

**REPORT
OF THE
HUMAN RIGHTS COMMITTEE**

GENERAL ASSEMBLY

OFFICIAL RECORDS: THIRTY-NINTH SESSION

SUPPLEMENT No. 40 (A/39/40)



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New York, 1984

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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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Covenant

1. As at 27 July 1984, the closing date of the twenty-second session of the Human Rights Committee, there were 80 States parties to the International Covenant on Civil and Political Rights and 34 States parties to the Optional Protocol to the Covenant, both adopted by the General Assembly in resolution 2200 A (XXI) of 16 December 1966 and opened for signature and ratification in New York on 19 December 1966. Both instruments entered into force on 23 March 1976 in accordance with the provisions of their articles 49 and 9 respectively. Also as at 27 July 1984, 16 States had made the declaration envisaged under article 41, paragraph 1, of the Covenant which came into force on 28 March 1979.
2. A list of States parties to the Covenant and to the Optional Protocol, with an indication of those which have made the declaration under article 41, paragraph 1, of the Covenant is contained in annex I to the present report.
3. Reservations and other declarations have been made by a number of States parties in respect of the Covenant or the Optional Protocol. These reservations and other declarations are set out verbatim in documents of the Committee (CCPR/C/2 and Add. 1-7).

B. Sessions and agendas

4. The Human Rights Committee has held three sessions since the adoption of its last annual report: the twentieth session (465th to 489th meetings) was held at the United Nations Headquarters, New York, from 26 March to 13 April 1984; and the twenty-second session (518th to 544th meetings) was held at the United Nations Office at Geneva from 24 October to 11 November 1983; the twenty-first session (490th to 517th meetings) was held at United Nations Office at Geneva from 9 to 27 July 1984. The agendas of the sessions are shown in annex III.

C. Membership and attendance

5. At the 470th meeting (twentieth session), held on 28 October 1984, the Chairman informed the Committee of the death of Committee member Mr. Leonte Herdocia Ortega (Nicaragua). Members of the Committee expressed their sorrow at the untimely death of Mr. Herdocia Ortega and paid tribute to his contributions to the work of the Committee and to the promotion of human rights in general.
6. At the sixth meeting of States parties held at United Nations Headquarters, New York, on 18 November 1983, in accordance with articles 28 to 34 of the Covenant, Mrs. Gisèle Côté-Harper (Canada) was elected to fill the vacancy created by the resignation of Mr. Walter Tarnopolsky.
7. At the seventh meeting of States parties held at United Nations Headquarters, New York, on 24 February 1984, in accordance with articles 28 to 34 of the Covenant, Mr. Alejandro Serrano Caldera (Nicaragua) was elected to fill the vacancy created by the death of Mr. Herdocia Ortega. A list of the members of the Committee is given in annex II.

8. All the members attended the twentieth and twenty-second sessions of the Committee. All members, except Mr. Errera and Mr. Movchan, attended the twenty-first session.

D. Solemn declarations

9. At the opening meetings of the twentieth and twenty-first sessions, before assuming their functions, Mr. Ndiaye, Mrs. Côté-Harper and Mr. Serrano Caldera, elected respectively at the fifth, sixth and seventh meetings of the States parties to the Covenant, made a solemn declaration in accordance with article 38 of the Covenant.

F. Election of officers

10. At its 513th meeting, held on 11 April 1984, the Committee elected Mr. Opsahl as its Rapporteur to fill the vacancy created by the resignation of Mr. Tarnopolsky, which was announced at the end of the nineteenth session. 1/

F. Working groups

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

12. The Working Group of the twentieth session was composed of Messrs. Cooray, Ermacora, Hanga and Opsahl. It met at the United Nations Office at Geneva from 17 to 21 October 1983 and elected Mr. Hanga as its Chairman/Rapporteur. The Working Group of the twenty-first session was composed of Messrs. Cooray, Ndiaye and Prado Vallejo and Sir Vincent Evans. It met at United Nations Headquarters, New York, from 19 to 23 March 1984. Sir Vincent Evans was elected Chairman/Rapporteur. The Working Group of the twenty-second session was composed of Mrs. Côté-Harper and Messrs. Dimitrijevic, Graefrath and Ndiaye. It met at the United Nations Office at Geneva from 2 to 6 July 1984 and elected as its Chairman/Rapporteur Mr. Graefrath.

13. Under rule 62 of its provisional rules of procedure, the Committee established working groups to meet before its twentieth and twenty-first sessions, which were mandated to make recommendations on the duties and functions of the Committee under article 40 of the Covenant and related matters. It also established a working group to meet before the twenty-second session, which was charged with taking up the question of second periodic reports in general and considering the second periodic reports to be examined at that session in accordance with the statement on the duties of the Human Rights Committee under article 40 of the Covenant.

14. The Working Group of the twentieth session was composed of Messrs. Bouziri, Movchan, Opsahl and Herdocia Ortega. It met at the United Nations Office at Geneva from 17 to 21 October 1983 and elected Mr. Bouziri as its Chairman/Rapporteur.

15. The Working Group of the twenty-first session was composed of Messrs. Bouziri, Graefrath, Opsahl and Tomuschat. It met at United Nations Headquarters, New York, from 19 to 23 March 1984 and elected Mr. Bouziri as its Chairman/Rapporteur.

16. The Working Group of the twenty-second session was composed of Mr. Aguilar, Sir Vincent Evans, Mr. Movchan and Mr. Opsahl. It met at the United Nations Office at Geneva from 2 to 6 July 1984 and elected Mr. Aguilar as its Chairman/Rapporteur.

G. Secretariat

17. Under article 36 of the Covenant, the necessary staff and facilities for the effective performance of the functions of the Committee are provided by the Secretary-General. In practice, the Committee is serviced by the staff of the Centre for Human Rights, assisted by several technical services. Within the Centre, the Committee secretariat is provided by the International Instruments Unit. In addition, the Committee is assisted by staff from the Communications Unit of the Centre in its work relating to the Optional Protocol to the Covenant. At the twenty-first session, members of the Committee paid tribute to the valuable contribution Mr. Anabtawi had made as Secretary of the Committee during its first seven years. At its twenty-first and twenty-second sessions, the Assistant Secretary-General for Human Rights assured the Committee of his determination to do everything within his power to assist the Committee and welcomed the reaction of members to a number of suggestions for ways and means to facilitate the Committee's work (see sect. I).

H. Action by the General Assembly on the annual report submitted by the Committee under article 45 of the Covenant

18. At its 492nd meeting, held on 27 March 1984, the Committee considered this item in the light of the relevant paragraphs of the summary records of the Third Committee and General Assembly resolutions 38/116 and 38/117 of 16 December 1983.

19. Members of the Committee expressed gratification over the many encouraging remarks made about its work within the Third Committee.

20. It was noted that a number of comments and opinions relating to the Committee's work were advanced by representatives in the Third Committee. These included suggestions to simplify the current admissibility procedure under the Optional Protocol to extend the time-limit for State party responses to communications to take a more positive approach in following up Committee decisions and to improve co-ordination among the bodies that dealt with reports submitted under various human rights instruments and the suggestion that the Committee should question the legitimacy of lengthy states of emergency. Note was also taken by members of a number of comments and opinions expressed in the Third Committee relating, inter alia, to the scope of the Human Rights Committee's mandate, the slow rate of new accessions to the Covenant, the paucity of reports dealt with by the Committee, the Committee's request for better publicity, the introduction of a reporting obligation in cases of public emergency and the Committee's reporting schedule.

21. Members of the Committee commented on the various opinions and suggestions that were made by representatives in the Third Committee regarding its work. Several members pointed out that an amendment of the rules of procedure had been proposed to the Committee in the interest of streamlining and expediting the consideration of communications. Some members expressed their agreement with the view that the current two-month period for submission of comments on the

admissibility of a complaint was inadequate, particularly in the case of States with a federal structure. Regarding the follow-up of Committee decisions, several members noted that States parties had been invited to inform the Committee of their reaction to its views under article 5 (4) of the Optional Protocol and that positive responses of three States parties to such views had already been received and published in the Committee's last annual report. Regarding the matter of improving co-ordination among human rights bodies it was noted that the problem relating to the reporting obligations of States parties might not be easy to solve, given the differences in the procedures under the various instruments in the periodicity of the various reports, in the guidelines for their preparation and in the nature of the issues examined. Nevertheless, there should be an organized flow of information among the various bodies and the hope was expressed that positive results might be achieved at the meeting of the Chairmen of relevant bodies, referred to in paragraph 5 of General Assembly resolution 38/117.

22. Members noted that a wide range of views was expressed by representatives at the Third Committee concerning the scope of the Human Rights Committee's mandate. They did not agree that the Human Rights Committee could do anything that was not prohibited to it under the Covenant. Members of the Committee were generally of the view that the Committee's mandate was clearly established in the Covenant. Several members felt that the Committee could but express its opinion on how the Covenant should be understood and inform States parties about the collective concerns of its members with a view to helping them to fulfil their obligations. Regarding the decline in the rate of new accessions, which members regretted, it was pointed out that some States not yet parties to the Covenant were developing countries lacking technical personnel and infrastructure and the legislation necessary to fulfil the obligations flowing from the Covenant. It was suggested that some of these States could be encouraged to become parties if appropriate assistance were provided to them. The need for addressing in any promotional activities the special sensitivities of newly independent States concerning sovereignty was also stressed. In connection with the concern expressed about the low number of State party reports considered by the Committee, it was noted that although the Committee did not have a large backlog of reports it would soon be receiving an increasing number of second periodic reports and should aim at examining reports at a higher rate.

23. The Committee noted with appreciation paragraph 13 of General Assembly resolution 38/116, in which the Assembly requested the Secretary-General to continue to take all possible steps to ensure that the Centre for Human Rights of the Secretariat was able to assist effectively the Human Rights Committee and the Economic and Social Council in the implementation of their respective functions under the International Covenants on Human Rights, taking into account General Assembly resolutions 3534 (XXX) of 17 December 1975 and 31/93 of 14 December 1976.

I. Inclusion of Arabic among the official and working languages of the Human Rights Committee

24. The Committee expressed special appreciation regarding the adoption by the General Assembly of resolution 38/115 of 16 December 1983, in which the Assembly authorized, inter alia, the provision of Arabic language services required for meetings of the Human Rights Committee. The decision of the General Assembly was implemented by the Secretary-General as from the Committee's twenty-first session.

J. Question of the transmission of the Committee's annual report to the General Assembly through the Economic and Social Council

25. In connection with Economic and Social Council decision 1983/101 of 4 February 1983, in which the Council invited the Committee to consider the possibility of rescheduling its meetings, on the basis of further consultation, the Council, in its resolution 1984/2 of 8 May 1984, decided to request the President of the Council to continue further his consultations with the Chairman of the Human Rights Committee and to report thereon to the Council at its organizational session for 1984. Such consultations took place during the twenty-first and twenty-second sessions of the Committee.

K. Question of publicity for the Covenant and for the work of the Committee

26. Members of the Committee have constantly emphasized the need for more publicity to be given both to the text of the Covenant itself (together with the Optional Protocol) and to the work of the Committee in promoting the due observance and enjoyment of the rights and freedoms set forth in the Covenant.

27. It is important that the text of the Covenant should be available not only in the working languages of the United Nations but in the official languages, and so far as possible other native languages of the States parties. To assist with this process the Centre for Human Rights is compiling a collection of different language texts.

28. The point is also frequently made in the course of the examination of States' reports that every State party should take steps to bring the Covenant to the attention of the administrative and judicial authorities so that they are aware of the obligations that the State has assumed under it (see general comment 3/13).

29. An admirable example of ways in which knowledge and understanding of human rights can be promoted was an all-island poster competition for school-children organized by the Sri Lanka Human Rights Centre with the objective of fostering humanitarian attitudes of mutual respect and tolerance and of creating greater awareness of the articles of the Universal Declaration of Human Rights.

Arrangements were made in co-operation with the Government of Sri Lanka to have the children's posters, illustrative of human rights, exhibited at the United Nations Office at Geneva while the Committee was examining the report of Sri Lanka (see paras. 95-135).

30. In his statements to the Committee at the opening of its twenty-first and twenty-second sessions, the Assistant Secretary-General for Human Rights stressed the importance of improving publicity for the work of the Committee. He referred to the fact that this had been a matter of continuing concern to the Committee with a view to ensuring the maximum effectiveness of its function to promote human rights in accordance with the Covenant. The Secretary-General had prepared a comprehensive report on promotional activities in the field of human rights (E/CN.4/1984/23) for the current biennium which also made projections and contained suggestions for the next biennium. He also pointed out that both the leaflet entitled "Universal Declaration of Human Rights" and the booklet entitled "International Bill of Human Rights" were to be reprinted for use by

non-governmental organizations, journalists, schools and the general public during the current biennium.

31. In this connection the General Assembly, in its resolution 38/116, urged that arrangements for the publication in bound volumes of the Committee's official public records should be expedited. The Assistant Secretary-General for Human Rights has since assured the Committee that the publication of its records covering the first two years, namely 1977 and 1978, is well under way and that within the next biennial budget additional resources would be requested in order to catch up with the publication of the outstanding volumes as soon as possible. The publication of a volume of selected decisions under the Optional Protocol will also be completed in 1984.

32. In addition, the Centre for Human Rights has arranged for the general comments adopted by the Committee under article 40, paragraph 4, of the Covenant (CCPR/C/21 and Add. 1-2) to be issued in a consolidated version and to be brought to the attention of all other human rights organs which it services. The Committee was informed that the Centre intended to continue that practice in the future.

33. The Information Service of the United Nations both in New York and Geneva issue press releases during the Committee's sessions. The Bureau of the Committee met on 25 July 1984 with the Director of the Information Service at the United Nations Office at Geneva and discussed ways of ensuring better publicity for the work of the Committee. The Assistant Secretary-General for Human Rights was also present and the Committee was informed about the meeting by the Chairman. The Committee appreciates the assistance of the Service in disseminating information about its proceedings.

34. The Committee is also aware that a number of non-governmental organizations give valuable publicity to its work in their journals and communiqués.

35. At its twentieth session, the Committee agreed to a request from an independent television company to be permitted to film some of the Committee's proceedings with a view to their inclusion in a documentary programme on human rights.

L. Miscellaneous

36. In his statement to the Committee at its twenty-first session, the Assistant Secretary-General for Human Rights informed the Committee that the Centre for Human Rights was considering the possibility of assisting the Committee in various new ways; in particular in preparing general comments under article 40 of the Covenant, examining reports by States parties and listing outstanding issues from previous reports, maintaining a bibliography, assembling and analysing the travaux préparatoires of the Covenant and the Optional Protocol and performing various other services. The Committee welcomed these suggestions (CCPR/C/SR.490).

37. The question of more appropriate meeting rooms for the Committee at Headquarters in New York has been raised several times (CCPR/C/SR.489 and SR.517), with emphasis being placed by the Committee on the need to facilitate attendance by the public. It has also been observed that those Committee meetings which under the rules of procedure are to be public have in fact not been accessible to the public for reasons of security (CCPR/C/SR.499). Furthermore, publicity concerning

the programme of work has not been sufficient to facilitate the attendance of interested members of the public and non-governmental organizations. The Secretariat has made the Committee aware of certain difficulties regarding the above matters. The Committee, nevertheless, has expressed the hope that these difficulties would be overcome in the future.

38. In the previous year the Committee also took up the question of technical assistance to States parties. 2/ At the twenty-first session, the Assistant Secretary-General for Human Rights, referring to the slow rate of new accessions, stated that the Centre for Human Rights was prepared to explore the possibilities of providing technical assistance to States that needed it in order to accelerate the procedure before acceding to the Covenant. He also informed the Committee that it might be possible to use the programme of advisory services to assist States parties in performing their obligations under the Covenant by providing training courses and fellowships to persons who drafted reports.

M. Future meetings of the Committee

39. At its twenty-first session, the Committee confirmed its calendar of meetings for 1985 and 1986, as follows: twenty-fourth session to be held at United Nations Headquarters from 25 March to 12 April 1985, twenty-fifth session at the United Nations Office at Geneva from 8 to 26 July 1985, twenty-sixth session at Geneva from 21 October to 8 November 1985, twenty-seventh session at United Nations Headquarters from 24 March to 11 April 1986, the twenty-eighth session at United Nations Office at Geneva from 7 to 25 July 1986 and twenty-ninth session at Geneva from 20 October to 7 November 1986, and that in each case the working groups would meet during the week preceding the opening of each session.

N. Adoption of the report

40. At its 542nd, 543rd and 544th meetings, held on 26 and 27 July 1984, the Committee considered the draft of its eighth annual report covering the activities of the Committee at its twentieth, twenty-first and twenty-second sessions, held in 1983 and 1984. The report, as amended in the course of the discussions, was unanimously adopted by the Committee.

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

A. Submission of reports

41. States parties have undertaken to submit reports in accordance with article 40 of the Covenant within one year of the entry into force of the Covenant for the States parties concerned and thereafter whenever the Committee so requests. In order to assist States parties in submitting the reports required under article 40 of the Covenant, the Committee, at its second session, approved general guidelines regarding the form and content of initial reports, the text of which appeared in annex IV to its first annual report submitted to the General Assembly at its thirty-second session. 3/

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

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

44. The actions taken, information received and relevant issues placed before the Committee during the reporting period (twentieth, twenty-first and twenty-second sessions) are summarized in paragraphs 45 to 53 below.

Twentieth session

45. The Committee decided to send reminders to the Governments of the Central African Republic, Chile, the Dominican Republic, Panama, Trinidad and Tobago and Zaire, whose reports were overdue.

46. Some members suggested that it would be desirable for a member of the Committee to take up the matter of overdue reports either during a forthcoming meeting of States parties or at a meeting of the Third Committee of the General Assembly and to discuss the matter with representatives of the concerned States.

47. The Committee asked members from the Latin American and African regions to make appropriate contacts during the Committee's twenty-first session in New York with the permanent missions of States parties whose reports were still outstanding.

48. The Committee had postponed its consideration of the report of Guinea four times because no representative of the State party had been designated to appear before it. In accordance with its decision at the nineteenth session that consideration of the report could not be postponed beyond the twentieth session 6/ and since no representative of the State party appeared at the twentieth session, the Committee proceeded with the consideration of the previous report at its twentieth session in the absence of the representative of the State party.

Twenty-first session

49. As agreed at the twentieth session, members made contacts with the Permanent Missions in New York of the Central African Republic, the Dominican Republic and Zaire. The Permanent Mission of the Dominican Republic indicated it was planning to submit its report in the near future. The representatives of the other two States parties undertook to contact their capitals.

50. Reminders were sent to Czechoslovakia, Iran (Islamic Republic of), the Libyan Arab Jamahiriya, Saint Vincent and the Grenadines, Tunisia and Uruguay, whose reports had been due during the first half of 1983.

51. The Committee also considered the question of how supplementary reports should be dealt with, but did not reach a final decision in that regard. However, it was provisionally agreed that such reports would be considered by the Committee in the normal way when so requested by the State party.

Twenty-second session

52. The Committee was informed that the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic and Spain had submitted their second periodic reports and that the Federal Republic of Germany would be submitting its second periodic report in October 1984. Upon a request from Trinidad and Tobago, whose initial report had been scheduled for consideration at the twenty-second session, the Committee decided that it be considered at the Committee's next session.

53. Owing to lack of time, the Committee decided that all action under this item be deferred to its next session.

B. Consideration of reports

1. Introduction

54. A major new development in the Committee's work during the past year was the beginning of the consideration of second periodic reports (see paras. 58-63).

55. In previous years the Committee had only been concerned with the examination of initial reports of States parties (due within a year after entry into force of the Covenant for the State party concerned, article 40 (1) (a) of the Covenant) and additional information to those reports in accordance with the relevant rules of procedure as adopted at the Committee's first session (rules 66-71). The method to be adopted for the consideration of initial reports was discussed at an early stage of the Committee's work (second session). The implementation of this method in practice and the Committee's experience so far was described in its annual report for 1979. 7/

56. During its twentieth, twenty-first and twenty-second sessions, the Committee considered the following initial reports: Sri Lanka, El Salvador, Guinea, New Zealand, India, Egypt, Gambia, Democratic People's Republic of Korea and Panama, as well as second periodic reports from Yugoslavia, Chile and the German Democratic Republic. The status of reports considered during the period under review and reports still pending consideration are indicated in annex V below.

57. A working group established to make recommendations to the twentieth session on second periodic reports was also mandated to consider certain other issues, inter alia, the order in which reports should be examined and the possibility of considering a report in the absence of representatives of a State party (see paras. 136-138 concerning Guinea). The Group felt that the chronological order of submission was perhaps the most objective approach in considering reports. Although the Committee has taken no decision on this point, in practice it has mostly followed the chronological order. It is generally felt that there should be no rigid pattern since other criteria - such as geographical distribution or prevailing urgency - also require to be taken into account.

2. Approach and procedure for consideration of second periodic reports

58. Under article 40, paragraph 1 (b), of the Covenant and in the light of the Committee's decision on periodicity, States parties are required to submit a second periodic report generally five years from the date of consideration of their initial report or of additional information. 8/ The initial guidelines on the contents of such reports were set out in paragraph (a) of the statement on the Committee's duties under article 40 of the Covenant. 9/ Paragraph (i) of the statement provided that prior to the meetings with representatives of the reporting States at which the second periodic report would be considered, a working group of three members of the Committee should review the information so far received by the Committee in order to identify those matters which it would seem most helpful to discuss with those representatives. Subsequently, at its twentieth session, the Committee considered a paper submitted by its Working Group on General Comments which contained additional proposals regarding the approach and procedure for consideration of second periodic reports.

59. The Working Group recommended, inter alia, that:

(a) As an approach to dealing with second periodic reports, the Committee should focus on the progress made in each State party since the time of submission of the initial report. Other focal points in the consideration of periodic reports should be in line with guidelines stressed in paragraph (g) of the statement on the duties of the Human Rights Committee under article 40 of the Covenant 9/ and elaborated in the guidelines regarding the form and contents of reports from States parties under article 40, paragraph 1 (b), of the Covenant; 10/

(b) The method for considering second periodic reports need not in principle differ significantly from that followed by the Committee in considering initial reports. However, a different method, whereby replies to questions posed could be expected during the same meeting, would be desirable, provided the States parties' representatives would be willing to do that. It might be even worthwhile to approach the State party in advance with a view to seeking its acceptance to conduct the dialogue in that way;

(c) The Committee should reconstitute the working group at the beginning of the session and charge three members, as indicated in paragraph (i) of the statement, to review the information contained in the second periodic report in order to identify those matters which would seem most helpful to discuss with the representatives of the State concerned.

60. Although the Committee did not take any normal decision on these recommendations, the approach suggested by the working group was applied by the Committee when, for the first time, it considered the second periodic report of Yugoslavia at its twentieth session. In particular, the sessional working group of three established by the Committee prepared an informal list inquiring both as to the general progress made since the examination of the initial report, including the response to the Committee's proceedings and promotional activities concerning the Covenant, and as to the state of implementation of specific articles which was discussed and amended in the Committee. In transmitting the list to the representatives of Yugoslavia, it was made clear that individual members might well wish to pose other questions during the course of the proceedings.

61. Many members felt that this experimental procedure, followed in the consideration of Yugoslavia's second periodic report, was positive. There was general agreement that the specific form of dialogue employed by the Committee on an experimental basis and made possible by the Yugoslav delegation's readiness to co-operate had clearly proven to be very useful.

62. At its twenty-first session, the Committee discussed the question of whether or not to establish a pre-sessional working group on second periodic reports and the question of the mandate of such a working group.

63. Although there was no agreement as to whether such a working group should be sessional or pre-sessional, there was broad agreement on the need for it. In this connection, some members noted that the working group established to examine Yugoslavia's second periodic report had helped to identify subjects for discussion and to focus the Committee's attention on the main issues and problems. It was also pointed out that such a working group was needed to ensure a more disciplined approach to the examination of second periodic reports and to help the Committee in developing a meaningful dialogue with each reporting State.

64. Accordingly, the Committee decided to establish a pre-sessional working group to take up the question of second periodic reports in general and to undertake preparatory work on second periodic reports scheduled for consideration at the twenty-second session. The working group on second periodic reports met prior to the Committee's twenty-second session, when the reports of Chile and the German Democratic Republic were to be considered. After having reviewed all relevant information regarding these two countries, the working group drafted for presentation to the Committee two lists - one for Chile and one for the German Democratic Republic - covering a variety of subjects on which it would seem most helpful to discuss with the representatives of the State concerned. The working group also presented recommendations to the Committee concerning procedural aspects of dealing with second periodic reports to the effect that the Committee should follow the general approach adopted at its twentieth session when it examined the second periodic report of Yugoslavia.

65. At its twenty-second session, the Committee considered the draft lists and recommendations of the Working Group. It ultimately adopted an approach to the consideration of the second periodic reports of Chile and the German Democratic Republic which included the following main elements: the preparation and transmission to the respective delegations of an unofficial, non-exhaustive list of subjects and issues with specifications which would seem most helpful to discuss, each issue to be treated one by one and in a manner providing for immediate replies, if possible, by the representatives of the State party, as well as an

opportunity for members to seek additional clarifications under each issue; general observations or supplementary questions to be left until the conclusion of the dialogue on the issues and points contained in the list; reaffirmation of each member's right to pose additional questions; and recognition that any immediate response would depend on the willingness of States parties' representatives.

66. Later at the same session and in the light of its experience during the session, the Committee reviewed its approach and procedure relating to the consideration of second periodic reports in general. After a broad exchange of views the Committee agreed to continue to develop its procedures within the context of its statement of duties under article 40 of the Covenant. 9/ The Committee also agreed that the working group on article 40 of the Covenant, which was to meet prior to its twenty-third session, should take the views of the members of the Committee into account in its preparation for the consideration of second periodic reports at that session.

3. States parties

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

El Salvador

68. The initial report of El Salvador was placed on the agenda for the twentieth session following a decision taken at the 462nd meeting, on 28 July 1983, to give it priority in view of the serious situation in the country (CCPR/C/SR.462/Add.1). At its 465th meeting, held on 24 October 1983, the Committee was informed that the Permanent Representative of El Salvador to the United Nations Office at Geneva had requested postponement of the consideration of the initial report of his country pending the submission of a supplementary report which would reflect the new political constitution that was being drafted. The Permanent Representative was, however, willing, if the Committee so wished, to appear before the Committee in order to answer factual questions but that he would be unable to deal with legal issues.

69. At the 467th meeting, held on 25 October 1983, the Chairman announced (CCPR/C/SR.467) that at an informal meeting held earlier in the day, a decision had been taken, in agreement with the Permanent Representative of El Salvador, to consider the report during the present session subject to his reservations.

70. The Committee considered the initial report of El Salvador (CCPR/C/14/Add.5) at its 468th, 469th, 474th and 485th meetings, held on 27 October, 1 and 9 November 1983 (CCPR/C/SR.468, 469, 474 and 485). The representative of El Salvador replied to members' comments and questions during all of these meetings. In this way, a more direct dialogue than usual for the consideration of initial reports was conducted. For convenience, however, the summaries below are grouped in the ordinary manner.

71. In his introductory statement, the representative of El Salvador pointed out that his country was facing an extraordinary situation in which violent internal conflicts were shaking the foundations of the country with terrible effects. He explained that following the coup d'etat of 1979, profound economic and social changes had taken place and that machinery had been created to ensure respect for human rights. These changes gave rise to struggles which were not yet concluded. Terrorism was adamant on breaking up this process of development. Rebels had taken up arms against the Government, causing social unrest and hampering the efforts being made to revitalize the national economy. He mentioned internal and external causes of the crisis affecting his country. Among the external causes were the revolutionary ideas which had invaded Latin America, especially after the Cuban revolution. His Government firmly rejected foreign intervention, which only served to exacerbate an already difficult situation.

72. The representative also stated that as long as military action continued, there would be violations of human rights in general and of the basic right to life in particular; that in the conflict excesses had been committed on both sides and that the magnitude of the problem was such that it was beyond the powers of the judiciary to investigate cases with due speed, although machinery had now been established to ensure respect for human rights and the Government's own Human Rights Commission currently published details of cases. He stressed that the difficulties of the existing situation were not primarily of a legal nature and that what was required was a comprehensive solution. He explained the various avenues his Government was exploring towards peace as well as the various peace efforts that were being undertaken at the international level. He would welcome any suggestions from members of the Committee which might assist his Government.

73. Members of the Committee welcomed the readiness of the Government of El Salvador to conduct a frank and constructive dialogue with the Committee with a view to promoting human rights in El Salvador. It was noted that the statement of the representative confirmed that it would be appropriate for the Committee to use a new method in discussing the situation, instead of focusing on the legal position described in the report. The problem in that country was not one of legal structure but the product of a combination of social, political and economic factors going back many years. There was, therefore, no point in blaming the East-West conflict for the tragic situation in El Salvador; nor could Cuba which had struggled for independence against dictatorship, be held responsible for that. It was said that everyone was aware of the difficult situation in which the Salvadorian people were plunged, struggling as they were for their self-determination against foreign backed military and paramilitary units and against the police whose actions had caused thousands of victims. The solution of the problem could not be reached by allowing foreign military advisers to help the Government in the armed confrontation with the guerillas, which in itself represented foreign interference. The social explosion which had culminated in the guerilla movement had deep roots, and a solution must involve a quest for social justice through dialogue between the parties to the conflict. In this connection, one member wondered whether the Government would accept the offer made by its opponents to begin negotiating without prior conditions. Another member pointed out that he was reluctant to engage in a discussion of the matter because not all the parties involved in the events in El Salvador were represented before the Committee.

74. In relation to article 2 of the Covenant, it was noted that whereas the Covenant was said to have been incorporated in El Salvador's internal law, its

provisions could not be invoked directly before the judicial system or administrative authorities and it was asked whether that implied that internal law rather than the Covenant should be invoked and, if so, whether complaints relating to violations of the Covenant had already been brought before the courts; what results were achieved in the light of the adoption of decrees suspending various rights and freedoms and what remedies against violations of human rights were available in the country under the present circumstances. In this connection, information was requested on the competence and activities of the national Human Rights Commission and on its legal links with the authorities.

75. With reference to article 4 of the Covenant, it was noted from the report that the state of emergency in El Salvador had been extended several times but that its proclamation and extension had never been notified to the other States parties to the Covenant in conformity with article 4 of the Covenant. In this respect, it was maintained that the requirement to notify any derogation from the provisions of the Covenant under that article together with the reasons for such derogation was no mere formality, and that it could lead Governments to abandon their plans with respect to certain derogations because, all things considered, they did not find them absolutely essential. The report contained little information on the consequences that a state of emergency entailed for human rights and on the measures taken to curb their violation. Recalling the statement of the representative of El Salvador to the effect that his Government would welcome advice from the Committee, one member advised the Government to respect fully all provisions of the Covenant, especially article 4. In the view of another member, El Salvador would appear to be not in a state of emergency but rather in one of civil war, to which rules such as those of article 3 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War should apply. So long as it remained the official policy to protect the power of some and to ensure the exploitation of Salvadorian people, the violations of basic human rights would continue.

76. Commenting on article 6 of the Covenant, members referred to the great number of civilian deaths in the civil war in El Salvador, many of which were attributed to the security forces of the State and related rightist extremists and to the reported abduction and disappearance of the President and other members of the (non-governmental) Salvadorian Commission of Human Rights of thousands of intellectuals known to be opposed to government policies, and they wondered whether that was not the result of an official policy and, if not, what steps the Government had taken to investigate the situation and prosecute those responsible and to defend the right to life in accordance with the Covenant; whether the Government was applying strict regulations on the use of fire-arms by the security forces and, if so, whether punishment was inflicted on members of those forces who abused their authority and, particularly, whether there had been a single conviction for murder in this respect. Information was also requested on the exact number of persons who had disappeared and on whether there was a governmental body to which the families of missing persons could apply for information. Noting that, according to new procedures established in El Salvador in 1980, persons under 16 years of age may be tried for certain serious crimes, one member asked whether that meant that the death sentence could be imposed on minors under 16 years of age and whether there had been any such cases or if minors had always been granted a reprieve.

