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HUMAN RIGHTS COMMITTEE

Forty-sixth session

SUMMARY RECORD OF THE 1182nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 21 October 1992, at 3 p.m.

Chairman: Mr. POCAR

later: Mr. AGUILAR URBINA

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GE.92-18060 (E)

The meeting was called to order at 3.40 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

Consideration of an amendment to the rules of procedure

1. The CHAIRMAN recalled that it had been agreed that in the first line of rule 66 (1) of the Committee's rules of procedure, the word "reports" should be replaced by "written reports". He invited the Committee to consider a proposed amendment to the rules of procedure, drafted and distributed in English only. It would consist of the following new paragraph to be inserted between the existing paragraphs 2 and 3 of rule 66: "When the Committee is not in session and the urgency of the situation so requires, a request may be made by the Committee through its Chairman, acting on behalf of and in consultation with all the members of the Committee, provided that a majority of two thirds of the members so agree." A footnote to that text, indicated by an asterisk, read: "Footnote to rule 51 will also apply." The footnote to rule 51 referred to the consensus principle.

2. Miss CHANET said she understood the amendment read out by the Chairman to be a preliminary draft only. Rule 66 of the rules of procedure formed part of the chapter entitled "Reports from States parties under article 40 of the Covenant". If the proposed new paragraph were inserted in that rule, it would mean that the decision would apply only to reports submitted by States parties. The issue should be clarified, since the text was very vague: what sort of "situation" was meant, and how great must its "urgency" be? What "request" would be made? It would also be preferable to put the phrase "in consultation with" before the phrase "on behalf of". She wondered whether it was justifiable to require a two-thirds majority, given that the rules of procedure did not require such a majority for the adoption of decisions on reports. Why was a majority decision required at all, rather than a unanimous decision or a consensus, and why a two-thirds majority?

3. The CHAIRMAN said that the phrase about the two-thirds majority could perhaps have been placed in brackets. He drew attention to rule 51 of the rules of procedure, which stated that, "Except as otherwise provided in the Covenant or elsewhere in these rules, decisions of the Committee shall be made by a majority of the members present." Decisions were thus basically taken by a simple majority. Nevertheless, there had been agreement, reflected in the footnote to rule 51 of the rules of procedure, on the need to seek consensus. He had therefore thought that, in view of the greater sensitivity of the procedure in question, a larger majority might be preferable.

4. Mr. PRADO VALLEJO recalled that, when the Committee had drawn up its rules of procedure, the issue of the majority required for the adoption of decisions had given rise to lengthy discussions. In the end, it had been agreed that a consensus should always be sought, since that was the best way of finding solutions acceptable to all, but that if a consensus were not possible, the proposal could be put to the vote and adopted by a simple majority. The inclusion of the phrase "in accordance with the Committee's practice" would ensure that the proposed procedure was sufficiently flexible.

5. Mr. HERNDL said he could agree to the amendment to rule 66 if it applied to State party reports, but that fact must be clearly indicated in the text. The text should refer specifically to "a request for a report" or use a phrase such as: "The Committee may decide to request a report". In his opinion, the new paragraph should appear after the existing paragraphs 2 and 3 of rule 66, rather than between them.

6. On the question of the majority, he doubted whether any specific majority should be required. A majority of the members present should be sufficient, since the Committee's usual practice had always been to seek a consensus and to use voting only as a last resort. The amendment could, accordingly, be worded to read: "When the Committee is not in session and the urgency of the situation so requires, the Committee may decide to request a report, through its Chairman, acting in consultation with and on behalf of all the members of the Committee, provided that a majority of the members so agree, taking into account the practice of the Committee". By the phrase "the practice of the Committee" he meant the consensus principle. If a consensus were not possible, the matter would be settled by a majority decision.

7. Mrs. HIGGINS suggested that, instead of adding a new paragraph, the existing paragraph 2 of rule 66 should be reworded to read: "Requests for the submission of reports under article 40 (1) (b) of the Covenant may be made during the session or, in case of emergency, and when the Committee is not in session, through its Chairman, acting on behalf of and in consultation with all the members of the Committee."

8. That amendment would make it clear that the Committee could request a report either during a session or at any other time. There seemed no need to mention voting since, in either case, the Committee would try to reach a consensus as provided for in the footnote to rule 51 of the rules of procedure. The Chairman would try to consult all members but, if one or two were unavailable, the Committee would still have some freedom of decision. The important thing was to state explicitly that the Chairman must consult all members when the Committee was not in session.

