date of initial letter)

Date of decision on admissibility: 25 October 1985

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

Meeting on 9 April 1987;

Having concluded its consideration of communication No. 172/1984 submitted to the Committee by S. W. M. Broeks under the Optional Protocol to the International Covenant on Civil and Political Rights;

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

adopts the following:

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

1. The author of the communication (initial letter dated 1 June 1984 and subsequent letters dated 1 December 1984, 5 July 1985 and 20 June 1986) is Mrs. S. W. M. Broeks, a Netherlands citizen born on 14 March 1951 and living in the Netherlands. She is represented by legal counsel.

2.1 Mrs. Broeks, who was married at the time when the dispute in question arose (she has since divorced and not remarried), was employed as a nurse from 7 August 1972 to 1 February 1979, when she was dismissed for reasons of disability. She had become ill in 1975, and from that time she benefited from the Netherlands social security system until 1 June 1980 (as regards disability and as regards unemployment), when unemployment payments were terminated in accordance with Netherlands law.

2.2 Mrs. Broeks contested the decision of the relevant Netherlands authorities to discontinue unemployment payments to her and in the course of exhausting domestic remedies invoked article 26 of the International Covenant on Civil and Political Rights, claiming that the relevant Netherlands legal provisions were contrary to the right to equality before the law and equal protection of the law without discrimination guaranteed by article 26 of the International Covenant on Civil and Political Rights. Legal counsel submits that domestic remedies were exhausted on 26 November 1983, when the appropriate administrative authority, the Central Board of Appeal, confirmed a decision of a lower municipal authority not to continue unemployment payments to Mrs. Broeks.

2.3 Mrs. Broeks claims that, under existing law (Unemployment Benefits Act (WWV), sect. 13, subsect. 1 (1), and Decree No. 61 452/IIIa of 5 April 1976, to give effect to sect. 13, subsect. 1 (1), of the Unemployment Benefits Act) an unacceptable distinction has been made on the grounds of sex and status. She bases her claim on the following: if she were a man, married or unmarried, the law in question would not deprive her of unemployment benefits. Because she is a woman, and was married at the time in question, the law excludes her from continued unemployment benefits. This, she claims, makes her a victim of a violation of article 26 of the Covenant on the grounds of sex and status. She claims that article 26 of the International Covenant on Civil and Political Rights was meant to give protection to individuals beyond the specific civil and political rights enumerated in the Covenant.

2.4 The author states that she has not submitted the matter to other international procedures.

3. By its decision of 26 October 1984, the Human Rights Committee transmitted the communication, under rule 91 of the provisional rules of procedure, to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

4.1 In its submission dated 29 May 1985 the State party underlined, inter alia, that:

(a) "The principle that elements of discrimination in the realization of the right to social security are to be eliminated is embodied in article 9 in conjunction with articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights;

(b) "The Government of the Kingdom of the Netherlands has accepted to implement this principle under the terms of the International Covenant on Economic, Social and Cultural Rights. Under these terms, States parties have undertaken to take steps to the maximum of their available resources with a view to achieving progressively the full realization of the rights recognized in that Covenant (art. 4, para. 1);

(c) "The process of gradual realization to the maximum of available resources is well on its way in the Netherlands. Remaining elements of discrimination in the realization of the rights are being and will be gradually eliminated;

(d) "The International Covenant on Economic, Social and Cultural Rights has established its own system for international control of the way in which States parties are fulfilling their obligations. To this end States parties have undertaken to submit to the Economic and Social Council reports on the measures they have adopted and the progress they are making. The Government of the Kingdom of the Netherlands to this end submitted its first report in 1983."

4.2 The State party then posed the question whether the way in which the Netherlands was fulfilling its obligations under article 9 in conjunction with articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights could become, by way of article 26 of the International Covenant on Civil and Political Rights, the object of an examination by the Human Rights Committee.

The State party submitted that the question was relevant for the decision whether the communication was admissible.

4.3 The State party stressed that it would greatly benefit from receiving an answer from the Human Rights Committee to the question mentioned in paragraph 4.2 above. "Since such an answer could hardly be given without going into one aspect of the merits of the case - i.e. the question of the scope of article 26 of the International Covenant on Civil and Political Rights - the Government would respectfully request the Committee to join the question of admissibility to an examination of the merits of the case."

4.4 In case the Committee did not grant that request and declared the communication admissible, the State party reserved the right to submit, in the course of the proceedings, observations which might have an effect on the question of admissibility.

4.5 The State party also indicated that a change of legislation had been adopted recently in the Netherlands, eliminating article 13, paragraph 1, of WvV, which was the subject of the author's claim. This is the Act of 29 April 1985, S 230, having a retroactive effect to 23 December 1984.

4.6 The State party confirmed that the author had exhausted domestic remedies.

5.1 In a memorandum dated 5 July 1985, the author commented on the State party's submission under rule 91. The main issues dealt with in the comments are set out in paragraphs 5.2 to 5.10 below.

5.2 Firstly, the author stated that in the preambles to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights an explicit connection was made between an individual's exercise of his civil and political rights and his economic, social and cultural rights. The fact that those different kinds of rights had been incorporated into two different covenants did not detract from their interdependence. It was striking, the author submitted, that in the International Covenant on Civil and Political Rights, apart from in article 26, there were specific references on numerous occasions to the principle of equality or non-discrimination. She listed them as follows:

- article 2, paragraph 1: non-discrimination with reference to the rights recognized in the Covenant;
- article 3: non-discrimination on the grounds of sex with reference to the rights recognized in the Covenant;
- article 14: equality before the courts;
- article 23, paragraph 4: equal rights of spouses;
- article 24, paragraph 1: equal rights of children to protective measures;
- article 25
and under (c): equal right to vote and equal access to government service.

5.3 Further, the author stated that article 26 of the Covenant was explicitly not confined to equal treatment with reference to certain rights, but stipulated a general principle of equality. It was even regarded as of such importance that under article 4, paragraph 1, of the Covenant, in a time of public emergency, the prohibition of discrimination on the grounds of race, colour, sex, religion or social origin must be observed. In other words, even in time of public emergency, the equal treatment of men and women should remain intact. In the procedure to approve the Covenant it had been assumed by the Netherlands legislative authority, as the Netherlands Government wrote in the explanatory memorandum to the Bill of Approval, that "the provision of article 26 is also applicable to areas otherwise not covered by the Covenant". That (undisputed) conclusion was based on the difference in formulation between article 2, paragraph 1, of the Covenant and of article 14 of the European Convention on Human Rights on the one hand and article 26 of the Covenant on the other.

5.4 The author recalled that during the discussion by the Human Rights Committee, at its fourteenth session, of the Netherlands report submitted in compliance with article 40 of the Covenant (CCPR/C/10/Add.3, CCPR/C/SR.321, SR.322, SR.325, SR.326), it had been assumed by the Netherlands Government that article 26 of the Covenant also applied in the field of economic, social and cultural rights. Mr. Olde Kalter had stated, on behalf of the Netherlands Government, that by virtue of national, constitutional law "direct application of article 26 in the area of social, economic and cultural rights depended on the character of the regulations or policy for which that direct application was requested" (see CCPR/C/SR.325, para. 50). In other words, in his opinion, article 26 of the Covenant was applicable to those rights and the only relevant question in terms of internal, constitutional law in the Netherlands (sects. 93 and 94 of the Constitution) was whether in such instances article 26 was self-executing and could be applied by the courts. He had regarded it as self-evident that the Netherlands in its legislation, among other things, was bound by article 26 of the Covenant. "In that connection he [Mr. Olde Kalter] noted that the Government of the Netherlands was currently analysing national legislation concerning discrimination on grounds of sex or race". In the observations of the State party in the present case, the author adds, this last point is confirmed.

5.5 The author further stated that in various national constitutional systems of countries which have acceded to the Covenant, generally formulated principles of equality could be found which were also regarded as being applicable in the field of economic, social and cultural rights. Thus, in the Netherlands Constitution, partly inspired, the author submitted, by article 26 of the Covenant, a generally formulated prohibition of discrimination (sect. 1) was laid down which was irrefutably regarded in the Netherlands as being applicable to economic, social and cultural rights as well. The only reason, she submitted, why the present issue had not been settled at a national level by virtue of section 1 of the Constitution was because the courts were forbidden to test legislation, such as that being dealt with currently, against the Constitution (sect. 120 of the Constitution). The courts, she stated, were allowed to test legislation against self-executing provisions of international conventions.

5.6 The author submitted that judicial practice in the Netherlands had been consistent in applying article 26 of the Covenant also in cases where economic, social and cultural rights had been at stake, for example:

(a) Afdeling Rechtspraak van de Raad van State (Judicial Division of the Council of State), 29-1981 GS81 141-442. This case involved discrimination on the grounds of sex with reference to housing. An appeal under article 26 of the Covenant in conjunction with article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights was founded.

(b) Gerechtshof's Gravenhage (Court of Appeal at the Hague), 17 June 1982 NJ 1983, 345 appendix 3. Again with regard to housing, an appeal was made under article 26 of the Covenant and was granted.

(c) Centrale Raad van Beroep (Central Board of Appeal), 1 November 1983, NJCM-Bulletin.

(d) Centrale Raad van Beroep (Central Board of Appeal), 1 November 1983, NJCM-Bulletin 9-1 (1984) appendix 4. In this case, which constitutes the basis for the petition to the Human Rights Committee, the Central Board of Appeal considered "that article 26 is not applicable only to the civil and political rights which are recognized by the Covenant". The appeal under article 26 was subsequently rejected for other reasons.

(e) Board of Appeal, Groningen, 2 May 1985, reg. No. AAW 181-1095 appendix 5. On the basis of article 26 of the Covenant among other things a discriminatory provision in the General Disablement Benefits Act was declared null and void.

5.7 The author further submitted that the question of equal treatment in the field of economic, social and cultural rights was not fundamentally different from the problem of equality with regard to freedom to express one's opinion or the freedom of association, in other words with regard to civil and political rights. The fact was, she argued, that in both cases it was not a question of the level at which social security had been set or the degree to which freedom of opinion was guaranteed, but purely and simply whether equal treatment or the prohibition of discrimination was respected. The level of social security did not come within the scope of the International Covenant on Civil and Political Rights nor was it relevant in a case of unequal treatment. The only relevant question, she submitted, was whether unequal treatment was compatible with article 26 of the Covenant. A contrary interpretation of article 26, she argued, would turn that article into a completely superfluous provision, for then it would not differ from article 2, paragraph 1, of the Covenant. Consequently, she submitted, such an interpretation would be incompatible with the text of article 26 of the Covenant and with the object and purpose of the Covenant as laid down in article 26 of the preamble.

5.8 The author recalled that in its observations the State party had put forward the question whether the way in which the Netherlands was meeting its commitments under the International Covenant on Economic, Social and Cultural Rights (via article 26 of the International Covenant on Civil and Political Rights), might be judged by the Human Rights Committee. The question, she submitted, was based on a wrong point of departure, and therefore required no answer. The fact was, she argued, that the only question that the Human Rights Committee was required to answer in that case was whether, ratione materiae, the alleged violation came under article 26 of the International Covenant on Civil and Political Rights. The author submitted that that question must be answered in the affirmative.

5.9 The author further recalled that the State party was of the opinion that the alleged violation could also fall under article 9 of the International Covenant on Economic, Social and Cultural Rights in conjunction with articles 2 and 3 of the same Covenant. Although that question was not relevant in the case in point, the author submitted, it was obvious that certain issues were related to provisions in both Covenants. Although civil and political rights on the one hand and economic and social and cultural rights on the other had been incorporated for technical reasons into two different Covenants, it was a fact, the author submitted, that those rights were highly interdependent. That interdependence, she argued, had not only emerged in the preamble to both Covenants, but was also once again underlined in General Assembly resolution 543 (VI), in which it had been decided to draw up two covenants: "the enjoyment of civic and political freedoms and of economic, social and cultural rights are interconnected and interdependent". The State party, too, she submitted, had explicitly recognized that interdependence earlier in the Explanatory Memorandum to the Act of Approval, appendix 1, page 8: "the drafters of the two Covenants wanted to underline the parallel nature of the present international conventions by formulating the preambles in almost entirely identical words. The point is that they have expressed in the preambles that, although civil rights and political rights on the one hand and economic, social and cultural rights on the other, have been incorporated into two separate documents, the enjoyment of all these rights is essential". If the State party was intending to imply that the subject-matter covered by the one covenant did not come under the other, that was demonstrably incorrect: even a summary comparison of the opening articles of the two covenants bore witness to the contrary, the author argued.

5.10 In her opinion, the author added, the State party seemed to wish to say that the Human Rights Committee was not competent to take note of the present complaint because the matter could also be brought up as part of the supervisory procedure under the International Covenant on Economic, Social and Cultural Rights (see art. 16-22). That assertion, the author contended, was not valid because the reporting procedure under the International Covenant on Economic, Social and Cultural Rights could not be regarded as "another procedure of international investigation or settlement" in the sense of article 5, paragraph 2 (a) of the Optional Protocol.

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, 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.

6.2 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. In this connection the Committee observes that the examination of State reports, submitted under article 16 of the International Covenant on Economic, Social and Cultural Rights, does not, within the meaning of article 5, paragraph 2 (a), constitute an examination of the "same matter" as a claim by an individual submitted to the Human Rights Committee under the Optional Protocol.