77. As regards articles 7 and 10 of the Covenant, members expressed their concern over the reported allegations suggesting that torture was widely and routinely used

by police in interrogations, in particular in the so-called "cain section" at the headquarters of the national police, and they requested information on measures taken to punish those responsible and on the number of police officers who had been tried and sentenced for acts of torture, and acts of terrorism committed against members of the medical profession. Reference was also made to the reported mistreatment of prisoners and of inhuman and tragic conditions of detention and it was asked whether the Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials had been brought to the knowledge of military personnel and prison staff and whether the reported abuses had been committed through ignorance of those norms.

78. In relation to articles 9 and 14 of the Covenant, members noted that whereas no mention had been made in the report of derogations relating to the provisions of those articles, the procedures established under Decree No. 507 of 1980 were hardly consistent with the provisions of the Covenant. It was pointed out that this Decree, for example, contained a series of provisions having the effect of prolonging pre-trial detention far beyond what had been envisaged in the Covenant, that it provided for a secret investigation procedure that was absolutely contrary to the provision of the Covenant and that it denied the right of the accused to examine the witnesses against them. In this connection, it was pointed out that although article 4 of the Covenant permitted measures derogating from some of the provisions of article 14, such measures must not go beyond "the extent strictly required by the exigencies of the situation"; and that although the establishment of military tribunals in times of emergency was not rare, such tribunals may not carry investigative procedures to such extent as to violate basic human rights. More information was requested on the procedures of those tribunals; on the rights of the accused, such as possibilities of appeal; on the relationship of the establishment and procedures of military tribunals to the Covenant; and on the reported intimidation of judges, jurors and witnesses.

79. With regard to articles 18 and 19 of the Covenant, members requested more information on the measures taken to ensure freedom of religion and of expression and it was asked whether the report of persecution of a large number of university professors was correct and, if so, whether their only fault had been that of expressing their views on the situation; whether all newspapers really enjoyed the same rights and how many newspapers had been suspended at the time of elections.

80. Commenting on article 25 of the Covenant, one member noted that the Salvadorian Government was endeavouring to guarantee constitutional stability through the electoral process and he pointed out that it was difficult to imagine the kind of elections that could take place in a situation of armed confrontation. Another member noted from the report that constitutional guarantees had been suspended "except in the case of political parties which were authorized to seek electoral support and carry out election propaganda without being subject to the restrictions imposed by the suspension of constitutional guarantees", which prompted questions concerning the criteria applied to decide that some parties might continue to enjoy their rights and others not. Information was requested on the measures taken to ensure respect for the political rights enshrined in article 25 of the Covenant.

81. As regards article 27 of the Covenant, information was requested on minorities, particularly aborigines, which existed in the country, their participation in political life, the extent to which they were involved in the internal conflict and the manner in which their cultural identity was being preserved and protected.

82. Questions were also raised in relation to other articles of the Covenant, particularly as regards the position of El Salvador concerning the right of the Namibian and Palestinian peoples to self-determination and independence under article 1 of the Covenant and the rights of women under article 3. A number of references were made to the reports by Mr. Pastor Ridruejo, the Special Rapporteur of the Commission on Human Rights, with a view to stressing the need of implementing the recommendations set forth therein.

83. Replying to questions raised by members of the Committee, the representative of the State party stressed that his Government was seeking peace and understanding and, to that end, had created a Peace Commission which had proposed that members of the opposition should lay down their arms and take part in the forthcoming elections for which purpose they would have to constitute themselves as political parties and receive legal recognition from the Central Council for Elections. The opposition, however, had not accepted that proposal and had demanded instead that a new government formed of the existing authorities and guerrilla groups should be constituted and that the armed forces should be integrated with the guerrilla groups. The Government of El Salvador had rejected that suggestion, but the Peace Commission intended to continue the dialogue, which was the recommendation of the international community and a means of arriving at a peaceful solution. He admitted that the solution in El Salvador and in Central America in general lay in the acceptance of pluralism and that every country should establish the system of its choice and that the Salvadorian Government, for its part, was prepared to go along with either Marxist or democratic régimes. He also pointed out that a number of different movements were trying to influence Salvadorian political life and that his Government hoped to receive international understanding and co-operation in its search for a solution which would ensure the success of the forces of peace. Noting that there were possibly 50 foreign military advisers in El Salvador, he stated that their presence was not at all the same thing as foreign military intervention, but a form of co-operation in the military area.

84. Replying to questions under article 2 of the Covenant, the representative stated that the provisions of the Covenant could be invoked directly before the judicial or administrative authorities because they were incorporated in the country's internal legislation. As to the competence and functions of the national Human Rights Commission, he explained that it was to ensure the enjoyment of the inalienable rights of the individual and to recommend appropriate measures for the effective observance of human rights. The Commission could hear complaints and initiate inquiries and, to that effect, it could require the Office of the Prosecutor, the Courts of the security forces, to furnish information in respect of complaints, for example with regard to alleged disappearances. Stressing that the Commission had very broad legal power and that it had been doing important work, he explained that, in the first half of 1983, it had heard 504 complaints and had secured the release of 45 persons. In addition, 91 persons alleged to have disappeared had been located and several detainees had benefited from the Amnesty Decree.

85. Replying to a question raised under article 4 of the Covenant, he pointed out that the state of siege had resulted in the partial suspension of some articles of the Constitution regarding the freedom of persons to enter and leave the Republic, the right to free dissemination of ideas, the inviolability of correspondence and the right of association for illicit purposes. Denying that the situation in his country was one of civil war to which rules such as those of article 3 of the Fourth Geneva Convention of 1949 should apply, he stated that El Salvador had a

legitimate Government which exercised its powers with internal and international competence; that the left-wing and right-wing guerrillas were clandestine groups indulging in crime and terrorism outside the legal framework of the nation; and that those groups were engaged in a rebellion, and not an insurrection, against their legitimate Government and that such a crime was punishable under civil and military law.

86. As regards article 6 of the Covenant, the representative stated that the Government was not responsible for the 30,000 deaths caused by the events taking place in his country and he refuted any suggestion of a policy of official repression against the people of El Salvador. He pointed out that a number of persons had fallen victim to political violence and terrorism, while others had died as a result of being caught in skirmishes. As to the question of disappearances, he referred to the complaints received by the United Nations Commission on Human Rights, Working Group on Enforced or Involuntary Disappearances, regarding El Salvador and to the efforts of his Government to investigate all cases brought to its attention and indicated that some of the persons concerned had not actually disappeared but were in detention and that the Government had reported the details of the charge against them and their place of detention; that when a person was in fact missing, it was very difficult to find any information; and that there were instances of young people who had gone underground and taken pseudonyms while others had been found buried in unidentified graves. His Government was assuming its full responsibilities, which were to restore public order and to ensure the safety of its citizens and the enforcement of the law, but the task was a difficult one and there was no easy solution.

87. Commenting on questions raised under articles 7 and 10 of the Covenant, the representative stated that the law established severe penalties for those found guilty of committing excesses or abuses against detainees; that guidelines for the treatment of detainees had been laid down; that the Salvadorian Human Rights Commission and the Red Cross had given lectures to the appropriate authorities in an effort to promote good treatment of detainees; and that there had been cases of abuses and excesses where the guilty had been punished after careful investigation. In this respect, he referred to the recent annual report of the Ministry of Defence to the Assembly which stated that 202 persons had been punished for violations of human rights. He also stated that the Special Representative of the Commission on Human Rights had visited prisons and had found them spacious and well-ventilated and that his Government had signed an agreement on detention with the International Committee of the Red Cross which enabled the Red Cross to find out about the detention of prisoners and to come and talk to them with a doctor without Government witnesses.

88. Replying to questions raised under articles 9 and 14 of the Covenant, he indicated that there was no secret detention but only a secret initial investigation; that Decree No. 507 did not involve any violations of the human rights guaranteed under the Covenant; and that it had been promulgated because of the need to deal with the emergency situation. He informed the Committee that in the light of the new Constitution, the Human Rights Commission of El Salvador had been requested to analyse Decree No. 507 with a view to submitting a draft revised version to the Constituent Assembly for consideration and approval and that, in addition, a committee had recently been set up to review criminal legislation. He undertook to bring members' observations on the Decree to the Government's notice, and he hoped that this exceptional measure would be repealed under the new constitution. He also pointed out that the military tribunals dealt with serious

crimes against the State and other crimes against peace and customary law, including terrorism, sabotage, subversive association and other crimes specified in article 376 of the Penal Code. A number of problems affected the judicial system, such as shortage of funds and staff and inadequate means of investigation, an unduly heavy work-load which delayed proceedings, cumbersome legal procedures, the difficulty of gathering evidence when people were afraid to give legal testimony and intimidation of and attacks on judges. Instances of corrupt justice had occurred and had given rise to the appropriate proceedings.

89. In connection with questions raised under article 19 of the Covenant, the representative stated that there had been no press censorship, despite the threat posed by clandestine groups and that the climate of opinion in the country had been affected by the general situation, but the press was permitted to criticize the Government, as could be seen from a reading of the newspapers.

90. Responding to comments made under article 25 of the Covenant, he referred to the 1982 elections, in which 85 per cent of the electorate had voted and during which the state of siege had been lifted and he pointed out that the election had been a reflection of the will of the people and had showed that elections could be held even in a situation of violence. He also stated that, prior to the 1982 elections, the political parties had been authorized to carry out election campaigns over a period of several months and that the fact that they enjoyed freedom of association had been illustrated recently by the demonstrations held in San Salvador in connection with some aspects of the agrarian reform.

91. Replying to questions raised under article 27 of the Covenant, the representative stated that El Salvador comprised a homogeneous blend of races and the small groups of minorities had no major presence in the country; that the indigenous population were probably no more than 15,000 persons and that their language and culture had nearly disappeared. However, they had organized themselves into a National Association of Salvadorian Indigenous Populations, which had held two congresses, the most recent having been held in 1983. The Government was engaged in various efforts to support such groups; the Ministry of Labour was working on employment problems and linguists and anthropologists on linguistic and cultural problems.

92. He replied briefly to the few questions raised under articles 1 and 3 of the Covenant indicating his country's support for the inalienable rights of the Namibian and Palestinian peoples, the rights of women, family and children. He also made several references to the reports of the Special Rapporteur of the United Nations Commission on Human Rights in support of some of his replies and views.

93. The representative of El Salvador stated that his Government was fully prepared to submit a further report in the light of the legal reforms that were being instituted.

94. The Chairman declared that the Committee had not completed its detailed consideration of the report and that the timing of the Committee's further consideration would depend on the time of submission by the Government of El Salvador of the supplementary report to which it had referred in its communication prior to this discussion and which he had stressed should be as early as possible. He trusted that the representative of El Salvador would transmit to his Government the deep concern of the Committee regarding the tragic situation and loss of life in El Salvador. It was the Committee's conviction that efforts must

continue in the Committee, in other United Nations bodies and in other organizations to assist El Salvador to revert to a normal situation as soon as possible.

Sri Lanka

95. The Committee considered the initial report of Sri Lanka (CCPR/C/14/Add.4 and 6) at its 471st, 472nd, 473rd and 477th meetings held, on 31 October, 1 and 2 November 1983 (CCPR/C/SR.471-473 and 477), in accordance with a decision taken at the nineteenth session, in view of the public emergency which had then just been proclaimed, to give priority to this report.

96. The report was introduced by the representative of the State party who described certain features of the country, its long history of parliamentary democracy, its position in world affairs, its stand on human rights and some landmarks of the 1978 Constitution which had abolished distinctions between forms of citizenship.

97. He stated that the Government of Sri Lanka appreciated that the foundation for maintaining international standards of human rights must be public awareness; and that it had, therefore, been taking steps to promote understanding and respect for human rights among the population, mainly through the activities of the Sri Lanka Foundation, a body corporate created by statute, whose object was the promotion and protection of human rights and belief in the democratic way of life. The Foundation, inter alia, had arranged for the Covenants to be translated and published in Sinhalese and Tamil for public distribution and had conducted competitions among school children with a view to stimulating an interest in human rights. He also described at length the steps taken to introduce the teaching of human rights into the curricula of universities and schools.

98. The representative referred to unfortunate developments that had taken place in Sri Lanka, where the even tenor of political and social life and the functioning of democratic institutions had been disrupted from about the mid-1970s by the activities of an extremist group demanding a separate State and pointed out that, accordingly, it had been necessary to adopt certain legislative measures, such as the Prevention of Terrorism Act, to cope with the terrorist attempts to subvert a legitimate and popularly elected Government.

99. Members of the Committee emphasized the importance and quality of Sri Lanka's report and of its delegation, which bore witness to the Government's willingness to enter into a genuine dialogue with the Committee, and it noted that the country was distinguished by a long tradition of legality and great judicial independence. It was pointed out that the action taken by the authorities to publish the Covenant in Sri Lanka's national languages and to stimulate public interest, particularly that of young people and children, in the question of human rights was especially praiseworthy. Information was requested about the substance of the human rights teaching offered in the schools.

100. Commenting on article 1 of the Covenant, some members wondered whether the interpretation given by Sri Lanka of the right of self-determination did not constitute an excessive restriction since that article was addressed to all States parties and that sovereign and independent States had obligations thereunder. It was asked whether, for example, part of the population might not claim the right of secession or plead for a federal form of government in accordance with the right of

peoples to self-determination as enshrined in this article. Other members pointed out that the right of self-determination in that article was generally interpreted as a right that could not be exercised to the detriment of territorial integrity or by elements which formed an integral part of any given country. They did not agree, however, that this right was not applicable to sovereign States since it was a right of a continuing character - the right of the whole people to choose their form of government and to elect their chosen representatives to carry out policies endorsed by the electorate.

101. With reference to article 2 of the Covenant, it was pointed out that the report merely stated that the Constitution had prohibited discrimination, but that it would be interesting to know how discrimination by private individuals on grounds of race had been dealt with. It was also noted that while the fundamental rights provided for in the Constitution should apply to all persons, some distinction had been made to the effect that aliens in general were unable to enjoy the rights to freedom of speech, freedom of assembly and freedom of association and that the Covenant allowed for derogations from article 2, paragraph 1, and article 26 only in situations of national emergency, whereas the Constitution of Sri Lanka allowed for general restrictions. In this connection it was pointed out that it appeared from the Constitution that no examination of its national law had been made by Sri Lanka before its accession to the Covenant to ensure conformity with its obligations under that instrument - hence the above-mentioned inconsistencies. Noting that the provisions of the Covenant, which were not recognized in common law or incorporated in the domestic legislation of Sri Lanka, could not be directly invoked before the courts and that the Supreme Court was competent to rule on the constitutionality of draft enactments, members asked what remedies would be available to an individual who considered that a measure of domestic law or an administrative act violated his or her rights as defined in the Covenant; which law would prevail in the event of a conflict between common law and the provisions of the Covenant; whether a general principle of interpretation had been developed in the court system of Sri Lanka whereby national statutes must be interpreted in the light of the country's international obligations; and more precisely, whether the Supreme Court could take into consideration a bill's consistency or inconsistency with the Covenant and, if not, who could. Explanations were requested as to the meaning of article 16 of the Constitution, and it was asked whether the provisions of that article did not restrict the effectiveness of the rights proclaimed in the Constitution or embodied in the Covenant.

102. Noting that the Supreme Court had sole and exclusive jurisdiction to hear and determine violations of the rights recognized by the Constitution and that persons whose rights were infringed by executive or administrative action had only one month to bring the matter before the Supreme Court, members pointed out that the number of cases must, therefore, be limited and wondered whether the time-limit of one month was not too short, especially in the case of a detainee who might find access to legal advice difficult. Reference was made to a statement in the report to the effect that the Supreme Court was able to "grant such relief or make such directions as it may deem just and equitable in the circumstances", and information was requested on the effectiveness of the remedies offered to citizens by the Supreme Court and, in particular, about the number of cases that had been referred to the Supreme Court and their results; whether the Supreme Court had any discretion to extend the time-limit in certain cases and whether, in view of the distance and cost involved, recourse to the Supreme Court was effectively possible for all persons. In this connection, it was asked what the relations were between

the Supreme Court and the Ombudsman and whether recourse to the Ombudsman was an alternative to proceedings before the Supreme Court. More details were requested about the functions of the Ombudsman and the number and outcome of cases referred to him, and it was asked how accessible the Parliamentary Commissioner was in fact to an individual who claimed that his or her rights had been violated and whether the procedure governing relations between the individual and the Commissioner did make for the efficient investigation of grievances. Reference was made to reports of excesses on the part of police officers or the administrative authorities and to a police superintendent who had lost a court case but had subsequently been promoted and the compensation he had been ordered to provide had been paid by the Government, and it was asked whether the executive, at least indirectly, might act to protect officials who had exceeded or abused their powers and what the effects of such action could be, considering that respect for human rights in daily life depended more on the attitude of the Government and police than on court decisions.

103. With reference to article 3 in conjunction with article 23 of the Covenant, more information was requested about existing legislation and practice relating to equality between men and women in Sri Lanka and about access of women to educational institutions, Parliament, foreign service and to free professions. Recognizing that religious laws had to be respected in Sri Lanka as anywhere else and that they often led to discrimination against married women, members wondered whether the Sri Lankan Government had the means to verify that religious practices and laws were not contrary to article 3 of the Covenant and whether, when there was discrimination, the courts were authorized to take cognizance of the case and whether equality between both sexes existed in Sri Lanka in case of divorce.

104. Commenting on article 4 of the Covenant, members asked what derogations from the provisions of the Covenant had been considered necessary following the proclamation of the state of emergency; whether any of the rights listed in article 4, paragraph 2, had been derogated from; whether the Prevention of Terrorism Act was considered an emergency measure; and whether the Public Security Ordinance was compatible with this article. It was asked why the Sri Lankan Government had not thought fit to make the notification of the proclamation of the state of emergency, as required under this article, and to what extent the proclamation of the state of emergency had influenced the situation of human rights in Sri Lanka. In this connection, it was pointed out that as long as no notification or justification had been given in respect of rights permitting derogation, they must be considered in force and hence the Government must account for them as in normal situations.

105. As regards article 6 of the Covenant, it was asked what the Government was doing to protect children against epidemics, hunger and the like, whether there was an excessively high birth rate and high infant mortality and whether abortion was authorized. Information was requested about the use of firearms by the police, the existence or otherwise of strict rules governing such use and the penalties imposed on policemen for the careless use of firearms. Reference was made to the recent intercommunal clashes in Sri Lanka which had been marked by special violence and the loss of innocent lives as well as to the inability of the police to perform its duty and the failure of the prison authorities to ensure the safety of detainees, and it was asked what was the exact number of persons who had been killed; whether any thorough investigation had taken place of the incidents and, if so, with what results; and whether any measures had been taken to prevent incidents of the kind from recurring. In this connection, reference was also made to a provision of the Emergency Regulations, issued on 3 June 1983, to the effect that the police could

take possession of and bury or cremate any corpse and forbid anybody to be present on pain of committing an offence, and it was pointed out that this provision was extremely disquieting, especially from a moral point of view, since the respect due to the dead had been common to all peoples from the most remote antiquity. In the absence of a clear explanation, the hypothesis lay open that the provision would enable the police to dispose of potential sources of embarrassment in the form of corpses, the sight of which might give rise to questions, assumptions or certainties about the exact circumstances of the death and what had preceded it.

106. With reference to articles 7 and 10 of the Covenant, it was noted that the Constitution prohibited torture and cruel treatment but that some detainees had complained of ill-treatment by the police and the security forces. It was asked who received and investigated such complaints; how the offenders were dealt with; whether cases of torture had been tried by the courts and whether there were any relevant provisions in the criminal law; how prisons were supervised; and whether prisons were regularly visited by persons who were completely independent of the prison authorities. In this connection, reference was made to a statement in the report to the effect that the Supreme Court had unanimously decided that there was no evidence of "an administrative practice of torture or ill-treatment", and it was asked whether that meant that the Court had found unlawful practices in many individual cases but no evidence of a pattern which could be described as an "administrative practice" and what the role of the Supreme Court was under this article, which was linked with article 2 of the Covenant.

107. As regards article 9 of the Covenant, it was pointed out that no restrictions were permitted on the rights set forth in this article although derogations from that article could be made under the emergency powers envisaged in article 4 and that both Sri Lanka's Prevention of Terrorism Act of 1979 and the Public Security Ordinance seemed to derogate from article 9 without any attempt being made to meet the requirements of that article. It was also noted that by virtue of an amendment adopted in 1982, the Act of 1979, which had been originally of a temporary character, would henceforth remain in force until repealed and it was asked whether the 1982 amendment was not inconsistent with the emergency character of the legislation. More information was requested in that respect, since a formal notification setting out the justification for the departures which had been enacted was required under article 4 of the Covenant. Concern was also expressed on the measures taken under that Act, especially with regard to arrests without warrants and preventive detention by order of the Minister of Internal Security for a period of up to 18 - hrs as well as over alleged political detentions under Emergency Regulation No. 19, and it was asked whether those provisions were really justified by the situation; how many persons were being detained under a ministerial order; what the maximum period was for which any such person had been held; what remedies were available to an individual who considered himself to be a victim of arbitrary detention; and what the legal status of insurgents was.

108. Commenting on article 14 of the Covenant, members asked whether the courts were really accessible to all, what training was required to become a judge, who appointed judges and whether any women served as judges, particularly in the Court of Appeal; whether the independence of the judiciary was ensured at all levels and whether referral of cases to the Secretary to the Ministry of Defence might not threaten such independence; whether confessions as a means of proof were accepted under Sri Lankan law and, if so, what happened in the case of confessions extracted in dubious circumstances. Noting that the constitution had placed certain restrictions upon the rule of presumption of innocence and that the Covenant would

allow a departure from the rule only within the framework of a state of emergency envisaged under article 4, one member expressed the view that the limitation clause in the Constitution should be reconsidered in the light of Sri Lanka's obligation under the Covenant.

109. With reference to article 15 of the Covenant, members noted that, according to the Prevention of Terrorism Act, acts which had not been criminal offences when they had been committed could be declared criminal offences and they asked how the Government of Sri Lanka could justify the retroactive character of that Act in the light of the express provisions of this article and the prohibition in article 4 of any derogation therefrom. It was also pointed out that article 15 (1) of the Constitution which provided for restriction of the prohibition of retroactivity was incompatible with article 15, paragraph 1, of the Covenant and it was suggested that the Law Commission of Sri Lanka should look into the matter.

110. In relation to article 18 of the Covenant, reference was made to article 9 of the Constitution which gave to Buddhism the foremost place, and information was requested on the actual effects of that provision, particularly with regard to the application of articles 25 and 26 of the Covenant.

111. As regards article 20 of the Covenant, information was sought on the relevant provisions of the Constitution and the criminal law which covered the prohibition of war propaganda as provided for in this article. One member noted the absence in the report of any mention of the prohibition of racial hatred as required in this article and he maintained that such prohibition by law would be a most effective means of combating the terrorism now racking Sri Lanka.

112. In connection with article 22 of the Covenant, it was asked what the reasons were for prohibiting certain political parties; what remedies were available to them and whether they had been invoked; and what the exact meaning was of article 15 (4) of the Constitution which authorized restrictions on the freedom of association in the interests of national economy.

113. With reference to article 24 of the Covenant, it was asked whether the legal status of children born out of wedlock was the same as that of legitimate children; how children acquired Sri Lankan nationality and whether children of Indian Tamils residing in the country had Sri Lankan nationality or the nationality of their parents; and what legislative or administrative measures had been taken to protect children against exploitation and discrimination in employment.

114. Commenting on article 25 of the Covenant, one member sought clarification of the Fourth Amendment to the Constitution prolonging the mandate of the present Parliament until 1989 which appeared to involve a serious curtailment of the democratic rights of the people. Another member requested information about the constitutional amendment requiring public officials to take an oath disavowing separatism.

115. Regarding article 27 of the Covenant, it was asked what distinction was made in practice between the official language and the national language in a country of multilingual character as Sri Lanka, whether the need to know two languages was not, for the majority of the population, an obstacle to entry to the civil service or university; how effect was given to article 29 of the Constitution which bound the State to enable all citizens to use their own language; and whether the Tamils, the majority of whom lived in another country, were considered as an ethnic group

or as a national minority. Noting that Sri Lanka was a "multinational, multilingual State", members requested details about the measures taken to guarantee the rights of ethnic and religious minority groups, about the assistance given to them to preserve their cultural identities, languages and religions and about the manner in which they were represented in Parliament.

116. It was suggested that nearly all of Sri Lanka's problems in the human rights field arose from racial antagonisms which the newly independent State had inherited from the colonial era; that traditional differences between the majority of the country's population and a sizeable minority, deliberately encouraged by foreign political and economic interests, were at the root of the process of deterioration of the human rights situation; and that unless a political solution was found, it would be extremely difficult in future to avoid a recurrence of the tragic events which had occurred in July 1983.

117. Members of the Committee asked what the Government of Sri Lanka intended to do about the observations and questions put forward in the Committee and whether the people of Sri Lanka would be given a full account of the discussion which had taken place in the Committee. It was stressed that the examination of States' reports could be fully effective only if the people were properly informed, so that a genuine dialogue could be said to take place between the Committee and the public, as well as the Government, of the country concerned.

118. Responding to comments made by members of the Committee, the representative of the State party stated that his Government's accession to the Covenant formed part of its affirmative action to promote human rights in Sri Lanka in line with its commitments to the ideals of the United Nations, but that the terror that ravaged his country recently could not be contained or controlled by normal processes applied by civilian law enforcement authorities, but could only be done by the assumption of additional powers limited to the exigencies of the situation and to the areas where the terrorists operated.

119. Replying to questions raised under article 1 of the Covenant, the representative pointed out that there was both a legal and a political problem with respect to this article and that they were competent to deal only with the legal question. They also reiterated their Government's interpretation of the phrase "the right of self-determination" as applying to peoples still under alien and foreign rule but not to sovereign independent States or to a section of a people or country.

120. As regards questions raised under article 2 of the Covenant, the representative confirmed that certain provisions of the Constitution had restricted the rights of non-citizens but that this was not done in a manner inconsistent with the Covenant. He also stated that the restrictions provided in article 15 (7) of the Constitution, although grouped together for the sake of convenient drafting, were not applicable to all the rights set forth in the Constitution but only to certain relevant rights in the interests of public health or morality. He conceded that article 16 of the new Constitution diverged from the provisions of the Covenant but explained that its authors, rather than abolish or invalidate any laws that were not strictly in compliance with the Covenant, had decided to keep them in force while, at the same time, setting up a Law Commission in order to examine those laws and change them as necessary from time to time, and that the Commission's current programme of work included the study of procedures for the enforcement of fundamental rights. All the rights set out in the Covenant were, in

substance, enshrined in one or more articles of the Sri Lankan Constitution; any bill which was consistent with the Constitution was ipso facto consistent with the Covenant. The constitutional validity of bills could be examined, as had been the case on several occasions, at the request of any citizen or organization composed of citizens.

121. Replying to a question concerning the one-month time-limit for invoking the jurisdiction of the Supreme Court, the representative stated that a certain time-limit had to be provided to ensure that complaints were not made so long after the alleged event that the veracity of the complaint could no longer be verified. However, the Supreme Court had recognized that no one should be denied relief as a result of having been unable to set the machinery in motion within the prescribed period. With regard to the cost of instituting an action, if account was taken of the fact that free legal assistance was available and that lawyers often appeared in fundamental rights cases without a fee, it could be said that the cost of invoking the jurisdiction of the Supreme Court would be about \$100. In this connection, he stressed that there was no limit placed on the power of the Supreme Court to grant any relief that might seem just and equitable. The Ombudsman or Parliamentary Commissioner could investigate not only the violation of a fundamental right but also any other case of injustice; that once he had concluded his investigation, he had to report to the Parliamentary Petitions Committee, and that where complaints were made of any offences or acts of violence by service personnel, they would initially be examined by a senior police officer and then referred to the Attorney General who would institute proceedings in appropriate cases. There was also a procedure whereby any person could institute proceedings by way of a private complaint before the magistrate. There was no official tolerance of violence. In every case where there was evidence of a breach of the law by service personnel, those legal procedures would be set in motion, without exception.

122. With respect to the questions put under article 3 in conjunction with article 23 of the Covenant, the representative stressed that no discrimination between men and women was permitted and that equality of all citizens, irrespective of sex, was protected by the Constitution. He gave a detailed account of women's active role in all spheres of life - political, diplomatic, social, educational etc. - and pointed out that there was no discrimination in labour law as between male and female workers except in a few areas such as the tea plantation sector, in which there was a difference based on the nature of the work performed.

123. Replying to questions raised under article 4 of the Covenant, the Committee was assured that none of the articles referred to in article 4, paragraph 2, of the Covenant had been derogated from in the emergency; that the conditions under which derogations from other articles of the Covenant were permitted under the Constitution related to the safeguarding of national security and public order, the protection of public health and morality, and the securing of due recognition and respect for the rights and freedoms of others; that restrictions on the rights described in the Covenant could be imposed not only for an emergency but also on other grounds specified in respect of each article; and that none of the restrictions stipulated in the Constitution went beyond the restrictions recognized by the Covenant. He informed the Committee that the necessary procedures to fulfil Sri Lanka's obligation to notify the proclamation of the state of emergency as stipulated in this article were being devised by the relevant authorities.

124. In connection with questions put under article 6 of the Covenant, the representative pointed out that the quality-of-life index in Sri Lanka was among the highest in the third world; that the infant mortality rate compared favourably even with that of some developed countries; that population growth had declined sharply in the last decade; and that family planning clinics in his country had existed for many years. He also gave details on capital punishment and said that no one had been executed since 1977. He stated that there were strict laws and regulations under which firearms could be used by members of the security forces; that members of the police did not carry firearms in the course of their normal duties except in the case of an emergency; that prison officers were entitled to cause death in apprehending an escaped prisoner; that the prison incident which resulted in the death of 53 prisoners involved an unprecedented situation where prisoners in one part of the prison had attacked prisoners in another part, that the small number of guards within the prison had been unable to control the rioters who had caused the death of the prisoners in question; that a magisterial inquest had immediately been held and the proceedings had been made public in the newspapers; and that steps had since been taken by the authorities to prevent a recurrence of a similar disaster. As to the emergency regulations regarding the disposal of dead bodies, he pointed out that the question of not holding a public inquest and excluding relatives from the funeral had a vital relevance in the context of the situation in Sri Lanka; that police officers had no right to bury deceased persons without an inquest unless the Secretary of Defence decided that an inquest was unnecessary after considering the notes of investigation; and that the reason for the exclusion of persons from the funeral was to prevent attendance by sensation-seeking journalists who might further exacerbate the feelings of the public.

125. With reference to questions raised under articles 7 and 10 of the Covenant, the representative pointed out that on receipt of complaints containing allegations of torture, action would be taken to instruct the judicial medical officers, who were not members of the security force, to examine the plaintiff. There had been allegations made by detainees who had given evidence in court and been subjected to cross-examination but that, on those occasions, it had been established that the allegations were false and unsupported by any evidence from doctors who had examined the detainees. Prisons were regularly inspected and every member of Parliament had the right to make surprise visits and thus complaints of ill-treatment could be investigated and action taken where necessary.

126. In connection with comments made under article 9 of the Covenant, he stated that the Prevention of Terrorism Act was an emergency measure; that its preamble set out the purposes and conditions under which it had come into operation; that the question really turned on what was meant by an imminent threat to public order and whether it could be limited to a definite period of time or should continue as long as the threat existed from a group of people who had already used violence against government officials and institutions. He also stressed that all detentions under the Act were subject to review by the courts which, like the United Kingdom courts, had never been deterred by the existence of an exclusion clause from subjecting an order to judicial review; that the writ of habeas corpus had been resorted to in a number of cases and the reasons to arrest had to be justified; and that the Act also provided for the release of prisoners on bail in certain circumstances. The Emergency Regulations provided that where the Secretary to the Ministry of Defence was of the opinion that it was necessary to prevent a person from acting in a manner prejudicial to national security or the maintenance of public order or the maintenance of an essential service, or from committing any

act of sedition or incitement to sedition, or any act of terrorism or fostering terrorism, such a person might be detained. However, the validity of the detention order could always be challenged in the courts and in such cases the Secretary to the Ministry of Defence would have to satisfy the court that the order had been made bona fide in the interests of national security and not for any collateral purpose.

