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# Report of the Human Rights Committee

## Volume I

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## NOTE

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

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## Executive summary

The present annual report covers the period from 1 August 2001 to 31 July 2002 and the seventy-third, seventy-fourth and seventy-fifth sessions of the Committee. Since the adoption of the last report, one State (Eritrea) became a party to the Covenant, four States (Azerbaijan, Mali, Mexico and Yugoslavia) became parties to the Optional Protocol and two States (Lithuania and Yugoslavia) became a party to the Second Optional Protocol, thus bringing the total of States parties to these instruments to 149, 102 and 47, respectively.

During the period under review, the Committee considered 11 initial and periodic reports under article 40 and adopted concluding observations on them (seventy-third session: Ukraine, United Kingdom of Great Britain and Northern Ireland and Overseas Territories, Switzerland and Azerbaijan; seventy-fourth session: Georgia, Sweden and Hungary; seventy-fifth session: New Zealand, Viet Nam, Yemen and Moldova). It further considered one country situation in the absence of a report from the State party, and adopted provisional concluding observations in that respect. Under the Optional Protocol procedure, it adopted 35 Views on communications, declared 2 communications admissible and 13 inadmissible. No communication was discontinued (see below, chapter IV for concluding observations and chapter V for information on Optional Protocol decisions).

The Committee continues to note with concern that, generally, States parties whose reports were considered during the period under review have not provided information on the implementation of the Committee's concluding observations adopted in their respect. The Committee, therefore, adopted a procedure for following up on concluding observations in 2001 (see the Committee's annual report for 2001, A/56/40, volume I, chapter II).

During its seventy-fourth session, the Committee adopted a number of decisions designed to spell out the modalities of following up concluding observations (see annex III.A below). The most important measure consists in the appointment of a Special Rapporteur for Follow-Up on Concluding Observations; Mr. Maxwell Yalden was designated as Special Rapporteur during the seventy-fifth session. During its seventy-fourth session, the Committee also adopted a number of decisions on working methods, designed to streamline and make more effective the procedure for the consideration of State reports (see below, annex III.B and chapter II, paragraphs 55 and 56).

The Committee again deplores that many States parties do not comply with their reporting obligations under article 40 of the Covenant. It therefore adopted a procedure for dealing with non-reporting States. This procedure does not, however, relieve States parties of their reporting obligations.

During its seventy-fifth session, the Committee applied for the first time the new procedure for dealing with non-reporting States. It considered the measures taken by the Gambia to give effect to the rights recognized in the Covenant without a report and in the absence of a delegation. In accordance with rule 69 A, paragraph 1, of its revised rules of procedure, it adopted provisional concluding observations on the measures taken by the Gambia to give effect to the rights recognized in the Covenant, which were transmitted to the State party.

The workload of the Committee under the Optional Protocol to the Covenant continued to grow during the reporting period, as demonstrated by the large number of cases registered. A total of 102 communications were registered under the Optional Protocol, and by the end of the seventy-fifth session, a total of 262 communications were pending, more than ever before (see chapter V below). Thanks to the work of the newly established Petitions Team in the Office of the High Commissioner for Human Rights, the backlog in dealing with communications has not increased, but further resources are needed for the expeditious handling of communications under the Optional Protocol procedure.

The Committee again notes that many States parties have failed to implement the Views adopted under the Optional Protocol. Through its Special Rapporteur for Follow-Up on Views, the Committee has continued to seek to ensure implementation of its Views by States parties, by arranging meetings with representatives of States parties which have not responded to the Committee's request for information about the measures taken to give effect to its Views, or which have given unsatisfactory replies to its request. However, follow-up missions to the States parties concerned could not be conducted, due to lack of funds (see chapter VI below).

On 16 July 2002 (seventy-fifth session), the Committee adopted General Comment No. 30 [75] on reporting obligations of States parties under the Covenant. This General Comment supersedes General Comment No. 1 on the same subject (see annex VI below).

Messrs. Lallah and Solari-Yrigoyen represented the Committee at the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, from 31 August to 8 September 2001. During the seventy-fourth session, Messrs. Solari-Yrigoyen and Lallah briefed the Committee on the Conference proceedings and the principal recommendations of the Durban Declaration and Programme of Action. The Committee has decided to give due attention to all pertinent aspects of the Declaration and Programme of Action in its activities. Sir Nigel Rodley represented the Committee at the International Consultative Conference on School Education in relation with Freedom of Religion and Belief, Tolerance and Non-discrimination, held in Madrid from 23 to 25 November 2001. He briefed the Committee on the Conference results during the seventy-fourth session.

The Committee wishes to put on record that much of its official documentation is made available in all of the Committee's working languages at a late stage, thereby causing difficulties in the discharge of its mandated activities. The Committee urges the Secretariat to make further efforts to make documents available in a timely manner. Furthermore, every effort should be made to resume publication of the Committee's Selected Decisions under the Optional Protocol.

The Committee has noted the reduction of the honorarium payable to its members to the symbolic sum of US$ 1, decided by the General Assembly on 27 March 2002. It considers that this reduction of the annual honorarium is incompatible with article 35 of the Covenant. The Committee regrets that there was no prior consultation and urges the General Assembly to reconsider the issue.

The officers of the Committee remained the same as in the previous reporting period, with Mr. P. N. Bhagwati acting as Chairperson, Messrs. A. Amor, D. Kretzmer and H. Solari-Yrigoyen as Vice-Chairpersons and Mr. E. Klein as Rapporteur.

# CHAPTER I. JURISDICTION AND ACTIVITIES

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

1. As at 26 July 2002, the closing date of the seventy-fifth session of the Human Rights Committee, there were 149 States parties[1] to the International Covenant on Civil and Political Rights, and 102 States parties to the Optional Protocol to the Covenant.[2] Both instruments have been in force since 23 March 1976.

2. Since the last report Eritrea has become a party to the Covenant.

3. Since the last report four more States have ratified the Optional Protocol, namely Azerbaijan, Mali, Mexico, and the Federal Republic of Yugoslavia.

4. As at 26 July 2002, there was no change in the number of States (47) which had made the declaration envisaged under article 41, paragraph 1, of the Covenant. In this respect, the Committee appeals to States parties to make the declaration under article 41 of the Covenant and to use this mechanism, with a view to making the implementation of the provisions of the Covenant more effective.

5. The Second Optional Protocol aiming at the abolition of the death penalty entered into force on 11 July 1991. As at 26 July 2002, there were 47 States parties to this Protocol, an increase since the Committee's last report by two: Lithuania and the Federal Republic of Yugoslavia.

6. A list of States parties to the Covenant and to the two Optional Protocols, indicating those States which have made the declaration under article 41, paragraph 1, of the Covenant, is contained in annex I to the present report.

7. Reservations and other declarations made by a number of States parties in respect of the Covenant and/or the Optional Protocols are set out in the notifications deposited with the Secretary-General. The Committee notes with regret that no reservations to the Covenant were withdrawn during the reporting period, and encourages States parties to consider the possibility of withdrawing reservations to the Covenant.

8. The following Governments have objected to the reservations to articles 7 and 12, paragraph 3, entered by Botswana upon ratification of the Covenant on 8 September 2000 (the date of the objection is given in brackets): Austria (17 October 2001), Denmark (4 October 2001), France (15 October 2001), Ireland (11 October 2001), the Netherlands (9 October 2001), Norway (11 October 2001), Portugal (26 July 2001), Spain (9 October 2001) and Sweden (25 July 2001). The objecting States consider that Botswana's reservation to articles 7 and 12, paragraph 3 of the Covenant, which limits the application of these provisions by reference to the content of existing legislation in Botswana, is contrary to the object and purpose of the Covenant, in that it seeks to limit Botswana's responsibilities under the Covenant by invoking general principles of its constitutional law. They note that their objection does not prevent the entry into force of the Covenant between the objecting State and Botswana.

9. On 12 October 2001, the Secretary-General of the United Nations, acting in his capacity as depositary, communicated that no State party to the Second Optional Protocol had objected within 12 months of the date of the depositary notification (5 October 2000) to the modification of the reservation entered by Azerbaijan upon ratification of the Second Optional Protocol. Accordingly, the modified reservation was deemed to have been accepted by the States parties on 5 October 2001.

### B. Sessions of the Committee

10. The Human Rights Committee held three sessions since the adoption of its previous annual report. The seventy-third session (1956th to 1984th meetings) was held at the United Nations Office at Geneva from 15 October to 2 November 2001, the seventy-fourth session (1985th to 2011th meetings) was held at United Nations Headquarters from 18 March to 5 April 2002, and the seventy-fifth session (2012th to 2041st meetings) was held at the United Nations Office at Geneva from 8 to 26 July 2002.

### C. Attendance of sessions

11. Seventeen members of the Committee participated in the seventy-third session. All members of the Committee participated in the seventy-fourth and seventy-fifth sessions.

### D. Election of officers

12. At its 1897th meeting (seventy-first session), held on 19 March 2001, the Committee elected the following officers for a term of two years, in accordance with article 39, paragraph 1, of the Covenant:

| | |
|---|---|
| Chairperson: | Mr. Prafullachandra Natwarlal Bhagwati |
| Vice-Chairpersons: | Mr. Abdelfattah Amor<br>Mr. David Kretzmer<br>Mr. Hipólito Solari-Yrigoyen |
| Rapporteur: | Mr. Eckart Klein |

13. During its seventy-third through seventy-fifth sessions, the Committee held nine Bureau meetings (three per session) with interpretation. Pursuant to the decision taken at the seventy-first session, the Bureau records its decisions in formal minutes, which are kept as a record of all decisions taken. Due to budgetary cutbacks, Bureau meetings during the seventy-fourth and seventy-fifth sessions could only be held during the normal Committee meeting hours, thereby reducing time available to the plenary for other mandated activities.

### E. Special rapporteurs

14. The Special Rapporteur on Follow-Up of Views, Mr. Nisuke Ando, met with representatives of the Democratic Republic of the Congo and Zambia during the seventy-third session. During the seventy-fourth session Mr. Ando met with representatives of Angola,

Namibia, Nicaragua, Peru, the Philippines, Sierra Leone and Togo. He presented a detailed report on his follow-up activities to the seventy-fourth session. During the seventy-fifth session, Mr. Ando met with representatives of Colombia and Spain.

15. The Special Rapporteur on New Communications, Mr. Martin Scheinin, continued his functions during the reporting period. He registered 102 communications, transmitted these communications to the States parties concerned, and issued 27 decisions on interim measures of protection pursuant to rule 86 of the Committee's rules of procedure.

### F. Working groups

16. In accordance with rules 62 and 89 of its rules of procedure, the Committee established working groups which met before each of its three sessions. The working groups were entrusted with the task of making recommendations (a) regarding communications received under the Optional Protocol; and (b) for the purposes of article 40, including the preparation of lists of issues concerning the initial or periodic reports scheduled for consideration by the Committee.

17. Representatives of specialized agencies and subsidiary bodies (International Labour Organization, Office of the United Nations High Commissioner for Refugees, World Health Organization and United Nations Population Fund) provided advance information on the reports to be considered by the Committee. To that end, the working groups also considered the oral and written presentations by representatives of non-governmental organizations, including Amnesty International, Human Rights Watch, Equality Now, the International League for Human Rights, the Lawyers' Committee for Human Rights, and several national human rights non-governmental organizations. The Committee welcomed the increasing interest shown by and the participation of these agencies and organizations and thanked them for the information provided.

18. Seventy-third session (8-12 October 2001): a combined Working Group on Communications and Article 40 was composed of Mrs. Medina Quiroga and Messrs. Amor, Bhagwati, Khalil, Lallah, Rivas Posada and Solari-Yrigoyen. Mr. Rivas Posada was elected Chairman-Rapporteur.

19. Seventy-fourth session (11-15 March 2002): the Working Group on Communications was composed of Messrs. Amor, Bhagwati, Klein, Kretzmer and Sir Nigel Rodley. Mr. Klein was elected Chairman-Rapporteur. The Working Group on Article 40 was composed of Messrs. Ando, Glèlè-Ahanhanzo, Khalil, Rivas Posada, Solari-Yrigoyen and Yalden. Mr. Yalden was elected Chairman-Rapporteur. Members of each working group also participated in all or several meetings of the other working group.

20. Seventy-fifth session (1-5 July 2002): the Working Group on Communications was composed of Mr. Bhagwati, Ms. Chanet, Mr. Kretzmer, Mr. Rivas Posada, Sir Nigel Rodley and Mr. Solari-Yrigoyen. Sir Nigel Rodley was elected Chairman-Rapporteur of the Working Group. Due to the establishment of country report task forces during the seventy-fifth session (see below, chapter II, paragraph 56, and annex III.B), no pre-sessional working group on article 40 was convened during that session.

## G. Question of honoraria of Committee members

21. On 27 March 2002, the General Assembly adopted resolution 56/272, under whose terms the honoraria payable to members of the Committee are reduced from their current level to the sum of US$ 1, with effect from 6 April 2002. The measure also affects the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women, the International Law Commission, the United Nations Administrative Tribunal and the International Narcotics Control Board. On 24 April 2002, the Controller of the United Nations informed the United Nations High Commissioner for Human Rights that for those human rights treaty bodies that had met once prior to 6 April 2002, including the Human Rights Committee, the full honoraria applicable prior to that date would remain in effect for 2002, and the revised honorarium would be applied as of 1 January 2003.

22. In a letter addressed to the Secretary-General of the United Nations on the Committee's behalf on 3 April 2002, the Chairman of the Committee drew attention to article 35 of the Covenant, which stipulates that Committee members shall "receive emoluments from the United Nations on such terms and conditions as the General Assembly may decide, *having regard to the importance of the Committee's responsibilities*" (emphasis added in the letter). The Committee considered that the reduction of the honorarium to a symbolic sum of US$ 1, by purporting to comply merely with the letter of article 35 while ignoring its true spirit and content, did not amount to a good faith interpretation of the Covenant. It further noted that the decision would have a negative impact on the work of the Committee.

23. The Committee regrets that there was no prior consultation and maintains its view that the reduction of honoraria payable to its members is incompatible with article 35 of the Covenant, and requests the General Assembly to reconsider the issue, with a view to reinstating the honoraria at the earliest opportunity.

## H. Related United Nations human rights activities

24. At all of its sessions, the Committee was informed about activities of United Nations bodies dealing with human rights issues. In particular the relevant general comments and concluding observations of the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, and the Committee against Torture were made available to the members of the Human Rights Committee. Relevant developments in the General Assembly and the Commission on Human Rights were also discussed. The High Commissioner for Human Rights addressed the seventy-third session of the Committee and explained the activities of her Office after the conclusion of the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, and the Office's activities in the context of the United Nations response to the terrorist attacks of 11 September 2001 in the United States of America. The Deputy High Commissioner addressed the seventy-fifth session of the Committee.

25. The World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance was held in Durban from 31 August to 8 September 2001. The Committee was represented by Messrs. Solari-Yrigoyen and Lallah; Messrs. Amor and Glèlè-Ahanhanzo

participated in their capacity as Special Rapporteurs of the Commission on Human Rights. After the release of the final version of the Durban Declaration and Programme of Action on 2 January 2002, the Committee's designated representative for the World Conference, Mr. Solari-Yrigoyen presented his report and evaluation of the Conference results to the Committee during its seventy-fourth session. Messrs. Lallah, Amor and Glèlè-Ahanhanzo also commented on the results of the World Conference. On 5 April 2002, the Chairman addressed a letter on behalf of the Committee to the High Commissioner for Human Rights, assuring her that the Committee would give due attention to the relevant passages of the Durban Declaration and Programme of Action in all of its activities, especially in the context of the State reporting procedure and in the context of consideration of general comments.

26. The International Consultative Conference on School Education in relation with Freedom of Religion and Belief, Tolerance and Non-discrimination was held in Madrid from 23 to 25 November 2001. Convened by Mr. Amor (in his capacity as Special Rapporteur on the Right to Freedom of Religion or Belief of the Commission on Human Rights) and the Government of Spain, the Conference sought to formulate a strategy for the prevention of intolerance in education. The Conference was attended by over 80 governmental delegations; the High Commissioner for Human Rights addressed the Conference on behalf of the Secretary-General of the United Nations; Sir Nigel Rodley participated on behalf of the Committee. The Conference adopted a final document by consensus. During the seventy-fourth session of the Committee, Mr. Amor and Sir Nigel Rodley briefed the Committee on the results of the Conference.

## I. Meeting with States parties

27. As detailed in the last Annual Report (A/56/40, vol. I, para. 27), the Committee is encouraged by the results of the first consultation with States parties, which took place on 30 October 2000. On 26 July 2001, therefore, it decided to organize a similar consultation in the course of its seventy-sixth session, in October 2002.

## J. Derogations pursuant to article 4 of the Covenant

28. Article 4, paragraph 1, of the Covenant stipulates that in time of public emergency, States parties may take measures derogating from certain of their obligations under the Covenant. Pursuant to paragraph 2, no derogation is allowed from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18. Pursuant to paragraph 3, any derogation must be immediately notified to the States parties through the intermediary of the Secretary-General. A further notification is required upon the termination of the derogation.

29. In cases of derogation the Committee considers whether the State party has satisfied the conditions of article 4 of the Covenant, and, in particular, insists that the derogation be terminated as soon as possible. When faced with situations of armed conflict, both external and internal, which affect States parties to the Covenant, the Committee will necessarily examine whether these States parties are complying with all of their obligations under the

Covenant. On the interpretation of article 4 of the Covenant, reference is made to the Committee's practice under the reporting and the Optional Protocol procedures. The Committee's General Comment No. 29, adopted during the seventy-second session, establishes guidelines that States parties are required to respect during a state of emergency (see document A/56/40, volume I, annex VI).

30. For States parties to the Covenant, the continued practice of derogations has frequently been a subject of discussion in the context of the consideration of State party reports under article 40 of the Covenant, and has often been identified as a matter of concern in the concluding observations, including some of those adopted during the reporting period. While not questioning the right of States parties to derogate from certain obligations in states of emergency, in conformity with article 4 of the Covenant, the Committee always urges States parties to withdraw the derogations as soon as possible.

31. For States parties to the Optional Protocol, the Committee has considered derogations in the context of the consideration of individual communications. The Committee has consistently given a strict interpretation to derogations and, in some cases, has determined that notwithstanding the derogation the State was responsible for violations of the Covenant.

32. During the period under review, the Government of the Sudan notified other States parties, through the intermediary of the Secretary-General, on 17 August 2001, that a presidential decree adopted in January 2001 pursuant to article 43 (d) of the Sudanese Constitution had extended a state of emergency in the Sudan to 31 December 2001. The measure was said to be justified by the exceptional circumstances prevailing in some regions of the Sudan, which represented a serious threat to the security and stability of the country. While the notification did not specify the provisions of the Covenant derogated from, the State party observed that all measures taken were strictly required by the exigencies of the situation and were not inconsistent with the State party's obligations under international law.

33. Also during the period under review, the Government of the United Kingdom of Great Britain and Northern Ireland notified other States parties, through the intermediary of the Secretary-General, on 18 December 2001, that it reserved the right to derogate from its obligations under article 9 of the Covenant by virtue of the extended powers of arrest and detention provided for in the Anti-Terrorism, Crime and Security Act 2001. The adoption of the said legislation, in response to the terrorist attacks in the United States of 11 September 2001, was said to be strictly required by the exigencies of the situation. It was a temporary provision which came into force for an initial period of 15 months and would then expire unless renewed by Parliament. Where the intention of the United Kingdom authorities was to remove or deport a person on national security grounds, continued detention might not always be compatible with article 9 of the Covenant. The Government had carefully considered whether the exercise of the extended power to detain, provided for in the Anti-terrorism, Crime and Security Act 2001, was inconsistent with the obligation under article 9, and decided to avail itself of the right of derogation conferred by article 4, paragraph 1, of the Covenant.

34. Also during the period under review, the Government of Argentina notified other States parties that, pursuant to article 4, paragraph 3, of the Covenant, a state of siege had been declared on 19 December 2001 in the entire territory of the Argentine nation by Decree No. 1678/2001. This siege was lifted on 21 December 2001 by Decree No. 1689/2001. With effect from 21 December 2001, a state of siege was declared in the Argentine provinces of Buenos Aires (Decree No. 16/2001), Entre Rios (Decree No. 18/2001) and San Juan (Decree No. 20/2001). These decrees expired on 31 December 2001 and the state of siege was lifted on that date in the three provinces. The State party observes that given the limited time for which the decrees establishing the state of siege were in effect, no implementing regulations were adopted and accordingly the provisions of the Covenant whose application was limited as a result of the situation were not specified.

35. In a note verbale dated 18 June 2002, the Government of Peru notified other States parties, through the Secretary-General, of the declaration of a state of emergency, with effect from 17 June 2002, in the province of Arequipa. This state of emergency was limited to a period of 30 days and was said to be necessary because of violent clashes in the province since 14 June 2002, which resulted in injuries for over 100 individuals and the destruction of public and private property. The rights derogated from are the rights to be free from unlawful interference with one's home, to freedom of movement, to freedom of assembly, to freedom and to security of the person, guaranteed by subsections 9, 11, 12 and 24f of article 2 of the Peruvian Constitution.

## K. General Comments under article 40, paragraph 4, of the Covenant

36. At its seventy-third, seventy-fourth and seventy-fifth sessions, the Committee discussed a revised general comment on the reporting obligations of States parties under article 40 of the Covenant. The revision became necessary because of the modification of the Committee's reporting guidelines and relevant rules of procedure. General Comment No. 30, adopted on 16 July 2002, replaces General Comment No. 1, and is reproduced in annex VI to the present report.

37. At the Committee's seventy-fourth session, Sir Nigel Rodley submitted an initial draft of a general comment on article 2 (Nature of the legal obligations imposed on States parties to the Covenant), which was discussed during that session. Based on the discussion, a revised draft will be prepared. In line with the decision of the Committee's Bureau of 20 March 2002, this revised draft General Comment will be made available to other treaty bodies, as well as to other interested intergovernmental and non-governmental organizations, for comments and observations.

## L. Staff resources

38. The Committee has welcomed the launch of the Global Plan of Action for the Geneva-based human rights treaty bodies, and the creation of a petitions team, and noted that the recruitment of three consultants for the petitions team and the addition of two junior professional officers for the reporting procedure and the petitions team would go some way to redressing the situation of serious understaffing previously noted by the Committee. The Committee hopes that these developments will help it to address, and ultimately eliminate, the continuing backlog in

the examination of communications, and that they will result in the provision of better services to the Committee. It notes that in comparison to last year, the backlog of communications has been further reduced, which is a positive development. The Committee further welcomes the appointment of a follow-up officer, who will assist the Committee with its follow-up activities, in particular inasmuch as they relate to the concluding observations.

39. While the Committee is encouraged by the results of the Global Plan of Action and the work of the petitions team, it reiterates the need for sufficient and experienced professional and other staff to be allocated to all aspects of its work. As the Plan of Action depends on extrabudgetary contributions made by donors, its time frame and its effects may be limited. Ultimately, only the provision of several additional established posts will guarantee the Committee's ability to discharge its responsibilities properly and in a timely manner. The Committee is also concerned at the fact that budgetary appropriations for travel by its Secretariat have been further reduced for the biennium 2002-2003; this has already negatively affected the servicing of the seventy-fourth session of the Committee, and forced the Committee to agree to the transfer of its seventy-seventh session (March 2003) from New York to Geneva.

## M. Publicity for the work of the Committee

40. The Chairperson, accompanied by members of the Bureau, met with the press after each of the Committee's three sessions during the reporting period. The Committee notes that with the exception of academic institutions (see para. 45 below), the awareness of its activities still leaves much to be desired, and that publicity must be enhanced to reinforce the protection mechanisms under the Covenant.

## N. Documents and publications relating to the work of the Committee

41. The Committee continued to be concerned about the difficulties it faced in regard to the late issuance of Committee documents, particularly reports by States parties, as a consequence of delays in editing and translation. In this connection, the Committee noted that pursuant to its recommendation, made during its sixty-sixth session, reports of States parties, whenever possible, are now being submitted for translation without editing, and that this new practice has reduced the delay in issuing reports. On the other hand, several reports examined during the reporting period only became available in one or more of the Committee's working languages shortly before their examination.

42. The Committee continued to be concerned that the summary records of the Committee meetings are issued only after considerable delay; summary records from the New York meetings have sometimes been issued after a lapse of two years.

43. In past annual reports, the Committee repeatedly urged that the publication of volumes 3 and 4 of the Selected Decisions under the Optional Protocol be undertaken as a matter of priority. This was also requested as part of the Plan of Action. The Committee appreciates that work has been completed on volume 3 and is in process for volume 4, but notes with concern that they have still not been issued, primarily due to technical and financial constraints. It also notes with concern that little progress was made on this issue since the publication of the last annual report, and urges that publication be expedited as a matter of priority.

44. The Committee reiterated its concern over the discontinuation of the publication of its Official Records after 1991-1992, and noted with regret that resources had not been made available for the publication of further volumes. This matter was also addressed in the Plan of Action.

45. The Committee welcomes the publication of its Optional Protocol decisions in the databases of various universities, including the University of Minnesota, United States of America (http://www1.umn.edu/humanrts/undocs/undocs.htm) and the publication of a case-law digest on the Committee's jurisprudence under the Optional Protocol by the University of Utrecht, Netherlands (SIM Documentation Site, http://sim.law.uu.nl/SIM/Dochome.nsf). Moreover the Committee notes with satisfaction that its work is becoming better known thanks to initiatives taken by the United Nations Development Programme and the Department of Public Information. The Committee also appreciates the growing interest in its work shown by universities and other institutions of higher learning. It recommends that the treaty body database of the web site of the Office of the United Nations High Commissioner for Human Rights (www.unhchr.ch) be equipped with adequate search functions.

## O. Future meetings of the Committee

46. At its seventy-first session, the Committee confirmed the following schedule of future meetings, to be held at the United Nations Office at Geneva, in 2002 and 2003: the seventy-sixth session from 14 October to 1 November 2002; the seventy-seventh session from 17 March to 4 April 2003; the seventy-eighth session from 14 July to 1 August 2003; and the seventy-ninth session from 20 October to 7 November 2003.

47. During its seventy-second session, the Committee had decided to request an additional week of meetings for its seventy-fifth session to be held in July 2002, to be devoted to consideration of communications under the Optional Protocol. This request was approved by the General Assembly. During its seventy-fourth session, the Committee considered it more appropriate to defer the implementation of its decision to hold an additional week of meetings to another session in the current biennium.

## P. Adoption of the report

48. At its 2037th and 2038th meetings, held on 24 and 25 July 2002, the Committee considered the draft of its twenty-sixth annual report, covering its activities at its seventy-third, seventy-fourth and seventy-fifth sessions, held in 2001 and 2002. The report, as amended in the course of the discussion, was adopted unanimously. By virtue of its decision 1985/105 of 8 February 1985, the Economic and Social Council authorized the Secretary-General to transmit the Committee's annual report directly to the General Assembly.

## Notes

[1] The Covenant continues to apply by succession in one other State, Kazakhstan, (see note (d) to annex I below).

[2] Although as of the date of the present report there are 102 States parties to the Optional Protocol, the Committee is competent to consider communications concerning 104 States, including two former States parties that have denounced the Optional Protocol pursuant to article 12. These countries are Jamaica, which denounced the Optional Protocol on 23 October 1997, with effect from 23 January 1998, and Trinidad and Tobago, which denounced the Optional Protocol on 27 March 2000, with effect from 27 June 2000. Thus, eight communications concerning Jamaica which had been submitted prior to 23 January 1998 and six communications concerning Trinidad and Tobago which had been submitted prior to 27 June 2000 are still under consideration by the Committee.

# CHAPTER II. METHODS OF WORK OF THE COMMITTEE UNDER ARTICLE 40 OF THE COVENANT: NEW DEVELOPMENTS

49. The present chapter summarizes and explains the modifications introduced by the Committee to its working methods under article 40 of the Covenant, as well as decisions adopted by the Committee on follow-up to its concluding observations on State party reports.

## A. Recent developments and decisions on procedures

50. In March 1999, the Committee decided that the lists of issues for the examination of States parties reports should henceforth be adopted at the session prior to the examination of the report, thereby allowing a period of at least two months for States parties to prepare for the discussion with the Committee. Central to the consideration of States parties reports is the oral hearing, where the delegations of States parties have the opportunity to answer specific questions from Committee members. Thus, States parties are encouraged to use the list of issues to better prepare for a constructive discussion, but are not required to submit written answers. This practice was put into effect in the summer of 1999. There has been progress with the implementation of the practice; the Committee, however, notes that if States parties do submit written answers to lists of issues, they should do so well in advance of the examination of their reports, to ensure that the translation of the replies into the Committee's working languages is produced in time. Experience has shown that if detailed replies to lists of issues are submitted shortly before the examination of the report and are available in one working language only, Committee members not proficient in that language are seriously disadvantaged.

51. In October 1999, the Committee adopted new consolidated guidelines on State reports, which replaced all previous guidelines and which are designed to facilitate the preparation of initial and periodic reports by States parties. The guidelines provide for comprehensive initial reports prepared on an article-by-article basis, and focused periodic reports geared primarily to the Committee's concluding observations on the previous report of the State party concerned. In their periodic reports, States parties need not report on every article of the Covenant, and should concentrate on those provisions identified by the Committee in its concluding observations and those articles in respect of which there have been significant developments since the submission of the previous report. The revised consolidated guidelines were issued as document CCPR/C/66/GUI/Rev.2 on 26 February 2001 (see the Committee's annual report for 2001, A/56/40, volume I, annex III.A).

52. For several years, the Committee has expressed concern about the number of overdue reports and non-compliance by States parties with their obligations under article 40 of the Covenant (see the Committee's annual report for 2001, A/56/40, volume I, chapter III.B, and chapter III.B of the present report). Two working groups of the Committee met during the sixty-eighth to seventy-first sessions of the Committee to discuss possible ways of improving, and making more effective, the Committee's reporting procedure under article 40. The working groups proposed amendments to the rules of procedure, which are aimed at helping States parties to fulfil their reporting obligations and designed to simplify the procedure. The amendments were formally adopted during the seventy-first session, and the revised rules of procedure have been issued as document CCPR/C/3/Rev.6 and Corr.1 (see annex III.B to the annual report

of 2001). All States parties were informed of the amendments to the rules of procedure, and the Committee has applied the revised rules since the end of the seventy-first session (April 2001). The Committee reiterates that General Comment 30 [75], adopted during the seventy-fifth session, spells out the States parties' obligations under article 40 of the Covenant.

53. The amendments introduce procedures for dealing with situations of States parties which have failed to honour their reporting obligations for a long time, or which have chosen to request a postponement of their scheduled appearance before the Committee at short notice. In both situations, the Committee may henceforth serve notice on the States concerned that it intends to examine, from material available to it, the measures adopted by that State party with a view to giving effect to the provisions of the Covenant, even in the absence of a report. The amended rules of procedure further introduce a follow-up procedure to the concluding observations of the Committee: rather than fixing a set time limit for its next report in the last paragraph of the concluding observations, the State party will be requested to report back to the Committee within a specified period with responses to the Committee's recommendations, indicating what steps, if any, it has taken to give effect to the recommendations. Such responses will thereafter be examined by the Special Rapporteur for Follow-up on Concluding Observations, and result in the determination of a definitive time limit for the presentation of the next report.

54. During its seventy-fifth session, the Committee first applied the new procedure to a non-reporting State. It examined the measures taken by the Gambia to give effect to the rights recognized in the Covenant without a report, and in the absence of a delegation from the State party. It adopted provisional concluding observations on the situation of civil and political rights in the Gambia, which were transmitted to the State party. The Committee further decided to examine the situation of civil and political rights in Suriname, another non-reporting State party, during its seventy-sixth session in October 2002.

55. During the seventy-fourth session of the Committee, a working group convened by Mr. Klein discussed options for implementing the new procedure for following up on concluding observations. Its recommendations were discussed by the Committee during the seventy-fourth session; on 21 March 2002, the Committee adopted decisions which spell out the modalities for following up on concluding observations. They are reproduced as annex III.A to the present report. During the seventy-fifth session, the Committee designated Mr. Yalden as its new Special Rapporteur for Follow-Up on Concluding Observations.

56. Also during the seventy-fourth session, a working group consisting of Ms. Chanet, Messrs. Henkin, Khalil, Klein (Chairperson and convenor), Lallah, Medina Quiroga, Scheinin, Shearer, Yalden and Sir Nigel Rodley discussed proposals tabled in 2001 by Messrs. Henkin and Scheinin with a view to streamlining the procedure for the examination of reports under article 40. On 5 April 2002, the Committee adopted a number of decisions on working methods, which are reproduced in annex III.B to the present report. The principal innovation consists in the establishment of country report task forces, consisting of no fewer than four and no more than six Committee members, who will have the main responsibility for the conduct of debates on a State report. The Committee hopes that the establishment of these country report task forces will enhance the quality of the dialogue with delegations during the examination of State reports. The first country report task forces were convened during the seventy-fifth session.

## B. Concluding observations

57. Since its decision of 24 March 1992, taken at its 1123rd meeting, the Committee has been adopting concluding observations. The Committee takes the concluding observations as a starting point in the preparation of the list of issues for the examination of the subsequent State party report. In some cases, the Committee has received comments on its concluding observations and replies to the concerns identified by the Committee under rule 70, paragraph 5, of its rules of procedure from the States parties concerned, which are issued in document form. During the period under review such comments and replies were received from the Dominican Republic, from Mauritius (in respect of paragraph 38 of the concluding observations of the Human Rights Committee on the Overseas Territories of the United Kingdom, dealing with the British Indian Ocean Territory), from the Socialist Republic of Viet Nam and the Democratic People's Republic of Korea. These State party replies have been issued as documents and are available from the Committee's Secretariat, or may be consulted on the web site of the Office of the United Nations High Commissioner for Human Rights (www.unhchr.ch, Treaty Body Database, Documents, Category "concluding observations").

## C. Links to other human rights treaties and treaty bodies

58. The Committee continues to find value in the meeting of persons chairing the human rights treaty bodies as a forum for the exchange of ideas and information on procedures and logistical problems, streamlining of working methods, improved cooperation among treaty bodies, and the necessity to obtain adequate secretariat services to enable all treaty bodies to fulfil their mandates effectively.

59. The fourteenth meeting of treaty body chairpersons was convened in Geneva from 24 to 26 June 2002. In the absence of the chairperson or any other member of the Bureau, the Committee was represented by Mr. Rivas Posada. The chairpersons met, inter alia, with the Bureau of the Commission on Human Rights, with special rapporteurs, independent experts and chairpersons of working groups of the Commission on Human Rights, and representatives of States parties to the six main United Nations human rights instruments.

60. The first Inter-Committee meeting was held in Geneva from 26 to 28 June 2002. It brought together representatives from each of the human rights treaty bodies. As the chairperson could not attend the meeting, the Committee was represented by Messrs. Solari-Yrigoyen and Yalden. The discussions focused on possibilities of harmonizing the working methods of all treaty bodies, increased cooperation between them, the issue of format and content of concluding observations, follow-up to concluding observations, and relations with non-governmental organizations.

61. The first Inter-Committee meeting recommended that another meeting be convened in the course of 2004, which would deal with outstanding issues from the first Inter-Committee meeting and focus on a thematic issue, to be determined by the fifteenth meeting of chairpersons in 2003.

## D. Cooperation with other United Nations bodies

62. In 1999, the Committee considered its participation in the initiative emerging from the Memorandum of Understanding signed by the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme (UNDP) on cooperation over a wide range of human rights issues and activities. The Committee welcomed the fact that, in its development programmes and in particular those relating to technical assistance, UNDP takes account of the Committee's conclusions arising from its consideration of State reports. While the indicators, i.e. quantitative and qualitative criteria for assessing compliance by States parties with the provisions of human rights treaties and for a State party's capacity for good governance, do not as yet include many rights guaranteed by the International Covenant on Civil and Political Rights, the Committee intends to play its part in refining and developing these indicators, so that United Nations resources may be more effectively targeted.

63. On 2 April 2001, the Chairperson of the Committee, Mr. Bhagwati, addressed a letter to the Administrator of UNDP, reiterating his request for continued UNDP contribution to the elaboration of list of issues on initial and/or periodic State reports. Since then, a contribution has been received in respect of only one periodic report.

# CHAPTER III. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

64. Under article 2, paragraph 1, of the International Covenant on Civil and Political Rights, each State party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant. In connection with this provision, article 40, paragraph 1, of the Covenant requires States parties to submit reports on the measures adopted and the progress achieved in the enjoyment of the various rights and on any factors and difficulties that may affect the implementation of the Covenant. States parties undertake to submit reports within one year of the entry into force of the Covenant for the State party concerned and, thereafter, whenever the Committee so requests. Under the Committee's current guidelines, adopted at the sixty-sixth session and amended at its seventieth session (see document CCPR/C/GUI/66/Rev.2), the five-year periodicity in reporting, which the Committee itself had established at its thirteenth session in July 1981 (CCPR/C/19/Rev.1), has now been replaced by a more flexible system whereby the date for the subsequent periodic report by a State party is set on a case-by-case basis at the end of the Committee's concluding observations on any report under article 40. The date may be reviewed on the basis of the comments which States parties may provide on the concluding observations. This system has been applied to all reports examined during the Committee's seventy-third to seventy-fifth sessions.

## A. Reports submitted to the Secretary-General from August 2001 to July 2002

65. During the period covered by the present report, only seven periodic reports were submitted to the Secretary-General: three second periodic reports were submitted by Israel, Estonia and Slovakia; two third periodic reports by Luxembourg and Portugal; one combined third/fourth periodic report by Egypt, and one combined third/fourth/fifth periodic report by El Salvador.

## B. Overdue reports and non-compliance by States parties with their obligations under article 40

66. States parties to the Covenant must submit the reports referred to in article 40 of the Covenant on time so that the Committee can duly perform its functions under that article. Those reports are the basis for the discussion between the Committee and States parties on the human rights situation in States parties. Regrettably, serious delays have been noted since the establishment of the Committee.

67. The Committee is faced with a problem of overdue reports, which has continued to grow notwithstanding the Committee's new reporting guidelines and other significant improvements in its working methods. The Committee has accepted to join the consideration of periodic reports submitted by States parties even if they had been issued as separate documents. It did so in July 2000 with the third and fourth periodic reports of Australia. For the same reason, the Committee has accepted the submission of periodic reports which combine two overdue reports in a single document. It accepted to do so with the combined third and fourth periodic report of

Egypt, which was submitted in November 2001 and which will be examined during the seventy-sixth session (October 2002). The Committee does not encourage the practice of joining overdue reports. With the adoption of the new guidelines, the date for the submission of the next periodic report is stated in the concluding observations.

68. The Committee notes with concern that the failure of States to submit reports hinders the Committee in the performance of its monitoring functions under article 40 of the Covenant. The Committee lists below the States parties that have a report more than five years overdue, as well as those that have not submitted reports requested by a special decision of the Committee. The Committee reiterates that those States are in serious default of their obligations under article 40 of the Covenant.

**States parties that have reports more than five years overdue (as at 31 July 2002) or that have not submitted a report requested by a special decision of the Committee**

| State party | Type of report | Date due | Years overdue |
|---|---|---|---|
| Gambia | Second | 21 June 1985 | 17 |
| Suriname | Second | 2 August 1985 | 16 |
| Kenya | Second | 11 April 1986 | 16 |
| Mali | Second | 11 April 1986 | 16 |
| Equatorial Guinea | Initial | 24 December 1988 | 13 |
| Central African Republic | Second | 9 April 1989 | 13 |
| Barbados | Third | 11 April 1991 | 11 |
| Somalia | Initial | 23 April 1991 | 11 |
| Nicaragua | Third | 11 June 1991 | 11 |
| Democratic Republic of the Congo | Third | 31 July 1991 | 10 |
| Saint Vincent and The Grenadines | Second | 31 October 1991 | 10 (has indicated that second periodic report would be submitted by 30 November 2002) |
| San Marino | Second | 17 January 1992 | 10 |
| Panama | Third | 31 March 1992 | 10 |
| Rwanda | Third | 10 April 1992 | 10 |
| Madagascar | Third | 31 July 1992 | 9 |
| Grenada | Initial | 5 December 1992 | 9 |
| Albania | Initial | 3 January 1993 | 9 |
| Philippines | Second | 22 January 1993 | 9 |
| Bosnia and Herzegovina | Initial | 5 March 1993 | 9 (State party has indicated that initial report is in preparation) |

| State party | Type of report | Date due | Years overdue |
|---|---|---|---|
| Benin | Initial | 11 June 1993 | 9 |
| Côte d'Ivoire | Initial | 25 June 1993 | 9 |
| Seychelles | Initial | 4 August 1993 | 8 |
| Mauritius | Fourth | 4 November 1993 | 8 |
| Angola | Initial/Special | 31 January 1994 | 8 |
| Niger | Second | 31 March 1994 | 8 |
| Afghanistan | Third | 23 April 1994 | 8 |
| Ethiopia | Initial | 10 September 1994 | 7 |
| Dominica | Initial | 16 September 1994 | 7 |
| Guinea | Third | 30 September 1994 | 7 |
| Mozambique | Initial | 20 October 1994 | 7 |
| Cape Verde | Initial | 5 November 1994 | 7 |
| Bulgaria | Third | 31 December 1994 | 6 |
| Islamic Republic of Iran | Third | 31 December 1994 | 7 |
| Malawi | Initial | 21 March 1995 | 7 |
| El Salvador | Third | 31 December 1995 | 6 |
| Namibia | Initial | 27 February 1996 | 6 |
| Burundi | Second | 8 August 1996 | 5 |
| Chad | Initial | 8 September 1996 | 5 |
| Haiti | Initial | 30 December 1996 | 5 |
| Jordan | Fourth periodic | 27 January 1997 | 5 |
| Malta | Initial | 12 December 1996 | 5 |
| Slovenia | Second periodic | 24 June 1997 | 5 |
| Sri Lanka | Fourth periodic | 10 September 1996 | 5 |
| Uganda | Initial | 20 September 1996 | 5 |

69. The Committee once again draws particular attention to 33 initial reports which have not yet been presented (including the 17 overdue initial reports listed above). The result is to frustrate a major objective of the Covenant, which is to enable the Committee to monitor compliance by States parties with their obligations under the Covenant, on the basis of States parties' reports.