6.3 The Committee further observes that a claim submitted under the Optional Protocol concerning an alleged breach of a provision of the International Covenant on Civil and Political Rights, cannot be declared inadmissible solely because the facts also relate to a right protected by the International Covenant on Economic, Social and Cultural Rights or any other international instrument. The Committee

need only test whether the allegation relates to a breach of a right protected by the International Covenant on Civil and Political Rights.

6.4 Article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication unless domestic remedies have been exhausted. The parties to the present communication agree that domestic remedies have been exhausted.

6.5 With regard to the State party's inquiry concerning the scope of article 26 of the International Covenant on Civil and Political Rights, the Committee did not consider it necessary to pronounce on its scope prior to deciding on the admissibility of the communication. However, having regard to the State party's statement (para. 4.4 above) that it reserved the right to submit further observations which might have an effect on the question of the admissibility of the case, the Committee pointed out that it would take into account any further observations received on the matter.

7. On 25 October 1985, the Human Rights Committee therefore decided that the communication was admissible. In accordance with article 4, paragraph 2, of the Optional Protocol, the State party was requested to submit to the Committee, within six months of the date of transmittal to it of the decision on admissibility, written explanations or statements clarifying the matter and the measures, if any, that might have been taken by it.

8.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 22 May 1986, the State party again objected to the admissibility of the communication, reiterating the arguments advanced in its submission of 29 May 1985.

8.2 In discussing the merits of the case, the State party elucidates first the factual background as follows:

When Mrs. Broeks applied for WWV benefits in February 1980, section 13, subsection 1 (1), was still applicable. This section laid down that WWV benefits could not be claimed by those married women who were neither breadwinners nor permanently separated from their husbands. The concept of 'breadwinner' as referred to in section 13, subsection 1 (1), of WWV was of particular significance, and was further amplified in statutory instruments based on the Act (the last relevant instrument being the ministerial decree of 5 April 1976, Netherlands Government Gazette 1976, 72). Whether a married woman was deemed to be a breadwinner depended, *inter alia*, on the absolute amount of the family's total income and on what proportion of it was contributed by the wife. That the conditions for granting benefits laid down in section 13, subsection 1 (1), of WWV applied solely to married women and not to married men is due to the fact that the provision in question corresponded to the then prevailing views in society in general concerning the roles of men and women within marriage and society. Virtually all married men who had jobs could be regarded as their family's breadwinner, so that it was unnecessary to check whether they met this criterion for the granting of benefits upon becoming unemployed. These views have gradually changed in later years. This aspect will be further discussed below (see para. 8.4).

*The Netherlands is a member State of the European Economic Community (EEC). On 19 December 1978 the Council of the European Communities issued a directive on the progressive implementation of the principle of

equal treatment for men and women in matters of social security (79/7/EEC), giving member States a period of six years, until 23 December 1984, within which to make any amendments to legislation which might be necessary in order to bring it into line with the directive. Pursuant to this directive the Netherlands Government examined the criterion for the granting of benefits laid down in section 13, subsection 1 (1), of WWV in the light of the principle of equal treatment of men and women and in the light of the changing role patterns of the sexes in the years since about 1960.

"Since it could no longer be assumed as a matter of course in the early 1980s that married men with jobs should always be regarded as 'breadwinners', the Netherlands amended section 13, subsection 1 (1), of WWV to meet its obligations under the EEC directive. The amendment consisted of the deletion of section 13, subsection 1 (1), with the result that it became possible for married women who were not breadwinners to claim WWV benefits, while the duration of the benefits was reduced for people aged under 35.

"In view of changes in the status of women - and particularly married women - in recent decades, the failure to award Mrs. Brooks WWV benefits in 1979 is explicable in historical terms. If she were to apply for such benefits now, the result would be different."

8.3 With regard to the scope of article 26 of the Covenant, the State party argues, inter alia, as follows:

"The Netherlands Government takes the view that article 26 of the Covenant does entail an obligation to avoid discrimination, but that this article can only be invoked under the Optional Protocol to the Covenant in the sphere of civil and political rights, not necessarily limited to those civil and political rights that are embodied in the Covenant. The Government could, for instance, envisage the admissibility under the Optional Protocol of a complaint concerning discrimination in the field of taxation. But it cannot accept the admissibility of a complaint concerning the enjoyment of economic, social and cultural rights. The latter category of rights is the object of a separate United Nations Covenant. Mrs. Brooks' complaint relates to rights in the sphere of social security, which fall under the the International Covenant on Economic, Social and Cultural Rights. Articles 2, 3 and 9 of that Covenant are of particular relevance here. That Covenant has its own specific system and its own specific organ for international monitoring of how States parties meet their obligations and deliberately does not provide for an individual complaints procedure.

"The Government considers it incompatible with the aims of both the Covenants and the Optional Protocol that an individual complaint with respect to the right of social security, as referred to in article 9 of the International Covenant on Economic, Social and Cultural Rights, could be dealt with by the Human Rights Committee by way of an individual complaint under the Optional Protocol based on article 26 of the International Covenant on Civil and Political Rights.

"The Netherlands Government reports to the Economic and Social Council on matters concerning the way it is fulfilling its obligations with respect to the right to social security, in accordance with the relevant rules of the International Covenant on Economic, Social and Cultural Rights ...

"Should the Human Rights Committee take the view that article 26 of the International Covenant on Civil and Political Rights ought to be interpreted more broadly, thus that this article is applicable to complaints concerning discrimination in the field of social security, the Government would observe that in that case article 26 must also be interpreted in the light of other comparable United Nations conventions laying down obligations to combat and eliminate discrimination in the field of economic, social and cultural rights. The Government would particularly point to 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.

"If article 26 of the International Covenant on Civil and Political Rights were deemed applicable to complaints concerning discriminatory elements in national legislation in the field of those conventions, this could surely not be taken to mean that a State party would be required to have eliminated all possible discriminatory elements from its legislation in those fields at the time of ratification of the Covenant. Years of work are required in order to examine the whole complex of national legislation in search of discriminatory elements. The search can never be completed, either, as distinctions in legislation which are justifiable in the light of social views and conditions prevailing when they are first made may become disputable as changes occur in the views held in society. ...

"If the Human Rights Committee should decide that article 26 of the International Covenant on Civil and Political Rights entails obligations with regard to legislation in the economic, social and cultural field, such obligations could, in the Government's view, not comprise more than an obligation of States to subject national legislation to periodic examination after ratification of the Covenant with a view to seeking out discriminatory elements and, if they are found, to progressively taking measures to eliminate them to the maximum of the State's available resources. Such examinations are under way in the Netherlands with regard to various aspects of discrimination, including discrimination between men and women."

8.4 With regard to the principle of equality laid down in article 26 of the Covenant in relation to section 13, subsection 1 (1), of WWV in its unamended form, the State party explains the legislative history of WWV and in particular the social justification of the "breadwinner" concept at the time the law was drafted. The State party contends that, with the "breadwinner" concept, "a proper balance was achieved between the limited availability of public funds (which makes it necessary to put them to limited, well-considered and selective use) on the one hand and the Government's obligation to provide social security on the other. The Government does not accept that the 'breadwinner' concept as such was 'discriminatory' in the sense that equal cases were treated in an unequal way by law." Moreover, it is argued that the provisions of WWV "are based on reasonable social and economic considerations which are not discriminatory in origin. The restriction making the provision in question inapplicable to men was inspired not by any desire to discriminate in favour of men and against women but by the de facto social and economic situation which existed at the time when the Act was passed and which would have made it pointless to declare the provision applicable to men. At the time when Mrs. Broeks applied for unemployment benefits the de facto situation was not essentially different. There was therefore no violation of article 26 of the Covenant. This is not altered by the fact that a new social

trend has been growing in recent years, which has made it undesirable for the provision to remain in force in the present social context."

8.5 With reference to the decision of the Central Board of Appeal of 26 November 1983, which the author criticizes, the State party contends that:

"The observation of the Central Board of Appeal that the Covenants employ different international control systems is highly relevant. Not only do parties to the Covenants report to different United Nations bodies but, above all, there is a major difference between the Covenants as regards the possibility of complaints by States or individuals, which exists only under the International Covenant on Civil and Political Rights. The contracting parties deliberately chose to make this difference in international monitoring systems, because the nature and substance of social, economic and cultural rights make them unsuitable for judicial review of a complaint lodged by a State party or an individual."

9.1 In her comments, dated 19 June 1986, the author reiterates that "article 26 of the Covenant is explicitly not confined to equal treatment with reference to certain rights, but stipulates a general principle of equality."

9.2 With regard to the State party's argument that it would be incompatible with the aims of both the Covenants and the Optional Protocol if an individual complaint with respect to the rights of social security, as referred to in article 9 of the International Covenant on Economic, Social and Cultural Rights could be dealt with by the Human Rights Committee, the author contends that this argument is ill-founded, because she is not complaining about the level of social security or other issues relating to article 9 of the International Covenant on Economic, Social and Cultural Rights, but rather she claims to be a victim of unequal treatment prohibited by article 26 of the International Covenant on Civil and Political Rights.

9.3 The author further notes that the State party "seems to admit implicitly that the provisions of the Unemployment Benefits Act were contrary to article 26 at the time when [she] applied for unemployment benefits, by stating that the provisions in question in the meantime have been amended in a way compatible with article 26 of the International Covenant on Civil and Political Rights.

10. The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. The facts of the case are not in dispute.

11. Article 26 of the Covenant on Civil and Political Rights provides:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

12.1 The State party contends that there is considerable overlapping of the provisions of article 26 with the provisions of article 2 of the International

Covenant on Economic, Social and Cultural Rights. The Committee is of the view that the International Covenant on Civil and Political Rights would still apply even if a particular subject-matter is referred to or covered in other international instruments, for example, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, or, as in the present case, the International Covenant on Economic, Social and Cultural Rights. Notwithstanding the interrelated drafting history of the two Covenants, it remains necessary for the Committee to apply fully the terms of the International Covenant on Civil and Political Rights. The Committee observes in this connection that the provisions of article 2 of the International Covenant on Economic, Social and Cultural Rights do not detract from the full application of article 26 of the International Covenant on Civil and Political Rights.

12.2 The Committee has also examined the contention of the State party that article 26 of the International Covenant on Civil and Political Rights cannot be invoked in respect of a right which is specifically provided for under article 9 of the International Covenant on Economic, Social and Cultural Rights (social security, including social insurance). In so doing, the Committee has perused the relevant travaux préparatoires of the International Covenant on Civil and Political Rights, namely, the summary records of the discussions that took place in the Commission on Human Rights in 1948, 1949, 1950 and 1952 and in the Third Committee of the General Assembly in 1961, which provide a "supplementary means of interpretation" (art. 32 of the Vienna Convention on the Law of Treaties a/). The discussions, at the time of drafting, concerning the question whether the scope of article 26 extended to rights not otherwise guaranteed by the Covenant, were inconclusive and cannot alter the conclusion arrived at by the ordinary means of interpretation referred to in paragraph 12.3 below.

12.3 For the purpose of determining the scope of article 26, the Committee has taken into account the "ordinary meaning" of each element of the article in its context and in the light of its object and purpose (art. 31 of the Vienna Convention on the Law of Treaties). The Committee begins by noting that article 26 does not merely duplicate the guarantees already provided for in article 2. It derives from the principle of equal protection of the law without discrimination, as contained in article 7 of the Universal Declaration of Human Rights, which prohibits discrimination in law or in practice in any field regulated and protected by public authorities. Article 26 is thus concerned with the obligations imposed on States in regard to their legislation and the application thereof.

12.4 Although article 26 requires that legislation should prohibit discrimination, it does not of itself contain any obligation with respect to the matters that may be provided for by legislation. Thus it does not, for example, require any State to enact legislation to provide for social security. However, when such legislation is adopted in the exercise of a State's sovereign power, then such legislation must comply with article 26 of the Covenant.

12.5 The Committee observes in this connection that what is at issue is not whether or not social security should be progressively established in the Netherlands but whether the legislation providing for social security violates the prohibition against discrimination contained in article 26 of the International Covenant on Civil and Political Rights and the guarantee given therein to all persons regarding equal and effective protection against discrimination.

13. The right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26.

14. It therefore remains for the Committee to determine whether the differentiation in Netherlands law at the time in question and as applied to Mrs. Brooks constituted discrimination within the meaning of article 26. The Committee notes that in Netherlands law the provisions of articles 84 and 85 of the Netherlands Civil Code impose equal rights and obligations on both spouses with regard to their joint income. Under section 13, subsection 1 (1), of the Unemployment Benefits Act (WWV), a married woman, in order to receive WWV benefits, had to prove that she was a "breadwinner" - a condition that did not apply to married men. Thus a differentiation which appears on one level to be one of status is in fact one of sex, placing married women at a disadvantage compared with married men. Such a differentiation is not reasonable; and this seems to have been effectively acknowledged even by the State party by the enactment of a change in the law on 29 April 1985, with retroactive effect to 23 December 1984 (see para. 4.5 above).

15. The circumstances in which Mrs. Brooks found herself at the material time and the application of the then valid Netherlands law made her a victim of a violation, based on sex, of article 26 of the International Covenant on Civil and Political Rights, because she was denied a social security benefit on an equal footing with men.

16. The Committee notes that the State party had not intended to discriminate against women and further notes with appreciation that the discriminatory provisions in the law applied to Mrs. Brooks have, subsequently, been eliminated. Although the State party has thus taken the necessary measures to put an end to the kind of discrimination suffered by Mrs. Brooks at the time complained of, the Committee is of the view that the State party should offer Mrs. Brooks an appropriate remedy.