127. With respect to questions raised under article 14 of the Covenant, the representative stated that the Constitution sought to ensure the independence of the judiciary and provided security of tenure, fixed salaries and insulation of judges from disciplinary controls by the Executive; and that the superior courts could not be arbitrarily abolished or the judges removed, except by the procedures provided for in the Constitution. Noting that the admissibility of confessions made to police officers as evidence against defendants was part of the law of several countries, he stressed that the Prevention of Terrorism Act, while making confessions admissible, contained safeguards against forced or non-voluntary confessions; that since no confession forced from a suspect was acceptable in a court of law, there would be little purpose in compelling him to make such a statement by torture or other means; and that there was the further safeguard that the court always looked for corroboration of a confession by testing the evidence. He explained that it had been necessary to enact such legislation because experience had shown that witnesses to acts of terrorism were frightened of becoming victims in their turn if they testified against the perpetrators of such acts. He also pointed out that the provision in the Constitution that "the burden of proving particular facts may be placed on an accused person" was explained by the dictum of Lord Ellenborough that where an accused person did not offer an explanation for circumstantial evidence which pointed to his guilt, it was to be presumed that he had no explanation to offer; that while the Constitution permitted the burden of proof in such circumstances to be placed on the accused, the onus of proving guilt always rested on the prosecution. It was, therefore, not unreasonable to provide that when an accused person subsequently wished to challenge the admissibility of his confession as being non-voluntary, the burden of establishing the facts which had affected his mind should be placed on him.

128. Commenting on questions posed under article 15 of the Covenant, the representative could not agree that the Prevention of Terrorism Act contained any provisions that could be construed as having retroactively created offences, but agreed that article 15 (1) of the Constitution which provided for restriction of the prohibition of retroactivity could be construed as detracting from article 13 (6) of the Constitution which prohibited retroactivity. He assured the Committee that his Government had not hitherto invoked the provision concerned and that he was confident that it would not do so in the future, but that the point could be referred to the Law Commission for consideration.

129. Replying to further questions raised, he explained the historical background for the provision in the Constitution giving to Buddhism the foremost place and pointed out that the Constitution also stressed that the freedom of all Sri Lanka citizens to practice their own religion was guaranteed; that the people were free to establish their own places of worship; and that the Government had been providing assistance to people of other religious faiths.

130. As regards questions raised under article 22 of the Covenant, he stated that his Government had considered that it had a right to apply restrictions in the interests of public safety or public order, as provided for in this article; and

that there were currently no such restrictions, but that his Government preserved its right to apply them as necessary.

131. Responding to questions raised under article 24 of the Covenant, the representative stated that children born out of wedlock acquired the nationality of their mothers; that a child born in wedlock would acquire the father's nationality; and that if his mother was a Sri Lankan, he would be granted Sri Lankan nationality on application. However, there was provision for the granting of citizenship by registration to any child born in Sri Lanka who was not entitled to citizenship by right of descent.

132. As regards questions put under article 25 of the Covenant, he explained that the Fourth Amendment to the Constitution sought to extend the life of Parliament by referendum; and that far from being a diminution of the sovereignty of the people and in conflict with article 25 of the Covenant, the referendum was an exercise of that sovereignty. The Fourth Amendment also stipulated that there must be a minimum poll of 66 per cent of the entire country and that a substantial majority of those voting must demonstrate their wish to extend the life of Parliament. Referring to a question concerning the oath to be taken by a person under the seventh schedule to uphold the Constitution, he pointed out that it was impossible to uphold the Constitution and at the same time to agree to dismantling the territory. It was open to the people of the country to amend the Constitution if they so wished, but so long as the Constitution existed, it was not possible to advocate separatism.

133. In connection with questions raised under article 27 of the Covenant, the representative explained the role of the Division of Hindu Religious Affairs established under the Ministry of Regional Development, the International Hindu Centre and the Department of Moslem Religious Affairs established under the Moslem Mosques and Charitable Trusts (Wakufs) Act in furthering religious and cultural interests of Hindu and Moslem interests, respectively. He also informed the Committee that 23 Tamil members of Parliament - 12 per cent of the total membership of 168 - had been elected in the latest general elections in 1977 and that there were several procedures for safeguarding the proper representation of minorities in Parliament.

134. The representative stated that his Government's campaign against separatist terrorists was not directed against the country's Tamil minority group but against those of its members who had chosen to abandon the democratic political process and to proceed instead by methods of inhuman terror with the object of creating a separate State through armed struggle against the Government.

135. He informed the Committee that there was tremendous interest in human rights matters at all levels in Sri Lanka; that the proceedings reported from Geneva regarding the consideration of the report would undoubtedly be given full coverage; that there would be questions in Parliament not only about the Committee's proceedings but probably also about the performance of members of the delegation; and that the Government would give serious attention and consideration to what had occurred and would no doubt await the Committee's report on the hearing. Some further observations by members of the Committee were also replied to.

Guinea

136. The Committee considered the initial report of Guinea (CCPR/C/6/Add.5) at its 475th, 476th, 485th and 486th meetings, held on 2 and 9 November 1983 (CCPR/C/SR.475, 476, 485, and 486), in the absence of a representative from the State party. The decision to do so had been taken in accordance with recommendations made by a working group and after debate in the Committee (CCPR/C/SR.473).

137. It was recalled that at its nineteenth session the Committee had pointed out to the Government of Guinea, through the Secretary-General, that the consideration of its initial report had been postponed on four occasions in the hope that the Government of Guinea would agree to its request that the report be examined in the presence of representatives of the Government with a view to conducting a useful and constructive dialogue on the promotion and implementation of the human rights guaranteed in the Covenant; and that in view of the brevity of the report, the Government had also been requested to provide supplementary information at the time when the report was considered in the interest of greater conformity with the Committee's guidelines.

138. The Committee regretted that no response to its request had been received from the Government of Guinea and that for the first time a State report would have to be examined in the absence of a representative from that country. It was stressed that it was the Committee's established principle that reports of States parties should be discussed with the active support of government representatives in so far as such procedure was helpful both for the Committee itself and for the Government, because it facilitated mutual understanding and promoted fruitful co-operation; and that the initial report of Guinea was brief and incomplete since it contained inadequate information on legislation and practices and made no reference at all to many of the articles of the Covenant. Notwithstanding the foregoing considerations the view prevailed that under article 40 of the Covenant, it was the duty of the Committee to examine the report before it whether a representative from that country was present or not and it was decided to proceed with comments and questions in the hope that through the relevant summary records the Government of Guinea would understand the areas in which the Committee had expressed concern about the implementation of the Covenant and that the present procedure would lead to more active co-operation in the future.

139. The Committee noted that part I of the report contained statements of a general nature, inter alia, that "citizens of Guinea felt no need to invoke the Covenant because national legislation was at a more advanced stage"; that the State party guaranteed the application of the provisions of the Covenant; that according to article 35 of the Constitution "The President of the Republic shall be responsible for ensuring the independence of the judicial authority"; that "any important decision of a general character is always the subject of critical examination at all levels of the structure of the Party and the State ..."; that "a person who claims that any of his rights have been violated may lodge a complaint with the different levels of the Revolutionary Power or the different judicial bodies"; that part II of the report (Information relating to articles of the Covenant) briefly referred to the right of self-determination, non-discrimination and the position of women and stated that "slavery, torture and arbitrary arrest were unknown" in the country; and that the report contained no information on articles 4, 6, 11 to 13, 17 to 22, 24 and 25 to 27 of the Covenant.

140. Referring to part I of the report, members noted that the report failed to give a full description of the judicial organization or of the role of the Party; that the role of the judiciary should have been better presented so that the Committee could know what remedies were available to individuals alleging violation of their rights, in particular whether remedies existed in the event of violations of individual rights under the Covenant by Government officials, whether Party officials wielded public power which might affect the enjoyment by private citizens of the rights guaranteed under the Covenant and whether there were any remedies against actions of Party officials. It was concluded that the provisions of article 35 of the Constitution did not satisfy the requirements of article 2, subparagraphs 3 (a) and (b), of the Covenant.

141. Pointing to the statement in part I of the report that the Constitution of Guinea respected and guaranteed to all individuals within its territory the rights recognized by the Covenant without distinction of any kind, it was asked whether the Covenant had been ratified by enactment of a law and had accordingly become the law of the land so that its provisions might be invoked before the courts and administrative authorities.

142. Referring to part II of the report, one member pointed out that the report was too concise to provide the Committee with information on points concerning which Guinea had a reputation of having a satisfactory record, such as the right of self-determination, non-discrimination, the granting of equal privileges and the imposition of equal obligations for any African who established himself in the national territory, and equality between men and women with regard to all civil and political rights. In this connection, some members noted with appreciation that Guinea had ratified the Convention on the Elimination of All Form of Discrimination against Women and that the People's National Assembly included over 50 women out of 210 deputies. Further information was requested in this connection as to whether there were laws providing for equal remuneration of women and men for work of equal value, what was the rate of maternal illness and mortality, and what measures were being taken to reduce it.

143. Referring to the last sentence of part II, one member stressed that it would be interesting to know what measures had been taken to make it possible that slavery, torture and arbitrary arrest were unknown in the country, and that other States should be informed about Guinea's experience, as required by article 40.

144. It then was suggested that the Government of Guinea should provide further information with regard to issues or problem areas of particular relevance to rights not permitting of derogation such as detention without trial, treatment of detainees and conditions of detention, death by execution or otherwise, disappearances and trials.

145. With regard to articles 6 and 7 of the Covenant, it was observed with concern that information from many sources indicated that a large number of executions had taken place in Guinea, some of them not even complying with the domestic law; that a number of persons in Guinea had died in prison as a result of torture or of the so-called "black diet", which consisted in denying any food and water to detainees; and that disappearances of persons had been reported, which also constituted a violation of article 17 in so far as the family of the disappeared was not informed of his whereabouts. It was also observed in this connection that article 6, paragraph 6, clearly looked towards the abolition of the death penalty and it was asked whether Guinea had given thought to its abolition.

146. Referring to article 9 of the Covenant, one member asked whether there were any special legal enactments which would provide for the arrest and detention of political opponents, or whether the Head of State held discretionary powers not defined by laws. It was noted in this connection that a number of arbitrary arrests of persons with differing political opinion had been reported. Information was requested in this connection as to whether a state of emergency existed in Guinea in respect of political prisoners and, if so, whether the provisions of article 4, paragraph 3, of the Covenant had been complied with.

147. With regard to article 10, reference was made to inhuman prison conditions, inter alia, that prisoners were held incommunicado in tiny cells. It was pointed out, with regard to the treatment of prisoners, that particular attention should be given by the State party - apart from article 10 - to article 7 and the general comments adopted by the Committee. It was suggested that a copy of the Standard Minimum Rules for the Treatment of Prisoners should be transmitted to the Government of Guinea which subsequently should provide information on the steps taken to comply with those requirements.

148. As regards article 12, one member asked whether emigration laws existed, how many persons had made use of them and whether people were prevented from leaving the country.

149. As regards article 14 of the Covenant, members noted that article 38 of the Constitution of Guinea stated only that the judicial organization of the Republic should be established by law and that article 35 of the Constitution provided, inter alia, that the President of the Republic should be responsible for ensuring the independence of the judicial authority. They sought information on what courts existed, who the judges were, how judges were appointed, what were their qualifications and under what circumstances they may be dismissed, and whether there were genuine guarantees of the independence and impartiality of the judiciary in accordance with article 14 of the Covenant. Members were of the opinion that it was necessary to clarify the whole situation with regard to such trials, which apparently were not conducted by ordinary courts but by the Central Committee of the Party, the National Assembly and standing revolutionary committees.

150. Pointing out that according to the report every citizen could have the services of a lawyer free of charge for grave political crimes such as treason, information was sought as to whether no such right existed for persons charged with less serious offences; explanations were also requested about a provision in the Constitution, namely that the presence of a foreign lawyer who already shared the views of the accused was not allowed; further questions were asked concerning the institutional aspect of assistance by legal counsel which according to the Covenant presupposed the existence of independent lawyers not acting under Government instructions but responsible only to the accused person; in this connection attention was drawn to some reports, that lawyers in Guinea were organized as public officials under the instructions of the Government.

151. Referring to the principle of presumption of innocence enshrined in article 14, information was sought on the use of confessions, particularly whether confessions made before police authorities were accepted as such or had to be reviewed before the judge.

152. Members further asked how political rights in general were guaranteed in a one-party State such as Guinea, where some degree of political freedom would be

necessary in order to ensure compliance with articles 19, 21, 22 and 25 of the Covenant and, more particularly, with the principles of political non-discrimination as set forth in article 2, paragraph 1, and article 26 of the Covenant. In this connection information was sought on whether a free independent press existed in the country.

153. Referring to article 27, one member drew attention to information he had received to the effect that the Peul ethnic group suffered discrimination and persecution by the authorities in Guinea.

154. Referring, inter alia, to article 44 of the Guinean Constitution, a member asked to what extent public education was free and compulsory and what measures had been taken to ensure that young people received an education in accordance with the spirit of the Covenant.

155. After consideration of the report, the Committee learned that on 4 November 1983 three representatives of the Government of Guinea had visited the Human Rights Liaison Office in New York and had conveyed the firm wish of their Government to fulfil its reporting obligations under the Covenant in future and had blamed lack of co-ordination for the Government's failure to respond to the various requests sent to it. They also indicated the need for specialized training in human rights matters for officials in charge of the preparation of the report. The Committee took note of this visit expressing appreciation at Guinea's reaction, though unofficial, to its consideration of the report.

156. In conclusion, members of the Committee decided to request a new report from the Government of Guinea not later than 30 September 1984, which should be prepared in accordance with the Committee's general guidelines as to the form and content of States reports under article 40 and most particularly should keep in view the questions and comments made by members of the Committee during the consideration of the first report.

157. The Committee considered that in the relevant letter of the Chairman to the Government of Guinea positive reference should be made to the unofficial contact by the three representatives of the Government in New York. The Committee also declared its willingness to provide assistance to the Government in the discharge of its reporting obligations under the Covenant.

158. The Committee at its twenty-first session was informed orally by the representative of Guinea of the new Government's declaration of intent with regard to human rights and about the effected release of all political prisoners in Guinea. The representative requested, on behalf of his Government, the Committee's assistance, by way of the Secretariat, in meeting its international obligations.

159. The Chairman of the Committee then invited the representative of Guinea to draw his Government's attention to the decision of the Committee adopted at its twentieth session when the initial report of Guinea had been considered in absentia.

160. At its twenty-second session, the Committee decided to authorize one of its members, Mr. Ndiaye, to make himself available for consultations with the Government of Guinea with a view to ascertaining the ways in which the Government could be assisted in fulfilling its reporting obligations under the Covenant.

New Zealand

161. The Committee considered the initial report of New Zealand (CCPR/C/10/Add.6) including the reports on Niue and Tokelau (CCPR/C/10/Add.10 and 11) at its 481st, 482nd and 487th meetings, held on 7 and 10 November 1983 (CCPR/C/SR.481, 482 and 487).

162. The report was introduced by the representative of the State party who pointed out that, before his country had ratified the Covenant, it had found it necessary to undertake an extensive review of domestic law and practice owing to his country's wish to ensure scrupulous compliance with the obligations which it had been about to accept and to the fact that New Zealand had neither a written constitution nor a bill of rights. He referred to the means by which the rights set forth in the Covenant were secured and protected in New Zealand and to the major pieces of legislation adopted following that review to promote human rights in his country, i.e. the Human Rights Commission Act 1977. He emphasized the long-standing recognition by the executive and legislative branches of government that the absence of formal restraint on the authority of Parliament to legislate did not sanction legislation that invaded individual liberties, as well as the existence of an alert, informed and critical public opinion that found expression in a free press.

163. The representative also informed the Committee of a number of relevant developments which had taken place in his country since the submission of the report, notably, the entry into force of the Official Information Act 1982 which created a statutory presumption that official information was to be made available unless there was good reason for withholding it on one of the grounds specified in the Act, the Citizenship (Western Samoa) Act 1982 concerning the citizenship of a large number of Western Samoans and the Industrial Law Reform Bill recently introduced in the Parliament and designed, inter alia, to ensure that membership in trade unions was voluntary.

164. Members of the Committee commended the excellence and comprehensiveness of the report in so far as it fulfilled the requirements set out in the Covenant and was consistent with the guidelines laid down by the Committee. Noting the wide-ranging activities of the New Zealand Human Rights Commission, members requested more information on its educational programmes and asked whether teaching about human rights was included in the curricula of schools and universities and in the professional training of lawyers, police officials, security services, civil servants and teachers. It was also asked whether only the act of accession to the Covenant was published or the text of the Covenant as well and, if so, in what language.

165. As regards article 1 of the Covenant, information was requested about the efforts made by New Zealand for the effective promotion of the principles laid down in this article and, particularly, about its position with regard to Namibia and Palestine.

166. Commenting on article 2 of the Covenant, members referred to the Race Relations Act and wondered why the Act, which had recently been promulgated and which prohibited discrimination on several grounds, had failed to mention discrimination on grounds of political or other opinion, property, birth or other status as provided for in this article; and what justification was there for educational establishments to be maintained wholly or principally for students or

one race or colour as mentioned in the Act. In this connection, reference was made to the recently enacted Citizenship (Western Samoa) Act 1982 and an explanation was requested of the human rights issues, mainly dealt with in article 2, paragraph 1, article 12, paragraph 4, and article 24, paragraph 3 of the Covenant, to which this Act had given rise. Noting that the incorporation of the provisions of the Covenant in domestic legislation and the granting of superior status to those provisions was a very efficient means of meeting the requirements of article 2, paragraph 2 of the Covenant, as that enabled the provisions of the Covenant to be invoked directly before the courts and the administrative authorities and prevented Parliament from enacting legislation that could restrict individual rights contrary to those provisions, members asked whether any proposals had been made for enacting a bill of rights. Noting that the common law system in New Zealand was based on precedent rather than on written law, one member asked how the opinions of judges in New Zealand were adapted to contemporary situations, what framework governed the exercise of their discretion and what guarantees existed to ensure that they complied with New Zealand's obligations under the Covenant.

167. More information was requested on the terms of reference and functioning of the New Zealand Human Rights Commission, the Ombudsman and the Race Relations Conciliator and it was asked whether the Commission's and the Ombudsman's power of investigation extended to breaches of the rights and freedoms recognized in the Covenant and to acts committed by local government officers; who removed the Ombudsman and members of the Commission and on what basis their removal could be effected; what had been, since its establishment, the number and subject of investigations carried out by the Commission; and of civil actions it had brought before the Equal Opportunities Tribunal; whether complaints were brought to the Equal Opportunities Tribunal more frequently by the Commission or by individuals themselves; and whether referral of complaints to the Conciliator precluded referral to the courts.

168. With respect to article 3 of the Covenant, members appreciated the honesty of the Government in describing frankly the difficulties encountered in applying this article and welcomed the efforts made to improve the situation. They requested information about the percentage of females attending high schools and universities as well as their numbers in the various professions and in Parliament and the foreign service. It was also asked whether the objective sought by the adoption of the Equal Pay Act 1972 had been attained.

169. In relation to article 6 of the Covenant, some members pointed out that the right to life included other aspects than those mentioned in the report regarding the death sentence and requested information on infant mortality, particularly in ethnic communities such as the Maoris, and on whether the figures varied with regard to urban or rural population or a particular category of population.

170. In connection with articles 7 and 10 of the Covenant, explanation was requested of a statement in the report to the effect that, with certain limited exceptions, the person adversely affected cannot take the law into his own hands; and it was asked whether corporal punishment had been abolished and what were the forms of punishment that could be inflicted on pupils and whether any abuses were committed. Concern was expressed in the Committee that, in theory, it was possible under New Zealand law to convict a child aged between 10 and 14 years, since children under 18 years of age required rehabilitation rather than punishment; and that the reservation made by New Zealand concerning the segregation of juvenile offenders from adults did not seem to be a matter of necessity and shortage of

suitable facilities but one of deliberate choice. Information was requested on New Zealand's success with the rehabilitation of prisoners and on the contents of the police instructions used in the only prison on the island of Niue in the absence of any local rules and regulations governing the administration of prisons. Noting that in the case of Tokelau, where there was no prison, prisoners had to be transferred to New Zealand prisons, one member pointed out that such a procedure made visits by families and friends extremely difficult and could lead to unduly harsh conditions of confinement. With reference also to article 18 of the Covenant, it was noted that, according to the report, a prisoner could be required to attend the services of a denomination to which he belonged, and it was pointed out that this seemed to be an infringement of the right to freedom of religion and conscience consecrated in the Covenant.

171. Commenting on article 9 of the Covenant, members recalled that the Committee had been in favour of a broad interpretation of the concept of deprivation of liberty and noted that the report seemed to be confined to cases of arrest and detention under criminal law. They stressed the need for safeguards to protect the rights of those detained on other grounds such as infectious diseases, vagrancy, unsound mind and so forth and asked whether New Zealand had taken steps in that direction.

172. As regards article 14 of the Covenant, it was asked why it had been considered necessary to establish an Equal Opportunities Tribunal in New Zealand; whether the Judicial Committee of the Privy Council tried cases and what its functions and powers were; what was the composition of the Children and Young Persons' court and what recourse procedure was available against its decisions; whether the cost of litigation was a problem in New Zealand and, if so, what was being done about it; who paid for interpretation services when an accused person or a witness did not speak or understand English; and whether there existed purely moral means of compensation, such as publication in newspapers of the decision rescinding a sentence.

173. As regards article 17 of the Covenant, it was asked whether citizens were protected against possible abuse in the handling of the computer-based information system referred to in the report; what procedures were available to them in the event of unwarranted intrusion upon their privacy and whether they could claim compensation for it. Noting that the monitoring of telephone calls was regulated in New Zealand by legislation, but that the Human Rights Commission was granted some authority in the area of respect for privacy, one member asked whether the Commission had ever examined the application of the New Zealand Security Intelligence Service Act 1969 and the Misuse of Drugs Amendment Act 1978 and, if so, whether it had made any comments or recommendations; and whether any new measures to improve the protection of privacy had been initiated or were planned for the future.

174. In connection with articles 18 and 19 of the Covenant, it was asked whether the New Zealand authorities had taken specific measures to protect the Maori religion; what specific means were available to ensure freedom of expression and opinion; whether section 123 of the Crimes Act 1961 relating to blasphemous libel was fully compatible with the Covenant, to what extent it was applied, whether any proceedings had been initiated under it during the past 10 years and what had been the decisions of the courts.

175. Referring to the reservation made by New Zealand with regard to article 20 and recalling that the Committee had expressed the view that prohibition of war propaganda was compatible with freedom of opinion, some members wondered whether New Zealand might not consider withdrawing its reservation on that article.

176. In relation to article 22 of the Covenant, it was asked what was the justification for the refusal to register a union which fulfilled satisfactorily the conditions required for registration on the pretext that the interests of its members might be represented adequately by an already existing union.

177. With respect to articles 25 and 27 of the Covenant, it was asked what criteria had been followed to determine who was a Maori and to set the number of Maori seats in Parliament at four; whether the administration recruited a percentage of Maoris proportionate to their number; whether there was any legislation to protect Maoris' fishing rights and to prevent the pollution of their fishing grounds; whether a person who had been educated in Tokelau could find employment in New Zealand; whether the Tokelauans could enjoy the benefit of all the resources in this exclusive economic zone recognized as such by New Zealand under an agreement with them; whether there had been any encroachment, for economic reasons, on the lands and other property rights of indigenous peoples; and what were the practical results of the measures taken in favour of the Maori and Pacific island peoples.

178. Replying to questions raised by Committee members, the representative of the State party explained that in order to promote education in the field of human rights, the New Zealand Human Rights Commission organized lectures in schools, arranged weekend forums for senior students and had a library of video material ready for distribution, and arranged lectures and seminars for police officers, public servants, lawyers and university students. The Covenant had been published in English, and pamphlets explaining its provisions had been published in English, Maori and all the relevant Pacific island languages; in addition, copies of the report of New Zealand to the Human Rights Committee were available in public libraries.

179. Replying to questions posed under article 1 of the Covenant, the representative stated that for many years his country had defended the right of self-determination of the peoples of southern Africa and Palestine in the United Nations and in other international bodies, and he gave details about his country's policies in this regard.

180. As regards article 2 of the Covenant, the representative pointed out that the limited coverage of distinctions in the Race Relations Act did not reflect a belief that discrimination on grounds specified in article 2, paragraph 1, either existed or was permissible, since one of the basic principles of the New Zealand legal system was the equality of all persons before the law; that no person could claim preferential rights on the basis of any of the distinctions referred to in this article, or could be placed at a disadvantage under the law by reference to such distinctions. He also stated that maintaining an educational establishment for students of one race was in conformity with article 1, paragraph 4, of the International Convention on the Elimination of All Forms of Racial Discrimination which authorized "special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals"; that there were no schools in New Zealand reserved for the majority race (Europeans), but that there were certain schools reserved for Maoris for the specific purpose of promoting the advancement of the Maori people. Replying to a question concerning the implications

of the enactment of the Citizenship (Western Samoa) Act, he gave a detailed account of the historical background since the attainment of independence by Western Samoa in 1962 and pointed out that the Act was in conformity with the fundamental principles of international law based on the concept of the State having responsibility for a specific territory and a specific population and with a decree issued by Western Samoa in 1959 under which the acquisition of another citizenship automatically entailed the loss of Samoan nationality. The two States had therefore agreed on the principles and procedures to follow in matters concerning citizenship and migration, by adopting a protocol relating to the Treaty of Friendship.

181. Regarding the question whether the protection of human rights was adequate in the absence of a basic law detailing those rights, the representative repeated what he had said in his introductory statement in this respect; he briefed the Committee on the growing debate in his country as to whether a Bill of Rights was needed as a super guarantee of human rights and stated that his Government so far had been of the opinion that the guarantees offered by a written Constitution and a Bill of Rights were not significantly superior to New Zealand's unwritten Constitution and that the conscience of the people, including those who wielded power, was the ultimate guarantee of the protection of human rights. He also explained that the doctrine under which courts were generally bound by prior decisions was not an inflexible one, and that the common law had repeatedly shown itself to be a living and dynamic system; that in areas where the common law had not developed rapidly enough or had been found inadequate for some other reason, statute law bearing on human rights had been introduced as required.

182. The representative provided more information on the powers and the functioning of the New Zealand Human Rights Commission and the Ombudsman, whose power extended to local bodies as well as to central government and could investigate any matter referred to them by a Parliamentary Committee or the Prime Minister. He explained the grounds on which the Ombudsman was able to determine that a complaint about administrative action was justified and referred to certain cases to demonstrate that the Ombudsman promoted the rights recognized by the Covenant. He pointed out that since the Chief Ombudsman, or an Ombudsman nominated by him, was a member of the New Zealand Human Rights Commission, the possibility of any conflict between the two institutions was greatly reduced, and indicated that the removal from office of an Ombudsman required parliamentary approval since he was an officer of Parliament. He also informed the Committee that from 1979 to 1983 the Human Rights Commission had undertaken more than 2,000 investigations, mostly concerning discrimination on grounds of sex; that most complaints had been settled without recourse to the Equal Opportunities Tribunal; and that the Equal Opportunities Tribunal had heard seven cases relating to sexual, religious and racial discrimination, with the Commission taking action on three occasions on behalf of groups, as compared to action initiated on four occasions by individuals. Replying to another question, he indicated that if an act or an omission was unlawful by virtue of the provisions of the Human Rights Commission Act and the Race Relations Act alone, the aggrieved person had to use the procedure provided for in the two Acts and that, subject to that provision, nothing in either Act affected the right to bring civil or criminal proceedings which might have been brought if the legislation had not been passed.

183. As regards article 3 of the Covenant, the representative explained the major efforts which had been made to increase educational opportunities for women and gave impressive statistics showing the percentage of female enrolment in various educational institutes and universities as well as in professional and technical occupations and in the diplomatic service. Noting that Government Service Equal Pay Act, 1960, had been extended in 1980 to cover emoluments other than base wages and salaries, he pointed out that all measures taken to achieve equal opportunities in employment in the private sector, including the Equal Pay Act, had been implemented; that guidelines had later been established to arrive at equitable pay levels for both sexes; and that, according to the 1981 census, the average ordinary wage of women in industrial occupations was 76.4 per cent of the average male wage.

184. Replying to questions raised under article 6 of the Covenant, he informed the Committee that infant mortality rates in New Zealand had generally decreased over the past 10 years; that his country occupied an intermediate position in the infant mortality rates of developed countries, except in the case of the post-neonatal infant mortality rates, for which New Zealand ranked highest among the developed countries, the major reason being the sudden infant death syndrome whose nature and high incidence in his country were not yet understood; that differences in urban and rural life expectancy might exist but that no relevant statistics were currently available.

185. In connection with questions posed under articles 7 and 10 of the Covenant, the representative stated that, in certain specified cases, New Zealand's law allowed for private justice whereby it recogn'ed a very limited power of citizen's arrest, but if that limited power was exceeded, the person involved exposed himself to criminal and civil liability; that corporal punishment or flogging had been abolished a long time ago; that the Children and Young Persons Act provided special procedure and special protection for all young persons who had committed offences; that the practice was to segregate persons under the age of 17 from other offenders and to keep their detention as short as possible; and that the Minister of Justice was considering a proposal to establish two experimental regional prisons for offenders aged 17 and over. He noted the concern voiced in the Committee that the New Zealand Police Instructions referred to in the report on Niue did not have force of law in Niue and therefore might not be in compliance with the Covenant and that he would convey that view to the Niuan authorities. Stressing that the initiative for the transfer of Tokelauan prisoners to New Zealand prisons did not lie with the New Zealand Government, he indicated that if family members of friends travelled to New Zealand to visit the prisoners, the Justice Department would permit extended visiting times; that the New Zealand Prisoners' Act and Rehabilitation Society would assist in finding accommodation for visitors but there was no provision for financial assistance from the Government. He acknowledged that the question concerning the Penal Institutions Regulations under which a prisoner might be required to attend the religious service of a denomination to which he belonged was a penetrating one which would be referred to the competent New Zealand authorities.

186. With respect to questions raised under article 9 of the Covenant, he admitted that the portion of the report dealing with this article could have been broader in scope, since the liberty of the person could be affected by means other than the application of criminal law. In this connection he stated that the rights of persons placed in mental institutions against their will were safeguarded under the Mental Health Act which contained provisions for the committal, care, treatment and

discharge of such patients and their right of appeal, i.e. to a judge of the High Court who could order an inquiry and order the patient's discharge if deemed appropriate.

187. Replying to questions posed under article 14 of the Covenant, the representative stated that the Equal Opportunities Tribunal was established because the technique of special tribunals, which had been widely used in this country, had been thought to have advantages in terms of continuity of experience, specialist membership, flexibility of procedure and the expeditious dispatch of cases brought before them; that the Judicial Committee of the Privy Council, inter alia, heard appeals from members of the Commonwealth which had not abolished such final appeal from their own courts, and that, since New Zealand had not done so, the Judicial Committee was its supreme judicial body; that the Children and Young Persons' Court was composed of a district court judge; that eligibility for legal aid now covered only persons with very low income and that a recommendation made in 1983 to extend that aid to people with modest incomes was being studied by the Government; and that material or moral compensation, as such, did not exist formally in New Zealand law but that as a matter of practice, compensation was paid on an ex gratia basis.

188. In connection with questions raised under article 17 of the Covenant, he stated that the New Zealand Human Rights Commission had not yet examined the operation of the New Zealand Security Intelligence Service Act, 1969; that the Computer Centre was excluded from the Commission's jurisdiction and that the Chief Ombudsman had already conducted an investigation into the Security Intelligence Service.

189. As regards questions raised under articles 18 and 19 of the Covenant, the representative stated that no specific measures had been taken with respect to the Maori religion, as distinct from Maori culture and language, and that those Maoris who professed a religion had generally adopted the Christian faith; that freedom of expression and opinion was a fundamental principle of New Zealand common law; that some limitations and restrictions imposed by both common law and statute were thought to be compatible with the Covenant; and that the problem of the compatibility of section 123 of the Crimes Act 1961 relating to blasphemous libel with article 19 (3) of the Covenant would have to be brought to the attention of his authorities for consideration.

190. Commenting on questions put to him regarding New Zealand's reservations on article 20 of the Covenant, he stated that there was no current problem of war propaganda in his country and that, if such a problem arose, the need for legislation making war propaganda a specific offence could be reconsidered.