70. The Committee noted that in the period under review, two States parties (Viet Nam and the Gambia) informed the Committee that their delegations were unable to appear before the Committee as initially scheduled, and requested a postponement. The Committee expresses its concern at this failure of States to cooperate in the reporting process and especially their withdrawal at a late stage; such conduct tends to aggravate the backlog problem in the examination of reports, since it is impossible for the Committee to schedule on short notice the examination of any other report.

71. With respect to the circumstances that are set out in chapter II, paragraphs 52 and 53, the amended rules of procedure now enable the Committee to consider the compliance by States

parties which have failed to submit reports under article 40, or which have requested a postponement of their scheduled appearance before the Committee. As noted in chapter II, paragraph 54, the new procedure was first applied by the Committee during the seventy-fifth session in relation to the measures taken by the Gambia to give effect to the rights recognized in the Covenant.

72. At its 1860th meeting on 24 July 2000, the Committee decided to request Kazakhstan to present its initial report by 31 July 2001, notwithstanding the fact that no instrument of succession or accession has been received from Kazakhstan following its independence. By the time of the adoption of the present report, the initial report of Kazakhstan had still not been received. The Committee invites the Government of Kazakhstan to submit its initial report under article 40 at its earliest convenience.

## CHAPTER IV. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

73. The following sections, arranged on a country-by-country basis in the sequence followed by the Committee in its consideration of the reports, contain the concluding observations adopted by the Committee with respect to the States parties' reports considered at its seventy-third, seventy-fourth and seventy-fifth sessions. The Committee urges States parties to adopt corrective measures consistent with their obligations under the Covenant and implement these recommendations.

### 74. Ukraine

(1) The Committee considered the fifth periodic report of Ukraine (CCPR/C/UKR/99/5) at its 1957th, 1958th and 1959th meetings, held on 15 and 16 October 2001. At its 1971st and 1972nd meetings, held on 24 and 25 October 2001, it adopted the following concluding observations.

#### Introduction

(2) The Committee welcomes the detailed report submitted on time by Ukraine. It regrets, however, that while providing information on legal norms and enactments governing Ukraine's obligations under the Covenant, the report lacks information on the implementation of the Covenant in practice. The Committee notes the State party's undertaking to submit additional written information in response to the Committee's questions.

#### Positive aspects

(3) The Committee expresses its appreciation for the considerable changes which have taken place in Ukraine since the submission of the last report. These changes constitute a positive constitutional and legal framework for the further implementation of the rights enshrined in the Covenant.

(4) The Committee welcomes the adoption of the new Constitution in June 1996, which gives legal recognition to human rights and freedoms of the individual.

(5) The Committee welcomes the abolition of the death penalty, including during time of war. The Committee hopes that the State party will ratify the second Optional Protocol to the Covenant.

(6) The Committee notes with satisfaction the State party's ongoing efforts to reform its legislation, including the new Law on Refugees of 2001, the Law on Immigration of 2001, the Citizenship Law of 2001 and the decriminalization of libel. The Committee also welcomes the establishment of a new Constitutional Court, the adoption of a new Criminal Code, the enactment of new legislation relating to the protection of human rights and the creation of an appeal court system.

(7) The Committee welcomes the establishment of the Office of the Ombudsman charged with the responsibility for protection of human rights in Ukraine.

**Concerns and recommendations**

(8) The Committee is concerned that in the case of a clash between the Covenant rights and domestic laws the latter might prevail. Neither through examination of the report of the State party nor during the discussion with the delegation could the Committee obtain a clear understanding of how potential conflicts between Covenant rights and domestic laws are resolved.

The State party must ensure the effective implementation of all Covenant rights, in accordance with article 2 of the Covenant and including through independent and impartial courts of law operating in compliance with article 14.

(9) While recognizing that there has been some progress in achieving equality for women in political and public life, the Committee remains concerned that the level of representation of women in Parliament and in senior positions in both the public and private sectors remains low.

The State party should undertake appropriate measures to give effect to its obligations under articles 3 and 26 so as to improve the representation of women in Parliament and in senior positions, in both the public and private sectors. The State party should consider the adoption of positive measures, including educational measures, to improve the status of women within the society.

(10) The Committee notes with concern that domestic violence against women remains a problem in Ukraine.

The State party should take positive measures, including through enactment and implementation of adequate legislation and training of police officers and sensitization of the population, to protect women from domestic violence.

(11) The Committee expresses concern that under the state of emergency, as envisaged in article 64 of the Constitution of Ukraine, the right to freedom of thought under article 34 of the Constitution and the right to freedom of religion could be restricted in a manner incompatible with the provisions of article 4 of the Covenant.

The State party must ensure that its framework for emergency powers during a state of emergency is compatible with article 4 of the Covenant, taking into account the Committee's General Comment No. 29.

(12) The Committee notes with concern that the Office of the Ombudsman is seriously under-resourced.

The State party should provide adequate human and material resources to the Office of the Ombudsman to enable it to carry out its work effectively.

(13) The Committee is concerned about allegations of police harassment, particularly of the Roma minority and aliens.

The State party should take effective measures to eradicate all forms of police harassment, and set up an independent authority to investigate complaints against the police. It should take steps against those held responsible for such acts of harassment.

(14) The Committee regrets that the delegation did not provide the requested information about measures taken to combat racism and anti-Semitic acts and publications, and about the situation of Jewish cemeteries confiscated under Nazi occupation.

The State party is requested to provide the information sought by the Committee by the deadline stipulated in paragraph 25 below. The State party should take effective measures to prevent and punish racist and anti-Semitic acts and inform the Committee by the deadline stipulated in paragraph 25.

(15) The Committee remains concerned about the persistence of widespread use of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials.

The State party should institute a more effective system of monitoring treatment of all detainees, so as to ensure that their rights under articles 7 and 10 of the Covenant are fully protected. The State party should also ensure that all allegations of torture are effectively investigated by an independent authority, that the persons responsible are prosecuted, and that the victims are given adequate compensation. Free access to legal counsel and doctors should be guaranteed in practice, immediately after arrest and during all stages of detention. The arrested person should have an opportunity immediately to inform a family member about the arrest and the place of detention. All allegations of statements of detainees being obtained through coercion must lead to an investigation and such statements must never be used as evidence, except as evidence of torture.

(16) The Committee is concerned at reports of bullying and hazing (dedovshchina) of young conscripts in the armed forces by older soldiers, which in some cases have led to deaths, suicides and desertion.

The State party should strengthen measures to end these practices and prosecute offenders, and take steps by way of education and training in its armed forces to eradicate the negative culture that has encouraged such practices.

(17) The Committee remains concerned about the permissible length of detention as a "temporary preventive measure" (up to 72 hours) in the custody of law enforcement authorities and before detainees are informed of charges brought against them, and about the practice of extending the period of such detention for up to 10 days in certain cases on the initiative of a prosecutor. Such practice is incompatible with article 9 of the Covenant. The Committee is also concerned that no effective mechanism exists for monitoring such detention.

The State party should take all necessary measures to reduce the length of such detention and to improve judicial oversight so as to ensure compliance with Covenant rights. The Committee also requests detailed information about the composition, manner of appointment, functions and powers of the "body of inquiry" referred to by the delegation, as well as information on its actual practice.

(18) The Committee remains concerned about the continuation of practices involving the trafficking of women in Ukraine.

The State party should take measures to combat this practice, including through the prosecution and punishment of those found responsible, and give full effect to the provisions of article 8 of the Covenant.

(19) The Committee is concerned about the continued existence of the propiska system, which is incompatible with the right to freedom of movement and choice of residence provided for in article 12 of the Covenant.

The State party should abolish the system of internal permits and give full effect to the provisions of article 12 of the Covenant.

(20) The Committee notes with concern the information given by the State party that conscientious objection to military service is accepted only in regard to objections for religious reasons and only with regard to certain religions, which appear in an official list. The Committee is concerned that this limitation is incompatible with articles 18 and 26 of the Covenant.

The State party should widen the grounds for conscientious objection in law so that they apply, without discrimination, to all religious beliefs and other convictions, and that any alternative service required for conscientious objectors be performed in a non-discriminatory manner.

(21) The Committee is concerned about the intimidation and harassment, in particular by government officials, of human rights defenders.

The State party must take measures to end the intimidation and harassment of human rights defenders. Reported instances of intimidation and harassment should be investigated promptly.

(22) The Committee is concerned about reports of intimidation and harassment of journalists. It is further concerned about the absence of criteria for granting or denying licences to electronic mass media, such as television and radio stations, which has a negative impact on the exercise of freedom of expression and the press provided for in article 19 of the Covenant. It is also concerned that the system of government subsidies to the press may be used to stifle freedom of expression.

(a) The State party should ensure that journalists can carry out their activities without fear of being subjected to prosecution and refrain from harassing and intimidating them, in order to give full effect to the right to freedom of expression and of the press provided for in article 19 of the Covenant;

(b) The State party should take effective measures to define clearly in law the functions and competences of the State Communications Committee of Ukraine. The decisions of the State Communications Committee should be subject to judicial control;

(c) The State party should ensure that clear criteria are established for payment and withdrawal of government subsidies to the press, so as to avoid the disbursement of such subsidies for the purpose of stifling criticism of the Government.

(23) The Committee expresses its concern about the vague and undefined concept of "national minorities", which is the dominant factor in the State party's legislation on national minorities but does not cover the entire scope of article 27 of the Covenant. The Committee is also concerned about reports of cases of discrimination and harassment of persons belonging to minorities.

The State party should ensure that all members of ethnic, religious and linguistic minorities enjoy effective protection against discrimination, and that members of these communities can enjoy their own culture and use their own language, in accordance with article 27 of the Covenant.

**Dissemination of information about the Covenant**

(24) The Committee calls upon the State party to publicize the text of these concluding observations in appropriate languages, and requests that the next periodic report be widely disseminated among the public, including non-governmental organizations operating in Ukraine.

(25) Pursuant to rule 70 (5) of the Committee's rules of procedure, the State party is invited to provide, within a period of 12 months, information about steps being taken to address the issues raised in paragraphs 10, 13, 14, 15, 17, 19 and 23 of the present concluding observations.

(26) The Committee requests the State party to submit its sixth periodic report by 1 November 2005.

## 75. United Kingdom of Great Britain and Northern Ireland and Overseas Territories

### Part I

(1) The Committee considered the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (CCPR/C/UK/99/5) and the fourth and fifth combined report on the Overseas Territories of the United Kingdom (CCPR/C/UKOT/5) at its 1960th to 1963rd meetings, held on 17 and 18 October 2001. The Committee adopted the following concluding observations at its 1976th and 1977th meetings, held on 29 October 2001.

## Introduction

(2) The Committee has examined the reports of the United Kingdom of Great Britain and Northern Ireland, and on the Overseas Territories of the United Kingdom. The Committee appreciates the extensive supplementary report covering events since the submission of the initial report and the responses, provided in advance, to the Committee's written questions. The Committee regrets that the State party's supplementary report was submitted at a late stage and was available in one working language only. In particular, the Committee commends the inclusion in the State party's responses of a comprehensive account of the legal and practical actions taken to follow up on each of the Committee's concluding observations on the consideration of the previous report. In respect of the overseas territories, the Committee regrets that it did not receive the entirety of the documentation referred to in the corresponding report, which prevented Committee members from fully examining the report.

## Part II

## United Kingdom of Great Britain and Northern Ireland

### Positive aspects

(3) The Committee welcomes the entry into force of the Human Rights Act 1998. The Committee considers the resulting enhanced judicial scrutiny of executive and legislative action, and the legal duty placed upon the authorities to act consistently with rights which are similar in substance to many Covenant rights, to be an important step towards ensuring compliance with, and remedies for breaches of, those Covenant rights.

(4) The Committee welcomes the conclusion of the Belfast Agreement in April 1998 and the changes adopted in Northern Ireland, based upon the agreement, as the State party and other signatories have sought to move away from the extraordinary measures in place in that jurisdiction towards higher promotion of respect for human rights and fundamental freedoms. In particular, the Committee commends the establishment of an independent Police Ombudsman with jurisdiction over complaints in regard to all uses of force on the part of the police and with significant powers of investigation and enforcement, as well as the creation of a Human Rights Commission in Northern Ireland. Consonant with these developments, the Committee also welcomes the State party's recent withdrawal of its notice of derogation relating to article 9, paragraph 3, of the Covenant.

(5) The Committee also welcomes the extension of the Race Relations Act to cover all public bodies, and the adoption of a Disability Discrimination Act.

### Principal subjects of concern and recommendations

(6) The Committee notes with concern that the State party, in seeking inter alia to give effect to its obligations to combat terrorist activities pursuant to Security Council resolution 1373 (2001), is considering the adoption of legislative measures which may have potentially far-reaching effects on rights guaranteed in the Covenant and which, in the State party's view, may require derogations from human rights obligations.

The State party should ensure that any measures it undertakes in this regard are in full compliance with the provisions of the Covenant, including, when applicable, the provisions on derogation contained in article 4 of the Covenant.

(7) The Committee regrets that the State party, while having incorporated many Covenant rights into its domestic legal order through the Human Rights Act 1998, has failed to accord the same level of protection to other Covenant rights, including the provisions of articles 26 and 27.

The State party should consider, as a matter of priority, how persons subject to its jurisdiction may be guaranteed effective and consistent protection of the full range of Covenant rights. It should consider, as a priority, accession to the first Optional Protocol.

(8) The Committee is deeply disturbed that, a considerable time after murders of persons (including human rights defenders) in Northern Ireland have occurred, a significant number of such instances have yet to receive fully independent and comprehensive investigations, and the persons responsible to be prosecuted. This phenomenon is doubly troubling where persistent allegations of involvement and collusion by members of the State party's security forces, including the Force Research Unit, remain unresolved.

The State party should implement, as a matter of particular urgency given the passage of time, the measures required to ensure a full, transparent and credible accounting of the circumstances surrounding violations of the right to life in Northern Ireland in these and other cases.

(9) Although the Committee appreciates the establishment of specialist bodies to deal with various specific areas of discrimination, such as the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission, the Committee considers that the establishment of a national human rights commission with comprehensive jurisdiction to receive complaints of human rights violations would be a valuable addition to the remedies available to persons complaining of such violations, particularly persons for whom recourse to the courts is, as a practical matter, too costly, difficult or impossible.

The State party should consider the establishment of a national human rights commission to provide and secure effective remedies for alleged violations of all human rights under the Covenant.

(10) The Committee is concerned at the State party's maintenance of an old law that convicted prisoners may not exercise their right to vote. The Committee fails to discern the justification for such a practice in modern times, considering that it amounts to an additional punishment and that it does not contribute towards the prisoner's reformation and social rehabilitation, contrary to article 10, paragraph 3, in conjunction with article 25 of the Covenant.

The State party should reconsider its law depriving convicted prisoners of the right to vote.

(11) Although the Committee appreciates the introduction of new criminal offences of racially aggravated violence, harassment or criminal damage, it is deeply disturbed by the recent repeated violent outbreaks of serious race and ethnicity-based rioting and associated criminal conduct in some major cities. These incidents seriously affected the enjoyment of rights under articles 9 and 26 of many persons of different ethnic groups.

(a) The State party should continue to seek to identify those responsible for these outbreaks of violence, and to take appropriate measures under its law. It should also work to facilitate dialogue between communities and between community leaders, and to identify and remedy the causes of racial tension in order to prevent such incidents in the future.

(b) The State party should also consider facilitating inter-political party arrangements to ensure that racial tension is not inflamed during political campaigns.

(12) The Committee is disturbed at the sharply increased number of racist incidents within the criminal justice system, particularly those reported as having been committed by police and prison staff against inmates. Racist violence between prisoners inappropriately located together has also resulted in serious violations of prisoners' rights under the Covenant, including at least one case of murder.

The State party should encourage the transparent reporting of racist incidents within prisons and ensure that racist incidents are rapidly and effectively investigated. It should ensure that appropriate disciplinary and preventive measures are developed to protect those persons who are particularly vulnerable. To this end, the State party should pay particular attention to improving the representation of ethnic minorities within the police and prison services.

(13) Although the Committee appreciates that a number of improvements over the reporting period in the representation of ethnic minorities in various walks of public life, as well as the extension in the Race Relations (Amendment) Act 2000 of a positive duty to certain public bodies to promote racial equality, the Committee remains concerned at the disproportionately low levels of participation by members of minority groups in government and the civil service, particularly the police and prison service.

The State party should take appropriate measures to ensure that its public life better reflects the diversity of its population.

(14) The Committee is concerned at reports that, since the recent terrorist attacks, persons have been the subject of attack and harassment on the basis of their religious beliefs and that religion has been utilized to incite to the commission of criminal acts. The Committee is also disturbed that incidents of violence and intimidation on the basis of religious affiliation in Northern Ireland continue to occur.

The State party should extend its criminal legislation to cover offences motivated by religious hatred and should take other steps to ensure that all persons are protected from discrimination on account of their religious beliefs.

(15) The Committee notes that, despite recent improvements, the proportions of women participating in public life, particularly at senior levels of the executive and judiciary and in Parliament, and also in the private sector, remain at low levels.

> The State party should take the necessary steps towards achieving an appropriate representation of women in these fields.

(16) The Committee is concerned that asylum-seekers have been detained in various facilities on grounds other than those legitimate under the Covenant, including reasons of administrative convenience. In any event, the Committee considers unacceptable any detention of asylum-seekers in prisons. The Committee notes, moreover, that asylum-seekers, after final refusal of their request, may also be held in detention for an extended period when deportation might be impossible for legal or other considerations. The Committee is also concerned that the practice of dispersing asylum-seekers may have adverse effects on their ability to obtain legal advice and on the quality of that advice. Dispersal, as well as the voucher system of support, have on occasion led to risks for the physical security of asylum-seekers.

> The State party should closely examine its system of processing asylum-seekers in order to ensure that each asylum-seeker's rights under the Covenant receive full protection, being limited only to the extent necessary and on the grounds provided for in the Covenant. The State party should end detention of asylum-seekers in prisons.

(17) Although the Committee appreciates the recent prohibition on drawing negative inferences from a suspect's silence while his or her lawyer is absent, the Committee remains troubled by the principle that juries may draw negative inferences from the silence of accused persons.

> The State party should reconsider, with a view to repealing it, this aspect of criminal procedure, in order to ensure compliance with the rights guaranteed under article 14 of the Covenant.

(18) The Committee remains concerned that, despite improvements in the security situation in Northern Ireland, some elements of criminal procedure continue to differ between Northern Ireland and the remainder of the State party's jurisdiction. In particular, the Committee is troubled that, under the so-called "Diplock court" system in Northern Ireland, persons charged with certain "scheduled offences" are subject to a different regime of criminal procedure, including the absence of a jury. That modified procedure applies unless the Attorney-General certifies, without having to justify or explain, that the offence is not to be treated as a scheduled offence. The Committee recalls its interpretation of the Covenant as requiring that objective and reasonable grounds be provided by the appropriate prosecution authorities to justify the application of different criminal procedures in particular cases.

The State party should carefully monitor, on an ongoing basis, whether the exigencies of the specific situation in Northern Ireland continue to justify any such distinctions. In particular, it should ensure that, in each case where a person is subjected to the "Diplock" jurisdiction, objective and reasonable grounds are provided and that this requirement is incorporated in the relevant legislation (including the Northern Ireland (Emergency Provisions) Act 1996).

(19) The Committee notes with concern that, under the general Terrorism Act 2000, suspects may be detained for 48 hours without access to a lawyer if the police suspect that such access would lead, for example, to interference with evidence or alerting another suspect. Particularly in circumstances where these powers have not been used in England and Wales for several years, where their compatibility with articles 9 and 14, inter alia, is suspect, and where other less intrusive means for achieving the same ends exist, the Committee considers that the State party has failed to justify these powers.

The State party should review these powers in the light of the Committee's views.

(20) The Committee is concerned that provisions of the Criminal Procedure and Investigations Act 1996 enable prosecutors to seek a non-reviewable decision by a court to the effect that sensitive evidentiary material, which would otherwise be disclosed to a defendant, is withheld on public interest/immunity grounds. The Committee considers that the State party has failed to demonstrate the necessity of these arrangements.

The State party should review these provisions in the light of the Committee's remarks and previous concluding observations in respect of article 14, in order to ensure that the guarantees of article 14 are fully respected.

(21) The Committee is concerned that powers under the Official Secrets Act 1989 have been exercised to frustrate former employees of the Crown from bringing into the public domain issues of genuine public concern, and to prevent journalists from publishing such matters.

The State party should ensure that its powers to protect information genuinely related to matters of national security are narrowly utilized and limited to instances where it has been shown to be necessary to suppress release of the information.

**Part III**

**Overseas Territories of the United Kingdom of Great Britain and Northern Ireland**

(22) The Committee welcomes the abolition of the death penalty for all offences in all of the overseas territories; it notes its retention in the Turks and Caicos Islands for piracy and treason.

(23) The Committee is deeply concerned that the protection of Covenant rights in the overseas territories is weaker and more irregular than in the metropolitan area. The Committee regrets that the provisions of the Human Rights Act 1998, which significantly improve the protection of many rights contained in the Covenant, do not extend to the overseas territories (except, to some extent, Pitcairn and St. Helena). The Committee regrets that the Covenant rights are not

incorporated in the legislation of the territories, and that its provisions cannot be invoked directly before or applied by the judiciary. The consequences are especially regrettable in those overseas territories (British Virgin Islands, Cayman Islands, St. Helena and Pitcairn) whose Constitutions do not contain chapters on fundamental rights. In this regard, the Committee would welcome answers to the questions not dealt with by the delegation.

The State party should give priority to incorporating Covenant rights in the respective domestic legal orders of the overseas territories.

(24) The Committee is concerned at the absence throughout the overseas territories of appropriate training on the Covenant for public officials, a situation recognized by the State party.

The appropriate authorities should establish programmes of training and education for their public officials, aimed at inculcating a human rights culture in these persons who exercise governmental powers in the various overseas territories.

## Positive aspects, principal subjects of concern and recommendations

### Bermuda

(25) The Committee welcomes the establishment of the Human Rights Commission of Bermuda, with powers of investigation, prosecution, conciliation and education.

### British Virgin Islands

(26) The Committee appreciates the elimination of constitutional rules inconsistent with articles 3 and 26 of the Covenant which discriminated between the rights accorded to spouses of male and female British Virgin Islanders.

### Cayman Islands

(27) The Committee appreciates the passage of the Youth Justice Law providing a regime for juvenile offenders, which focuses on the specific needs of that group.

(28) The Committee is concerned that the categories of persons for whose deportation Cayman law provides, in particular "undesirable" or "destitute" persons, are defined in terms that are vague and unclear, and that deportation of such persons may violate articles 17 and 23 of the Covenant. Moreover, the Committee considers that, since deportation occurs pursuant to an order issued by the Governor after having considered a magistrate's report, there is insufficient review of the appropriateness of such a measure in terms of article 13.

The State party should review its law on deportation to provide clear criteria, and effective and impartial review of any deportation decision, in order to ensure compliance with articles 17, 23 and 26.

**Falkland Islands/Malvinas**

(29) The Committee welcomes the enactment of the Race Relations Ordinance 1994 (adopting the provisions of the Race Relations Act 1974 (UK)) and the Sex Discrimination Act 1998, aimed at eliminating discrimination on grounds of race and sex.

(30) The Committee is concerned that, while "seek[ing] to remove any avoidable discrimination against, or stigma attaching to, children born outside of marriage", the Family Law Reform Ordinance does not abolish the status of illegitimacy. The Committee also considers that the absence of any right of compensation, in the circumstances of article 14, paragraph 6, of the Covenant, violates that provision.

> The State party should amend these aspects of its law to bring them into line with its obligations under article 24, taken together with article 26, and under article 14 of the Covenant.

**Gibraltar**

(31) The Committee appreciates the Domestic Violence and Matrimonial Proceedings Act 1998 and the Maintenance (Amendment) Ordinance 1998, which provide protection orders and exclusion orders for vulnerable parties in matrimonial relationships.

**Montserrat**

(32) The Committee commends the State party for its emphasis on maintaining observance of its human rights obligations despite the volcanic eruptions of 1995, 1996 and 1997. In particular, the Committee commends the holding of elections for the Legislative Council in October 1996.

(33) The Committee is concerned over the situation of long-term prisoners, who have had to serve sentences in other overseas territories.

> The State party should ensure that, consistent with articles 10, 17, 23 and 24 of the Covenant, long-term prisoners may serve their sentences in its territory; alternatively, it should investigate non-custodial means of punishment.

**St. Helena**

(34) The Committee takes note of the adoption of Public Order Ordinance 1997, providing an up-to-date legal scheme governing public processions and assemblies. The Committee also appreciates the appointment of a Public Solicitor in 1998, providing free legal advice, assistance or representation to persons so requiring.

(35) The Committee is concerned at the mixing of accused and convicted prisoners, especially since St. Helena is not one of the overseas territories to which a reservation to article 10, paragraph 2 (a), of the Covenant has been applied.

> The State party should ensure that accused and convicted prisoners are appropriately segregated.

**Turks and Caicos Islands**

(36) The Committee takes note of the construction and opening of a new detention facility, with female prisoners wholly segregated from male prisoners and supervised by female staff. It appreciates the sharp drop in infant mortality (from 30 per cent to 13 per cent over two years), following the adoption of a series of primary health measures.

(37) The Committee is concerned that in the Turks and Caicos Islands, alone among the overseas territories, capital punishment for the offences of treason and piracy has been retained. It considers that such retention may raise issues under article 6 of the Covenant, particularly since the death penalty has been abolished for the offence of murder.

> The State party should take the necessary steps to abolish the death penalty for treason and piracy.

**British Indian Ocean Territory**

(38) Although this territory was not included in the State party's report (and the State party apparently considers that, owing to an absence of population, the Covenant does not apply to this territory), the Committee takes note of the State party's acceptance that its prohibition of the return of Ilois who had left or been removed from the territory was unlawful.

> The State party should, to the extent still possible, seek to make exercise of the Ilois' right to return to their territory practicable. It should consider compensation for the denial of this right over an extended period. It should include the territory in its next periodic report.

**Part IV**

(39) The State party should publicize the text of its fifth periodic reports, the written answers it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations.

(40) The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding the State party's policy and practice contained in paragraphs 6, 8, 11 and 23 above. The Committee requests that information concerning the remainder of its recommendations be included in the State party's sixth periodic reports, to be submitted by 1 November 2006.

76. **Switzerland**

(1) The Committee considered the second periodic report of Switzerland (CCPR/C/CH/98/2) at its 1964th and 1965th meetings, held on 19 October 2001, and adopted the following concluding observations at its 1977th and 1978th meetings, held on 29 and 30 October 2001.

## Introduction

(2) The Committee welcomes the timely submission of the State party's comprehensive second periodic report. The Committee appreciates the extensive supplementary report covering events since the submission of the initial report. (It regrets that the supplementary report was submitted too late to be made available in more than one working language.) It also appreciates the State party's detailed responses to the Committee's concluding observations on consideration of the initial report, as well as the additional information provided by the delegation in response to the Committee's questions.

## Positive aspects

(3) The Committee welcomes the progress made since the consideration of the State party's initial report in advancing the protection of Covenant rights. It especially notes the adoption of the revised federal Constitution, which came into force in January 2000, and which contains a bill of rights.

(4) The Committee welcomes the repeal in March 1998, following its previous recommendations (see CCPR/C/79/Add.70, para. 28), of the Federal Decree on Political Speeches by Foreigners, which restricted the freedom of expression of foreigners without a permanent residence permit.

## Principal areas of concern and recommendations

(5) The Committee remains concerned that the State party has not seen fit to withdraw its reservations to the Covenant. It notes the mandate given to the federal administration to examine the question of the removal of reservations to human rights treaties and hopes that by the time the next report is considered all reservations to the Covenant will have been withdrawn. Further, the Committee reiterates its recommendation that the State party accede to the Optional Protocol to the Covenant.

(6) The Committee is concerned that the application of the State party's obligations under the Covenant in all parts of its territory may be hampered by the federal structure of the State party. It reminds the State party that under article 50 of the Covenant the provisions of the Covenant "shall extend to all parts of federal States without any limitations or exceptions".

> The State party should take measures to ensure that the authorities in all cantons and communities are aware of the rights set out in the Covenant and of their duty to ensure respect for them.

(7) The Committee is concerned that urgent legislation "that has no constitutional basis", permitted under article 165 of the Federal Constitution, may lead to derogation from Covenant rights, without the requirements of article 4 of the Covenant being met.

> The State party should ensure that its framework for urgent legislation ensures compliance with its obligations under article 4 of the Covenant.

(8) The Committee is concerned that incidents of racial intolerance have increased. While commending the continuous efforts made by the Federal Commission against Racism to combat anti-Semitism, racism and xenophobia, it notes that the Commission does not have the power to initiate legal action to combat racial incitement and discrimination.

> The State party should ensure rigorous enforcement of its laws against racial incitement and discrimination. It should consider broadening the mandate of the Federal Commission against Racism, or creating an independent human rights mechanism with the power to initiate legal action (articles 2 and 20 of the Covenant).

(9) In relation to article 3 of the Covenant the Committee recognizes the progress made since the initial report in promoting equality of men and women and notes in particular the launching of the Plan of Action "Equality between women and men". Nevertheless, it remains concerned that women are still disadvantaged in many areas, especially in the achievement of equal remuneration for work of equal value and in appointment to senior positions, in both the public and private sectors.

> The State party should implement its Plan of Action and adopt binding policies to ensure compliance with article 3 of the Covenant in all parts of its territory.

(10) The Committee is concerned that legislation protecting individuals against discrimination in the private sector does not exist in all parts of the State party's territory.

> The State party should ensure that legislation exists throughout its territory to protect individuals against discrimination in the private field, pursuant to articles 2 and 3 of the Covenant.

(11) The Committee is deeply concerned at reported instances of police brutality towards persons being apprehended and detainees, noting that such persons are frequently aliens. It is also concerned that many cantons do not have independent mechanisms for investigation of complaints regarding violence and other forms of misconduct by the police. The possibility of resort to court action cannot serve as a substitute for such mechanisms.

> The State party should ensure that independent bodies with authority to receive and investigate effectively all complaints of excessive use of force and other abuses of power by the police are established in all cantons. The powers of such bodies should be sufficient to ensure that those responsible are brought to justice or, as appropriate, are subject to disciplinary sanctions sufficient to deter future abuses and that the victims are adequately compensated (article 7 of the Covenant).

(12) The Committee is concerned that many of the guarantees in articles 9 and 14 are not contained in the criminal procedure codes of some cantons and that a unified criminal procedure code has not yet been adopted. Consequently, rights under articles 9 and 14 are not always respected. The Committee is particularly concerned at persistent reports that detainees have been denied the right to contact a lawyer upon arrest or to inform a close relative of their detention.

The State party should take measures to ensure effective implementation of all rights under articles 9 and 14 of the Covenant in all parts of its territory.

(13) The Committee is deeply concerned that, in the course of the deportation of aliens, there have been instances of degrading treatment and use of excessive force, resulting on some occasions in the death of the deportee.

The State party should ensure that all cases of forcible deportation are carried out in a manner which is compatible with articles 6 and 7 of the Covenant. In particular, it should ensure that restraint methods do not affect the life or physical integrity of the persons concerned.

(14) While the Committee notes the delegation's explanation that incommunicado detention is not practised in Switzerland, it is concerned that the criminal procedure code in some cantons would still seem to allow such detention.

The State party should ensure that its laws throughout the country do not allow incommunicado detention in violation of articles 9 and 10 of the Covenant.

(15) The Committee is concerned at the consequences of distinctions made in various pieces of legislation between citizens and non-citizens, the latter forming a considerable segment of the workforce. In particular, aliens without working papers run the risk of becoming victims of exploitation and abuse. Another vulnerable category of persons are foreign spouses of foreigners with residence permits, who are subject to deportation in the event of discontinuation of de facto cohabitation and, hence, may be forced to live in abusive relationships.

The State party should review its policies in relation to distinctions between citizens and aliens and between different categories of aliens, in particular in respect of those who do not have papers and spouses of foreigners with residence permits, in order to ensure that the rights of such persons under the Covenant are respected and ensured (arts. 2, 3, 9, 12, 17 and 23).

(16) The State party should widely publicize the text of its second periodic report, the written answers it has provided in response to the list of issues drawn up by the Committee and, in particular, the present concluding observations.

(17) The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations contained in paragraphs 152 and 154 of the present concluding observations. The Committee requests that information concerning the remainder of its recommendations be included in the State party's third periodic report, to be submitted by 1 November 2006.

## 77. Azerbaijan

(1) The Committee considered the second periodic report of Azerbaijan (CCPR/C/AZE/99/2) at its 1974th and 1975th meetings, held on 26 October 2001. The Committee adopted the following concluding observations at its 1983rd meeting, held on 1 November 2001.

## Introduction

(2) The Committee welcomes the frank and constructive explanation by the delegation of measures undertaken by the State party since the presentation of its initial report. It further commends the delegation for supplying it with updated information about the legal situation in Azerbaijan, but regrets that it was not provided with more information with regard to the implementation of Covenant rights in practice.

## Positive aspects

(3) The Committee commends the State party for undertaking in a period of transition from totalitarian rule, and armed conflict with the resulting displacement of a large proportion of its population, the process of bringing its legislation into line with its international obligations. The Committee appreciates the enactment of a significant number of laws in order to harmonize domestic legislation with the requirements of the Covenant.

(4) The Committee welcomes the abolition of the death penalty in 1998 as well as the State party's accession to the Second Optional Protocol to the Covenant, though with a reservation relating to wartime. It further welcomes the information provided by the delegation about the ratification of the Optional Protocol.

(5) The Committee notes with satisfaction that under article 151 of the Constitution, international legal obligations, including the rights stipulated in the Covenant, prevail over domestic legislation in the event of a conflict between them.

(6) The Committee expresses its satisfaction at the fact that an agreement has been reached between the State party and the International Committee of the Red Cross, by which the ICRC is authorized to visit Azerbaijani prisons and detention facilities.

(7) The Committee welcomes the reform of the criminal procedure system and ministerial responsibilities, particularly the transfer of the jurisdiction over detention facilities from the Ministry of the Interior to the Ministry of Justice.

## Principal subjects of concern and recommendations

(8) While commending the constitutional provision stipulating that in a state of emergency the restriction of citizens' rights and liberties is subject to the State's international obligations (art. 71 (3)), the Committee is concerned that the notifications submitted by the State party on resorting to article 4 of the Covenant have been quite broad and vague.

> The State party should ensure that the draft law on states of emergency, as well as any future application of that law, are compatible with article 4 of the Covenant and that in practice no derogation from rights should be made unless the conditions of article 4 have been met.

(9) The Committee is concerned at the lack of an independent mechanism for investigating complaints against members of the police and prison guards. This fact may account for the small number of recorded complaints, in contrast to information about large numbers of violations received from non-government sources (articles 2, 7 and 9 of the Covenant).

The State party should establish an independent body with authority to receive and investigate all complaints of excessive use of force and other abuses of power by law enforcement officials, and initiate criminal and disciplinary proceedings against those found responsible.

(10) While welcoming the steps taken by the State party to bring its law into compliance with international standards to prevent torture, the Committee is deeply concerned at the reported failure to ensure application of such legal provisions and at continuing reports of the use of torture and cruel, inhuman or degrading treatment or punishment. The Committee notes that the delegation could not provide clarifications on the number of investigations and prosecutions in regard to torture, particularly under the new Criminal Code, or on remedies provided to victims and their families, including rehabilitation and compensation (articles 2 and 7 of the Covenant).

The State party should take all necessary measures to ensure the full implementation of its domestic and international obligations relating to torture and cruel, inhuman or degrading treatment or punishment. The State party should ensure the prompt, impartial and full investigation of all allegations of torture, the prosecution of persons responsible, as well as compensation to victims, or, as the case may be, their families.

(11) The Committee is concerned that the legal right of detainees to access to counsel, medical advice and members of the family is not always respected in practice (articles 7 and 9 of the Covenant).

The State party should ensure scrupulous respect for these rights by its law enforcement agencies, procuracy and judiciary.

(12) The Committee is concerned at the problem of overcrowding in prisons. The Committee notes that insufficient information has been provided by the State party concerning measures undertaken in this regard (article 10 of the Covenant).

The State party should take measures to overcome overcrowding in prisons and should ensure that all persons deprived of their liberty are treated with humanity and respect for their dignity in compliance with the requirements of article 10.

(13) The Committee is concerned at the lack of independent and transparent scrutiny of prison facilities.

The State party should institute a system for independent inspections of detention facilities, which should include elements independent of Government so as to ensure transparency and compliance with article 10.

(14) While appreciating the steps that have been initiated by the State party to reform the judiciary, including Presidential Decree of 17 January 2000 to improve the procedures for the appointment of judges, the Committee is concerned at reports of irregularities during the selection procedure in practice. Furthermore, the Committee is concerned at the lack of security of tenure for judges, and at the fact that decisions concerning the assignment of judges and affecting their seniority appear to be made at the discretion of the administrative authorities, may expose judges to political pressure and jeopardize their independence and impartiality. The Committee considers that the new Law on the Bar may compromise lawyers' free and independent exercise of their functions (article 14 of the Covenant).

The Committee recommends the institution of clear and transparent procedures to be applied in judicial appointments and assignments, in order to ensure full implementation of the legislation in practice and to safeguard the independence and impartiality of the judiciary. The State party should furthermore ensure that the criteria for access to and the conditions of membership in the Bar do not compromise the independence of lawyers. The State party should provide information on the distinction between "licensed lawyer" and member of the Bar.

(15) The Committee is deeply concerned that it received no information on the extent of the problem of trafficking in women, as the State party is reportedly a country of both origin and transit. While acknowledging the need for legislation to combat trafficking of women, the delegation noted that trafficking is not defined as a separate criminal offence if the victim is not a minor; moreover, the delegation gave no conclusive information on action to combat such trafficking (articles 3 and 8 of the Covenant).

The State party should take resolute measures to combat this practice, which constitutes a violation of several Covenant rights, including those in articles 3 and 8, by imposing sanctions against those found responsible.

(16) The Committee is concerned that the State party has not undertaken adequate measures to help women prevent unwanted pregnancies and to ensure that they do not undergo life-threatening abortions.

The State party should take adequate measures to help women prevent unwanted pregnancies and avoid resorting to life-threatening abortions, and to adopt appropriate family planning programmes to this effect.

(17) With regard to articles 3, 9 and 26 of the Covenant, the Committee is concerned at the incidence of violence against women, including rape and domestic violence. The Committee takes note with concern that domestic violence is apparently not acknowledged to be a problem. The Committee notes as well that information on these matters is not systematically maintained, that women have a low level of awareness of their rights and the remedies available to them, and that complaints are not being adequately dealt with.

The State party should take effective measures to combat violence against women, including marital rape. The State party should also organize an effective information campaign to address all forms of violence against women. The Committee urges that reliable data be systematically collected and maintained on the incidence of violence and discrimination against women in all their forms.

(18) The Committee is concerned that the traditional attitudes to women still prevail, whereby a woman's primary role is as wife and mother (articles 3 and 26 of the Covenant).

The State party should take measures to overcome traditional attitudes regarding the role of women in society. It should organize special training programmes for women and regular awareness campaigns in this regard.

(19) The Committee notes that, despite recent improvements, the proportion of women participating in public life and the private sector workforce, particularly at senior levels of the executive and in Parliament, remain at unacceptably low levels (article 3 of the Covenant).

The State party should take appropriate steps towards achieving a balanced representation of women in these fields.

(20) With regard to the rights of aliens, the Committee considers that the provisions in the State party's legislation providing for the principle of reciprocity in guaranteeing Covenant rights to aliens are contrary to articles 2 and 26 of the Covenant. The Committee is equally concerned that according to article 61 of the Constitution, the right to immediate access to legal representation is guaranteed only to citizens.

The Committee recommends that the State party take appropriate measures to guarantee all rights of aliens in accordance with articles 2 and 26 of the Covenant.

(21) The Committee takes note of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.

The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.

(22) The Committee is concerned at the extensive limitations on the right to freedom of expression of the media. While noting the explanations given by the delegation with regard to this issue, the Committee remains concerned at reports of harassment and criminal libel suits used to seek to silence journalists critical of the Government or public officials, as well as the closure of print media outlets and the imposition of heavy fines, aimed at undermining freedom of expression (article 19 of the Covenant).

The Committee urges the State party to take the necessary measures to put an end to direct and indirect restrictions on freedom of expression. Criminal defamation legislation should be brought into line with article 19 by ensuring a proper balance between the protection of a person's reputation and freedom of expression.