Notes

a/ United Nations, Juridical Yearbook 1969 (United Nations publication, Sales No. E.71.V.4), p. 140.

C. Communication No. 180/1984, L. G. Danning v. the Netherlands
(Views adopted on 9 April 1987 at the twenty-ninth session)

Submitted by: L. G. Danning (represented by legal counsel)

Alleged victim: the author

State party concerned: the Netherlands

Date of communication: 19 July 1984

Date of decision on admissibility: 25 October 1985

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

Meeting on 9 April 1987;

Having concluded its consideration of communication No. 180/1984 submitted to the Committee by L. G. Danning under the Optional Protocol to the International Covenant on Civil and Political Rights;

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

adopts the following:

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

1. The author of the communication (initial letter dated 19 July 1984 and subsequent letters dated 13 August 1984, 8 July 1985 and 25 June 1986) is Ludwig Gustaaf Danning, a Netherlands citizen born in 1960. He is represented by legal counsel.

2.1 The author claims to be a victim of a violation by the Government of the Netherlands of article 26 in conjunction with article 2, paragraph 1 of the International Covenant on Civil and Political Rights.

2.2 He states that, as a consequence of an automobile accident in 1979, he became disabled and confined to a wheelchair. During the first year after the accident he received payments from his employer's insurance; after the first year, payments were received under another insurance programme for employees who have been medically declared unfit to work. This programme provides for higher payments to married beneficiaries. The author claims that since 1977 he has been engaged to Miss Esther Verachuren and that they live together in common-law marriage. Therefore he maintains that he should be accorded insurance benefits as a married man and not as a single person. Such benefits, however, have been denied to him and he has taken the case to the competent instances in the Netherlands. The Raad van Beroep in Rotterdam (an organ dealing with administrative appeals in employment issues) held in 1981 that his claim was ill-founded; he subsequently appealed to the Centrale Raad van Beroep in Utrecht, which in 1983 confirmed the decision of the lower instance. He claims that this appeal exhausted domestic remedies.

2.3 The same matter has not been submitted for examination to any other procedure of international investigation or settlement.

3. By its decision of 16 October 1984, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure, to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

4.1 In its submission dated 29 May 1985 the State party underlined, inter alia, that:

(a) "The principle that elements of discrimination in the realization of the right to social security are to be eliminated is embodied in article 9 in conjunction with articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights";

(b) "The Government of the Kingdom of the Netherlands has accepted to implement this principle under the terms of the International Covenant on Economic, Social and Cultural Rights. Under these terms, States parties have undertaken to take steps to the maximum of their available resources with a view to achieving progressively the full realization of the rights recognized in that Covenant (art. 2, para. 1)";

(c) "The process of gradual realization to the maximum of available resources is well on its way in the Netherlands. Remaining elements of discrimination in the realization of the rights are being and will be gradually eliminated";

(d) "The International Covenant on Economic, Social and Cultural Rights has established its own system for international control of the way in which States parties are fulfilling their obligations. To this end States parties have undertaken to submit to the Economic and Social Council reports on the measures they have adopted and the progress they are making. The Government of the Kingdom of the Netherlands to this end submitted its first report in 1983".

4.2 The State party then posed the question whether the way in which the Netherlands was fulfilling its obligations under article 9 in conjunction with articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights could become, by way of article 26 of the International Covenant on Civil and Political Rights, the object of an examination by the Human Rights Committee. The State party submitted that that question was relevant for the decision whether the communication was admissible.

4.3 The State party stressed that it would greatly benefit from receiving an answer from the Human Rights Committee to the question mentioned in paragraph 4.2 above. "Since such an answer could hardly be given without going into one aspect of the merits of the case - i.e., the question of the scope of article 26 of the International Covenant on Civil and Political Rights - the Government would respectfully request the Committee to join the question of admissibility to an examination of the merits of the case."

4.4 In case the Committee did not grant that request and declared the communication admissible, the State party reserved the right to submit, in the course of the proceedings, observations which might have an effect on the question of admissibility.

4.5 The State party confirmed that the author had exhausted domestic remedies.

5. Commenting on the State party's submission under rule 91, the author, in a letter dated 8 July 1985, contends that the fact that the International Covenant on Economic, Social and Cultural Rights obliges the Governments of the States parties to eliminate discrimination in their system of social security, does not mean that the individuals of the State parties which are also parties to the Optional Protocol to the International Covenant on Civil and Political Rights are precluded from having recourse to the Human Rights Committee in case of a violation of any right set forth in the latter Covenant that at the same time constitutes discrimination in the exercise of a social security right.

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, 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.

6.2 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. In this connection the Committee observes that the examination of State reports, submitted under article 16 of the International Covenant on Economic, Social and Cultural Rights, does not, within the meaning of article 5 (2) (a), constitute an examination of the "same matter" as a claim by an individual submitted to the Human Rights Committee under the Optional Protocol.

6.3 The Committee further observes that a claim submitted under the Optional Protocol concerning an alleged breach of a provision of the International Covenant on Civil and Political Rights is not necessarily incompatible with the provisions of that Covenant (see art. 3 of the Optional Protocol), because the facts also relate to a right protected by the International Covenant on Economic, Social and Cultural Rights or any other international instrument. It still had to be tested whether the alleged breach of a right protected by the International Covenant on Civil and Political Rights was borne out by the facts.

6.4 Article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication unless domestic remedies have been exhausted. The parties to the present communication agree that domestic remedies have been exhausted.

6.5 With regard to the State party's inquiry concerning the scope of article 26 of the International Covenant on Civil and Political Rights, the Committee did not consider it necessary to pronounce on its scope prior to deciding on the admissibility of the communication. However, having regard to the State party's statement (para. 4.4 above) that it reserved the right to submit further observations which might have an effect on the question of the admissibility of the case, the Committee pointed out that it would take into account any further observations received on the matter.

7. On 25 October 1985 the Human Rights Committee therefore decided that the communication was admissible. In accordance with article 4, paragraph 2, of the Optional Protocol, the State party was requested to submit to the Committee, within six months of the date of transmittal to it of the decision on admissibility, written explanations or statements clarifying the matter and the measures, if any, that might have been taken by it.

8.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 20 May 1986, the State party again objected to the admissibility of the communication, reiterating the arguments advanced in its submission of 29 May 1985.

8.2 In discussing the merits of the case, the State party elucidates first the factual background and the relevant legislation as follows:

"Paragraph 2.2 of the Human Rights Committee's decision of 23 July 1985 sets forth the events prior to Mr. Danning's complaint. The facts of the case need to be stated more precisely. After the accident, Mr. Danning received benefit under the Sickness Benefits Act (ZW), which was supplemented by his employer. As from 14 July 1980 he received disablement benefit in accordance with the General Disablement Benefits Act (AAW) and the Disability Insurance Act (WAO). This benefit was supplemented by payments made in accordance with the General Assistance Act (ABW).

"To obtain a clear picture of the present matter it is important to consider the regulations for disability for work in the Netherlands. Employed persons pay contributions, based on their income, towards various forms of social insurance. The most important of these in the present case are the Sickness Benefits Act (ZW), the Disability Insurance Act (WAO) and the General Disablement Benefits Act (AAW). If the employee falls ill, he can receive benefit equivalent to 70 per cent of his most recent income (up to a yearly income of f. 60,000) for a period of up to one year under ZW. The employer will in most cases contribute the remaining 30 per cent of the employee's income. If the employee remains ill for more than one year, sickness benefit is replaced by payments made under the provisions of AAW and WAO.

"AAW is a basic payment for (long-term) disability and is linked to the minimum subsistence income as defined in the Netherlands. Persons who were in full-time employment prior to becoming disabled qualify in the first instance for a standard payment, based on what is termed the 'base figure'.

"In the case of total disability, the base figure will give a payment equivalent to 70 per cent of the current net statutory minimum wage. Only married people with a dependent spouse and unmarried people with one or more dependent children may qualify for an increase of the base figure by 15 to 30 per cent, depending on the amount of the insured person's own income (art. 10 AAW). 'Married person' is defined in such a way as to exclude unmarried cohabitants.

"This rather complicated system, involving two different Acts concerning disablement, can be explained in historical terms. WAO dates from 18 February 1967 and AAW from 11 December 1975. The introduction of AAW (which unlike WAO was not restricted to employees, but also included the self-employed) meant that WAO (which was usually higher than AAW) acquired the function of a supplementary payment.

"In the case of partial disability or part-time employment, AAW and WAO payments are reduced proportionately. If the payment calculated in this way is less than the official subsistence level, it can be supplemented by a (partial) payment under the provisions of the General Assistance Act (ABW), which contains regulations on the minimum subsistence income. The size of payments made under the provisions of ABW is also linked to the net minimum

wage. Unlike both AAW and WAO, ABW takes account of the financial position and income of the recipient's partner.

"This complicated system will in fact probably be discontinued in the near future. For some time now, the Netherlands Government has been planning to simplify the social security system, partly with a view to eliminating complaints of unequal treatment of recipients. To this end the Government put a package of proposed reform legislation before the Lower House in 1985. The Bill is currently going through parliament. Important changes will be made to AAW and WAO. There will be a single Disablement Benefits Act, and the 'base figure' system of AAW will disappear.

"It will be replaced by a Supplementary Benefits Act, which will provide for supplementary payments in cases where the basic payment is less than the official minimal subsistence income. In the course of drafting this new legislation, the question whether married people and unmarried cohabitants will be accorded equal treatment, and if so to what extent, will be examined.

"Mr. Danning submitted that he was in receipt of a supplementary payment under the provisions of ABW. This payment is apparently made because the AAW/WAO payment is below the official subsistence level.

"The AAW payment made to Mr. Danning, who at the time of applying was cohabiting with his girl-friend, was based on the general base figure and not on the higher, married person's base figure. In fact it would make no difference to the total payment made to Mr. Danning if the AAW payment were to be calculated using the married person's base figure. This is because he lives with his girl-friend and therefore receives a supplementary family allowance under the provisions of ABW, which brings his total social security payment up to the same level (i.e., the net minimum wage) as an AAW payment based on the married person's base figure. Since Mr. Danning is in receipt of a supplementary allowance under ABW, the Netherlands Government is of the opinion that the difference between ABW and AAW in respect of the partner's financial position and income is not a factor in the present case. The conclusion is therefore that Mr. Danning's complaint is based purely on considerations of principle."

8.3 With regard to the scope of article 26 of the International Covenant on Civil and Political Rights, the State party argues, inter alia, as follows:

"The Netherlands Government takes the view that article 26 of the Covenant does entail an obligation to avoid discrimination, but that this article can only be invoked under the Optional Protocol to the Covenant in the sphere of civil and political rights, not necessarily limited to those civil and political rights that are embodied in the Covenant. The Government could, for instance, envisage the admissibility under the Optional Protocol of a complaint concerning discrimination in the field of taxation. But the Government cannot accept the admissibility of a complaint concerning the enjoyment of economic, social and cultural rights. The latter category of rights is the object of a separate United Nations convention. Mr. Danning's complaint relates to rights in the sphere of social security, which fall under the International Covenant on Economic, Social and Cultural Rights. Articles 2, 3 and 9 of that Covenant are of particular relevance here. That Covenant has its own specific system and its own specific organ for

international monitoring of how States parties meet their obligations and deliberately does not provide for an individual complaints procedure.

"The Government considers it incompatible with the aims of both the Covenants and the Optional Protocol that an individual complaint with respect to the right of social security, as referred to in article 9 of the International Covenant on Civil and Political Rights, could be dealt with by the Human Rights Committee by way of an individual complaint under the Optional Protocol based on article 26 of the International Covenant on Civil and Political Rights.

"The Netherlands Government reports to the Economic and Social Council on matters concerning the way it is fulfilling its obligations with respect to the right to social security, in accordance with the relevant rules of the International Covenant on Economic, Social and Cultural Rights ...

"Should the Human Rights Committee take the view that article 26 of the International Covenant on Civil and Political Rights ought to be interpreted more broadly, thus that this article is applicable to complaints concerning discrimination in the field of social security, the Government would observe that in that case article 26 must also be interpreted in the light of other comparable United Nations Conventions laying down obligations to combat and eliminate discrimination in the field of economic, social and cultural rights. The Government would particularly point to 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.

"If article 26 of the International Covenant on Civil and Political Rights were deemed applicable to complaints concerning discriminatory elements in national legislation in the field of those conventions, this could surely not be taken to mean that a State party would be required to have eliminated all possible discriminatory elements from its legislation in those fields at the time of ratification of the Covenant. Years of work are required in order to examine the whole complex of national legislation in search of discriminatory elements. The search can never be completed, either, as distinctions in legislation which are justifiable in the light of social views and conditions prevailing when they are first made may become disputable as changes occur in the views held in society ...

"If the Human Rights Committee should decide that article 26 of the International Covenant on Civil and Political Rights entails obligations with regard to legislation in the economic, social and cultural field, such obligations could, in the Government's view, not comprise more than an obligation of States to subject national legislation to periodic examination after ratification of the Covenant with a view to seeking out discriminatory elements and, if they are found, to progressively taking measures to eliminate them to the maximum of the State's available resources. Such examinations are under way in the Netherlands with regard to various aspects of discrimination, including discrimination between men and women.

"If the Human Rights Committee accepts the above considerations, Mr. Danning's claim that the Netherlands has violated article 26 of the Covenant seems to be ill-founded."