9. Mr. EL SHAFEI noted that all the members of the Committee agreed on the need to amend rule 66 and that the only question was that of wording. He supported the addition of the word "written" before "reports" in the first line of rule 66 (1). As for the Chairman's amendment, it should be made clear what kind of request was meant: a request for a report, a special report or supplementary information, for example. The phrase "and gravity" might also be added after "the urgency". The amendment would, accordingly, read: "When the Committee is not in session and the urgency and gravity of the situation prevailing in a Member State so require, a request for a report or a special report may be made by the Committee through its Chairman, acting in consultation with and on behalf of all the members of the Committee."

10. The CHAIRMAN said that he had no preference for one type of majority rather than another and saw no problem in retaining the principle of a simple majority. His intention had merely been to limit the powers of the Chairman.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Burundi (CCPR/C/68/Add.2, HRI/CORE/1/Add.16) (continued)

11. The CHAIRMAN invited the delegation of Burundi to reply to the oral questions asked by members of the Committee.

12. Mrs. SAMOYA KIRURA (Burundi) thanked the members of the Committee for their many questions and comments, which showed their desire to ensure that human rights were better guaranteed in Burundi. She would answer their questions to the best of her ability. Document HRI/CORE/1/Add.16 should serve as the basis for considering the human rights situation in her country.

13. Although some might think that the various ethnic groups in Burundi formed distinct communities, she wished to state once again that Burundi had a single people, with a single culture and language, making up a single nation. Burundi was, at one and the same time, a very ancient nation and a young independent State. Admittedly, Burundi had had many ethnic problems and there had been much bloodshed. There were many underlying reasons for that situation, but they all went back to events in the country's history (the monarchy and colonial rule of the past and the running of State affairs after independence). The elites had taken opposing sides and dragged the population into their power struggle, so that there had been refugees and expatriates. But for some years now the people of Burundi had declared its desire to work towards national reconciliation. After an eight-month debate about the ethnic problem, tangible results had been achieved with the adoption of the Charter of National Unity and the new Constitution, which embodied all the principles of participation in public life and emphasized respect for human rights. A public debate had taken place on the issue of a multi-party system. New political parties had been set up and were preparing for the 1993 elections.

14. Mr. BIRIHANYUMA (Burundi) said that the Committee's questions showed members' desire to learn more about the political and legal system of Burundi. His delegation would try to answer those questions as fully as possible, without any evasion or trickery.

15. He referred to a statement made on Swiss radio that morning by the spokesman of the Swiss section of Amnesty International, in which Burundi had been described as a country notorious throughout the world for torture and summary executions of children. Those allegations were entirely groundless, as the diplomatic representatives of foreign countries in Bujumbura could testify. So could Amnesty International, if it were objective, since none of the many letters it had sent to him during his time as Attorney-General of the Republic had mentioned cases of torture or even detention of children by the State.

16. Mr. LALLAH, speaking on a point of order, said that, under article 40 of the Covenant, State party delegations should only answer questions from members of the Committee and should not refer to questions asked by other bodies or to comments from other sources. The delegation of Burundi should, accordingly, confine itself to answering the Committee's questions.

17. Mr. BIRIHANYUMA (Burundi), responding to the questions raised with regard to the application of article 2 of the Covenant, said that the problem of non-discrimination should be looked at from various angles, including political, sociocultural, legislative and preventive. With respect to political, sociocultural factors, the Burundi Government, aware of the potential danger of discrimination for the State and its citizens, had elaborated a full-fledged policy to combat that danger by educating and raising the awareness of the people, so that they might progressively become conscious of the need for equality for all before the law. Legislative and preventive measures had been taken to that end. That policy was given expression in the Constitution and in the Charter of National Unity. Article 1 of the Constitution stipulated: "Burundi is a unitary, independent, sovereign, secular and democratic republic. Its principle is government of the people, by the people and for the people. Its democratic system must conform to the fundamental values of society, namely, national unity, social peace, social justice, development, independence and national sovereignty". Article 15 of the Constitution provides that "All men are equal before the law and are entitled, without distinction, to equal protection of the law". More generally, articles 10 to 15 of the Constitution recapitulated all the principles set forth under article 2 of the Covenant. In implementing those provisions, the Penal Code, the Code of Penal Procedure, the Code governing individuals and the Family and the Code of Organization and powers of the judiciary had adopted the definition of discrimination used in the International Convention on the Elimination of All forms of Racial Discrimination, ratified by Burundi. Burundi had taken a large number of preventive measures in the legislative, administrative and judicial fields, adopting inter alia the Labour Code, the Education Act and the Code of Organization and Powers of the Judiciary. The Government also encouraged other public and private initiatives with a particular view to promoting the advancement of women and the defence of children's rights.