(23) The Committee is concerned at reported obstacles imposed on the registration and free operation of non-governmental human rights organizations and political parties (articles 19, 22 and 25 of the Covenant).

> The Committee urges the State party to take all necessary steps to enable national non-governmental human rights organizations to function without hindrance. With regard to political parties, the Committee urges the State party to take all necessary measures to ensure that registration is not used to silence political movements opposed to the Government and to limit the rights of association guaranteed by the Covenant. In particular, legislation should clarify the status of associations, non-governmental organizations and political parties in the period between the request for registration and the final decision; such status should be consistent with articles 19, 22 and 25.

(24) The Committee is concerned at the serious interference in the electoral process, whilst noting the delegation's statement with respect to the punishment and dismissal of those responsible and the cancellation of the results of elections in 11 districts where serious violations had been found and the holding of new elections in those districts.

> The State party should take all necessary measures to ensure that the electoral process is conducted in accordance with article 25 of the Covenant.

(25) The Committee is concerned at the apparently low level of awareness amongst the public of the provisions of the Covenant (article 2 of the Covenant).

> The State party should widely publicize the provisions of the Covenant and the availability of the complaint mechanism to individuals as provided upon the entry into force in the State party of the Optional Protocol.

(26) The State party should widely publicize the present examination of its second periodic report by the Committee and, in particular, these concluding observations.

(27) The State party is requested, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward within 12 months information on the implementation of the Committee's recommendations regarding measures taken to ensure the compatibility with article 4 of the draft law on states of emergency (para. 8 above); investigation of all allegations of torture, the prosecution of those responsible and compensation provided to victims, or, as the case may be, their families (para. 10); legal and practical measures taken to combat violence against women and trafficking (paras. 15 and 17); measures taken to ensure that any restrictions on freedom of expression do not exceed those permissible under article 19, paragraph 3, of the Covenant (para. 22); as well as measures taken to ensure that general elections adequately reflect popular choice (para. 24). The Committee requests that information concerning the remainder of its recommendations be included in the third periodic report, to be submitted by 1 November 2005.

78. **Georgia**

(1) The Committee considered the second periodic report of Georgia (CCPR/C/GEO/2000/2) at its 1986th and 1987th meetings, held on 18 and 19 March 2002. At its 2001st and 2002nd meetings, held on 28 March 2002, it adopted the following concluding observations.

**Introduction**

(2) The Committee welcomes the detailed report and its timely presentation by the State party. It regrets, however, that although information is provided on legislation relating to the Covenant obligations, the necessary information on the practical implementation of the Covenant is lacking.

**Positive aspects**

(3) The Committee appreciates the significant progress achieved in Georgia since the submission of its previous report. That progress is the basis for a positive political, constitutional and legal framework for the implementation of rights enshrined in the Covenant.

(4) The Committee commends the State party for its abolition of the death penalty and the ratification of the Second Optional Protocol to the Covenant.

(5) The Committee welcomes the creation of the Rapid Reaction Group, the function of which is to visit police stations and other places of detention to carry out investigations promptly in response to complaints.

**Principal subjects of concern and recommendations**

(6) The Committee expresses satisfaction at the creation of a Constitutional Court, but it remains concerned that current procedures impede access to the Court.

> The State party should reform the procedures for access to the Constitutional Court in order to guarantee full protection of the human rights enshrined in the Covenant.

(7) The Committee expresses its concern at the still very large number of deaths of detainees in police stations and prisons, including suicides and deaths from tuberculosis. The Committee also remains concerned about the large number of cases of tuberculosis reported in prisons.

> The State party should take urgent measures to protect the right to life and health of all detained persons as provided for in articles 6 and 7 of the Covenant. Specifically, the State party should improve the hygiene, diet and general conditions of detention and provide appropriate medical care to detainees as provided for in article 10 of the Covenant. It should also ensure that every case of death in detention is promptly investigated by an independent agency.

(8) The Committee remains concerned at the widespread and continuing subjection of prisoners to torture and cruel, inhuman or degrading treatment or punishment by law-enforcement officials and prison officers.

(a) The State party should ensure that all forms of torture and similar ill-treatment are punishable as serious crimes under its legislation, in order to comply with article 7 of the Covenant;

(b) The State party should also set up an effective system to monitor the treatment of all prisoners, in order to ensure full protection of their rights under articles 7 and 10 of the Covenant;

(c) The State party should also ensure that all complaints of ill-treatment are properly investigated by an independent authority, that those responsible are brought to justice and that victims are appropriately compensated;

(d) Immediately upon first being deprived of liberty and during all stages of detention, free access to a lawyer and to doctors should be ensured;

(e) All statements obtained by force from detained persons should be investigated and may never be used as evidence, except as evidence of torture; and

(f) The State party should provide training in human rights, particularly on the prohibition of torture, to police and prison officers.

(9) The Committee is concerned at the length of the period (up to 72 hours) that persons can be kept in police detention before they are informed of the charges against them. It is also concerned at the fact that, until the trial takes place, the accused cannot make a complaint before a judge regarding abuse or ill-treatment during the period of detention.

The State party should ensure that detainees are informed promptly of the charges against them, in accordance with article 9 of the Covenant. Detainees should be given the opportunity to make a complaint before a judge regarding any ill-treatment during the investigation phase, as required by articles 7 and 14 of the Covenant.

(10) The Committee expresses its concern at the fact that a person may be detained and imprisoned or prevented from leaving his or her residence because of non-fulfilment of contractual obligations.

The State party should bring its civil and criminal legislation into line with articles 11 and 12 of the Covenant.

(11) The Committee expresses its concern at the difficulties that detainees and persons charged with an offence have in gaining access to lawyers, particularly court-appointed lawyers. Although the law provides for the latter, budgetary problems are obstructing the enjoyment of this right.

The State party should ensure the full enjoyment of the right to be represented by a lawyer in accordance with article 14, paragraph 3 (d), of the Covenant; this includes appropriate budgetary provisions for an effective system of legal aid.

(12) The Committee expresses its concern at the existence of factors which have an adverse effect on the independence of the judiciary, such as delays in the payment of salaries and the lack of adequate security of tenure for judges.

The State party should take the necessary measures to ensure that judges are able to carry out their functions in full independence, and should ensure their security of tenure pursuant to article 14 of the Covenant. The State party should also ensure that documented complaints of judicial corruption are investigated by an independent agency and that the appropriate disciplinary or penal measures are taken.

(13) Although the Committee recognizes that some progress has been made in efforts to achieve equality for women in political and public life, it remains concerned at the low level of representation of women in Parliament and in senior public - and private-sector jobs.

The State party should take appropriate measures to fulfil its obligations under articles 3 and 26 in order to improve the representation of women in Parliament and in senior positions in the public and private sectors as provided in article 3 of the Covenant. The State party should also consider measures, including educational ones, to improve the situation of women in society.

(14) The Committee notes with concern that domestic violence against women remains a problem in Georgia.

The State party should take effective measures, including the enactment and implementation of appropriate legislation, training of police officers, promotion of public awareness and, in more concrete terms, human rights training to protect women against domestic violence, in accordance with article 9 of the Covenant. The State party should provide concrete information on the situation of domestic violence.

(15) The Committee remains concerned at the continuation of practices which involve trafficking in women in Georgia.

The State party should take measures to prevent and combat this practice by enacting a law penalizing trafficking in women, and should fully implement the provisions of article 8 of the Covenant. The Committee recommends that preventive measures be taken to eradicate trafficking in women and provide rehabilitation programmes for the victims. The laws and policies of the State party should provide protection and support for the victims.

(16) Although the Committee welcomes the appointment of an Ombudsman, it notes with concern that her functions are not clearly defined and her power to implement recommendations is limited.

The State party should clearly define the functions of the Ombudsman, ensure her independence from the executive, provide for a direct reporting relationship with the legislature, and give her authority in relation to other State agencies in accordance with article 2 of the Covenant.

(17) The Committee notes with deep concern the increase in the number of acts of religious intolerance and harassment of religious minorities of various creeds, particularly Jehovah's Witnesses.

The State party should take the necessary measures to ensure the right to freedom of thought, conscience and religion as provided in article 18 of the Covenant. It should also:

(a) Investigate and prosecute documented cases of harassment against religious minorities;

(b) Prosecute those responsible for such offences; and

(c) Conduct a public awareness campaign on religious tolerance and prevent, through education, intolerance and discrimination based on religion or belief.

(18) The Committee expresses its concern at the discrimination suffered by conscientious objectors owing to the fact that non-military alternative service lasts for 36 months compared with 18 months for military service; it regrets the lack of clear information on the rules currently governing conscientious objection to military service.

The State party should ensure that persons liable for military service who are conscientious objectors can opt for civilian service the duration of which is not discriminatory in relation to military service, in accordance with articles 18 and 26 of the Covenant.

(19) The Committee expresses its concern with respect to obstacles facing minorities in the enjoyment of their cultural, religious or political identities.

The State party should ensure that all members of ethnic, religious and linguistic minorities enjoy effective protection from discrimination and that the members of such communities can enjoy their own culture and use their own language, in accordance with article 27 of the Covenant.

(20) The Committee is concerned at the harassment of members of non-governmental organizations, particularly those defending human rights.

The State party should ensure that non-governmental organizations can safely carry out their functions in a manner consonant with the principles of a democratic society.

### Dissemination of information about the Covenant

(21) The Committee requests the State party to publicize the text of these concluding observations in the appropriate languages and to ensure that the next periodic report is widely disseminated among the public at large, including non-governmental organizations active in Georgia.

(22) Pursuant to article 70, paragraph 5, of the rules of procedure of the Committee, the State party is requested to transmit, within 12 months, information on measures adopted to deal with the issues raised in paragraphs 7, 8 and 9 of the present concluding observations.

(23) The Committee requests the State party to submit its third periodic report by 1 April 2006.

79. **Sweden**

(1) The Committee considered the fifth periodic report of Sweden (CCPR/C/SWE/2000/5) at its 1989th and 1990th meetings, held on 20 March 2002, and adopted the following concluding observations at its 2003rd and 2004th meetings, held on 1 April 2002.

### Introduction

(2) The Committee welcomes the timely submission of the report by the State party in accordance with the guidelines. The Committee notes with appreciation that the report contains useful information on developments since the consideration of the fourth periodic report. The Committee also welcomes the responses given to the questions raised and the concerns expressed during the consideration of the report. Moreover, the Committee draws attention to the frankness of the dialogue with the delegation and to the useful oral clarifications provided. Lastly, the Committee takes note with appreciation of the importance accorded by the delegation to the role of non-governmental organizations in promoting and protecting human rights and to their contributions to the observance of the Covenant.

### Positive aspects

(3) The Committee welcomes the adoption:

(a) In January 2002, of the National Plan of Action for Human Rights, whose priorities include protection against discrimination, the rights of the disabled, children and the elderly, the right to housing, national minorities, the Sami people, deprivation of freedom, and freedom of expression and religion;

(b) In February 2001, of the National Plan of Action against Racism, Xenophobia, Homophobia and Discrimination; and

(c) In 1997, of the National Plan of Action against the Sexual Exploitation of Children for Commercial Purposes.

(4) The Committee notes with satisfaction the legislative amendments giving access, as from 1 January 2002, to pre-school, primary and secondary education, and health care to children requesting asylum, on the same conditions as children residing in Sweden.

(5) The Committee commends the State party for its sustained role in the international community's efforts to abolish the death penalty.

**Principal subjects of concern and recommendations**

(6) The Committee, while commending the way in which the courts refer to the Covenant in interpreting rights, regrets that the Covenant as such may not be directly invoked before Swedish courts or before the administrative authorities. In this connection, it notes that in certain areas (arts. 25, 26 and 27) the Covenant gives greater protection than is accorded under the European Convention on Human Rights, which has been incorporated in Swedish domestic law.

The State party should ensure that its domestic legislation gives full effect to the rights embodied in the Covenant and that remedies are available for the exercise of those rights.

(7) The Committee notes with concern the persistence of domestic violence despite legislation adopted by the State party (articles 3 and 7 of the Covenant).

The State party should pursue its policy against domestic violence and, in this framework, should take more effective measures to prevent it and assist the victims of such violence.

(8) The Committee notes with concern cases of female genital mutilation and "honour crimes" involving girls and women of foreign extraction (articles 3, 6 and 7 of the Covenant).

The State party should continue its efforts to prevent and eradicate such practices. In particular, it should ensure that offenders are prosecuted, while promoting a human rights culture in the society at large, especially among the most vulnerable sectors of immigrant communities.

(9) The Committee expresses its concern at the recognition of early marriage involving girls of non-Swedish nationality who are resident in Sweden (articles 3 and 26 of the Covenant).

The State party should take vigorous measures to provide better protection for minors in the matter of marriage and eliminate all forms of discrimination among them.

(10) The Committee notes with concern several cases of excessive use of force by the police which led to serious injury and death, for example of persons in custody or during the Goteborg summit (articles 6, 7 and 10 of the Covenant).

The State party should ensure the completion of investigations into such use of force, in conditions of total transparency and through a mechanism independent of the law enforcement authorities. Depending on the results of the investigations, it should expedite the prosecution of law enforcement officers implicated. The State party should also guarantee better human rights training of police officers. During demonstrations, the State party should ensure that no equipment that can endanger human life is used.

(11) The Committee notes the lack of clarity relating to the right of the accused to an assigned lawyer and to an interpreter (article 14 of the Covenant).

The State party is invited to provide the necessary clarifications to assure the Committee that legislation and practice in this area are compatible with article 14 of the Covenant.

(12) While it understands the security requirements relating to the events of 11 September 2001, and takes note of the appeal of Sweden for respect for human rights within the framework of the international campaign against terrorism, the Committee expresses its concern regarding the effect of this campaign on the situation of human rights in Sweden, in particular for persons of foreign extraction. The Committee is concerned at cases of expulsion of asylum-seekers suspected of terrorism to their countries of origin. Despite guarantees that their human rights would be respected, those countries could pose risks to the personal safety and lives of the persons expelled, especially in the absence of sufficiently serious efforts to monitor the implementation of those guarantees (two visits by the embassy in three months, the first only some five weeks after the return and under the supervision of the detaining authorities) (articles 6 and 7 of the Covenant). The Committee also stresses the risk of violations of fundamental rights of persons of foreign extraction (freedom of expression and privacy), in particular through more frequent recourse to telephone tapping and because of an atmosphere of latent suspicion towards them (articles 13, 17 and 19 of the Covenant):

(a) The State party must ensure that measures taken under the international campaign against terrorism are fully in conformity with the Covenant. The State party is requested to ensure that the concern over terrorism is not a source of abuse;

(b) In addition, the State party should maintain its practice and tradition of observance of the principle of non-refoulement. When a State party expels a person to another State on the basis of assurances as to that person's treatment by the receiving State, it must institute credible mechanisms for ensuring compliance by the receiving State with these assurances from the moment of expulsion; and

(c) The State party is also requested to undertake an educational campaign through the media to protect persons of foreign extraction, in particular Arabs and Muslims, from stereotypes associating them with terrorism, extremism and fanaticism.

(13) The Committee expresses its concern at reports of persistent manifestations of racism and xenophobia, whether refusal of access to public places because of ethnicity or difficulties for foreigners in the job market (articles 19 and 26 of the Covenant).

The State party must make a sustained effort to improve the application of laws punishing racially motivated crimes, the integration into society of members of minority groups and the dissemination of a culture of tolerance, in particular as part of primary and secondary education.

(14) The Committee is deeply concerned at the existence and considerable activism of neo-Nazi organizations and by the production and distribution of so-called "white power" music preaching the superiority of the white race (article 20 of the Covenant).

The State party should take steps to review its policy towards the establishment and operation of racist, xenophobic and, especially, neo-Nazi organizations. It should also review its attitude towards the production and distribution of so-called "white power" music.

(15) The Committee is concerned at the limited extent to which the Sami Parliament can have a significant role in the decision-making process on issues affecting the traditional lands and economic activities of the indigenous Sami people, such as projects in the fields of hydroelectricity, mining and forestry, as well as the privatization of land (articles 1, 25 and 27 of the Covenant).

The State party should take steps to involve the Sami by giving them greater influence in decision-making affecting their natural environment and their means of subsistence.

(16) The State party should disseminate widely the text of its fifth periodic report and the present concluding observations.

(17) In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should provide within one year the relevant information on the implementation of the Committee's recommendations in paragraph 12 above concerning, in particular, the monitoring of the cases of persons expelled. The Committee requests the State party to provide in its next report, which it is scheduled to submit by 1 April 2007, information on the other recommendations made and on the Covenant as a whole.

80. **Hungary**

(1) The Committee considered the fourth periodic report of Hungary (CCPR/C/HUN/2000/4) at its 1993rd and 1994th meetings, held on 22 March 2002, and adopted the following concluding observations at its 2005th meeting (seventy-fourth session), held on 2 April 2002.

**Introduction**

(2) The Committee welcomes the State party's fourth periodic report and the constructive discussion it had with the State party delegation. It appreciates the additional details and statistical data provided by the delegation as a supplement to the information contained in the report. It observes that it would have been helpful if this information had been included in the report itself, so as to permit a more considered examination by the Committee.

## Positive aspects

(3) The Committee commends the State party for the substantial progress it has made in strengthening democratic institutions within its jurisdiction. It welcomes the legislative measures and other steps towards establishing and consolidating a human rights regime which have been taken since the submission of its last report. It particularly notes the establishment of a framework for minority protection and minority electoral representation.

(4) The Committee welcomes the contribution of the Constitutional Court in resolving conflicts between national legislation and obligations under the Covenant.

(5) The Committee takes note of assurances given by the State party that measures to combat terrorism will respect Covenant guarantees.

## Principal subjects of concern and recommendations

(6) While the Covenant is incorporated into the domestic legal order and is directly applicable before the Hungarian courts, not all Covenant rights are ensured in practice. The Committee is also concerned that, notwithstanding article 26 of the Covenant, there is no comprehensive legislative provision against discrimination.

> The State party is requested to take steps to enact comprehensive anti-discrimination legislation (article 26 of the Covenant).

(7) The Committee is deeply concerned at the situation of the Roma people who, despite various steps taken by the State party, remain disadvantaged in almost all aspects of life covered by the Covenant. The Committee particularly regrets ongoing discrimination against Roma with regard to employment, housing, education, social security and participation in public life. The excessively high number of Roma in prisons, reports of their ill-treatment in police custody and the continuing existence of separate schools are also ongoing sources of concern to the Committee.

> The State party should strengthen measures for improving the situation of the Roma people. In addition to further legislative steps, the training of officials, in particular the police, is strongly recommended, as is a vigorous campaign to alter public attitudes vis-à-vis the Roma people. The State party should also discontinue the placement of Roma children in special schools or special classes and give priority to measures that will enable them to benefit from regular schools and classes (articles 26 and 27 of the Covenant).

(8) The Committee regrets that, under the new Criminal Procedure Act, short-term arrest of up to 12 hours remains possible. It expresses its concern both at the length of the initial pre-trial detention phase (up to 72 hours) and the difficulties experienced by detainees in contacting their families and obtaining access to a lawyer, especially if the detained person cannot afford to engage private counsel. Further, the Committee is deeply concerned at ongoing pre-trial detention on police premises and the high risk of ill-treatment which it entails. It also greatly regrets that pre-trial detention of up to three years is provided for under the Act.

The State party should reconsider removing these provisions from the new Criminal Procedure Act, especially those permitting detention in police stations for more than 48 hours. The State party should ensure that its law and practice are compatible with article 9 of the Covenant. It should also bring to the attention of judges the particular risk of ill-treatment in police premises, and take appropriate measures to ensure detainees' rights to contact their families and obtain legal assistance (articles 7, 9 and 14 of the Covenant).

(9) The Committee is concerned at the low participation of women in political life and at their segregation in the labour market, as well as their low representation in senior levels of government and in the private sector.

The State party should implement positive measures in order to give effect to its Covenant obligations to ensure the equal participation of women in both the public and private sectors (article 3 of the Covenant).

(10) The Committee regrets continuing reports of violence against women, including rape and sexual harassment.

The State party should take more vigorous measures to encourage the development of a culture of human rights and to ban violence against women; in this context, training and education in human rights are essential at all levels and in all sectors of society. In particular, the State party should take measures to encourage women to report domestic violence to the authorities, and to make police officers more sensitive in their handling of allegations of rape and its psychological effects on the victim. It should also consider enacting further legislation to deal with domestic violence, including the introduction of restraining orders as a means of separating women from violent male family members; and it should provide shelters and other support for victims of domestic violence (articles 3, 7 and 9 of the Covenant).

(11) The Committee is concerned at the high maternal mortality rate in Hungary and the fact that the State party does not provide sufficient support for family planning through effective means of contraception.

The State party should take steps to protect women's life and health, through more effective family planning and contraception (article 6 of the Covenant).

(12) The Committee is concerned at the high number of reports of ill-treatment by law enforcement agencies, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated.

The State party should take measures to educate law enforcement officials and judges with a view to preventing such treatment and, when it occurs, should ensure careful investigation and prosecution where necessary. It should also establish an independent system of investigation of complaints of abuses by law enforcement officials (article 7 of the Covenant).

(13) The Committee is concerned that, notwithstanding the construction of new prison facilities, there is continuing overcrowding in prisons.

> The State party should take steps to reduce the grounds for detention provided for by law, to promote alternatives to detention, and to construct additional prison facilities as needed (article 10 of the Covenant).

(14) The Committee notes with concern discriminatory practices with respect to the registration of certain religious groups in Hungary and the limited protection accorded to the religious rights of asylum-seekers and prisoners. It further notes that the restitution of Church property has not been completed in a timely manner. Finally, it observes that educational programmes concerning religious tolerance and non-discrimination on the basis of religion or conviction are inadequate.

> The State party should ensure that religious organizations are treated in a manner that is compatible with the Covenant; it should reinforce the protection of religious rights of asylum-seekers and prisoners; it should complete the process of restitution of Church property without discrimination; and it should undertake educational programmes designed to promote tolerance and the elimination of discrimination on the grounds of religion and conviction (articles 18 and 26 of the Covenant).

(15) The Committee regrets the lack of information from the State party on measures undertaken to ensure the implementation in practice of its obligations under article 19 of the Covenant.

> The State party should provide adequate information on this issue in its next periodic report.

(16) The State party should widely publicize the text of its fourth periodic report and the present concluding observations.

(17) Pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, the State party should furnish within one year information on any action it has taken in the light of the Committee's observations and recommendations on the situation of the Roma people (para. 7) and pre-trial detention in police premises (para. 8). The Committee requests that information on the remainder of its recommendations be included in the fifth periodic report, due to be submitted by 1 April 2007.

## 81. New Zealand

(1) The Committee considered the fourth periodic report of New Zealand (CCPR/C/NZL/2001/4 and HRI/CORE/1/Add.33) at its 2015th and 2016th meetings, held on 9 and 10 July 2001 (see CCPR/C/SR.2015 and 2016) and adopted the following concluding observations at its 2026th meeting (CCPR/C/SR.2026), on 17 July 2002.

## Introduction

(2) The Committee expresses its appreciation to the State party for its excellent report, which contains detailed information on the law and practice relating to the implementation of the Covenant and is in accordance with the Committee's guidelines. However, it regrets the delay in submitting the report.

(3) The Committee notes with appreciation that the report contains useful information on developments since the consideration of the third periodic report, as well as responses to the concerns expressed by the Committee in its concluding observations on the previous report. The Committee also welcomes the written responses given to the Committee's written list of questions.

## Positive aspects

(4) The Committee welcomes the *Consistency 2000* exercise - the examination by the New Zealand Human Rights Commission of all acts, regulations, government policies and administrative practices with a view to determining whether they are consistent with the anti-discrimination provisions of the Human Rights Act. It further welcomes the audit process undertaken by the Government to identify and resolve the inconsistencies between the Human Rights Act and legislation, regulations, government policies and practices, known as *Compliance 2001*.

(5) The Committee notes with satisfaction that in the determination of cases the New Zealand courts take account and are aware of the obligations undertaken by the State party under the Covenant and of the Committee's general comments.

(6) The Committee welcomes the enactment of:

(a) The Parental Leave and Employment Protection (Paid Parental leave) Amendment Act 2002;

(b) The Human Rights Amendment Act 2001;

(c) The Employment Relations Act 2000; and

(d) The Domestic Violence Act 1995.

(7) The Committee welcomes the further progress made in the protection and promotion of the rights of Maori under the Covenant, in particular the amendments introduced by the Maori Reserved Land Amendment Act which came into force in 1998. In this respect, the Committee notes with satisfaction that the Act provides for compensation to be paid to lessors for delays in carrying out rent reviews and to ensure fair annual rents, and providing for compensation to be paid to (largely non-Maori) lessees under certain circumstances. The approach of providing compensation from public funds helps to avoid tensions that might otherwise hamper the recognition of indigenous land and resource rights.

## Principal subjects of concern and recommendations

(8) Article 2, paragraph 2, of the Covenant requires States parties to take such legislative or other measures which may be necessary to give effect to the rights recognized in the Covenant. In this regard the Committee regrets that certain rights guaranteed under the Covenant are not reflected in the Bill of Rights, and that it has no higher status than ordinary legislation. The Committee notes with concern that it is possible, under the terms of the Bill of Rights, to enact legislation that is incompatible with the provisions of the Covenant and regrets that this appears to have been done in a few cases, thereby depriving victims of any remedy under domestic law.

> The State party should take appropriate measures to implement all the Covenant rights in domestic law and to ensure that every victim of a violation of Covenant rights has a remedy in accordance with article 2 of the Covenant.

(9) The Committee regrets that the State party does not consider it necessary to include in the prohibited grounds of discrimination all the grounds stated in the Covenant, in particular, language, although in New Zealand language has been interpreted as an aspect of race.

> The State party should revise its domestic law in order to bring it into full conformity with the provisions of articles 2 and 26 of the Covenant.

(10) With regard to the possible impact of the punishment of preventive detention upon article 15 rights in conjunction with other articles of the Covenant, the Committee has received a written answer from the State party after the close of the dialogue. However, the Committee still has some concerns and looks forward to pursuing its dialogue with the State party further on this issue.

> The State party should deal fully with this issue in its next periodic report and should inform the Committee of any relevant further developments.

(11) The Committee recognizes that the security requirements relating to the events of 11 September 2001 have given rise to efforts by New Zealand to take legislative and other measures to implement Security Council resolution 1373 (2001). The Committee, however, expresses its concern that the impact of such measures or changes in policy on New Zealand's obligations under the Covenant may not have been fully considered. The Committee is concerned about possible negative effects of the new legislation and practices on asylum-seekers, including by "removing the immigration risk offshore" and in the absence of monitoring mechanisms with regard to the expulsion of those suspected of terrorism to their countries of origin which, despite assurances that their human rights would be respected, could pose risks to the personal safety and lives of the persons expelled (articles 6 and 7 of the Covenant).

> The State party is under an obligation to ensure that measures taken to implement Security Council resolution 1373 (2001) are in full conformity with the Covenant. The State party is requested to ensure that the definition of terrorism does not lead to abuse and is in conformity with the Covenant. In addition, the State party should maintain its practice of strictly observing the principle of non-refoulement.

(12) The Committee is concerned at information that permanent residents of New Zealand and, under certain conditions, even some citizens need a return visa to re-enter New Zealand, as this may raise issues under article 12, paragraph 4, of the Covenant.

The State party should review its legislation to ensure compliance with article 12, paragraph 4, of the Covenant.

(13) The Committee notes with concern that the management of one prison and prison escort services have been contracted to a private company. While welcoming the information that the State party has decided that all prisons will be publicly managed after the expiry of the current contract in July 2005 and that the contractors are expected to respect the United Nations Minimum Standards for the Treatment of Prisoners, it nevertheless remains concerned about whether the practice of privatization, in an area where the State is responsible for protecting the rights of persons whom it has deprived of their liberty, effectively meets the obligations of the State party under the Covenant and its own accountability for any violations. The Committee further notes that there does not appear to be any effective mechanism of day-to-day monitoring to ensure that prisoners are treated with humanity and with respect for the inherent dignity of the human person and further benefit from treatment, the essential aim of which is directed to their reformation and social rehabilitation.

The State party should ensure that all persons deprived of their liberty are not deprived of the various rights guaranteed under article 10 of the Covenant.

(14) While recognizing the positive measures taken by the State party with regard to the Maori, including the implementation of their rights to land and resources, the Committee continues to be concerned that they remain a disadvantaged group in New Zealand society with respect to the enjoyment of their Covenant rights in all areas of their everyday life.

The State party should continue to reinforce its efforts to ensure the full enjoyment of the Covenant rights by the Maori people.

(15) The State party should finalize its review of its reservations relating to article 10 of the Covenant with a view to withdrawing them at the earliest possible date.

(16) The State party should disseminate widely the text of its fourth periodic report, the written replies it provided to the list of issues drawn up by the Committee and, in particular, the present concluding observations.

(17) The Committee draws the attention of the State party to the guidelines of the Committee on the preparation of reports (CCPR/C/66/GUI/Rev.1). The fifth periodic report should be prepared in accordance with those guidelines, with particular attention paid to the implementation of rights in practice. It should indicate the measures taken to give effect to these concluding observations. The fifth periodic report should be submitted by 1 August 2007.

82. **Viet Nam**

(1) The Committee considered the second periodic report of Viet Nam (CCPR/C/VNM/2001/2) at its 2019th, 2020th and 2021st meetings (CCPR/C/SR.2019-2021), held on 11 and 12 July 2002, and adopted the following concluding observations at its 2031st meeting (CCPR/C/SR.2031), held on 19 July 2002.

**Introduction**

(2) The Committee welcomes Viet Nam's second periodic report, which contains detailed information on domestic legislation in the area of civil and political rights, and the opportunity to resume the discussion with the State party. The Committee welcomes the State party's decision to send a strong delegation from its capital, composed of representatives of various government authorities, for the examination of the report. The Committee regrets, however, the considerable delay in the submission of the report which was due in 1991. It also regrets the lack of information on the human rights situation in practice, as well as the absence of facts and data on the implementation of the Covenant. As a result, a number of credible and substantiated allegations of violations of Covenant provisions which have been brought to the attention of the Committee could not be addressed effectively and the Committee found it difficult to determine whether individuals in the State party's territory and subject to its jurisdiction fully and effectively enjoy their fundamental rights under the Covenant.

**Positive aspects**

(3) In this regard, the Committee has noted developments within the State party that reflect some relaxation of the political restraints that have raised serious questions of gross violations of rights protected by the Covenant.

(4) The Committee takes note of the efforts which are being made by the State party to reform its domestic legal order, to comply with its international, in particular human rights, commitments.

**Principal areas of concern and recommendations**

(5) The Committee is concerned about the status under domestic law of the rights provided for in the Covenant, which remains unclear. It is also concerned that certain constitutional provisions would appear to be incompatible with the Covenant and that the Vietnamese Constitution does not enumerate all Covenant rights, nor the extent to which they may be limited and the criteria used. The Committee is concerned that according to Vietnamese law the Covenant rights must be interpreted in a way that may compromise the enjoyment of these rights by all individuals.

> The State party should guarantee the effective protection of all rights enshrined in the Covenant and ensure that they are fully respected and enjoyed by all (art. 2).

(6) The Committee is concerned about the statement of the delegation that because persons under the jurisdiction of the State party have recourse to national mechanisms, the State party does not need to accede to the Optional Protocol.

The State party should consider acceding to the Optional Protocol in order to enhance the protection of human rights afforded to persons under its jurisdiction.

(7) Notwithstanding the reduction in the number of crimes that carry the death penalty from 44 to 29, the Committee remains concerned about the large number of crimes for which the death penalty may still be imposed. The penalty does not appear to be restricted only to those crimes that are considered as the most serious ones. In this respect, the Committee considers that the definition of certain acts such as opposition to order and national security violations, for which the death penalty may be imposed, are excessively vague and are inconsistent with article 6, paragraph 2, of the Covenant.

The State party should continue to review the list of crimes for which the death penalty may be imposed in order to reduce and limit these to crimes which may be strictly considered as the most serious crimes, as required by article 6, paragraph 2, and with a view to abolishing capital punishment in furtherance of article 6 of the Covenant.

(8) Notwithstanding the information provided by the delegation that only three persons were currently subject to administrative detention, referred to as probation by the delegation, the Committee remains concerned about the continued use of this practice as prescribed under decree CP-31, since it provides for persons to be kept under house arrest for up to two years without the intervention of a judge or a judicial officer. The Committee is equally concerned at the provisions of article 71 of the Code of Criminal Procedure, pursuant to which the Principal Prosecutor may prolong the duration of the preventive detention of an individual without time limits, "if required and for serious offences against national security".

The State party should ensure that no persons are subjected to arbitrary restriction of their liberty and that all persons deprived of their liberty are promptly brought before a judge or other officer authorized to exercise judicial power by law, and that they can only be deprived of their liberty on the basis of a judgement based on law, as required by article 9, paragraphs 3 and 4, of the Covenant.

(9) The Committee is concerned that the judicial system remains weak owing to the scarcity of qualified, professionally trained lawyers, lack of resources for the judiciary and its susceptibility to political pressure. The Committee is also concerned that the Supreme People's Court is not independent of government influence. It is further concerned that the judiciary seeks the opinion of the National Assembly's Standing Committee in regard to the interpretation of laws and that the Standing Committee is responsible for setting criteria and instructions which are binding for the judiciary.

In order to implement article 14 of the Covenant, the State party should take effective measures to strengthen the judiciary and to guarantee its independence, and ensure that all allegations of undue pressure on the judiciary are dealt with promptly.

(10) The Committee is concerned about the procedures for the selection of judges as well as their lack of security of tenure (appointments of only four years), combined with the possibility, provided by law, of taking disciplinary measures against judges because of errors in judicial decisions. These circumstances expose judges to political pressure and jeopardize their independence and impartiality.

The State party should enact procedures to be applied in appointing and assigning judges in order to safeguard and ensure the independence and impartiality of the judiciary in line with article 14 of the Covenant. It must ensure that judges may not be removed from their posts unless they are found guilty by an independent tribunal of inappropriate conduct.

(11) The Committee is concerned that the State party has not yet established an independent, legally constituted body with power to oversee and investigate complaints of human rights violations, including complaints against members of the police and the security services and prison guards. This fact may account for the small number of recorded complaints, in contrast to the information about large numbers of violations received from non-governmental sources (arts. 2, 7 and 10).

The State party should establish, by legislation, a permanent independent human rights monitoring body with adequate powers and resources to receive and investigate allegations of torture or other abuses of power by public officials, including members of the security services, and to initiate criminal and disciplinary proceedings against those found responsible.

(12) The Committee regrets the lack of precise information provided by the delegation with respect to the number and location of all the detention centres or institutions in which persons are held against their will, and the conditions under which such persons are held (art. 10).

The State party should provide information in respect of all the institutions in which persons are held against their will, the number and names of the institutions and the number of inmates in each and whether these are remand or convicted prisoners.

(13) The Committee is concerned that the legal right of detainees to access to counsel, medical advice and members of the family is not always respected in practice.

The State party should ensure scrupulous respect for these rights by its law enforcement agencies, the procuracy and the judiciary.

(14) The Committee is concerned that the State party asserts that domestic violence against women is a new phenomenon and that, although some efforts have been made, there is no comprehensive approach to preventing and eliminating it and punishing the perpetrator (arts. 3, 7, 9 and 26).

The State party should assess the impact of measures already taken to address the incidence of domestic violence against women. It should strengthen and improve the effectiveness of legislation, policies and programmes aimed at combating such violence.

The State party should further implement training and sensitization programmes for the judiciary, law enforcement officials and members of the legal profession, as well as awareness-raising measures, to ensure zero tolerance in society of violence against women.

(15) The Committee is concerned that the State party has not undertaken adequate measures to help women prevent unwanted pregnancies and to ensure that they do not undergo life-threatening abortions (art. 6).

The State party should take adequate measures to help women prevent unwanted pregnancies and avoid resorting to life-threatening abortions, and adopt appropriate family planning programmes to this effect.

(16) The Committee notes that the information provided by the delegation was insufficient for the Committee to have a clear view of the situation in Viet Nam with regard to religious freedom. In the light of information available to the Committee that certain religious practices are repressed or strongly discouraged in Viet Nam, the Committee is seriously concerned that the State party's practice in this respect does not meet the requirements of article 18 of the Covenant. The Committee is deeply concerned by allegations of harassment and detention of religious leaders and regrets that the delegation failed to provide information relating to such allegations. In this context, the Committee is concerned at the restrictions placed on outside observers who wished to investigate the allegations.

The State party is requested to provide the Committee with up-to-date information about the number of individuals belonging to various religious communities and the number of places of worship, as well as the practical measures taken by the authorities to guarantee the freedom of exercise of religious practice.

(17) The Committee takes note of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.

The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.

(18) The Committee is concerned at reports of the extensive limitations on the right to freedom of expression in the media and the fact that the Press Law does not allow the existence of privately owned media. It is also concerned at the press laws which impose restrictions on publications which, inter alia, are said to cause harm to political stability or insult national institutions. These broadly defined offences are incompatible with paragraph 3 of article 19 of the Covenant.

The State party should take all necessary measures to put an end to direct and indirect restrictions on freedom of expression. The press laws should be brought into compliance with article 19 of the Covenant.

(19) While noting that the State party denies any violation of the Covenant rights in this respect, the Committee remains concerned at the abundance of information regarding the treatment of the Degar (Montagnard) indicating serious violations of articles 7 and 27 of the Covenant. The Committee is concerned at the lack of specific information concerning indigenous peoples, especially the Degar (Montagnard), and about measures taken to ensure that their rights under article 27 to enjoy their cultural traditions, including their religion and language, as well as to carry out their agricultural activities, are respected.

> The State party should take immediate measures to ensure that the rights of members of indigenous communities are respected. Non-governmental organizations and other human rights monitors should be granted access to the central highlands.

(20) While noting the explanations provided by the delegation regarding the exercise of the right to freedom of association, the Committee is concerned at the absence of specific legislation on political parties and at the fact that only the Communist Party is permitted. The Committee is concerned at reported obstacles imposed on the registration and free operation of non-governmental human rights organizations and political parties (arts. 19, 22 and 25). It is especially concerned about obstacles placed in the path of national and international non-governmental organizations and special rapporteurs whose task it is to investigate allegations of human rights violations in the territory of the State party.

> The State party should take all the necessary steps to enable national and international non-governmental human rights organizations and political parties to function without hindrance.

(21) The Committee is concerned about the restrictions on public meetings and demonstrations (art. 25).

> The State party should provide additional information on the conditions for public assemblies and, in particular, to indicate whether and under what conditions the holding of a public assembly can be prohibited and whether such measures can be appealed.

(22) The State party should make public the present examination of its second periodic report by the Committee, the written answers it has provided in responding to the list of issues drawn up by the Committee and, in particular, these concluding observations.

(23) The State party is requested, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding paragraphs 7, 12, 14, 16, 19 and 21 above. The Committee requests that information concerning the remainder of the recommendations be included in the third periodic report, to be submitted by 1 August 2004.

83. **Yemen**

(1) The Committee considered the third periodic report of Yemen (CCPR/C/YEM/2001/3) at its 2027th and 2028th meetings (CCPR/C/SR.2027 and CCPR/C/SR.2028) on 17 and 18 July 2002 and adopted the following concluding observations at its 2036th meeting (CCPR/C/SR.2036) on 24 July 2002.

**Introduction**

(2) The Committee welcomes the timely submission by the State party of a report containing important information on domestic legislation on the implementation of the Covenant. It notes with appreciation that the report contains useful information on some legal and institutional developments since the consideration of the second periodic report. It nonetheless regrets the lack of information on the jurisprudence and the practical aspects of the implementation of the Covenant. The Committee does note, however, the partial responses given in answer to the questions raised and the concerns expressed during the consideration of the report. It also welcomes the Yemeni delegation's expressed readiness to cooperate.

**Positive aspects**

(3) The Committee welcomes the importance attached in article 6 of the Yemeni Constitution to the Universal Declaration of Human Rights. It also welcomes some human rights initiatives undertaken by the State party in recent years, in particular the appointment of a Minister of State for Human Rights in 2001, and conclusion of a technical cooperation agreement with the Office of the United Nations High Commissioner for Human Rights (in keeping with the recommendation in the Committee's concluding observations of 3 October 1995, paras. 258 and 265) and with the International Labour Office to eradicate child labour and set up aid centres for disadvantaged children. It also notes the growing number of non-governmental organizations, particularly for the rights of women.

**Principal subjects of concern and recommendations**

(4) The Committee regrets the lack of clarity about the question of the juridical value of the Covenant in domestic law and the consequences thereof.

> The State party should ensure that its legislation gives full effect to the rights acknowledged in the Covenant and that remedies are available for the exercise of those rights.

(5) The Committee, while it takes note of the composition and functions of the Yemeni National Committee for Human Rights, which is a government commission, notes the absence of a human rights commission that is independent of the authorities and the lack of any plans in this connection.

> The State party should consider the establishment of an independent institution for the protection of human rights, with a mandate to receive complaints, to initiate inquiries and to institute proceedings where appropriate with complete independence.

(6) The Committee notes with concern the continued practice of female genital mutilation (articles 3, 6 and 7 of the Covenant). It is also concerned at the persistence of domestic violence despite the legislation passed by the State party (articles 3 and 7 of the Covenant).

The State party must pursue its efforts to eradicate such practices. It should in particular ensure that proceedings are instituted against the perpetrators and promote a human rights culture within society along with greater awareness of the rights of women, especially the right to physical integrity. It must also take more effective action to prevent and punish domestic violence and aid the victims.