8.4 With regard to the concept of discrimination in article 26 of the Covenant, the State party explains the distinctions made in Dutch law as follows:

"In the Netherlands, the fact that people live together as a married or unmarried couple has long been considered a relevant factor to which certain legal consequences may be attached. Persons living together as unmarried cohabitants have a free choice of whether or not to enter into marriage, thereby making themselves subject either to one set of laws or to another. The differences between the two are considerable; the cohabitation of married persons is subject to much greater legal regulation than is the cohabitation of unmarried persons. A married person is, for example, obliged to provide for his or her spouse's maintenance; the spouse is also jointly liable for debts incurred in respect of common property; a married person also requires the permission or co-operation of his or her spouse for certain undertakings, such as buying goods on hire purchase which would normally be considered a part of the household, transactions relating to the matrimonial home, etc. The Civil Code contains extensive regulations governing matrimonial law concerning property. The legal consequences of ending a marriage by divorce are also the subject of a large number of provisions in the Civil Code, including a provision allowing the imposition of a maintenance allowance payable to the former spouse. The law of inheritance, too, is totally geared to the individuals' formal status. The Government cannot accept that the differences in treatment by the Netherlands law, described above, between married and unmarried cohabitants could be considered to be 'discrimination' within the legal meaning of that term under article 26 of the Covenant. There is no question of 'equal cases' being treated differently under the law. There is an objective justification for the differences in the legal position of married and unmarried cohabitants, provided for by the Netherlands legislation."

9. In his comments, dated 25 June 1986, the author welcomes the forthcoming changes in the General Disablement Benefits Act (AAW) and the Disability Insurance Act (WAO), mentioned in the State party's submission. However, he notes that while he understands that it is not possible for the Netherlands Government to bring into effect immediately all desired changes to the existing laws, "individuals should not suffer as a consequence of not being able to benefit from proposed changes in the legislation which are about to affect their situation." He claims that the existing law is "clearly discriminatory" and that article 26 of the Covenant applies because the differentiation between married and unmarried couples is discriminatory in itself.

10. The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. The facts of the case are not in dispute.

11. Article 26 of the International Covenant on Civil and Political Rights provides:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race,

colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

12.1 The State party contends that there is considerable overlapping of the provisions of article 26 with the provisions of article 2 of the International Covenant on Economic, Social and Cultural Rights. The Committee is of the view that the International Covenant on Civil and Political Rights would still apply even if a particular subject-matter is referred to or covered in international instruments, for example, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, or, as in the present case, the International Covenant on Economic, Social and Cultural Rights. Notwithstanding the interrelated drafting history of the two Covenants, it remains necessary for the Committee to apply fully the terms of the International Covenant on Civil and Political Rights. The Committee observes in this connection that the provisions of article 2 of the International Covenant on Economic, Social and Cultural Rights do not detract from the full application of article 26 of the International Covenant on Civil and Political Rights.

12.2 The Committee has also examined the contention of the State party that article 26 of the International Covenant on Civil and Political Rights cannot be invoked in respect of a right which is specifically provided for under article 9 of the International Covenant on Economic, Social and Cultural Rights (social security, including social insurance). In so doing, the Committee has perused the relevant travaux préparatoires of the International Covenant on Civil and Political Rights, namely the summary records of the discussions that took place in the Commission on Human Rights in 1948, 1949, 1950 and 1952 and in the Third Committee of the General Assembly in 1961, which provide a "supplementary means of interpretation" (art. 32 of the Vienna Convention on the Law of Treaties a/). The discussions, at the time of drafting, concerning the question whether the scope of article 26 extended to rights not otherwise guaranteed by the Covenant, were inconclusive and cannot alter the conclusion arrived at by the ordinary means of interpretation referred to in paragraph 12.3 below.

12.3 For the purpose of determining the scope of article 26, the Committee has taken into account the "ordinary meaning" of each element of the article in its context and in the light of its object and purpose (art. 31 of the Vienna Convention on the Law of Treaties). The Committee begins by noting that article 26 does not merely duplicate the guarantees already provided for in article 2. It derives from the principle of equal protection of the law without discrimination, as contained in article 7 of the Universal Declaration of Human Rights, which prohibits discrimination in law or in practice in any field regulated and protected by public authorities. Article 26 is thus concerned with the obligations imposed on States in regard to their legislation and the application thereof.

12.4 Although article 26 requires that legislation should prohibit discrimination, it does not of itself contain any obligation with respect to the matters that may be provided for by legislation. Thus it does not, for example, require any State to enact legislation to provide for social security. However, when such legislation is adopted in the exercise of a State's sovereign power, then such legislation must comply with article 26 of the Covenant.

12.5 The Committee observes in this connection that what is at issue is not whether or not social security should be progressively established in the Netherlands but whether the legislation providing for social security violates

the prohibition against discrimination contained in article 26 of the International Covenant on Civil and Political Rights and the guarantee given therein to all persons regarding equal and effective protection against discrimination.

13. The right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26.

14. It therefore remains for the Committee to determine whether the differentiation in Netherlands law at the time in question and as applied to Mr. Danning constituted discrimination within the meaning of article 26. In the light of the explanations given by the State party with respect to the differences made by Netherlands legislation between married and unmarried couples (para. 8.4 above), the Committee is persuaded that the differentiation complained of by Mr. Danning is based on objective and reasonable criteria. The Committee observes, in this connection, that the decision to enter into a legal status by marriage, which provides, in Netherlands law, both for certain benefits and for certain duties and responsibilities, lies entirely with the cohabiting persons. By choosing not to enter into marriage, Mr. Danning and his cohabitant have not, in law, assumed the full extent of the duties and responsibilities incumbent on married couples. Consequently, Mr. Danning does not receive the full benefits provided for in Netherlands law for married couples. The Committee concludes that the differentiation complained of by Mr. Danning does not constitute discrimination, in the sense of article 26 of the Covenant.

15. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as submitted do not disclose a violation of any article of the International Covenant on Civil and Political Rights.

Notes

a/ United Nations, Juridical Yearbook 1969 (United Nations publication, Sales No. E.71.V.4), p. 140.

D. Communication No. 182/1984, F. H. Zwaan-de Vries v. the Netherlands (Views adopted on 9 April 1987 at the twenty-ninth session)

Submitted by: F. H. Zwaan-de Vries (represented by D. J. van der Vos)

Alleged victim: the author

State party concerned: the Netherlands

Date of communication: 28 September 1984

Date of decision on admissibility: 23 July 1985

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

Meeting on 9 April 1987;

Having concluded its consideration of communication No. 182/1984 submitted to the Committee by F. H. Zwaan-de Vries under the Optional Protocol to the International Covenant on Civil and Political Rights;

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

adopts the following:

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

1. The author of the communication (initial letter dated 28 September 1984 and subsequent letters of 2 July 1985, 4 and 23 April 1986) is Mrs. F. H. Zwaan-de Vries, a Netherlands national residing in Amsterdam, the Netherlands, who is represented before the Committee by Mr. D. J. van der Vos, head of the Legal Aid Department (Rechtskundige Dienst L.V.), Amsterdam.

2.1 The author was born in 1943 and is married to Mr. C. Zwaan. She was employed from early 1977 to 9 February 1979 as a computer operator. Since then she has been unemployed. Under the Unemployment Act she was granted unemployment benefits until 10 October 1979. She subsequently applied for continued support on the basis of the Unemployment Benefits Act (WWV). The Municipality of Amsterdam rejected her application on the ground that she did not meet the requirements because she was a married woman; the refusal was based on section 13, subsection 1 (1), of WWV, which did not apply to married men.

2.2 Thus the author claims to be a victim of a violation by the State party of article 26 of the International Covenant on Civil and Political Rights, which provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. The author claims that the only reason why she was denied unemployment benefits is because of her sex and marital status and contends that this constitutes discrimination within the scope of article 26 of the Covenant.

2.3 The author pursued the matter before the competent domestic instances. By decision of 9 May 1980 the Municipality of Amsterdam confirmed its earlier decision of 12 November 1979. The author appealed against the decision of 9 May 1980 to the Board of Appeal in Amsterdam, which, by an undated decision sent to her on 27 November 1981, declared her appeal to be unfounded. The author then appealed to the Central Board of Appeal, which confirmed the decision of the Board of Appeal on 1 November 1983. Thus, it is claimed that the author has exhausted all national legal remedies.

2.4 The same matter has not been submitted for examination to any other procedure of international investigation or settlement.

3. By its decision of 16 October 1984, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure, to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

4.1 In its submission dated 29 May 1985 the State party underlined, inter alia, that:

(a) "The principle that elements of discrimination in the realization of the right to social security are to be eliminated is embodied in article 9 in conjunction with articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights;

(b) "The Government of the Kingdom of the Netherlands has accepted to implement this principle under the terms of the International Covenant on Economic, Social and Cultural Rights. Under these terms, States parties have undertaken to take steps to the maximum of their available resources with a view to achieving progressively the full realization of the rights recognized in that Covenant (art. 2, para. 1);

(c) "The process of gradual realization to the maximum of available resources is well on its way in the Netherlands. Remaining elements of discrimination in the realization of the rights are being and will be gradually eliminated;

(d) "The International Covenant on Economic, Social and Cultural Rights has established its own system for international control of the way in which States parties are fulfilling their obligations. To this end States parties have undertaken to submit to the Economic and Social Council reports on the measures they have adopted and the progress they are making. The Government of the Kingdom of the Netherlands to this end submitted its first report in 1983;"

4.2 The State party then posed the question whether the way in which the Netherlands was fulfilling its obligations under article 9 in conjunction with articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights could become, by way of article 26 of the International Covenant on Civil and Political Rights, the object of an examination by the Human Rights Committee. The State party submitted that that question was relevant for the decision whether the communication was admissible.

4.3 The State party stressed that it would greatly benefit from receiving an answer from the Human Rights Committee to the question mentioned in paragraph 4.2 above. "Since such an answer could hardly be given without going into one aspect

of the merits of the case - i.e. the question of the scope of article 26 of the International Covenant on Civil and Political Rights - the Government would respectfully request the Committee to join the question of admissibility to an examination of the merits of the case."

4.4 In case the Committee did not grant the request and declared the communication admissible, the State party reserved the right to submit, in the course of the proceedings, observations which might have an effect on the question of admissibility.

4.5 The State party also indicated that a change of legislation had been adopted recently in the Netherlands, eliminating section 13, subsection 1 (1), of the Unemployment Benefits Act (WWV), which was the subject of the author's claim. This is the Act of 29 April 1985, S 230, having a retroactive effect to 23 December 1984.

4.6 The State party confirmed that the author had exhausted domestic remedies.

5.1 Commenting on the State party's submission under rule 91, the author, in a letter dated 2 July 1985, contended that the State party's question to the Committee as well as the answer to it were completely irrelevant with regard to the admissibility of the communication, because the author's complaint "pertains to the failure of the Netherlands to respect article 26 of the International Covenant on Civil and Political Rights. As the Netherlands signed and ratified the Optional Protocol to that Covenant, the complainant is by virtue of articles 1 and 2 of the Optional Protocol, entitled to file a complaint with your Committee pertaining to the non-respect of article 26. Therefore her complaint is admissible."

5.2 The author further pointed out that, although section 13, subsection 1 (1), of WWV had been eliminated, her complaint concerned legislation in force in 1979.*

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, 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.

6.2 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. In this connection the Committee observes that the examination of State reports, submitted under article 16 of the International Covenant on Economic, Social and Cultural Rights, does not, within the meaning of article 5, paragraph 2 (a), constitute an examination of the "same matter" as a claim by an individual submitted to the Human Rights Committee under the Optional Protocol.

6.3 The Committee further observes that a claim submitted under the Optional Protocol concerning an alleged breach of a provision of the International Covenant on Civil and Political Rights is not necessarily incompatible with the provisions of that Covenant (see art. 3 of the Optional Protocol), because the facts also

* The Covenant and the Optional Protocol entered into force on 11 March 1979 in respect of the Netherlands.

relate to a right protected by the International Covenant on Economic, Social and Cultural Rights or any other international instrument. It still had to be tested whether the alleged breach of a right protected by the International Covenant on Civil and Political Rights was borne out by the facts.

6.4 Article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication unless domestic remedies have been exhausted. The parties to the present communication agree that domestic remedies have been exhausted.

6.5 With regard to the State party's inquiry concerning the scope of article 26 of the International Covenant on Civil and Political Rights, the Committee did not consider it necessary to pronounce on its scope prior to deciding on the admissibility of the communication. However, having regard to the State party's statement (para. 4.4 above) that it reserved the right to submit further observations which might have an effect on the question of the admissibility of the case, the Committee pointed out that it would take into account any further observations received on the matter.

7. On 23 July 1984, the Human Rights Committee therefore decided that the Communication was admissible. In accordance with article 4, paragraph 2, of the Optional Protocol, the State party was requested to submit to the Committee, within six months of the date of transmittal to it of the decision on admissibility, written explanations or statements clarifying the matter and the measures, if any, that might have been taken by it.

8.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 14 January 1986, the State party again objected to the admissibility of the communication, reiterating the arguments advanced in its submission of 29 May 1985.