18. The principle of the equal right of men and women to the enjoyment of all civil and political rights, set forth in article 3 of the Covenant, was ensured under article 15 of the Constitution, the provisions of which were restated in all the laws and regulations governing public and private life in Burundi.

19. There were both sociocultural and political obstacles to the practical application of articles 2 and 3 of the Covenant. In the sociocultural domain, the Burundi people was having difficulty adapting to modern ways, giving rise to a certain inequality of the sexes, particularly in matters of inheritance. In terms of politics, the acceptance of the democratic ideas accompanying the emergence of new political parties was still posing problems both for the Government and for the people, especially in rural areas.

20. In respect of the right of derogation provided for under article 4 of the Covenant, he noted that where a country's population was threatened by a real danger or where the security or integrity of the national territory was violated, as had happened in Burundi and in every other State in Africa and throughout the world, the Government was bound to take special measures to re-establish order and security. Such measures naturally restricted or derogated from the fundamental rights of the person. Consequently, aware of the effect that those measures could have on the exercise of human rights, the

Burundi legislature had elaborated appropriate laws which took into account the need to protect human rights and individual freedoms and the need to maintain or re-establish law and order. That legislation included measures relating to the maintenance of order and security, the proclamation of a state of emergency or state of siege and the requisitioning of persons and property. Such measures were taken in a manner respectful of articles 19 and 29 of the Constitution. In practice, whenever an exceptional measure was taken, the public was so informed by the media and by the local authorities. Thus, the emergency measures which had had to be taken during the meningitis epidemic in Burundi at the end of September had been readily accepted by the population, even though its freedom of movement had been curtailed.

21. In respect of articles 6 and 7 of the Covenant, articles 11, 19, 20 and 21 of the Constitution enshrined the individual's right to physical and moral integrity. Other laws and regulations had been enacted to ensure the application of those constitutional provisions. Contrary to what some might have thought, disciplinary and criminal penalties had in actual fact been applied to security force members who had violated those rights. He cited as an example the case of the former commander of the Katumba brigade, who had been imprisoned as a result of the Antoine Muhitira case, the investigation and prosecution of which was following the standard procedure. Other criminal investigation officers, military and civilian, had likewise been penalized once they had been found guilty of that type of violation. It was, however, undeniable that there had been irregularities which could reoccur, in particular in the context of ethnic disputes, despite the steps taken by the Government. Nevertheless, the competent authorities had always sought to ensure respect for human rights, in particular the right to life. In that connection, the fact that national and international non-governmental organizations were free to carry out investigations proved that the Burundi Government had nothing to hide or to apologize for. It was all the same unfortunate that the conclusions of certain reports by non-governmental organizations were often tendentious. Those reports never mentioned the civil or military victims of terrorist group attacks, as though article 6 and 7 of the Covenant were not applicable to them, while such groups were massacring with impunity female and infant members of innocent civilian populations.

22. With regard to the application of article 9 of the Covenant, he pointed out that articles 14, 19, 25 and 26 of the Constitution guaranteed the right to liberty and security of person. Any restrictions on that right, as carried out in accordance with the Constitution, were not contrary to the provisions of article 9 of the Covenant itself. Police officers and judges pleading guilty of infringements of rights and freedoms were subject to punishment in accordance with the law. Other measures had been taken guaranteeing, for example, the right of a detainee to be informed of the reasons for his arrest, to appear before a judge within a reasonable period of time and to have the assistance of a lawyer. In addition, the Code of Penal Procedure was currently being revised to bring it even more closely into line with the constitutional provisions guaranteeing respect for human rights.

23. The provisions of article 14 of the Covenant were implemented within the framework of article 16 of the Constitution. The right to a proper trial

procedure was also ensured by other legal instruments, including the Code of Organization and Powers of the Judiciary and the Codes of Civil and Penal Procedure. The provisions of the Covenant and of the Constitution were respected, even if irregularities did sometimes occur.

24. With regard to the relationship between the Charter of National Unity and the Constitution, it should be mentioned that as the Charter was not accompanied by any legal or regulatory sanctions, it was not really comparable to the Constitution, which declared any act contrary to its provisions to be null and void. In contrast, at the moral and political level, the Charter had primacy over the law. The Charter conformed fully to the Covenant as it was based essentially on the principle set forth in article 20 of the Covenant which prohibited any propaganda for war or advocacy of national, racial or religious hatred or of discrimination or violence.