191. Replying to a question raised under article 22 of the Covenant, the representative explained that an essential feature of the system established by the Industrial Relations Act was that only one registered union could cover a particular category of workers; that there was a right of appeal to the Arbitration Court against refusal to register a union on the grounds that its members could be represented adequately by an existing union; that the failure to register a union did not mean that it ceased to exist but rather that it was deprived of the benefits that flowed from registration; and that in his Government's view, this restriction was permissible under the terms of article 22, paragraph 2, of the Covenant.

192. With respect to questions raised under articles 25 and 27 of the Covenant, the representative explained how the law determined who was Maori for the purpose of

elections and pointed out that, in practice, persons of Maori descent were not required, when enrolling, to produce any evidence of their ancestry and that people had a certain freedom of choice as to whether they enrolled in one type of electorate or another. The answer to the question concerning the allocation of only four Maori seats in Parliament was that a number of Maoris chose to enrol on the non-Maori roll. The total on Maori electoral rolls currently made up 3.72 per cent of the total on all-electoral rolls. In 1967, the electoral law had made it possible for a person registered as a Maori elector to stand for Parliament in any electorate. At present there were six Maori members of Parliament - four in the Maori seats and two in others. He also pointed out that several areas in his country were recognized by legislation as reserves where Maoris had exclusive fishing rights and that a full 200-mile exclusive economic zone had been established around Tokelau and that all the resources of that zone belonged to the people of that island. Replying to other questions, he stated that the Treaty of Waitangi of 1840 had confirmed and guaranteed to the Maori people the possession of their lands, estates, forests and fisheries; that there was still a strong feeling of injustice among some minority groups with respect to a number of land claims; that there was now a markedly more sympathetic attitude to land claims; that it was the Government's general policy to revert land that was no longer required for the purposes for which it had been acquired from the original owners and that payment of compensation was now authorized for the descendants of those who had been dispossessed of their lands the previous century. He informed the Committee of the wide range of educational and social programmes which had been established and which had contributed in many ways to the advancement of the Maori people and he admitted that more had still to be done for them as well as for other minority groups.

Yugoslavia

193. Since the second periodic report of Yugoslavia was the first of its kind for any State party to be considered various ways and means for approaching and proceeding with the study of second periodic reports in general were discussed by the Committee at its twentieth session, 466th and 480th meetings, held on 25 October and 4 November 1983 (CCPR/C/SR.466 and 480/Add.1). The Committee took into account, in this connection, the guidelines adopted at its thirteenth session regarding the form and contents of reports from States parties under article 40, paragraph 1 (b) of the Covenant (CCPR/C/20) 12/ and the suggestions made in that regard by its Working Group on General Comments (see para. 59).

194. In pursuance of paragraph (i) of the statement on its duties under article 40 of the Covenant, adopted at its eleventh session (CCPR/C/18), 13/ the Committee during the twentieth session entrusted a working group of three members to review the information so far received by the Committee in order to identify those matters which would seem most helpful to discuss with the representatives of the reporting State. The working group prepared a list of questions to be put to the Yugoslav representative, inter alia, dealing with progress made and measures taken by the Government of Yugoslavia since the consideration of its initial report to implement the provisions of the Covenant and defining particular areas of concern under a number of articles. The list elaborated by the working group and subsequently supplemented by the Committee was transmitted to the Yugoslav delegation prior to its appearance before the Committee, together with a note stressing that the Yugoslav delegation should also expect some questions regarding other articles of the Covenant. With a view to achieving a more constructive and richer dialogue, the Committee also agreed with the concurrence of the representatives of

Yugoslavia, to use a method - different from the one used for the consideration of initial reports - which provided for immediate responses by the representatives to questions that had been posed.

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195. The Committee considered the second periodic report of Yugoslavia (CCPR/C/28/Add.1) at its 483rd, 484th and 488th meetings, held on 8 and 10 November 1983 (CCPR/C/SR.483, 484 and 488). The report was introduced by the representative of the State party who noted that Yugoslavia's second periodic report consisted primarily of answers to questions put by members of the Committee during consideration of Yugoslavia's initial report. The representative stated that while no major amendments to Yugoslav legislation pertaining to civil and political rights had been adopted during the second reporting period, major efforts had been directed towards ensuring the fuller implementation of existing regulations. In this connection, he stated that exceptional efforts had been made to strengthen "self-management", which was seen as the basic pre-condition for realizing and promoting both individual rights and freedoms and for ensuring full equality of the various nationalities in his country; that the Assembly of the Socialist Federal Republic of Yugoslavia had examined in detail the question of the realization of constitutional rights, freedoms, obligations and responsibilities of citizens and working people and had called upon the Federal Government to report on the practical steps taken to promote and protect such rights and freedoms; that the Federal Chamber of the Assembly had decided to conduct regular reviews relating to the actual exercise and protection of constitutional rights and freedoms and to the execution of Yugoslavia's international obligations and had proposed to the other chamber of the Assembly - the Chamber of Republics and Provinces - to provide for similar concrete action in areas within its competence.

196. The representative of the State party also referred to various human rights' public information and education activities, citing, in particular, the fact that the news media had conducted public debates on human rights issues, that human rights topics were incorporated in school curricula and that a conference had been organized by the Federal Supreme Court in 1981 to acquaint officials of various national institutions, including judges, public prosecutors and police authorities, with international human rights provisions and to provide guidance in the domestic implementation of these rights.

197. Members of the Committee expressed their appreciation to the Government of Yugoslavia for its second periodic report, parts of which they considered impressive and demonstrating that the highest political organs of the reporting State took a direct interest in human rights questions. With regard to the report's format, however, regret was expressed that the Committee's guidelines for the preparation of second periodic reports (CCPR/C/20) 12/ had not been fully observed and that an article by article approach was not followed.

Progress in the implementation of the Covenant

198. With regard to progress in implementing the Covenant's provisions, clarifications were requested concerning the reasons prompting a review of the realization and protection of constitutional rights by the Assembly and about the eventual results of such a review and further information regarding problems and difficulties being encountered. In addition, questions were asked concerning the accomplishment of a special working body which, according to the report, had been set up to monitor the implementation of the recommendations adopted by the Federal

Chamber of the Assembly. More information was also sought about the impact of the consideration by the Committee of Yugoslavia's initial report, particularly whether information about the activities of the Human Rights Committee, including its comments on the report, had been made available to the above-mentioned special working body and similar groups.

199. Referring to information received by the Committee from other sources about various initiatives taken by groups in Yugoslavia to amend the Constitution and to improve the implementation of human rights, it was asked what the fate of these initiatives had been.

200. In his reply, the representative of the State party attributed the lack of specifics regarding human rights developments primarily to the fact that the various bodies established to monitor the implementation of various recommendations made and reviews undertaken by the Assembly and its Chambers had only been in existence for a year or so and had not issued any reports as yet.

201. As an example of existing shortcomings and difficulties experienced, he cited a finding by a working group of the Assembly that since the exercise of some human rights was linked to economic factors regulated, under self-management, by collectives and the organizations of associated labour, situations existed that often were not in conformity with existing federal, republican and provincial statutes. The constitutional courts, if seized with such matters, were able to provide remedies, he noted.

202. In reply to a question as to whether there had been any court decisions directly applying the Covenant, the representative cited, inter alia, a passport case before the Constitutional Court where the federal statute had been upheld as being "in accordance with international obligations".

203. Finally, the representative asserted that the protection of human rights and the dissemination of relevant information was being adequately handled by the media, particularly the broadcasting bodies and newspapers, which devoted much time and space to individual complaints and their remedies; that school programmes and the organizing of human rights days were also devoted to the dissemination of information on human rights; and that the human rights instruments ratified by Yugoslavia had been published in the languages of the various nationalities.

Right of peoples to self-determination

204. Turning to the specific articles of the Covenant and with specific reference under article 1 to Yugoslavia's reported active involvement in the struggle for recognition and expansion of human rights and its important role in the realization of the rights of peoples to self-determination, it was asked what had been done to promote the rights of minorities in Yugoslavia; how self-management was applied in concrete terms to the different nationalities of the Yugoslav population, in conformity with the principles of the Covenant; how equality was achieved between those nationalities; and what were the legal provisions on ethnic minorities in the Constitutions of the republics and provinces.

205. In response, the representative referred to the Constitution of 1974 which confirmed the equality of all nations and nationalities. He stated that for the realization of this goal, inter alia, a special fund existed for investment in the economic development of the republics; that 45 per cent of this fund had been

allocated to the economically backward autonomous province of Kosovo; that the Constitution provided for equality through concrete measures often found in the provisions of self-management bodies; and that special attention was given to the representation of nationalities in federal, provincial and communal organs of authority. He expressed his Government's willingness to prepare an additional report regarding provisions of the Constitution and the legislation relating to the equality of nations and nationalities in Yugoslavia.

Article 2 of the Covenant

206. As regards article 2, paragraph 1, clarifications were asked regarding the discrepancy between the text of the Covenant and article 154 of the Constitution in so far as the rights referred to in the Constitution were not recognized "without distinction to political and other opinions".

207. The representative, while recognizing that this discrepancy in fact existed, pointed out that the Covenant could be directly invoked before the courts. He added that experts on constitutional law were of the opinion that constitutional law prohibited discrimination on grounds of political opinion.

208. Referring to article 2, paragraph 3, it was noted that although article 180 of the Constitution seemed to be in harmony with the Covenant, articles 215 and 216 of the Constitution provided for certain exceptions to the right of appeal and that, in addition, decisions taken in respect of individuals by the Assembly or the Presidency of the Republic were not subject to appeal.

209. In addition, information was requested concerning the distinction in the Yugoslav Constitution between "citizens" and "workers".

210. Replying to those questions, the representative of the State party pointed out that the right of appeal could be ruled out but only where other remedies existed. He acknowledged, however, that appeals were ruled out in decisions of the Assembly and the Presidency, although this provision of the Constitution was a rather theoretical one. He noted that according to the Constitution "citizens possessed Yugoslav nationality and thereby certain rights; that "workers" were persons to whom the Constitution recognized particular rights; and that there also existed a third category - "every person" - which applied to any other person on Yugoslav territory, such as aliens or stateless persons.

Equality of the sexes

211. Referring to article 3 and noting that Yugoslav law seemed to provide women with a remarkable status, information was requested as to the practical application of the law; particularly how equality between men and women was actually achieved in Yugoslavia where the impact of different cultures and religions had necessarily to be felt; how many women served as deputies and ambassadors; whether requirements concerning divorce were the same everywhere in Yugoslavia; what were the details in legislation relating to the voluntary interruption of pregnancy in the various provinces and republics; whether a housewife was classified as a "worker" and whether legal machinery existed to enable women both to exercise a profession and to discharge household tasks.

212. The representative replied that the problems of women concerned society as a whole, men as well as women; that women had acquired all the rights of "citizen"

and "worker"; that society protected women in their reproductive functions and ensured that their aspirations were satisfied; and that Yugoslavia had ratified many international instruments concerning women which had been integrated into domestic legislation. The representative recalled, however, that Yugoslavia had inherited different traditions emanating from different republics and the problems could not be solved immediately and that some legislation, for example, relating to the family reflected the differences among republics.

213. The representative, replying to specific questions, said that in 1982 17.53 per cent of the members of the Assembly of the Socialist Federal Republic of Yugoslavia were women and that the percentage in the assemblies of the federal units varied from 12 to 30 per cent. As regards the status of "housewife" it had been felt that the Yugoslav community was not required to remunerate work performed at home; that women working outside the house was no cause for conflicts; and that legislation favoured women, particularly in respect of retirement. However, a case had been brought before the Constitutional Court by women doctors who protested against the alleged advantage of early retirement and consequently the law on retirement was amended to enable women to work up to the age of 65.

Emergency situations

214. As regards article 4 of the Covenant, it was noted that article 317 of the Constitution which foresees in case of war or similar situations the suspension of a variety of rights, regulations and parts of the Constitution by decree had been adopted after 1978 (when the Committee had considered the initial report). Information was requested as to whether an exceptional situation had arisen since 1978. The representative replied in the negative, noting that in 1981 because of disturbances in the autonomous region of Kosovo only the right to movement had been restricted, under article 12 of the Covenant.

Right to life

215. Noting that, with regard to article 6, the report stated that "the Yugoslav self-management socialist society is oriented towards abolishing capital punishment", members inquired how that "orientation" was reflected at the practical level; how the reported 45 different offences punishable by the death penalty could be in line with article 6 of the Covenant, which required that the death penalty might be imposed only for the most serious crimes; and asked whether there was an organized movement in Yugoslavia for the abolition of the death penalty.

216. The representative of Yugoslavia explained that while the number of offences subject to the death penalty seemed high, these were quite exceptional cases related to exceptional situations endangering the internal or external security of the State; that Yugoslav authorities continued to support retention of the death penalty for most serious crimes but that several campaigns were conducted through the media, calling for its abolition.

Treatment of persons

217. Referring to articles 7 and 10, members remarked that although legislation on the treatment of persons deprived of their liberty was exhaustive, implementation seemed to be quite different; that the second periodic report had not answered questions asked during the discussion of the initial report, i.e. whether remedies were available to a person who had been ill-treated by the police; that further

information was needed on whether arrangements existed for regular inspection of prisons. It was asked what was the procedure followed in investigating complaints and what measures were taken against officials found to have infringed articles 7 and 10. It was also pointed out that the protection envisaged in article 7 of the Covenant was more extensive than that prescribed in the Law of Criminal Procedure, and it was asked whether there existed legislation that generally prevented people from being subject to a medical or scientific experiment without their consent.

218. While recognizing that there had been a few cases of abuse by members of the police who had been sentenced to imprisonment from one to 10 years, the representative proposed that Yugoslavia's next report provide more information in that regard, particularly concerning the prohibition of medical or scientific experiments.

Liberty and security of persons

219. Regarding article 9, information was requested on several points: whether in accordance with article 196 of the Code of Criminal Procedure - which stipulated that a police officer might make an arrest without a warrant - persons might be arrested just for questioning or only subject to certain conditions; whether compensation under article 9, paragraph 5, of the Covenant existed in cases where a person detained for questioning had been released once his innocence had been established.

220. The representative stated that the police had the right to keep a person in detention up to 24 hours; that such detention was only possible in cases specified in article 191 of the Code of Criminal Procedure; that conditions for granting compensation were set out in detail and the provisions in the Code of Penal Procedure so numerous that he would prefer, if the Committee so agreed, to submit all relevant information in an annex to his Government's next report.

Administration of justice

221. With reference to article 14, information was requested by members on the structure of the Yugoslav judicial and administrative system, more specifically, on the characteristics of the ordinary and self-management courts. In this connection, one member requested explanations as to article 230 of the Constitution which stated that judges of regular courts should be elected, re-elected or relieved of office under conditions and by a procedure which should ensure professional expertise and moral-political capabilities, which seemed to indicate, in the member's opinion that the judiciary was not separate but part of a uniform system of power and self-management.

222. Another member referred to an inconsistency in article 230 of the Constitution, namely that in paragraph 2 the judicial independence seemed to be guaranteed for regular judges; that however in paragraph 4 of article 230 no reference was made to the independence of judges of self-management courts.

223. As regards article 14, paragraph 3, information was requested about the legal assistance offered to an accused person in civil and in criminal cases, most particularly, at what stage of the investigation or trial the accused was informed of his right to have legal assistance and could avail himself of the services of counsel, and as regards the arrangements made to grant legal assistance to needy persons.

224. In response to the questions asked with regard to article 14, the representative pointed out that under the Yugoslav judicial system there were four kinds of courts: the regular courts, the commercial courts, the military courts and the self-management courts, including the courts of associated labour. Regular courts which dealt with civil and criminal action existed on communal, district, republic and provincial level; the federal court acted as body of last instance in exceptional circumstances such as in the case of acts punishable by death and in the case of extraordinary remedies. He stressed the special jurisdiction of the commercial courts which dealt mainly with disputes involving economic matters and cases relating to social property; organization of these courts differed according to the provinces and republics, the supreme regular court of the province or republic being also the highest instance for disputes on economic activities. The representative briefly referred to the military courts, it being understood that they dealt with criminal offences committed by members of the armed forces. He denied that self-management courts were conventional State organs, describing them as being mainly courts of associated labour dealing with cases relating to such matters as labour relations, wages and self-management agreements. He further stressed that in his opinion, Yugoslav legislature did not make distinctions between regular and self-management courts.

225. Turning to the question of legal assistance to the accused, the representative pointed out that in accordance with the provisions of the Code of Criminal Procedure the defendant was entitled to such assistance at all stages of the proceedings, including the time of first questioning if he was unable to defend himself; if the offence was punishable by a 10-year prison term or if the accused was tried in absentia; that in some cases defence counsel was appointed ex officio by the court but that the accused could ask that a particular lawyer be debarred.

226. The representative then turned to the questions raised concerning the "capabilities" required from professional and lay judges, stressing that the requirement of "political capabilities" of the candidate for judicial office meant this acceptance of the constitutional systems and order of the State; further noting in this connection that professional judges were elected for eight years and could be re-elected without limit.

227. Answering a question about lay judges, the representative explained that lay judges come from any professional background; that for the 423 regular courts the number of lay judges was 53,391 in comparison to 4,797 professional judges, and for the commercial courts, 3,451 lay compared to 258 professional, it being understood that a considerably higher number of lay judges than regular judges were required because the former were not always available to serve and because the ratio of lay to professional judges on a bench was higher.

228. Furthermore the representative asserted that the judicial authorities carried out regular checks in prisons, that the United Nations Standard Minimum Rules for the Treatment of Prisoners were strictly applied in all prisons; and that prisoners, through prisoners' councils, were permitted a degree of participation in prison administration, particularly regarding their living conditions.

Freedom of expression

229. Clarification was sought of the term "offences against the people and the State" - offences which were punishable by a prison term ranging from one to 10 years or by the death sentence in the most serious cases.

230. The representative indicated that this term covered a large range of acts mostly related to a wartime context, inter alia, counter-revolutionary activities threatening the social system, service in enemy armed forces in wartime, terrorism, conclusion of international treaties detrimental to Yugoslavia, incitement to national, racial or religious hatred and criminal collusion.

231. In connection with the stipulation under article 19 of the Covenant to the effect that restrictions must be expressly provided by law, which meant that the law defining the nature of criminal offences must be very precisely worded, concern was expressed by the members at the vagueness of expressions used in the Yugoslav Criminal Code whose provisions in particular articles 114 and 133 were liable to give rise to misunderstanding. It was pointed out in this connection that offences such as "damage to the reputation of Yugoslav society and against the State", for which severe prison sentences were provided, could therefore also include expression of opinions differing from those of the Government and hamper the free discussion of public affairs in contravention of articles 19 and 25 of the Covenant. Information was also requested as to whether peaceful campaigns for political reforms and activities of peace movements were authorized.

232. In his response the representative referred to a statement by the Supreme Federal Court, to the effect that only malicious or unjustified criticism of Yugoslavia's social and political system constituted an offence; that freedom of expression and opinion existed in Yugoslavia, in particular that criticism against the Yugoslav Government was freely expressed by journalists and broadcasters; and that only persons acting with intent to spread false information or to stir up national or religious conflicts had been charged under article 133. The representative of Yugoslav added in this connection that competent authorities were currently reviewing the provisions of articles 114 and 133 of the Criminal Code with a view to formulating observations and proposals designed to improve national legislation.

Political rights

233. As regards article 25, one member requested more detailed information on the role of the Party within the State; in particular whether the Party could wield power vis-à-vis individuals.

234. The representative of the State party observed that the League of Communists - which was not a political party in the conventional sense - had no power in regard to individuals; that it was one of the socio-political organizations - along with, inter alia, trade unions, the Socialist Alliance of the Working Peoples - which formed part of the institutions which the Constitution recognized as having a special role in the development of the Yugoslav social system. He further illustrated the role of the League of Communists by explaining the Yugoslav electoral system, according to which elections were held on three levels:

(1) local communities elected the members of the supreme organs of the Federative Republic and the republics and provinces; (2) the organizations of associated labour elected the members of their boards; and (3) the socio-political organs elected members of the social and political boards - a system that demonstrated total separation of powers between the League of Communists and the State.

Protection of minorities

235. Referring to article 27, it was noted that under the provisions of the Constitution the various languages spoken in Yugoslavia were on an equal footing. It was, however, inquired whether children belonging to a minority group residing outside the region where the minority group originated could receive primary and university education in their own language and whether there was a particular demographic threshold to reach.

236. The representative of the State party explained that the six Yugoslav nations and several nationalities, the latter being certain groups which originated in other countries, had the right to their language without a particular requirement, and that, however, there was a threshold of 1 per cent of the population in a community for the enjoyment of the rights inquired about by the Committee.

237. The representative stated that special measures were adopted to promote the development of the culture of nationalities and to ensure equality despite the costliness of these endeavors and the limited resources available. Bulgarian, Albanian, Hungarian, Italian and Czech newspapers were published; the Official Gazette of the Federative Republic was available in all seven languages and broadcasts were transmitted in all languages.

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General observations

238. Members thanked the Yugoslav delegation for its frank and detailed replies, in particular for the fact that the delegation had accepted as an experiment for the consideration of Yugoslavia's second periodic report the option of an immediate exchange of questions and answers. Members stated that the co-operation of the Yugoslav delegation had been most valuable and deserved thanks and that the constructive dialogue augured well for the future relations between the Government of Yugoslavia and the Committee.

India

239. The Committee considered the initial report of India (CCPR/C/10/Add.8) at its 493rd, 494th and 498th meetings held on 28 March and 30 March 1984 (SR.493, 494 and 498).

240. The report was introduced by the Attorney-General of India as representative of the State party who stressed the great importance his country had always attached to standard-setting in the field of human rights, calling the recession of India to the International Covenant on Civil and Political Rights an important landmark in this regard.

241. Recalling its size, population, history and traditions, including the caste system - initially analogous to occupational stratification which had been gradually perverted by introducing a hereditary element and social disabilities such as untouchability, he also referred to the crusade against the evils of that system. India's ancient traditions and cultures were already imbued with humanism and respect for the dignity of man and "non-violence".

242. He also referred to the struggle against colonialism and the trauma of the country's partition which accompanied its independence in 1947 and had strengthened the people's resolve to maintain the integrity and unity of their homeland. He then referred to India's Constitution of 1950 - inspired by the Universal Declaration of Human Rights - which enshrined wide-ranging fundamental rights including the right to equality, freedom and the right to constitutional remedies. He emphasized that the Consitution embodied all the principles and provisions of the Covenant long before the Covenant was adopted. The rule of law, parliamentary democracy and separation of powers among the legislature, the executive and the judiciary were among its main provisions.

243. Pointing out that the Supreme Court of India over the years had greatly liberalized the locus standi of individuals to institute legal proceedings, the representative of the State party explained that apart from individuals, voluntary organizations could institute proceedings before a court for the enforcement of the rights of a third party, individual or collective, and that the Supreme Court could initiate proceedings on its own on the basis of a letter or a press report, thus affording the poorest and most disadvantaged a possibility of asserting their rights directly before the highest court of the land. This Court had been remarkably active and considered that fundamental rights created positive obligations for the State to take measures ensuring the full exercise of those rights.

244. The representative further indicated that discrimination based on religion, race, caste, sex and place of birth was prohibited; that untouchability had been abolished by law. The State had also taken special measures to provide assistance to disadvantaged groups such as "scheduled castes" and "scheduled tribes". India had no State religion but it respected the right of all individuals and denominations to practice their faith freely.

245. The representative assured the Committee of India's sincere efforts to implement the provisions of the Covenant. Mass media, the press and voluntary organizations which had espoused the cause of human rights were raising the awareness of Indians of their rights. In such a vast developing country, however, economic and social problems continued to exist, in spite of the efforts made to resolve them.

246. Members stated that the report of India was clear and well-written but noted that the information provided by the brief report was too vague and that the report did not sufficiently indicate the factors and difficulties affecting the implementation of the Covenant. One member observed in this connection that the guidelines of the Committee concerning the preparation of initial reports - which in the case of India had been followed to the letter - tended to induce States to report on laws and regulations only and not on the human rights situation itself. Another member pointed out that the Committee's general comments, which were intended to assist States parties in preparing their reports, should have been taken into account by India.

247. Regarding the legal status of the Covenant in India, members recalled that treaties were not self-executing in India and that implementating legislation was necessary. Information was requested as to whether the provisions of the Covenant could be invoked in courts in India for the purpose of interpreting the domestic law. Clarification was also sought on the extent to which provisions of the Covenant were incorporated in India's internal legislation.

248. Questions were asked on the amount of publicity given to the Covenant in India; whether it had been printed in the Official Gazette, what other measures had been taken to publicize it, in which languages it was available; whether the report of India had been made available to the public and whether the proceedings before the Committee would be publicized.

249. On the subject of remedies, it was observed that the relevant information in the report was succinct but not helpful since it provided general principles, but not hard facts and specific details needed if the Committee was to perform its task. Information needed in this respect was along the following lines; what did remedies mean to the common man; how was access to courts possible for peasants in remote areas and what other remedies were available to them; had the question of setting up an Ombudsman arisen; and did procedural safeguards exist for protecting the rights of prisoners.

250. Various questions concerning sexual equality (art. 3) are raised (see paras. 254, 257, 265 and 266).

251. With regard to article 4 of the Covenant, it was questioned whether the special powers provided for in the Constitution for the re-establishment of public order were in conformity with the Covenant since they seemed to be unrestricted.

252. As regards article 6 of the Covenant, it was noted that Indian criminal law provided for the death penalty for serious crimes and information was requested on how frequently the death penalty had been imposed in India and whether it was intended to abolish it in the future.

253. Members further inquired whether, in view of the high infant mortality in the rural areas which was twice as high as in the cities, the Government would extend the provisions of medical care also to rural areas.

254. Noting that the Dowry Prohibition Act of 1961 had abolished dowries and prescribed punishments for perpetuating the practice, it was asked what other action had been taken to solve the continuing problem involving the immolation or self-immolation, particularly of young Muslim women who were unable to pay the required dowry. Concern was expressed about legislation promulgated in some disturbed regions of the country which exempted the police from prosecution in cases where fire-arms resulting in death were used. It was asked whether investigation had been conducted in such cases and what regulations and training were provided to police in the use of fire-arms.

255. With regard to articles 7 and 10 of the Covenant, information was sought on the procedures available to prisoners to follow up complaints against abuses committed by the police and security forces and regarding any provision allowing persons independent of the prison administration to inspect prisons or psychiatric establishments. More detailed information was sought on the prison system, the means used for the social rehabilitation of prisoners and the treatment of young offenders.

256. Regarding article 8, it was noted that although Indian legislation contained many provisions prohibiting forced labour, such practices as bonded labour, to which the report made no reference, were deep-rooted. Members of the Committee therefore wished to be informed about the extent of this problem in certain regions of India and of action taken to solve it.

257. Referring to articles 9 and 14, concern was expressed that in acceding to the Covenant India had appended a declaration stating that there was no enforceable right to compensation for unlawful arrest. Members also questioned the constitutional provisions on preventive detention which lacked appropriate guarantees for the victims, as well as the long periods of detention preceding trial and pending the exhaustion of applicable remedies. It was also asked why trials against women could be conducted in camera. Noting that destitute women could obtain free legal aid and advice the question was raised why only women enjoyed this right and whether the Constitution actually recognized equality between men and women.

258. Recognizing that the independence of the judiciary was generally well established in India, a member referred to recent cases in which judges had been transferred from one part of the country to another purportedly as a punitive action and requested information in this regard.

259. With respect to article 11, the report stated that in exceptional cases civil arrest was possible; members asked what these exceptions were and to what extent they affected the implementation of article 11.

260. Regarding article 12, the report stated that "reasonable restrictions" could be imposed on the right of freedom of movement for the protection of "scheduled tribes"; members inquired what the meaning of "reasonable restrictions" was and what the reason was for imposing them.

261. As to articles 16 and 26, information was sought about the scope of the special treatment given to certain well-defined groups such as the "scheduled tribes" and the question was asked whether this treatment did not amount to discrimination.

262. Regarding article 19, members noted that freedom of the press was vigorously defended in India but asked to know, given the size of the population, how widely that specific right was implemented. It was further pointed out that the report enumerated exceptions to the right of freedom of expression other than those of article 19 of the Covenant. Clarification was sought in this connection as to how restrictions on freedom of expression could safeguard the sovereignty and integrity of the State, as mentioned in the report.

263. In the same connection, clarification was sought about the statement contained in India's report that "freedom of expression" could be limited in order to maintain friendly relations with foreign States.

264. Referring to confrontations which had occurred in India between various religious groups, a member noted that the report made no mention of that fact and asked whether efforts were made by the Government to prevent such confrontations and whether religious tolerance was taught to school children.

265. Regarding article 26, in connection with article 2, paragraphs 2 and 3, of the Covenant, it was pointed out that the exercise of basic human rights by all citizens on an equal footing was ensured, inter alia, by the possibility of eliminating privileges in the field of education. Information was requested about India's efforts to guarantee education for all. In addition, clarification was sought on the following expressions used in the report: "equality before the law" and "equal protection of the law". Questions were also raised about the status of

women; how the legislative and institutional guarantees on the equality of the sexes were applied in practice; what the Government had done to ensure genuine equality since there were deep-seated cultural traditions and religious beliefs which had tremendous influence with regard to the status of women and family law.

266. Interest was expressed in the foregoing connection in knowing how many girls received a full education and whether they earned the same pay as men when entering the labour market. Additional details were also requested about any special legislation in favour of women adopted by individual States.

267. Regarding article 27, the statement of India that the concept of minorities did not apply to it evoked surprise in view of India's many different linguistic groups, particularly the "scheduled tribes" whose very existence implied that there were ethnic groups and minorities. The Government of India was requested to supply further information on this point.

268. In his reply the representative of the State party, referring to the status of the Covenant under Indian law, explained that according to a recent ruling of the Supreme Court, rules of international law must be incorporated into the national law, even without legislation, provided they do not conflict with acts of Parliament. When they did conflict, the sovereignty and integrity of the Republic and the supremacy of the constituted legislatures in making the laws could not be subjected to external rules. He also stressed that in a number of cases articles of the Covenant had been invoked directly before the Indian courts and that the Supreme Court in one such case had held that an article of the Covenant was comprehended in several different articles of the Indian Constitution. The adoption by the Supreme Court of the doctrine of incorporation also covered states of the Union so that the Covenant could be implemented throughout the entire country provided there was no conflict with the domestic law. However, Parliament retained the ultimate jurisdiction over international law, including the Covenant. As regards due publicity for the Covenant, the Committee was assured that every lawyer in India was aware of it.

269. Referring to questions about India's declaration with regard to article 1 of the Covenant, the representative explained that the declaration reflected India's understanding that in keeping with the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations, the right to self-determination in the international context applied only to dependent Territories and peoples. He did not appreciate the relevance of questions concerning certain component parts of the Union.

270. Referring to a question raised concerning the safeguards for the rights which under article 4 of the Covenant could not be derogated from, the representative observed that under the Constitution the President was not empowered during an emergency situation to suspend articles 20 and 21 of the Constitution which covered rights equivalent to those mentioned in article 4, paragraph 2, of the Covenant. The Preventive Detention Act was not to be confused with the declaration of a public emergency threatening the life of the nation.

271. Regarding articles 7 and 10 of the Covenant, the representative stated that article 20 of the Indian Constitution prohibited torture and he added that in general the philosophy of the Indian legal system was to emphasize reformation rather than punishment. Under the Juvenile Offenders Act first offenders were separated from habitual criminals and only the more serious offenders were sent to correctional institutions.

272. On the issue of bonded or forced labour under article 8, the representative recognized that despite legislation enacted since 1975 to combat forced labour and despite encouraging practical results, e.g. that more than 160,000 bonded workers had been identified and freed by February 1983, many such cases still existed in the rural areas of the country. The problem of eradicating debt bondage which constituted the most frequent kind of forced labour was to be tackled by solving rural unemployment and the Government had developed a specific programme in this regard.

273. The removal of persons who were a menace to public safety in a locality was temporary and was a "reasonable restriction" on such persons' rights within the meaning of the Constitution, controlled by the courts.

274. To questions raised on differences in rights between aliens and Indians and on India's reservation to article 13, the representative replied that there was no discrimination in the enjoyment of rights related to life, liberty and remedies; however, aliens did not have political rights and the reservation applied specifically to laws relating to aliens on such issues as registrations, passports and the issues of entry, stay and movement in India.