8.2 In discussing the merits of the case, the State party elucidates first the factual background as follows:

"When Mrs. Zwaan applied for WWV benefits in October 1979, section 13, subsection 1 (1), was still applicable. This section laid down that WWV benefits could not be claimed by those married women who were neither breadwinners nor permanently separated from their husbands. The concept of 'breadwinner' as referred to in section 13, subsection 1 (1), of WWV was of particular significance, and was further amplified in statutory instruments based on the Act (the last relevant instrument being the ministerial decree of 5 April 1976, Netherlands Government Gazette 1976, 72). Whether a married woman was deemed to be a breadwinner depended, *inter alia*, on the absolute amount of the family's total income and on what proportion of it was contributed by the wife. That the conditions for granting benefits laid down in section 13, subsection 1 (1), of WWV applied solely to married women and not to married men is due to the fact that the provision in question corresponded to the then prevailing views in society in general concerning the roles of men and women within marriage and society. Virtually all married men who had jobs could be regarded as their family's breadwinner, so that it was unnecessary to check whether they met this criterion for the granting of benefits upon becoming unemployed. These views have gradually changed in later years. This aspect will be further discussed below (see para. 8.4).

"The Netherlands is a member State of the European Economic Community (EEC). On 19 December 1978 the Council of the European Communities issued a directive on the progressive implementation of the principle of equal treatment for men and women in matters of social security (79/7/EEC), giving member States a period of six years, until 23 December 1984, within which to make any amendments to legislation which might be necessary in order to bring it into line with the directive. Pursuant to the directive the Netherlands Government examined the criterion for the granting of benefits laid down in section 13, subsection 1 (1), of WWV in the light of the principle of equal treatment of men and women and in the light of the changing role patterns of sexes in the years since about 1960.

"Since it could no longer be assumed as a matter of course in the early 1980s that married men with jobs should always be regarded as 'breadwinners', the Netherlands amended section 13, subsection 1 (1), of WWV to meet its obligations under the EEC directive. The amendment consisted of the deletion of section 13, subsection 1 (1), with the result that it became possible for married women who were not breadwinners to claim WWV benefits, while the duration of the benefits, which had previously been two years, was reduced for people aged under 35.

"In view of changes in the status of women - and particularly married women - in recent decades, the failure to award Mrs. Zwaan WWV benefits in 1979 is explicable in historical terms. If she were to apply for such benefits now, the result would be different."

8.3 With regard to the scope of article 26 of the Covenant, the State party argues inter alia as follows:

"The Netherlands Government takes the view that article 26 of the Covenant does entail an obligation to avoid discrimination, but that this article can only be invoked under the Optional Protocol to the Covenant in the sphere of civil and political rights. Civil and political rights are to be distinguished from economic, social and cultural rights, which are the object of a separate United Nations Covenant, the International Covenant on Economic, Social and Cultural Rights.

"The complaint made in the present case relates to obligations in the sphere of social security, which fall under the International Covenant on Economic, Social and Cultural Rights. Articles 2, 3 and 9 of that Covenant are of particular relevance here. That Covenant has its own specific system and its own specific organ for international monitoring of how States parties meet their obligations and deliberately does not provide for an individual complaints procedure.

"The Government considers it incompatible with the aims of both the Covenants and the Optional Protocol that an individual complaint with respect to the right of social security, as referred to in article 9 of the International Covenant on Economic, Social and Cultural Rights, could be dealt with by the Human Rights Committee by way of an individual complaint under the Optional Protocol based on article 26 of the International Covenant on Civil and Political Rights.

"The Netherlands Government reports to the Economic and Social Council on matters concerning the way it is fulfilling its obligations with respect to the right to social security, in accordance with the relevant rules of the International Covenant on Economic, Social and Cultural Rights ...

"Should the Human Rights Committee take the view that article 26 of the International Covenant on Civil and Political Rights ought to be interpreted more broadly, thus that this article is applicable to complaints concerning discrimination in the field of social security, the Government would observe that in that case article 26 must also be interpreted in the light of other comparable United Nations conventions laying down obligations to combat and eliminate discrimination in the field of economic, social and cultural rights. The Government would particularly point to 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.

"If article 26 of the International Covenant on Civil and Political Rights were deemed applicable to complaints concerning discriminatory elements in national legislation in the field of those conventions, this could surely not be taken to mean that a State party would be required to have eliminated all possible discriminatory elements from its legislation in those fields at the time of ratification of the Covenant. Years of work are required in order to examine the whole complex of national legislation in search of discriminatory elements. The search can never be completed, either, as distinctions in legislation which are justifiable in the light of social views and conditions prevailing when they are first made may become disputable as changes occur in the views held in society ...

"If the Human Rights Committee should decide that article 26 of the International Covenant on Civil and Political Rights entails obligations with regard to legislation in the economic, social and cultural field, such obligations could, in the Government's view, not comprise more than an obligation of States to subject national legislation to periodic examination after ratification of the Covenant with a view to seeking out discriminatory elements and, if they are found, to progressively taking measures to eliminate them to the maximum of the State's available resources. Such examinations are under way in the Netherlands with regard to various aspects of discrimination, including discrimination between men and women."

8.4 With regard to the principle of equality laid down in article 26 of the Covenant in relation to section 13, subsection 1 (1), of WWV in its unamended form, the State party explains the legislative history of WWV and in particular the social justification of the "breadwinner" concept at the time the law was drafted. The State party contends that with the "breadwinner" concept "a proper balance was achieved between the limited availability of public funds (which makes it necessary to put them to limited, well-considered and selective use) on the one hand and the Government's obligation to provide social security on the other. The Government does not accept that the 'breadwinner' concept as such was 'discriminatory' in the sense that equal cases were treated in an unequal way by law." Moreover, it is argued that the provisions of WWV "are based on reasonable social and economic considerations which are not discriminatory in origin. The restriction making the provision in question inapplicable to men was inspired not by any desire to discriminate in favour of men and against women but by the de facto social and economic situation which existed at the time when the Act was passed and which

would have made it pointless to declare the provision applicable to men. At the time when Mrs. Zwaan applied for unemployment benefits the de facto situation was not essentially different. There was therefore no violation of article 26 of the Covenant. This is not altered by the fact that a new social trend has been growing in recent years, which has made it undesirable for the provision to remain in force in the present social context."

8.5 With reference to the decision of the Central Board of Appeal of 1 November 1983, which the author criticizes, the State party contends that "The observation of the Central Board of Appeal that the Covenants employ different international control systems is highly relevant. Not only do parties to the Covenants report to different United Nations agencies but, above all, there is a major difference between the Covenants as regards the possibility of complaints by States or individuals, which exists only under the International Covenant on Civil and Political Rights. The contracting parties deliberately chose to make this difference in international monitoring systems, because the nature and substance of social, economic and cultural rights make them unsuitable for judicial review of a complaint lodged by a State party or an individual."

9.1 In her comments, dated 4 and 23 April 1986, the author reiterates that "article 13, subsection 1 (1) contains the requirement of being breadwinner for married women only, and not for married men. This distinction runs counter to article 26 of the Covenant ... The observations of the Netherlands Government on views in society concerning traditional roles of men and women are completely irrelevant to the present case. The question ... is in fact not whether those roles could justify the existence of article 13, subsection 1 (1), of WWV, but ... whether this article in 1979 constituted an infraction of article 26 of the Covenant ... The State of the Netherlands is wrong when it takes the view that the complainant's view could imply that all discriminatory elements ought to have been eliminated from its national legislation at the time of ratification of the Covenant ... The complainant's view does imply, however, that ratification enables all Netherlands citizens to invoke article 26 of the Covenant directly ... if they believe that they are being discriminated against. This does not imply that the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women have become meaningless. Those treaties in fact compel the Netherlands to eliminate discriminatory provisions from more specific parts of national legislation."

9.2 With respect to the State party's contention that article 26 of the Covenant can only be invoked in the sphere of civil and political rights, the author claims that this view is not shared by Netherland courts and that it also "runs counter to the stand taken by the Government itself during parliamentary approval. It then stated that article 26 - as opposed to article 2, paragraph 1 - 'also applied to areas otherwise not covered by the Covenant'".

9.3 The author also disputes the State party's contention that applicability of article 26 with regard to the right of social security, as referred to in article 9 of the International Covenant on Economic, Social and Cultural Rights, would be incompatible with the aims of both Covenants. The author claims that article 26 would apply "to one well-defined aspect of article 9 only, which is equal treatment before the law, leaving other important aspects such as the level of social security aside".

9.4 With regard to the State party's argument that, even if article 26 were to be considered applicable, the State party would have a delay of several years from the time of ratification of the Covenant to adjust its legislation, the author contends that this argument runs counter to the observations made by the Government at the time of [parliamentary] approval with regard to article 2, paragraph 2, of the International Covenant on Civil and Political Rights stating that such a terme de grâce would be applicable only with respect to provisions that are not self-executing, whereas article 26 is in fact recognized by the Government and court rulings as self-executing. The author adds that "it can, in fact, be concluded from the travaux préparatoires of the International Covenant on Civil and Political Rights that according to the majority of the delegates 'it was essential to permit a certain degree of elasticity to the obligations imposed on States by the covenant, since all States would not be in a position immediately to take the necessary legislative or other measures for the implementation of its provisions'". a/

10. The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol. The facts of the case are not in dispute.

11. Article 26 of the International Covenant on Civil and Political Rights provides:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

12.1 The State party contends that there is considerable overlapping of the provisions of article 26 with the provisions of article 2 of the International Covenant on Economic, Social and Cultural Rights. The Committee is of the view that the International Covenant on Civil and Political Rights would still apply even if a particular subject-matter is referred to or covered in other international instruments, for example the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, or, as in the present case, the International Covenant on Economic, Social and Cultural Rights. Notwithstanding the interrelated drafting history of the two Covenants, it remains necessary for the Committee to apply fully the terms of the International Covenant on Civil and Political Rights. The Committee observes in this connection that the provisions of article 2 of the International Covenant on Economic, Social and Cultural Rights do not detract from the full application of article 26 of the International Covenant on Civil and Political Rights.

12.2 The Committee has also examined the contention of the State party that article 26 of the International Covenant on Civil and Political Rights cannot be invoked in respect of a right which is specifically provided for under article 9 of the International Covenant on Economic, Social and Cultural Rights (social security, including social insurance). In so doing, the Committee has perused the relevant travaux préparatoires of the International Covenant on Civil and Political Rights, namely the summary records of the discussions that took place in the Commission on Human Rights in 1948, 1949, 1950 and 1952 and in the Third Committee

of the General Assembly in 1961, which provide a "supplementary means of interpretation" (art. 32 of the Vienna Convention on the Law of Treaties b/). The discussions, at the time of drafting, concerning the question whether the scope of article 26 extended to rights not otherwise guaranteed by the Covenant, were inconclusive and cannot alter the conclusion arrived at by the ordinary means of interpretation referred to in paragraph 12.3 below.

12.3 For the purpose of determining the scope of article 26, the Committee has taken into account the "ordinary meaning" of each element of the article in its context and in the light of its object and purpose (art. 31 of the Vienna Convention on the Law of Treaties). The Committee begins by noting that article 26 does not merely duplicate the guarantees already provided for in article 2. It derives from the principle of equal protection of the law without discrimination, as contained in article 7 of the Universal Declaration of Human Rights, which prohibits discrimination in law or in practice in any field regulated and protected by public authorities. Article 26 is thus concerned with the obligations imposed on States in regard to their legislation and the application thereof.

12.4 Although article 26 requires that legislation should prohibit discrimination, it does not of itself contain any obligation with respect to the matters that may be provided for by legislation. Thus it does not, for example, require any State to enact legislation to provide for social security. However, when such legislation is adopted in the exercise of a State's sovereign power, then such legislation must comply with article 26 of the Covenant.

12.5 The Committee observes in this connection that what is at issue is not whether or not social security should be progressively established in the Netherlands but whether the legislation providing for social security violates the prohibition against discrimination contained in article 26 of the International Covenant on Civil and Political Rights and the guarantee given therein to all persons regarding equal and effective protection against discrimination.

13. The right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26.

14. It therefore remains for the Committee to determine whether the differentiation in Netherlands law at the time in question and as applied to Mrs. Zwaan-de Vries constituted discrimination within the meaning of article 26. The Committee notes that in Netherlands law the provisions of articles 84 and 85 of the Netherlands Civil Code imposes equal rights and obligations on both spouses with regard to their joint income. Under section 13, subsection 1 (1), of the Unemployment Benefits Act (WWV) a married woman, in order to receive WWV benefits, had to prove that she was a "breadwinner" - a condition that did not apply to married men. Thus a differentiation which appears on one level to be one of status is in fact one of sex, placing married women at a disadvantage compared with married men. Such a differentiation is not reasonable, and this seems to have been effectively acknowledged even by the State party by the enactment of a change in the law on 29 April 1985, with retroactive effect to 23 December 1984 (see para. 4.5 above).

15. The circumstances in which Mrs. Zwaan-de Vries found herself at the material time and the application of the then valid Netherlands law made her a victim of a violation, based on sex, of article 26 of the International Covenant on Civil and Political Rights, because she was denied a social security benefit on an equal footing with men.

16. The Committee notes that the State party had not intended to discriminate against women and further notes with appreciation that the discriminatory provisions in the law applied to Mrs. Zwaan-de Vries have, subsequently, been eliminated. Although the State party has thus taken the necessary measures to put an end to the kind of discrimination suffered by Mrs. Zwaan-de Vries at the time complained of, the Committee is of the view that the State party should offer Mrs. Zwaan-de Vries an appropriate remedy.