(7) The Committee notes with concern the situation of discrimination against women in matters of personal status, particularly in matters of marriage and divorce and the rights and duties of spouses.

The State party should review its legislation to ensure that, in all fields in the life of society, women enjoy complete equality with men, both in law and in fact, so as to comply with its obligations under the Covenant (articles 3, 7, 8, 17 and 26 of the Covenant).

(8) The Committee notes with concern that married women may not, at least by law, leave their homes without the authorization of their husbands (articles 3, 12 and 26 of the Covenant).

The State party should take appropriate measures to combat this practice and make sure, in fact and in law, that women's rights under articles 3, 12 and 26 of the Covenant are observed.

(9) The Committee notes the persistence of the practice of polygamy, which is detrimental to human dignity and discriminatory within the meaning of the Covenant (articles 3 and 26 of the Covenant).

The State party is strongly encouraged to abolish polygamy and combat it socially by effective means.

(10) The Committee expresses its concern about the practice of early marriage of young girls and the inequality between men and women as regards marriageable age (articles 3 and 26 of the Covenant).

The State party should protect girls from early marriage and do away with discrimination against women as regards marriageable age.

(11) The Committee notes the discriminatory situation affecting women as regards the acquisition and transmission of nationality (articles 3 and 26 of the Covenant).

The State party must eliminate from its legislation all discrimination between men and women as regards acquisition and transmission of nationality.

(12) The Committee is concerned at the continued detention of women who have served their prison sentences and are held in detention because of social and family attitudes of rejection towards them (articles 3, 9 and 26 of the Covenant).

The State party is encouraged to find appropriate solutions to enable these women to return to society.

(13) While it welcomes the measures taken by the authorities in recent years to promote the participation of women in public life, the Committee notes the underrepresentation of women in the public and private sectors (arts. 3 and 26).

The State party is encouraged to pursue its efforts to secure better participation of women at all levels of society and of the State.

(14) The Committee notes the lack of clarity in the legal provisions permitting the declaration of a state of emergency and derogation from the obligations established in the Covenant (article 4 of the Covenant).

The State party should see to it that its legislation conforms to the provisions of the Covenant so as to ensure in particular that there are no breaches of non-derogable rights.

(15) The Committee notes with concern that the offences punishable by the death penalty under Yemeni law are not consistent with the requirements of the Covenant and that the right to seek a pardon is not guaranteed for all on an equal footing. The preponderant role of the victim's family in determining on the basis of financial compensation whether or not the penalty is carried out is also contrary to articles 6, 14 and 26 of the Covenant.

The State party should review the question of the death penalty. The Committee points out that article 6 of the Covenant limits the circumstances that may justify the death penalty and guarantees the right of every convicted person to seek a pardon. Consequently, it calls upon the State party to bring its legislation and practice into line with the provisions of the Covenant. The State party is also called upon to provide the Committee with detailed information on the number of persons sentenced to death and the number of convicted persons executed since the year 2000.

(16) The Committee is extremely troubled to find that amputation and flagellation, and corporal punishment generally, are still accepted and practised, for this is contrary to article 7 of the Covenant.

The State party must take appropriate action to end these practices and ensure that the Covenant is respected.

(17) The Committee is disturbed to note cases of torture and cruel, inhuman or degrading treatment for which law enforcement officers are responsible. It is equally concerned at the absence, in general, of investigations into such reprehensible practices and of punishment for the perpetrators. It is also concerned at the lack of an independent body to investigate such reports (articles 6 and 7 of the Covenant).

The State party should ensure that all human rights abuses are investigated and should, depending on the findings of the investigations, institute proceedings against the perpetrators of such violations. It should also set up an independent body to investigate such reports.

(18) While it understands the security requirements connected with the events of 11 September 2001, the Committee expresses its concern about the effects of this campaign on the human rights situation in Yemen, in relation to both nationals and foreigners. It is concerned, in this regard, at the attitude of the security forces, including Political Security, which arrests and detains anyone suspected of links with terrorism, in violation of the guarantees set out in the Covenant (art. 9). The Committee also expresses its concern about cases of expulsion of foreigners suspected of terrorism without an opportunity for them to legally challenge such measures. Such expulsions are, furthermore, apparently decided on without taking into account the risks to the physical integrity and lives of the persons concerned in the country of destination (arts. 6 and 7).

The State party must ensure that the measures taken in the campaign against terrorism are within the limits of Security Council resolution 1373 (2001) and fully consistent with the provisions of the Covenant. It is requested to ensure that the fear of terrorism does not become a source of abuse.

(19) The Committee notes that the independence of the judiciary does not seem to be guaranteed in all circumstances (art. 14).

The State party must free the judiciary of any interference, in accordance with the provisions of the Covenant.

(20) The Committee notes with concern the violations of freedom of religion or belief, in particular breaches of the right to change religion (article 18 of the Covenant).

The State party must ensure that its legislation and practice are in line with the provisions of the Covenant, and in particular respect people's right to change their religion if they so choose.

(21) The Committee expresses its concern about some restrictions under Yemeni legislation on freedom of the press and about the difficulties encountered by journalists in practising their profession when they criticise the authorities (article 19 of the Covenant).

The State party should ensure that the provisions of article 19 of the Covenant are respected.

(22) The State party should disseminate widely the text of its third periodic report and the present concluding observations.

(23) In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should within one year provide information on the implementation of the Committee's recommendations in paragraphs 6 to 13 concerning the status of women and in paragraph 15 on the number of persons sentenced to death and executed since the year 2000. The Committee requests the State party to provide in its next report, which it is scheduled to submit by 1 August 2004, information on the other recommendations made and on its implementation of the Covenant as a whole.

84. **Moldova**

(1) The Committee considered the initial report of Moldova (CCPR/C/MDA/2000/1) at its 2029th and 2030th meetings, held on 18 and 19 July 2002 (see CCPR/C/SR.2029 and 2030) and adopted the following concluding observations at its 2038th meeting (CCPR/C/SR.2038), held on 25 July 2002.

**Introduction**

(2) The Committee welcomes the State party's accession to the Covenant in 1993 and expresses its appreciation to the State party for its initial report. The report sought to provide a comprehensive framework of law and policy, though the Committee would have benefited by a greater focus on the practical realities of the enjoyment of Covenant rights. The Committee regrets the substantial delay in submission since the report was due in 1994.

(3) While appreciating the delegation's comments on a series of questions posed orally by members of the delegation, the Committee regrets that an extensive number of questions remained wholly or partly unanswered at the conclusion of its discussion. Brief additional material was received in the week following the delegation's appearance, but the Committee continues to look forward to receiving full written responses to its questions, which the State party has undertaken to provide.

(4) The Committee notes that the State party did not provide, either in its report or in its oral presentation, more detailed information on the situation in the Transnistrian region. While accepting that the Moldovan authorities' control over the Transnistrian region is limited and that parallel structures of governance have established themselves there, the Committee must nonetheless be in a position to assess the enjoyment of Covenant rights in the entire territory under the jurisdiction of the State party. It welcomes, however, the willingness of the authorities of the State party to engage in the pursuit of durable solutions to this matter, which would enable it to give fuller effect to its responsibilities under the Covenant in that region.

**Positive aspects**

(5) The Committee welcomes the adoption in 1994 of a Constitution that includes provisions designed to protect the rights of persons within the jurisdiction of the State party, including non-discrimination and equality before the law, and to reinforce the State party's legal order with respect to rights contained in the Covenant. The Committee also appreciates the competence of

the Constitutional Court to strike down legislation incompatible with these rights, as occurred, for example, in the Court's determination that the *propiska* regime (the requirement to obtain a permit for internal movement) was unconstitutional. The Committee further welcomes the abolition of forced labour in 1998, as well as the provision for alternative civilian service of equal duration in place of military service.

(6) The Committee welcomes the State party's abolition of the death penalty. It invites the State party to accede to the Second Optional Protocol to the Covenant.

(7) The Committee welcomes the State party's efforts to establish effective institutions to enhance the observance of human rights, including the Parliamentary Advocates (Ombudsmen) and the Centre for Human Rights, as well as additional parliamentary and executive human rights bodies.

**Principal subjects of concern and recommendations**

(8) The Committee expresses its concern that, in response to members' questions, the State party indicated that no study had been undertaken to ensure that legislative and other measures in pursuance of Security Council resolution 1373 (2001) were in compliance with its obligations under the Covenant.

> The State party is under an obligation to ensure that counter-terrorism measures taken under Security Council resolution 1373 (2001) are in full conformity with the Covenant.

(9) The Committee is deeply concerned at the conditions prevailing in the State party's detention facilities, in particular its failure to comply with international standards (as acknowledged by the State party), including the guarantees provided in articles 7 and 10 of the Covenant. It is particularly disturbed at the prevalence of disease, notably tuberculosis, which is a direct result of prison conditions. It reminds the State party of its obligation to ensure the health and life of all persons deprived of their liberty. Danger to the health and lives of detainees as a result of the spread of contagious diseases and inadequate care amounts to a violation of article 10 of the Covenant and may also include a violation of articles 9 and 6.

> The State party should take immediate steps to ensure that the conditions of detention within its facilities comply with the standards set out in articles 6, 7 and 10 of the Covenant, including the prevention of the spread of disease and the provision of appropriate medical treatment to persons who have contracted diseases, either in prison or prior to their detention.

(10) The Committee is concerned that, despite recent attempts by the State party to halt the activities of persons involved in the smuggling of individuals, there continue to be widespread reports of extensive trafficking, particularly of women, in violation of article 8 of the Covenant.

> The State party should reinforce its efforts to put a stop to the trafficking of individuals, particularly of women, both originating in and in transit through its territory.

(11) The Committee is concerned at the length of time that elapses in practice before a person suspected of a crime is brought before a judge, and at overly lengthy periods of pre-trial detention. The Committee is concerned by the apparently frequent administrative detention for significant periods of persons qualified as "vagrants".

> The State party should ensure that all persons suspected of a crime are brought promptly before a judge, as required by article 9 of the Covenant. In order to comply with articles 9 and 14, the detention of persons awaiting trial should also be reviewed periodically and their trials held without undue delay. The Committee recalls, moreover, the obligation of the State party under article 9, paragraph 4, to enable persons in administrative detention to initiate proceedings in order to test the legality of their detention.

(12) The Committee is concerned at provisions in the State party's law which raise doubts as to the full independence and impartiality of its judges, as required by article 14, paragraph 1, of the Covenant. In particular, the Committee is concerned at short initial appointments for judges, beyond which they must satisfy certain criteria in order to gain an extension of their term.

> The State party should revise its law to ensure that judges' tenure is sufficiently long to ensure their independence, in compliance with the requirements of article 14, paragraph 1. The Committee emphasizes that judges should be removed only in accordance with an objective, independent procedure prescribed by law.

(13) The Committee remains concerned that artificial hurdles continue to exist in the State party for individuals and organizations seeking to exercise their religious freedoms under article 18 of the Covenant.

> The State party should ensure that its law and policy relating to the registration of religious organizations fully respect the rights of persons within its jurisdiction to full and free expression of their religious beliefs, as required by article 18.

(14) The Committee is concerned that, contrary to articles 19 and 26 of the Covenant, the State television and radio broadcasting service (Tele-Radio Moldova) has been subject to directives inconsistent with the requirements of impartiality and non-discrimination with respect to political opinion.

> The State party should take the necessary steps, including legislative measures, to ensure that the State broadcaster enjoys broad discretion as to programming content, and that competing views, including those of political parties opposed to government policy, are appropriately reflected in the broadcaster's transmissions.

(15) The Committee is further concerned at the requirement of 15 days' advance notice of proposed assemblies to be provided to the relevant authorities. The Committee considers that a requirement of such length may unduly circumscribe legitimate forms of assembly.

The Committee should revise its law with a view to ensuring that the time periods required for advance notice to its authorities of assemblies, as well as the procedures applied to such requests and appeals against initial decisions, pay due regard to the ability in practice of the individuals concerned fully to enjoy their rights under article 21 of the Covenant.

(16) The Committee is concerned that certain requirements that the State party places upon the registration of political parties, such as conditions with respect to the extent of their territorial representation, may violate article 25 of the Covenant by restricting the right of individuals to full expression of their political freedoms.

The State party should review its law and policy concerning the registration of political parties, removing those elements which are inimical to the full exercise of Covenant rights, in particular article 25.

(17) While welcoming gradual improvements in the representation of women in Parliament and the executive, the Committee remains concerned that they continue to have a disproportionately low level of participation in the political and economic life of the State party, particularly in senior positions in the public sector and in business.

The State party should take appropriate measures to ensure that the participation of women in political, public and other sectors of Moldovan life is on a fair and equal footing with that of men, consistent with the requirements of articles 3 and 26 of the Covenant.

(18) The Committee is concerned that the delegation was unable to respond to the question of whether the practice of relying on abortion as a means of contraception is a cause of the high level of maternal mortality in the State party.

The State party should undertake a careful assessment of the issue of abortion and maternal mortality and take the necessary measures to reduce the high maternal death rate.

(19) While acknowledging steps that have been taken to improve the legal position of minorities, the Committee remains concerned at their situation in practice. In this connection, it expresses its concern at the situation of the Gagauz and that of the Roma, who continue to suffer serious discrimination, notably in rural areas.

The State party should increase its efforts to translate its international commitments under articles 26 and 27 of the Covenant into practical achievements for its minorities, including the Gagauz and the Roma in rural communities.

(20) The State party should disseminate widely the text of its initial report, the replies provided to the list of issues drawn up by the Committee and the present concluding observations.

(21) The Committee draws the attention of the State party to the guidelines of the Committee on the preparation of reports (CCPR/C/66/GUI/Rev.1). The second periodic report should be prepared in accordance with those guidelines, with particular attention paid to the implementation of the rights contained in the Covenant in practice. It should also indicate the measures taken to give effect to these concluding observations.

(22) In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should provide within one year relevant information on the implementation of the Committee's recommendations in paragraphs 8, 9, 11 and 13 above. The second periodic report should be submitted by 1 August 2004.

# CHAPTER V. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

85. Individuals who claim that any of their rights under the International Covenant on Civil and Political Rights have been violated by a State party, and who have exhausted all available domestic remedies, may submit written communications to the Human Rights Committee for consideration under the Optional Protocol. No communication can be considered unless it concerns a State party to the Covenant that has recognized the competence of the Committee by becoming a party to the Optional Protocol. Of the 149 States that have ratified, acceded or succeeded to the Covenant, 102 have accepted the Committee's competence to deal with individual complaints by becoming parties to the Optional Protocol (see annex I, sect. B). Since the last annual report, Azerbaijan, Mali, Mexico and Yugoslavia have become parties to the Optional Protocol. Moreover, under article 12, paragraph 2, of the Optional Protocol the Committee is still considering communications from two States parties (Jamaica, and Trinidad and Tobago) that denounced the Optional Protocol, in 1998 and 2000 respectively, such communications having been submitted before denunciation took effect.

86. Consideration of communications under the Optional Protocol is confidential and takes place in closed meetings (article 5, paragraph 3, of the Optional Protocol). Under rule 96 of the rules of procedure, all working documents issued for the Committee are confidential unless the Committee decides otherwise. However, the author of a communication and the State party concerned may make public any submissions or information bearing on the proceedings unless the Committee has requested the parties to respect confidentiality. The Committee's final decisions (Views, decisions declaring a communication inadmissible, decisions to discontinue a communication) are made public; the names of the authors are disclosed unless the Committee decides otherwise.

87. Communications addressed to the Human Rights Committee are processed by the Petitions Team of the Office of the United Nations High Commissioner for Human Rights. This secretariat team also services the communications procedures under article 22 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and under article 14 of the Convention on the Elimination of All Forms of Racial Discrimination.

## A. Progress of work

88. The Committee started its work under the Optional Protocol at its second session, in 1977. Since then, 1,107 communications concerning 71 States parties have been registered for consideration by the Committee, including 103 registered during the period covered by the present report (28 July 2001-26 July 2002). This represents a 50 per cent increase in registered cases over the previous reporting period.

89. The status of the 1,107 communications registered for consideration by the Human Rights Committee so far is as follows:

(a) Concluded by Views under article 5, paragraph 4, of the Optional Protocol: 404, including 313 in which violations of the Covenant were found;

(b) Declared inadmissible: 310;

(c) Discontinued or withdrawn: 143;

(d) Not yet concluded: 250.

90. In addition, the Petitions Team received more than 300 communications in respect of which the authors are advised that further information would be needed before their communications could be registered for consideration by the Committee. The authors of more than 3,000 letters were informed that their cases will not be submitted to the Committee, for example, because they fall clearly outside the scope of the Covenant or of the Optional Protocol. A record of this correspondence is kept in the secretariat and reflected in the secretariat's database. The Special Rapporteur on New Communications will register a number of these communications upon receipt of additional information and clarifications.

91. During the seventy-third to seventy-fifth sessions, the Committee concluded consideration of 35 cases by adopting Views thereon. These are cases Nos. 580/1994 (Ashby v. Trinidad and Tobago), 641/1995 (Gedumbe v. Democratic Republic of the Congo), 667/1995 (Ricketts v. Jamaica), 677/1996 (Teesdale v. Trinidad and Tobago), 678/1996 (Gutiérrez Vivanco v. Peru), 683/1996 (Wanza v. Trinidad and Tobago), 684/1996 (Sahadath v. Trinidad and Tobago), 695/1996 (Simpson v. Jamaica), 721/1996 (Boodoo v. Trinidad and Tobago), 728/1996 (Sahadeo v. Guyana), 747/1997 (Des Fours Walderode v. the Czech Republic), 763/1997 (Lantsova v. Russia), 774/1997 (Brok v. the Czech Republic), 765/1997 (Fábryová v. the Czech Republic), 779/1997 (Äärelä and Näkkäläjärvi v. Finland), 788/1997 (Cagas et al. v. the Philippines), 792/1998 (Higginson v. Jamaica), 794/1998 (Jalloh v. the Netherlands), 802/1998 (Rogerson v. Australia), 845/1998 (Kennedy v. Trinidad and Tobago), 848/1999 (Rodríguez Orejuela v. Colombia), 854/1999 (Wackenheim v. France), 859/1999 (Jiménez Vaca v. Colombia), 865/1999 (Gómez v. Spain), 899/1999 (Francis v. Trinidad and Tobago), 902/1999 (Joslin v. New Zealand), 906/2000 (Chira Vargas v. Peru), 916/2000 (Jayawardena v. Sri Lanka), 919/2000 (Müller and Engelhard v. Namibia), 921/2000 (Dergachev v. Belarus), 923/2000 (Matyus v. Slovakia), 928/2000 (Sooklal v. Trinidad and Tobago), 932/2000 (Gillot v. France), 946/2000 (L.P. v. the Czech Republic) and 965/2000 (Karakurt v. Austria). The text of these Views is reproduced in annex IX.

92. The Committee also concluded consideration of 13 cases by declaring them inadmissible. These are cases Nos. 803/1998 (Althammer v. Austria), 825/1999 (Silva v. Zambia), 826/1999 (Godwin v. Zambia), 827/1999 (de Silva v. Zambia), 828/1999 (Perera v. Zambia), 880/1999 (Irving v. Australia), 925/2000 (Koi v. Portugal), 940/2000 (Zébié Aka Bi v. Côte d'Ivoire), 1005/2001 (Sánchez González v. Spain), 1048/2002 (Riley et al. v. Canada), 1055/2002 (I. N. v. Sweden), 1065/2002 (Mankarious v. Australia) and 1087/2002 (Hesse v. Australia). The text of these decisions is reproduced in annex X.

93. Under the Committee's rules of procedure, the Committee will normally decide on the admissibility and merits of a communication together. Only in exceptional circumstances will the Committee request a State party to address admissibility only. A State party which has received a request for information on admissibility and merits may, within two months, object to admissibility and apply for separate consideration of admissibility. Such a request, however,

will not release the State party from the requirement to submit information on the merits within the fixed time limit, unless the Committee, its Working Group or its designated Special Rapporteur decides to extend the time for submission of information on the merits until after the Committee has ruled on admissibility. In the period under review, the Committee, acting through its Special Rapporteur on New Communications, decided in seven cases to deal first with the admissibility of the communication.

94. During the period under review, the Working Group declared one communication admissible, which will be considered on the merits at a later session. Decisions declaring communications admissible are not normally published by the Committee. Procedural decisions were adopted in a number of pending cases (under article 4 of the Optional Protocol or under rules 86 and 91 of the Committee's rules of procedure). The Committee requested the secretariat to take action in other pending cases.

### B. Growth of the Committee's caseload under the Optional Protocol

95. As the Committee has stated in previous reports, the increasing number of States parties to the Optional Protocol and better public awareness of the procedure have led to a growth in the number of communications submitted to the Committee. The table below sets out the pattern of the Committee's work on communications over the last five calendar years to 31 December 2001.

**Table 1**

**Communications dealt with, 1997-2001**

| Year | New cases registered | Cases concluded[a] | Pending cases (total admissible and pre-admissible cases) at 31 December | Admissible cases at 31 December | Pre-admissible cases at 31 December |
|---|---|---|---|---|---|
| 2001 | 81 | 41 | 222 | 25 | 197 |
| 2000 | 58 | 43 | 182 | 27 | 155 |
| 1999 | 59 | 55 | 167 | 36 | 131 |
| 1998 | 53 | 51 | 163 | 42 | 121 |
| 1997 | 60 | 56 | 157 | 44 | 113 |

[a] Total number of all cases decided (by the adoption of Views, inadmissibility decisions and cases discontinued).

### C. Approaches to consider communications under the Optional Protocol

#### 1. Special Rapporteur on new communications

96. At its thirty-fifth session in March 1989, the Committee decided to designate a Special Rapporteur to process new communications as they were received, i.e. between sessions of the Committee. At the Committee's seventy-first session, in March 2001, Mr. Scheinin was

designated as new Special Rapporteur. In the period covered by the present report, the Special Rapporteur transmitted 98 new communications to the States parties concerned under rule 91 of the Committee's rules of procedure, requesting information or observations relevant to the questions of admissibility and merits. In 27 cases, the Special Rapporteur issued requests for interim measures of protection pursuant to rule 86 of the Committee's rules of procedure. The competence of the Special Rapporteur to issue, and if necessary to withdraw, requests for interim measures under rule 86 of the rules of procedure is described in the 1997 annual report (A/52/40, vol. I, para. 467).

### 2. Competence of the Working Group on Communications

97. At its thirty-sixth session in July 1989, the Committee decided to authorize the Working Group on Communications to adopt decisions declaring communications admissible when all five members so agreed. Failing such agreement, the Working Group refers the matter to the Committee. It also does so whenever it believes that the Committee itself should decide the question of admissibility. While the Working Group cannot adopt decisions declaring communications inadmissible, it makes recommendations in that respect to the Committee. Pursuant to those rules, the Working Group on Communications that met prior to the seventy-third, seventy-fourth and seventy-fifth sessions of the Committee declared one communication admissible.

98. At its fifty-fifth session in October 1995, the Committee decided that each communication would be entrusted to a member of the Committee, who would act as rapporteur for it in the Working Group and in the plenary Committee. The role of the rapporteur is described in the 1997 report (A/52/40, para. 469).

## D. Individual opinions

99. In its work under the Optional Protocol, the Committee strives to arrive at its decisions by consensus. However, pursuant to rule 98 (formerly rule 94, paragraph 4) of the Committee's rules of procedure, members can add their individual concurring or dissenting opinions to the Committee's Views. Under this rule, members can also append their individual opinions to the Committee's decisions declaring communications admissible or inadmissible (formerly rule 92, paragraph 3).

100. During the period under review, individual opinions were appended to the Committee's Views in 16 cases Nos. 667/1995 (Ricketts v. Jamaica), 677/1996 (Teesdale v. Trinidad and Tobago), 678/1996 (Gutiérrez Vivanco v. Peru), 684/1996 (Sahadath v. Trinidad and Tobago), 728/1996 (Sahadeo v. Guyana), 774/1997 (Brok v. the Czech Republic), 765/1997 (Fábryová v. the Czech Republic), 779/1997 (Äärelä and Näkkäläjärvi v. Finland), 788/1997 (Cagas et al. v. the Philippines), 845/1998 (Kennedy v. Trinidad and Tobago), 865/1999 (Gómez v. Spain), 899/1999 (Francis et al. v. Trinidad and Tobago), 902/1999 (Joslin v. New Zealand), 916/2000 (Jayawardena v. Sri Lanka), 946/2000 (L.P. v. the Czech Republic) and 965/2000 (Karakurt v. Austria). Individual opinions were also appended to the Committee's decisions declaring three communications inadmissible: 803/1998 (Althammer v. Austria), 880/1999 (Irving v. Australia), 925/2000 (Koi v. Portugal). An individual opinion was appended with respect to a decision to declare one communication admissible.

## E. Issues considered by the Committee

101. A review of the Committee's work under the Optional Protocol from its second session in 1977 to its seventy-second session in July 2001 can be found in the Committee's annual reports for 1984 to 2001, which, inter alia, contain summaries of the procedural and substantive issues considered by the Committee and of the decisions taken. The full texts of the Views adopted by the Committee and of its decisions declaring communications inadmissible under the Optional Protocol are reproduced in annexes to the Committee's annual reports to the General Assembly.

102. Two volumes containing selected decisions of the Human Rights Committee under the Optional Protocol, from the second to the sixteenth sessions (1977-1982) and from the seventeenth to the thirty-second sessions (1982-1988), have been published (CCPR/C/OP/1 and 2). The publication of volume 3 of the selected decisions, covering the period from the thirty-third to the thirty-ninth sessions, is still at the stage, reported last year, of being "expected shortly". As domestic courts increasingly apply the standards contained in the International Covenant on Civil and Political Rights, it is imperative that the Committee's decisions are available on a worldwide basis in a properly compiled and indexed volume.

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

### 1. Procedural issues

#### (a) Reservations and Interpretative Declarations

104. In case No. 925/2000 (Koi v. Portugal), the Committee addressed the question of the application of the Covenant and the Optional Protocol to Macao and considered that, in the absence of an express reservation or declaration by Portugal to that effect, until 19 December 1999, when Macao was transferred to Chinese administration, individuals residing on this territory were under the jurisdiction of Portugal and could therefore validly submit a communication to the Human Rights Committee. It is noted in the Committee's decision that:

> "With regard to the application of the Optional Protocol to Macao during the period under Portuguese administration, until 19 December 1999, the Committee notes that the State party adhered to the Optional Protocol with effect from 3 August 1983. It further notes that the application of the Protocol cannot be based on article 10 of the Optional Protocol, since Macao was not a constituent part of Portugal after adoption of the new Constitution in 1976. It is also not possible to draw a positive conclusion from the Portuguese Parliament's resolution 41/92 which formally extended the application of the Covenant to Macao, since the Covenant and the Optional Protocol are distinct treaties" (annex X, sect. D, para. 6.2).

"The Committee, on the other hand, does not share the view that the fact that an analogous declaration has not been made with regard to the Optional Protocol precludes the application of the Protocol to this case. The Committee recalls the language of article 1 of the Optional Protocol which stipulates in its first clause:

> 'A State party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State party of any of the rights set forth in the Covenant.'

"All these elements are present in the case at hand. Portugal is a party to the Covenant, as well as to the Optional Protocol, and as such it has recognized the Committee's competence to receive and consider communications from individuals 'subject to its jurisdiction'. Individuals in Macao were subject to Portugal's jurisdiction until 19 December 1999. In the present case, the State party exercised its jurisdiction by the courts over the author.

"As the intention of the Optional Protocol is further implementation of Covenant rights, its non-applicability in any area within the jurisdiction of a State party cannot be assumed without any express indication (reservation/declaration) to that effect. No act of this nature exists. Therefore, the Committee comes to the conclusion that it has the competence to receive and consider the author's communication insofar as it concerns alleged violations by Portugal of any of the rights set forth in the Covenant (cf. also the general rule embodied in article 29 of the Vienna Convention on the Law of Treaties)" (annex X, sect. D, para. 6.3).

105. A number of individual opinions were appended to the Committee's decision (see annex X, sect. D, appendix).

106. In case No. 965/2000 (Karakurt v. Austria), the Committee considered the reservation made by Austria to article 5 of the Optional Protocol and according to which "[...] the Committee [...] shall not consider any communication from an individual unless it has been ascertained that the same matter has not been examined by the European Commission on Human Rights established by the European Convention for the Protection of Human Rights and Fundamental Freedoms". To the State party's contention that its reservation excluded the Committee's competence to consider the communication because the author had submitted his case already for examination to the European Court of Human Rights, the Committee noted that:

> "The concept of the 'same matter' within the meaning of article 5 (2) (a) of the Optional Protocol must be understood as referring to one and the same claim of the violation of a particular right concerning the same individual. In this case, the author is advancing free-standing claims of discrimination and equality before the law, which were not, and indeed could not have been, made before the European organs. Accordingly, the Committee does not consider itself precluded by the State party's reservation to the Optional Protocol from considering the communication" (annex IX, sect. II, para. 7.4).

107. In the same case, the Committee also addressed the reservation made by Austria on article 26 of the Covenant, according to which the State party understood this provision "to mean that it does not exclude different treatment of Austrian nationals and aliens, as is also permissible under article 1, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination".

> "The Committee considers itself precluded, as a consequence, from examining the communication insofar as it argues an unjustified distinction in the State party's law between Austrian nationals and the author. However, the Committee is not precluded from examining the claim relating to the further distinction made in the State party's law between aliens being EEA nationals and the author as another alien" (annex IX, sect. II, para. 7.5).

### 2. Two Committee members appended an individual opinion to the Views

108. In case No. 803/1998 (Althammer v. Austria), the Committee decided that it did not need to examine the question related to the State party's reservation to article 5, paragraph 2, of the Optional Protocol, because it had already established that the author's claim was not sufficiently substantiated. An individual opinion was appended to the Committee's decision.

109. In case No. 845/1998 (Kennedy v. Trinidad and Tobago), four members of the Committee restated that the communication should have been declared inadmissible because of the State party's reservation.

## (b) Inadmissibility ratione temporis (Optional Protocol, art. 1)

110. During the period under review, the Committee has continued to consider communications that had been submitted before the States parties concerned had denounced the Optional Protocol under article 12 of the latter. These are cases Nos. 580/1994 (Ashby v. Trinidad and Tobago), 667/1995 (Ricketts v. Jamaica), 677/1996 (Teesdale v. Trinidad and Tobago), 683/1996 (Wanza v. Trinidad and Tobago), 684/1996 (Sahadath v. Trinidad and Tobago), 695/1996 (Simpson v. Jamaica), 721/1996 (Boodoo v. Trinidad and Tobago), 728/2000 (Sooklal v. Trinidad and Tobago), 792/1998 (Higginson v. Jamaica), 845/1998 (Kennedy v. Trinidad and Tobago), and 899/1999 (Francis et al. v. Trinidad and Tobago).

111. In case No. 728/2000 (Sooklal v. Trinidad and Tobago), the Committee noted that:

> "At the time of submission, Trinidad and Tobago was a party to the Optional Protocol. The withdrawal by the State party from the Optional Protocol on 27 March 2000, with effect as of 27 June 2000, does not affect the competence of the Committee to consider this communication" (annex IX, sect. FF, para. 4.3).

**(c) Inadmissibility for lack of standing as a victim (Optional Protocol, art. 1)**

112. In case No. 932/2000 (Gillot v. France), the Committee observed:

> "On the question of future referenda after the cut-off date of 31 December 2014, the Committee has examined the State party's argument that only Ms. Sophie Demaret will be excluded since she will not have met the 20-year residence requirement. In the State party's view, however, the 20 other petitioners will, assuming that they remain in New Caledonia as they say they intend to do, be able to prove that they have lived in New Caledonia for over 20 years, which will enable them to participate in future referenda. According to the State party, therefore, these 20 petitioners do not have a proven personal interest in acting and, accordingly, may not claim the status of victims; hence this part of the communication is inadmissible. The Committee has also taken note of the petitioners' argument, inter alia, that, apart from Ms. Demaret, they will be unable to participate in future referenda if, in conformity with their right under article 12 of the Covenant, they were to temporarily leave New Caledonia for a period which would prevent them from meeting the 20-year continuous residence requirement." (annex IX, sect. GG, para. 10.4)
>
> "After considering the arguments adduced and other information in the communication, the Committee notes that 20 of the 21 petitioners have (a) stressed their desire to remain in New Caledonia, which constitutes their permanent place of residence and the centre of their family and working lives, and (b) mentioned on a purely hypothetical basis a number of eventualities, namely, temporary departure from New Caledonia and a period of absence which, according to the individual situation of each petitioner, would at some point result in exclusion from future referenda. The Committee considers that the latter arguments as raised by the petitioners, which are in fact at variance with their main argument concerning their present and future permanent residence in New Caledonia, do not go beyond the bounds of eventualities and theoretical possibilities. Consequently, only Mrs. Demaret, through having failed to accumulate 20 years' residence in New Caledonia, will be able to claim victim status vis-à-vis future referenda, within the meaning of article 1 of the Optional Protocol" (ibid., para. 10.5)

**(d) Claims not substantiated (Optional Protocol, art. 2)**

113. Article 2 of the Optional Protocol provides that "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 a written communication to the Committee for consideration".

114. Although an author does not need to prove the alleged violation at the admissibility stage, he or she must submit sufficient materials substantiating his/her allegation for purposes of admissibility. A "claim" is, therefore, not just an allegation, but an allegation supported by a certain amount of substantiating materials. In cases where the Committee finds that the author has failed to substantiate a claim for purposes of admissibility, the Committee has held the communication inadmissible, in accordance with rule 90 (b) of its rules of procedure.

115. Claims have been declared inadmissible for lack of substantiation in cases Nos. 641/1995 (Gedumbe v. Democratic Republic of the Congo), 695/1996 (Simpson v. Jamaica), 728/1996 (Sahadeo v. Guyana), 774/1997 (Brok v. the Czech Republic), 779/1997 (Äärelä v. Finland), 792/1998 (Higginson v. Jamaica), 802/1998 (Rogerson v. Australia), 803/1998 (Althammer v. Austria), 825-828/1999 (Silva et al. v. Zambia), 865/1999 (Marin Gomez v. Spain), 916/2000 (Jayawardena v. Sri Lanka), 921/2000 (Dergachev v. Belarus), 932/2000 (Gillot v. France), 1055/2002 (I.N. v. Sweden), 1065/2002 (Mankarious v. Australia) and 1087/2002 (Hesse v. Australia).

**(e) Competence of the Committee with respect to the evaluation of facts and evidence**

116. In case No. 728/1996 (Sahadeo v. Guyana), with regard to a claim that the conviction of the author was not based on sufficient evidence, the Committee:

> "Referred to its prior jurisprudence and reiterated that it is generally not for the Committee, but for the courts of States parties, to review the evidence against an accused, unless it can be ascertained that the evaluation of the evidence was manifestly arbitrary or amounted to a denial of justice" (annex IX, sect. J, para. 6.3).

117. A similar finding was made by the Committee in case No. 580/1994 (Ashby v. Trinidad and Tobago) with regard to a claim under article 7 of the Covenant (para. 10.3) and in case No. 677/1996 (Teesdale v. Trinidad and Tobago) with regard to a claim under article 14 of the Covenant. However in some cases the Committee has considered the issue of competence as one to be examined with the merits of a case.

**(f) Claims not compatible with the provisions of the Covenant (Optional Protocol, art. 3)**

118. Communications must raise an issue concerning the application of the Covenant. Despite previous attempts to explain that the Committee cannot function under the Optional Protocol as an appellate body where the issue is one of domestic law, some communications continue to be based on such a misapprehension; such cases, as well as those where the facts presented do not raise issues under the articles of the Covenant invoked by the author, are declared inadmissible under article 3 of the Optional Protocol as incompatible with the provisions of the Covenant.

119. In case No. 880/1999 (Irving v. Australia), the Committee considered the conditions of application of article 14, paragraph 6, of the Covenant and observed that:

> "The author's conviction in the District Court of Cairns of 8 December 1993 was affirmed by the Court of Appeal of Queensland on 20 April 1994. Mr. Irving applied for leave to appeal this decision before the High Court of Australia. Leave to appeal was granted and on 8 December 1997 the High Court of Australia quashed the conviction on the ground that the author's trial had been unfair. As the decision of the Court of Appeal of Queensland was subject to appeal (albeit with leave) on the basis of the normal grounds for appeal, it would appear that until the decision of the High Court of Australia, the author's conviction may not have constituted a 'final decision' within the meaning of

article 14, paragraph 6. However, even if the decision of the Court of Appeal of Queensland were deemed to constitute the 'final decision' for the purposes of article 14, paragraph 6, the author's appeal to the High Court of Australia was accepted on the grounds that the original trial had been unfair and not that a new, or newly discovered fact, showed conclusively that there had been a miscarriage of justice. In these circumstances, the Committee considers that article 14, paragraph 6, does not apply in the present case, and this claim is inadmissible ratione materiae under article 3 of the Optional Protocol" (para. 8.4).

120. Two individual opinions were appended to the Committee's Views in this respect.

121. A claim was declared inadmissible for incompatibility with the Covenant in case No. 854/1999 (Wackenheim v. France), where the Committee observed:

> "As regards the alleged violation of article 5, paragraph 2, of the Covenant, the Committee notes that article 5 of the Covenant relates to general undertakings by States parties and cannot be invoked by individuals as a self-standing ground for a communication under the Optional Protocol. This complaint is thus not admissible under article 3 of the Optional Protocol. However, this conclusion does not prevent the Committee from taking article 5 into account when interpreting and applying other provisions of the Covenant" (annex IX, sect. V, para. 6.5).

### (g) The requirement of exhaustion of domestic remedies (Optional Protocol, art. 5, para. 2 (b))

122. Pursuant to article 5, paragraph 2 (b), of the Optional Protocol, the Committee shall not consider any communication unless it has ascertained that the author has exhausted all available domestic remedies. In case No. 925/2000 (Koi v. Portugal), the Committee addressed the issue whether the requirement of the exhaustion of domestic remedies should be assessed at the time of the submission of the communication or at the time of the consideration of the communication by the Committee. While the majority of the members of the Committee came to the conclusion that the communication was inadmissible, these members did not agree on a common ground for inadmissibility. Hence, the Committee's decision spells out that reason for inadmissibility that was supported by a majority amongst those members who felt that the communication was inadmissible. In this regard, the Committee notes:

> "The implications of [article 2 of the Optional Protocol] are clear: until such time as remedies available under the domestic legal system have been exhausted, an individual who claims that his or her rights under the Covenant have been violated is not entitled to submit a communication to the Committee. It is therefore incumbent on the Committee to reject as inadmissible a communication submitted before this condition has been met. And indeed it has been the practice of the Committee not to receive communications when it is abundantly clear that available domestic remedies have not been exhausted. Thus, for example, in communications involving allegations of violations of fair trial in criminal cases, the Committee does not receive and register communications when it is clear that an appeal is still pending. The problem is that in many cases it is not self-evident from the communication itself whether domestic remedies were available

and if so, whether they were exhausted by the author. In such cases the Committee has no choice but to register the communication and to decide on admissibility after considering the submissions of both the author and the State party on the issue of domestic remedies. When deciding whether to reject such communications as inadmissible under article 5, paragraph 2 (b) of the Optional Protocol, the Committee generally follows the practice of other international decision-making bodies and examines whether domestic remedies have been exhausted at the time of considering the matter (rather than at the time the communication was submitted). The rationale of this practice is that rejecting a communication as inadmissible when domestic remedies have been exhausted at the time of consideration would be pointless, as the author could merely submit a new communication relating to the same alleged violation. It should be noted, however, that the assumption underlying this practice is that the legal standing of the State party has not changed between the date of submission and the date of consideration of the communication, and that there would therefore be no legal impediments to submission of a new communication by the author relating to the alleged violation. When this assumption is invalid, the practice becomes incompatible with the requirements of the Optional Protocol" (annex X, sect. D, para. 6.4).

"In the present case both the author's claims concerning the lack of competence of the special Portuguese judge, as well as the other claims regarding alleged violations of article 14 of the Covenant in the course of the author's trial, were raised in the appeal to the Tribunal de Segunda Instancia in Macao. This appeal had not yet been heard at the time of the submission of the communication. The judgements in this appeal and in a further appeal lodged with the Tribunal of Last Instance, were rendered on 28 July 2000 and 16 March 2001 respectively, when Macao was no longer administered by Portugal. It follows that domestic remedies had not been exhausted when the communication was submitted and that the author was therefore not entitled, under article 2 of the Optional Protocol, to submit a communication. By the time the remedies had been exhausted, the author was no longer subject to the jurisdiction of Portugal, and his communication was inadmissible under article 1 of the Optional Protocol" (ibid., para. 6.5).

"It should further be noted that the fact that the author's appeals were heard after Portugal no longer had jurisdiction over Macao in no way implies that these remedies ceased to be domestic remedies which had to be exhausted before a communication could be submitted against Portugal. While Macao became a special administrative region in the People's Republic of China after submission of the communication, its legal system remained intact, and the system of criminal appeals remained unchanged. Thus there remained remedies that had to be pursued under the domestic legal system, irrespective of the State which exercised control over the territory" (ibid., para. 6.6).