275. As to the questions posed concerning remedies and their effectiveness in the protection of fundamental rights, the representative ensured the Committee that violations of human rights, even in the most remote areas, could be brought before the Supreme Court or the high courts by sending a postcard or entrusting a third person with the submission of the complaint. Human rights cases had priority before the courts so that remedies for the protection of human rights were most effective in India.

276. Responding to questions regarding the transfer of judges by the Executive, the representative stressed that such transfer never took place without previous consultation with the Chief Justice and the practice had been found by the Supreme Court not to affect the independence of the judiciary.

277. Referring to questions raised on the lack of enforceable compensation in the case of unlawful arrest noted in the report, the representative confirmed that the Supreme Court recently in fact had ordered compensation if warranted, and he further stressed that in addition the Preventive Detention Act and the Constitution provided many safeguards against unlawful detention, even before the adoption of the 44th amendment to which some speakers had referred.

278. Regarding compliance with article 6, the representative observed that the right to life was scrupulously respected in India and many safeguards existed against its denial. The death penalty could be imposed only for six types of serious offences. He added that for each sentence special reasons had to be recorded and recourse to the Government or President for remission was possible. As an illustration, out of 17,627 prosecutions for murder in 1977, only nine had resulted in executions. In 1980, there had been only two executions. The abolition of the death penalty was subject to a lively discussion in India.

279. Answering questions on the possibility of excessive use of arms for law enforcement, he stated that even during disturbances the forces of law and order were empowered to make only "proper" use of their weapons.

280. Infant mortality rates, according to the representative of the State party, had declined between 1978 and 1981 and life expectancy was rising steadily. Family planning was voluntary and abortion allowed when termination of pregnancy was desirable.

281. The rights of women, although guaranteed in the Constitution, in special legislation such as the Maternity Benefits Act of 1961, the Equal Remuneration Act of 1977 and the Marriage Law Amendment Act, were still violently opposed by traditionalists. Several government authorities were studying the problem and making recommendations. Similarly the dowry system, although prohibited in the Dowry Prohibition Act, the Penal Code, the Code of Criminal Procedure and the Evidence Act, still existed since established attitudes of a whole nation could not be easily changed although this was the Government's aim.

282. Replying to questions on the education of young children, particularly girls, the representative referred to five-year plans and to different schemes for drawing girls into school, which had resulted within a short time in the enrolment of 24 million girls from classes 1 to 5.

283. Commenting on the reference made by members to minorities in India, the representative insisted that ethnic minorities did not exist in India, since the country had no ethnic majority either; all the different tribes in India were not racial categories but had different religious, linguistic and cultural backgrounds.

284. Answering the question "what the equality clause in the Indian Constitution meant when it referred to equality before and equal protection of the laws", the representative explained that in the first place, it meant that laws must be made equal so that there was equality before the law. But since that in itself was not enough, it also meant that there must be equality in the application of those laws so that there was equal protection of the laws.

285. He stated that it was not against the principle of equality to provide special treatment to women and scheduled castes and tribes. Such provisions were designed to eradicate inequality so that the disadvantaged could compete in society on an equal footing. The Supreme Court had ruled that to treat unequals as equals was a violation of the equality clause of the Constitution. He explained the legal and social situation of scheduled castes and tribes, who constituted 22.5 per cent of the total population in 1981, and described the various measures taken to promote and protect their interests.

286. In conclusion, the representative of the State party announced that any gaps in the answers he had provided would be filled in by the Government in its next report.

Egypt

287. The Committee considered the initial report of Egypt (CCPR/C/26/Add.1/Rev.1) at its 499th, 500th and 505th meetings, held on 2 and 5 April 1984.

288. The report was introduced by the representative of the State party who stressed that the Government of Egypt attached great importance to human rights and human dignity since, as stated in the law promulgating the Constitution, "man was the cornerstone on which the fatherland was build". Modern Egypt had always recognized that promotion of human rights was a historic necessity because it was

the prerequisite for the full development of the individual's personality. Furthermore, the shari'a, which reflected the principles of the Koran regarding dignity, honour, freedom and equality of all men without distinction of religion, race, or colour, was a primary source of law in Egypt. He drew attention to the explicit statement in the Constitution that Egypt encouraged all efforts to ensure respect for personal freedom, the latter being the keystone of Egypt's modernization and the full development of its population. Against this background it was clear why Egypt had assumed a major role in elaborating the Universal Declaration of Human Rights and the two Covenants on Human Rights.

289. The representative explained that the initial report of Egypt sought to describe the general framework guaranteeing the exercise of the rights and freedoms mentioned in the Covenant without going into the details of various legislative provisions. It should be regarded as a "prelude" to the dialogue which Egypt hoped to establish with the Committee.

290. Turning briefly to the report itself, the representative highlighted the fact that under article 57 of the Constitution, any assault on personal freedom, on the private life of citizens or the violation of other rights protected in the Constitution was a crime and not subject to prescription. He also noted that the report covered a number of human rights that were specifically enumerated in the Constitution, including the equality of all citizens before the law (art. 40), the protection of the human dignity of any citizen arrested or detained (art. 42) and freedom of the press (art. 48), and also dealt with constitutional guarantees for the exercise of these rights and freedoms.

291. Members of the Committee welcomed the accession of Egypt to the Covenant referring to Egypt's major role in the history of the Arab world and thanked the Government of Egypt for the timely submission of its report. They regretted, however, that the Committee's general guidelines concerning the form and content of reports were not followed; that the report was too concise, particularly with regard to information on measures taken to implement the provisions on human rights; that no references were made to restrictions of human rights; and that the report did not discuss any factors or difficulties affecting the implementation and application of the Covenant.

292. With regard to the status of the Covenant in Egyptian law, members noted that article 151 of the Constitution stated, inter alia, that "Conventions to which the Arab Republic of Egypt accedes have the effect of law after they have been signed, ratified and published in accordance with the prescribed procedures". Hence, they concluded that the provisions of the Covenant had been incorporated into Egyptian law. In this connection, it was asked whether those provisions could be directly invoked in court and, if so, whether there were any judicial decisions in that field. Information was also requested as to how conflicts between the principles of Islamic Law and the articles of the Covenant, particularly articles 2, 3, 23 and 24, were resolved; and whether and in what language the Government had published the text of the Covenant.

293. Concerning article 1 of the Covenant, it was noted with regret that the report did not provide any specific information on the right to self-determination. Clarification was sought as to what measures had been taken by Egypt to promote the exercise of the right of self-determination, particularly with respect to the Palestinian and Namibian peoples.

294. It was noted that the report made no reference to article 3 of the Covenant (equality of women). The question was raised why Egypt felt it necessary to make a reservation to article 16 of the Convention on the Elimination of All Forms of Discrimination against Women after not having made such a reservation to article 23 of the Covenant which was equally concerned with equality of women in all matters relating to marriage and family relations. It was also remarked that no specific information on the implementation of articles 23 and 26, particularly with regard to the equality of sexes, was contained in the report. Statistics were requested on the employment of women in the public and private sectors as well as on the proportion of women in elected bodies and in educational establishments. Information was also sought regarding measures taken by the Government of Egypt to improve the status of women and ensure their participation in the development process, particularly in rural areas.

295. Referring to article 4, members remarked that little information was provided about the "State of Emergency" introduced by Act No. 162 of 1958, which had been amended in 1981 and 1982 and had remained in force without interruption since its adoption, and noted that the increased powers which it conferred on the executive had been institutionalized to such an extent that it could be questioned whether the provisions of the Constitution were still applicable. Members also wondered, in the absence of notification by the Government of the state of emergency, whether the implementation of the Act implied no derogation from the obligations set forth in the Covenant. Regarding the Supreme Court of State Security established by the Emergency Act, it was asked whether articles 165 to 168 of the Constitution, which guaranteed the independence of the judiciary, also applied to that Court and who appointed its judges. Further questions were posed as to what powers the President of the Republic had under the state of emergency and what remedies were available to an individual to counter adverse decisions under the state of emergency or to what court appeal could be made. Noting with satisfaction the adoption of the most recent amendment to the Emergency Act (Act No. 50 of 1982), which provided for some liberalization, information was requested whether this process would continue so that article 9, paragraphs 2 and 3, and article 14, paragraphs 1 and 3 (a) and (c), of the Covenant could be fully implemented. Regret was expressed, however, that Act No. 50 of 1982 had not abolished the power of the Prime Minister to order that a person who had already been convicted or acquitted by a definitive judgement should be judged again on the same offence, such order seeming to be contrary to article 14, paragraph 7, of the Covenant; and that the executive still had the power to promulgate decrees and ordinances which could affect rights guaranteed in the Covenant. For example, it appeared that Act No. 34 of 1972, relating to the protection of national unity, restricted the exercise of fundamental rights.

296. Regret was also voiced, in connection with article 6 of the Covenant, that the report made no reference to measures to abolish capital punishment, which still existed under the Egyptian Penal and Military Codes, and it was asked whether the legislation could be revised. It was added in this connection that in the view of the Committee, any measure designed to abolish capital punishment would represent progress in the enjoyment of human rights. Hope was also expressed that supplementary information would be provided on such subjects as life expectancy and infant mortality. In connection with articles 7 and 10, information was requested on any steps that had been taken to prevent maltreatment of persons in police or military custody, and in connection with article 10, about prison conditions in Egypt and about training programmes for police and prison guards.

297. Concerning article 9 of the Covenant, clarification was sought as to the conditions of preventive detention and it was noted that the intervention of the President of the Republic in cases of preventive detention was a serious violation of the principle of separation of powers. In particular, members inquired as to how long a person could be detained prior to appearing before a judge, whether there was any right of appeal, and whether individuals could be arrested on political grounds without having committed any criminal acts.

298. Noting that no information was provided in the report on article 13 of the Covenant, it was asked whether any legislation had been enacted to effectively implement the provisions of that article.

299. A considerable number of questions and points were raised by members concerning article 14, including the following: (a) what were the qualifications of appointees to the State Security Courts established under article 171 of the Constitution and were they such as to ensure the impartiality of the Courts and their independence of the executive; (b) was there a right to appeal against decisions of the State Security Courts to higher tribunals; (c) the power of the President or Prime Minister to order a retrial before another court of persons acquitted by a State Security Court represented double jeopardy - contrary to article 14, paragraph 7, and hope was expressed that the provision would be reviewed by the Government; (d) doubt was expressed that individuals could be assured a fair hearing before a State Security Court, if tried together with other defendants in mass trial; (e) was there an independent professional association of lawyers; (f) were judges elected or appointed and what moral criteria were used in the process? Was the term "socialist conduct", used in the report, defined anywhere?

300. Referring to the protection of privacy laid down in article 17 of the Covenant, members inquired whether measures such as surveillance of correspondence and telephone conversations could be ordered or implemented by authorities other than judicial authorities and, if so, by which authorities and in which cases.

301. As regards article 18 of the Covenant, it was noted that according to the report Egypt guaranteed freedom of belief and of religious observance. In this connection, information was sought on the relationship between on the one hand Christian churches and those of other religions, and on the other hand, Islam, the State religion. Specific information was also requested concerning reports indicating that the Coptic community in Egypt did not enjoy equal status, that the head of the Coptic Church was under a formal house arrest, that church publications had been banned and that the church had difficulty in obtaining permits to repair and build places of worship. Noting particularly in the context of article 16 that under the Muslim Code of Religious Law it appeared that Muslims who converted to another religion were considered legally dead, members requested information on the legal status of such converts.

302. Referring to article 19 in connection with articles 22 and 25 of the Covenant, members expressed concern that freedom of speech and of association was restricted on grounds of "prejudice to the spirit of national unity". Members wondered what authority was competent to decide whether "the spoken word" and "association" were opposed to national unity and whether remedies were available to individuals in this context.

303. Regarding article 24, information was requested on specific measures taken by the Government of Egypt to ensure the protection of children.

304. In connection with article 27 of the Covenant, it was noted that minorities were not discussed in the report. Information was requested as to whether there were any minorities in Egypt and whether the situation with regard to minorities was satisfactory.

305. In his reply the representative of Egypt stated that he would answer some questions immediately and that all questions would be answered in a supplementary report which his Government was ready to submit in the near future. His immediate responses are summarized below.

306. Prison personnel had to be police academy graduates and had to attend courses on the treatment of prisoners. Egyptian prisons which came under the authority of the public prosecutor received regular inspections and had to comply with comprehensive instructions. Detainees could be imprisoned only by decision of the public prosecutor. Imprisonment which had not been subject to any regulations until 1971 was now governed by legislative texts, e.g. in case a prisoner died an inquiry had to be initiated by the public prosecutor. He explained the mandate of the latter even in other respects. The situation in Egypt as regards torture and maltreatment could not be compared with that of many other countries. Prisoners received normal and humanitarian treatment. A medical examination was obligatory to determine that a prisoner had not been subjected to maltreatment during detention. All cases of alleged health maltreatment were investigated. A law was recently promulgated stipulating that there was no statute of limitation applicable to acts of torture.

307. Egypt did not think it was necessary to abolish capital punishment because it was to safeguard society. It was imposed only on persons jeopardizing the independence or integrity of the State, who voluntarily joined an army hostile to Egypt or who had been found guilty of wilful homicide or homicide accompanied by theft. All had the right to a fair trial; in the mass trial of President Sadat's killers sentence had not yet been passed because each of the accused should be able to defend himself.

308. The proclamation of the state of emergency was a sovereign right of the State exercised by the People's Assembly. The measure was introduced to ensure stability.

309. Only the most eminent persons were selected as judges. The decision to reopen a trial was entirely in keeping with the Constitution. The Bar Association which had been dissolved had appealed to the courts and had won its case. This was evidence of the independence of the judiciary.

310. As to the right of self-determination, Egypt felt that recourse should be had to all possible means to end the colonial domination, terrorism and injustice to which the Namibian and Palestinian peoples were subjected.

311. The Government of Egypt was endeavouring to reduce infant mortality, which was due mainly to dehydration during periods of drought, by undertaking programmes to supply drinking water in various parts of the country. Social centres and medical service for mothers and children were available also in rural areas.

312. Surveillance of telephone conversations had been completely stopped except where the integrity and sovereignty of the State were at risk and could then be authorized only by a court decision.

313. The application of article 27 of the Covenant to ethnic minorities in Egypt, such as the Nubians, was not a problem because they were an integral part of society. The status of Islamic law (the shari'a) was explained in some detail. It did not apply to Egyptians of other religions. Egyptian Copts were full Egyptian citizens, without any discrimination. They were allowed to hold government posts and admitted to any university without restriction. Economic indicators showed that Egyptian Copts had higher incomes than Muslims. Church construction for Christians was not subject to restrictions and the number of churches constructed per year was rising continuously. The allegation that a Christian could not sue a Muslim was false. The head of the Egyptian Coptic Church was not imprisoned because of his religious function and was free to perform his religious duties and to see members of the Christian community. He had been placed under house arrest by order of President Sadat in accordance with the Constitution, and the case was currently before a civil court.

314. Egypt attached great importance to the role of women in society and in development. Egyptian legislation guaranteed respect for and protection of the principle of equality between men and women. Women held posts as ambassadors, were members of governing bodies and worked as administrators and managers.

315. Members thanked the representative of Egypt for his replies, which again served to demonstrate the importance of a fruitful dialogue between States and the Human Rights Committee. They expressed the hope that the supplementary report of Egypt would contain answers to all outstanding questions and would take into account the Committee's recommendations and views as well as the general comments on the interpretation of articles 1 to 14 of the Covenant. As Egypt had been one of the pioneers of the movement of non-aligned countries, many of them would surely wish to follow its example by becoming parties to the International Covenant on Civil and Political Rights.

Gambia

316. The Committee considered the initial report of the Gambia (CCPR/C/10/Add.7) at its 501st, 502nd and 506th meetings, held on 3 and 5 April 1984 (CCPR/C/SR.501, 502 and 506).

317. The report was introduced by the Solicitor-General of the Gambia, as representative of the State party, who pointed out that the rights and fundamental freedoms provided for in the Covenant were reflected in chapter 3 of his country's Constitution, which could be amended only by a bill approved in a referendum and passed by a two-thirds majority in the House of Representatives. The provisions of chapter 3 could, however, be suspended by the President's proclamation of a state of emergency, but within the limits set by the Constitution itself. Besides, the judiciary in the Gambia had primary responsibility for ensuring respect for human rights and for considering all alleged violations of such rights, as provided for, in particular, by section 28 of the Constitution.

318. The representative also referred to various provisions which guaranteed certain fundamental rights enshrined in the Covenant and emphasized that the constitutional restrictions on the enjoyment of those rights were in conformity with article 5 of the Covenant. He made reference, in particular, to the National

Women's Council Act which had been adopted in 1981 and explained that the Council advised the Government on all matters affecting the development and welfare of women. While the death penalty had not yet been abolished in the Gambia, it had been carried out only twice since his country's accession to independence. He drew the Committee's attention to certain provisions of the Prisons Act the purpose of which was to ensure that prisoners were treated with humanity. Under the Criminal Procedure Code, decisions of the lower courts were forwarded once a month for review by the Supreme Court which was empowered to set aside any order or judgement which it considered erroneous. Under that provision, sentences handed down against individuals who, for some reason or other, had not appealed were reviewed by the Supreme Court. Gambian legislation also included a specific procedure applicable to minors which took into account their age and was geared towards their rehabilitation and reformation rather than their punishment.

319. The difficulties which the Gambia had encountered in implementing the provisions of the Covenant must be viewed in the context of the country's economic situation. The Gambia was a poor, developing country and the exercise of certain rights set forth in the Covenant, such as the legal assistance of the accused and the rehabilitation and vocational training for prisoners, would involve expenditures that would place a heavy burden on the State's financial resources.

320. The representative recalled that important events had recently taken place in the Gambia. On 30 July 1981, a group of Gambians had attempted to overthrow the lawful Government by force and the country had been plunged into chaos. The President of the Republic, exercising the powers vested in him under section 29 of the Constitution, had proclaimed a state of emergency on 2 August 1981. The state of emergency, which had been approved and extended by the House of Representatives, was still in force. Regrettably, because of the chaotic situation prevailing in the country, the Government of the Gambia had not been able to notify other States parties immediately in accordance with article 4, paragraph 3, of the Covenant, of the provisions from which it had derogated and of the reasons.

321. The Committee was provided with detailed information on special measures taken by Government under the state of emergency, in particular, the emergency powers regulations and the activities of the Special Division of the Supreme Court which had been established to hear cases involving offences committed in an attempt to overthrow the Government and offences defined in the emergency regulations. Statistics of arrest, detentions, releases and trials were quoted. It was also pointed out that even though the state of emergency remained in force, the parliamentary and presidential elections scheduled for May 1982 had been held as planned, with the full participation of all the political parties.

322. Members of the Committee praised the high quality of the report which showed the Gambia's willingness to engage in a dialogue with the Committee and to promote human rights. It was of higher quality than those of certain countries which had considerably more resources; and therefore there should be no question of applying double standards or creating two classes of countries. They also congratulated the representative of the Gambia for his commendable introductory statement which had provided useful background information and which had explained what difficulties the Gambia had encountered in implementing the Covenant. Questions were asked on the progress made in giving effect to the provisions of the charter of human rights drawn up at a conference in the Gambia by the Organization of African Unity and on the composition and functions of the Law Reform Commission which had been set up in 1983 to promote development of the Gambia's statutory and traditional laws. The Commission could play a very important part in promoting human rights and ensuring

that the country's laws were compatible with the requirements of the Covenant. It was also asked how widely the Government had made the Covenant available within the country, what had been done to draw the Gambia's accession to the Covenant to the attention of the legal profession, the courts and any authorities responsible for compliance with its terms, and whether translations of the Constitution and the Covenant were available in local languages.

323. With regard to article 1 of the Covenant, members of the Committee wished to receive more information on its implementation with particular reference to the right of peoples to self-determination when the Gambia entered into a confederation with Senegal; whether foreign companies had interests in the Gambia, what share such interests represented in the country's economy and what the Government's position was with respect to the new international economic order.

324. In connection with article 2 of the Covenant, members of the Committee noted that in order for the provisions of international instruments to become part of the Gambian laws they must be incorporated in the domestic legal system by an act of Parliament, and they asked whether such an act of the Parliament had in fact been passed and, if the Covenant had been incorporated in the legal system, what rank it enjoyed; whether it could be invoked before the courts and whether there was in the country any administrative recourse against violation of civil and political rights. Since the Gambia was a common-law country where various customs were also applied, it was also asked whether the Covenant would prevail over both in the event of a conflict and what role, if any, tribal institutions played in the settlement of civil law disputes. In addition, reference was made to section 13 of the Constitution of Gambia which guaranteed all individuals the rights recognized in the Covenant without discrimination of any kind and it was asked why sex was not mentioned among the forms of discrimination. Clarification was also requested on the text of section 25 of the Constitution which seemed to leave open the possibility of discrimination against foreigners.

325. With reference to article 3 of the Covenant, statistics were requested on the education of women, their participation in elected bodies, their number in the liberal professions and their representation in the public and private sectors.

326. As regards article 4 of the Covenant, it was noted that section 26 of the Constitution of Gambia appeared to permit derogations from the provisions on protection against discrimination contained in section 25 of the Constitution and it was observed that this derogation was incompatible with the requirements of article 4, paragraph 1, of the Covenant. It was also asked whether the restrictions which had been imposed during the recent uprising remained in effect.

327. Commenting on article 6 of the Covenant, members of the Committee noted that the Constitution of the Gambia referred to persons being deprived of life when it was reasonably justifiable and it was observed that the death penalty should be imposed only in exceptional circumstances. In this connection, it was asked whether the possibility of abolishing capital punishment had been considered by the Gambian authorities and, if so, what steps had been taken in that direction and whether any of the persons who were still under death sentence had been executed. Clarification was also requested on section 14 (2) of the Constitution which gave defence of property as a ground for excusing the use of force resulting in death and on the relationship between presidential prerogatives to commute death sentences and the independence of the Judiciary. In addition, members of the Committee wished to receive information on the birth and death rates, particularly for children, and on the measures taken by the Government in the health field to

improve health conditions and to increase life expectancy especially in the villages. It was asked, in this connection, whether abortion was legal in the Gambia.

328. In respect of article 7 of the Covenant, members of the Committee observed that the reservation contained in article 17 of the Constitution of Gambia, relating to punishments that were lawful prior to 1970, required further explanation. It was asked, in particular, whether there had been any derogations to the provisions of the Constitution, what specific instructions were given to the representatives of order with regard to the use of force, whether the punishment of whipping a young offender was still applied and, if so, in what cases, and whether the Government had considered the possibility of requiring young offenders to perform community service as an alternative to corporal punishment.

329. Turning to article 9 of the Covenant, members of the Committee asked how long preventive detention could last, whether Gambian law made provision for detaining persons against their will on medical grounds and, if so, what procedure was followed; whether an administrative or a court decision was required or whether the recommendation of medical personnel was sufficient, how the rights of the individual were protected in such cases, whether there was any remedy for persons who had been detained against their will, whether there could be any appeal to a higher authority if a subordinate court ruled that the raising of a particular question was "merely frivolous or vexatious", and whether the compensation provided to persons who had been unlawfully arrested or detained was purely material or whether it was also moral. It was also asked what specific motives must be proven by the State for detention under section 27 of the Constitution referring to the state of emergency and where the onus of proof laid, whether there were any political prisoners currently being held in the Gambia and what was the fate of the approximately 1,700 persons who had been detained when the state of emergency had been declared and who had not yet been brought to trial.

330. With regard to article 10 of the Covenant, it was asked whether certain detainees were still put in irons at the Mile Two prison, what measures, if any, had been taken or were contemplated for the reformation and social rehabilitation of prisoners and whether the possibility of obtaining technical assistance and advice in this respect had been explored by the Government of the Gambia.

331. As regards article 11 of the Covenant, it was asked whether there were exceptions to the rule that contractual obligations did not carry prison sentences.

332. In connection with article 12 of the Covenant, it was asked on what grounds restrictions could be placed on the right of a person to move freely or to reside in any part of the Gambia.

333. With reference to article 13 of the Covenant, members of the Committee asked whether there was any way for an alien to appeal a court decision to deport him.

334. With respect to article 14 of the Covenant, members of the Committee wished to know whether an accused person could be granted bail if he did not have sufficient means to pay for it, what was the meaning of the provision in section 20 of the Constitution concerning the imposition upon any person charged with a criminal offence of the burden of proving particular facts, and in what circumstances legal representation could be prohibited under the law referred to in another provision of the Constitution. The failure to grant legal assistance to persons facing criminal charges, save those facing charges carrying the death penalty, generally

weakened the principle of the right of defence. They asked whether in such cases the trial might proceed with the individual alone defending himself. It was also asked whether the judges of magistrate's courts were lawyers or lay persons and whether they were assisted by assessors, what was the procedure and composition of the courts martial referred to in section 94 of the Constitution, how the Special Chamber of the Supreme Court established to try persons arrested after the attempted coup of 1981 was composed and whether it followed any special procedures which might not be consistent with the provisions of article 14 of the Covenant. With reference to article 15 of the Constitution of Gambia concerning detention pending trial, clarification was requested on the expression "suspicion of his ... being about to commit a criminal offence" which appeared to contradict the principle of the presumption of innocence until proven guilty. In addition, it was asked whether any provision was made in the Gambia for preventive education in order to dissuade young persons from breaking the law and under what circumstances, according to the Gambian Code of Criminal Procedure, it was not possible to appeal to the Supreme Court.

335. With reference to article 15 of the Covenant, it was asked whether the constitutional provisions prohibiting the retroactive enforcement of an act of criminal law had been observed in the case of the dissolution of the association called "Movement for Justice in Africa".

336. In connection with article 16 of the Covenant, it was asked whether under Gambian law life was deemed to begin at conception.

337. With reference to articles 18 and 19 of the Covenant, it was noted that the Constitution provided that no person should be hindered in the enjoyment of his freedom of conscience and expression, except with his own consent. Clarification was requested on the exact scope of that provision. In addition, it was asked which political parties, if any, were still banned, whether there were any daily newspapers, how local radio stations were organized and whether opposition parties had any right to access to the media.

338. With reference to article 20 of the Covenant, members of the Committee asked for clarification of the scope and import of the provisions in section 39 of the Criminal Code prohibiting individuals from aiding, advising or preparing for any war or warlike undertaking.

339. In connection with article 22 of the Covenant, it was asked if the Gambia's trade unions were legal entities in public or in private law, whether there was a single trade union or many, and whether the right to strike or to bargain collectively was the prerogative of trade union organizations as such or was allowed to workers themselves.

340. With respect to articles 23 and 24 of the Covenant, members of the Committee wished to know what was the minimum age laid down by law for marriage in the Gambia, what was the meaning of the term "common maintenance and custody" applied to children of dissolved marriages, whether Gambian law provided for the determination of paternity in cases of children born out of wedlock, whether they had the same rights under the law as legitimate children, what protection was afforded to working mothers and whether women who became pregnant were assured of the right to return to their jobs after they had given birth. Clarification was also requested on the subject of affiliation proceedings.

341. In connection to article 25 of the Covenant, members of the Committee expressed the view that the requirement in section 58 of the Constitution of the Gambia that to qualify to be nominated for election to the House of Representatives an individual had to be able to speak English well enough to take an active part in the proceedings of the House could be prejudicial to members of minority groups.

342. It was also observed that article 57 (b) and 63 of the Constitution relating to the election to the House of Representatives of Chiefs' representative members seemed to be at variance with the right of every citizen to be elected under article 25 of the Covenant. Clarification was requested with regard to section 60 of the Constitution which provided that a person was entitled to vote unless disqualified by Parliament.

343. As regards article 27 of the Covenant, information was requested on the status of ethnic, linguistic and religious minorities which existed in the Gambia. It was asked, in particular, how large they were, whether it was the Government's policy to promote their assimilation and whether the Government planned to ensure to preserve their characteristics.

344. Replying to questions raised by members of the Committee, the representative of the Gambia pointed that although his Government had ratified the African Charter on Human and People's Rights, that instrument was not yet in force because it had not received the necessary number of ratifications. The Law Reform Commission established in 1983 was composed of a judge of the Court of Appeal, who acted as its Chairman, the President and a member of the Gambian Bar Association and two lay members. Its task was systematically to study the laws of the Gambia with a view to improving and modernizing them and its first subject was the protection of spouses and children following the dissolution of marriage. He assured the Committee that he would bring its views to the attention of the Law Reform Commission and impress upon it the need to scrutinize local law in order to determine whether it was compatible with the requirements of the Covenant.

345. As regards article 1 of the Covenant, the representative stated that in the Confederation of Senegambia, which had been in existence since February 1982, the two States retained their sovereignty and independence but adopted joint defence and monetary policies. Neither the Council of Ministers nor the Parliament of the Confederation, which were purely advisory bodies, could enact laws for the Gambia. He also referred to action taken by his Government at the international level to support the right of peoples, in particular in Palestine, to self-determination and to search for ways to initiate the new international economic order. He explained that the Gambia was an agricultural country which derived most of its foreign exchange from the export of ground-nuts. The country had a mixed economy and the Government had established advisory services to enable entrepreneurs to participate in the economic development of the country.

346. With reference to article 2 of the Covenant, the representative indicated that the legislative action required in the Gambia to incorporate the Covenant in municipal law had not yet been taken and, therefore, the Covenant could not provide the basis for a claim in the courts. Furthermore, under the Law of England Application Act, customary law would apply only to the extent that it was not in conflict with the statutes or contrary to justice. As regards administrative remedies available in his country, he explained that, in recent years, several people had addressed petitions either to the President or to the Ministry of the Interior instead of filing applications to the court. Such petitions had been given immediate attention and, if the parties in question had been wronged, their

grievances had been redressed. However, that procedure had not yet become institutionalized and the majority of disputes were resolved by the district tribunals. Besides, the advice of village elders and religious leaders was frequently sought and was heeded. He also pointed out that the provision of article 25 of the Constitution applied to rights, such as the right to vote and to own land, which most countries guaranteed only to their own citizens.

347. Some information was given about the role of women in society. Detailed figures would be provided as soon as possible. As to the compatibility of section 26 of the Constitution with the requirements of article 4 of the Covenant, he clarified that the purpose of section 26 was to deal with the situation which had led to the declaration of a state of emergency, not to deal with any particular social, political, racial or ethnic group. However, it was possible that a particular group might be implicated in events leading to the declaration of a state of emergency.

348. Referring to article 6 of the Covenant, the representative stated that the question of whether force was reasonably justifiable under section 14 (2) of the Constitution was a question of fact to be determined in each case. He also stated that his Government had embarked on a maternal and child health programme and had initiated a primary health care programme for the whole population with the assistance of the international organizations concerned. Abortion was prohibited in the Gambia except in cases where it was necessary in order to save the life of the mother.

349. In respect to article 7 of the Covenant, the representative explained that the Constitution had come into force on 24 April 1970 and the purpose of inserting the date of 23 April 1970 in section 17 (2) was to ensure that a person could not claim that, for example, whipping, which was allowed by the law prior to the coming into force of the Constitution, had, by virtue of the new Constitution, become torture, or cruel, inhuman or degrading treatment or punishment. In this connection, he pointed out that whipping was currently restricted to persons below the age of 18 who could be sentenced to 12 strokes instead of imprisonment.

350. In connection with article 9 of the Covenant, the representative stated that there were no preventive detention laws in his country, although such detention was permissible in a state of public emergency; that the review tribunals had the task to advise the authorities on the need to continue to hold detainees; that compensation for wrongful arrest was always pecuniary and that there were currently no political detainees in the Gambia, nor detainees charged with offences during the state of emergency awaiting trial.

351. Responding to questions raised under articles 10 and 11 of the Covenant, the representative informed the Committee that the President of the Gambia, in a letter dated 24 December 1982, had instructed the Minister of the Interior to abolish the use of leg-irons in prison and that the only situation in which confinement was possible for inability to fulfil a contractual obligation was under the terms of an absconding debtor warrant.

352. In connection with article 13 of the Covenant, he stated that expulsion of aliens was not subject to appeal. Such cases could not be challenged in the courts unless bad faith could be shown or it could be demonstrated that the authority had no jurisdiction in the case.