Notes

a/ Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28 (Part II), document A/2929, chap. V, para. 8.

b/ United Nations, Jurid'cal Yearbook 1969 (United Nations publication, Sales No. E.71.V.4), p. 140.

B. Communication No. 198/1985, R. D. Stalla Costa v. Uruguay
(Views adopted on 9 July 1987 at the thirtieth session)

Submitted by: R. D. Stalla Costa

Alleged victim: the author

State party concerned: Uruguay

Date of communication: 11 December 1985 (date of initial letter)

Date of decision on admissibility: 8 April 1987

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

Meeting on 9 July 1987;

Having concluded its consideration of communication No. 198/1985 submitted to the Committee by R. D. Stalla Costa under the Optional Protocol to the International Covenant on Civil and Political Rights;

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

adopts the following:

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

1. The author of the communication (initial letter dated 11 December 1985 and three subsequent letters) is Ruben Stalla Costa, a Uruguayan lawyer, residing in Montevideo, who claims to be a victim of violations of articles 2, 25 (c) and 26 of the International Covenant on Civil and Political Rights.

2.1 The author states that he has submitted job applications to various governmental agencies in order to have access to and obtain a job in the public service in his country. He has allegedly been told that only former public employees who were dismissed as a result of the application of Institutional Act No. 7 of June 1977 are currently admitted to the public service. He refers in this connection to article 25 of Law 15.737 of 22 March 1985, which provides that all public employees who were dismissed as a result of the application of Institutional Act No. 7 have the right to be reinstated in their respective posts.

2.2 The author claims that article 25 of Law 15.737 gives more rights to former public employees than to other individuals, such as the author himself, and that it is therefore discriminatory and in violation of articles 2, 25 (c) and 26 of the International Covenant on Civil and Political Rights.

2.3 The author claims to have exhausted all internal remedies. He submitted an action for amparo on grounds of violation of his constitutional rights, in particular his right not to be discriminated against, before the Supreme Court of Justice in June 1985. The Supreme Court dismissed the case.

3. By its decision of 26 March 1986, 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. In its submission under rule 91, dated 24 July 1986, the State party requested that the communication be declared inadmissible, explaining, inter alia, that Act No. 15.737 of 22 March 1985, which the author claimed was discriminatory, had been passed with the unanimous support of all Uruguayan political parties as an instrument of national reconstruction:

"This Act ... seeks to restore the rights of those citizens who were wrongfully treated by the de facto Government. In addition to proclaiming a broad-ranging and generous amnesty, it provides under article 25, that all public officials dismissed on ideological, political or trade-union grounds or for purely arbitrary reasons shall have the right to be reinstated in their jobs, to resume their career in the public service and to receive a pension.

"The right of any citizen to have access, on an equal footing, to public employment cannot be deemed to be impaired by virtue of this Act, the purpose of which is to provide redress.

"Lastly, so far as exhaustion of remedies is concerned, there is an irrefutable presumption that a right has been violated or claimed beforehand. This is not the case here, as the complainant does not have any such right but only the legitimate expectation, common to all Uruguayan citizens, of being recruited to the public service."

5. In his comments on the State party's submission, the author argues, inter alia, that "the enactment of Act No. 15.737 did not have the support of all the political parties ... It is also asserted that article 25 seeks to provide redress and does not infringe the right to access on an equal footing to posts in the public service. I join in this spirit of reconciliation, like all people in my country, but redress will have to take the form of money."

6.1 In further observations, dated 10 February 1987, the State party elucidates Uruguayan legislation and practice regarding access to public service:

"Mr. Stalla regards himself as having a subjective right to demand that a given course of action be followed, namely, his admission to the public service. The Government of Uruguay reiterates that Mr. Stalla, like any other citizen of the Republic, may legitimately aspire to enter the public service, but by no means has a subjective right to do so.

"For a subjective right to exist, it must be founded on an objective legal norm. Accordingly, any subjective right presumes the existence of a possession [bien] or legal asset [valor jurídico] attached to the subject by a bond of ownership established in objective law, so that the person in question may demand that right or asset as his own. In the case in question, Mr. Stalla has no such subjective right since the filling of public posts is the prerogative of the executive organs of the State, of State enterprises or of municipal authorities. Any inhabitant of the Republic meeting the requirements laid down in the legal norms (age requirement, physical and moral suitability, technical qualifications for the post in question) may be

appointed to a public post and may have a legitimate aspiration to be vested with the status of public servant, should the competent bodies so decide."

6.2 With regard to article 8 of the Uruguayan Constitution, which provides that "all persons are equal before the law, no other distinctions being recognized among them save those of talent and virtue", the State party comments:

"This provision of the Constitution embodies the principle of the equality of all persons before the law. The Government of Uruguay wishes to state in this respect that to uphold Mr. Stalla's petition would unquestionably violate this principle by according him preference over other university graduates who, like Mr. Stalla, have a legitimate aspiration to secure such posts, without any distinction being made between them, other than on the basis of talent and virtue."

6.3 With regard to article 55 of the Uruguayan Constitution, which provides that "the law shall regulate the impartial and equitable distribution of labour", the State party comments:

"This provision is one of the 'framework rules', under which legal measures will be enacted developing the established right to work (art. 53) and combining the existence of this right with good administration.

"It will not have escaped the Committee that it is obviously impossible for the Government of Uruguay, or of any other State with a similar system, to absorb all university graduates into the public service."

6.4 The State party further emphasizes the necessity of "provision for redress made in the legislation enacted by the first elected Parliament after more than 12 years of military authoritarianism, legislation which has made it possible to restore the rights of those public and private officials who were removed from their posts as a result of ideological persecution".

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, 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.

7.2 The Human Rights Committee therefore ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement. Regarding the requirement of prior exhaustion of domestic remedies, the Committee concluded, based on the information before it, that there were no further domestic remedies which the author could resort to in the particular circumstances of his case. The Committee noted in that connection the author's statement that his action for amparo had been dismissed by the Supreme Court (see para. 2.3 above), as well as the State party's observation to the effect that there could be no remedy in the case as there had been no breach of a right under domestic law (see para. 4 above).

7.3 With regard to the State party's submission that the communication should have been declared inadmissible on the ground that the author had no subjective right in law to be appointed to a public post, but only the legitimate aspiration to be so employed (see para. 4 and the State party's further elaboration in para. 6.1

above), the Committee observed that the author had made a reasonable effort to substantiate his claim and that he had invoked specific provisions of the Covenant in that respect. The question whether the author's claim was well-founded should, therefore, be examined on the merits.

7.4 The Committee noted that the facts of the case, as set out by the author and the State party, were already sufficiently clear to permit an examination on the merits. However, the Committee deemed it appropriate at that juncture to limit itself to the procedural requirement of deciding on the admissibility of the communication. It noted that, if the State party should wish to add to its earlier submissions within six months of the transmittal to it of the decision on admissibility, the author of the communication would be given an opportunity to comment thereon. If no further explanations or statements were received from the State party under article 4, paragraph 2, of the Optional Protocol, the Committee would then proceed to adopt its final views in the light of the written information already submitted by the parties.

7.5 On 8 April 1987 the Human Rights Committee therefore decided that the communication was admissible and requested the State party, if it did not intend to make a further submission in the case under article 4, paragraph 2, of the Optional Protocol, so to inform the Committee, to permit an early decision on the merits.

8. By note dated 26 May 1987, the State party informed the Committee that, in the light of its prior submission, it would not make a further submission in the case.

9. The Human Rights Committee has considered the merits of the present communication in the light of all information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. The facts of the case are not in dispute.

10. The main question before the Committee is whether the author of the communication is a victim of a violation of article 25 (c) of the Covenant because, as he alleges, he has not been permitted to have access to public service on general terms of equality. Taking into account the social and political situation in Uruguay during the years of military rule, in particular the dismissal of many public servants pursuant to Institutional Act No. 7, the Committee understands the enactment of Act No. 15.737 of 22 March 1985 by the new democratic Government of Uruguay as a measure of redress. Indeed, the Committee observes that Uruguayan public officials dismissed on ideological, political or trade-union grounds were victims of violations of article 25 of the Covenant and as such are entitled to have an effective remedy under article 2, paragraph 3 (a), of the Covenant. The Act should be looked upon as such a remedy. The implementation of the Act, therefore, cannot be regarded as incompatible with the reference to "general terms of equality" in article 25 (c) of the Covenant. Neither can the implementation of the Act be regarded as an invidious distinction under article 2, paragraph 1, or as prohibited discrimination within the terms of article 26 of the Covenant.

11. 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 submitted do not sustain the author's claim that he has been denied access to public service in violation of article 25 (c) or that he is a victim of an invidious distinction, that is, of discrimination within the meaning of articles 2 and 26 of the Covenant.

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. 192/1985, S. H. B. v. Canada (Decision of 24 March 1987, adopted at the twenty-ninth session)

Submitted by: S. H. B. [name deleted]

Alleged victim: the author

State party concerned: Canada

Date of communication: 13 August 1985 (date of initial letter)

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

Meeting on 24 March 1987,

adopts the following:

Decision on admissibility

1. The author of the communication (initial letter of 13 August 1985 and subsequent letters of 19 December 1985, 25 March and 10 June 1986) is S. H. B., a Canadian naturalized citizen born in Egypt in 1942, at present practising medicine in the Province of Alberta. He submits the communication in his own name and on behalf of his son A. B., born in April 1976 in Canada. He alleges violations of articles 2, 3, 7, 8, 14, 15, 23 and 26 of the International Covenant on Civil and Political Rights by federal and provincial authorities in Canada.

2.1 The author states that he was married to J. M. B., a Canadian nurse, on 20 January 1976, because of her advanced pregnancy; their son A. was born less than three months later. As a result of marital disagreements and the husband's allegations of "mental cruelty", the spouses were separated by a separation agreement of December 1977, and divorced in June 1982. The author's communication concerns alleged violations of his rights under the Covenant during the divorce proceedings, in particular in connection with the lower court's decision to grant custody of the child to the mother under the Canadian Divorce Act, to award her alimony and child support in the amount of \$800 per month and to divide matrimonial property on the basis of a retroactive application of the new Matrimonial Property Act of the Province of Alberta. Such dispositions allegedly constituted a gross abuse of judicial discretion by the judge concerned of the Trial Division of the Court of Queen's Bench of Alberta.

2.2 In particular, the author claims to be a victim of violations of:

(a) Article 2 of the Covenant, because "Canada failed to ensure that there is an effective remedy to the violation of my human rights, notwithstanding that the violations have been committed by persons acting in an official capacity";

(b) Article 3, because "the Government of Canada and the Government of Alberta failed to take appropriate steps to prevent discrimination based on sex in the implementation of laws governing child custody and division of matrimonial property";

(c) Article 7, because the Matrimonial Property Act which gives judges "absolute and unchallengeable discretionary powers" exposed him to "cruel, inhuman and degrading treatment" by subjecting him "to the whims of the judge, and his prejudices";

(d) Article 8, paragraph 2, of the Covenant, because "I am, in effect, held in servitude for an indefinite period of time, to my ex-spouse. I am forced to provide luxury to my ex-spouse, without any provisions whatsoever for the discontinuation of this state of servitude";

(e) Article 14, because he was tried "before a tribunal, whose competence and impartiality are in very grave doubt";

(f) Article 15, because of the retroactive application to him of the Matrimonial Property Act;

(g) Article 23, paragraph 4, because Canada has failed to "take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage, and at its dissolution", as manifested by a "systematic denial of fathers' rights by the courts of Canada generally, and Alberta specially";

(h) Article 26, because "there exists in Canada, at present, a rampant and blatant discrimination against men at the dissolution of marriage".

2.3 The author further argues that the granting of unrestricted and unchallengeable discretionary powers to judges in matters of division of matrimonial property and awarding of child custody goes literally against the essence of justice. "If the purpose of all laws is to protect one human from the arbitrary will of another, then the idea of awarding a judge unrestricted and unchallengeable discretionary powers amounts to suspension of the rule of law in favour of the rule of the individual. The unrestricted discretionary power of judges is literally against the intent and the purposes of the entire International Covenant on Civil and Political Rights, and is indeed unconstitutional according to the Canadian Charter of Rights." In his own case he claims that the trial judge "has been sexist and racist", possibly because the author is of Egyptian origin and his ex-wife was born and raised in the trial judge's home town.

2.4 With regard to the exhaustion of domestic remedies, the author states that he has appealed to the Supreme Court of Alberta, but that the court of appeal refused to investigate the trial judge's use of discretion, and that no written reasons were given for refusing to consider the appeal. The author has also addressed himself to the Chief Justice of Alberta, the Judicial Council, the Minister of Justice of Canada, the Minister of Justice of Alberta, and the Provincial Ombudsman of Alberta, without success, because the judge's power of discretion is considered beyond challenge and thus no investigations were conducted. The author indicates that he could still make an appeal to the Supreme Court of Canada, but explains that this would not be a practical option because the main issue is the judge's use of discretion and the current law provides that the judge has absolute discretion in matters of awarding child custody and division of matrimonial property, and thus

the Supreme Court could not overturn the lower court's decision without a legislative change. Moreover, even if the issue could be examined by the Supreme Court of Canada, the backlog of cases is such that review of his case would be impossible within a reasonable time.

3. By its decision of 15 October 1985, the Working Group of the Human Rights Committee transmitted the communication to the State party concerned, under rule 9 of the Committee's provisional rules of procedure, requesting information and observations relevant to the question of admissibility of the communication. The Working Group also requested the author to provide clarification of his allegation that appeal proceedings before the Supreme Court of Canada would be unduly prolonged and not constitute an effective remedy.