25. Relations between national non-governmental organizations and the Government were governed by the statutes of such organizations, the freedom of opinion, movement and action of which were fully guaranteed.

26. He explained that certain articles of the Covenant were not mentioned in the Constitution because all the rights and duties set forth in the international human rights instruments were proclaimed and guaranteed in accordance with article 10 of the Constitution.

27. Article 79 of the Constitution, setting forth the special powers of the President of the Republic during a state of exception or emergency, was fully compatible with articles 4 and 9 of the Covenant, article 4 itself providing that certain rights could allow of derogation. The Covenant and the Constitution naturally prevailed over the Penal Code and the Code of Penal Procedure. If the latter failed to conform to the Covenant or the Constitution, they were automatically amended; furthermore, any decision which was in violation of the Constitution or fundamental human rights would be annulled by the Appeals Division.

28. With regard to the application of article 10 of the Covenant, it should be emphasized that a State party to the Covenant was not prohibited from adopting a penal code which included the death penalty. There was no question of "arbitrarily" depriving any person of his life, which would be in violation of article 6 of the Covenant. In Burundi, the death penalty could be applied in cases of assassination, murder, theft followed by murder, cannibalism, torture leading to death, abortions resulting in death, and rape resulting in death. As had been stated by the participants at the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, in September 1990, the death penalty might be maintained or abolished depending on the social, cultural, economic, political and religious context of each country. In Burundi, handing down a death sentence, even if it was not carried out, was not a futile act, given the deterrent effect of such a sentence and the infamy it entailed. The Burundi Code of Penal Procedure did not actually provide for police custody, since, according to article 4 of the Code, criminal investigation officers were bound to bring the arrested individual immediately before the competent judge when there was serious evidence of guilt. The government attorney carried out a weekly inspection of

police station premises and had the power to release any person apprehended by the police where evidence against that person was insufficient.

29. In respect of freedom of movement, provided for under article 12 of the Covenant, it should be recalled that under article 22 of the Constitution, "All Burundians have the right to travel and to settle freely anywhere within the national territory and to leave and return to that territory. The exercise of that right may only be limited by law for reasons of public order or State security, to fend off collective threats or to protect persons in danger". Irregularities in the application of that provision had been noted for the last time in 1978 when an administrative authority had arbitrarily placed a State official under restricted residence. In contrast, since 1989 no one had been required to submit his travel documents to the immigration service.

30. Public demonstrations were now authorized in Burundi, under a decree-law of 1992. There were no regulations requiring demonstrators to obtain prior authorization from local authorities. For security reasons only, demonstration organizers had to inform local authorities of the demonstration 48 hours in advance.

31. It had been alleged that the Minister of Rural Development had forced civil servants to demonstrate on the occasion of the celebration of the fiftieth anniversary of the Third Republic; in response, he affirmed that the Minister had given no instructions whatsoever of that kind, but had simply requested in writing that a report on the manner in which civil servants had celebrated the anniversary should be made to him. On that occasion, the Minister had in no way opposed the exercise of the right of freedom of expression by government officials and agents.

32. A Committee member had pointed out an apparent contradiction between articles 19, 22 and 25 of the Covenant and articles 55, 56 and 57 of the Constitution of Burundi. However, articles 19, 22 and 25 of the Covenant enunciated respectively the right to freedom of opinion and freedom of expression, the right to freedom of association - subject to such restrictions as were prescribed by law - and the right to take part in the conduct of public affairs, to vote, to be elected and to have access to public service, whereas articles 55, 56 and 57 of the Constitution of Burundi laid down the principle of the approval of political parties and prohibited them from identifying themselves with a particular ethnic group, region, religion, sect or sex. Articles 55, 56 and 57 of the Constitution thus dealt with a completely different set of matters than articles 19, 22 and 25 of the Covenant and in consequence could not be contrary to them.

33. In respect of article 25 of the Covenant, several questions had been raised regarding the right to take part in the conduct of public affairs, to vote and to be elected, and to have access, on general terms of equality, to public service. All those provisions were implemented in Burundi political and legislative practice and were not incompatible with articles 3 and 29 of the Constitution given that the few restrictions stipulated therein were provided for under article 25 of the Covenant. At the political level, the Government encouraged individuals of all ethnic groups, as long as they met the requirements, to apply for vacant posts available through appointment or competitive examination. The relevant legislation and regulations consisted

of articles 29 and 33 of the Constitution, the Labour Code, the civil service regulations, and other specific laws concerning recruitment for government service and for the private sector. The right to vote was guaranteed to all citizens meeting the conditions set forth in the Electoral Code, subject to such restrictions as were provided for by law, in accordance with the Covenant and the Constitution.