353. With reference to questions raised under article 14 of the Covenant, the representative stated that the grant of bail in his country did not require any payment to the court and that it was presumed that a person should be afforded the possibility of bail unless he was likely to abscond. He also pointed out that under section 20 (2) (b) of the Constitution, the burden of proof always rested with the prosecution. If, however, a fact emerged during a trial and only the accused could testify to it, then the burden of proof rested with the accused.

354. With regard to legal aid to ensure a fair trial, he explained that from time to time the Bar tried to assist impecunious defendants on a voluntary basis and without payment. The Bar however was quite small and a member might not be available when needed in a particular court. The fact that no counsel was available did not stop the court from hearing a case but it imposed a greater obligation on both the prosecution and the judge to ensure that justice was done. He explained also that there were in the Gambia two kinds of magistrates in the magistrate's courts, namely, first-class magistrates, who had legal training and had been called to the Bar, and lay magistrates with a rudimentary knowledge of the law who represented the majority because of a shortage of trained legal personnel in the country. In addition, he informed the Committee that the Special Division of the Supreme Court had applied ordinary criminal law and ordinary criminal procedure, as amended only to enable the judge to sit alone, without a jury, and to disregard certain technical rules of procedure in so far as it did not result in a miscarriage of justice. All the judges of the Special Division had been recruited from abroad. Moreover he pointed out that secondary school curriculum included civics courses which taught students about their responsibilities in society.

355. In connection with article 15 of the Covenant, the representative stated that the question of whether or not criminal law had been applied retroactively in the case of the Movement for Justice in Africa could have been brought by the defence of that Movement before the Supreme Court, but the defence had not done so and the magistrate's decision had been let to stand.

356. With reference to the questions concerning constitutional provisions relevant to the implementation of articles 18 and 19 of the Covenant, the representative explained that an individual entering into an employment contract might understand that the working hours would prevent him from taking part in religious observances at a specific time but might none the less consent to the restriction. He also stated that no public political organization had ever been banned in the Gambia; that in his country papers were published twice or three times weekly, there were two radio stations, one run by the Government to which the opposition party had access during election campaigns.

357. Referring to the words "warlike undertaking", which were contained in section 39 of the Criminal Code and cited in connection with article 20 of the Covenant, he suggested that, in the absence of any judicial pronouncement in that regard, those words could be interpreted as referring to any act which revealed an unequivocal intention to prepare to engage in war or warlike activities.

358. In connection with article 22 of the Covenant, the representative explained that, under the Trade Unions Act, a trade union was recognized as a legal personality, and there was no restriction on the number of trade unions that could be formed. The right to strike was also recognized under certain conditions.

359. With regard to articles 23 and 24 of the Covenant, the representative explained that the marriageable age in his country was determined by the relevant marriage act, for example by the Civil, Christian or Mohammedan Marriage Act. The responsibility of parents and guardians were regulated by law. Neither customary law nor English law recognized the inheritance rights of illegitimate children. Working women were entitled to three months' paid maternity leave either before or after delivery, and could also opt for early retirement for domestic reasons. There was no provision in the law relating to the registration of births covering affiliation proceedings. If the father of a child was not known or if no one acknowledged paternity, the surname of the mother was entered on the birth record.

360. In connection with article 25 of the Covenant, the representative stated that the language requirement for election to the House of Representatives did not constitute discrimination, because English was the official language of the country. Although there were several local languages, none was spoken nation-wide.

361. Replying to questions raised under article 27 of the Covenant, the representative informed the Committee that there were no minorities in the Gambia. There were a number of different peoples, but none could be regarded as a minority requiring protection or as a majority seeking to dominate the others. Moreover, through intermarriage the distinction between those peoples had become blurred over the years.

362. The representative of the Gambia finally stated that other questions which had been asked by members of the Committee would be answered in his Government's next periodic report.

363. The Committee thanked the Government for having sent such a high-level delegation. Members stressed their satisfaction at the excellent exchange of views and said, inter alia, that the Committee had rarely had the benefit of such a clear, concise and well-informed response.

Democratic People's Republic of Korea

364. The Committee considered the initial report of the Democratic People's Republic of Korea (CCPR/C/22/Add.3 and 5) at its 509th, 510th and 516th meetings, held on 9 and 12 April 1984 (CCPR/C/SR.509, 510 and 516).

365. The report was introduced by the representative of the State party who said that his Government attached great importance to close co-operation between the Committee and the States parties. Although the Korean people were divided into two States, they formed a homogenous nation with a common language and civilization. The people strongly desired to bring about the peaceful reunification of the country. Since the adoption of his country's Constitution in 1948 and after a long history of colonial domination and foreign occupation, his country had made great strides in its political, economic and cultural life.

366. The laws in the Democratic People's Republic of Korea were all based on the Juche idea - that man was the master of the world and that things had value only in so far as they served man. All the principles set forth in the Covenant are embodied in the Constitution of the Democratic People's Republic of Korea; the legislation of the country was in full conformity with the Covenant's provisions; and the Covenant has been translated into Korean and published. Korean citizens

enjoyed various political rights and freedoms, including the right to elect and to be elected, freedom of speech, press, assembly and association, freedom of religious belief and from anti-religious propaganda and the right to make complaints and to submit petitions.

367. Personal security and the right to life were guaranteed by law. Equality before the law and equal protection under the law were also guaranteed by the Constitution. There was an independent judiciary and all cases were heard in public. The Constitution also guaranteed economic and cultural rights to citizens. Women enjoyed equal social status and equal rights with men and played an important role in all spheres of activity.

368. Members of the Committee, in welcoming the commitment of the Democratic People's Republic of Korea to the Covenant even though, as it was recalled, this State party was not a member of the United Nations, and also welcoming its willingness to co-operate with the Committee as it had demonstrated by supplementing its report, observed that the report was too general and brief, not containing sufficient material to make a genuine dialogue possible; it recounted progress made in the social, labour and health fields but was insufficient to understand the situation with regard to civil and political rights. Members commented favourably on the positive aspects of the report and stressed action taken by the Democratic People's Republic of Korea such as the abolition of the death penalty as an ordinary punishment and the considerable progress that had been made in other areas such as the increase in life expectancy attested to the fundamental changes that had taken place. It was asked whether the Democratic People's Republic of Korea subscribed to the principle of the indivisibility of human rights and whether the Government had taken new measures following the entry into force of the Covenant to implement its provisions.

369. Among other general questions asked were how the provisions of the Covenant were being implemented, how the division of Korea affected the enjoyment of human rights in the Democratic People's Republic of Korea and what had been done to reunite families separated because of that division. Noting that article 10 of the Constitution stated that the country exercised the dictatorship of the proletariat, one member wished to know how that affected life in theory and in practice. Members wanted more information concerning the Juche idea (article 4 of the Constitution) and asked whether it was used as a source of law or as guidance for interpreting the Constitution in matters of human rights. Other fundamental concepts, as the Chongsan-ri spirit and method (article 12) and the Chollima movement (article 13), also needed clarification. It was asked what the role of the masses was in the realization of the principle of democratic centralism (article 9). More information was desired on the everyday, practical application of the principles contained in the Constitution.

370. Turning to the various articles of the Covenant, information was requested regarding article 1, as to whether the Government of the Democratic People's Republic of Korea felt that reunification of the country would be a model of self-determination in the sense of that article, and whether the SWAPO and PLO were represented in the Democratic People's Republic of Korea.

371. With regard to article 2 of the Covenant, members asked who would receive complaints and petitions from citizens pursuant to article 55 of the Constitution and what action would be taken if such complaints and petitions proved justified. Members inquired about the recourses available to individuals who felt that their

civil and political rights had been violated. Could the Covenant be invoked before a court of law in such cases?

372. Members requested additional details, in connection with article 3 of the Covenant, about the equality of men and women and the role of women in public life at all levels and in all sectors.

373. With regard to article 4 of the Covenant it was noted that the reports and the Constitution did not refer to it, but the representative had referred to a state of alert; it was asked whether any provision covered such a situation and what legal provisions had been adopted to govern situations of public emergency, if any.

374. Regarding article 6 of the Covenant, it was noted that the death penalty had been abolished as an ordinary punishment and was reserved only for special crimes. In this connection, additional information was requested about crimes for which the death penalty could be imposed. Were any political crimes punishable by the death penalty, could it be applied to pregnant women, for example, or to women in general? What was the meaning of the phrase "international murder"? A member wished to know whether there was any legal protection of citizens against the excessive use of fire-arms by the police and other authorities.

375. With reference to article 7, it was asked whether torture and cruel, inhuman or degrading treatment was punishable by law and whether compensation could be sought through the courts for such treatment. Clarification was sought as to the punishment of "not more than one year of reformatory labour" for, inter alia, forcing a person to make a statement.

376. Concerning article 8, it was asked at what age children were permitted to work and whether the Democratic Peoples' Republic of Korea was bound by the various ILO conventions on child labour.

377. Regarding article 9, members asked whether preventive detention existed and, if so, under what circumstances. What was the duration of such detention and what remedies were available to detainees? Clarification was sought of article 64 of the Constitution that "no citizen can be arrested except by law". What was that law and did it respect the principles of the Covenant?

378. In connection with article 10, information was requested about the experience of the Democratic People's Republic of Korea in re-educating and reforming criminals. Was it true that extraordinary prisons existed where many persons were being detained?

379. Regarding article 12, members asked which body was competent to issue travel documents and whether such documents were provided as a right or merely at the discretion of the Government. Additional information was also requested as to whether travel was permitted between the two Korean States and more generally about legislation governing the right of citizens to leave the country. In this connection, members recalled the obligation of Governments to allow family members to be reunited and asked what efforts were being made by the Democratic Peoples' Republic of Korea to restore contact and communication between divided families. If travel restrictions had been enacted, how could they be justified under the terms of the Covenant?

380. Under article 13, it was asked what the situation of repatriated persons was.

381. Regarding article 14, members noted that under the Constitution the country's highest judicial organ, the Central Court, was responsible to the Supreme People's Assembly. They wondered how such constitutional provisions could be reconciled with the requirement for an independent judiciary. It was further noted that article 138 of the Constitution permitted holding trials in camera and it was questioned what specific criteria had to be met to justify such closed hearings. Members also requested information about the Special Courts and about the existence of any special labour, juvenile or family courts.

382. In connection with article 18, members asked what religions were practiced in the Democratic Peoples' Republic of Korea, whether Koreans had free access to houses of worship and whether Koreans continued to attend them.

383. With regard to article 19, members asked whether freedom of speech and opinion was fully protected. They also inquired as to whether the press, radio and television were owned by the Government or could offer opposing views.

384. Concerning article 20, details were requested concerning laws under which propaganda for war was a punishable offence.

385. Questions were also asked concerning the existence and number of political parties and trade unions, and how large a membership they had.

386. With regard to article 23, several members noted with surprise that divorce had almost disappeared in the Democratic Peoples' Republic of Korea. They asked in this connection whether this phenomenon was largely due to the behaviour of individuals, or whether there were legal norms or other Government interventions which made divorce difficult. In addition, members requested information about the extent of equality of spouses, as well as the position of people living unmarried together, or apart without divorce.

387. Members also raised a number of questions concerning article 25, including the following: were there any restrictions on the formation of political parties; did the voters have a choice of candidates and could anyone present himself for elections?

388. The representative of the State party in his reply to questions raised by members touched on a variety of points, starting with his country's policy concerning Korean reunification. The peaceful reunification of Korea was a matter of restoring the country's sovereignty and realizing the right of self-determination throughout its territory. His country had long favoured the reunification of families and had undertaken a number of initiatives since 1957 to bring this about. However, these efforts have thus far not been successful. In further explanation of the Juche ideology, the representative noted that it consisted of independence in politics, self-sufficiency in the economy and self-reliance in defence.

389. The Government of the Democratic People's Republic of Korea had already expressed active support for the national liberation struggle in South Africa and its firm solidarity with the Namibian people. It also supported the Palestinian people in their pursuit of all their legal and national rights. The Palestine Liberation Organization had established an office in the Democratic People's Republic Of Korea.

390. There could be no conflict between domestic laws and international treaty obligations since the implementation of the latter was a legal duty of the Government. Measures had been adopted to guarantee to all citizens effective remedies for violations of rights set out in both the Covenant and the Constitution. For example, citizens were fully entitled to submit complaints and petitions, and a timely resolution of petitions was guaranteed by law. The organs of State power monitored and ensured the exercise of the constitutional rights of citizens. If anyone was unlawfully arrested or detained the public procurator took steps to secure his immediate release.

391. Specific action has been taken to ensure equal rights for women and to create the necessary conditions for the actual enjoyment of such rights. An important law providing for equality between men and women, promulgated in 1946, accorded to women ample opportunities for participating in the country's political, economic and cultural life.

392. The death penalty was reserved for special offenses such as espionage and premeditated murder. There were no political criminals in the Democratic People's Republic of Korea except spies. The aim of sentencing was to prevent recidivism. Accordingly, convicts sentenced to reformatory labour had access to newspapers, could receive and send letters and be visited by relatives and friends. Juvenile offenders were not treated as ordinary criminals but were instead rehabilitated through the school, the family and social education. There was no preventive detention and no one could be arrested or detained without the approval of the Prosecutor or a court order.

393. Citizens were guaranteed complete freedom of movement and residence within the Democratic People's Republic of Korea and to travel abroad for official or private purposes whenever they wished. Aliens could also enter the country at any time, subject to the relevant legal formalities. Travel into and out of the country was on the rise. The repatriated Koreans - 100,000 from Japan since 1959 - enjoyed the same rights as other citizens.

394. The independence and impartiality of judges was fully guaranteed under the Constitution and any interference in their activities was strictly prohibited. Judges of the Central Court were selected by the Standing Committee of the Supreme People's Assembly and the judges of other courts by the relevant people's assemblies. Candidates for the bench had to enjoy the confidence of the people and have a knowledge of the law. Court hearings were held in public, trials sometimes at the scene of the crime, with the broad participation of the people. Lawyers enjoyed complete independence in the conduct of their activities and had formed the Korean Democratic Lawyers' Association.

395. All citizens have the right to freedom both of religion and of anti-religious propaganda. There were three religions - Buddhism, Chondoism and Christianity - and the State ensured religious life by law. The religious and non-religious were treated alike. There was no restriction whatsoever on the right of people to seek and impart information and ideas and citizens had freedom of expression in the mass media. Democratic political parties and social organizations enjoyed free activity and there were three political parties in the country: the Worker's Party of Korea which had about 2 million members, the Korean Social Democratic Party and the Chondoist Chongu Party. No restrictions were placed on the formation of political parties. The trade unions and their General Federation were institutions for the ideological education of their members and mobilized them to carry out the political and economic tasks set by the Party and Government.

396. Particular attention was paid to the protection of children and the minimum working age had been established by the Constitution at 16. Infant mortality was the same in both town and country.

397. All citizens over 17 had the constitutional right to elect and be elected. Further details were given about the electoral process and the character and structure of the State, and class dictatorship, the power and responsibilities of the state organs and the abolition of taxes.

398. After members had thanked the representative and asked some additional questions, in particular how the proceedings of the Committee would be taken into account by the Government of the Democratic People's Republic of Korea and what publicity would be given to them, the representative invited them to submit any further questions even after the meeting and undertook to convey them to his Government for consideration. In reply to one of the additional questions he said that the media in his country would be able to publicize the Committee's proceedings if they so desired.

Panama

399. The Committee considered the initial report of Panama (CCPR/C/4/Add.8/Rev.1) at its 521st, 522nd and 526th meetings, held on 11 and 13 July 1984 (CCPR/C/SR.521, 522 and 526).

400. The report was introduced by the representative of the State party who acknowledged that his country's report was too brief. He said that he would therefore supplement the information in the report orally and that he would be prepared to supply detailed written responses to questions, as may be necessary. He explained that the brevity of the report did not reflect a lack of interest in human rights on the part of his Government, but rather the fact that Panama was a small developing country with many contradictions and only a recent democratic tradition. He outlined the country's constitutional evolution, the basis of which is the Constitution of 1904, and noted in particular that the provisions of the Covenant had been incorporated into domestic law by Law No. 14 of 28 October 1976 and that in April 1983 a new Constitution was adopted by a national referendum.

401. The representative provided a considerable amount of additional information concerning the situation in Panama with respect to the rights enumerated in the Covenant and stated, inter alia, that under Law No. 46 of 1956 citizens enjoyed a variety of judicial remedies such as habeas corpus and amparo; that the equality of sexes in the fields of education, health, the family and work was guaranteed by law; and that women had had the right to vote since the 1940s. Nevertheless there was still much to be done to correct certain culturally and psychologically based discriminatory attitudes.

402. Despite its limited resources, Panama had made great efforts to promote education and health and to protect human life. As a result, infant mortality, for example, had declined over the past 20 years from 70 per 1,000 to 20 per 1,000. Fourteen per cent of the population, however, were still illiterate and there were great differences in the conditions of life of the various socio-economic groups.

403. The representative referred to a number of articles in the Constitution, in particular articles 19, 20, 21, 22, 28, 30, 35, 36 and 121 guaranteeing the rights enumerated in articles 9, 12, 14, 18, 19, 21, 22, 23, 25 and 26 of the Covenant.

404. The representative also commented on the situation of ethnic minorities within Panama (article 27 of the Covenant). While acknowledging that such groups were still experiencing certain educational and economic difficulties, he noted that there had been progress in other areas such as in the provision of health care to minorities and in increased political participation by native Amerindian groups. In conclusion, the representative expressed his intention, in view of the brevity of the initial report of Panama, to provide additional information to the Committee in the near future.

405. Members congratulated the representative of Panama on the excellent introduction which he had given and which had served as a supplementary report along the lines foreseen by the Covenant and the Committee's guidelines. They also expressed their appreciation to the Government of Panama which was doing a great deal for international peace and security in Central America through the Contadora Group. The Committee noted, however, that the report did not provide an adequate account of the human rights situation in the country and there was insufficient background information on the implementation of each of the articles of the Covenant. In this connection, it was asked what measures had been taken by the Government of Panama to give the widest possible dissemination to the provisions of the Covenant and other international human rights instruments to which it was a party; to what extent the constitutional provisions were actually applied; what real difficulties the Government had faced in the field of human rights; what progress had been made in solving Panama's problems; and what the prospects were for solving them in the future.

406. Some members expressed surprise that, despite Panama's being a developing country, the report did not refer to any difficulties in providing for the enjoyment of human rights. They inquired, in particular, whether the restrictions imposed on the production of banana and sugar in Panama by transnational companies or other large-scale buyers, which had resulted in unemployment, had interfered with the enjoyment of civil and political rights. More information was requested on the extensive constitutional amendments of 1983 and about their effect on the human rights situation in the country, as well as on the status of the Covenant.

407. With regard to article 2 of the Covenant, it was observed that according to the Panamanian Constitution one function of the Supreme Court was to pronounce itself on the constitutionality of laws and other acts, including those of the administrative authorities. In this connection, it was asked whether the Supreme Court had similar competence to ensure compliance with the requirements of the Covenant. Furthermore, the Constitution of Panama contained a number of important provisions designed to safeguard the rights of the individual, while a comparison with the Covenant showed that in some respects those rights were formulated more precisely in the Covenant than in the Constitution. Members of the Committee asked to what extent the Supreme Court was able to ensure that the requirements of the Covenant were complied with; whether steps had been taken to bring the relevant provisions of the Covenant to the attention of the administrative authorities, including the police authorities and prison officials; whether there had been cases before the courts in which the Covenant had been invoked; and whether there were any court decision, based directly on the provisions of the Covenant.

408. As regards article 3 of the Covenant, it was observed that, although the report noted that men and women were equal, there was no information on any measures taken to improve the status of women. Members asked what the proportion of women to men was in the universities, in public and private employment, in the

legislature and the judiciary and what steps had been taken to integrate women into the development process both as participants and beneficiaries.

409. Commenting on article 4 of the Covenant and referring to article 51 of the Panamanian Constitution which permitted the suspension of certain rights in an emergency, members inquired, inter alia, whether habeas corpus and amparo could be suspended in a state of emergency in Panama. Members also inquired whether a detainee had any recourse against arbitrary or wrongful arrest. It was noted that the authority to terminate the state of emergency was vested in the Legislature, if in session, and, if not, in the cabinet. In this connection, it was asked whether the executive could continue to govern under emergency rules for an indefinite time if Parliament had been dissolved, and whether there was a certain time-limit for the duration of a state of emergency beyond which parliamentary approval would be required for its continuation.

410. As regards article 6 of the Covenant, members of the Committee asked what type of domestic disturbance threatening public order could lead to the imposition of the death penalty. Noting that implementation of article 6 of the Covenant involved the elimination of hunger and malnutrition, one member asked what agricultural development plans had been adopted to improve food production and its equitable distribution; what agrarian reforms had been undertaken and whether the Government had developed a nutritional food policy and established health centres.

411. In relation to articles 7 and 10 of the Covenant, the Committee praised the explicit prohibition in the Panamanian Constitution of any kind of torture and requested more information on provisions for the effective investigation of complaints by prisoners of torture by public officials on the existing arrangements for investigating complaints by detained persons regarding ill-treatment and on prison conditions. Further details were asked about the methods for obtaining confessions, and to what extent and at what intervals visits to prisoners were allowed by doctors, lawyers and family. Some members also requested information as to whether steps had been taken to prevent overcrowding in prisons and whether social assistance was provided to former prisoners in Panama.

412. With regard to article 8 of the Covenant, the Committee inquired whether legislation had been enacted to harmonize the Administrative Code and other laws of Panama with the ILO Convention on Forced Labour; and whether there had been a re-examination of police powers and judicial codes to prevent the administrative authorities from imposing punishment amounting to forced labour. It was also noted that under the Commercial Code seafarers who abandoned their vessel might be required under pain of imprisonment to complete the term of their contract and to work for one month without payment.

413. In connection with article 9 of the Covenant, members of the Committee pointed out that the National Guard was not only a military organization but also a State security body and that its functions included police duties. Referring to article 305 of the Constitution, it was asked whether the National Guard was empowered to arrest persons; whether it had its own detention centre; and whether there was any system of preventive detention in Panama. Referring also to article 21 of the Constitution, the Committee inquired in what cases a person could be arrested without warrant and held incommunicado; and on what grounds bail could be refused and how often that was done. Members also noted that, as stated in the report, the provisions of the Covenant could be invoked before the courts which could enforce them directly. They wondered whether the courts enforced the right

to compensation under article 9, paragraph 5, and article 14, paragraph 6, of the Covenant; what remedies were available against administrative acts; and whether the assistance free of charge of an interpreter was provided when required. Further information was requested as to what procedures were prescribed for the removal or transfer of magistrates; whether they were contained in laws enacted by parliament or rules decided by the executive; and what guarantees existed for the independence of judges.

414. With respect to article 13 of the Covenant, information was requested on the provisions for asylum in Panama.

415. In relation to article 14 of the Covenant, clarification was requested on articles 146 and 154 of the Constitution which stated that impeachment was applicable to judges of the Supreme Court, in addition to the President of the Republic. In this connection, it was asked how a legislative assembly could act as a tribunal within the terms of article 14, paragraph 1, of the Covenant. More information was requested concerning article 33 of the Constitution which appeared to permit the imposition of penalties without trial since it provided that public officials could impose fines or arrest upon anyone insulting them or acting on contempt of their authority. Members wondered to what extent Panamanian public officials were subject to judicial control; how effective court procedures were; how often human rights issues had been invoked before the courts; and what the main issues were.

416. Commenting on article 18 of the Covenant, an explanation was requested on the legal provisions relating to freedom of religion in Panama; on the concept of Christian morality and the implications of not being a Catholic on the position and career of an individual.

417. As regards article 19 of the Covenant, members inquired what degree of Government control was exercised over the news media, radio and television and to what extent low-income people were able to run a newspaper or have access to the mass media. More information was requested on legal limitations and on freedom of speech.

418. In connection with article 22 of the Covenant and with reference to Law No. 81 of 1978 concerning the activities of political parties, it was asked what criteria existed for the distribution of State subsidies for that purpose. Referring to the report of the ILO Committee of Experts which had recommended that Panama should make adjustments in its labour code in order to bring it into line with the provisions of Convention No. 87 concerning freedom of association and protection of the right to organize (1948), it was asked whether any readjustments had been made in the labour code, particularly in articles 344, 346, 359 and 376. Clarification was also requested on whether there was any legal provision regarding the right of public employees to collective bargaining and to strike, especially in public undertakings which did not involve essential services, as well as whether there was any restriction on the formation of unions imposed by transnational corporations, especially on banana workers.

419. With respect to articles 23 and 24 of the Covenant, the Committee noted that article 51 of the Constitution provided for State protection of marriage and that Panama was unique in the region for its position in this regard. Members requested more information on the rights and responsibilities of spouses, the protection of children and the percentage of maternal and child mortality as well as on the work

of the family protection agency. In connection with article 54 of the Panamanian Constitution, which stated that a de facto union had all the effects of a civil marriage after five years, it was asked what the philosophical reasons underlying that system were; what the position of the Government was concerning de facto unions, whether after five years they took on the characteristics of legal marriage and the children became legitimate; and whether there was any legal difference between a family resulting from a legal union and the family of a de facto union. Members of the Committee noted that minors under the age of 15 made up more than 40 per cent of the population of Panama and inquired whether there was any special protection for children whose parents or guardians abused their authority; and whether there were any special laws or provisions affecting them, particularly, concerning the treatment of young delinquents before the courts.

420. In relation to article 25 of the Covenant, members of the Committee noted that voting in Panama was not only a right but a duty and asked what sanctions were applied in the case of those not voting; whether there were fees for registration and, if so, how did that fact affect voter participation; whether the results of the elections genuinely reflected the popular will; and whether provision had been made for periodic elections to the National Legislative Council or for the postponement of elections.

421. As regards article 27 of the Covenant, it was noted that the Constitution contained far-reaching provisions in articles 84, 86 and 123 for the protection of minorities in Panama, and it was asked how the Government had implemented the provisions of article 84 concerning the special study and literacy programmes for the indigenous population. Referring to the provisions in the Constitution dealing with agrarian measures, members inquired how these provisions had been applied, in particular, to the collective ownership of the land and comarcas, or to grants of land; what progress had been made in that regard; whether indigenous lands had suffered from the use made of them by the multinational companies; and what the environmental and cultural impact of a large foreign work force was on the Indian population. Furthermore, it was asked what percentage of the population was constituted by tribal Indians in Panama; what place their tribal laws, customs and religious practices had in the Panamanian political and legal system; and what percentage of them spoke Spanish. Referring to a report from the World Council of Churches on a specific case concerning the Guayni people and their future, one member requested detailed information on their conditions and the extent of their incorporation into the development process of the country and whether the Government was willing to suspend its series of projects within the Guayni territory until the rights of the Guayni people had been more clearly demarcated.

422. Replying to questions raised by members, the representative of the State party informed the Committee that his Government was concerned with improving the provisions of the Constitution so as to meet not only legal requirements but also other factors which might contain valuable elements for progress and improvements; that in the course of Panama's history, there has been a cycle of political crises; and that a radical change had taken place with the amendment of the Constitution in 1983 with people having the right to participate even in the most remote areas and to vote and make their opinions felt through the National Assembly. He also informed the Committee that the traditional division of the people into work brigades was encouraged for community-level projects to improve housing and to organize a health service in the form of vaccination and drinking-water campaigns, the construction of latrines and the training of women in nutrition and midwifery.

423. In connection with article 1 of the Covenant, he stated that Panama supported independence movements in Africa and considered that the Palestinian people had a right to have a nation. He also said that Panama worked with the Contadora Group and considered that the situation in Central America must be solved by negotiation and not by military activity which merely postponed a solution.

424. Replying to questions raised under article 3 of the Covenant, the representative indicated that owing to rivalry between the sexes and a feeling of machismo, some persons in Panama believed that it was not right for women to occupy certain positions. However, women played an active role and had a broad participation in the economic, political and social life of the country. He gave a number of examples and statistics to that effect and pointed particularly to progress in the areas of teaching, education, medicine and services. As far as high ranking positions were concerned, he pointed out that there had been women Ministers for health, trade, economy, a Vice-Minister for Foreign Affairs and that recently two presidential candidates had chosen women as candidates for the vice-presidency.

425. As regards article 4 of the Covenant, he stated that the suspension of rights and guarantees during a state of emergency had been kept within fixed time-limits, and as for the presumption of innocence, this guarantee had not been suspended since 1968.

426. With regard to article 8 of the Covenant, the representative said that the Government had submitted a bill to the National Assembly to ensure the respect of human rights in conformity with the provisions of this article.

427. Responding to questions raised under article 9 of the Covenant, he stressed that the National Defence Forces were subject to the law and responsible for the defence of the country and for public safety and that they were obliged to respect the present Constitution and to provide all necessary support to the authorities in their effort to protect the rights of individuals and of society.

428. Replying to questions raised under article 10 of the Covenant, the representative indicated that efforts had been made in recent years to improve prison conditions by a process of decentralization, with the establishment of small prisons whose aim was to facilitate communication with relatives and improve conditions for prisoners. Advances had also been made in the rehabilitation of prisoners through the use of psychologists and other experts but much still remained to be done.

429. In connection with questions raised under articles 23 and 24, he said that the Government had set up a working group on family legislation which had drafted a progressive family code for submission to the National Assembly. The head of the family was a woman in about 30 per cent of the households. The representative pointed out that in rural areas, however, women still occupied a traditional role and in some backward communities the level of participation of women in political and civic activities was low. Forty-five per cent of the population was under 15 years of age and all troubled children were treated by medical institutions with understanding so as to reunite them with their families and to facilitate their re-integration into the community.

430. With respect to article 25 of the Covenant, the representative stated that the direct presidential and legislative elections recently held in Panama were the

first for 16 years; that an electoral court was constituted to supervise the elections which took place without irregularity; votes were counted in public in the presence of representatives of the political parties and the outcome recorded; and that numerous parties took part in the elections from left to right including the Communist Party.

431. Replying to questions raised under article 27 of the Covenant, the representative stated that the indigenous population participated fully in the National Assembly where they had 47 representatives. The minorities of Cuna were a well-organized group which had migrated earlier this century and had established their own communities with a traditional hierarchy of chiefs. They also had their own doctors and nurses and justice was administered at the local level in their own language. Another indigenous group, the Bocas del Toro, was self-governing and had recently requested that the region they occupied should be preserved. The representative said that the indigenous languages were fully recognized, bilingual textbooks had been prepared for use in schools, and the Spanish language was gradually taught in the early years at the primary schools.

432. Finally, the representative of the State party recognized that it had not been possible to reply exhaustively to all specific questions asked and stated that he would convey the Committee's questions and his replies to his Government so that the competent authorities would complete the information and rectify any mistakes. He felt sure that his Government would be greatly helped by the questions raised and comments made in its efforts to perfect laws and institutions and to comply more fully with the provisions of the Covenant and human rights in general.

433. Members of the Committee thanked the representative of the State party for his most interesting and frank statement and expressed the hope that the additional documentation and explanations promised by him would cover all the questions raised during the consideration of his country's initial report.

434. Subsequent to his appearance before the Committee, the representative of Panama provided additional written replies to questions raised during the consideration of the report by several members, as well as certain legal texts. It was agreed that additional replies to questions addressed to individual members would be compiled by the Secretariat into a document, to be made available to the Committee. The Committee expressed gratification to the Government of Panama for having provided additional information so promptly.

Chile

435. In accordance with paragraph (i) of the statement on its duties under article 40 of the Covenant, adopted at its eleventh session (CCPR/C/18) 14/ and its further consideration of the method to be followed in examining new reports (see paras. 57-59), the Committee before its twenty-second session entrusted a working group to review the information so far submitted by the Government of Chile in order to identify those matters which would seem most helpful to discuss with the representatives of the reporting State. The working group prepared a list of issues to be taken up during the dialogue with the Chilean representatives. The list, as subsequently supplemented by the Committee, was transmitted to the Chilean representatives prior to their appearance before the Committee, and appropriate explanations on the procedure to be followed were given to them. The Committee stressed, in particular, that the list of issues was not exhaustive and that members of the Committee could raise other matters, whether within the various

sections of the list or outside them. The representatives of Chile would be asked to comment on the issues listed, section by section, and to reply to members' additional questions, if any.