4.1 In his submission dated 19 December 1985 the author refers to the time factor and indicates that it took no less than four and a half years for his case to come to court. This period included a year of waiting before proceedings could start, and another year of waiting until the Amicus Curiae completed his report which was handed to him less than a week before the date of the trial, thus precluding any effective professional challenge to the conclusions of the report. It took approximately two more years of waiting until the Appellate Division of the Supreme Court of Alberta heard his case and dismissed it, without giving any written reasons. He further states that:

"litigants in Canada do not have a right to appeal to the Supreme Court of Canada. Appeals may be heard only after application for leave to appeal is made to, and granted by, the Supreme Court of Canada, which may refuse without giving any reasons, to hear any appeal. This is more likely to happen when the Provincial Appeal Court decision is - as in my case - unanimous ... I have it on good authority that, even if leave to appeal is granted by the Supreme Court of Canada, the waiting would be no less than two years and very likely, four years or more".

4.2 The author again draws attention to the factual situation, recalling that:

"legal separation between my ex-spouse and myself occurred when my son, A. P. B., was approximately one and a half years old. At present, my son is very close to the age of 10 years. By the time the issue comes to the Supreme Court of Canada, my son will likely be approximately 14 years of age. My financial loss as a direct consequence of a miscarriage of justice can be measured in the hundreds of thousands of dollars. Clearly, another four years of delay is totally unacceptable by any reasonable standards. Allowing the violations to my human rights and those of my son to continue unabated for another four years is, in itself, a gross travesty of justice."

4.3 The author also refers to the case of the Alberta Union of Provincial Employees, which after losing two court battles in Alberta with regard to the right to strike, submitted its case to the International Labour Organisation, a United Nations body. The Union took its case to the United Nations after losing two battles in Alberta and before reaching the Supreme Court of Canada. The fact that the case was accepted before it reached the Supreme Court of Canada clearly indicates a recognition of the fact that the delay encountered in attempting to go to the Supreme Court of Canada is unacceptable.

5.1 In its submission under rule 91, dated 25 February 1986, the State party describes the factual situation in detail and argues that the communication is inadmissible because of non-exhaustion of domestic remedies and also on the ground of non-substantiation of allegations.

5.2 With regard to the author's claim concerning custody, the State party points out that while he appealed to the Court of Appeal of Alberta on the issues of maintenance and division of matrimonial property, he did not appeal on the issue of custody, although he could have done so pursuant to the Alberta Judicature Act of 1980. Moreover, the State contends that the author has not substantiated his allegation that the custody ruling entailed violations of articles 7, 14, 23 and 26 of the Covenant. The fact that women are more often awarded custody of children upon divorce is insufficient substantiation.

5.3 With regard to the claim that article 2, paragraphs 1 to 3, and article 3 of the Covenant have been violated, the State party submits that although these provisions are relevant to a determination of whether other articles of the Covenant have been violated, they are not capable of independent violation in their own right.

5.4 With regard to maintenance and division of property, the State party notes that the author has failed to seek leave to appeal the judgement of the Alberta Court of Appeal to the Supreme Court of Canada. It is submitted that leave to appeal in at least 18 maintenance and/or matrimonial property cases has been granted by the Supreme Court of Canada since 1975 and that in eight of these cases the appeal was allowed. Thus, "leave to appeal to the Supreme Court of Canada on these matters is an effective and sufficient domestic remedy, although of course the relative merits of the case will affect the likelihood of relief being granted. Certain delays are inevitably involved in invoking the appellate jurisdiction of the highest court of any country, but Canada submits that the time periods involved in proceedings before the Supreme Court of Canada are not untoward in this regard, and that they are least prejudicial in matters such as the present, involving solely financial and property interests."

5.5 The State party also contends that the author has not substantiated his allegations concerning violations by Canada of the following provisions of the Covenant:

(a) Article 7: It is submitted that the author has not provided any substantiation of his claim to have been subjected to torture or cruel, inhuman or degrading treatment contrary to article 7 of the Covenant. In particular, it is contended that in order to substantiate this claim, it is not sufficient for the author to allege that he has been required to pay a total of \$800 a month maintenance to his former wife and child, or that he was required to pay the lump sum of \$37,066 to his former wife upon divorce;

(b) Article 8: It is similarly submitted that the above allegation provides no substantiation of the claim that his right not to be held in servitude pursuant to article 8, paragraph 2 of the Covenant has been violated;

(c) Article 14: It is submitted that there has been no substantiation of the claim by the author that the trial judge was biased or incompetent in awarding \$800 a month in maintenance to his former wife and child, or in granting his former wife a lump sum payment of \$37,066 upon divorce. It is insufficient to allege that an

unfavourable decision has been reached in order to substantiate a claim of bias or incompetence upon the part of a tribunal;

(d) Article 15: It is submitted that there has been no substantiation of the claim by the author that the application of the Matrimonial Property Act resulted in a violation of article 15 of the Covenant. Indeed, it is clear that the facts of this case fall outside the ambit of article 15, since it applies to the criminal rather than the civil process;

(e) Article 23, paragraph 4: It is submitted that there has been no substantiation of the author's claim that the maintenance and division of property awards violate article 23, paragraph 4, of the Covenant. In particular, it is submitted that it is necessary in these matters for judges to be granted a certain discretion, and that in any event the discretion is not an unfettered one in Canada;

(f) Article 26: It is submitted that there has been no substantiation of the allegation by the author that the maintenance and division of property award of the trial judge violated article 26 of the Covenant. In particular, no evidence has been provided of any discrimination on the basis of race or sex in the particular circumstances of the author's case.

5.1 In his comments of 25 March and 10 June 1986, the author states that if the Committee requires additional documentary substantiation, he will undertake to provide it. But, in the light of the extensive submissions and exhibits already presented, the author believes that sufficient substantiation has been provided to have the case declared admissible and to warrant further examination on the merits by the Committee. In particular, he argues that "the best substantiation of the allegations lies in the full text of the trial transcript, as well as other official documents, including the text of examination for discovery and four affidavits submitted to the Court of Queen's Bench of Alberta over the course of several years."

6.2 With regard to the allegations of violations by Canada of article 23, paragraph 4, and article 26 of the Covenant, the author states that, in addition to the evidence already provided, "there are numerous expert witnesses who would readily testify to the existence of rampant sexism, in my own case specifically, and in the implementation of child custody and division of matrimonial property laws, generally." Besides reiterating his allegations of "sexism and racism", the author submits "that judges in Canada are protected from legal accountability, contrary to article 26." In this connection he cites a recent attempt to sue members of the Court of Appeal. The Master in Chambers dismissed the claim on the basis that "judicial negligence does not constitute a cause of action at the common law".

6.3 With regard to the State party's contention that he has not exhausted domestic remedies with respect to the issue of custody, the author submits that "it has been the unanimous advice of several legal experts that the awarding of child custody is entirely within the discretion of the judge" and that therefore an appeal to the Court of Appeal would be totally futile. He could not, he argues, obtain a new evaluation of the facts by the Court of Appeal, and the only possibility of challenging the lower court's decision would be by establishing bias or misconduct on the part of the judge or of the Amicus Curiae. In pursuing this "unconventional means", he requested the Provincial Ombudsman in Alberta to conduct an investigation into the way the department of Amicus Curiae in Alberta is run.

However, the author alleges that the Attorney-General of Alberta invoked technical objections thus denying the Ombudsman the opportunity to investigate the matter and to establish the author's allegations. He also reported the lower court judge to the Chief-Justice of Alberta and to the Judicial Council. However, "the Judicial Council refused to conduct an investigation, thus effectively denying me the opportunity to prove my allegations of bias and denying me the means to ask for a new trial on the issue of custody." The author also forwards press reports showing that recently many other divorced fathers have unsuccessfully attempted to sue the Amicus Curiae, but that the Master in Chambers (who is not a judge) has blocked the legal action, "thus, denying citizens of this province the fundamental constitutional right of having their cases determined in court."

6.4 The author concludes that domestic remedies, to the extent that they can be considered effective, have been exhausted. He further emphasizes the time factor "since the harm to my son continues until a solution is reached."

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

7.2 The Committee observes in this respect, on the basis of the information available to it, that the author has failed to pursue remedies which the State party has submitted were available to him, namely, an appeal to the Court of Appeal on the issue of custody and an application for leave to appeal to the Supreme Court of Canada on the issues of maintenance and division of matrimonial property. The Committee has noted the author's belief that a further appeal on the issue of custody would be futile and that a procedure before the Supreme Court of Canada would entail a further delay. The Committee finds, however, that, in the particular circumstances disclosed by the communication, the author's doubts about the effectiveness of these remedies are not warranted and do not absolve him from exhausting them, as required by article 5, paragraph 2 (b), of the Optional Protocol. The Committee accordingly concludes that domestic remedies have not been exhausted.

8. The Human Rights Committee therefore decides:

1. The communication is inadmissible;
2. This decision shall be communicated to the author and to the State party.

**D. Communication No. 209/1986, F. G. G. v. the Netherlands
(Decision of 25 March 1987, adopted at the twenty-ninth
session)**

Submitted by: F. G. G. [name deleted]

Alleged victim: the author

State party concerned: the Netherlands

Date of communication: 15 April 1986 (date of initial letter)

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

Meeting on 25 March 1987,

adopts the following:

Decision on admissibility

1.1 The author of the communication (initial letter of 15 April 1986 and subsequent letter of 28 October 1986) is F. G. G., a Spanish seaman who, in 1983, was dismissed together with 222 other foreign sailors by a Netherlands private shipping company. The reasons for the dismissals put forward by the company were that the foreign seamen's knowledge of Dutch was not sufficient and that the company was forced to reduce its work force because of economic difficulties. The author points out in this connection that most of the foreign seamen had been employed for over 15 years and that no Netherlands national was dismissed.

1.2 The author states that under Netherlands labour law the Arbeidsburo (an agency of the Ministry of Labour) must state whether a dismissal may or may not take place and, in that connection, must hear both parties before taking a decision. He alleges that at the time the company requested permission for his dismissal he was not properly informed of his rights, but only told that he would have to make his submission to the Arbeidsburo within 14 days. Being at sea at the time and not having an opportunity to seek counsel, this requirement, he states, was very difficult for him to comply with.

1.3 The author claims that in the circumstances which he describes he was denied the right to equal treatment before the law and the right to equal protection of the law. In support of his claim he encloses copies of various documents, including a report from the National Ombudsman, a submission by the dismissed seamen to the Cantonal Court (court of first instance) in response to a submission made to the Court by the shipping company, a letter addressed to the Queen of the Kingdom of the Netherlands concerning the dismissal of the foreign seamen, certificates concerning the author's prior satisfactory employment with other Netherlands shipping companies, correspondence between the author and the Ministry of Justice concerning the author's application for a residence permit in the Netherlands and a decision of the Ministry of Justice declining to grant a residence permit to the author.

2. By its decision of 1 July 1986, the Working Group of the Human Rights Committee transmitted the communication to the State party concerned under rule 91

of the Committee's provisional rules of procedure, requesting information and observations relevant to the question of admissibility of the communication.

3.1 In its submission under rule 91, dated 29 September 1986, the State party describes the factual situation in detail and argues that the communication is inadmissible because of non-exhaustion of domestic remedies and also on the ground of incompatibility with the Covenant.

3.2 With regard to the author's claim about his dismissal, the State party states that F. G. G. "was employed as a seaman by NedLloyd Rederijdsdienst BV, Rotterdam". The continuing recession and the considerable overcapacity of the world fleet, together with sizeable operating losses by the company, necessitated a radical reorganization within NedLloyd, entailing a reduction in the number of employees. It was decided by NedLloyd that 209 shore-based staff and 222 crew members would have to be dismissed. In 1983 NedLloyd applied to the director of the Local Employment Office in Rotterdam (the competent government body) for dismissal permits as it was obliged to do under article 6 of the Labour Relations (Special Powers) Decree promulgated by the Netherlands Government in 1945. In the absence of a mutual agreement between the employer and the employee, employment may not be terminated, under the said article, without a permit from the director of the Local Employment Office. With a few exceptions, the permits applied for were granted by the director on 28 September 1983. NedLloyd then proceeded to dismiss those concerned, including F. G. G. One hundred and twenty of the dismissed seamen, including F. G. G., subsequently issued a writ of summons, dated 13 February 1984, asking the Rotterdam Cantonal Court to declare their dismissal null and void and to order that they be reinstated in their jobs because their dismissal had been manifestly unreasonable. Netherlands courts are competent to make such an order under articles 1639s and 1639t of the Civil Code. The dismissed seamen claimed in this action that the criteria used in selecting those who were to be dismissed were discriminatory. The Cantonal Court reached a provisional decision in respect of this case on 13 June 1984, against which the dismissed seamen, including F. G. G., and NedLloyd lodged an appeal. The judicial proceedings are still in progress. In relation to the proceedings concerning his dismissal by NedLloyd, F. G. G. invokes "the right to be fairly and equally treated before the law", while in relation to the proceedings concerning the granting of the dismissal permit by the director of the Local Employment Office, he invokes "the right to have full information and the opportunity to defend himself".

3.3 With regard to the admissibility of F. G. G.'s communication, the State party addresses two questions:

"(a) Does the application relate to violation by the Kingdom of the Netherlands of rights and freedoms embodied in the International Covenant on Civil and Political Rights and is the application compatible with the provisions of the Covenant?"