123. A number of individual opinions were appended to the Committee's decision (see annex X, sect. D, appendix).

124. In case 919/2000 (Müller and Engelhard v. Namibia), the authors of the communication were married and only the husband exhausted domestic remedies before submitting the communication to the Committee. The State party contended that the communication should be declared inadmissible with regard to the wife because she had not herself exhausted domestic remedies. The Committee found that:

> "[e]ven if Ms. Engelhard could have pursued her claim through the Namibian court system, together with her husband or separately, her claim, being quite similar to Mr. Müller's, would inevitably have been dismissed, as Mr. Müller's claim was dismissed by the highest court in Namibia. The Committee has established jurisprudence (Barzhig v. France) that an author need not pursue remedies that are indisputably ineffective, and concludes therefore that Ms. Engelhard's claims are not inadmissible under the Optional Protocol article 5, paragraph 2" (para. 6.3).

125. The Committee reiterated its jurisprudence that only available and effective domestic remedies have to be exhausted in its Views on case No. 848/1999 (Rodríguez Orejuela v. Colombia), observing:

> "As regards the requirement of the exhaustion of domestic remedies, the Committee notes that the State party is contesting the communication on the ground of failure to exhaust those remedies, further stating that, in addition to the remedy of judicial review, there are other available remedies such as the application for review and protection. The Committee further notes the State party's observations, explaining that the application for protection is a subsidiary procedure that has been allowed only in exceptional circumstances and that its protection is only temporary until the judge hands down his decision. In this connection, bearing in mind that in the instant case there has been a decision of the Supreme Court of Justice against which there is no remedy, the Committee considers that it has not been demonstrated that the domestic remedies are available" (annex IX, sect. U, para. 6.3).

126. The Committee declared certain claims admissible, taking into account the undue delay in the application of domestic remedies. In case No. 859/1999 (Jiménez Vaca v. Colombia), the Committee observed:

> "With regard to the proceedings before the administrative court concerning the claim for damages, the Committee doubts whether a claim for damages before the administrative court constitutes the only possible remedy for a person experiencing this type of violation. The Committee further notes that in this case implementation of domestic remedies has been unduly prolonged, the administrative court having taken nine years to reach a decision at first instance" (annex IX, sect. W, para. 6.4).

127. In the period covered by the present report, other claims were declared inadmissible for failure to pursue available and effective remedies. See cases: Nos. 802/1998 (Rogerson v. Australia), 854/1999 (Wackenheim v. France), and 1065/2002 (Mankarious v. Australia).

### (h) Inadmissibility because of submission to another procedure of international investigation or settlement (Optional Protocol, art. 5, para. 2 (a))

128. Pursuant to article 5, paragraph 2 (a), of the Optional Protocol, the Committee shall ascertain that the same matter is not being examined under another procedure of international investigation or settlement. Upon becoming parties to the Optional Protocol some States have made a reservation to preclude the Committee's competence if the same matter has already been examined elsewhere. During the period under review, the Committee addressed this issue.

129. In case No. 965/2000 (Karakurt v. Austria), where it further interpreted the concept of "same matter" (see above, para. 224). It noted the issue in two cases declared inadmissible on other grounds, Nos. 803/1998 (Althammer v. Austria) and 1055/2002 (I.N. v. Sweden).

### (i) Burden of proof

130. Under the Optional Protocol, the Committee bases its Views on all written information made available by the parties. This implies that if a State party does not provide an answer to an author's allegations, the Committee will give due weight to an author's uncontested allegations as long as they are substantiated. In the period under review, the Committee recalled this principle in its Views concerning cases Nos. 641/1995 (Gedumbe v. Democratic Republic of the Congo), 667/1995 (Ricketts v. Jamaica), 677/1996 (Teesdale v. Trinidad and Tobago), 695/1996 (Simpson v. Jamaica), 721/1996 (Boodoo v. Trinidad and Tobago), 728/1996 (Sahadeo v. Guyana), 747/1997 (Des Fours Walderode v. the Czech Republic), 765/1997 (Fábryová v. the Czech Republic), 792/1998 (Higginson v. Jamaica), 899/1999 (Francis et al. v. Trinidad and Tobago) and 928/2000 (Sooklal v. Trinidad and Tobago).

131. In case No. 747/1997 (Des Fours Walderode v. the Czech Republic), the Committee recalled in this respect: "that a State party has an obligation under article 4, paragraph 2, of the Optional Protocol to cooperate with the Committee and to submit written explanations or statements clarifying the matter and the remedy, if any, that may have been granted" (annex IX, sect. K, para. 8.1).

### (j) Interim measures under rule 86

132. Under rule 86 of the Committee's rules of procedure, the Committee may, after receipt of a communication and before adopting its Views, request a State party to take interim measures in order to avoid irreparable damage to the victim of the alleged violations. The Committee continues to apply this rule on suitable occasions, mostly in cases submitted by or on behalf of persons who have been sentenced to death and are awaiting execution and who claim that they were denied a fair trial. In view of the urgency of the communications, the Committee has requested the States parties concerned not to carry out the death sentences while the cases are under consideration. Stays of execution have specifically been granted in this connection. Rule 86 has also been applied in other circumstances, for instance in cases of imminent deportation or extradition which may involve or expose the author to a real risk of violation of rights protected by the Covenant.

### (k) Breach of Optional Protocol obligations

133. When States parties have disregarded the Committee's decisions under rule 86, the Committee may find that the State party has violated its obligations under the Optional Protocol.

134. In case No. 580/1994 (Ashby v. Trinidad and Tobago), the victim was executed while the Special Rapporteur on New Communications had requested the State party, under rule 86 of the Committee's Rules of Procedure, to stay the execution pending the consideration by the Committee of the communication. Referring to its jurisprudence in the case 869/1999 (Piandiong et al. v. the Philippines), the Committee recalled that:

> "Apart from any violation of the rights under the Covenant, the State party commits a serious breach of its obligations under the Optional Protocol if it engages in any acts which have the effect of preventing or frustrating consideration by the Committee of a communication alleging any violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. The behaviour of the State party represents a shocking failure to demonstrate even the most elementary good faith required of a State party to the Covenant and of the Optional Protocol" (annex IX, sect. A, para. 10.9).

> "The Committee finds that the State party breached its obligations under the Protocol, by proceeding to execute Mr. Ashby before the Committee could conclude its examination of the communication, and the formulation of its Views. It was particularly inexcusable for the State to do so after the Committee had acted under its Rule 86 requesting the State party to refrain from doing so. Flouting of the Rule, especially by irreversible measures such as the execution of the alleged victim, undermines the protection of Covenant rights through the Optional Protocol" (ibid., para. 10.10).

## 2. Substantive issues

### (a) The right of peoples to self-determination (Covenant, art. 1)

135. Case No. 932/2000 (Gillot v. France) concerned the elections being held in French New Caledonia, to determine the future of this territory in the context of a process of self-determination. The Committee made a finding that the elections were organized in a manner compatible with articles 25 and 26 of the Covenant. The Committee observed:

> "Although the Committee does not have the competence under the Optional Protocol to consider a communication alleging violation of the right to self-determination protected in article 1 of the Covenant, it may interpret article 1, when this is relevant, in determining whether rights protected in Parts II and III of the Covenant have been violated. The Committee is of the view, therefore, that, in this case, it may take article 1 into account in interpretation of article 25 of the Covenant" (annex IX, sect. GG, para. 13.4).

"The Committee recalls that, in the present case, article 25 of the Covenant must be considered in conjunction with article 1. It therefore considers that the criteria established are reasonable to the extent that they are applied strictly and solely to ballots held in the framework of a self-determination process. Such criteria, therefore, can be justified only in relation to article 1 of the Covenant, which the State party does. Without expressing a view on the definition of the concept of 'peoples' as referred to in article 1, the Committee considers that, in the present case, it would not be unreasonable to limit participation in local referenda to persons 'concerned' by the future of New Caledonia who have proven, sufficiently strong ties to that territory. The Committee notes, in particular, the conclusions of the Senior Advocate-General of the Court of Cassation, to the effect that in every self-determination process limitations of the electorate are legitimized by the need to ensure a sufficient definition of identity. The Committee also takes into consideration the fact that the Noumea Accord and the Organization Act of 19 March 1999 recognize a New Caledonian citizenship (not excluding French citizenship but linked to it), reflecting the common destiny chosen and providing the basis for the restrictions on the electorate, in particular for the purpose of the final referendum" (ibid., para. 13.16).

**(b) The right to life (Covenant, art. 6)**

136. Article 6, paragraph 1, protects every human being's inherent right to life. This right shall be protected by law and no one shall be arbitrarily deprived of his life.

137. In case No. 580/1994 (Ashby v. Trinidad and Tobago), the alleged victim had been executed while remedies were still sought before the Court of Appeal of the State party, the Judicial Committee of the Privy Council and the Human Rights Committee. In addition to a finding by the Committee that the State party had breached its obligations under the Optional Protocol (see above, para. 49), the Committee found, with respect to article 6, that:

"Having regard to the fact that the representative of the Attorney-General informed the Privy Council that Mr. Ashby would not be executed until all possibilities of obtaining a stay of execution had been exhausted, the carrying out of Mr. Ashby's sentence notwithstanding that assurance constituted a breach of the principle of good faith which governs all States in their discharge of obligations under international treaties, including the Covenant. The carrying out of the execution of Mr. Ashby when the execution of the sentence was still under challenge constituted a violation of article 6, paragraphs 1 and 2, of the Covenant" (annex IX, sect. A, para. 10.8).

138. In case No. 845/1998 (Kennedy v. Trinidad and Tobago), the author claimed that the mandatory character of the death sentence and its application in his case constituted a violation of article 6, paragraph 1. The Committee noted that:

"The mandatory imposition of the death penalty under the laws of Trinidad and Tobago is based solely on the particular category of crime of which the accused person is found guilty. Once that category has been found to apply, no room is left to consider the personal circumstances of the accused or the particular circumstances of the offence. In the case of Trinidad and Tobago, the Committee notes that the death penalty is

mandatory for murder, and that it may be and in fact must be imposed in situations where a person commits a felony involving personal violence and where this violence results even inadvertently in the death of the victim. The Committee considers that this system of mandatory capital punishment would deprive the author of his right to life, without considering whether, in the particular circumstances of the case, this exceptional form of punishment is compatible with the provisions of the Covenant. The Committee accordingly is of the opinion that there has been a violation of article 6, paragraph 1, of the Covenant" (annex IX, sect. T, para. 7.3).

139. Five members appended an individual opinion to the Views.

140. In the same case, the author claimed that the fact that he was not heard in relation to his request for a pardon nor informed about the status of the procedure on his request was in violation of article 6, paragraph 4, of the Covenant. The Committee observed that:

"The wording of article 6, paragraph 4, does not prescribe a particular procedure for the modalities of the exercise of the prerogative of mercy. Accordingly, States parties retain discretion for spelling out the modalities of the exercise of the rights under article 6, paragraph 4. It is not apparent that the procedure in place in Trinidad and Tobago and the modalities spelled out in Sections 87 to 89 of the Constitution are such as to effectively negate the right enshrined in article 6, paragraph 4. In the circumstances, the Committee finds no violation of this provision" (ibid., para. 7.4).

141. In case No. 763/1997 (Lantsova v. Russian Federation) where the author died in detention in the absence of appropriate medical treatment, the Committee affirmed that:

"It is incumbent on States to ensure the right of life of detainees, and not incumbent on the latter to request protection. [...] It is up to the State party by organizing its detention facilities to know about the state of health of the detainees as far as may be reasonably expected. Lack of financial means cannot reduce this responsibility. The Committee considers that a properly functioning medical service within the detention centre could and should have known about the dangerous change in the state of health of Mr. Lantsov. It considers that the State party failed to take appropriate measures to protect Mr. Lantsov's life during the period he spent in the detention centre. Consequently, the Human Rights Committee concludes that, in this case, there has been a violation of paragraph 1 of article 6 of the Covenant" (annex IX, sect. L, para. 9.2).

142. In case No. 859/1999 (Jiménez Vaca v. Colombia), the Committee observed:

"With regard to the author's claim that article 6, paragraph 1, was violated insofar as the very fact that an attempt was made on his life is a violation of the right to life and the right not to be arbitrarily deprived of life, the Committee points out that article 6 of the Covenant implies an obligation on the part of the State party to protect the right to life of every person within its territory and under its jurisdiction. In the case in question, the State party has not denied the author's claims that the threats and harassment which led to

an attempt on his life were carried out by agents of the State, nor has it investigated who was responsible. In the light of the circumstances of the case, the Committee considers that there has been a violation of article 6, paragraph 1, of the Covenant" (annex IX, sect. W, para 7.3).

**(c) Prohibition of torture and ill-treatment (Covenant, art. 7)**

143. In case No. 728/1996 (Sahadeo v. Guyana), the author claimed that he signed a confession after having been subjected to severe ill-treatment. In this regard, the Committee recalled the duty of States parties to ensure protection against acts contrary to article 7 of the Covenant and that it was important for the prevention of violations of this provision "that the law must exclude the admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment" (annex IX, sect. J, para. 9.3). Nevertheless, the Committee observed that:

> "Mr. Sahadeo's allegations of torture had been dealt with during the first trial in 1989 and again in the retrial in 1994. It appears from the notes of evidence of the retrial that Mr. Sahadeo had the opportunity to give evidence and that witnesses of his treatment during his detention by the police were cross-examined. The Committee recalls that it is in general for the courts of States parties, and not for the Committee, to evaluate the facts in a particular case. The information before the Committee and the arguments advanced by the author do not show that the courts' evaluation of the facts were manifestly arbitrary or amounted to a denial of justice. In the circumstances, the Committee finds that the facts before it do not sustain a finding of a violation of article 7 and article 14, paragraph 3 (g), of the Covenant in relation to the circumstances in which the confession was signed" (ibid., para. 9.3).

144. Two individual opinions were appended to the Committee's Views.

145. In case 928/2000 (Sooklal v. Trinidad and Tobago), the author was sentenced to "12 strokes of the birch" and claimed that this constituted corporal punishment contrary to article 7 of the Covenant. The Committee, referring to its earlier jurisprudence in case No. 759/1997 (Osbourne v. Jamaica), recalled that "irrespective of the nature of the crime that is to be punished, however brutal it may be", it was of the firm opinion "that corporal punishment constitutes cruel, inhuman and degrading treatment or punishment contrary to article 7 of the Covenant". The Committee therefore considered "that by imposing a sentence of whipping with the birch, the State party ha[d] violated the author's rights under article 7" (annex IX, sect. FF, para. 4.6).

146. In another case involving corporal punishment, case No. 792/1998 (Higginson v. Jamaica), the Committee, following its constant jurisprudence, found that the penalty of whipping with the tamarind switch constituted a treatment contrary to article 7 of the Covenant.

147. In case No. 684/1996 (Sahadath v. Trinidad and Tobago), the Committee addressed the question whether the issuance of a warrant of execution for a person who is mentally ill (at the time of the issuance) constitutes a treatment prohibited by article 7 of the Covenant. In its decision, the Committee held that:

> "[c]ounsel has provided information that shows that the author's mental state at the time of the reading of the death warrant was obvious to those around him and should have been apparent to the prison authorities. This information has not been contested by the State party. The Committee is of the opinion that in these circumstances issuing a warrant for the execution of the author constituted a violation of article 7 of the Covenant" (annex IX, sect. G, para. 7.2).

**(d) Liberty and security of person (Covenant, art. 9, para. 1)**

148. Article 9, paragraph 1, of the Covenant stipulates not only the right of every person to liberty, i.e. not to be subjected to arbitrary arrest or detention, but also the right to one's personal security.

149. In case No. 859/1999 (Jiménez Vaca v. Colombia), the Committee held:

> "In the case in question, Mr. Jiménez Vaca had an objective need for the State to take steps to ensure his safety, given the threats made against him. The Committee takes note of the State party's observations, set out in paragraph 5.1, but notes that the State party does not refer to the complaint which the author claims to have filed with the regional procurator's office in Turbo or before the regional office of the administrative security department of Turbo, nor does it offer any argument to show that the so-called "extortion" did not begin as a result of the complaint concerning death threats which the author filed with the Turbo second criminal circuit court. The Committee must also consider the fact that the State party does not deny the author's allegations that there was no reply to his request that the threats should be investigated and his protection guaranteed. The attempt on the author's life subsequent to the threats confirms that the State party did not take, or was unable to take, adequate measures to guarantee Mr. Asdrúbal Jiménez's right to security of person as provided for in article 9, paragraph 1" (annex IX, sect. W, para. 7.2).

150. In case No. 916/2000 (Jayawardena v. Sri Lanka), the Committee observed:

> "In respect of the author's claim that the allegations made publicly by the President of Sri Lanka put his life at risk, the Committee notes that the State party has not contested the fact that these statements were in fact made. It does contest that the author was the recipient of death threats subsequent to the President's allegations but, on the basis of the detailed information provided by the author, the Committee is of the view that due weight must be given to the author's allegations that such threats were received after the statements and the author feared for his life. For these reasons, and because the

statements in question were made by the Head of State acting under immunity enacted by the State party, the Committee takes the view that the State party is responsible for a violation of the author's right to security of person under article 9, paragraph 1, of the Covenant" (annex IX, sect. BB, para. 7.2).

"With regard to the author's claim that the State party violated his rights under the Covenant by failing to investigate the complaints made by the author to the police in respect of death threats he had received, the Committee notes the State party's contention that the author did not receive any death threats and that no complaints or reports of such threats were received. However, the State party has not provided any specific arguments or materials to refute the author's detailed account of at least two complaints made by him to the police. In the circumstances, the Committee concludes that the failure of the State party to investigate these threats to the life of the author violated his right to security of person under article 9, paragraph 1, of the Covenant" (ibid., para. 7.3).

**(e) Right to be brought promptly before a judge (Covenant, art. 9, para. 3)**

151. In several cases, the Committee considered the right for anyone arrested or detained to be tried within a reasonable time, as set forth in article 9, paragraph 3, of the Covenant. In cases Nos. 721/1996 (Boodoo v. Trinidad and Tobago), 788/1997 (Cagas et al. v. the Philippines), 728/1996 (Sahadeo v. Guyana) and 928/2000 (Sooklal v. Trinidad and Tobago), the Committee considered that, in the absence of any justification or satisfactory explanation from the State party, a period going from two years and nine months to nine years between the moment when the authors were arrested and the moment when they were brought to trial or released on bail constituted a violation of article 9, paragraph 3, of the Covenant.

152. In case No. 788/1997 (Cagas et al. v. the Philippines), the Committee recalled its General Comment 8 according to which "pre-trial detention should be an exception and as short as possible" (annex IX, sect. P, para. 7.4).

153. In the same case and cases Nos. 728/1996 (Sahadeo v. Guyana) and 721/1996 (Boodoo v. Trinidad and Tobago), the Committee found that the delay also entailed a violation of article 14, paragraph 3 (c), of the Covenant.

154. In case No. 677/1996 (Teesdale v. Trinidad and Tobago), where the author was in pre-trial detention for a period of approximately one year and a half, the Committee noted that:

"The author was detained on 28 May 1988 and formally charged with murder on 2 June 1988. His trial began on 6 October 1989 and he was sentenced to death on 2 November 1989. Under article 9, paragraph 3, of the Covenant anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time. It appears from the transcript of the trial before the San Fernando Assize Court that all evidence for the case of the prosecution was gathered by 1 June 1988 and no further investigations were carried out. The Committee is of the view that in the context of

article 9, paragraph 3, in the specific circumstances of the present case and in the absence of any explanation for the delay by the State party, the length of time that the author was in pre-trial detention is unreasonable and, therefore, constitutes a violation of this provision" (annex IX, sect. D, para. 9.3).

155. In case No. 845/1998 (Kennedy v. Trinidad and Tobago), the author was charged five days after his arrest and brought to a judge after six days. The Committee considered that:

"[w]hile the meaning of the term 'promptly' in paragraphs 2 and 3 of article 9 must be determined on a case-by-case basis, the Committee recalls its jurisprudence under the Optional Protocol pursuant to which delays should not exceed a few days. While the information before the Committee does not enable it to determine whether Mr. Kennedy was 'promptly' informed of the charges against him, the Committee considers that in any event he was not brought 'promptly' before a judge, in violation of article 9, paragraph 3" (annex IX, sect.T, para. 7.6).

**(f) Treatment during imprisonment (Covenant, art. 10)**

156. Article 10, paragraph 1, prescribes that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. In case No. 695/1996 (Simpson v. Jamaica), the Committee noted that:

"Counsel has provided specific and detailed allegations concerning inappropriate conditions of detention prior to his trial and since his conviction, and lack of medical treatment. The State party has not responded to these allegations with specific responses but in its initial submission merely denies that the conditions constitute a violation of the Covenant and then goes on to say that it would investigate these allegations, including the allegation of the failure to provide medical treatment (para. 4.6). The Committee notes that the State party has not informed the Committee of the outcome of its investigations. In the absence of any explanation from the State party, the Committee considers that the author's conditions of detention and his lack of medical treatment as described violate his right to be treated with humanity and with respect for the inherent dignity of the human person and are therefore contrary to article 10, paragraph 1. In light of this finding in respect of article 10, a provision which deals with the situation of persons deprived of their liberty and encompasses the elements set out generally in article 7, it is not necessary to consider separately the claims arising under that article" (annex IX, sect. H, para. 7.2).

157. The Committee made a similar finding in case No. 899/1999 (Francis et al. v. Trinidad and Tobago).

158. In case No. 845/1999 (Kennedy v. Trinidad and Tobago), the Committee notes that:

"The author was kept on remand for a total of 42 months with at least 5 and up to 10 other detainees in a cell measuring 6 by 9 feet; that for a period of almost eight years on death row, he was subjected to solitary confinement in a small cell with no sanitation except for a slop pail, no natural light, being allowed out of his cell only once a week,

and with wholly inadequate food that did not take into account his particular dietary requirements. The Committee considers that these - uncontested - conditions of detention amount to a violation of article 10, paragraph 1, of the Covenant" (annex IX, sect. T, para. 7.9).

**(g) Freedom of movement; right to return to one's country (Covenant, art. 12)**

159. Article 12, paragraph 1, protects the right to liberty of movement and freedom to choose a residence; paragraph 3 of article 12 provides that these rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the Covenant.

160. Article 12, paragraph 4, provides that no one shall be arbitrarily deprived of the right to enter his own country.

161. In case No. 859/1999 (Jiménez Vaca v. Colombia), the author had been forced to flee his country and to live in exile. In addition to the question of freedom of movement itself, the Committee examined the possible consequences on the enjoyment of other rights of the Covenant of a violation of the right to freedom of movement.

> "With regard to the author's allegation that there was a violation of article 12, paragraphs 1 and 4, of the Covenant, the Committee notes the observations of the State party to the effect that the attribution of violations of other rights such as the right to freedom of movement cannot be the responsibility of the State party in the case of matters arising indirectly out of violent acts. However, in the light of the above finding of a violation of the author's right to security of person (art. 9, para. 1) and the Committee's assessment that effective domestic remedies were not available to allow the author to return safely from his involuntary exile, the Committee finds that the State party has failed to ensure the author's right to remain in, to return to, and to reside in his own country. Consequently, there has been a violation of article 12, paragraphs 1 and 4, of the Covenant. This violation inevitably has an adverse impact on the enjoyment by the author of other rights guaranteed by the Covenant" (annex IX, sect.W, para. 7.4).

**(h) Guarantees of a fair hearing (Covenant, art. 14, para. 1)**

162. Article 14, paragraph 1, provides for the right to equality before the courts and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. In case 779/1997 (Äärelä v. Finland), the Committee first decided, with regard to a claim that the granting by a court of an oral hearing and at the same time the refusal to grant an on-site inspection constituted unfair trial, that such a matter of procedural practice was to be determined by domestic courts in the interests of justice. The Committee noted that:

> "The onus is on the authors to show that a particular practice has given rise to unfairness in the particular proceedings. In the present case, an oral hearing was granted as the Court found it necessary to determine the reliability and weight to be accorded to oral testimony. The authors have not shown that this decision was manifestly arbitrary or

otherwise amounted to a denial of justice. As to the decision not to pursue an on-site inspection, the Committee considers that the authors have failed to show that the Court of Appeal's decision to rely on the District Court's inspection of the area and the records of those proceedings injected unfairness into the hearing or demonstrably altered the outcome of the case. Accordingly, the Committee is unable to find a violation of article 14 in the procedure applied by the Court of Appeal in these respects" (annex IX, sect. O, para. 7.3).

163. In the same case, the Committee considered the extent to which the imposition of award cost against the party that lost the trial could constitute a violation of the principle of equal access to the courts in the sense of article 14, paragraph 1, of the Covenant.

"[T]he Committee considers that a rigid duty under law to award costs to a winning party may have a deterrent effect on the ability of persons who allege their rights under the Covenant have been violated to pursue a remedy before the courts. In the particular case, the Committee notes that the authors were private individuals bringing a case alleging breaches of their rights under article 27 of the Covenant. In the circumstances, the Committee considers that the imposition by the Court of Appeal of substantial costs award, without the discretion to consider its implications for the particular authors, or its effect on access to court of other similarly situated claimants, constitutes a violation of the authors' rights under article 14, paragraph 1, in conjunction with article 2 of the Covenant. The Committee notes that, in the light of the relevant amendments to the law governing judicial procedure in 1999, the State party's courts now possess the discretion to consider these elements on a case-by-case basis" (ibid., para. 7.2).

164. In this respect, several individual opinions were appended to these Views.

165. Again in the same case, the authors claimed that they had been denied the right to comment on a last submission made by the other party and that this also constituted a breach of article 14, paragraph 1 of the Covenant. The Committee, recalling its jurisprudence in case No. 846/1999 (Jansen-Gielen v. the Netherlands) as reflected in the previous annual report (A/56/40, vol. I, para. 147), noted that:

"It is a fundamental duty of the courts to ensure equality between the parties, including the ability to contest all the argument and evidence adduced by the other party. The Court of Appeal states that it had 'special reason' to take account of these particular submissions made by the one party, while finding it 'manifestly unnecessary' to invite a response from the other party. In so doing, the authors were precluded from responding to a brief submitted by the other party that the Court took account of in reaching a decision favourable to the party submitting those observations. The Committee considers that these circumstances disclose a failure of the Court of Appeal to provide full opportunity to each party to challenge the submissions of the other, thereby violating the principles of equality before the courts and of fair trial contained in article 14, paragraph 1 of the Covenant" (annex IX, sect. O, para. 7.4).

166. In case No. 667/1995 (Ricketts v. Jamaica), where the author claimed that he was a victim of a violation of article 14, paragraphs 1 and 2, because he had been convicted by a non-unanimous jury, the Committee noted that:

> "After the trial four members of the Lucea Circuit Court jury submitted affidavits stating that they had not agreed to the verdict, though they conceded that they had not given oral expression to their differing view when the jury foreman announced that the verdict was accepted by all jurors. The Committee observes that the question presented by the jurors' affidavits was raised on appeal before the Judicial Committee of the Privy Council, which dismissed the petition. The Committee further notes that the alleged lack of unanimity was not raised before the trial judge nor before the Court of Appeal. In these circumstances, the Committee cannot conclude that article 14, paragraphs 1 and 2 of the Covenant has been violated" (annex IX, sect. C, para. 7.2).

167. Three members appended an individual opinion to these Views.

168. In case No. 845/1998 (Kennedy v. Trinidad and Tobago), the Committee addressed the question of legal aid and whether it constituted an obligation for the State party under article 14, paragraph 1, of the Covenant:

> "The Committee notes that the Covenant does not contain an express obligation as such for any State party to provide legal aid to individuals in all cases but only in the determination of a criminal charge where the interests of justice so require (art. 14 (3) (d)). It is further aware that the role of the Constitutional Court is not to determine the criminal charge itself, but to ensure that applicants receive a fair trial. The State party has an obligation, under article 2, paragraph 3, of the Covenant, to make the remedies in the Constitutional Court, provided for under Section 14 (1) of the Trinidadian Constitution, available and effective in relation to claims of violations of Covenant rights. As no legal aid was available to the author before the Constitutional Court, in relation to his claim of a violation of his right to a fair trial, the Committee considers that the denial of legal aid constituted a violation of article 14, paragraph 1, in conjunction with article 2, paragraph 3" (annex IX, sect.T, para. 7.10).

169. In case No. 848/1999 (Rodríguez Orejuela v. Colombia), the Committee addressed the issue of the public nature of criminal proceedings. In finding a violation of article 14 it observed:

> "The author maintains that the proceedings against him were conducted only in writing, excluding any hearing, either oral or public. The Committee notes that the State party has not refuted these allegations but has merely indicated that the decisions were made public. The Committee observes that in order to guarantee the rights of the defence enshrined in article 14, paragraph 3, of the Covenant, in particular those contained in subparagraphs (d) and (e), all criminal proceedings must provide the person charged with the criminal offence the right to an oral hearing, at which he or she may appear in person

or be represented by counsel and may bring evidence and examine the witnesses. Taking into account the fact that the author did not have such a hearing during the proceedings that culminated in his conviction and sentencing, the Committee finds that there was a violation of the right of the author to a fair trial in accordance with article 14 of the Covenant" (annex IX, sect. U, para. 7.3).

**(i) Right to be presumed innocent (Covenant, art. 14, para. 2)**

170. Article 14, paragraph 2, provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty. In case No. 788/1997 (Cagas et al. v. the Philippines), the Committee found that although a denial of bail was not a priori contrary to article 14, paragraph 2, an excessive period of pre-trial detention, in this case over nine years, was affecting the right to be presumed innocent and constituted therefore a violation of this provision.

**(j) Right to adequate time and facilities for the preparation of one's defence (Covenant, art. 14, para. 3 (b))**

171. In case No. 677/1996 (Teesdale v. Trinidad and Tobago), where counsel for the author was not assigned to him until the day of the trial itself, the Committee decided that such a late assignment of counsel constituted a breach to the right for the accused to have time and facilities for the preparation of his defence as it is set forth in article 14, paragraph 3 (b), of the Covenant.

**(k) Right to be tried without undue delay (Covenant, art. 14, para. 3 (c))**

172. Article 14, paragraph 3 (c), provides that everyone charged with a criminal offence shall be tried without undue delay. In cases Nos. 788/1997 (Cagas et al. v. the Philippines), 728/1996 (Sahadeo v. Guyana) and 928/2000 (Sooklal v. Trinidad and Tobago) the Committee found that the circumstances of the cases revealing a violation of article 9, paragraph 3, constituted also a separate violation of article 14, paragraph 3 (c). In case No. 788/1997, the authors were still awaiting their trial more than nine years after their arrest. In case 728/1996, the author was tried four years and two months after his arrest and the last decision on appeal took place more than six years after the initial trial. In case 928/2000, the author was tried seven years and nine months after his arrest.

173. In the same case, the author also claimed that nine years after the facts had occurred, the witnesses could no longer be expected to testify accurately and that this justified a separate violation of article 14, paragraph 3 (c). The Committee found however that:

> "[a]s it appears from the file that issues related to the credibility and assessment of the evidence were addressed by the High Court, the Committee takes the view that the effect of the delay on the credibility of the witnesses' testimonies does not give rise to a finding of a violation of the Covenant that would be separate from the conclusion reached above under article 14, paragraph 3 (c)" (annex IX, sect. FF, para. 4.9).

174. In case 580/1994 (Ashby v. Trinidad and Tobago), the Committee noted that the author had to wait more than four years in detention to have his appeal heard by the Court of Appeals. The Committee noted:

> "The State party's explanation concerning the delay in the appeals proceedings against Mr. Ashby. The Committee finds that the State party did not submit that the delay in proceedings was dependent on any action by the accused nor was the non-fulfilment of this responsibility excused by the complexity of the case. Inadequate staffing or general administrative backlog is not sufficient justification in this regard. In the absence of any satisfactory explanation from the State party, the Committee considers that the delay of some four and a half years was not compatible with the requirements of article 14, paragraphs 3 (c) and 5, of the Covenant" (annex IX, sect. A, para. 10.5).

175. The Committee took a similar decision in case No. 683/1996 (Wanza v. Trinidad and Tobago), where the author waited five years to have his appeal heard, and in case No. 899/1999 (Francis et al. v. Trinidad and Tobago), where the Committee found a violation of article 14, paragraph 3 (c) because the authors were not brought to trial for four years and three months.

176. In case No. 802/1998 (Rogerson v. Australia), the Committee addressed the question whether a delay in delivering a decision in a criminal case could constitute a violation of article 14, paragraph 3 (c). In its decision, the Committee noted that:

> "The Court heard the appeal of the author from 22 to 24 March 1993. The Committee notes further that the two puisne judges delivered their draft decisions on 28 April and 27 July 1993, respectively; on 17 March 1995, the Court dismissed the author's case. The State party has not explained what happened in the author's case between these dates, notwithstanding the existence of a case management system. The Committee finds that in the circumstances of the present case a delay of almost two years to deliver the final decision violates the right of the author to be tried without undue delay as provided for in article 14, paragraph 3 (c), of the Covenant" (annex IX, sect. S, para. 9.3).

### (l) Right to legal assistance (Covenant, article 14, paragraph 3 (d))

177. Article 14, paragraph 3 (d) provides, inter alia, for the right to legal defence and free legal assistance. In case 695/1996 (Simpson v. Jamaica), the author claimed that his counsel had been absent for the hearing of two of the four witnesses during the preliminary hearing. In this regard, the Committee recalled that legal assistance should be available at all stages of the proceedings and particularly in capital cases. It also referred to its prior jurisprudence in case No. 775/1997 (Brown v. Jamaica), A/56/40, where it decided that a magistrate should not proceed to the hearing of a witness during preliminary hearing without having allowed the author to secure the presence of his lawyer. The Committee thus found that, as it appeared that the magistrate had not adjourned the hearing in the absence of the counsel, the facts before it disclosed a violation of article 14, paragraph 3 (d).

178. In case 928/2000 (Boodlal v. Trinidad and Tobago), the author claimed that he had not received effective legal representation as it was only at the appeal hearing that the author heard his counsel telling the court that there were no grounds for appeal. Recalling its previous jurisprudence where it held in death penalty cases that the withdrawal of an appeal without consultation would amount to a violation of article 14, paragraph 3 (d) of the Covenant, the Committee stated that:

> "The requirements of fair trial and of representation require that the author be informed that his counsel does not intend to put arguments to the Court and that he have an opportunity to seek alternative representation, in order that his concerns may be ventilated at appeal level. In the present case, it does not appear that the Appeal Court took any steps to ensure that this right was respected. In these circumstances, the Committee finds that the author's right under article 14, paragraph 3 (d), has been violated" (annex IX, sect. FF, para. 4.10).

179. In case No. 677/1996 (Teesdale v. Trinidad and Tobago), the Committee recalled its previous jurisprudence that "an accused is not entitled to choice of counsel if he is being provided with a legal aid lawyer, and is otherwise unable to afford legal representation" (annex IX, sect. D, para. 9.6).

180. In a similar case, No. 667/1995 (Ricketts v. Jamaica), the Committee found that "although it is incumbent on the State party to provide effective legal aid representation, it is not for the Committee to determine how this should have been ensured, unless it is apparent that there has been a miscarriage of justice" (annex IX, sect. C, para. 7.3).

181. In case 848/1999 (Rodriguez Orejuela v. Colombia), the Committee held that article 14 of the Covenant had been violated, making a reference to paragraph 3 (d) in connection with the right to oral hearings and to be represented at criminal proceedings (see para. 85 above).

**(m) Right to appeal (Covenant, art. 14, para. 5)**

182. Article 14, paragraph 5, provides that everyone convicted of a crime shall have the right to have his/her conviction and sentence reviewed by a higher tribunal according to law.

183. In case No. 677/1996 (Teesdale v. Trinidad and Tobago), with regard to a claim by the author that his rights under article 14, paragraph 3 (d) and paragraph 5 were breached because his counsel had not consulted him before the appeal, the Committee considered that:

> "Appeals are argued on the basis of the record and that it is for the lawyer to use his professional judgement in advancing the grounds for appeal, and in deciding whether to seek instructions from the defendant. The State party cannot be held responsible for the fact that the legal aid attorney did not consult with the author. In the circumstances of the instant case, the Committee is not in a position to find a violation of article 14, paragraphs 3 (d) and 5, with regard to the author's appeals hearing" (annex IX, sect. D, para. 9.7).

184. In case No. 899/1999 (Francis et al. v. Trinidad and Tobago), the Committee found that there had been no violation of this provision and observed:

> "As to the claim of a delay of four years and three months between conviction and the judgement on appeal, the Committee notes that the authors lodged their application for leave to appeal in November 1994, and that the Court disposed of the appeal some 5 months later in March 1995. In the absence of any argument by the authors that responsibility for the delay in lodging the appeal could be imputed to the State party, the Committee is unable to find that there has been a violation of article 14, paragraphs 3 (c) and 5, of the Covenant" (annex IX, sect. Y, para. 5.5).

**(n) Right to family and protection of children (Covenant, arts. 17, 23 and 24)**

185. The Committee examined the non-enforcement of judicial orders concerning visiting rights in case No. 946/2000 (L.P. v. the Czech Republic). In finding a violation of article 17, it observed:

> "As to the alleged violation of article 17, the Committee notes the State party's contention that there is no documentation of arbitrary or unlawful interference by the State party with the author's family, that the decisions of courts of all instances have complied with the rules of procedure set by law, and that the delay in the resolution of the divorce and custody proceedings is due to the numerous petitions submitted by the author. However, the current communication is not based only on article 17, paragraph 1, of the Covenant, but also on paragraph 2 of the said provision, according to which everyone has the right to the protection of the law against interference or attacks on one's privacy and family life" (annex IX, sect. HH, para. 7.2).

> "The Committee considers that article 17 generally includes effective protection to the right of a parent to regular contact with his or her minor children. While there may be exceptional circumstances in which denying contact is required in the interests of the child and cannot be deemed unlawful or arbitrary, in the present case the domestic courts of the State party have ruled that such contact should be maintained. Consequently, the issue before the Committee is whether the State party has afforded effective protection to the author's right to meet his son in accordance with the court decisions of the State party" (ibid., para. 7.3).

186. An individual opinion was appended to the Committee's Views.

187. In case No. 902/1999 (Joslin v. New Zealand), the Committee examined the issue of same-sex marriage. It observed:

> "The authors' essential claim is that the Covenant obligates States parties to confer upon homosexual couples the capacity to marry and that by denying the authors this capacity the State party violates their rights under articles 16, 17, 23, paragraphs 1 and 2, and 26 of the Covenant. The Committee notes that article 23, paragraph 2, of the Covenant expressly addresses the issue of the right to marry. Given the existence of a specific provision in the Covenant on the right to marriage, any claim that this right has been

violated must be considered in the light of this provision. Article 23, paragraph 2, of the Covenant is the only substantive provision in the Covenant which defines a right by using the term 'men and women', rather than 'every human being', 'everyone' and 'all persons'. Use of the term "men and women", rather than the general terms used elsewhere in Part III of the Covenant, has been consistently and uniformly understood as indicating that the treaty obligation of States parties stemming from article 23, paragraph 2, of the Covenant is to recognise as marriage only the union between a man and a woman wishing to marry each other" (annex IX, sect. Z, para. 8.2).

"In light of the scope of the right to marry under article 23, paragraph 2, of the Covenant, the Committee cannot find that by mere refusal to provide for marriage between homosexual couples, the State party has violated the rights of the authors under articles 16, 17, 23, paragraphs 1 and 2, or 26 of the Covenant" (ibid., para. 8.3).

188. An individual opinion was appended to the Committee's Views.

**(o) Freedom of thought, conscience and religion (Covenant, art. 18)**

189. Article 18 protects the right to freedom of thought, conscience and religion. Paragraph 3 of article 18 provides that the freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights of others.

190. Case No. 721/1996 (Boodoo v. Trinidad and Tobago) concerned an author, who was imprisoned and claimed that his prayer books had been confiscated and that he had been forbidden to wear a beard and to worship at religious services. In finding a violation of article 18, the Committee reaffirmed that:

"The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts and that the concept of worship extends to ritual and ceremonial acts giving expression to belief, as well as various practices integral to such acts. In the absence of any explanation from the State party concerning the author's allegations [...], the Committee concludes that there has been a violation of article 18 of the Covenant" (annex IX, sect. I, para. 6.4).

**(p) Freedom of opinion (Covenant, art. 19)**

191. Article 19 provides for the right to freedom of opinion and expression. According to paragraph 3 of article 19, these rights may only be restricted as provided by law and when necessary for respect of the rights of reputations of others or for the protection of national security or public order (ordre public), or of public health or morals.

192. In case No. 921/2000 (Dergachev v. Belarus), the author alleged a violation of article 19 of the Covenant because he had been sentenced to a fine for having carried a poster with an inscription to the effect that: "Followers of the present regime! You have led the people to poverty for five years. Stop listening to lies. Join the struggle led by the Belarus People's Front for you." In the absence of State party's observations on the communication, the Committee found that it constituted a violation of article 19 of the Covenant.

**(q) The right to take part in the conduct of public affairs, to participate in elections, to have access to public service (Covenant, art. 25)**

193. In case No. 932/2000 (Gillot v. France), the Committee referred to its jurisprudence in relation to article 25 of the Covenant, "namely that the right to vote is not an absolute right and that restrictions may be imposed on it provided they are not discriminatory or unreasonable" (annex IX, sect. GG, para. 12.2).