34. Article 14 of the Covenant could be invoked before the courts; if the courts did not take that article into consideration, their decisions could be set aside by the Appeals Division of the Supreme Court.

35. The Department of Public Prosecution, in reference to which clarification had been requested, encompassed four chief Public Prosecutors' Offices under the Court of Audit and the courts of appeal and, at a lower level, 16 public prosecutors' offices under the courts of major jurisdiction. The main function of the Department of Public Prosecution was to defend society against criminals by assembling evidence in criminal cases brought against them. The Department had authority over criminal investigation officers throughout the country.

36. Mr. Aguilar Urbina took the Chair.

37. Mr. BIRIHANYUMA (Burundi), replying to questions regarding the frequency of human rights violations in Burundi referring to a number of different reports of ethnic massacres, cases of imprisonment for belonging to ethnic groups and other acts by the police and security forces, and replying also to questions regarding the possibility of ethnic reconciliation in Burundi and the measures which the Government was planning to take to restore confidence, said that the Government was trying to promote ethnic reconciliation by combating division and encouraging national unity, through specific actions aimed at preventing exclusion in all areas of national life, particularly concerning appointments of senior officials which affected all ethnic groups, and recruitment to the police and military forces. The security services had been reorganized and anyone found guilty of abuses had been punished. Finally, in order to restore confidence, particularly among the populations of the frontier areas, which were repeatedly attacked by the "Palipehutu" (Hutu People's Liberation Party) the authorities were trying to educate them and involve them in the fight against the enemies of national unity.

38. With regard to the jurisdiction of the Commission for the Voluntary Repatriation of Refugees and the lack of a right of appeal, in order to facilitate the reception and reintegration of returnees, the Commission had been empowered by decree of 22 January 1992 to settle disputes over property claimed by the returnees. The Commission's decisions were not open to appeal in order to facilitate reception conditions and encourage the amicable settlement of any family conflicts which might arise - the institution of court proceedings might be a delaying tactic designed to prevent returnees from recovering their property. Furthermore, experience had shown that the Commission's authority had not been challenged; had it been, the Government would of course have reviewed the Commission's powers.

39. Replying to questions on the structure of the prison administration, he said that the prison establishments were each run by a prison governor and

deputy governor assisted by wardens, under the supervision of a director-general assisted by two departmental directors, the director for administrative and legal affairs and the director for financial, economic, cultural and social affairs. The office of the Director-General was a public administrative body which had been independent since 1988. The prison establishments were responsible for the custody and supervision of detainees and for providing a link between the detainees and the judicial authorities (judges, prosecuting counsels and judicial police).

40. Detention conditions were consistent with the Standard Minimum Rules for the Treatment of Prisoners: prisoners were entitled to at least two meals per day and could practise a sport within the prison compound, take part outside the prison in agricultural and stock raising activities, and learn a trade (carpentry, needlework, brick-making and bricklaying). They had the right to receive visits from their relatives whenever possible and to confer with their lawyers in private. They were entitled to free medical care in the event of illness and to freedom of religious worship on Saturdays and Sundays.

41. With regard to the right to freedom of thought, conscience and religion and the right to freedom of opinion and expression, covered by articles 18 and 19 of the Covenant, those freedoms had become a reality in Burundi, where many political parties, associations, newspapers, religions or sects had been authorized for some years, and more especially since the promulgation of the Constitution in March 1992. The laws guaranteeing those rights and freedoms included the Political Parties Act, the Press Act, the Public Demonstrations Act and the Associations Act.

42. Article 20 of the Covenant, prohibiting propaganda for war and incitement to racial, national or religious hatred, was implemented by article 42 of the Burundi Constitution and article 180 (book II) of the Penal Code. Unfortunately, there were still some separatist elements who kept up their destabilizing propaganda. The call for the liberation of the Hutu people, which was the watchword of the Palipehutu, had ceased to be acceptable since the adoption of the Charter of National Unity. Contrary to the claims of the Palipehutu, young Burundians of all ethnic origins who met the necessary conditions had been recruited for some years already into the Military Academy (ISCAM) and the National Police Training College (ENAPO). The same was true of other secondary schools or colleges, as the national and international press could testify. However, because of the unfortunate events which had marked Burundi's past, some young Burundians were afraid to enlist in the army, although there was no law to prohibit them from doing so.

43. With regard to the measures envisaged or already taken by the Government of Burundi for the promotion and respect of human rights, he drew attention to the Constitution and other major legislation such as the acts governing political parties, the press, associations and the approval of human rights leagues, as well as the establishment in April 1992 of the Centre for the Promotion of Human Rights, which demonstrated a real political will to democratize institutions.