"(b) Have all domestic remedies been exhausted?"

3.4 The State party submits that it is not clear which of the rights and freedoms embodied in the Covenant F. G. G. deems to have been violated. If F. G. G.'s invocation of "the right to have full information and the opportunity to defend himself" is intended to refer to article 14, paragraph 1, of the Covenant, the State party argues that it is not well-founded, "since he invokes this right in respect of the procedure whereby the dismissal permit was granted by the director

of the Local Employment Office. This procedure does not, however, constitute 'the determination of any criminal charge' or of 'rights and obligations in a suit at law' to which article 14, paragraph 1, refers. The application cannot therefore be said to relate to violation of this paragraph of the Covenant."

3.5 In respect of F. G. G.'s invocation of "the right to be fairly and equally treated before the law", the State party observes that

"If this is intended as an invocation of article 26 of the Covenant, then in so far as this article is invoked in respect of F.G.G.'s dismissal by NedLloyd the Netherlands Government ... takes the view that article 26 of the Covenant does entail an obligation to avoid discrimination, but that this article can only be invoked under the Optional Protocol to the Covenant in the sphere of civil and political rights. The scope of article 26 of the Covenant is not necessarily limited to those civil and political rights that are embodied in the Covenant. (The Netherlands Government could, for instance, envisage the admissibility under the Optional Protocol of a complaint concerning discrimination in the field of taxation.) But the Government cannot accept the admissibility of a complaint concerning rights which are not in themselves civil and political rights, such as economic, social and cultural rights. The latter category of rights is governed by a separate international covenant. F.G.G.'s complaint relates to rights in the economic and social sphere, which fall under the International Covenant on Economic, Social and Cultural Rights. Articles 2, 6 and 7 of that Covenant are of particular relevance here. That Covenant has its own specific system and its own specific organ for international monitoring of how States parties meet their obligations. It deliberately does not provide for an individual complaints procedure. The Government considers it incompatible with the aims of both the Covenants and the Optional Protocol that an individual complaint with respect to the right to equal treatment as referred to in article 2 of the International Covenant on Economic, Social and Cultural Rights should be dealt with by the Human Rights Committee by way of an individual complaint under the Optional Protocol based on article 26 of the International Covenant on Civil and Political Rights. The Government therefore takes the view that the application submitted by F.G.G. does not relate to any violation by the Kingdom of the Netherlands of rights and freedoms embodied in that Covenant and that it is not compatible with the provisions thereof."

3.6 With regard to the question whether domestic remedies have been exhausted, the State party observes:

"The civil proceedings brought by the seamen in connection with the dismissal by NedLloyd of F.G.G. and his fellow employees ... are still sub judice. The [Rotterdam] Cantonal Court has not yet made a definitive decision with regard to the seamen's claim. Among the issues raised in these proceedings is the lawfulness of the granting of the dismissal permit. Article 26 of the Covenant is one of the provisions invoked by the seamen. The definitive decision of the Cantonal Court will be open to appeal before the District Court whose decision is open to appeal in cassation before the Supreme Court. The Government therefore takes the view that with regard to F.G.G.'s application domestic remedies have not yet been exhausted."

4.1 In his comments of 28 October 1986, the author contends that the State party's submission is incomplete. He adds the following facts:

- "1. From 24 October 1963 to 8 September 1971 I worked on Netherlands based ships.
- "2. From 9 September 1971 to 7 August 1976 I worked on Netherlands based ships for transport on inland water (Rhine).
- "3. From 7 August 1976 to 22 September 1983 I worked on Netherlands based ships (NedLloyd Company).
- "4. I was registered at the Rotterdam Municipality from 24 April 1972 until 4 August 1978 when, without my knowledge, I was erased from the register of municipal inhabitants.
- "5. On three different occasions until 1983, I requested official permission to establish myself in the Netherlands, which was not granted, although I fulfilled all the requirements imposed under the Netherlands law for foreign seamen (no criminal/political record either in Spain or in the Netherlands; more than seven years of employment on Netherlands based ships ...; employed and registered in a given Netherlands municipality)."

4.2 With regard to his claim to be a victim of discrimination, he stresses that

"The people fired were all foreign workers ... According to the Netherlands Labour Relations Act, when dismissals may take place, the Labour Employment Office must take into account the following elements:

"(a) Seniority (first in, last out);

"(b) Representation (persons to be fired must be proportionally represented among different 'workers stratas at the company branch'). That means candidates to be dismissed must be selected among persons of different age, mastership, experience, education, etc;

"(c) Workers to be fired have the right to ask for an alternative job at the same company/subsidiaries, if there are vacancies.

"All of these elements are stated at the Collective Labour Agreement (CAO) signed by the Netherlands Labour Unions and the Companies. The CAO was agreed five years before we were fired and any foreign seaman with more than three years of service was automatically included in it, independently of whether the seaman was a member of a given union or not."

4.3 The author argues that none of the above-mentioned criteria were taken into account by the Labour Employment Office at Rotterdam. He further states:

"The Minister of Labour produced a letter (dated 23 September 1983) to the Director of the Labour Employment Office, stating that in the specific situation of the foreign seamen ('NedLloyd Case') the principles of seniority, and representation must not be applied. A new criteria, completely unknown to us and which was not present in the CAO was implemented: the criteria of the place of residence for foreign seamen. That means, seamen could be fired if

they could not prove that they had a residence on Netherlands soil. Never before was the place of residence an element to determine whether workers could be fired."

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

5.2 With regard to article 5, paragraph 2 (b) of the Optional Protocol, the State party has argued that the civil proceedings concerning the author and the other seamen are still sub judice before the Rotterdam Cantonal Court. An adverse decision by that court would be appealable to the District Court, whose decision in turn could be tested in cassation before the Supreme Court. Accordingly, the Committee finds that domestic remedies have not been exhausted.

6. The Human Rights Committee therefore decides:

1. The communication is inadmissible;
2. This decision shall be communicated to the author and to the State party.

C. Communication No. 217/1986, H. v. d. P. v. the Netherlands
(Decision of 8 April 1987, adopted at the twenty-ninth
session

Submitted by: H. v. d. P. [name deleted]

Alleged victim: the author

State party concerned: the Netherlands

Date of communication: 16 December 1986

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

Meeting on 8 April 1987,

adopts the following:

Decision on admissibility

1. The author of the communication dated 9 June 1986 is H.v.d.P., a national of the Netherlands born in 1945, at present residing in the Federal Republic of Germany. He claims to be a victim of violations by the Netherlands of articles 2, 14, 25 (c) and 26 of the International Covenant on Civil and Political Rights.

2.1 The author, who was an industrial engineer in the Netherlands, is now employed as a substantive patent examiner at the European Patent Office (EPO) in Munich, Germany. He states that in January 1980 he applied for a post as examiner in EPO. He was offered the post at the A1, step 2 level and he accepted it. Only after he had been several months with the organization, and had had the opportunity to compare his credentials and experience with that of his peers, did he realize that he had apparently been appointed at a discriminatorily low level and he felt that the preponderance of citizens of the Federal Republic of Germany in the higher grades was the result of the discriminatory practices of the organization. He thus lodged an appeal on the basis of denial of equal treatment, both within the Co-ordinated Organizations (North Atlantic Treaty Organization, Council of Europe, European Space Agency etc.) and within EPO itself, claiming that he should have been appointed at the A2 level in 1980. His appeal was rejected on 19 January 1982 by the President of EPO as ill-founded. He then appealed to the Internal Appeals Committee, which on 6 December 1982 submitted its report rejecting the author's appeal and concluding that "no breach of the Service Regulations or of any rule of general law affecting international civil servants has been established". In reaching its decision, the Internal Appeals Committee relied heavily on the judicial precedents of the Administrative Tribunal of the International Labour Organisation. On 16 February 1983, the author proceeded to appeal to the Administrative Tribunal of ILO, which dismissed his complaint (Judgement No. 568 of 20 December 1983), concluding that

"The circumstances in which the organization was created ... show that it was necessary for the organization to recruit a large staff to fill all grades from the highest to the lowest and so, when fixing the initial grade, to take into account experience gained, first, in patent offices and, second, in

industry generally. In reckoning this experience the organization distinguishes between the first and second categories. The complainant contends that this is an unreal distinction and consequently one which offends against the principle of equality of treatment. In the opinion of the Tribunal the distinction is not unreal and the complainant has not shown any breach of principle. He is employed as a search examiner and in that work it is reasonable to believe that experience in the handling of patent applications is more immediately useful than general experience as an industrial engineer."

2.2 The author applied to the European Commission of Human Rights* on 13 June 1984, which on 15 May 1986 declared his application inadmissible ratione materiae on the grounds that litigation concerning the modalities of employment as a civil servant, on either the national or international level, fell outside the scope of the European Convention on Human Rights.

2.3 The author then turned to the Human Rights Committee, which he considers competent to consider the case, since five States parties (France, Italy, Luxembourg, the Netherlands and Sweden) to the European Patent Convention are also parties to the Optional Protocol to the International Covenant on Civil and Political Rights. He argues that "pursuant to article 25 (c) every citizen shall have access, on general terms of equality, to public service in his country. EPO, though a public body common to the Contracting States, constitutes a body exercising Dutch public authority". The appeal to the President of EPO and the opinion given by the Internal Appeals Committee, the author argues, do not constitute an effective remedy within the meaning of article 2 of the Covenant against violations of article 25 (c) of the Covenant. Moreover, "the Internal Appeals Committee is a travesty of competence, independence and impartiality as required by article 14 of the Covenant. IAC declines to adjudicate on the basis of public international law invoked by the applicant, i.e. law which the Contracting States undertook solemnly to observe".

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

3.2 The Human Rights Committee observes in this connection that it can only receive and consider communications in respect of claims that come under the jurisdiction of a State party to the Covenant. The author's grievances, however, concern the recruitment policies of an international organization, which cannot, in any way, be construed as coming within the jurisdiction of the Netherlands or of any other State party to the International Covenant on Civil and Political Rights and the Optional Protocol thereto. Accordingly, the author has no claim under the Optional Protocol.

4. The Human Rights Committee therefore decides:

The communication is inadmissible.

* When ratifying the Optional Protocol the Netherlands did not make a reservation aimed at precluding examination by the Human Rights Committee of a case previously considered under another procedure of international investigation or settlement.

List of Committee documents issued during the reporting periodA. Twenty-ninth session

CCPR/C/14/Add.7	Supplementary report of El Salvador
CCPR/C/32/Add.13	Second periodic report of Poland (additional information)
CCPR/C/37/Add.4	Second periodic report of Senegal
CCPR/C/37/Add.5	Second periodic report of Denmark
CCPR/C/45	Consideration of reports submitted by States parties under article 40 of the Covenant - initial reports of States parties due in 1987, note by the Secretary-General
CCPR/C/46	Consideration of reports submitted by States parties under article 40 of the Covenant - second periodic reports of States parties due in 1987, note by the Secretary-General
CCPR/C/47	Provisional agenda and annotations - twenty-ninth session
CCPR/C/SR.702-729/Add.1 and corrigendum	Summary records of the twenty-ninth session

B. Thirtieth session

CCPR/C/2/Rev.1	Reservations, declarations, notifications and objections relating to the International Covenant on Civil and Political Rights and the Optional Protocol thereto
CCPR/C/4/Add.10	Initial report of Zaire
CCPR/C/36/Add.3	Initial report of Zambia
CCPR/C/37/Add.6	Second periodic report of Colombia
CCPR/C/37/Add.7	Second periodic report of Trinidad and Tobago
CCPR/C/46/Add.1	Second periodic report of Rwanda
CCPR/C/48	Provisional agenda and annotations - thirtieth session
CCPR/C/SR.730-757 and corrigendum	Summary records of the thirtieth session

كيفية الحصول على منشورات الأمم المتحدة

يمكن الحصول على منشورات الأمم المتحدة من المكتبات ودور التوزيع في جميع أنحاء العالم. استعلم عنها من المكتبة التي تعامل معها أو كتب إلى الأمم المتحدة، قسم البيع في نيويورك أو في جنيف.

如何购取联合国出版物

联合国出版物在全世界各地的书店和经销处均有发售。请向书店询问或写信到纽约或日内瓦的联合国销售组。

HOW TO OBTAIN UNITED NATIONS PUBLICATIONS

United Nations publications may be obtained from bookstores and distributors throughout the world. Consult your bookstore or write to: United Nations, Sales Section, New York or Geneva.

COMMENT SE PROCURER LES PUBLICATIONS DES NATIONS UNIES

Les publications des Nations Unies sont en vente dans les librairies et les agences depositaires du monde entier. Informez vous auprès de votre librairie ou adressez vous à: Nations Unies, Section des ventes, New York ou Genève.

КАК ПОЛУЧИТЬ ИЗДАНИЯ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ

Издания Организации Объединенных Наций можно купить в книжных магазинах и агентствах по всему миру. Наводите справки об изданиях в нашем книжном магазине или пишете по адресу: Организация Объединенных Наций, Секция по продаже изданий, Нью-Йорк или Женевы.

COMO CONSEGUIR PUBLICACIONES DE LAS NACIONES UNIDAS

Las publicaciones de las Naciones Unidas están en venta en librerías y casas distributoras en todas partes del mundo. Consulte a su librero o diríjase a: Naciones Unidas, Sección de Ventas, Nueva York o Ginebra.