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436. The Committee considered the report of Chile (CCPR/C/32/Add.1 and 2) at its 527th to 531st meetings, held on 16, 17 and 18 July 1984 (CCPR/C/SR.527 to 531).

437. The Chairman of the Committee made a preliminary statement in which he recalled that on 26 April 1979, after the examination by the Committee of the initial report submitted by the Government of Chile (CCPR/C/1/Add.25 and 40), the Committee requested that Government to submit a report in accordance with article 40 of the Covenant and to furnish specific information on restrictions applicable to the rights and freedoms under the Covenant during the period of the state of emergency, since the Committee had found that the information provided by the Government of Chile on the enjoyment of human rights set forth in the Covenant and the impact of the state of emergency was still insufficient. The Government of Chile, despite the initial acceptance by its representatives, did not comply with that request, a failure which the Committee very much regretted. The Chairman of the Committee also recalled that the Committee could only function effectively and successfully discharge its difficult task if it had the full co-operation of States parties and he stressed that the request for a supplementary report was still valid and should be complied with. The committee wished to continue its dialogue with Chile with a view to ensuring observance of the provisions of the Covenant in Chile.

438. In introducing the reports of his Government, the representative of Chile referred to the new Political Constitution which had been approved by plebiscite in 1980. In that connection, he noted that the framers of the Constitution had provided for a transition period during which constitutional guarantees could, exceptionally, be limited and the exercise of human rights could be restricted if the social situation so required, but that Chile was nevertheless pursuing its efforts with a view to restoring democracy. As stated in the additional report, the original report was prepared in circumstances which differed from the ones now prevailing in the country, inasmuch as the Government had again been obliged to declare a state of emergency.

Measures adopted to give effect to the rights recognized in the Covenant and progress made in the enjoyment of those rights

439. Following the list of issues to be taken up in connection with the report of Chile, the members of the Committee, under the first item, asked, inter alia, what response there had been to the Committee's consideration of Chile's initial report, whether the body responsible for drawing up the new Chilean Constitution had been familiar with the proceedings of the Committee during its examination of that report in 1979 and, if so, whether that body had taken account of the Government's international commitments. The members of the Committee also asked what activities had been undertaken to promote knowledge of the Covenant among the Chilean population and what factors and difficulties were particularly affecting the implementation of the Covenant in Chile. The members of the Committee also expressed a wish for fuller information on progress made towards the establishment of a democratic system of government in Chile and on the legislation adopted and the further steps envisaged for that purpose, such as popular participation in the constitutional process and the consultation of democratic forces.

440. In that connection, it was noted that the concept of a transition period during which restrictions on democracy were applied in Chile should be clarified. It was also observed that, while the new Political Constitution of Chile furnished guarantees similar to those set out in the Covenant, unfortunately the transitional provisions of that Constitution, numbering 29, cancelled out those guarantees, and it was asked how progress could be made towards democracy when the country was governed on the basis of transitional provisions restricting the fundamental rights embodied in the Covenant rather than on the basis of permanent principles. One member again emphasized the unique situation obtaining in Chile, which was ruled by authorities whose very existence rested on the elimination of the democratic and political rights of the Chilean people.

441. Members of the Committee referred to article 8 of the Constitution concerning the prohibition of certain so-called "totalitarian" parties and the statements of the representative of Chile to the effect that the non-totalitarian sectors in the country's political life were consulted by the Government; they pointed out that it was, in fact, democratic political parties conforming to article 8 of the Constitution and the Church that were accusing the authorities of repression. They requested further information on the steps taken by the Government to ensure the success of the dialogue called for by the Chilean bishops and on the reasons for which even parties conforming to article 8 of the Constitution were officially banned and the new organic law on political parties envisaged in the Constitution had not yet been adopted. Members of the Committee also referred to article XXIV of the transitional provisions concerning the penalties, and particularly expulsion without appeal, applicable to persons acting contrary to the interests of Chile or accused of promoting totalitarian doctrines; they observed that those provisions created a discriminatory situation regarding the enjoyment of rights by Chileans and, in particular, were contrary to the provisions of article 13 of the Covenant, which provided for an appeal in that kind of situation. Other members asked whether the individuals who had participated in the violent overthrow of the Government in 1973 had been punished under the 1958 State Security Act and whether the victims of that violent disruption of public order, or their relatives, had been compensated; whether, in general, proceedings could be brought against persons responsible for violations of human rights in Chile; why the Chilean régime, which had been in power since 1973, had seven years later thought it necessary to introduce transitional provisions into the new Constitution and what rights or possibilities provided for in that Constitution it had deemed it necessary to suspend; why the constitutional provisions concerning the democratic system were not applicable before 1989; and whether one or other of the provisions of article 8 of the Constitution which, inter alia, involved an element of retroactivity to the detriment of the accused, contrary to article 15 of the Covenant, could be declared by judicial decision to be a violation of human rights. It was also asked whether freedom of association existed in Chile and whether the Government had ratified the Conventions of the International Labour Organisation on that matter.

442. Questions were also asked concerning the composition, mandate and activities of the Chilean Council of State which, according to the report, was engaged in consideration of legislation designed to enable a democratic system to operate. In particular, it was asked what time-limit had been established for completion of the task entrusted to the Council of State and what progress it had made in its work.

443. In addition, members of the Committee requested information on judicial decisions and administrative practices related to the implementation of the Covenant. In that connection, they asked whether the legislation needed for the

Covenant to be invoked before the Chilean courts had been adopted, what exactly was the status of the Covenant and of other international instruments under Chile's domestic law, and whether the judicial decisions adopted by the Supreme Court in April 1982 whereby the remedies of protection and amparo were not suspended during the state of emergency could be made available to the Committee.

444. Replying to the questions raised by the members of the Committee, the representatives of Chile expressed regret at the misunderstanding which had occurred between the Committee and the Government of Chile concerning the submission of reports under article 40 of the Covenant, and said that they were prepared to provide the Committee with all necessary supplementary information. They further stated that the Covenant, like all international human rights instruments ratified by Chile, was brought to the knowledge of lawyers and studied in secondary schools. As for difficulties experienced in implementing the Covenant in Chile, the representatives said that they were due to the terrorist acts and attacks perpetrated by certain groups which did not wish to strengthen democracy but sought to destabilize the Government. In addition, the world economic situation was having an effect on the country, and the Government sometimes had to resort to emergency measures and restrict the exercise of certain rights. Despite difficulties, however, steady progress was being made towards the restoration of a democratic system in Chile; in particular, the method of direct universal suffrage had been instituted for the election of the President of the Republic, 70 per cent of the membership of the Senate and the entire membership of the Chamber of Deputies. Ideological pluralism was also recognized under the régime, even though, in the interests of preserving the integrity of the community, any doctrine prejudicial to the rights of the family, fostering violence or justifying totalitarianism had been debarred.

445. Political parties were still carrying out activities because the Chilean authorities had refrained from implementing the transitional provisions of the Constitution banning political activities. There was open criticism of the Government and its members published in newspapers and magazines. Certain political parties and the Church had their own radio stations and broadcast the news as they saw it. The absolute powers of the President were only exercised in cases of acts of violence and terrorism. In addition, there had been consultations between various parties and the Government. The Minister of the Interior had met all types of political groupings, but the opposition had broken off the dialogue by imposing conditions such as that the President must resign. The Government nevertheless had expressed its willingness to continue the dialogue and to considering amending parts of the Constitution. The participation of the people did take place not only through political parties, but through such bodies as neighbourhood organizations, professional bodies, and trade unions and there were no restrictions on them. The Act on the Status of Political Parties was being considered by the legislature and should be ready for implementation by September 1984.

446. As regards labour relations and trade unions, the representatives stated that the International Labour Organisation had recently recognized in connection with Chile's most recent reports that progress had been made. The right to join - or not to join - trade unions existed and collective bargaining had been fully restored. The Labour Relations Court, which had been temporarily disbanded, was to be restored and recently trade unions had held elections for officials and more would be held.

447. The representatives also explained that the Council of State was a transitional organ which would disappear as soon as Congress began to function. It acted as a review body for the Executive and was composed of former Presidents of the Republic, former Presidents of the Supreme Court, former Ministers of State, representatives of trade union organizations and a former Commander-in-Chief of the Army and the Air Force. The Council consulted all citizens to ensure that legislation reflected general opinion in the country. It had promulgated a law for the establishment of a Constitutional Court and a law regulating mining concessions, which constituted an important sphere of economic activity in Chile. The electoral system had also been revised, and a law on the powers of Congress had been drawn up.

448. The representatives stated that the provisions of the Covenant could be invoked before the courts in Chile once domestic remedies had been exhausted and that they had frequently been invoked, particularly in amparo proceedings, but so far the higher judicial bodies such as the Court of Appeal or the Supreme Court had not specifically had the occasion to pronounce on the application of the provisions of the Covenant. It could be invoked when all legal formalities had been completed. The Supreme Court would then make a pronouncement on this issue. They also stated that the text of the decisions adopted by the Supreme Court in 1982 concerning the remedies of protection and amparo had been made available to the Committee.

State of emergency

449. With regard to the second issue, the state of emergency, members of the Committee wished to receive information on the occasions in recent years when that situation or a similar situation had been declared in Chile, the duration of such situations and the measures as a result of them. It was observed in this connection that since 1973 not one day had passed in Chile without a state of emergency being in force and that that situation could not be justified. It was also asked what the position of the Government was with regard to the conclusions concerning measures of exception in Chile contained in the report on the situation of human rights in that country submitted to the General Assembly at its thirty-eighth session (A/38/385 and Add.1).

450. Information was requested on the extent to which a state of emergency implied suspension of the normally applicable provisions of the Covenant. Concern was particularly expressed with regard to the suspension of remedies for the duration of the state of emergency which continued to be effective. Attention was drawn, in this connection, to transitory provision XXIV of the Constitution under which, inter alia, a person could be arrested and held for 20 days without trial by an administrative decision and without the possibility of invoking any remedies except "reconsideration" and in virtue of a decision taken by the President of the Republic. It was also observed that the suspension of certain rights provided for by the Covenant could only be justified under its article 4 and it was asked whether the Government of Chile claimed the existence of a "public emergency" within the meaning of that article and, in the affirmative, why the Government had not notified any derogation in accordance with paragraph 3 of the same article. It was observed also that what was called an emergency in Chile had nothing to do with what was intended by the same term in article 4 of the Covenant and that the so-called emergency was being used to justify the discriminatory measures provided for in article 8 of the 1980 Constitution.

451. In addition, members of the Committee wished to receive further clarification on whether the remedies of amparo, habeas corpus and protection for alleged deprivation of liberty of person and of other human rights were available for actions taken by the Government of Chile in a state of emergency or whether all three remedies were suspended under transitory provision XXIV of the Constitution. It was also asked what places of detention were referred to under article 41 of the Constitution by which the President of the Republic could order the detention of persons "at places which are neither prisons nor centres of detention or imprisonment of common criminals".

452. The representatives of Chile stated that the state of emergency had been terminated in 1983; however, on 24 March 1984, the Government had again been obliged to declare a state of national emergency following an increase in acts of violence. That situation, nevertheless, did not involve any suspension of the provisions of the Covenant. As regards the notification of derogations under article 4, paragraph 3, of the Covenant, they undertook to obtain a detailed response at a later stage. The representatives also affirmed that the remedy of amparo was fully applied in Chile even under emergency legislation and a detained person had the right of appeal to the Supreme Court which could reverse the decision. With regard to places of detention in connection with article 41 of the Constitution, they stated that Decree No. 594 specifically mentioned the places of detention as being located one per region.

Right of self-determination

453. As regards the right of self-determination, members of the Committee wished to know what was the position taken by the Government of Chile on the right of self-determination of the people of Palestine, to what extent it had been able to promote the realization of that right and how it saw the principle of self-determination applying to Central American countries, in particular to El Salvador and Nicaragua.

454. The representatives of Chile stated that their Government supported without reservation the right of self-determination of the people of Palestine. They also pointed out that, although their Government did not have full relations with the Palestine Liberation Organization, it supported its aims. However, Chile was too small a country to give more than diplomatic support to promoting the cause of the self-determination of the Palestinian people. In addition they expressed the hope that also El Salvador and Nicaragua would achieve self-determination.

Equality of men and women in the enjoyment of all the civil and political rights set forth in the Covenant

455. With reference to this issue members of the Committee wished to receive information on the situation of Chile in practice. They asked, in particular, what was the proportion of women in schools, colleges, university, administration at the director and deputy-director level, what was the participation of women in the cultural and social fields and in the liberal professions, such as lawyers, doctors and engineers, what kind of participation women had in the political life of Chile, how many ministers and senators were women and, with regard to the family, who was regarded as the head of the household, how the woman was protected in the event of the dissolution of marriage and who was awarded custody of the children. They also wished to know what action had been taken by the Government of Chile for the effective realization of the objectives of the United Nations Decade for Women, particularly with regard to their integration and development and decision-making.

456. The representatives of Chile informed the Committee that in the judiciary about 40 per cent of the magistrates of higher courts of appeal were women. In education, about 40 per cent of the administrative positions were held by women. With regard to the social sector, women were occupying an increasingly greater proportion of social welfare positions. As to access to higher education, there was full equality. In the armed forces and auxiliary elements, women could become high-level officers such as colonels and majors. Furthermore, they stated that Chile had been one of the first countries to extend the vote to women. Women had been elected to public office for many years; there were a number of women in Parliament and there were quite a few women mayors in the country. Legally, the head of the household was a man. However, women's rights were protected and the question of the custody of children was decided by magistrates. A wife who worked could request the separation of property. In that case it would be for the magistrates to take the relevant decision. Moreover, in accordance with the recommendations of the various international organizations, their Government was trying to ensure the maximum equality between the sexes.

Right to life

457. With regard to the various aspects of the right to life, the members of the Committee said that they would welcome precise information on the application of the death penalty in Chile. In particular, they asked for which offences the death penalty could be imposed, whether the death penalty had been introduced for new offences and whether the Government of Chile was considering the possibility of abolishing the death penalty. The members of the Committee also requested information on the number of cases so far established of persons who had disappeared in Chile and the measures taken by the authorities to investigate those cases and the results. In that connection, it was observed that the examining magistrates seemed to lack the means of investigating cases of disappearance, since their investigations could not relate to a specific suspect, and it was asked whether it would not have been more effective to establish a special commission of inquiry. Reference was also made to the investigation into the discovery of a common grave at Longuén in 1979, when the bodies of persons declared to have disappeared had been found, and information was requested on the results of the investigation. The members of the Committee also asked for information on measures taken to investigate deaths resulting from the action of the Chilean security forces and measures taken to control the use of firearms by those forces. In that connection, information was requested on the number of deaths resulting from the recent national days of protest in Chile, on the judicial inquiries instituted in that regard and the reasons for their slowness, on the application of the amnesty law to the few culprits identified, and on the right to compensation of the victims or their relatives. Clarification was also requested on the links between the public authorities and non-official organizations of armed citizens who claimed to be assisting the police to maintain order, as well as on the number of persons prosecuted for clandestine executions, on investigating authorities other than the courts and on possible compensation entitlements of the victims' families. In addition, it was asked whether the murderers of Mr. Letelier, former Minister for Foreign Affairs of Chile, had been prosecuted and punished. The members of the Committee also requested information on health protection, infant mortality, Chilean legislation expressly protecting the health and lives of mine workers, and the measures taken by the Government to reduce unemployment.

458. The representatives replied that under article 21 of the Penal Code, the crimes punishable by the death sentence were those of exceptional seriousness, such as aggravated homicide, treason in wartime and terrorist acts which resulted in death. The death penalty was difficult to apply because in no case was it envisaged as the sole penalty. The court had the power to apply one of a range of penalties, depending on the seriousness of the offence and any aggravating or mitigating circumstances. Furthermore, article 77 of the Chilean Penal Code stated that under certain conditions the alternative of life imprisonment should be imposed. In addition, the death penalty could not be passed in the second instance except by a unanimous vote of the Court. The file relating to the case had to go to the President of the Republic for decision, with the Court's opinion as to whether or not there were grounds for commuting the sentence or for pardon. In the past 10 years, the death penalty had been imposed in only one instance, where two security officers who had committed abuses had been sentenced to death and executed. Abolition of the death penalty was not so far envisaged in Chile, however several Chilean jurists were in favour of its abolition.

459. Referring to the questions on disappeared persons, the representatives stated that as a result of the excellent work of investigation done in Chile by the Committee of the International Red Cross at the request of the Government in 1978, there were only about 500 persons whose whereabouts had not been determined and they observed that in some cases several identity cards might have been issued to a single person. Several legal procedures had been devised to determine the whereabouts of persons alleged to have disappeared and the Government was continuing its efforts to solve those cases. As a result, 60 per cent of the cases had been clarified. Although the establishment of a special commission of inquiry on disappeared persons could be useful, the conduct of investigations was always entrusted to the courts, since they alone had the means to enforce decisions taken. Culprits who had been identified were brought to court and given a sentence according to the seriousness of the offence. The representatives of Chile also stated that they could possibly inform the Committee of the names of persons already convicted.

460. Furthermore, the representatives stated that in the event of death resulting from the action of the security forces, a judicial procedure was always instituted in which the persons responsible were identified. However, they pointed out that in some cases it was difficult to achieve speedy results. They also explained that cases involving members of the armed forces and security bodies came under the jurisdiction of the military courts, which were responsible to the Ministry of Justice and that there were in Chile, at present, 53 trials under way involving police officials charged with having used unnecessary force in the exercise of their functions. Under Chilean law fire-arms could be used by the security forces only when there was a rational need for such use and in proportion to the gravity of the situation.

461. The representatives then informed the Committee that the demonstration of December 1983 had led to 71 investigations into deaths caused by police violence and 31 investigations into the deaths of law enforcement officials. The latest demonstration had occurred in March 1984, and in neither case had judicial inquiries been completed. The victims of abuses by the police enjoyed all the rights granted to them by the Constitution, notably the right to choose a lawyer, to appeal against decisions as far as the Supreme Court and to exercise any remedy to expedite proceedings. The amnesty law promulgated in 1978 related to acts committed prior to that date. Consequently, it was not applicable to the cases to

which they had just referred. Moreover, according to the general rules in force, the families of the victims were entitled to apply to the criminal courts for compensation, not only in cases involving political offences, but also in cases concerning offences of any other kind. As to the murderers of the former Minister for Foreign Affairs of Chile, the Government was following the rules of international law regarding extradition.

462. The representatives then informed the Committee that a considerable proportion of the national budget was devoted to protection and improvement of health. Social expenditure had grown by 80 per cent in real terms between 1974 and 1982 and there had been a substantial reduction in infant mortality and in maternal mortality. Chile also had special provisions enabling workers whose health deteriorated to retire when they wished, and a law on preventative medicine. The legislation in force could be made available to the Committee at a later stage. The representatives added that, in order to alleviate the problem of unemployment, the Government had decided in August 1983 to allocate an amount of 15 thousand million pesos from the 1983 budget for the creation of jobs and the construction of housing and that it was also in the process of drawing up plans for resolving the problem of debts.

Treatment of persons deprived of their liberty

463. The members of the Committee referred to the numerous allegations of torture or ill-treatment of detained persons and requested information on the steps taken to ensure that those allegations were duly investigated and on the results of those investigations, on the steps taken to ensure that such methods were not used and that all detained persons were treated with humanity, and on the penalties imposed on persons responsible for torture or ill-treatment. In particular, they asked how many complaints of torture had been lodged, before which courts they had been brought, what had been the decisions of the courts up to the present date and, in cases in which there had been a conviction, what was the rank of the culprits in the police or the military, whether they had pleaded that they were obeying orders, whether the amnesty laws had affected those prosecutions or convictions and whether, in the absence of criminal proceedings, disciplinary measures had been taken against certain members of the police and the army, and what rank such persons held. They also asked whether prison staff had been informed of the Standard Minimum Rules for the Treatment of Prisoners prepared by the United Nations and were familiar with the Code of Conduct of Law Enforcement Officials and the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment. It was also observed that, if victims of abuses and torture often preferred not to apply to the courts, it was perhaps because regular procedures were not followed, the credibility of the complaints was impugned and the press and the media were manipulated to their detriment. It was then asked what the Government was doing to bring about the social rehabilitation of prisoners and whether it had considered inviting international organizations of its choosing to visit the country's prisons.

464. The representatives stated that persons found guilty in proceedings concerning cases of torture or ill-treatment were always punished, and the death sentence could sometimes be imposed. In many cases, proceedings were extremely slow and the trial could last for years, but the courts scrupulously respected procedure, which had recently been improved in Chile. A law on terrorist acts had been promulgated which also comprised guarantees for the protection of prisoners. The amnesty law

was not applicable to persons convicted of abuse of authority or torture. They also informed the Committee that 47 complaints of torture had been recorded since the beginning of 1984. The majority of the complaints had been brought before the military courts and the others before the ordinary courts of justice. In 7 of the 47 cases, sentence was to be handed down and the others were still under investigation. In 1983, two lieutenants and some sub-officers had been involved in cases of torture and prosecuted and the question of their duty to obey had not been invoked. The representatives pointed out that if a police officer was convicted, he had to leave the institution. They then gave information on conditions in places of detention in Chile - places which were all included in a list published by the Government and were visited periodically by the International Red Cross - and stated that the Government had endeavoured to eliminate torture and to promote the social rehabilitation of prisoners, for which purpose it had earmarked substantial resources throughout the prison system. In their opinion, the fear of reprisals was not something that prevented people from lodging complaints of torture, since almost all towns in Chile had organizations of lawyers acting with complete freedom and the Vicaría de la Solidaridad also had legal offices.

Liberty and security of persons

465. Members of the Committee wished to receive information on the total number of arrests in 1980, 1981, 1982 and 1983, the total number of arrests at public meetings in 1980, 1981, 1982 and 1983, the powers of arrest and detention of the CNI (National Information Centre), the remedies available to persons and to their relatives who believed that they were detained wrongfully, in particular, the Recurso de amparo, and the recurso de habeas corpus, the effectiveness of these remedies and the extent to which the requirements of article 9, paragraphs 2 and 3, of the Covenant were observed. They also wished to receive information on prisoners incommunicado, the applicable rules, the contact between an arrested person and his lawyer; in particular, the time when first such contact was taking place and the time when his family was informed of his arrest. In addition, they observed that there were allegations about secret places of detention and they requested information on the subject, as well as on steps taken to prevent the CNI from holding persons in places of detention that were not legally declared detention centres. It was noted in this connection that according to Decree-Law 18315 of 17 May 1984, detention centres run by the CNI were legalized and it was asked who controlled and inspected such centres of detention. It was noted also that in the first 11 months of 1983 there had been nearly five times as many arrests as in the same period of 1982 and 1981. Yet, according to Chile's report, there was no state of emergency in force between August 1983 and March 1984. Thus, those arrests had taken place during a period when the transitory provisions were not in effect and it was observed that those arrests did not conform to article 9, paragraph 1, of the Covenant. It was also asked why there had been so many allegations that persons had been arrested because they were trade-union leaders, persons were detained for their opinions or for their engagements in the promotion of human rights and in the service of the Catholic Church, whether there was a selectivity in making arrests and, if so, how it was justified, on what grounds persons were arrested at public gatherings and released later without being formally charged and whether measures existed to prevent the police from arbitrarily arresting the same kind of people time and again. Furthermore, explanation was requested in particular on 175 persons held incommunicado in secret premises in the first 10 months of 1983 against what was established in Transitory Provision XXIV of the Constitution. In addition, it was

asked what were the functions of the Jefes de Plaza established under Decree No. 147 of 8 September 1983 and Law No. 18015 of 14 July 1981, how often the President had used his power under Transitory Provision XXIV of the Constitution to arrest persons and whether all the arrests in the past year had been made under that provision, whether in the application by an individual for a remedy such as amparo, a court, in addition to considering the formal legality of detention, could enquire into the factual correctness of the administrative or executive action, in the case of a decision purported to have been made but not factually and correctly made under the law or by Presidential decree, and whether the right to compensation of all victims of unlawful arrest or detention was enforceable.

466. The representatives explained that in Chile, as in most countries, whenever there were disturbances at public gatherings, some people were arrested but solely for the purpose of verifying their identity and they were released either immediately or after a few hours. The CNI did not have the specific power of detention. It had to act on the basis of a written order of a competent authority, except in the case of in flagrante delicto, and must place the person concerned at the disposal of the responsible authority. In carrying out an investigation, the CNI could search the premises of the person concerned. If the authorities caused any person to be arrested or detained, they should, within the following 48 hours, notify the competent judge and place the person concerned at his disposal. The judge might, by an order accompanied by a statement of reasons, extend that time-limit by up to five days and by up to 10 days in the event that the acts under investigation were classified by the law as terrorist acts. Furthermore no one could be arrested or detained, or held in custody or committed to prison pending trial, except in his home or in public places intended for that purpose. The representatives then made reference to article 21 of the Constitution dealing with remedies for persons arrested, detained or imprisoned in violation of the provisions of the Constitution or the laws, they provided detailed information on those remedies, including the remedy of amparo, and they stated that the remedy of amparo had not been suspended during the state of emergency.

467. The representatives explained that no person was being held incomunicado in Chile, and that there was a wide range of freedom for a prisoner to seek the advice of a lawyer. The only restriction was that, when a defendant had been indicted, he could be declared incomunicado by the decision of the judge and could then be visited by the prison warden and, if the judge so authorized, by his lawyer. As regards political prisoners during a state of emergency, the detention had to be duly authorized and it was obligatory to notify that detention to the immediate members of the person's family within 48 hours. Prisoners should be taken to public places of detention and the possibility of secret places of detention had disappeared in the country. Detention centres were subject to visits and inspections by inspecting magistrates.

468. The representatives pointed out that most persons arrested in the first 10 months of 1983 had been released or fined. While it was true that trade union leaders had been detained, it had not been on a selective basis. They were often involved in the demonstrations and when so many arrests were made it was inevitable that some trade union leaders had been included. They had generally been released after a fine. The representatives explained that the purpose of the Jefes de Plaza was to take military command of the area if the situation required and that their appointment was a temporary one with a maximum of 90 days. They also clarified the difference between an administrative provision and a provision coming within the

competence of the law courts in Chile and stated that illegal arrest was an offence for which victims were entitled to compensation.

Right to a fair trial and equality before the law

469. Members of the Committee requested information on the guarantees of the independence of the judiciary, the guarantees of the free and effective exercise of the responsibilities of members of the legal profession towards their clients, the competence of military or special courts to try civilians, and on whether these courts observed all the requirements set out in articles 14 and 15 of the Covenant. They asked, in particular, whether Transitory Provision XVIII, paragraph (h), of the Constitution, affected the independence and authority of the judiciary, and whether it qualified in any way the provisions of article 73 of the Constitution. They noted that associate judges (abogados integrantes) were effectively nominees of the Government and they observed that such a system would seem to have certain dangers for the necessary independence of the judiciary in a country with political problems of the kind existing in Chile. Furthermore, reference was made to article 19, paragraph 3, of the Constitution and it was asked whether peace-time military courts dealt with offences related to fraud and to unlawful association. With reference to article 14, paragraph 2, of the Covenant clarification was requested on article 9 of the anti-terrorist law which imposed a punishment on persons suspected of committing an offence. Moreover, it was observed that the statement in the anti-terrorist law concerning the secrecy of statements and identity of witnesses did not appear to be in conformity with article 14, paragraph 3, of the Covenant.

470. The representatives stated that the judiciary was completely independent in Chile. They explained that peace-time military courts were part of the normal legal system in Chile and were subordinate to the Supreme Court. Wartime military courts, which had functioned for a period during the state of siege, had been disbanded since the anti-terrorist law came into effect. Peace-time military courts were concerned with certain offences such as espionage, with offences committed against military personnel by civilians and with the violations of arms control regulations, including the organizing and training of armed groups. All the investigations conducted by the military courts were subject to the rules of the civil justice penal code and sentences must comply with those rules and could be the subject of appeal to the Supreme Court.

471. The representatives further stated that, in general, the special courts did not administer justice. Thus, the Constitutional Court pronounced on the constitutionality of pending legislation but, although it was composed of magistrates of the Supreme Court of Justice and was called a "Court", did not administer justice. The same was true of the court responsible for supervising elections, which ruled on possible disputes concerning election results. In addition, the special wartime court sat only during wartime and for practical reasons, since it was very difficult for the Supreme Court to hear appeals concerning events which had occurred in the theatre of war.

472. The representatives then provided clarification regarding the application of Transitional Provision XVIII of the Constitution, which gave the Government responsibility for dealing with conflicts of competence between courts. As to the question raised concerning associate judges (abogados integrantes), they stated that, in their country, the number of judges was limited and it might therefore be necessary to apply either to the prosecutor attached to the particular court or to

associate judges appointed each year for that purpose. They emphasized, however, that all magistrates could be challenged and, in the event that a magistrate in that situation refused to accept the objection, it was the court that decided.

473. With regard to the anti-terrorists law, the representatives stated that the power to request the interception or recording of documents or communications in the event of terrorist acts lay with the court responsible for the investigation. Similarly, the court could provisionally decide to keep statements by witnesses or complainants secret (although those statements nevertheless remained at the disposal of the accused for preparing his defence) in order to protect witnesses from possible assault during investigations.

474. The remaining issues on the list to be discussed with the representatives of Chile concerned: IX. Freedom of movement; X. Interference with privacy; XI. Freedom of expression; XII. Right of peaceful assembly; XIII. Political activities. The Committee heard observations by the representatives of Chile on the points raised under the first of these issues, namely: (a) Restrictions on freedom of movement currently in force; (b) Current practice as regards the external and internal exiling of persons; (c) Number of individuals and their dependants who are at present denied permission to return to their homes from exile abroad or within Chile; (d) Steps being taken to review these cases and alleviate the situation of the persons concerned. ^{15/} (See para. 478.) Before members of the Committee could proceed to ask individual questions on these or any other matters, it had become clear that for reasons of time the examination could not without considerable difficulty be completed during the twenty-second session.

General observations and further procedure

475. Some members of the Committee expressed the view that, despite the goodwill shown by the Committee in preparing a list of issues to be taken up and precise questions designed to elicit comprehensive information on the situation of civil and political rights in Chile, the representatives of the Government of Chile had given evasive replies or provided inadequate information in the discussion thus far. Moreover, as in 1979, the Committee had before it reports which did not give a true picture of the exceptional circumstances of daily life in Chile and provided no specific information on the restrictions imposed on human rights during the state of emergency still in force in the country, notwithstanding the large amount of information on restrictions which was in the international community's possession and which had aroused its indignation and led to the adoption of several decisions by the General Assembly.

476. The members of the Committee emphasized that, even if the new Chilean Constitution were regarded as legitimate, the transitional provisions being applied, which would remain in force for a very long time to come, made many constitutional provisions inoperative, particularly those regarding human rights, and prevented the human rights provisions laid down in the Covenant from being satisfactorily applied. Consequently, the dialogue which had so far taken place between the Committee and the Chilean Government had been extremely difficult and it was to be hoped that better results could be obtained in the future.

477. In order to achieve those results, the Committee intended to ask many more questions and looked forward to receiving detailed replies accompanied by concrete information.

478. In that connection, several members of the Committee noted that it would be difficult to find the necessary time at the present session to complete consideration of the report of Chile. On the proposal of the Chairman of the Committee and with the consent of the representatives of the Government of Chile, the Committee therefore decided to defer consideration of the remaining questions concerning that report until its twenty-third session.

German Democratic Republic

479. In accordance with the statement on its duties under article 40 of the Covenant adopted at its eleventh session (CCPR/C/18), 14/ paragraph (i), and the guidelines adopted at its thirteenth session regarding the form and contents of reports from States parties (CCPR/C/20), 16/ and having further considered the method to be followed in examining second periodic reports (see paras. 58-59), the Committee, prior to its twenty-second session, entrusted a working group with the review of the information so far submitted by the Government of the German Democratic Republic in order to identify those matters which would seem most helpful to discuss with the representative of the reporting State. The working group prepared a list of issues to be taken up during the dialogue with the representatives of the German Democratic Republic. The list, supplemented by the Committee, was transmitted to the representatives of the German Democratic Republic prior to their appearance before the Committee, and appropriate explanations on the procedure to be followed were given to them. The Committee stressed, in particular, that the list of issues was not exhaustive and that members could raise other matters. The representatives of the German Democratic Republic would be asked to comment on the issues listed, section by section, and to reply to members' additional questions, if any.