44. Turning to the question of the powers and functions of the Centre for the Promotion of Human Rights and its independence from the Government, he replied that the Centre was endowed with legal personality and financial autonomy.

Its governing body was an Administrative Council consisting of ten members chosen from among representatives of leagues and other associations for human rights, representatives of religious faiths and lawyers, and comprised only three representatives from the public administration. The Administrative Council set the programme of activities and operating budget. The officers and members of the Administrative Council were appointed by the President of the Republic for a term fixed in accordance with the Public Administrative Institutions Act.

45. The task of the Centre was four-fold: first, the training of managers and staff of the specialized bodies through seminars, colloquia and training courses; second, education and consciousness-raising for the entire population, particularly young people, through lectures and debates and special human rights days; third, dissemination of human rights instruments and all other human rights information, requiring the translation of documents into the language understood by the majority of the people of Burundi; and, fourth, the establishment of a specialized human rights documentation centre.

46. In reply to a question on the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, he said that the Convention appeared in the list of instruments ratified by Burundi that was included in document HRI/CORE/1/Add.16.

47. The question of the nationality of children in Burundi was covered by the Constitution on the one hand and by the Nationality Act and the Code governing Individuals and the Family on the other. As far as the former was concerned, it should be borne in mind that the 1992 Constitution had annulled and replaced the 1981 Constitution, and consequently the report should be read in the light of the 1992 Constitution.

48. The conflict between Church and State had brought the leaders of the Second Republic into confrontation with the Catholic Church in 1986. However, since the establishment of the Third Republic in September 1987, relations between Church and State had been excellent.

49. The jurisdiction of the military tribunals was defined by the Code of Judicial Organization and Jurisdiction of the Military Courts promulgated in 1980. The military tribunals consisted of the Court Martial and the Military Court, which were empowered to try only military personnel and their civilian accomplices, and to judge any crimes and offences involving the use of fire-arms committed by civilians. The decisions of the Court Martial could be taken to appeal in the Military Court. The Court Martial tried all military personnel below the rank of major and the Military Court all officers of equal or higher rank. The Military Court might in some cases consist of one or more appeal court judges and its decisions could be the subject of an application for judicial review to the Appeals Division of the Supreme Court.

50. Mr. Pocar resumed the chair.

51. Mr. BIRIHANYUMA (Burundi), replying to the question regarding the independence of the judiciary vis-à-vis the military courts, stated that the judiciary was quite separate from the military courts, and that ordinary judges could not be subordinate to the military judges as they were not

connected either technically or administratively. However, ordinary judges could by their decisions control the military judges, particularly when sitting in the Military Court or in setting aside decisions of the Military Court in proceedings brought before the Appeals Division of the Supreme Court.

52. With regard to the independence of the judiciary vis-à-vis the Executive in other words, whether the Minister of Justice or the President of the Republic could influence judges to take certain decisions, he pointed out that the 1992 Constitution guaranteed the independence of the judiciary, in that the judges pronounced judgement with sole reference to the law and their own conscience. There had been cases of interference between 1980 and 1985, but at the present time the country's socio-political situation did not allow the executive to put any pressure on judges.

53. The human rights violations which had occurred in conjunction with the events of November 1991 and April 1992 had been the work of the so-called Palipehutu, an ethnic terrorist faction which operated under cover within the country and openly outside it, particularly in refugee camps and European capitals, and for which reconciliation was impossible until such time as there was ethnic cleansing in Burundi, in other words, the physical elimination of one section of the population, the Tutsis. The members of that faction incited the people to ethnic hatred through the use of leaflets, cassette recordings and secret meetings. Outside the country they sought to deceive international opinion and humanitarian organizations by means of preposterous untruths to the effect that the Hutus were the victims of massacres by the Tutsi minority and the military were inciting the Hutus to revolt. Unfortunately, many organizations believed those misrepresentations.

54. In November 1991, some communes had been struck by terrorist attacks which had claimed 500 innocent victims, including many Hutus who were opposed to tribalist attitudes. Clashes between the law enforcement forces and the aggressors had also resulted in a large number of victims on both sides. Legal proceedings had been brought against the terrorists and their accomplices and had been conducted with the greatest possible openness. Unfortunately the families and friends of the culprits had not hesitated to alarm public opinion by claims that the accused had been convicted because of their ethnic origin. The people, however, regardless of their ethnic origins, had not allowed themselves to be manipulated by those divisive elements and in the stricken communes those same people had fought and exposed the aggressors and had collaborated with the officers of the law to restore peace.