194. In holding that article 25 had not been violated, the Committee observed that:

> "Each cut-off point should provide a means of evaluating the strength of the link to the territory, in order that those residents able to prove a sufficiently strong tie are able to participate in each referendum. The Committee considers that, in the present case, the difference in the cut-off points for each ballot is linked to the issue being decided in each vote: the 20-year cut-off point - rather than 10 years as for the first ballot - is justified by the timeframe for self-determination, it being made clear that other ties are also taken into account for the final referendum" (ibid., para. 14.6).
>
> "Noting that the length of residence criterion is not discriminatory, the Committee considers that, in the present case, the cut-off points set for the referendum of 1998 and referenda from 2014 onwards are not excessive inasmuch as they are in keeping with the nature and purpose of these ballots, namely a self-determination process involving the participation of persons able to prove sufficiently strong ties to the territory whose future is being decided. This being the case, these cut-off points do not appear to be disproportionate with respect to a decolonization process involving the participation of residents who, over and above their ethnic origin or political affiliation, have helped, and continue to help, build New Caledonia through their sufficiently strong ties to the territory" (ibid., para. 14.7). See above paragraph 51.

195. The Committee has also examined the application of article 25 (c) in the context of a dismissal from public service. In finding a violation of this provision in case No. 641/1999 (Gedumbe v. Democratic Republic of the Congo), the Committee observed:

> "With regard to the alleged violation of article 25 (c) of the Covenant, the Committee notes that the author has made specific allegations relating, on the one hand, to his suspension in complete disregard of legal procedure and, in particular, in violation of the Zairian regulations governing State employees, and, on the other hand, to the failure to reinstate him in his post, in contravention of decisions by the Ministry of Primary and Secondary Education. In this connection the Committee notes also that the non-payment of the author's salary arrears, notwithstanding the instructions by the Minister for Foreign

Affairs, is the direct consequence of the failure to implement the above-mentioned decisions by the authorities. In the absence of a response by the State party, the Committee finds that the facts in the case show that the decisions by the authorities in the author's favour have not been acted upon and cannot be regarded as an effective remedy for violation of article 25 (c) read in conjunction with article 2 of the Covenant" (ibid., para. 5.2).

**(r) The right to equality before the law and the prohibition of discrimination (Covenant, art. 26)**

196. Article 26 of the Covenant guarantees equality before the law and prohibits discrimination. At its seventy-third session, the Committee again addressed the issue of the restitution of properties confiscated in the Czech Republic during and after the Second World War in three different cases. These are cases Nos. 747/1997 (Des Fours Walderode v. the Czech Republic), 765/1997 (Fábryová v. the Czech Republic) and 774/1997 (Brok v. the Czech Republic). In the three cases, the Committee was of the opinion that there had been a breach of article 26 of the Covenant but for different reasons.

197. In case No. 747/1997 (Des Fours Walderode v. the Czech Republic), the author claimed that his right to equal protection before the law had been breached by the enactment of new legislation of 1996 requiring continued citizenship for recovering a confiscated property. The Committee first noted that:

> "Law No. 243/1992 already contained a requirement of citizenship as one of the conditions for restitution of property and that the amending Law No. 30/1996 retroactively added a more stringent requirement of continued citizenship. The Committee notes further that the amending Law disqualified the author and any others in this situation, who might otherwise have qualified for restitution. This raises an issue of arbitrariness and, consequently, of a breach of the right to equality before the law, equal protection of the law and non-discrimination under article 26 of the Covenant" (annex IX, sect. K, para. 8.3)

> "The Committee recalls its Views in cases Nos. 516/1993 (Simunek et al.), 586/1994 (Joseph Adam) and 857/1999 (Blazek et al.) that a requirement in the law for citizenship as a necessary condition for restitution of property previously confiscated by the authorities makes an arbitrary, and, consequently a discriminatory distinction between individuals who are equally victims of prior State confiscations, and constitutes a violation of article 26 of the Covenant. This violation is further exacerbated by the retroactive operation of the impugned Law" (ibid., para. 8.4).

198. In another case, No. 774/1997 (Brok v. the Czech Republic), the Committee examined whether the application to the author's case of two different laws of 1991 and 1994 providing for restitution or compensation for properties confiscated during the communist regime constituted a violation of the right to equality before the law. The Committee noted:

> "These laws provide restitution or compensation to victims of illegal confiscation carried out for political reasons during the Communist regime. The law also provides for

restitution or compensation to victims of racial persecution during the Second World War who had an entitlement under Benes Decree No. 5/1945. The Committee observes that legislation must not discriminate among the victims of the prior confiscation to which it applies, since all victims are entitled to redress without arbitrary distinctions" (annex IX, sect. N, para. 7.3).

"The Committee notes that Act No. 87/1991 as amended by Act No. 116/1994 gave rise to a restitution claim of the author which was denied on the ground that the nationalization that took place in 1946-1947 on the basis of Benes Decree No. 100/1945 falls outside the scope of laws of 1991 and 1994. Thus, the author was excluded from the benefit of the restitution law although the Czech nationalization in 1946-1947 could only be carried out because the author's property was confiscated by the Nazi authorities during the time of German occupation. In the Committee's view this discloses a discriminatory treatment of the author, compared to those individuals whose property was confiscated by Nazi authorities without being subjected, immediately after the war, to Czech nationalization and who, therefore, could benefit from the laws of 1991 and 1994. Irrespective of whether the arbitrariness in question was inherent in the law itself or whether it resulted from the application of the law by the courts of the State party, the Committee finds that the author was denied his right to equal protection of the law in violation of article 26 of the Covenant" (ibid., para. 7.4).

199. Three individual opinions were appended to the Committee's Views.

200. In another case, No. 765/1997 (Fábryová v. the Czech Republic), although the State party itself recognized that the author was entitled to restitution, the latter was finally not able to obtain restitution due to procedural rules. The Committee noted that:

"The State party concedes that under Law No. 243/1992 individuals in a similar situation as that of the author qualify for restitution as a result of the subsequent interpretation given by the Constitutional Court (para. 4.4). The State party further concedes that the decision of the Jihlava Land Office of 14 October 1994 was wrong and that the author should have had the opportunity to enter a fresh application before the Jihlava Land Office. The author's renewed attempt to obtain redress has, however, been frustrated by the State party itself which, through a letter of the Ministry of Agriculture of 25 May 1998, informed the author that the decision of the Jihlava Land Office of 14 October 1994 had become final on the ground that the decision of the Central Land Office reversing the decision of the Jihlava Land Office had been served out of time" (annex IX, sect. M, para. 9.2).

"Given the above facts, the Committee concludes that, if the service of the decision of the Central Land Office reversing the decision of the Jihlava Land Office was made out of time, this was attributable to the administrative fault of the authorities. The result is that the author was deprived of treatment equal to that of persons having similar entitlement to the restitution of their previously confiscated property, in violation of her rights under article 26 of the Covenant" (ibid., para. 9.3).

201. One individual opinion was appended to the Committee's Views.

202. In case No. 965/2000 (Karakurt v. Austria), the author claimed that the State party had breached its obligation under article 26 of the Covenant because he had been refused eligibility to participate in a work-council of his company, because he was not a national of the European Economic Area (EEA). The Committee noted in this respect that:

> "The State party has granted the author, a non-Austrian/EEA national, the right to work in its territory for an open-ended period. The question therefore is whether there are reasonable and objective grounds justifying exclusion of the author from a close and natural incident of employment in the State party otherwise available to EEA nationals, namely the right to stand for election to the relevant work-council, on the basis of his citizenship alone. Although the Committee had found in one case (No. 658/1995, Van Oord v. the Netherlands) that an international agreement that confers preferential treatment to nationals of a State party to that agreement might constitute an objective and reasonable ground for differentiation, no general rule can be drawn therefrom to the effect that such an agreement in itself constitutes a sufficient ground with regard to the requirements of article 26 of the Covenant. Rather, it is necessary to judge every case on its own facts. With regard to the case at hand, the Committee has to take into account the function of a member of a work-council, i.e., to promote staff interests and to supervise compliance with work conditions (see para. 3.1). In view of this, it is not reasonable to base a distinction between aliens concerning their capacity to stand for election for a work-council solely on their different nationality. Accordingly, the Committee finds that the author has been the subject of discrimination in violation of article 26" (annex IX, sect. II, para. 8.4).

203. An individual opinion was appended to the Committee's Views.

204. In case No. 919/2000 (Müller and Engelhard v. Namibia), the authors claimed that the differentiation made in the legislation of the State party on the basis of sex, in relation to the right of male or female persons to assume the surname of the other spouse on marriage violated article 26 of the Covenant. The Committee reiterated its jurisprudence, including case No. 180/1984 (Danning v. the Netherlands), that:

> "The right to equality before the law and to the 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. A different treatment based on one of the specific grounds enumerated in article 26, clause 2, of the Covenant, however, places a heavy burden on the State party to explain the reason for the differentiation. The Committee, therefore, has to consider whether the reasons underlying the differentiation on the basis of gender, as embodied in section 9, paragraph 1, remove this provision from the verdict of being discriminatory" (annex IX, sect. CC, para. 6.7).

> "The Committee notes the State party's argument that the purpose of Aliens Act section 9, paragraph 1, is to fulfil legitimate social and legal aims, in particular to create legal security. The Committee further notes the States party's submission that the distinction made in section 9 of the Aliens Act is based on a long-standing tradition for women in Namibia to assume their husbands' surname, while in practice men so far

never have wished to assume their wives' surname; thus the law, dealing with the normal state of affairs, is merely reflecting a generally accepted situation in Namibian society. The unusual wish of a couple to assume as family name the surname of the wife could easily be taken into account by applying for a change of surname in accordance with the procedures set out in the Aliens Act. The Committee, however, fails to see why the sex-based approach taken by section 9, paragraph 1, of the Aliens Act may serve the purpose of creating legal security, since the choice of the wife's surname can be registered as well as the choice of the husband's surname. In view of the importance of the principle of equality between men and women, the argument of a long-standing tradition cannot be maintained as a general justification for different treatment of men and women, which is contrary to the Covenant. To subject the possibility of choosing the wife's surname as family name to stricter and much more cumbersome conditions than the alternative (choice of husband's surname) cannot be judged to be reasonable; at any rate the reason for the distinction has no sufficient importance in order to outweigh the generally excluded gender-based approach. Accordingly, the Committee finds that the authors have been the victims of discrimination and violation of article 26 of the Covenant" (ibid., para. 6.8).

205. In case No. 677/1996 (Teesdale v. Trinidad and Tobago), the author claimed that he was a victim of discrimination because his death sentence had been commuted to 75 years of imprisonment with hard labour while 53 other prisoners have had their death sentence commuted to life imprisonment, which in practice allows release earlier than under a 75 years' sentence. The Committee recalled:

"Its established jurisprudence that article 26 of the Covenant prohibits discrimination in law and in fact in any field regulated and protected by public authorities. The Committee considers that the decision to commute a death sentence and the determination of a term of imprisonment is within the discretion of the President and that he exercises this discretion on the basis of many factors. Although the author has referred to 53 cases where the death penalty was commuted to life imprisonment, he has not provided information on the number or nature of cases where death sentences were commuted to imprisonment with hard labour for a fixed term. The Committee is therefore unable to make a finding that the exercise of this discretion in the author's case was arbitrary and in violation of article 26 of the Covenant" (annex IX, sect. D, para. 9.8).

206. Four individual opinions were appended to the Committee's Views.

207. In case No. 854/1999 (Wackenheim v. France), the Committee had to determine whether the ban imposed by French authorities on the tossing of dwarfs constituted a form of discrimination for purposes of article 26 of the Covenant. In holding that article 26 had not been violated, the Committee considered:

"The ban on tossing placed by the State party in the present case applies only to dwarves (as described in paragraph 2.1). However, the reason for singling such persons out is that only they are capable of being tossed. Thus the distinction between the persons to whom the ban applies, namely dwarves, and those to whom it does not apply, namely people who are not dwarves, is based on an objective reason, and has no discriminatory purpose.

The Committee considers that the State party has demonstrated, in the present case, that the ban on dwarf-tossing as practised by the author, was not abusive but was necessary in order to protect public order including inter alia, considerations of human dignity which are compatible with the aims of the Covenant. It therefore concludes that the distinction between the author and persons to whom the ban imposed by the State party does not apply was based on objective and reasonable grounds" (annex IX, sect. V, para. 7.4).

**(s) Minority rights (Covenant, art. 27)**

208. Article 27 provides that persons belonging to ethnic, religious or linguistic minorities, shall not be denied the right to enjoy their own culture, to profess and practise their own religion, or to use their own language.

209. In case 779/1997 (Äärelä v. Finland), the authors were of Sami ethnic origin and lived from reindeer husbandry. They claimed that the logging and road construction in certain reindeer husbandry areas violated their rights under article 27 of the Covenant. In its Views, the Committee observed that:

"It is undisputed that the authors are members of a minority culture and that reindeer husbandry is an essential element of their culture. The Committee's approach in the past has been to inquire whether interference by the State party in that husbandry is so substantial that it has failed to properly protect the authors' right to enjoy their culture. The question therefore before the Committee is whether the logging of the 92 hectares of the Kariselkä area rises to such a threshold" (annex IX, sect. O, para. 7.5).

"The Committee notes that the authors, and other key stakeholder groups, were consulted in the evolution of the logging plans drawn up by the Forestry Service, and that the plans were partially altered in response to criticisms from those quarters. The District Court's evaluation of the partly conflicting expert evidence, coupled with an on-site inspection, determined that the Kariselkä area was necessary for the authors to enjoy their cultural rights under article 27 of the Covenant. The appellate court finding took a different view of the evidence, finding also from the point of view of article 27, that the proposed logging would partially contribute to the long-term sustainability of reindeer husbandry by allowing regeneration of ground lichen in particular, and moreover that the area in question was of secondary importance to husbandry in the overall context of the Collective's lands. The Committee, basing itself on the submissions before it from both the authors and the State party, considers that it does not have sufficient information before it in order to be able to draw independent conclusions on the factual importance of the area to husbandry and the long-term impacts on the sustainability of husbandry, and the consequences under article 27 of the Covenant. Therefore, the Committee is unable to conclude that the logging of 92 hectares, in these circumstances, amounts to a failure on the part of the State party to properly protect the authors' right to enjoy Sami culture, in violation of article 27 of the Covenant" (ibid., para. 7.6).

## F. Remedies called for under the Committee's Views

210. After the Committee has made a finding of a violation of a provision of the Covenant in its Views under article 5, paragraph 4, of the Optional Protocol, it proceeds to ask the State party to take appropriate steps to remedy the violation, such as commutation of sentence, release, or providing adequate compensation for the violation suffered. When pronouncing on a remedy, the Committee observes that:

> "Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views."

211. During the period under review and with respect to three cases related to an alleged discrimination on property restitution in the the Czech Republic, the Committee recommended in cases 747/1997 (Des Fours Walderode v. the Czech Republic) and 774/1997 (Brok v. the Czech Republic) that the effective remedy to the violation of article 26 of the Covenant would entail restitution of the property or compensation as well as appropriate compensation for the period during which the victims were deprived of their property. However, an individual opinion dissenting in this respect with the majority's decision was appended to the Committee's Views in the Brok case. In the third case, No. 765/1997 (Fábryová v. the Czech Republic), the Committee, while it considered that the facts before it also revealed a violation of article 26, held that the effective remedy should include the opportunity to file a new claim for restitution or compensation but not a direct restitution as in the two other cases.

212. In the same three cases, the Committee also addressed the issue of equality before the law and equal protection of the law more broadly and recommended that the State party:

> "Should review its legislation and administrative practices to ensure that all persons enjoy equality before the law as well as the equal protection of the law" (annex IX, sect. N, case No. 774/1997, para. 9; sect. K, case No. 747/1997, para. 9.2; and sect. M, case No. 765/1997, para. 10).

213. In case No. 965/2000 (Karakurt v. Austria), where it also found a violation of article 26, the Committee recommended a broad remedy by holding that the effective remedy consisted "of modifying the applicable law so that no improper differentiation is made between persons in the author's situation and EEA nationals" (annex IX, sect. II, para. 10).

214. In case No. 779/1997 (Äärelä v. Finland), where it had found that the award of costs against the losing party and that the authors had not been entitled to comment on an adverse party's late submitted brief were both in contrary to the principle of fair trial, the Committee held that "the State party was under an obligation to restitute to the authors that proportion of the costs award already recovered, and to refrain from seeking execution of any further portion of the award" (annex IX, sect. O, para. 8.2). Moreover, the Committee considered that, "as the decision of the Court of Appeal was tainted by a substantive violation of fair trial provisions, the State party is under an obligation to reconsider the authors' claims".

215. In another case where judicial costs were ordered against the author (case No. 919/2000, Müller and Engelhard v. Namibia), the Committee requested the State party to "abstain from enforcing the cost order of the Supreme Court or, in case it is already enforced, to refund the respective amount of money".

216. In the cases where the Committee found that there had been unreasonable delays both of detention and in the time taken to try the victims, the Committee recommended compensation to the victims but also other remedies depending on the circumstances. In case No. 788/1997 (Cagas et al. v. the Philippines), where the authors had been detained for more than nine years without trial, the Committee recommended that they "be tried promptly with all the guarantees set forth in article 14 or, if not possible, released" (annex IX, sect. P, para. 9). Two individual opinions were appended to the Committee's Views. In case No. 728/1996 (Sahadeo v. Guyana), where the author was detained during a procedure that lasted more than 10 years and was sentenced to death, the Committee recommended "a commutation of the sentence of death" (annex IX, sect. J, para. 11).

217. In case No. 928/2000 (Sooklal v. Trinidad and Tobago), where the author had been the victim of a violation of article 14, paragraph 3 (d) because he did not have an opportunity to lodge an appeal, the Committee held that the author should have "the opportunity to lodge a new appeal, or should this no longer be possible, to due consideration of granting him release" (annex IX, sect. FF, para. 6).

218. In cases Nos. 802/1998 (Rogerson v. Australia) and 923/2000 (Matyus v. Slovakia), the Committee held that a finding of violation constituted a sufficient remedy for the author.

219. In case No. 641/1995 (Gedumbe v. Congo), where the author had been illegally dismissed from his post as director of the consular school in Bujumbura, the Committee held:

> "Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee is of the view that the author is entitled to an appropriate remedy, namely: (a) effective reinstatement to public service and to his post, with all the consequences that this implies or, if necessary, to a similar post; and (b) compensation comprising a sum equivalent to the payment of the arrears of salary and remuneration that he would have received from the time at which he was not reinstated to his post, beginning in September 1989" (annex IX, sect. B, para. 6.2).

220. A similar remedy was formulated in the Committee's Views in case No. 906/2000 (Chira Vargas v. Peru, annex IX, sect. AA, para. 9).

221. In case No. 921/2000 (Dergachev v. Belarus), the Committee concluded that "the State party, by the annulment of the decisions against the author, subsequent to the submission of the communication, has rectified the situation by a remedy that the Committee deems appropriate within the meaning of article 2 of the Covenant" (annex IX, sect. DD, para. 8).

222. States' compliance with the Committee's Views is monitored by the Committee through its follow-up procedure, as described in chapter VI of the present report.

## CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

223. From its seventh session, in 1979, to the conclusion of its seventy-fifth session, in July 2002, the Human Rights Committee has adopted 404 Views on communications considered under the Optional Protocol. The Committee found violations in 313 of them.

224. During its thirty-ninth session, in July 1990, the Committee established a procedure whereby it could monitor the follow-up to its Views under article 5, paragraph 4, and it created the mandate of the Special Rapporteur for the Follow-up on Views (A/45/40, annex XI). Mr. Nisuke Ando has been Special Rapporteur since the Committee's seventy-first session in March 2001.

225. The Special Rapporteur began to request follow-up information from States parties in 1991. Follow-up information has been systematically requested in respect of all Views with a finding of a violation of the Covenant. Attempts to categorize follow-up replies by States parties are necessarily subjective and imprecise. Roughly 30 per cent of the replies received could be considered satisfactory in that they display the State party's willingness to implement the Committee's Views or to offer the applicant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or merely relate to one aspect of them. Certain replies simply indicate that the victim has failed to file a claim for compensation within statutory deadlines and that no compensation can therefore be paid.

226. The remainder of the replies explicitly challenge the Committee's findings on factual or legal grounds, constitute much-belated submissions on the merits of the case, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

227. In many instances, the secretariat has received also information from authors to the effect that the Committee's Views had not been implemented. Conversely, in rare instances, the author of a communication has informed the Committee that the State party had given effect to the Committee's recommendations, although the State party had not itself provided that information.

228. The previous annual report of the Committee (A/56/40, vol. I, chap. VI) contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2001. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-fourth and seventy-fifth sessions, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

Angola: Views in one case with findings of violations:

711/1996 - Dias (A/55/40); no follow-up reply. On 21 January 2001 the author visited OHCHR and informed that the State party had not implemented the Committee's recommendations. See paragraph 9 below.

Argentina: Views in one case with findings of violations:

400/1990 - Mónaco de Gallichio (A/50/40); for follow-up reply, see A/51/40, paragraph 455.

Australia: Views in four cases with findings of violations:

488/1992 - Toonen (A/49/40); for follow-up reply, see A/51/40, paragraph 456;

560/1993 - A. (A/52/40); for follow-up reply, dated 16 December 1997, see A/53/40, paragraph 491. See also A/55/40, paragraph 605 and A/56/40, paragraph 183;

930/2000 - Winata et al. (A/56/40); for follow-up replies, see paragraph 10 below;

802/1998 - Rogerson (annex IX); no follow-up reply required because the Committee deemed the finding of a violation to be a sufficient remedy.

Austria: Views in three cases with findings of violations:

415/1990 - Pauger (A/47/40), for follow-up reply, see A/52/40, paragraph 524;

716/1996 - Pauger (A/54/40); for follow-up reply, see A/55/40, paragraph 606, and paragraph 11 below;

965/2001 - Karakurt (annex IX): follow-up reply not yet due.

Belarus: Views in two cases with findings of violations:

780/1997 - Laptsevich (A/55/40); for follow-up reply, see A/56/40, paragraph 185, and paragraph 12 below;

921/2000 - Dergachev (annex IX): follow-up reply not yet due.

Bolivia: Views in two cases with findings of violations:

176/1984 - Peñarrieta (A/43/40); for follow-up reply, see A/52/40, paragraph 530;

336/1988 - Bizouarne and Fillastre (A/47/40); for follow-up reply, see A/52/40, paragraph 531.

Cameroon: Views in two cases with findings of violations:

458/1991 - Mukong (A/49/40); follow-up reply remains outstanding. See A/52/40, paragraphs 524, 532;

630/1995 - Mazou (A/56/40); for follow-up reply, see paragraph 13 below.

Canada: Views in nine cases with findings of violations:

24/1977 - Lovelace (in Selected Decisions, vol. 1); for State party's follow-up reply, see Selected Decisions, vol. 2, annex I;

27/1978 - Pinkney (in Selected Decisions, vol. 1); no follow-up reply received;

167/1984 - Ominayak (A/45/40); follow-up reply, dated 25 November 1991, unpublished;

359/1989 - Ballantyne and Davidson - 385/1989, and McIntyre (A/48/40); follow-up reply, dated 2 December 1993, unpublished;

455/1991 - Singer (A/49/40); no follow-up reply required;

469/1991 - Ng (A/49/40); follow-up reply, dated 3 October 1994, unpublished;

633/1995 - Gauthier (A/54/40); for follow-up reply, see A/55/40, paragraph 607; A/56/40, paragraph 186; and paragraph 14 below;

694/1996 - Waldman (A/55/40); for follow-up reply, see A/55/40, paragraph 608, and A/56/40, paragraph 187, and paragraph 14 below.

Central African Republic: Views in one case with findings of violations:

428/1990 - Bozize (A/49/40); for follow-up reply, see A/51/40, paragraph 457.

Colombia: Views in 13 cases with findings of violations:

For the first eight cases and follow-up replies, see A/51/40, paragraphs 439-441, and A/52/40, paragraphs 533-535;

563/1993 - Bautista (A/52/40). The Committee received a submission from the State party, dated 21 April 1997, forwarding a copy of resolution No. 11/96, adopted by a Ministerial Committee set up pursuant to enabling legislation No. 288 of 1996 on 11 September 1996, and which recommends that compensation be paid to the family of the victim. Further note dated 2 November 1999, stating that the case is pending before the Higher Military Tribunal. The State party mentions that some unspecified payment had been made to the family on an unspecified date;

612/1995 - Arhuacos (A/52/40); no follow-up reply. Follow-up consultations were held during the sixty-seventh and seventy-fifth sessions;

687/1996 - Rojas García (A/56/40); no follow-up reply received;

848/1999 - Rodríguez Orejuela (annex IX); follow-up reply not yet due;

859/1999 - Jiménez Vaca (annex IX); follow-up reply not yet due.

Croatia: Views in one case with findings of violations:

727/1996 - Paraga (A/56/40); for follow-up reply, see A/56/40, paragraph 188.

Czech Republic: Views in seven cases with findings of violations:

516/1992 - Simunek et al. (A/50/40); see paragraph 16 below;

586/1994 - Adam (A/51/40). For follow-up replies, see A/51/40, paragraph 458. One author (in Simunek) has confirmed that the Committee's recommendations were implemented, the others complained that their property was not restored to them or that they were not compensated. Follow-up consultations were held during the sixty-first and sixty-sixth sessions (see A/53/40, paragraph 492, and A/54/40, paragraph 465). See further below;

857/1999 - Blazek et al. (A/56/40); see paragraph 16 below;

765/1997 - Fábryová (annex IX); and

774/1997 - Brok (annex IX); see paragraph 16 below;

Czech Republic: (cont'd)

747/1997 - Des Fours Walderode (annex IX); for follow-up reply, see paragraph 16 below;

946/2000 - Patera (annex IX); follow-up reply not yet due.

Democratic Republic of the Congo (formerly Zaire)

Views in nine cases with findings of violations:

16/1977 - Mbenge et al.; see paragraph 17 below,

90/1981 - Luyeye;

124/1982 - Muteba;

138/1983 - Mpandanjila et al.;

157/1983 - Mpaka Nsusu; and

194/1985 - Miango (Selected Decisions, vol. 2);

241/1987 and 242/1987 - Birindwa and Tshisekedi (A/45/40);

366/1989 - Kanana (A/49/40);

542/1993 - Tshishimbi (A/51/40);

No follow-up reply has been received in respect of any of the above cases, in spite of reminders addressed to the State party. During the fifty-third and fifty-sixth sessions, the Committee's Special Rapporteur could not establish contact with the Permanent Mission of Zaire, with a view to discuss follow-up action. On 3 January 1996, he addressed a note verbale to the Permanent Mission of Zaire to the United Nations, requesting a follow-up meeting with the State party's Permanent Representative during the fifty-sixth session. There was no reply. On 29 October 2001, during the Committee's seventy-third session, the Special Rapporteur met with representatives of the Permanent Mission, who agreed to transmit the Rapporteur's concerns to Kinshasa and provide a written response. No replies have been received;

641/1995 - Gedumbe (annex IX); follow-up reply not yet due.

Dominican Republic:

Views in three cases with findings of violations:

188/1984 - Portorreal (in Selected Decisions, vol. 2); for State party's follow-up reply, see A/45/40, vol. II, annex XII;

193/1985 - Giry (A/45/40);

Dominican Republic (cont'd)

449/1991 - Mojica (A/49/40); follow-up reply in the latter two cases has been received but is incomplete in respect of Giry. Follow-up consultations with the Permanent Mission of the Dominican Republic to the United Nations were conducted during the fifty-seventh and fifty-ninth sessions (see A/52/40, paragraph 538).

Ecuador:

Views in five cases with findings of violations:

238/1987 - Bolaños (A/44/40); for follow-up reply, see A/45/40, vol. II, annex XII, sect. B;

277/1988 - Terán Jijón (A/47/40); follow-up reply, dated 11 June 1992, unpublished;

319/1988 - Cañón García (A/47/40); no follow-up reply received;

480/1991 - Fuenzalida (A/51/40);

481/1991 - Ortega (A/52/40); for follow-up reply in the latter two cases, dated 9 January 1998, see A/53/40, paragraph 494. Follow-up consultations with the Permanent Mission of Ecuador to the United Nations Office at Geneva were conducted during the sixty-first session (see A/53/40, paragraph 493). For further follow-up replies, dated 29 January and 14 April 1999, see A/54/40, paragraph 466.

Equatorial Guinea:

Views in two cases with findings of violations:

414/1990 - Primo Essono; and

468/1991 - Oló Bahamonde (A/49/40). Follow-up reply remains outstanding in both cases, in spite of consultations with the Permanent Mission of Equatorial Guinea to the United Nations during the fifty-sixth and fifty-ninth sessions (see A/51/40, paragraphs 442-444 and A/52/40, paragraph 539).

Finland:

Views in five cases with findings of violations:

265/1987 - Vuolanne (A/44/40); for follow-up reply, see A/44/40, paragraph 657 and annex XII;

291/1988 - Torres (A/45/40); for follow-up reply, see A/45/40, vol. II, annex XII, sect. C;

387/1989 - Karttunen (A/48/40); for follow-up reply, dated 20 April 1999, see A/54/40, paragraph 467;

Finland (cont'd) 412/1990 - Kivenmaa (A/49/40); preliminary follow-up reply, dated 13 September 1994, unpublished; for further follow-up reply, dated 20 April 1999 see A/54/40, paragraph 468;

779/1997 - Äärelä et al. (annex IX); for follow-up reply, see paragraph 18 below.

France: Views in six cases with findings of violations:

196/1985 - Gueye et al. (A/44/40); for follow-up reply see A/51/40, paragraph 459;

549/1993 - Hopu (A/52/40); for follow-up reply see A/53/40, paragraph 495;

666/1995 - Foin (A/55/40); no follow-up reply required;

689/1996 - Maille (A/55/40); no follow-up reply required because the Committee deemed the finding of a violation to be a sufficient remedy, as the law under consideration has been changed;

690/1996 and 691/1996 - Venier and Nicolas (A/55/40); no follow-up reply required because the Committee deemed the finding of a violation to be a sufficient remedy, as the law under consideration has been changed.

Georgia: Views in four cases with findings of violations:

623/1995 - Domukovsky;

624/1995 - Tsiklauri;

626/1995 - Gelbekhiani;

627/1995 - Dokvadze (A/53/40); for follow-up replies, dated 19 August and 27 November 1998, see A/54/40, paragraph 469.

Guyana: Views in two cases with findings of violations:

676/1996 - Yasseen and Thomas (A/53/40); no follow-up reply received. In several letters, the last dated 23 August 1998, the authors' legal representative expresses concern that the Legal Affairs Minister of Guyana has recommended to his Government not to comply with the Committee's decision. In a letter dated 14 June 2000, the father of Yasseen informs the Committee that its recommendations have not been fulfilled so far. In a letter dated 6 November 2000, the same information is provided by Interights, the authors' legal representative;

728/1996 - Sahadeo (annex IX); no follow-up reply received.

Hungary: Views in two cases with findings of violations:

410/1990 - Párkányi (A/47/40); for follow-up reply, see A/52/40, paragraph 524;

521/1992 - Kulomin (A/51/40); for follow-up reply, see A/52/40, paragraph 540.

Ireland: Views in one case with findings of violations:

819/1998 - Kavanagh (A/56/40); for follow-up reply, see below.

Italy: Views in one case with findings of violations:

699/1996 - Maleki (A/54/40); for follow-up reply, see A/55/40, paragraph 610.

Jamaica: Views in 93 cases with findings of violations:

25 detailed follow-up replies received, of which 19 indicate that the State party will not implement the Committee's recommendations, two promise to investigate and one announces the author's release (see A/54/40, paragraph 470); 36 general replies, indicating merely that the authors' death sentences had been commuted. No follow-up replies in 31 cases. Follow-up consultations with the State party's Permanent Representatives to the United Nations and to the United Nations Office at Geneva were conducted during the fifty-third, fifty-fifth, fifty-sixth and sixtieth sessions. Prior to the Committee's fifty-fourth session, the Special Rapporteur for the follow-up on Views conducted a follow-up fact-finding mission to Jamaica (A/50/40, paras. 557-562). See further A/55/40, paragraph 611, and below. Note verbale of 4 July 2001 concerning case Smith & Stewart v. Jamaica, No. 668/1995, see A/56/40, paragraph 190;

792/1998 - Higginson (annex IX); follow-up reply not yet due.

Latvia: Views in one case with findings of violations:

884/1999 - Ignatane (A/56/40); for follow-up reply, see paragraph 21 below.

Libyan Arab Jamahiriya: Views in one case with findings of violations:

440/1990 - El-Megreisi (A/49/40); follow-up reply remains outstanding. The author has informed the Committee that his brother was released in March 1995. Compensation remains outstanding.

Madagascar: Views in four cases with findings of violations:

49/1979 - Marais;

115/1982 - Wight;

132/1982 - Jaona; and

155/1983 - Hammel (in Selected Decisions, vol. 2); follow-up replies remain outstanding in all four cases; the authors of the two first cases informed the Committee that they were released from detention. Follow-up consultations with the Permanent Mission of Madagascar to the United Nations were held during the fifty-ninth session (A/52/40, para. 543).

Mauritius: Views in one case with findings of violations:

35/1978 - Aumeeruddy-Cziffra et al. (in Selected Decisions, vol. 1); for follow-up reply, see Selected Decisions, vol. 2, annex I.

Namibia: Views in two cases with findings of violations:

760/1997 - Diergaardt (A/55/40); for follow-up reply, see paragraph 22 below;

919/2000 - Muller (annex IX); follow-up reply not yet due.

Netherlands: Views in six cases with findings of violations:

172/1984 - Broeks (A/42/40); follow-up reply, dated 23 February 1995, unpublished;

182/1984 - Zwaan-de Vries (A/42/40); follow-up reply, unpublished;

305/1988 - van Alphen (A/45/40); for follow-up reply, see A/46/40, paragraphs 707 and 708;

453/1991 - Coeriel (A/50/40); follow-up reply, dated 28 March 1995, unpublished;

786/1997 - Vos (A/54/40); for follow-up reply, see A/55/40, paragraph 612;

846/1999 - Jansen-Gielen (A/56/40); for follow-up reply, see paragraph 23 below.

Nicaragua: Views in one case with findings of violations:

328/1988 - Zelaya Blanco (A/49/40); for follow-up reply, see A/56/40, paragraph 192, and paragraph 24 below.

Norway: Views in one case with findings of violations:

631/1995 - Spakmo (A/55/40); for follow-up reply, see A/55/40, paragraph 613.

Panama: Views in two cases with findings of violations:

289/1988 - Wolf (A/47/40);

473/1991 - Barroso (A/50/40). For follow-up replies, dated 22 September 1997, see A/53/40, paragraphs 496 and 497.

Peru: Views in eight cases with findings of violations:

202/1986 - Ato del Avellanal (A/44/40); see paragraph 25 below;

203/1986 - Muñoz Hermosa (A/44/40);

263/1987 - González del Río (A/48/40);

309/1988 - Orihuela Valenzuela (A/48/40); for follow-up reply in these four cases, see A/52/40 paragraph 546;

540/1993 - Laureano (A/51/40); follow-up reply remains outstanding;

577/1994 - Polay Campos (A/53/40); for follow-up reply, see A/53/40, paragraph 498;

678/1996 - Gutierrez Vivanco (annex IX); follow-up reply not yet due;

906/1999 - Chira Vargas (annex IX); follow-up reply not yet due;

The Special Rapporteur held consultations with representatives of the State party at the seventy-fourth session, who undertook to inform the capital and report to the Committee. No information has yet been received from the State party.

Philippines: Views in two cases with findings of violations:

788/1997 - Cagas (annex IX); and

869/1999 - Piandong et al. (A/56/40); no follow-up replies received;

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| Philippines: (cont'd) | The Special Rapporteur held consultations with representatives of the Permanent Mission of the Philippines at the seventy-fourth session. No further information has been supplied. |
| Republic of Korea: | Views in three cases with findings of violations:<br><br>518/1992 - Sohn (A/50/40); follow-up reply remains outstanding (see A/51/40, paragraphs. 449 and 450; A/52/40, paragraphs. 547 and 548);<br><br>574/1994 - Kim (A/54/40); no follow-up reply received;<br><br>628/1995 - Park (A/54/40); for follow-up reply, see A/54/40, paragraph 471. |
| Russian Federation: | Views in two cases with findings of violations:<br><br>770/1997 - Gridin (A/55/40); for follow-up reply, see paragraph 26 below;<br><br>763/1997 - Lantsova (annex IX): follow-up reply not yet due. |
| Saint Vincent and the Grenadines: | Views in one case with findings of violations:<br><br>806/1998 - Thompson (A/56/40); no follow-up reply received. |
| Senegal: | Views in one case with findings of violations:<br><br>386/1989 - Famara Koné (A/50/40); for follow-up reply, see A/51/40, paragraph 461. See also summary record of the 1619th meeting, held on 21 October 1997 (CCPR/C/SR.1619). |
| Sierra Leone: | Views in three cases with findings of violations:<br><br>839/1998 - Mansaraj et al. (A/56/40);<br><br>840/1998 - Gborie et al. (A/56/40); and<br><br>841/1998 - Sesay et al. (A/56/40); for follow-up replies, see paragraph 27 below. |
| Slovakia: | Views in one case with findings of violations:<br><br>923/2000 - Matyus (annex IX); follow-up reply not yet due. |

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| Spain: | Views in three cases with findings of violations:<br><br>493/1992 - Griffin (A/50/40); follow-up reply, dated 30 June 1995, unpublished, in fact challenges Committee's findings;<br><br>526/1993 - Hill (A/52/40); for follow-up reply, see A/53/40, paragraph 499, and A/56/40, paragraph 196;<br><br>701/1996 - Gómez Vásquez (A/55/40); for follow-up reply see A/56/40, paragraphs 197 and 198, and paragraph 28 below. During the seventy-fifth session, the Special Rapporteur met with a representative of the State party who undertook to inform the capital and report in writing. |
| Sri Lanka: | Views in one case with findings of violations:<br><br>916/2000 - Jayawardena (annex IX); follow-up reply not yet due. |
| Suriname: | Views in eight cases with findings of violations:<br><br>146/1983 and 148-154/1983 - Baboeram et al. (in Selected Decisions, vol. 2); consultations held during the fifty-ninth session (see A/51/40, paragraph 451, and A/52/40, paragraph 549); for follow-up reply, see A/53/40, paragraphs 500-501. For follow-up consultations during the Committee's sixty-eighth session, see A/55/40, paragraph 614. |
| Togo: | Views in four cases with findings of violations:<br><br>422-424/1990 - Aduayom et al.; and<br><br>505/1992 - Ackla (A/51/40): see A/56/40, paragraph 199, and paragraph 29 below for follow-up replies. |
| Trinidad and Tobago: | Views in 22 cases with findings of violations:<br><br>232/1987 and 512/1992 - Pinto (A/45/40 and A/51/40);<br><br>362/1989 - Soogrim (A/48/40);<br><br>447/1991 - Shalto (A/50/40);<br><br>434/1990 - Seerattan and;<br><br>523/1992 - Neptune (A/51/40);<br><br>533/1993 - Elahie (A/52/40);<br><br>554/1993 - LaVende, |

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| Trinidad and Tobago (cont'd) | 555/1993 - Bickaroo,<br><br>569/1993 - Matthews and<br><br>672/1995 - Smart (A/53/40);<br><br>594/1992 - Phillip and<br><br>752/1997 - Henry (A/54/40);<br><br>818/1998 - Sextus (A/56/40); and<br><br>580/1994 - Ashby;<br><br>677/1996 - Teesdale;<br><br>683/1996 - Wanza;<br><br>684/1996 - Sahadath;<br><br>721/1996 - Boodoo;<br><br>845/1998 - Kennedy;<br><br>899/1999 - Francis et al.; and<br><br>928/2000 - Sooklal (annex IX);. follow-up replies not yet due.<br><br>Follow-up replies received in respect of Pinto, Shalto, Neptune and Seerattan. Follow-up replies on the remainder of the cases are outstanding. Follow-up consultations were conducted during the sixty-first session (A/53/40, paras. 502-507); see also A/51/40, paragraphs 429, 452, 453, A/52/40, paragraphs 550-552, and below. |
| Uruguay: | Views in 45 cases with findings of violations:<br><br>43 follow-up replies received, dated 17 October 1991, unpublished. Follow-up reply, dated 31 May 2000, concerning case No. 110/1981 Viana Acosta, granting payment of US$ 120,000 to Mr. Viana. Follow-up replies on two Views remain outstanding: 159/1983 - Cariboni (in Selected Decisions, vol. 2) and 322/1988 - Rodríguez (A/49/40); see also A/51/40, paragraph 454. |
| Venezuela: | Views in one case with findings of violations:<br><br>156/1983 - Solórzano (in Selected Decisions, vol. 2); follow-up reply, dated 21 October 1991, unpublished. |

Zambia: Views in five cases with findings of violations:

314/1988 - Bwalya (A/48/40); follow-up reply; dated 3 April 1995, unpublished;

326/1988 - Kalenga (A/48/40); follow-up reply, dated 3 April 1995, unpublished;

390/1990 - Lubuto (A/51/40); and

768/1997 - Mukunto (A/54/40); follow-up replies remain outstanding despite consultations of the Special Rapporteur with representatives of the Permanent Mission on 20 July 2001 (see A/56/40, paragraph 200). See paragraph 31 below;

821/1998 - Chongwe (A/56/40); follow-up reply, dated 23 January 2001, challenging the Committee's Views, alleging non-exhaustion of domestic remedies by Mr. Chongwe. The author by letter of 1 March 2001 indicates that the State party has not taken any measures pursuant to the Committee's Views. See also A/56/40, paragraph 200, and see paragraph 31 below.