55. Of course, during periods of disturbances, the police might be guilty of abuses. Such cases had been reported and members of the military had been prosecuted for summary executions. With regard to the student Robert Ndanga, who had been questioned about his collaboration with the aggressors during the clandestine infiltration, the report that he had died from torture was utterly untrue. All those who had been sentenced in connection with the attacks of 1991 and April 1992 had been guilty of specific offences punishable under Burundi legislation and had also been guilty of breaching article 20 of the Covenant, which condemned incitement to ethnic hatred.

56. The particular laws relating specifically to articles 6 and 7 of the Covenant were incorporated in the Penal Code, which made homicide, infanticide

and other acts violating the right to life punishable offences. The Charter of National Unity proclaimed that the human person was sacred. Although the death penalty had not been abolished, it was imposed only in the cases provided for under article 6 (2) of the Covenant. In addition, the Burundi authorities had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

57. Concerning the results of voting in terms of the various ethnic groups, he said that in compiling the electoral roll no account was taken of ethnic origin. Consequently, the results were calculated not in terms of ethnic groupings, but rather in terms of the population of voting age. He pointed out that the Charter of National Unity had been adopted by a majority of over 89 per cent, while the Constitution had been approved by over 90 per cent of the voters.

58. The Government was endeavouring to make national and international legal instruments known to the illiterate part of the population by organizing rallies and information sessions as well as radio programmes, and by having the various codes in force in the country translated into the national language. The spirit of Ubushingantahe, an intrinsic quality recognized in Burundi, combining a whole series of virtues - wisdom, devotion to truth, impartiality, respect for promises, love of peace, etc. - possessed by many people in the country, had enabled Burundi to pass through periods of disturbances without plunging into civil war, and had greatly contributed to the preservation of its social cohesion.

59. Concerning the results of investigations into abuses committed by members of the armed forces at the time of the events of November 1991, abuses had been reported in two provinces, investigations had been conducted, and the guilty parties arrested in accordance with the law.

60. On the question of the cohabitation of ethnic groups in Burundi, he said that from the scientific and cultural point of view no ethnic groupings in the strict sense of the word existed in the country, since no population group possessed a territory, culture, language or religion of its own. The term "ethnic group" was used for lack of a better word to designate the Hutus, the Tutsis and the Twas, whereas in fact the three groups made up a single population sharing the same culture. The figures whereby the Hutus were said to represent 85 per cent of the population of Burundi, the Tutsis 14 per cent and the Twas 1 per cent dated from the colonial era, and there had been no ethnic census since that time. Generally speaking, there was no cohabitation problem in the countryside. On the other hand, in urban areas, and notably among the elite, there were those who were busy fomenting ethnic divisions which had not existed in traditional Burundi.

61. Concerning the persons or parties said to have been penalized because they had not approved the Constitution, he declared that that was a false rumour. In fact, before the promulgation of the Constitution, there had been no parties. In addition, the draft Constitution had been the subject of lengthy debate, first in the Constitutional Commission which had prepared the draft, and subsequently among all levels of the population, and no one had been prosecuted for voicing criticisms. Lastly, the vote had been by secret

ballot, and the whole procedure had been conducted in a climate of transparency.

62. Concerning the question of prisoners of conscience or opinion, a certain number of prisoners of conscience, as well as prisoners of opinion, did exist in Burundi. However, none of them had been prosecuted for criticizing the Government, the administration, or a party. The only ones prosecuted had been those who had published or circulated tracts inciting to ethnic hatred, in accordance with Burundi law and with the provisions of the Covenant. Persons prosecuted for membership of terrorist movements could not be considered as prisoners of opinion, since they were being detained as a result of their criminal activities and not as a result of their political beliefs. In that sense, the law was the same for all those who had committed offences, whether members of the security forces, members of the military, or terrorists. The allegation that 1 million Hutus had been imprisoned for their opposition to the Government was entirely without foundation. Members of all ethnic groups had fallen victim to the disturbances, both on the side of the security forces and on that of the terrorists. Recent events in the country had clearly indicated that the arrests made had no connection with ethnic origin.

63. In reply to a question on the content of article 40 of the Constitution as it related to the provisions of the Covenant, he stated that the content of that article was linked to the very existence and raison d'être of the Burundi nation. He pointed out that the Covenant was incorporated in the Constitution, but added that implementation of the Covenant could not be permitted to jeopardize the existence of the nation.