229. For further information on the status of all the Views in which follow-up information remains outstanding or in respect of which follow-up consultations have been or will be scheduled, reference is made to the follow-up progress report prepared for the seventy-fourth session of the Committee (CCPR/C/74/R.7/Rev.1, dated 28 March 2002), discussed in public session at the Committee's 2009th meeting on 4 April 2002 (CCPR/C/SR.2009). Reference is also made to the Committee's previous reports, in particular A/56/40, paragraphs 182 to 200.

## Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

230. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

231. Angola: With regard to case No. 711/1996, Dias (A/55/40), the Special Rapporteur met with representatives of the State party at the Committee's seventy-fourth session in March 2002, the delegation informed the Special Rapporteur that information would be supplied. To date this has not been received.

232. Australia: With regard to case No. 930/2000 - Winata et al. (A/56/40), the State party provided an interim response by note verbale of 3 December 2001. It stated that Mr. Winata and Ms. Li had met core requirements for the grant of a parent visa offshore on 13 August 2001 allowing their application to be placed in the parent queue. The State party noted that parent visas are in high demand and a limited number are granted each year. Visa places are allocated in order based on a person's queue date. On this basis, it would be some time before a parent place is available for Mr. Winata and Ms. Li. The State party reiterated that a criterion of a parent visa is that the applicant must be outside Australia when the visa is granted. Accordingly, Mr. Winata and Ms. Li must be outside Australia in order for a parent visa to be granted. If parent visas are granted, they would be entitled to return to Australia. The State party stated that it was currently considering whether and on what basis under Australian law Mr. Winata and Ms. Li may remain in Australia pending the grant of a parent visa, and that it would provide a full response as soon as possible. This reply has not yet been received. By note of 15 July 2002, the State party stated that, while it has not yet been possible to resolve the situation, Mr. Winata and Ms. Li remain in the community, and a number of options are being explored, including how the Committee's Views can be given effect.

233. Austria: With regard to case No. 716/1996 - Pauger (A/54/40), the author informed the Committee by letter of 18 December 2001 that he had not been provided with an effective remedy, in particular, lump sum payment on the basis of full pension benefits, nor had the State party discontinued the discrimination. By a note verbale of 21 January 2002, the State party informed the Committee that its law on survivors' pensions fully respects the principle of equal treatment since 1995. For budgetary reasons, however, the modified pension law could not apply retroactively. There was no legal possibility to effect an ex gratia payment to the author, which would also constitute an unjustified unequal treatment of the author with other widowers in the same position and even more compared to recent widows/widowers. Accordingly, the State party could not implement the Committee's Views.

234. Belarus: With regard to case No. 780/1997 - Laptsevich (A/55/40), the Committee received a note verbale from the State party, dated 17 July 2000, stating that the competent authorities in Belarus were examining the validity of the Committee's Views. By letter of 5 April 2002, the author informed the Committee that the State party had failed to abide by the Committee's Views, and sought the Committee's assistance.

235. Cameroon: With regard to case No. 630/1995 - Mazou (A/56/40), the State party informed the Committee by a note verbale of 5 April 2002 that the author had been reintegrated into the judicial corps, and that his career is following its normal course. The State party noted, however, that there is no right to "reconstitution" of the author's career. It was open to the author to apply to the relevant administrative authority to this end, but to date he had not done so. As such, this element of the author's claim should be considered inadmissible. In any event, grade advancement is not automatic and depends on a variety of individual factors including budgetary resources. Moreover, the author had not made an application to the Ministry of Justice for advancement as was open to him. The State party undertook to guard against a future recurrence of delays in handling similar claims.

236. Canada: With regard to case No. 633/1995 - Gauthier (A/54/40), the author, by letter of 24 November 2001, informed the Committee that he had been granted a temporary six-month

pass by the Canadian Parliamentary Press Gallery Corporation, which he had accepted under protest for economic reasons. He had been denied a permanent pass, with membership of the Press Gallery Corporation still required. The author stated that the Independent Expert appointed by the Speaker to review the author's case was summary and superficial, and came to the opposite conclusions of the Committee. The Speaker now regarded the matter closed. By letter of 23 February 2002, the author informed the Committee that the State party had still failed to comply with the Committee's Views. The author has been advised that all dealings must be with the private Press Gallery organization, and had still only been provided a temporary pass with limited benefits. He sought the Committee's determination of the amount of damages that the State party should pay him.

237. With regard to case No. 694/1996 - Waldman (A/55/40), the author informed the Committee by letter of 20 March 2002 that the State party had failed to take any measures to correct the discrimination identified by the Committee and asked the Special Rapporteur to follow up again with the State party's authorities.

238. Czech Republic: On 24 January 2002, the Czech Prime Minister Milos Zeman visited the High Commissioner for Human Rights Mary Robinson in Geneva, who urged him to ensure implementation of the Committee's Views. On 25 January 2002, a Czech delegation, including the Deputy Director of the Human Rights Department, met with OHCHR secretariat staff to discuss the outstanding implementation of the Czech cases in which the Committee had found violations of the Covenant. The delegation advised that the State party was analysing its restitution legislation, in the light of the Committee's Views, with a view to amendment and will propose solutions in three to six months. It was stressed that the Committee concerned itself solely with the restitution legislation, rather than the post-war Benes decrees. With regard to case No. 747/1997, Des Fours Walderode (annex IX), the State party advised the Committee, by its note verbale of 15 January 2002, that legislative work concerning the implementation of the Committee's Views had been commenced and sought an extension to March 2002 in view of the complexity of the case. On 15 February 2002, the State party sought an extension until May 2002 for its reply. By letter of 4 April 2002, the author provided a judgement of the Constitutional Court of 14 March 2002 in the author's favour and remitting the case to the first instance authority. By letter of 31 May 2002, the author informed the Committee that the first instance authority, by letter of 10 April 2002, requested an extensive further quantity of documentation from the author, including proof that the victim in question had not acted contrary to the State's interests. Accordingly, the author contended that the steps taken by the State party were insufficient and only prolonged the period in which a full remedy may be expected.

239. Democratic Republic of the Congo: With regard to case No. 16/1977 - Mbenge et al. (A/45/40), the author informed the Committee by letter of 3 June 2002 that the State party, both before and after the change of regime, had failed for over a decade to give effect to the Committee's Views. The author remained without the use of his property and had not been compensated for his losses. The authorities had ensured that certain property of other persons was returned to them, but the author had not been treated in like fashion.

240. Finland: With regard to case No. 779/1997, Äärelä et al. (annex IX), the State party informed the Committee, by submission of 24 January 2002, that authors had been restituted the costs awarded against them. Part of the restitution may be considered compensation for

non-pecuniary damage concerning non-communication of the Forestry Service brief. As to the reconsideration of the author's claims, under the Finnish legal system a final judgement may be challenged by means of so-called extraordinary appeal which are provided for in Chapter 31 of the Code of Judicial Procedure. It was mainly for the injured party him/herself that may resort to such means. The injured party may, for example, lodge a request for the annulment of a judgement with the Supreme Court which would examine the request and decide whether there was reason to annul the judgement. Furthermore, it was possible for the Chancellor of Justice to independently make a request for annulment in cases involving significant public interests. Thus, the Government would submit the Committee's views to the Chancellor of Justice, in order for an assessment of whether there still are grounds for extraordinary appeal. Moreover, the Committee's Views would, in accordance with standard procedure, be sent to the relevant authorities.

241. Ireland: With regard to case No. 819/1998, Kavanagh (A/56/40), the State party informed the Committee by submissions of 1 and 13 August 2001 that it had offered the author £1,000 for the individual violation suffered. With respect to the systemic issue, the State party provided an interim Committee report on possible modifications to Special Criminal Court system. By letters of 22 August 2001 and 5 October 2001, counsel rejected the State party's offer of £1,000 compensation as an inadequate and ineffective remedy. By letter of 21 February 2002, the author informed the Committee that the Government had taken no action to change the law or the procedure in relation to the power of the Director of Public Prosecutions to refer cases to the Special Criminal Court. The author stated that the Committee established to review the Offences Against the State Acts had not yet completed its full report although it was said to be near to doing so. When the report would be completed, it would be submitted to the Government but there was no commitment as to when the Government would decide whether or not to act on its recommendations. The author concluded that no Government action to change the law or practice to avoid further breaches of the Covenant was any closer to being realized. By letter of 6 March 2002, the author provided the rejection by the Supreme Court of an appeal from the rejection of the High Court of the author's motion for judicial review on the basis of the Committee's Views, noting therewith the Court's rejection of the applicability within Ireland of the Covenant or the Committee's Views. By letter of 21 May 2002, the author advised the Committee that there had been no response from the State party subsequent to the rejection of its offer in August last year, and that the Director of Public Prosecutions continues to send people for trial before the Special Criminal Court without providing reasons.

242. Jamaica: With regard to case No. 695/1996 - Simpson (annex IX), the author's counsel informed the Committee by letter of 18 February 2002 that his death sentence had been commuted in 1998, but that his non-parole period had still not been determined by the Jamaican Court of Appeal, leaving him still (after seven years of imprisonment) ineligible for parole. The author is also suffering from worsening health conditions, which the State party had not taken steps to alleviate.

243. Latvia: With regard to case No. 884/1999, Ignatane (A/56/40), the State party, by its notes verbales of 24 October 2001 and 7 March 2002, informed the Committee that a working group established for the examination of the Committee's Views had submitted to the Cabinet of Ministers proposals on measures to be taken to give effect to the Views. On 6 November 2001, the Cabinet accepted two legislative amendments to the "Statutes of the State Language Centre"

and "Regulations on the Proficiency Degree in the State Language Required for the Performance of the Professional and Positional Duties on the Procedure of Language Proficiency Tests", thus removing the problematic issues identified by the Committee. The State party also informed the author on 3 December 2001 of the steps it had taken to give effect to the Committee's Views.

244. Namibia: With regard to case No. 760/1997 - Diergaardt (A/55/40), the State party, following consultations with the Special Rapporteur during the seventy-fourth session, informed the Committee by a note verbale of 28 May 2002 that its Constitution does not prohibit the use of languages other than English in schools, and the authors did not claim that they had established a non-English school and had been asked to close it. The State party states that there are no private courts, and no law barring the traditional courts of the authors from using their language of choice. Persons appearing before the official English-speaking courts are provided State-paid interpreters in any of the 12 State languages, and proceedings do not go ahead if interpreters are unavailable. The State party states that the authors' community's proceedings are conducted, as others, in the language of choice, but all communities' proceedings are recorded in the official language of English. The State party notes that no African State provides translations for all persons wishing to communicate in non-English languages, and that, contrary to the previous regime, civil servants must work all over the country. If a civil servant speaks a non-official language, she or he will endeavour to assist a person using that language. The State party refers to a Minister of Justice circular of 9 July 1990 to the effect that civil servants may receive and process non-English correspondence, but should respond in writing in English.

245. Netherlands: With regard to case No. 846/1999 - Jansen-Gielen (A/56/40), the State party informed the Committee by submission of 10 September 2001 that it had paid the author ex gratia f. 5,000, including any costs of psychiatric reports provided in the national proceedings, and a further f. 3,500 by way of reimbursement for legal assistance. As to the systemic issue, the entry into force on 1 January 1994 of the General Administrative Law Act prevented any repetition of future similar violations.

246. Nicaragua: With regard to case No. 328/1988 - Zelaya Blanco (A/49/40), the State party, by submission of 19 March 2002 and following consultations with the Special Rapporteur at the Committee's seventy-fourth session in March 2001, reiterated earlier submissions to the Committee to the effect that in Nicaragua there is no special procedure for demanding compensation in cases of torture and ill-treatment. The author can, however, demand compensation through the ordinary courts pursuant to the Code of Civil Procedure. Compensation cannot be paid by virtue of an executive decree or administrative decision, but would require a judicial decision. With regard to the Committee's request that the State party carry out an official investigation into the torture and ill-treatment suffered by the author, the State party explains that in view of the many years that have elapsed since the violations, it is very difficult for the State party to carry out the necessary investigations, also taking into account that the Oficina de Seguridad de Estado no longer exists, the old prison authorities have been transferred elsewhere and certain amnesties are now in force.

247. Peru: With regard to case No. 202/1986 - Ato del Avellanal (A/44/40), the author informed the Committee by letters dated 15 November 2001, 3 December 2001, 3 January 2002, 22 April 2002, 15 May 2002 [and 1 June 2002] that the State party had still not implemented the Committee's Views.

248. Russia: With regard to case No. 770/1997 - Gridin (A/55/40), the State party informed the Committee by a note verbale of 18 October 2001 that the Supreme Court and the General Prosecutor's Office had re-examined the case in the light of the Committee's Views but did not share the Committee's opinion. All procedures were carried out according to law. As soon as the author's family requested legal advice, it was provided. Although afforded the opportunity, many of the issues pleaded before the Committee were not raised by the author or his counsel during proceedings, and, of those that were raised, some were resolved in his favour. By letter of 14 January 2002, the author responded that the State party had not accorded the Committee's Views due respect, and that the statements now advanced by the State party should have been supplied prior to the determination of the case. In any case, the author asserted the State party's factual contentions and conclusions were incorrect and contested specific examples.

249. Sierra Leone: With regard to cases Nos. 839/1998 - Mansaraj et al., 840/1998 - Gborie et al., and 841/1998 - Sesay et al. (A/56/40), the Special Rapporteur held consultations with the Ambassador of Sierra Leone at the seventy-fourth session, who indicated that the six persons in question had been released. The State party further informed the Committee by a note verbale of 5 April 2002 that a right of appeal from courts martial had been re-instated, but that it was otherwise not in a position to comply with the Committee's Views, for the Committee did not have jurisdiction to hear the complaint.

250. Spain: With regard to case No. 701/1996 - Gómez Vásquez (A/55/40), the author's counsel stated by letter of 25 August 2001 that while the Sala General de Magistrados del Tribunal Supremo had decided to give effect to the Committee's Views, his petitions to the Sala de lo Penal del Tribunal Supremo had been unsuccessful. The State party, by its note verbale of 27 September 2001, informed the Committee as to the train of legislative steps under way to adjust its law of criminal procedure. For reasons of judicial independence, the State party did not wish to comment on the author's application currently before the Tribunal Supremo. By letter of 28 December 2001, the author's counsel provided a copy of the judgement of the Tribunal Supremo of 14 December 2001, wherein the author's application based upon a contended direct effect in domestic law of the Committee's Views was rejected. The author's counsel criticized the terms and tone of the judgement, and indicated he had lodged an application before the Constitutional Court against this decision. He again sought the Committee's action to provide the author with an effective remedy. By a note verbale of 4 January 2002, the State party also provided the Committee with a copy of the judgement of the Tribunal Supremo, and further described the progress of the legislative amendments to its law of criminal procedure. The State party notes that, although the Supreme Court has rejected the author's motion for annulment of conviction, a section in the Codification Commission was created on October 2001 by the Ministry of Justice in order to elaborate a new law that will seek to apply the criminal double-instance principle to all cases.

251. Togo: With regard to case No. 422-424/1990 - Aduayom et al.; and case No. 505/1992 - Ackla (A/51/40), the State party, by a note verbale of 24 September 2001, advised, with respect to Mr. Ackla, that his allegations of State restrictions upon his movement and the confiscation of his house were demonstrably false and that a mission was invited to confirm this. As to Mr. Aduayom et al., the State party contended that the withdrawal of the charges did not indicate that the acts charged had not taken place, and accordingly it was not possible to pay any compensation. The State party argued that the authors were seeking to politically destabilize the

country, and that accordingly its actions were justified under article 19, paragraph 3, of the Covenant, and no compensation was payable. As to article 25, the State party contended that this article was inapplicable to persons already having had access to, or who were in, the public service. Accordingly, rather than compensation, one could only speak of a regularization of the authors' situations, which had occurred. At the seventy-fourth session, the Special Rapporteur held consultations with representatives of the Permanent Mission of Togo.

252. Trinidad and Tobago: With regard to case No. 523/1992, Neptune (A/51/40), the author, by letter of 1 January 2002, informed the Committee of worsening conditions of detention.

253. Zambia: With regard to case No. 768/1997, Mukunto (A/54/40), the author informed the Committee by letter of 2 April 2002 that the State party had paid him US$ 5,000 compensation. The author regarded this payment as insufficient satisfaction of his claim for US$ 80,000, and pointed out further that the State party had not published the Committee's Views. By a note verbale of 12 June 2002, the State party indicated that both parties had agreed that the sum of $5,000 compensation was a full and final settlement, and supplied a signed undertaking of full satisfaction by the author of a sum of 20 million Kwacha.

254. With regard to case No. 821/1998, Chongwe (A/56/40), the State party contended, by a note verbale dated 10 October 2001, that the Committee had not indicated the quantum of damages payable, much less directed payment of the US$ 2.5 million claimed by the author. It also reiterated its wish to be heard on the merits of the dispute. On 20 October 2001, at the Committee's seventy-third session, the Special Rapporteur met with a representative of the Zambian mission. It was explained that the case could not be reopened and that the State party was given the opportunity to make submissions to the Committee within the prescribed deadlines. On 5 and 13 November 2001, the author objected to the State party's view, and sought an effective remedy. By its note verbale of 14 November 2001, the State party provided copies of correspondence between its Attorney-General and the author, in which the author was provided assurances that the State party would respect his rights to life and invited to return to its territory. As to the issue of compensation, the Attorney-General indicated to the author that this would be dealt with at the conclusion of further investigations into the incident, which had been hindered by the author's earlier refusal to cooperate. By letter of 23 February 2002, the author again rejected the State party's arguments and sought an effective remedy. By letter of 28 February 2002, the State party noted that the domestic courts could not have awarded the quantum of damages sought, that the author had fled the country for reasons unrelated to the incident in question, and that, while the Government saw no merit in launching a prosecution, it was open to the author to do so. The State party considered that the communication was without merit, but that was taking sufficient positive steps. By letter of 26 April 2002, the author pointed out that the State party had provided compensation in other Optional Protocol cases. The author also speaks of further attempts upon Mr. Kaunda's life by State agents since the incident forming the subject of the communication and his prolonged detention without trial. He reiterated his fears for his safety if he returned. The author noted that no action had been taken on the conclusions of a recent commission of inquiry into torture of suspects in the 1997 attempted coup attempt. He repeated his request for a full remedy. By a note verbale of 13 June 2002, the State party reiterated its position that it was not bound by the Committee's decision as domestic remedies had not been exhausted. The author chose to leave the country of his own will, but remained at liberty to commence proceedings even in his absence. In any event, the new

President had confirmed to the author that he was free to return. Indeed the State hoped that he would do so and then apply for legal redress. Mr. Kaunda, who was attacked at the same time as the author, is said to be a free citizen carrying on his life without any threat to his liberties.

**Concern over the effectiveness of follow-up**

255. The Committee is deeply concerned about the increasing number of cases where States parties fail to implement the Committee's Views or even to inform the Committee within the requested time frame of 90 days as to the measures taken. The Committee recalls that States parties to the Optional Protocol have an obligation to provide an effective remedy under article 2 of the Covenant (see, chapter V, paragraph [70]).

256. The Committee again expresses its regret that its recommendation, formulated in its previous reports, to the effect that at least one follow-up mission per year be budgeted by the Office of the United Nations High Commissioner for Human Rights, has still not been implemented. Similarly, the Committee, considers that staff resources to service the follow-up mandate continue to remain inadequate, despite the Committee's repeated requests, and that this prevents the proper and timely conduct of follow-up activities, including follow-up missions and follow-up consultations. The Committee welcomes the High Commissioner's Plan of Action for improving the servicing of the treaty bodies, in particular the establishment of the Petitions Team, and expresses its hope that a full-time staff member will be assigned to service the follow-up mandate and that funds will be budgeted for follow-up missions.

## Annex I

## STATES PARTIES TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND TO THE OPTIONAL PROTOCOLS AND STATES WHICH HAVE MADE THE DECLARATION UNDER ARTICLE 41 OF THE COVENANT AS AT 26 JULY 2002

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| **A. States parties to the International Covenant on Civil and Political Rights (149)** | | |
| Afghanistan | 24 January 1983[a] | 24 April 1983 |
| Albania | 4 October 1991[a] | 4 January 1992 |
| Algeria | 12 September 1989 | 12 December 1989 |
| Angola | 10 January 1992[a] | 10 April 1992 |
| Argentina | 8 August 1986 | 8 November 1986 |
| Armenia | 23 June 1993[a] | [b] |
| Australia | 13 August 1980 | 13 November 1980 |
| Austria | 10 September 1978 | 10 December 1978 |
| Azerbaijan | 13 August 1992[a] | [b] |
| Bangladesh | 6 September 2000 | 6 December 2000 |
| Barbados | 5 January 1973[a] | 23 March 1976 |
| Belarus | 12 November 1973 | 23 March 1976 |
| Belgium | 21 April 1983 | 21 July 1983 |
| Belize | 10 June 1996[a] | 10 September 1996 |
| Benin | 12 March 1992[a] | 12 June 1992 |
| Bolivia | 12 August 1982[a] | 12 November 1982 |
| Bosnia and Herzegovina | 1 September 1993[c] | 6 March 1992 |
| Botswana | 8 September 2000 | 8 December 2000 |
| Brazil | 24 January 1992[a] | 24 April 1992 |
| Bulgaria | 21 September 1970 | 23 March 1976 |
| Burkina Faso | 4 January 1999[a] | 4 April 1999 |
| Burundi | 9 May 1990[a] | 9 August 1990 |
| Cambodia | 26 May 1992[a] | 26 August 1992 |
| Cameroon | 27 June 1984[a] | 27 September 1984 |
| Canada | 19 May 1976[a] | 19 August 1976 |
| Cape Verde | 6 August 1993[a] | 6 November 1993 |
| Central African Republic | 8 May 1981[a] | 8 August 1981 |
| Chad | 9 June 1995[a] | 9 September 1995 |
| Chile | 10 February 1972 | 23 March 1976 |
| Colombia | 29 October 1969 | 23 March 1976 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Congo | 5 October 1983[a] | 5 January 1984 |
| Costa Rica | 29 November 1968 | 23 March 1976 |
| Côte d'Ivoire | 26 March 1992[a] | 26 June 1992 |
| Croatia | 12 October 1992[c] | 8 October 1991 |
| Cyprus | 2 April 1969 | 23 March 1976 |
| Czech Republic | 22 February 1993[c] | 1 January 1993 |
| Democratic People's Republic of Korea | 14 September 1981[a] | 14 December 1981 |
| Democratic Republic of the Congo | 1 November 1976[a] | 1 February 1977 |
| Denmark | 6 January 1972 | 23 March 1976 |
| Dominica | 17 June 1993[a] | 17 September 1993 |
| 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 |
| Equatorial Guinea | 25 September 1987[a] | 25 December 1987 |
| Eritrea | 22 January 2002[a] | 22 April 2002 |
| Estonia | 21 October 1991[a] | 21 January 1992 |
| Ethiopia | 11 June 1993[a] | 11 September 1993 |
| 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 |
| Georgia | 3 May 1994[a] | [b] |
| Germany | 17 December 1973 | 23 March 1976 |
| Ghana | 7 September 2000 | 7 December 2000 |
| Greece | 5 May 1997[a] | 5 August 1997 |
| Grenada | 6 September 1991[a] | 6 December 1991 |
| Guatemala | 6 May 1992[a] | 5 August 1992 |
| Guinea | 24 January 1978 | 24 April 1978 |
| Guyana | 15 February 1977 | 15 May 1977 |
| Haiti | 6 February 1991[a] | 6 May 1991 |
| Honduras | 25 August 1997 | 25 November 1997 |
| Hungary | 17 January 1974 | 23 March 1976 |
| Iceland | 22 August 1979 | 22 November 1979 |
| India | 10 April 1979[a] | 10 July 1979 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Iran, Islamic Republic of | 24 June 1975 | 23 March 1976 |
| Iraq | 25 January 1971 | 23 March 1976 |
| Ireland | 8 December 1989 | 8 March 1990 |
| Israel | 3 October 1991[a] | 3 January 1992 |
| 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 |
| Kazakhstan[d] | | |
| Kenya | 1 May 1972[a] | 23 March 1976 |
| Kuwait | 21 May 1996[a] | 21 August 1996 |
| Kyrgyzstan | 7 October 1994[a] | [b] |
| Latvia | 14 April 1992[a] | 14 July 1992 |
| Lebanon | 3 November 1972[a] | 23 March 1976 |
| Lesotho | 9 September 1992[a] | 9 December 1992 |
| Libyan Arab Jamahiriya | 15 May 1970[a] | 23 March 1976 |
| Liechtenstein | 10 December 1998[a] | 10 March 1999 |
| Lithuania | 20 November 1991[a] | 20 February 1992 |
| Luxembourg | 18 August 1983 | 18 November 1983 |
| Madagascar | 21 June 1971 | 23 March 1976 |
| Malawi | 22 December 1993[a] | 22 March 1994 |
| Mali | 16 July 1974[a] | 23 March 1976 |
| Malta | 13 September 1990[a] | 13 December 1990 |
| Mauritius | 12 December 1973[a] | 23 March 1976 |
| Mexico | 23 March 1981[a] | 23 June 1981 |
| Monaco | 28 August 1997 | 28 November 1997 |
| Mongolia | 18 November 1974 | 23 March 1976 |
| Morocco | 3 May 1979 | 3 August 1979 |
| Mozambique | 21 July 1993[a] | 21 October 1993 |
| Namibia | 28 November 1994[a] | 28 February 1995 |
| Nepal | 14 May 1991 | 14 August 1991 |
| 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 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Nigeria | 29 July 1993[a] | 29 October 1993 |
| Norway | 13 September 1972 | 23 March 1976 |
| Panama | 8 March 1977 | 8 June 1977 |
| Paraguay | 10 June 1992[a] | 10 September 1992 |
| Peru | 28 April 1978 | 28 July 1978 |
| Philippines | 23 October 1986 | 23 January 1987 |
| Poland | 18 March 1977 | 18 June 1977 |
| Portugal | 5 June 1978 | 5 September 1978 |
| Republic of Korea | 10 April 1990[a] | 10 July 1990 |
| Republic of Moldova | 26 January 1993[a] | [b] |
| Romania | 9 December 1974 | 23 March 1976 |
| Russian Federation | 16 October 1973 | 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 |
| Seychelles | 5 May 1992[a] | 5 August 1992 |
| Sierra Leone | 23 August 1996[a] | 23 November 1996 |
| Slovakia | 28 May 1993[c] | 1 January 1993 |
| Slovenia | 6 July 1992[c] | 25 June 1991 |
| Somalia | 24 January 1990[a] | 24 April 1990 |
| South Africa | 10 December 1998[a] | 10 March 1999 |
| 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 |
| Switzerland | 18 June 1992[a] | 18 September 1992 |
| Syrian Arab Republic | 21 April 1969[a] | 23 March 1976 |
| Tajikistan | 4 January 1999[a] | [b] |
| Thailand | 29 October 1996[a] | 29 January 1997 |
| The former Yugoslav Republic of Macedonia | 17 September 1991[c] | 17 September 1991 |
| 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 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Turkmenistan | 1 May 1997[a] | [b] |
| Uganda | 21 June 1995[a] | 21 September 1995 |
| Ukraine | 12 November 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 |
| United States of America | 8 June 1992 | 8 September 1992 |
| Uruguay | 1 April 1970 | 23 March 1976 |
| Uzbekistan | 28 September 1995 | [b] |
| Venezuela | 10 May 1978 | 10 August 1978 |
| Viet Nam | 24 September 1982[a] | 24 December 1982 |
| Yemen | 9 February 1987[a] | 9 May 1987 |
| Yugoslavia (Federal Republic of) | 12 March 2001[a] | [f] |
| Zambia | 10 April 1984[a] | 10 July 1984 |
| Zimbabwe | 13 May 1991[a] | 13 August 1991 |

Note: In addition to the States parties listed above, the Covenant continues to apply in Hong Kong, Special Administrative Region, People's Republic of China, and Macao Special Administrative Region, People's Republic of China.[e]

## B. States parties to the Optional Protocol (102)

| | | |
|---|---|---|
| Algeria | 12 September 1989[a] | 12 December 1989 |
| Angola | 10 January 1992[a] | 10 April 1992 |
| Argentina | 8 August 1986[a] | 8 November 1986 |
| Armenia | 23 June 1993[a] | 23 September 1993 |
| Australia | 25 September 1991[a] | 25 December 1991 |
| Austria | 10 December 1987 | 10 March 1988 |
| Azerbaijan | 27 November 2001 | 27 February 2002 |
| Barbados | 5 January 1973[a] | 23 March 1976 |
| Belarus | 30 September 1992[a] | 30 December 1992 |
| Belgium | 17 May 1994[a] | 17 August 1994 |
| Benin | 12 March 1992[a] | 12 June 1992 |
| Bolivia | 12 August 1982[a] | 12 November 1982 |
| Bosnia and Herzegovina | 1 March 1995 | 1 June 1995 |
| Bulgaria | 26 March 1992[a] | 26 June 1992 |
| Burkina Faso | 4 January 1999[a] | 4 April 1999 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Cameroon | 27 June 1984[a] | 27 September 1984 |
| Canada | 19 May 1976[a] | 19 August 1976 |
| Cape Verde | 19 May 2000[a] | 19 August 2000 |
| Central African Republic | 8 May 1981[a] | 8 August 1981 |
| Chad | 9 June 1995 | 9 September 1995 |
| Chile | 28 May 1992[a] | 28 August 1992 |
| Colombia | 29 October 1969 | 23 March 1976 |
| Congo | 5 October 1983[a] | 5 January 1984 |
| Costa Rica | 29 November 1968 | 23 March 1976 |
| Côte d'Ivoire | 5 March 1997 | 5 June 1997 |
| Croatia | 12 October 1995[a] | |
| Cyprus | 15 April 1992 | 15 July 1992 |
| Czech Republic | 22 February 1993[c] | 1 January 1993 |
| Democratic Republic of the Congo | 1 November 1976[a] | 1 February 1977 |
| Denmark | 6 January 1972 | 23 March 1976 |
| Dominican Republic | 4 January 1978[a] | 4 April 1978 |
| Ecuador | 6 March 1969 | 23 March 1976 |
| El Salvador | 6 June 1995 | 6 September 1995 |
| Equatorial Guinea | 25 September 1987[a] | 25 December 1987 |
| Estonia | 21 October 1991[a] | 21 January 1992 |
| Finland | 19 August 1975 | 23 March 1976 |
| France | 17 February 1984[a] | 17 May 1984 |
| Gambia | 9 June 1988[a] | 9 September 1988 |
| Georgia | 3 May 1994[a] | 3 August 1994 |
| Germany | 25 August 1993 | 25 November 1993 |
| Ghana | 7 September 2000 | 7 December 2000 |
| Greece | 5 May 1997[a] | 5 August 1997 |
| Guatemala | 28 November 2000 | 28 February 2001 |
| Guinea | 17 June 1993 | 17 September 1993 |
| Guyana[g] | 10 May 1993[a] | 10 August 1993 |
| Hungary | 7 September 1988[a] | 7 December 1988 |
| Iceland | 22 August 1979[a] | 22 November 1979 |
| Ireland | 8 December 1989 | 8 March 1990 |
| Italy | 15 September 1978 | 15 December 1978 |
| Kyrgyzstan | 7 October 1994[a] | 7 January 1995 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Latvia | 22 June 1994[a] | 22 September 1994 |
| Lesotho | 6 September 2000 | 6 December 2000 |
| Libyan Arab Jamahiriya | 16 May 1989[a] | 16 August 1989 |
| Liechtenstein | 10 December 1998[a] | 10 March 1999 |
| Lithuania | 20 November 1991[a] | 20 February 1992 |
| Luxembourg | 18 August 1983[a] | 18 November 1983 |
| Madagascar | 21 June 1971 | 23 March 1976 |
| Malawi | 11 June 1996 | 11 September 1996 |
| Mali | 24 October 2001 | 24 January 2002 |
| Malta | 13 September 1990[a] | 13 December 1990 |
| Mauritius | 12 December 1973[a] | 23 March 1976 |
| Mexico | 15 March 2002 | 15 June 2002 |
| Mongolia | 16 April 1991[a] | 16 July 1991 |
| Namibia | 28 November 1994[a] | 28 February 1995 |
| Nepal | 14 May 1991[a] | 14 August 1991 |
| Netherlands | 11 December 1978 | 11 March 1979 |
| New Zealand | 26 May 1989[a] | 26 August 1989 |
| 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 |
| Paraguay | 10 January 1995[a] | 10 April 1995 |
| Peru | 3 October 1980 | 3 January 1981 |
| Philippines | 22 August 1989[a] | 22 November 1989 |
| Poland | 7 November 1991[a] | 7 February 1992 |
| Portugal | 3 May 1983 | 3 August 1983 |
| Republic of Korea | 10 April 1990[a] | 10 July 1990 |
| Romania | 20 July 1993[a] | 20 October 1993 |
| Russian Federation | 1 October 1991[a] | 1 January 1992 |
| 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 |
| Seychelles | 5 May 1992[a] | 5 August 1992 |
| Sierra Leone | 23 August 1996[a] | 23 November 1996 |
| Slovakia | 28 May 1993[c] | 1 January 1993 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Slovenia | 16 July 1993[a] | 16 October 1993 |
| Somalia | 24 January 1990[a] | 24 April 1990 |
| Spain | 25 January 1985[a] | 25 April 1985 |
| Sri Lanka[a] | 3 October 1997 | 3 January 1998 |
| Suriname | 28 December 1976[a] | 28 March 1977 |
| Sweden | 6 December 1971 | 23 March 1976 |
| Tajikistan | 4 January 1999[a] | 4 April 1999 |
| The former Yugoslav Republic of Macedonia | 12 December 1994[a] | 12 March 1995 |
| Togo | 30 March 1988[a] | 30 June 1988 |
| Turkmenistan[b] | 1 May 1997[a] | 1 August 1997 |
| Uganda | 14 November 1995 | 14 February 1996 |
| Ukraine | 25 July 1991[a] | 25 October 1991 |
| Uruguay | 1 April 1970 | 23 March 1976 |
| Uzbekistan | 28 September 1995 | 28 December 1995 |
| Venezuela | 10 May 1978 | 10 August 1978 |
| Yugoslavia (Federal Republic of) | 6 September 2001 | 6 December 2001 |
| Zambia | 10 April 1984[a] | 10 July 1984 |

Note: Jamaica denounced the Optional Protocol on 23 October 1997, entering into effect from 23 January 1998. Trinidad and Tobago denounced the Optional Protocol on 26 May 1998 and re-acceded on the same day subject to a reservation, with effect from 26 August 1998. Following the Committee's decision in case No. 845/1999 (Kennedy v. Trinidad and Tobago) of 2 November 1999, declaring the reservation invalid, Trinidad and Tobago again denounced the Optional Protocol on 27 March 2000, entering into effect from 27 June 2000. Cases pending against Jamaica and Trinidad and Tobago are still under examination before the Committee.

### C. States parties to the Second Optional Protocol, aiming at the abolition of the death penalty (47)

| | | |
|---|---|---|
| Australia | 2 October 1990[a] | 11 July 1991 |
| Austria | 2 March 1993 | 2 June 1993 |
| Azerbaijan | 22 January 1999[a] | 22 April 1999 |
| Belgium | 8 December 1998 | 8 March 1999 |
| Bosnia and Herzegovina | 16 March 2001 | 16 June 2001 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Bulgaria | 10 August 1999 | 10 November 1999 |
| Cape Verde | 19 May 2000[a] | 19 August 2000 |
| Colombia | 5 August 1997 | 5 November 1997 |
| Costa Rica | 5 June 1998 | 5 September 1998 |
| Croatia | 12 October 1995[a] | 12 January 1996 |
| Cyprus | 10 September 1999 | 10 December 1999 |
| Denmark | 24 February 1994 | 24 May 1994 |
| Ecuador | 23 February 1993[a] | 23 May 1993 |
| Finland | 4 April 1991 | 11 July 1991 |
| Georgia | 22 March 1999[a] | 22 June 1999 |
| Germany | 18 August 1992 | 18 November 1992 |
| Greece | 5 May 1997[a] | 5 August 1997 |
| Hungary | 24 February 1994[a] | 24 May 1994 |
| Iceland | 2 April 1991 | 11 July 1991 |
| Ireland | 18 June 1993[a] | 18 September 1993 |
| Italy | 14 February 1995 | 14 May 1995 |
| Liechtenstein | 10 December 1998 | 10 March 1999 |
| Lithuania | 27 March 2002 | 26 June 2002 |
| Luxembourg | 12 February 1992 | 12 May 1992 |
| Malta | 29 December 1994 | 29 March 1995 |
| Monaco | 28 March 2000[a] | 28 June 2000 |
| Mozambique | 21 July 1993[a] | 21 October 1993 |
| Namibia | 28 November 1994[a] | 28 February 1995 |
| Nepal | 4 March 1998 | 4 June 1998 |
| Netherlands | 26 March 1991 | 11 July 1991 |
| New Zealand | 22 February 1990 | 11 July 1991 |
| Norway | 5 September 1991 | 5 December 1991 |
| Panama | 21 January 1993[a] | 21 April 1993 |
| Portugal | 17 October 1990 | 11 July 1991 |
| Romania | 27 February 1991 | 11 July 1991 |
| Seychelles | 15 December 1994[a] | 15 March 1995 |
| Slovakia | 22 June 1999[a] | 22 September 1999 |
| Slovenia | 10 March 1994 | 10 June 1994 |
| Spain | 11 April 1991 | 11 July 1991 |
| Sweden | 11 May 1990 | 11 July 1991 |

| State party | Date of receipt of the instrument of ratification | Date of entry into force |
|---|---|---|
| Switzerland | 16 June 1994[a] | 16 September 1994 |
| The former Yugoslav Republic of Macedonia | 26 January 1995[a] | 26 April 1995 |
| United Kingdom of Great Britain and Northern Ireland | 10 December 1999 | 10 March 2000 |
| Turkmenistan | 12 January 2000[a] | 12 April 2000 |
| Uruguay | 21 January 1993 | 21 April 1993 |
| Venezuela | 22 February 1993 | 22 May 1993 |
| Yugoslavia (Federal Republic of) | 6 September 2001 | 6 December 2001 |

## D. States which have made the declaration under article 41 of the Covenant (47)

| State party | Valid from | Valid until |
|---|---|---|
| Algeria | 12 September 1989 | Indefinitely |
| Argentina | 8 August 1986 | Indefinitely |
| Australia | 28 January 1993 | Indefinitely |
| Austria | 10 September 1978 | Indefinitely |
| Belarus | 30 September 1992 | Indefinitely |
| Belgium | 5 March 1987 | Indefinitely |
| Bosnia and Herzegovina | 6 March 1992 | Indefinitely |
| Bulgaria | 12 May 1993 | Indefinitely |
| Canada | 29 October 1979 | Indefinitely |
| Chile | 11 March 1990 | Indefinitely |
| Congo | 7 July 1989 | Indefinitely |
| Croatia | 12 October 1995 | Indefinitely |
| Czech Republic | 1 January 1993 | Indefinitely |
| Denmark | 23 March 1976 | Indefinitely |
| Ecuador | 24 August 1984 | Indefinitely |
| Finland | 19 August 1975 | Indefinitely |
| Gambia | 9 June 1988 | Indefinitely |
| Germany | 28 March 1976 | 10 May 2006 |
| Guyana | 10 May 1993 | Indefinitely |
| Hungary | 7 September 1988 | Indefinitely |

| State party | Valid from | Valid until |
|---|---|---|
| Iceland | 22 August 1979 | Indefinitely |
| Ireland | 8 December 1989 | Indefinitely |
| Italy | 15 September 1978 | Indefinitely |
| Liechtenstein | 10 March 1999 | Indefinitely |
| Luxembourg | 18 August 1983 | Indefinitely |
| Malta | 13 September 1990 | 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 |
| Poland | 25 September 1990 | Indefinitely |
| Republic of Korea | 10 April 1990 | Indefinitely |
| Russian Federation | 1 October 1991 | Indefinitely |
| Senegal | 5 January 1981 | Indefinitely |
| Slovakia | 1 January 1993 | Indefinitely |
| Slovenia | 6 July 1992 | Indefinitely |
| South Africa | 10 March 1999 | Indefinitely |
| Spain | 30 January 1998 | Indefinitely |
| Sri Lanka | 11 June 1980 | Indefinitely |
| Sweden | 23 March 1976 | Indefinitely |
| Switzerland | 18 September 1992 | 18 September 2002 |
| Tunisia | 24 June 1993 | Indefinitely |
| Ukraine | 28 July 1992 | Indefinitely |
| United Kingdom of Great Britain and Northern Ireland | 20 May 1976 | Indefinitely |
| United States of America | 8 September 1992 | Indefinitely |
| Zimbabwe | 20 August 1991 | Indefinitely |

**Notes**

[a] Accession.

[b] In the opinion of the Committee, the entry into force goes back to the date when the State became independent.

[c] Succession.

[d] Although a declaration of succession has not been received, the people within the territory of the State - which constituted part of a former State party to the Covenant - continue to be entitled to the guarantees enunciated in the Covenant in accordance with the Committee's established jurisprudence (see Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40 (A/49/40), vol. I, paras. 48 and 49).

[e] For information on the application of the Covenant in Hong Kong, Special Administrative Region, People's Republic of China, see Official Records of the General Assembly, Fifty-first Session, Supplement No. 40 (A/51/40), chap. V, sect. B, paras. 78-85. For information on the application of the Covenant in Macao, Special Administrative Region, see A/55/40, chapter IV.