64. The question of habeas corpus and that of the designation of counsel by the courts did not arise in Burundi criminal law. The law governing the bar, as well as the laws governing the Code of Penal Procedure and the Criminal Division of the Court of Appeal, provided that a person charged with an offence could, if he so wished, be assisted by counsel of his own choosing, or could request that counsel be assigned to him. Contrary to what was claimed by certain terrorists and extremists, the persons charged following the events of the previous June and July had categorically refused to be assisted by the counsel offered them by the presiding judges of the two Courts of Appeal before which they were due to appear. Even in the most advanced countries, the fact than an accused person refused the assistance of counsel did not warrant putting an end to the procedure.

65. His delegation had been surprised to hear a member of the Committee state that the question of the bloody, tribal ideology of the Palipehutu party was of little interest to the Committee. He pointed out that article 20 of the Covenant provided that any propaganda for war should be prohibited by law, and that any advocacy of national, racial, or religious hatred that constituted incitement to discrimination, hostility or violence should also be prohibited by law. He had the feeling that on that particular point the Committee had perhaps failed to show all the impartiality required of it in its consideration of the initial report of Burundi (CCPR/C/68/Add.2).

66. Concerning the system for training, appointing, promoting and dismissing judges, he pointed out that anyone wishing to become a judge or prosecuting counsel had to comply with certain standards of morality and good conduct, and

undergo a two-year training course under the supervision of the President of the Court of First Instance or the Public Prosecutor. At the end of the training course, the candidate would become a fully qualified member of the judiciary. Promotion would depend on the merits of the person concerned, and on the number of vacant posts in the ranks of the judiciary immediately above the position he occupied. In the case of a serious breach of discipline, a judicial inquiry would be opened, and the individual concerned could be brought before the Higher Council of the Judiciary, presided over by the President of the Republic. In the case of dismissal, decisions were taken by a disciplinary body which was likewise presided over by the Head of State and included the Minister of Justice, the President of the Supreme Court, the Attorney-General and the Inspector-General of Justice, as well as other members appointed for a three-year term by the Head of State, and three persons who were not members of the judiciary.

67. Concerning the prerogatives of certain political bodies which were relevant to implementation of article 14 of the Covenant, he emphasized the need to realize the exceptional and urgent nature of the refugee situation, a situation which had to be dealt with speedily and conclusively, while at the same time disputes of all kinds had to be brought to an end.

68. In reply to a question concerning the Mandi Commission, he said that it was a special commission which, in 1977, had abolished land development contracts under which a person who had cultivated a landholding for several years could be evicted from it at any time by the landowner. Although the way in which the Commission had acted was perhaps open to criticism, its intentions were no less praiseworthy for that.

69. In regard to the functions of the so-called "Judicial Control Commission", replaced in 1987 by the Office of the Inspector-General of Justice, he stated that the Commission had been concerned exclusively with enforcing judgements in land disputes. Its task had been to ensure conformity in the enforcement of court decisions in that area, in accordance with the law governing the organization and competence of the judiciary.

70. In reply to a question concerning article 57 of the Constitution, which prohibited political parties from identifying themselves in any way with any particular ethnic group, region, religion, sect or sex, he stated that the primary objectives of the Third Republic of Burundi, as well as the principal obstacles it was encountering, could be summed up in five points: (a) the practical implementation of the principle of equitable allocation of responsible posts in all sectors of the public service, as between members of the various ethnic groups; (b) the promotion and safeguarding of values such as integrity, mutual respect, mutual forgiveness, and the general good; (c) the systematic condemnation of human rights violations, and equitable and just punishment for offences committed; (d) the dissemination of the principles governing the Charter of National Unity; and (e) the implementation of a policy for the voluntary return of refugees.

71. In regard to the remedies available to an accused person, he said that an arrested person was entitled to refer his case to the superior of the official who had carried out the arrest, or to the Attorney-General. If he received no reply, he could then make a complaint to any authority, even the Minister of Justice.

72. Just as there were no ethnic groups in Burundi, so there were no religious minorities. There were no official statistics to indicate that some groups were in the majority, and others in the minority. In the absence of a proper census, the percentages quoted in regard to the Hutus, the Tutsis and the Twas were of no value.

73. In conclusion, he stated that, under article 72 of the Constitution, the President of the Republic was empowered to appoint and dismiss the Prime Minister, and was also empowered, on the proposal of the Prime Minister, to appoint and dismiss other members of the Government.

74. The CHAIRMAN suggested that, in view of the late hour, consideration of the initial report of Burundi (CCPR/C/68/Add.2) should be concluded at a later meeting.

The meeting rose at 6.05 p.m.