[f] The Socialist Federal Republic of Yugoslavia ratified the Covenant on 2 June 1971, which entered into force for that State on 23 March 1976. The successor State (Federal Republic of Yugoslavia) was admitted to the United Nations by General Assembly Resolution 55/12 of 1 November 2000. According to a subsequent declaration, the Federal Republic of Yugoslavia acceded to the Covenant, with effect from 12 March 2001. It is the established practice of the Committee that the people within the territory of a State - which constituted part of a former State party to the Covenant - continue to be entitled to the guarantees recognized in the Covenant.

[g] Guyana denounced the Optional Protocol on 5 January 1999 and re-acceded on the same day subject to reservations, with effect from 5 April 1999. Guyana's reservation elicited objections from six States parties to the Optional Protocol.

## Annex II

## MEMBERSHIP AND OFFICERS OF THE HUMAN RIGHTS COMMITTEE, 2001-2002

### A. Membership of the Human Rights Committee

**Seventy-third, seventy-fourth and seventy-fifth sessions (October-November 2001, March-April 2002 and July 2002)**

| | |
|---|---|
| Mr. Abdelfattah AMOR* | Tunisia |
| Mr. Nisuke ANDO* | Japan |
| Mr. Prafullachandra Natwarlal BHAGWATI** | India |
| Ms. Christine CHANET* | France |
| Mr. Maurice GLELE AHANHANZO** | Benin |
| Mr. Louis HENKIN* | United States of America |
| Mr. Ahmed Tawfik KHALIL** | Egypt |
| Mr. Eckart KLEIN* | Germany |
| Mr. David KRETZMER* | Israel |
| Mr. Rajsoomer LALLAH** | Mauritius |
| Ms. Cecilia MEDINA QUIROGA* | Chile |
| Mr. Rafael RIVAS POSADA** | Colombia |
| Sir Nigel RODLEY** | United Kingdom of Great Britain and Northern Ireland |
| Mr. Martin SCHEININ** | Finland |
| Mr. Ivan SHEARER** | Australia |
| Mr. Hipólito SOLARI-YRIGOYEN* | Argentina |
| Mr. Patrick VELLA** | Malta |
| Mr. Maxwell YALDEN** | Canada |

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* Term expires on 31 December 2002.

** Term expires on 31 December 2004.

## B. Officers

### During the seventy-third, seventy-fourth and seventy-fifth sessions

The Officers of the Committee, elected for a term of two years at the 1897th meeting, on 19 March 2001 (seventy-first session), are as follows:

| | |
|---|---|
| Chairperson: | Mr. Prafullachandra Natwarlal Bhagwati |
| Vice-Chairpersons: | Mr. Abdelfattah Amor<br>Mr. David Kretzmer<br>Mr. Hipólito Solari-Yrigoyen |
| Rapporteur: | Mr. Eckart Klein |

## Annex III

## A. FOLLOW-UP TO CONCLUDING OBSERVATIONS: DECISIONS ADOPTED BY THE HUMAN RIGHTS COMMITTEE ON 21 MARCH 2002

1. The following paragraphs set out the procedure for following up on concluding observations pursuant to rules 70, paragraph 5, and 70A of the Committee's rules of procedure.

2. It should first be noted that information pursuant to rule 70, paragraph 5, of the rules of procedure need not be requested in respect of all States parties whose reports are examined by the Committee. The Committee must be mindful of the substantial additional workload that the analysis of information submitted pursuant to rule 70, paragraph 5, will inevitably entail. It should focus in particular on the urgency of the concern addressed to the State party, as well as the State party's ability to take remedial action in a short time frame. Country rapporteurs should bear this in mind when preparing draft concluding observations.

3. A Special Rapporteur for follow-up on concluding observations will be designated by the Committee.

4. The Special Rapporteur will examine the follow-up information received from a given State party pursuant to the Committee's request, with the assistance of the Secretariat officer for follow-up. It would be helpful if the Special Rapporteur would submit his or her findings to the Committee, in the form of a succinct report.

5. The Committee should set aside sufficient time for discussion of the Special Rapporteur's findings and the adoption of formal recommendations, if any, including, where appropriate, reconsideration of the date on which the next periodic report of the State party is due.

6. The Committee establishes the following procedure for dealing with States parties that do not submit follow-up information before expiry of the one-year time limit:

(a) The Secretariat will contact the States parties concerned in an informal manner approximately two months prior to expiry of the deadline, with a view to ascertaining whether a submission can be expected;

(b) A written reminder will be sent to the States parties concerned within one month following the expiry of the deadline;

(c) If no follow-up submission pursuant to rule 70, paragraph 5, is received in spite of this reminder, this will be recorded in the Committee's subsequent annual report to the General Assembly.

7. The Committee will prepare, as of 2003, a chapter in the annual report that deals specifically with follow-up activities under article 40 of the Covenant.

## B. DECISIONS ON WORKING METHODS ADOPTED BY THE HUMAN RIGHTS COMMITTEE ON 5 APRIL 2002

The Committee discussed the Working Group on working methods' proposals and decided as follows:

### I. The Committee endorses the recommendations of the Working Group:

(a) For the establishment of Country Report Task Forces, the modalities of which are spelled out below;

(b) Not to pursue, for the time being, the idea of establishing a Task Force on communications;

(c) Not to pursue, for the time being, the idea of establishing a Task Force on General Comments;

(d) For the discontinuation of the pre-sessional working group on article 40 of the Covenant.

### II. Regarding the country report task forces (CRTFs):

1. All members of the Committee will normally be asked to serve on at least one country report task force per session.

2. Each country report task force will consist of no less than four and, where possible, five or six members. If possible two sessions in advance, each member of the Committee should indicate on which task force he or she is volunteering to serve. As soon as a report is ready to be scheduled for examination, the Secretariat should send a circular e-mail asking for volunteers to serve on the task force. At least one member from the region and the country rapporteur should be on the task force for the report of a given State party; both long-standing and new Committee members should be on each one. The Chair will select who will sit on each task force and designate the country rapporteur as soon as possible.

3. The Secretariat will be entrusted with the task of convening country report task forces during the sessions.

4. Meetings will take place only if interpretation (English/French/Spanish) is available. If necessary, time will be made available for task force meetings from meeting time allotted to the plenary.

5. The country rapporteur will prepare the list of issues on a State report in cooperation with the Secretariat; the list will be circulated to the members of the task force who may transmit comments, in writing, for proposed amendments and additions to the list to the country rapporteur.

6. The country rapporteur and the Secretariat will focus on the most relevant problems facing the State party whose report is under examination and keep the list of issues to those that are of the highest priority. Questions should be precise as far as possible. The Chair may, in consultation with the country rapporteur, discontinue the traditional division of the discussion into parts.

7. The members of the country report task force will have the main responsibility for the conduct of debates on a State report. It is understood that after the answers of the delegation to questions of members of the task force, other members of the Committee will have the opportunity to intervene.

8. The initial draft of concluding observations will be circulated to all members for written comments to the task force/country rapporteur, which will prepare the final draft.

9. The work of the task forces may mean that the pre-sessional working group would not normally have to prepare lists of issues in discharge of its mandate under article 40 of the Covenant. This will be taken into account in determining the agenda and the composition of the pre-sessional working group.

10. Whenever possible, State party delegations should have some time to reflect on, and prepare responses to, additional questions raised by members of the task forces. This would imply that the first meeting on the consideration of a report should take place in the afternoon, and the second meeting the next morning.

11. Scheduling of a State report will generally be avoided for the afternoon of the first day of the Committee plenary.

12. Before the country report task forces adopt a list of issues, non-governmental organizations and specialized agencies would be heard by the Committee during the first meeting of the Committee plenary, in a private meeting. The Committee reserves the right to determine, at a later stage, whether other briefings by non-governmental organizations should also become part of the Committee's official proceedings and hence require interpretation.

13. At least once if not twice per session, the back-to-back scheduling of country reports may be required.

14. Country report task forces will start operating during the seventy-fifth session of the Committee in July 2002.

## Annex IV

## SUBMISSION OF REPORTS AND ADDITIONAL INFORMATION BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (STATUS AS OF 26 JULY 2002)

| State party | Type of report | Date due | Date of submission |
|---|---|---|---|
| Afghanistan | Second periodic | 23 April 1989 | 25 October 1991[a] |
| Albania | Initial/Special | 3 January 1993 | Not yet received |
| Algeria | Third periodic | 1 June 2000 | Not yet received |
| Angola | Initial | 31 January 1994 | Not yet received |
| Argentina | Fourth periodic | 31 October 2005 | Not yet due |
| Armenia | Second periodic | 1 October 2001 | Not yet received |
| Australia | Fifth periodic | 31 July 2005 | Not yet due |
| Austria | Fourth periodic | 1 October 2002 | Not yet due |
| Azerbaijan | Third periodic | 1 November 2005 | Not yet due |
| Bangladesh | Initial | 6 December 2001 | Not yet received |
| Barbados | Third periodic | 11 April 1991 | Not yet received |
| Belarus | Fifth periodic | 7 November 2001 | Not yet received |
| Belgium | Fourth periodic | 1 October 2002 | Not yet due |
| Belize | Initial | 9 September 1997 | Not yet received |
| Benin | Initial | 11 June 1993 | Not yet received |
| Bolivia | Third periodic | 31 December 1999 | Not yet received |
| Bosnia and Herzegovina | Initial | 5 March 1993 | Not yet received |
| Botswana | Initial | 8 December 2001 | Not yet received |
| Brazil | Second periodic | 23 April 1998 | Not yet received |
| Bulgaria | Third periodic | 31 December 1994 | Not yet received |
| Burkina Faso | Initial | 3 April 2000 | Not yet received |
| Burundi | Second periodic | 8 August 1996 | Not yet received |
| Cambodia | Second periodic | 31 July 2002 | Not yet due |
| Cameroon | Fourth periodic | 31 October 2000 | Not yet received |
| Canada | Fifth periodic | 8 April 2000 | Not yet received |
| Cape Verde | Initial | 5 November 1994 | Not yet received |
| Central African Republic | Second periodic | 9 April 1989 | Not yet received |
| Chad | Initial | 8 September 1996 | Not yet received |
| Chile | Fifth periodic | 30 April 2002 | Not yet received |
| Colombia | Fifth periodic | 2 August 2000 | Not yet received |

| State party | Type of report | Date due | Date of submission |
|---|---|---|---|
| Congo | Third periodic | 31 March 2003 | Not yet due |
| Costa Rica | Fifth periodic | 30 April 2004 | Not yet due |
| Côte d'Ivoire | Initial | 25 June 1993 | Not yet received |
| Croatia | Second periodic | 1 April 2005 | Not yet due |
| Cyprus | Fourth periodic | 1 June 2002 | Not yet received |
| Czech Republic | Second periodic | 1 August 2005 | Not yet due |
| Democratic People's Republic of Korea | Third periodic | 1 January 2004 | Not yet due |
| Democratic Republic of the Congo (formerly Zaire) | Third periodic | 31 July 1991 | Not yet received |
| Denmark | Fifth periodic | 31 October 2005 | Not yet due |
| Dominica | Initial | 16 September 1994 | Not yet received |
| Dominican Republic | Fifth periodic | 1 April 2005 | Not yet due |
| Ecuador | Fifth periodic | 1 June 2001 | Not yet received |
| Egypt | Third periodic | 31 December 1994 | 13 November 2001 |
| El Salvador | Third periodic | 31 December 1995 | 8 July 2002 |
| Equatorial Guinea | Initial | 24 December 1988 | Not yet received |
| Estonia | Second periodic | 20 January 1998 | 21 May 2002 |
| Ethiopia | Initial | 10 September 1994 | Not yet received |
| Finland | Fifth periodic | 1 June 2003 | Not yet due |
| France | Fourth periodic | 31 December 2000 | Not yet received |
| Gabon | Third periodic | 31 October 2003 | Not yet due |
| Gambia | Second periodic | 21 June 1985 | Not yet received[b] |
| Georgia | Third periodic | 1 April 2006 | Not yet due |
| Germany | Fifth periodic | 3 August 2000 | Not yet received |
| Ghana | Initial | 7 December 2001 | Not yet received |
| Greece | Initial | 4 August 1998 | Not yet received |
| Grenada | Initial | 5 December 1992 | Not yet received |
| Guatemala | Third periodic | 1 August 2005 | Not yet due |
| Guinea | Third periodic | 30 September 1994 | Not yet received |
| Guyana | Third periodic | 31 March 2003 | Not yet due |
| Haiti | Initial | 30 December 1996 | Not yet received |

| State party | Type of report | Date due | Date of submission |
|---|---|---|---|
| Honduras | Initial | 24 November 1998 | Not yet received |
| Hong Kong Special Administrative Region (People's Republic of China)[c] | Second periodic (China) | 31 October 2003 | Not yet due |
| Hungary | Fifth periodic | 1 April 2007 | Not yet due |
| Iceland | Fourth periodic | 30 October 2003 | Not yet due |
| India | Fourth periodic | 31 December 2001 | Not yet received |
| Iran (Islamic Republic of) | Third periodic | 31 December 1994 | Not yet received |
| Iraq | Fifth periodic | 4 April 2000 | Not yet received |
| Ireland | Third periodic | 31 July 2005 | Not yet due |
| Israel | Second periodic | 1 June 2000 | 20 November 2001 |
| Italy | Fifth periodic | 1 June 2002 | Not yet received |
| Jamaica | Third periodic | 7 November 2001 | Not yet received |
| Japan | Fifth periodic | 31 October 2002 | Not yet due |
| Jordan | Fourth periodic | 21 January 1997 | Not yet received |
| Kazakhstan[d] | | | |
| Kenya | Second periodic | 11 April 1986 | Not yet received |
| Kuwait | Second periodic | 31 July 2004 | Not yet due |
| Kyrgyzstan | Second periodic | 31 July 2004 | Not yet due |
| Latvia | Second periodic | 14 July 1998 | Not yet received |
| Lebanon | Third periodic | 31 December 1999 | Not yet received |
| Lesotho | Second periodic | 30 April 2002 | Not yet received |
| Libyan Arab Jamahiriya | Fourth periodic | 1 October 2002 | Not yet due |
| Liechtenstein | Initial | 11 March 2000 | Not yet received |
| Lithuania | Second periodic | 7 November 2001 | Not yet received |
| Luxembourg | Third periodic | 17 November 1994 | 3 May 2002 |
| Madagascar | Third periodic | 30 July 1992 | Not yet received |
| Malawi | Initial | 21 March 1995 | Not yet received |
| Mali | Second periodic | 11 April 1986 | Not yet received |
| Macao Special Administrative Region (People's Republic of China)[c] | Initial (China) | 31 October 2001 | Not yet received |
| Malta | Second periodic | 12 December 1996 | Not yet received |
| Mauritius | Fourth periodic | 30 June 1998 | Not yet received |

| State party | Type of report | Date due | Date of submission |
|---|---|---|---|
| Mexico | Fifth periodic | 30 July 2002 | Not yet received |
| Monaco | Second periodic | 1 August 2006 | Not yet due |
| Mongolia | Fifth periodic | 31 March 2003 | Not yet due |
| Morocco | Fifth periodic | 31 October 2003 | Not yet due |
| Mozambique | Initial | 20 October 1994 | Not yet received |
| Namibia | Initial | 27 February 1996 | Not yet received |
| Nepal | Second periodic | 13 August 1997 | Not yet received |
| Netherlands | Fourth periodic | 1 August 2006 | Not yet due |
| Netherlands (Antilles) | Fourth periodic | 1 August 2006 | Not yet due |
| Netherlands (Aruba) | Fifth periodic | 1 August 2006 | Not yet due |
| New Zealand | Fifth periodic | 1 August 2007 | Not yet due |
| Nicaragua | Third periodic | 11 June 1991 | Not yet received |
| Niger | Second periodic | 31 March 1994 | Not yet received |
| Nigeria | Second periodic | 28 October 1999 | Not yet received |
| Norway | Fifth periodic | 31 July 2004 | Not yet due |
| Panama | Third periodic | 31 March 1992[d] | Not yet received |
| Paraguay | Second periodic | 9 September 1998 | Not yet received |
| Peru | Fifth periodic | 31 October 2003 | Not yet due |
| Philippines | Second periodic | 22 January 1993 | Not yet received |
| Poland | Fifth periodic | 30 July 2003 | Not yet due |
| Portugal | Third periodic | 1 August 1991 | 3 June 2002 |
| Republic of Korea | Third periodic | 31 October 2003 | Not yet due |
| Republic of Moldova | Second periodic | 1 August 2004 | Not yet due |
| Romania | Fifth periodic | 30 July 2003 | Not yet due |
| Russian Federation | Fifth periodic | 4 November 1998 | Not yet received |
| Rwanda | Third periodic | 10 April 1992 | Not yet received |
| | Special[e] | 31 January 1995 | Not yet received |
| Saint Vincent and the Grenadines | Second periodic | 31 October 1991 | Not yet received |
| San Marino | Second periodic | 17 January 1992 | Not yet received |
| Senegal | Fifth periodic | 4 April 2000 | Not yet received |
| Seychelles | Initial | 4 August 1993 | Not yet received |
| Sierra Leone | Initial | 22 November 1997 | Not yet received |
| Slovakia | Second periodic | 31 December 2001 | 30 July 2002 |
| Slovenia | Second periodic | 24 June 1997 | Not yet received |
| Somalia | Initial | 23 April 1991 | Not yet received |
| South Africa | Initial | 9 March 2000 | Not yet received |

| State party | Type of report | Date due | Date of submission |
|---|---|---|---|
| Spain | Fifth periodic | 28 April 1999 | Not yet received |
| Sri Lanka | Fourth periodic | 10 September 1996 | Not yet received |
| Sudan | Third periodic | 7 November 2001 | Not yet received |
| Suriname | Second periodic | 2 August 1985 | Not yet received[f] |
| Sweden | Sixth periodic | 1 April 2007 | Not yet due |
| Switzerland | Third periodic | 1 November 2006 | Not yet due |
| Syrian Arab Republic | Third periodic | 1 April 2003 | Not yet due |
| Tajikistan | Initial | 3 April 2000 | Not yet received |
| Thailand | Initial | 28 January 1998 | Not yet received |
| The former Yugoslav Republic of Macedonia | Second periodic | 1 June 2000 | Not yet received |
| Togo | Third periodic | 30 December 1995 | 19 April 2001 |
| Trinidad and Tobago | Fifth periodic | 31 October 2003 | Not yet due |
| Tunisia | Fifth periodic | 4 February 1998 | Not yet received |
| Turkmenistan | Initial | 31 July 1998 | Not yet received |
| Uganda | Initial | 20 September 1996 | Not yet received |
| Ukraine | Sixth periodic | 1 November 2005 | Not yet due |
| United Kingdom of Great Britain and Northern Ireland | Sixth periodic | 1 November 2005 | Not yet due |
| United Kingdom of Great Britain and Northern Ireland (Overseas Territories) | Sixth periodic | 1 November 2005 | Not yet due |
| United Republic of Tanzania | Fourth periodic | 1 June 2002 | Not yet received |
| United States of America | Second periodic | 7 September 1998 | Not yet received |
| Uruguay | Fifth periodic | 21 March 2003 | Not yet due |
| Uzbekistan | Second periodic | 1 April 2004 | Not yet due |
| Venezuela | Fourth periodic | 1 April 2005 | Not yet due |
| Viet Nam | Third periodic | 1 August 2004 | Not yet due |
| Yemen | Fourth periodic | 1 August 2004 | Not yet due |
| Yugoslavia (Federal Republic of) | Initial | 12 March 2002 | Not yet received (Promised for the end of 2002)[d, g] |
| Zambia | Third periodic | 30 June 1998 | Not yet received |
| Zimbabwe | Second periodic | 1 June 2002 | Not yet received |

## Notes

[a] At its fifty-fifth session, the Committee requested the Government of Afghanistan to submit information updating the report before 15 May 1996 for consideration at its fifty-seventh session. No additional information was received. At its sixty-seventh session the Committee invited Afghanistan to present its report at the sixty-eighth session. The State party asked for a postponement of the examination of the report. During the seventy-third session, the Committee decided to postpone consideration of Afghanistan to a later date, pending consolidation of the new Government of the State party.

[b] The Committee considered the measures taken by the Gambia to give effect to the rights recognized in the Covenant during its seventy-fifth session, in the absence of a report and of a delegation.

[c] Although not itself a party to the Covenant, the People's Republic of China has assured the reporting obligation under article 40 with respect to Hong Kong and Macao, which were previously under British and Portuguese administration, respectively.

[d] Although a declaration of succession has not been received, the people within the territory of the State - which constituted part of a former State party to the Covenant - continue to be entitled to the guarantees enunciated in the Covenant in accordance with the Committee's established jurisprudence (see Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40 (A/49/40), vol. I, paras. 48 and 49).

[e] Pursuant to a Committee decision of 27 October 1994 (fifty-second session), Rwanda was requested to submit by 31 January 1995 a report relating to recent and current events affecting the implementation of the Covenant in the country for consideration at the fifty-second session. At its sixty-eighth session two members of the Bureau of the Committee met with the Ambassador of Rwanda to the United Nations in New York, who undertook to submit the overdue reports in the course of the year 2000.

[f] The measures taken by Suriname to give effect to the rights recognized in the Covenant will be considered in the absence of the second periodic report during the seventy-sixth session of the Committee (October 2002).

[g] The fourth periodic report of Yugoslavia was scheduled to be examined during the seventy-first session (March 2001) of the Committee. By note verbale of 18 January 2001, the Government requested a postponement of the consideration of the report. Prior to the seventy-fourth session, the Permanent Mission of Yugoslavia to the United Nations Office at Geneva indicated that a new report would be submitted by the end of the summer of 2002, in the form of an initial report (taking into account that Yugoslavia was admitted to the United Nations by General Assembly resolution 55/12 on 1 November 2000).

## Annex V

## STATUS OF REPORTS AND SITUATIONS CONSIDERED DURING THE PERIOD UNDER REVIEW AND OF REPORTS STILL PENDING BEFORE THE COMMITTEE

| State party | Date due | Date of submission | Status |
|---|---|---|---|
| | | **A. Initial reports** | |
| Republic of Moldova | 25 April 1994 | 17 January 2001 | Considered on 18 and 19 July 2002 (seventy-fifth session) |
| | | **B. Second periodic reports** | |
| Azerbaijan | 12 November 1998 | 8 November 1999 | Considered on 25 October 2001 (seventy-third session) |
| Switzerland | 17 September 1998 | 29 September 1998 | Considered on 19 October 2001 (seventy-third session) |
| Gambia | 21 June 1985 | Not yet received | Situation considered in the absence of a report and a delegation on 15 and 16 July 2002 (new procedure) (seventy-fifth session) |
| Georgia | 2 August 2000 | 26 August 2000 | Considered on 18 and 19 March 2002 (seventy-fourth session) |
| Israel | 1 June 2000 | 20 November 2001 | In translation |
| Viet Nam | 30 July 1991 | 3 April 2001 | Considered on 12 July 2002 (seventy-fifth session) |
| Estonia | 20 January 1998 | 21 May 2002 | In translation |
| Slovakia | 31 December 2001 | 30 July 2002 | In translation |

| State party | Date due | Date of submission | Status |
|---|---|---|---|
| | | **C. Third periodic reports** | |
| Luxembourg | 17 November 1994 | 2 May 2002 | In translation |
| Portugal | 1 August 1991 | May 2002 | In translation |
| Togo | 30 December 1995 | 19 April 2001 | Issued, not yet considered (scheduled for seventy-sixth session) |
| Yemen | 8 May 1998 | 17 July 2001 | Considered on 17 and 18 July 2002 (seventy-fifth session) |
| Egypt | 31 December 1994 | 13 November 2001 | In translation (scheduled for consideration for seventy-sixth session) |
| El Salvador | 31 December 1995 | 8 July 2002 | In translation |
| | | **D. Fourth periodic reports** | |
| Hungary | 2 August 1995 | 12 December 2000 | Considered on 22 March 2002 (seventy-fourth session) |
| New Zealand | 27 March 1995 | 7 March 2001 | Considered on 9 and 10 July 2002 (seventy-fifth session) |
| | | **E. Fifth periodic reports** | |
| Ukraine | 18 August 1999 | 20 September 1999 | Considered on 15 and 16 October 2001 (seventy-third session) |
| Sweden | 27 October 1999 | 27 October 2000 | Considered on 20 March 2002 (seventy-fourth session) |

| State party | Date due | Date of submission | Status |
|---|---|---|---|
| United Kingdom of Great Britain and Northern Ireland | 18 August 1999 | 11 October 1999 | Considered on 17 and 18 October 2001 (seventy-third session) |
| United Kingdom of Great Britain and Northern Ireland (Overseas Territories) | 18 August 1999 | 9 December 1999 | Considered on 17 and 18 October 2001 (seventy-third session) |

## Annex VI

## GENERAL COMMENT UNDER ARTICLE 40, PARAGRAPH 4, OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

## GENERAL COMMENT NO. 30 [75] ON REPORTING OBLIGATIONS OF STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT[a]

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

2. The Committee notes, as appears from its annual reports, that only a small number of States have submitted their reports on time. Most of them have been submitted with delays ranging from a few months to several years and some States parties are still in default, despite repeated reminders by the Committee.

3. Other States have announced that they would appear before the Committee but have not done so on the scheduled date.

4. To remedy such situations, the Committee has adopted new rules:

(a) If a State party has submitted a report but does not send a delegation to the Committee, the Committee may notify the State party of the date on which it intends to consider the report or may proceed to consider the report at the meeting that had been initially scheduled;

(b) When the State party has not presented a report, the Committee may, at its discretion, notify the State party of the date on which the Committee proposes to examine the measures taken by the State party to implement the rights guaranteed under the Covenant:

(i) If the State party is represented by a delegation, the Committee will, in the presence of the delegation, proceed with this examination on the date assigned;

(ii) If the State party is not represented, the Committee may, at its discretion, either decide to proceed to consider the measures taken by the State party to implement the guarantees of the Covenant at the initial date or notify a new date to the State party.

For the purpose of the application of these procedures, the Committee shall hold its meetings in public session if a delegation is present, and in private if a delegation is not present, and shall follow the modalities set forth in the reporting guidelines and in the rules of procedure of the Committee.

5. After the Committee has adopted concluding observations, a follow-up procedure shall be employed in order to establish, maintain or restore a dialogue with the State party. For this purpose and in order to enable the Committee to take further action, the Committee shall appoint a Special Rapporteur, who will report to the Committee.

6. In the light of the report of the Special Rapporteur, the Committee shall assess the position adopted by the State party and, if necessary, set a new date for the State party to submit its next report.

**Notes**

[a] Adopted by the Committee at its 2025th meeting (seventy-fifth session) on 16 July 2002. This general comment would replace former general comment No. 1.

## Annex VII

## LIST OF STATES PARTIES' DELEGATIONS THAT PARTICIPATED IN THE CONSIDERATION OF THEIR RESPECTIVE REPORTS BY THE HUMAN RIGHTS COMMITTEE AT ITS SEVENTY-THIRD, SEVENTY-FOURTH AND SEVENTY-FIFTH SESSIONS

**(Listed in order in which their reports were considered)**

### UKRAINE

| | |
|---|---|
| Representative | Mr. Olexander Paseniuk, Deputy State Secretary, Ministry of Justice |
| Advisers | Mr. Mykhailo Skuratovskyi, Permanent Representative of Ukraine to the United Nations Office at Geneva and other international organizations; Mrs. Nina Karpachova, Plenipotentiary Representative of the Verkhovna Rada (Parliament) on Human Rights; Mr. Mikola Garnik, First Deputy Prosecutor General; Mr. Mykola Malomuzh, Deputy Head of the State Committee on Religious Issues; Mr. Vadym Demchenko, Director of the International Law Department of the Ministry of Justice; Mrs. Maria Pasichnyk, Director of the Department of the Social and Labour Law of the Ministry of Justice, member of the delegation; Mr. Vasyl Topchyi, Head of the Investigations Department of the Ministry of Interior; Mrs. Olga Yavlovytska, Deputy Head of the Department of the Constitutional and Administrative Law of the Ministry of Justice; Mr. Anatolyi Zadvornyi, Adviser of the Plenipotentiary Representative of the Verkhovna Rada on Human Rights; Ms. Ivanna Markina, Second Secretary of the Permanent Mission of Ukraine; Ms. Oksana Krasnovid, Attaché of the Department of International Organizations, Ministry of Foreign Affairs of Ukraine |

### UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

| | |
|---|---|
| Representative | Ms. Joan MacNaughton, Director-General, Policy, Lord Chancellor's Department |
| Advisers | Mr. Mark de Pulford, Head, Human Rights Unit, Lord Chancellor's Department; Mr. Philip Stevens, Head of the International Branch, Human Rights Unit, Lord Chancellor's Department; Ms. Stavroulla Gabriel, Human Rights Unit, Lord Chancellor's Department; Ms. Felicity Clarkson, Director of the Asylum and Asylum and Appeals Policy Directorate, Home Office; Ms. Julie Clouder, Head of the European, International and General Policy Section, Race Relations Unit, Home Office; |

Mr. Simon Hickson, Head of the Juvenile Offenders' Unit, Home Office; Mr. Clive Osborne, Assistant Legal Adviser, Home Office; Mr. Paul Pugh, Head of the Police Powers and Leadership Unit, Home Office; Ms. Christine Stewart, Head of the Sentencing and Offences Unit, Home Office; Mr. Nicholas Sanderson, Head of Prisoner Administration Group, Prison Service of England and Wales; Mr. Brian Peddie, Head of Legal Policy, Scottish Prison Service; Mr. Gerald Byrne, Head of Police Powers and Duties Branch, Scottish Executive Justice Department; Ms. Mary Madden, Head of Security Policy and Operations Division, Northern Ireland Office; Ms. Clare Salters, Head of the Human Rights and Equality Unit, Northern Ireland Office; Mr. Jonathan Stephens, Political Directorate, Northern Ireland Office; Ms. Cathy Clements, Northern Ireland Office; Mr. Henry Steel, Overseas Territories Consultant, Foreign and Commonwealth Office; Mr. Paul Bentall, Human Rights Section, Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations in Geneva; Ms. Lucy Foster, Human Rights Section, Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations in Geneva

**SWITZERLAND**

Representative — M. Heinrich Koller, Directeur de l'Office fédéral de la justice

Advisers — M. Philippe Boillat, Sous directeur de l'Office fédéral de la justice et agent du Gouvernement suisse devant la Cour européenne des droits de l'homme; Mme Patricia Schulz, Directrice du Bureau fédéral de l'égalité entre femmes et hommes; M. Jean-Daniel Vigny, Ministre, Responsable des droits de l'homme au sein de la représentation permanente de la Suisse près des Nations Unies à Genève; M. Stephan Arnold, Chef-suppléant de la Division des affaires juridiques et internationales de l'Office fédéral des réfugiés; M. Frank Schürmann, Chef de la Section de droits de l'homme et du Conseil de l'Europe de l'Office fédéral de la justice et agent-suppléant du Gouvernement suisse devant la Cour européenne des droits de l'homme; M. Arthur Mattli, Chef de Section des droits de l'homme et du droit humanitaire du Département fédéral des affaires étrangères; M. Michael Braun, Adjoint scientifique à la Section des affaires internationales et des analyses à l'Office fédéral des étrangers; M. Carl-Alex Ridoré, Collaborateur scientifique à la Section des droits de l'homme et du Conseil de l'Europe de l'Office fédéral de la justice; M. Urs Rechtsteiner, Chef de la police judiciaire genevoise et membre de la Conférence des chefs de police judiciaire cantonale; Mme Boël Sambuc, Vice-présidente de la Commission fédérale contre le racisme; M. Christophe Spenlé, Section des droits de l'homme et du droit humanitaire du Département fédéral des affaires étrangères;

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| | Mme Camille Bergmann, Section des droits de l'homme et du droit humanitaire du Département fédéral des affaires étrangères; Mme Corina Müller, Chef du service juridique du bureau fédéral de l'égalité entre femmes et hommes; M. Christian Scyboz, Division des affaires juridiques et internationales de l'Office fédéral des réfugiés; Mme Barbara Winter, Section des droits de l'homme et du Conseil de l'Europe de l'Office fédéral de la justice |

**REPUBLIC OF AZERBAIJAN**

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| Representative | Mr. Khalaf Khalafov, Deputy Minister of Foreign Affairs |
| Advisers | Mr. Isfandiar Vahabzada, Ambassador, Permanent Representative of the Republic of Azerbaijan to the United Nations Office at Geneva and other international organizations; Mr. Eldar Mammadov, Court of the Constitutional Court; Mr. Latif Huseynov, Head of the Department on Constitutional Law, Milli Mejlis (Parliament) Secretariat; Mr. Zaver Gafarov, Head of the International Legal Cooperation Department of the Ministry of Justice; Mr. Tofiq Musayev, Deputy Director of the Treaty and Legal Department of the Ministry of Foreign Affairs; Mr. Murad Najafov, First Secretary of the Permanent Mission |

**GEORGIA**

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| Representative | Ms. Rusudan Beridze, Deputy Secretary of the National Security Council |
| Advisers | Mr. George Tskrialashvili, Deputy Minister of Justice; Mr. Gocha Lordkipanidze, Senior Counsellor, Permanent Mission of Georgia to the United Nations; Mr. Alexander Nalbandov, Deputy Head of Human Rights Office of the National Security Council |

**SWEDEN**

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| Representative | Mr. Carl-Henrik Ehrenkrona, Director-General for Legal Affairs, Ministry of Legal Affairs |
| Advisers | Ms. Ulla Ström, Ambassador, Ministry of Foreign Affairs; Mr. Götan Lindqvist, Deputy Director, Ministry of Industry, Employment and Communication; Ms. Erica Hemtke, Deputy Director, Ministry of Justice; Ms. Elizabeth Eklund, Desk Officer, Ministry for Foreign Affairs |

**HUNGARY**

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| Representative | Mr. Lipót Höltzl, Deputy State Secretary, Ministry of Justice |
| Advisers | Professor Károly Bárd, Independent Expert, Central European University, ELTE-Budapest; Mr. Gyula K. Szelei, Director-General for International Organizations, Ministry of Foreign Affairs; Mr. István Posta, Chargé d'Affaires a.i., Permanent Mission of Hungary to the United Nations; Mr. Gyula Misi, Counsellor, Permanent Mission of Hungary to the United Nations; Mr. Mónika Weller, Adviser, Ministry of Justice; Dr. Orsolya Tóth, Adviser, Ministry of Foreign Affairs |

**NEW ZEALAND**

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| Representative | Mr. Tim Caughley, Permanent Representative of New Zealand to the Office of the United Nations in Geneva |
| Delegation | Ms. Cheryl Gwyn, Deputy Secretary, Ministry of Justice, Wellington; Mr. John Paki, Deputy Chief Executive, Ministry of Maori Development Te Puni Kokiri, Wellington; Ms. Petra Butler, Law School, Victoria University of Wellington; Ms. Deborah Geels, Counsellor, New Zealand Permanent Mission, Geneva |

**VIET NAM**

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|---|---|
| Representative | Mr. Ha Hung Coung, Vice-Minister of Justice |
| Delegation | Mr. Nguyen Quy Binh, Ambassador, Permanent Representative of Viet Nam to the United Nations Office and Other International Organizations at Geneva, Deputy Head of Delegation; Mr. Le Luong Minh, Deputy Director-General, Department for the International Organizations, Ministry of Foreign Affairs, Deputy Head of the Delegation; Mr. Nguyen Van Ngoc, Deputy Head of the Government Office for Religious Affairs, member; Mr. Vu Duc Long, Deputy Director, Department of International Cooperation, Ministry of Justice, member; Mr. Nguyen Van Luat, Judge, the People's Supreme Court, Deputy Director of the Institute for adjudication science research, member; Mr. Nguyen Chi Dung, Editor in Chief, "Researching codification" Review, National Assembly Office, member; Mr. Dang The Toan, adviser, Ministry of Public Security, member; Mr. Bui Quang Minh, adviser, Department of International Organizations, Ministry of Foreign Affairs, member; Mr. Duong Chi Dung, Counsellor, Permanent Mission of Viet Nam at Geneva, member; Ms. Pham Thi Kim Anh, Second Secretary, Permanent Mission of Viet Nam in New York, member |

**YEMEN**

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| Representative | Mr. Ali Naser Mahdi, member of the Sub-Committee, Head of Delegation |
| Delegation: | Mr. Abdulkader Quahtan, member of the Sub-Committee; Mr. Azal Abdullah Mohamed, Member of the Supreme National Committee for Human Rights; Mr. Suleiman Tabrizi |

**REPUBLIC OF MOLDOVA**

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| Representative | Mr. Vitalic Slonovschi, Deputy Minister of Foreign Affairs |
| Delegation | Mr. Eugen Revenco, Director of the Law and International Treaties Department, Ministry of Foreign Affairs; Mr. Adrian Calmac, Chargé d'affaires a.i., Deputy Permanent Representative of the Republic of Moldova to the United Nations Office at Geneva; Ms. Stela Pavlov, Head of the Law Application Division, Ministry of Justice; Mr. Victor Maxim, Third Secretary, Permanent Mission of the Republic of Moldova to the United Nations Office at Geneva |

## Annex VIII

## LIST OF DOCUMENTS ISSUED DURING THE REPORTING PERIOD

### A. Reports of States parties considered (in the order of examination)

| | |
|---|---|
| CCPR/C/UKR/99/5 | Fifth periodic report of Ukraine |
| CCPR/C/UK/99/5 | Fifth periodic report of the United Kingdom of Great Britain and Northern Ireland |
| CCPR/C/UKOT/99/5 | Fifth periodic report of the Overseas Territories of the United Kingdom of Great Britain and Northern Ireland |
| CCPR/C/CH/99/2 | Second periodic report of Switzerland |
| CCPR/C/AZE/99/2 | Second periodic report of Azerbaijan |
| CCPR/C/GEO/2000/2 | Second periodic report of Georgia |
| CCPR/C/SWE/99/5 | Fifth periodic report of Sweden |
| CCPR/C/HUN/2000/4 | Fourth periodic report of Hungary |
| CCPR/C/NZL/2001/4 | Fourth periodic report of New Zealand |
| CCPR/C/VNM/2001/2 | Second periodic report of Viet Nam |
| CCPR/C/74/L/GMB | Situation of civil and political rights in the Gambia (new procedure) |
| CCPR/C/YEM/2001/3 | Third periodic report of Yemen |
| CCPR/C/MDA/2001/1 | Initial report of the Republic of Moldova |

### B. Reports of States parties issued but not yet considered

| | |
|---|---|
| CCPR/C/EGY/2001/3 | Third and fourth periodic report of Egypt |

## C. Concluding observations of the Human Rights Committee on initial and periodic reports of States parties

| | |
|---|---|
| CCPR/CO/73/UKR | Concluding observations on the fifth periodic report of Ukraine |
| CCPR/CO/73/UK; CCPR/CO/73/UKOT | Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland and Overseas Territories |
| CCPR/CO/73/CH | Concluding observations on the second periodic report of Switzerland |
| CCPR/CO/73/AZE | Concluding observations on the second periodic report of Azerbaijan |
| CCPR/CO/74/GEO | Concluding observations on the second periodic report of Georgia |
| CCPR/CO/74/SWE | Concluding observations on the fifth periodic report of Sweden |
| CCPR/CO/74/HUN | Concluding observations on the fourth periodic report of Hungary |
| CCPR/CO/75/NZL | Concluding observations on the fourth periodic report of New Zealand |
| CCPR/CO/75/VNM | Concluding observations on the second periodic report of Viet Nam |
| CCPR/CO/75/GMB | Preliminary concluding observations on the situation of civil and political rights in the Gambia* |
| CCPR/CO/75/YEM | Concluding observations on the third periodic report of Yemen |
| CCPR/CO/75/MDA | Concluding observations on the initial report of the Republic of Moldova |

* Document not made public pursuant to rule 69A(1) of the Committee's rules of procedure.

## D. Comments by the States parties on the Committee's concluding observations

| | |
|---|---|
| CCPR/CO/71/DOM/Add.1 | Comments by the Government of the Dominican Republic on the concluding observations of the Human Rights Committee |
| CCPR/CO/73/UK; CCPR/CO/73/UKOT/Add.1 | Comments by the Government of Mauritius on paragraph 38 of the concluding observations of the Human Rights Committee on the Overseas Territories of the United Kingdom of Great Britain and Northern Ireland |
| CCPR/CO/75/VNM/Add.1 | Comments by the Government of the Socialist Republic of Viet Nam on the concluding observations of the Human Rights Committee |
| CCPR/CO/72/PRK/Add.1 | Replies submitted by the Government of the Democratic People's Republic of Korea under rule 70A of the rules of procedure of the Human Rights Committee in response to concerns identified by the Committee under rule 70, paragraph 5, of the rules of procedure |

## E. General comment

**General comment No. 30[75] on Reporting Obligations of States parties under article 40 of the Covenant, adopted on 16 July 2002**

## F. Provisional agendas and annotations

| | |
|---|---|
| CCPR/C/145 | Provisional agenda and annotations (seventy-third session) |
| CCPR/C/146 | Provisional agenda and annotations (seventy-fourth session) |
| CCPR/C/147 | Provisional agenda and annotations (seventy-fifth session) |

## G. Summary records

| | |
|---|---|
| CCPR/C/SR.1956 to 1984 | Summary records of the seventy-third session |
| CCPR/C/SR.1985 to 2011 | Summary records of the seventy-fourth session |
| CCPR/C/SR.2012 to 2041 | Summary records of the seventy-fifth session |

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