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480. The Committee considered the second periodic report of the German Democratic Republic (CCPR/C/28/Add.2) at its 532nd, 533rd, 534th and 536th meetings, held on 18, 19 and 20 July 1984 (CCPR/C/SR.532, 533, 534 and 536).

481. The report was introduced by the representative of the State party who stated that since its initial report to the Committee in 1978, the German Democratic Republic had undertaken numerous activities for the continued implementation and promotion of human rights both at national and international levels. In particular, major efforts had been made in his country to improve material conditions, public education, cultural life, health and social welfare of the people and to provide conditions and opportunities for the promotion of international understanding and mutual co-operation. He stressed the close connection between the right to peace and the right to life and the urgent need for effective disarmament, referring to the various proposals made or supported by the Government of the German Democratic Republic. He noted, in particular, that in 1983 the Government adopted regulations on the work of foreign cultural centres in the German Democratic Republic; a decree governing the conditions and procedures applicable to family reunification matters and marriages between citizens of the German Democratic Republic and aliens; and that his Government was constantly improving working people's participation in the conduct of public affairs as exemplified by recent elections to the local assemblies and election of judges. He described the process and its results. Moreover, the courts of the country, in particular the Supreme Court, had developed procedures which strengthened political and civil rights. In providing legal protection to individuals against physical

injury and damage to personal property the courts had been much involved in determining and asserting civil law claims with regard to the payment of damages and compensation as well as the satisfaction of insurance claims.

482. The representative of the State party also referred to various human rights activities and stated, in particular, that under the new law of 1983 on social courts, disputes and arbitration commissions had been established in the German Democratic Republic which helped citizens with advice on legal matters and the exercise of their rights and gave advice on meeting legal obligations; that in the case of legal protection, a considerable contribution was made, in addition to barristers, by trade unions or the legal advisers or counsels appointed by them; that 37.7 per cent of the representatives elected to local assemblies and 50 per cent of legal officers were women; and that the German Democratic Republic was among the countries with the lowest crime rate in the world.

483. Members of the Committee welcomed the spirit of co-operation shown by the German Democratic Republic and expressed their appreciation to the Government for its second periodic report and for the additional information provided by the representative of the reporting State.

Constitutional and legal framework within which the Covenant is implemented

484. With reference to this issue, members of the Committee wished to receive information on the significant changes relating to the implementation of the Covenant since the previous report; precisely in what respects had steady progress been made in the implementation of civil and political rights since the submission of the previous report; promotional activities concerning the Covenant; and factors and difficulties, if any, affecting the implementation of the Covenant. They also wished to receive information on whether the Government had achieved a balance between civil and political rights on the one hand and economic, social and cultural rights on the other; whether any study had been made of the restrictions placed on civil and political rights in order to determine whether they were really necessary and consistent with the principle of proportionality, which was the guiding criterion of the Covenant. With regard to promotional activities, members asked, in particular, to what extent and in what ways knowledge of human rights recognized in the Covenant was imparted to schools and universities, to public officials and law enforcement officers, and to the general public; to what extent the Covenant was made available to the general public and whether it was available in libraries and bookshops; whether trade unions and other organizations were aware of the Covenant provisions; whether the bulletin of the Human Rights Committee of the German Democratic Republic was easily circulated in the country; whether the Committee included people from different walks of life and how its activities were planned; whether besides the planned activities there were also more spontaneous ones by non-governmental organizations, or demonstrations of solidarity; and finally, whether the summary records of the Committee's consideration of the present report and the Committee's proceedings would be published in the bulletin.

485. Clarification was requested on the views of the German Democratic Republic regarding self-determination of peoples (article 1 of the Covenant). Recalling a parallel question to the Democratic People's Republic of Korea, a member asked whether the policy of the German Democratic Republic on reunification of Germany accorded with that principle, and whether it considered self-determination to be a dynamic or static concept. Another member wanted additional information on what

was being done with regard to the self-determination of other peoples referring in particular to southern Africa and Palestine. It was also asked whether the country had granted diplomatic status to either the PLO or the SWAPO. Members further asked what was the legal framework of the participation of citizens in public administration and whether it was encouraged. More information was also sought concerning the regulations governing family reunification and transborder marriages; on the content of the Third Penal Modification Act of 28 June 1979 to which reference was made in the report; on the petitions and appeals made at the administrative, judicial and legal levels; and whether petitions could be classified as effective remedies within the meaning of article 2, paragraph 3, of the Covenant and whether there were any specific rules concerning their handling.

486. In his reply, the representative of the State party stated that in the last 10 to 20 years the idea of human rights had become much more widespread in his country; that human rights issues formed part of the legal education in high schools and were frequently discussed in the mass media and that the citizens' consciousness and awareness of human rights had enormously increased; and that civil and political rights found expression not only in the constitution but in official commentaries and textbooks published in the last few years; that the Covenant and the text of the final act of Helsinki and the complete text of the concluding document of the Madrid conference had been published in the German Democratic Republic; that a human rights committee had been in existence in the country for more than 20 years, issuing a bulletin and most recently publishing the Government's second periodic report to the Committee; and that the Government had taken note of the various problems discussed in the Committee, in particular, during consideration of the first periodic report. He explained that the two German States were of a different socio-economic system and that it would be impossible to compare the situation in Korea with the situation in Europe or use the reunification policy of the Democratic People's Republic of Korea as a general model. He also pointed out that there had been a significant increase in the use of petitions in the last few years under article 103 of the Constitution; that petitions were a simple and informal procedure, no fee was payable and they often produced more benefits than filling an action with a court; that about 50 per cent of petitions challenging judgements or other legal decisions proved successful. The representative stressed that petitions were not appeals and could not be used in place of appeals. Moreover, they could not achieve any formal modification of a decision of a court. Petitions often consisted of criticisms of decisions or activities of State organs and other organizations. Article 1 of the Petitions Act stipulated that exercising the right of petition must not result in any disadvantage to a citizen or a social organization. Article 7 stipulated that the petitioner had the right to a detailed written or oral answer to his petition which had to be delivered within four weeks. Under articles 10 and 11 the relevant State organs and other bodies were required to analyse the contents of petitions with a view to improving their work. The representative stressed that the highly developed level of economic, political, social and cultural life in the German Democratic Republic was the basis for a full guarantee of human rights and the equality of all human beings without any discrimination; as well as of the largest possible political participation of citizens in the conduct of public affairs.

487. As regards the Committee for Human Rights in the German Democratic Republic, the representative said that the Committee was an independent, non-governmental body without affiliation to any political party; it was not responsible to any authority, institution or organization. Its membership consisted of representatives from various organizations and included representatives of

different parties, mass organizations, central government bodies, academic establishments; hence it represented varying interest and social groups.

Equality of the sexes

488. With regard to the second issue, members of the Committee wished to receive information on the equality of the sexes which was dealt with in paragraphs 16 to 20 of the report. In particular, since measures taken to improve the status of women could have considerable implications for family life and for the care and upbringing of children, further details were requested on how those problems were dealt with in the German Democratic Republic. In addition, information was requested on whether married women were treated in the same way as unmarried women; from what age interruption of pregnancy was permitted and whether there was any distinction between the treatment of minors and adult women; whether a married woman could have an abortion without the agreement of her husband; what the impact of abortion on family life was and was the opinion of the husband taken into consideration; and whether the birth rate had decreased in the country and, if so, what problems were envisaged.

489. Replying to those questions, the representative of the State party pointed out that about 50 per cent of all students at colleges and nearly 75 per cent of all students in technical schools were women; that 99 per cent of girls who had completed 10 years of compulsory schooling began vocational training; and that as a result, the number of women having completed vocational or higher education was steadily growing. Replying to other questions concerning the status of women and family life he said that the State provided financial assistance for working mothers; that many mothers took a year's paid maternity leave; that families with three or more children received priority in housing; that paid maternity leave would be extended to 18 months; that mothers taking care of sick children received an allowance equivalent to the sick pay to which they were entitled after the seventh week of their own incapacitation and those benefits were also available to unmarried mothers. He also stated that the paid leave available for working mothers who wished to care for their children had been extended to 18 months. It was, however, true that working mothers, and especially those more highly qualified, tended to lose part of their professional development due to maternity and did not find it easy to reach the level of their male colleagues, especially in scientific fields. In the administration of justice, however, women are playing a large role. Replying to additional questions, the representative said that women were free to decide whether they wished to work or to stay at home and take care of their families. His country's experience showed that equality for women could only be achieved if men gave their full support and participation in what was a difficult and complicated social process. Progressive steps had been taken to allow every female to decide during the first three months of pregnancy whether she wanted a child. In addition effective social measures and widespread family planning were provided to ensure the equality and freedom of women.

Rights to life

490. With reference to this issue, members of the Committee wished to receive information on the death penalty, including information on the number of cases and for what offences the death penalty had been carried out; whether any consideration was being given to its abolition; deaths resulting from action of the security forces; what instructions security forces had received regarding the use of fire-arms; and in relation to the deployment of nuclear arms in Europe, what

attitude did the Government and the people of the German Democratic Republic take and what practical steps had the German Democratic Republic taken to promote disarmament. Regarding the right to live in peace, the report referred to "relentless punishment of crimes against peace, humanity, human rights and war crimes" an indispensable prerequisite for peace and stability, and members asked whether the German Democratic Republic would favour the establishment of a criminal jurisdiction on an international basis to deal with such crimes. Members also raised questions as to the protection of health.

491. Other questions raised by members concerned the manner in which the German Democratic Republic conceived and applied the principle of unilateral renunciation of military force. Other members referred to the inadequacy of article 4 of the Constitution guaranteeing the right to live in peace relative to the broader right to life guaranteed under article 6 of the Covenant; the possible violation of article 6 through arbitrary use of deadly force by frontier guards; in that connection it was asked how many persons had been killed by automatically triggered fire-arms along the frontier since the submission of the German Democratic Republic's initial report in 1979. The wish was expressed that those devices be removed.

492. The representative of the German Democratic Republic explained that the right to life was linked to the right to peace; that in the opinion of his Government, no one should be arbitrarily deprived of life, it would be wrong to interpret article 4 of the Constitution as a limited protection of the right to life. That right was also protected by other provisions of the Constitution and specific laws. The death penalty (arts. 6 (2), (3), (4) and (5) of the Covenant) was applicable only to a very few serious crimes, including crimes against peace and humanity, genocide and war crimes, high treason, espionage and very serious cases of murder. He stressed that even in the case of military crimes the death penalty was only applicable when the German Democratic Republic was the victim of aggression and was in a state of national defence. In practice, since the first periodic report, there had been no cases of death sentences either imposed or executed. The question of abolition of the death penalty was linked to that of international efforts towards peace to save the lives of millions from nuclear war. Nothing was more important than peace and all means should be used to achieve it, even the death penalty. The lessons of history had been learned under fascism and the Government of the German Democratic Republic would fight with all means at its disposal against this most serious of crimes.

493. With reference to the question of death resulting from the action of the security forces, he said that weapons could only be used to an appropriate extent commensurate with the threat of danger offered. He quoted articles 26 and 27 of the law on the State frontier of the German Democratic Republic which stated that frontier troops might resort to physical action if other means were not adequate to prevent serious implications for security and order in the frontier area and only against violent acts. He also said that a complicated situation had existed for more than 25 years due to the fact that the western frontier of the German Democratic Republic had not been fully recognized as an international border. Attempts had been made to destroy the Socialist State in the German Democratic Republic and national security consequently had become a vital issue. The situation of the border was different from that prevailing in relation to other States because it was a frontier between two differing social systems and divided two military pacts. Turning to another question, he stated that fire-arms were the ultimate measure against individuals only when other physical action was

ineffective and failed to prevent the perpetration of a crime. The lives of persons would be spared if possible and injured persons aided. A similar law governed the People's Police and corresponded to regulations enacted in other democratic countries. It had very seldom been used because of the stable political situation in the German Democratic Republic and the absence of terrorism or banditry. There had been a strict control on fire-arms since 1945 and prohibition on their possession or import.

494. With reference to questions on the right to live in peace, he said that the explicit inclusion of human rights in paragraph 26 of the Penal Code illustrated the view that the protection of peace, humanity and human rights was one and the same; that individual human rights were protected by law; that the more serious crimes, such as mercenary or war crimes, were equivalent to crimes against humanity; that the Code was particularly clear with regard to crimes against national, ethnic, racial or religious groups and that in the past few years a number of ex-Nazi criminals had been tried and sentenced for war crimes. The representative also stated that his Government thought the question of an international criminal jurisdiction for that purpose was inseparable from the sovereignty of any State, and that crimes against peace and humanity should be prosecuted under the principle of universality within the competence of every State. In relation to concrete steps for disarmament, he referred to the willingness of the German Democratic Republic to accept the proposal of the Government of Sweden for a nuclear-free zone in Europe and its efforts to ban all nuclear weapons from European territory.

495. In response to the questions raised with regard to the protection of health, the representative stated that health of the people was considered to be a human right in the Constitution and was guaranteed by article 35 which provided for the improvement of working and living conditions, the promotion of physical culture and sport, and free medical care on the basis of the social insurance system.

496. He cited a number of statistics to illustrate health improvements in the German Democratic Republic, in particular, infant mortality in 1983 had improved to 10.7 per thousand live births; in 1949 there had been 9,245 deaths from infectious diseases but only 390 in 1982; deaths from malignant tumours and heart and circulatory diseases had also dropped in recent years; the Government had paid great attention to public health and in 1983 there were 22 doctors available per 10,000 inhabitants compared with 7 per 10,000 inhabitants in 1949. Financial support for public health had grown from 1 billion marks in 1950 to 11 billion marks in 1983.

497. Referring to questions on legislation concerning the beginning of life he said that the start of life and the development of the personality occurred when the body of the child separated from the body of the mother and from that moment the individual was considered to have human rights protected by penal law, although even before that moment the foetus was protected under the laws on abortion and article 363 of the Civil Code according to which a child already conceived had the right of inheritance. Legislation in the German Democratic Republic prohibited any active assistance in ending a person's life and medical personnel involved in such activities were punished. Where the transplant of organs was concerned, the German Democratic Republic had some practice but no legislation; a transplant was regarded as an operation and the consent of both parties or their relatives was necessary.

Liberty and security of persons

498. With reference to this issue, members of the Committee wished to receive information concerning the circumstances and periods for which persons might be detained without being charged with a criminal offence; on the remedies available to persons (and their relatives) who believed that they were being detained wrongfully; on the effectiveness of those remedies; on observance of article 9, paragraphs 2 and 3 of the Covenant; on the maximum period for which persons might be detained pending trial; on solitary confinement; on the contact between arrested persons and lawyers; on the prompt notification of family in case of arrest; detailed information on the Ordinance of 8 November 1979 on the care of persons and the protection of dwellings and property in case of arrest; the laws on the treatment of persons in custody during investigation and their compatibility with the United Nations Standard Minimum Rules for the Treatment of Offenders.

499. In addition, members of the Committee wished to receive further information concerning possible violation of article 9 of the Covenant through the arbitrary arrest of peaceful demonstrators; concerning the conditions of detention such as whether prisoners were obliged to work, whether there were programmes for prisoners' education and for their social rehabilitation; whether there were separate places of detention for those undergoing trial and those already sentenced; whether there were high-security prisons and whether political prisoners were kept separately from common criminals. In addition, information was requested concerning the claims made by many persons charged with attempted escape, that they were unaware of the applicable Penal Law covering their offence; and concerning reported violations of article 9, paragraph 4, of the Covenant involving delays of as much as six months prior to trial.

500. The representative of the German Democratic Republic stated that no arbitrary deprivation of liberty existed in the German Democratic Republic. In practical terms, under article 125 of the Penal Code any person could apprehend another if he were in flight and if he were suspected of attempting to abscond and his identity could not be established. The procurator and the investigating authorities could order temporary apprehension of a person if the conditions for issuing a warrant prevailed. Such a person, however, must be brought before a competent court not later than the next day. Following preliminary arrest, a number of legal remedies were applicable and available to the person concerned. A date must be appointed for a public trial not later than four weeks after a person had been charged. In 90 per cent of criminal proceedings that period was complied with and only in exceptional circumstances, which had to be recorded, was that provision not observed.

501. Turning to the question on the commitment of persons to institutions, he said that principally the family was involved, and in some cases a member of the family might legally represent the person in question. Under article 14.3 of the Law on Commitment, a member of the family had the right to apply for the derogation of commitment to an institution passed by a court provided that the family would see to the medical treatment of the patient.

502. Replying to questions on the execution of criminal justice, the representative stated that the standard minimum rules of hygiene in places of detention were stringently observed. Labour safety regulations for prisoners were no worse than those in force outside prison. In accordance with the Covenant, pre-trial and criminally charged prisoners were separated, and pre-trial detainees were treated

as persons who had not been proved guilty. Juveniles and adults were separated in accordance with the provisions of the Covenant except in certain instances where such juveniles were receiving training and were over 18 years of age. In other instances juvenile offenders over 18 years of age might remain in juvenile prisons to complete training. He also said that political opinions were not punished and there were no special trials for those accused of political crimes nor special prison regulations for political prisoners and that the German Democratic Republic only held persons responsible for their criminal acts. Moreover, among the efforts to rehabilitate prisoners stress was laid on parole before the full sentence had been served as an important step in the transition from prison to freedom. A prisoner who was released was given a job in accordance with the qualifications obtained in prison and provided with lodging (unless he returned to his family); those items were very important in the rehabilitation of former prisoners and were complemented by social assistance.

Freedom of movement

503. With reference to this issue, members of the Committee wished to receive information on the restrictions on the freedom of movement currently in force; the restrictions for citizens of the German Democratic Republic to enter their country; the actions, if any, taken against persons who attempted to leave the country without authorization, and the criteria used for permission to leave the country. They asked, in particular, what documents were required for application for authorization to leave the country either temporarily or permanently; whether they included tax statements or statements by the employers or members of the family regarding the purpose of the journey, documents from other administrations such as the police and housing services and the duration of such certificates; whether citizens had the right to a passport and how the passport system of 1979 compared to article 12, paragraph 2, of the Covenant; how restrictions could be justified with regard to article 12, paragraph 3, of the Covenant; what protection of national security meant and what were the criteria of proportionality to prevent persons from going abroad; as well as how an application by a citizen to leave the country was assessed in relation to the protection of public order. Furthermore, explanation was requested on the number of applications to leave the country; on the percentage of applications made for permission to leave for countries other than those of Eastern Europe and what percentage of applications were granted or refused and whether reasons were given for refusal; which category of persons were permitted or refused the right to leave; whether the legal reasons for refusal were mentioned in any text and whether the person concerned was informed of them and what effective remedies the person could claim with reference to article 12, paragraph 2, of the Covenant if a passport was refused. In addition to the normal frontier posts for police and customs controls, it was asked whether any physical obstacles existed to crossing the frontier and, if so, when they had been set up and for what purpose and what the results of their existence and operation had been, as well as how many persons had been condemned under article 213 of the Penal Code.

504. The representative stated that liberty of movement was guaranteed by article 32 of the Constitution; that it was only restricted by law in certain specific circumstances in the interest of the citizen and of society, to ensure security and protect health, for example in the case of epidemics; and that residence restrictions might be imposed by court decision under article 31 of the Penal Code in accordance with the nature of the crime.

505. With reference to restrictions for citizens to enter their country, he said that there were no circumstances or conditions under which citizens were not allowed to enter the German Democratic Republic. Under article 10 of the Law on Citizenship, citizens were allowed to move to another country upon request unless the law and regulations stipulated otherwise.

506. As regards questions concerning the actions taken against persons who attempted to leave the country without authorization, the representative asserted that those persons violated the law, both in the case of citizens of the German Democratic Republic and of foreigners residing there. Foreigners might have their permit withdrawn or be expelled from the country, while citizens of the German Democratic Republic might be charged under article 213 of the Penal Code. Persons known as "escape helpers" who received money for helping persons to leave the country illegally could be punished on the grounds of conducting traffic in human beings.

507. Replying to questions posed on the criteria used for permission to leave the country, the representative explained that requests to leave the country were processed by the competent organs acting in accordance with national legislation, such as the Passport Act and Passport and Visa Decree of 1979 and the Ordinance on the regulation of questions concerning family reunification and marriage between citizens of the German Democratic Republic and aliens of September 1983, and that the temporary or permanent exit from one country to another depended on the relation between States. In order to ensure the legitimate rights of their citizens, the authorities reserved the right to grant permission to leave, because the German Democratic Republic was located on the dividing line between two social systems, even until today its laws on citizenship were not respected by all States and the German Democratic Republic must defend itself against efforts to lure away skilled manpower. He also stated that permission was refused if the rights of citizens were impaired by the change of residence and also depended on the family situation of the applicant, his profession, whether he had met his obligations in the German Democratic Republic, whether he had given correct information, whether his desire to change his residence was at conflict with the interests of the German Democratic Republic, whether he was free of military obligations or whether he was involved in any criminal proceedings.

508. In reply to a number of questions, he said that the role of the frontier was to determine the territory of the State with respect to its neighbours; that his Government wished for peaceful relations with all its neighbours and enjoyed relations of friendship with them and that a country's right to its frontiers could not be questioned under the Charter of the United Nations and the treaty of Helsinki.

Right to fair trial and equality before the law

509. With reference to this issue, members of the Committee wished to receive information on the legal guarantees with regard to the right of all persons to a fair and public hearing by competent, independent and impartial tribunal, on the relevant rules and practices concerning the publicity of trials and to public pronouncement of judgements as required by article 14, paragraph 1, of the Covenant and on specific rules concerning the admission of the mass media to court hearings; as well as on facilities for accused persons to enable them to obtain legal assistance. Referring to article 94 (1) of the Constitution which stipulated that only persons loyally devoted to the people and their socialist State could be

judges, it was asked whether there was a public body to decide which judges met those requirements. As regards the admission of the mass media to court hearings, more information was requested on whether observers from non-governmental organizations could attend trials; what criteria were used to decide when a trial should be held in secret for reasons of State security and what measures were applied to prevent trials from exceeding a reasonable limit, as required under article 14 of the Covenant. As regards the right to a public hearing, it was inquired whether in cases where articular facts were kept secret, was this not an exception which could be very broadly interpreted and used to hold trials in camera whenever the State felt that for some reason or another it would be desirable for them not to be held in public. It was also asked whether trials concerning illegal crossing of the frontier were normally held in public or always held in camera. In addition, further clarification was requested regarding the principle of the independence of the judiciary.

510. The representative of the German Democratic Republic stated that equal rights of all individuals before the law was a fundamental basis of the legislation of the German Democratic Republic and were enshrined in articles 20 and 94 of the Constitution, article 5 of the Penal Code and article 5 of the Criminal Procedure Code. The right to a fair and public hearing was guaranteed by article 105 of the Constitution, articles 10 and 11 of the Court Constitutional Act, articles 211 and 246 of the Penal Procedure Code, and articles 3, 43 and 44 of the Civil Procedure Code. The independence and impartiality of the judiciary was guaranteed by article 96 of the Constitution, article 5 of the Court Constitution Act, and articles 156 and 222 of the Criminal Procedure Code. There were no extraordinary courts in the German Democratic Republic. Military courts were included in the general court system and there were no special military codes. The Supreme Court ensured uniform application of the law by all courts, including military courts.

511. In order to safeguard a fair trial by an independent and impartial court, article 7 of the Penal Code included important provisions concerning the eligibility and election of judges; courts and judges were subject only to the Constitution and the law and court judgements could only be revised by a superior court. Only a special body of judges sitting in a disciplinary committee was entitled to decide upon the disciplinary liability of a judge. The representative also pointed out that article 94 of the Constitution required that only persons loyally devoted to the people and their socialist State, and endowed with a high measure of knowledge and experience, human maturity and character might be judges. The fact that judges were elected and had to be scrutinized by citizens' teams provided a safeguard that people with the right personality became judges and that has been his country's experience.

512. As to the independence of judges, he stated that judges of the Supreme Court were elected by the People's Chamber and might be recalled by it, and that the People's Chamber issued guidelines for the work of the Supreme Court. Nevertheless, it did not give orders as to how the Supreme Court was actually to function.

513. With regard to the admission of mass media to court hearings, it was a principle of the administration of justice in the German Democratic Republic that, in accordance with article 14, paragraph 1, of the Covenant, court proceedings were held in public. The only exceptions were in accordance with articles 44 and 211 of the Criminal Procedure Code. Court proceedings were regularly reported in the mass media as part of the process of developing the legal consciousness and awareness of

the people. In conformity with article 14 of the Covenant, facilities were granted to accused persons without any restriction or discrimination. A person charged with a criminal offence was entitled under article 61 of the Criminal Procedure Code to defend himself and to avail himself of legal assistance at any stage of the proceedings and he was entitled to legal assistance of his own choosing free of charge. Most advocates in the German Democratic Republic had joined the collegia mentioned in the report; the collegia ensured that persons seeking advice could freely choose their advocate from among members. An individual contract had to be concluded between the client and an advocate which formed the basis for the activity of the defence counsel.

Interference with privacy

514. With regard to this issue, members of the Committee wished to receive information on the powers of security forces to search private houses and to interfere with private correspondence.

515. The representative stated that the rights and duties of the security forces were strictly stipulated by law and that such interference was admissible only in regular preliminary proceedings or court proceedings as provided by article 98 of the Criminal Code. If those legal prerequisites were not fulfilled, no one was allowed to search private homes or to interfere with private correspondence. Under article 19 of the Criminal Code, if the information provided gave rise to a suspicion of a criminal action, a written order would be issued for the institution of preliminary proceedings. Article 108, paragraph 2, of the Criminal Code provided that a person could be searched if he was suspected of having committed or participated in a criminal act and if the search was expected to produce evidence.

516. Under article 115 of the Criminal Code, the post office might be ordered to hold letters, telegrams and other postal matter addressed to the accused. If it was established after opening the mail that retention was unnecessary, it must be returned to the postal service. The surveillance and recording of telecommunication might be ordered in the event of a strong suspicion of criminal acts such as air piracy, and drug trafficking. Under article 121 of the Criminal Code, application must be made to a court within 48 hours for confirmation of such restrictive measures and if confirmation was denied, the measures must be cancelled within 24 hours.

Freedom of expression

517. With reference to this issue members of the Committee wished to receive information on the controls exercised on freedom of the press and the mass media; on cases where persons may be arrested or detained on account of their political views; on restrictions on political debates; on the extent to which artistic activity was dependent on membership in official organs of artists; as well as on the criteria of admission to and dismissal from such organizations.

518. They also wished to receive further clarification on the application in practice of article 99 of the Criminal Code, under which it was a criminal offence to collect information which was not classified as secret with a view to passing it to foreign agencies or organizations, as well as how this article had been interpreted by the courts.

519. Moreover, members inquired what measures, in particular, were taken by the State to enable people to seek and receive information, regardless of frontiers; whether it was true that, in order to publish anything, a person needed the authorization of the Minister of Information; whether, if an individual wished to publicize his ideas for change or draw attention to alleged violations of rights, what means were available for him to do so; whether he had to do it in the government-controlled mass media or could issue some other publication.

520. Further information was also requested on the application of articles 106 and 220 of the Criminal Code; on whether there was any kind of private human rights committee, in particular, whether there was a branch of Amnesty International or a Helsinki Declaration Monitoring Group; and also how the German Democratic Republic justified the fact that German language newspapers from other countries were not available in that country. Concern was expressed that a private peace group, which had chosen the monument "Swords into Ploughshares" as its symbol, had been subjected to sanctions by public authorities.

521. The representative explained that freedom of expression was a fundamental right of citizens of the German Democratic Republic and was ensured by article 27 of the Constitution. This guarantee was an essential part and pre-condition of socialist democracy. In the Republic the press was owned by the people, the political parties and other organizations. There were no private newspapers or journals and the press was not governed by commercial interests. The parties and organizations which represented the ideas and feeling of the working people determined the general policy of the press. The people had an opportunity to write articles and contribute to the press and there was a large network of popular correspondents who reported on everyday affairs and experiences reflecting the living and working conditions of the people.

522. There was no State control of the press. Radio and television were controlled by two State committees which guided their activities. The committees represented the working people and reflected their interests. Political and other subjects were frequently discussed on radio and television. It should be noted that while radio and television were under the control of the State, such control was not directed at restricting or limiting freedom of expression but at promoting the use and application of that right to the greatest possible extent.

523. With regard to cases where persons might be arrested or detained on account of the political views which they expressed, he said that there had not been a single case in the German Democratic Republic of arrest or detention on such grounds. According to articles 19, 87 and 99 of the Constitution, criminal responsibility arose only in respect of concrete acts and not in respect of a person's conviction, attitude or opinion. In the case of crimes against humanity, propaganda for war, and acts directed against the sovereignty of the German Democratic Republic, the political power of the working people and public order, persons were not punished as dissenters but were called to account on the grounds of their criminal conduct.

524. With regard to restrictions on political debate, he said that there were no special legal or other restrictions on such debate. The general orientation for political debate was to secure peace and to safeguard the welfare of the people as laid down in the Constitution. Within the framework of that objective, people in his country discussed freely in various forums the various problems which arose, making the use of the right to participate in the conduct of public affairs. Following such debates, the people frequently submitted proposals to the relevant bodies.

525. With respect to the extent to which artistic activity was dependent on membership in an official organ of artists and the criteria of admission to, and dismissal from, such organizations, he said that artistic activity was an important part of the cultural life and development of people in the German Democratic Republic. Therefore, the State and society supported the promotion of artistic activity. Such activity was not dependent on membership in any official organization and any one who would wish to participate in an artistic activity could do so in accordance with his ability. Therefore, groups and organizations of artists formed in accordance with the Constitution were autonomous in that they conducted their own affairs and drew up their own statutes. They were of course registered with the competent State authorities in order to have legal status.

526. Replying to questions about the peace movement in the German Democratic Republic, he said that an active and extensive peace movement was independent of State control. No citizen had been prosecuted for participating in peace movement demonstrations; however, in recent years certain forces external to the German Democratic Republic had initiated activities of a subversive nature sometimes using the label of the peace movement.

527. Turning to the question on the possibility of obtaining newspapers from Western countries in the German Democratic Republic, the representative pointed out that many newspapers and films were indeed imported from other countries and the citizens of his country had access to a great deal of information from German language newspapers and television stations. He himself had travelled to many countries where it had been impossible to buy newspapers from the German Democratic Republic. Where reciprocity was concerned, a number of agencies carried out an exchange of press with other countries, such as Austria, France and the United Kingdom. Such exchanges, however, had been conducted in hard currency and the issue was, therefore, complicated. Postal communications had been successfully extended. Independent publishing houses were able to purchase the books of their choice. Nationally-owned companies examined the manuscripts they received for suitability to ascertain whether they were compatible with their publishing policy. There was no Government interference or censorship.

Right of peaceful assembly

528. Members of the Committee requested information on the restrictions on this right

529. In this connection, the representative stated that the right of peaceful assembly was basic to socialist democracy and guaranteed by the Constitution and all bodies in the State. Every day many meetings of organizations were held and the only restrictions were provisions regulating material conditions to be met for health and traffic purposes, for instance. Groups inviting the public for such activities as dances, concerts or pop festivals must apply to the State authorities for special permission.

Freedom of association

530. With reference to this issue, members of the Committee wished to receive information on the right of workers to establish organizations of their own choosing, on the requirements needed to form a political party and on whether a political party may be formed to promote changes of the present Constitution by peaceful means.

531. In addition, members of the Committee wished to receive further clarification on the provisions of article 1 of the Constitution, which stated that the German Democratic Republic was the political organization of the working people "... led by the working class and its Marxist-Leninist party", in particular, whether that provision did not exclude the possibility of change and whether political parties in the country could adopt a capitalist ideology and what specific restrictions had been posed on freedom of association. Moreover, information was also requested on whether the German Democratic Republic had acceded to the ILO Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize; whether the statement in the report that the nature and aims of associations had to be in agreement with the objectives of the socialist society was not restrictive of the right of freedom of association; as well as whether private farmers were able to form associations or trade unions to defend their interests.

532. Replying to questions raised under this issue, the representative stated that socialist society was based on co-operation and mutual assistance and needed appropriate forms of organization. In using that freedom the workers had joined organizations, namely, trade unions, such as had existed in the past. Immediately after being liberated from the Hitlerian dictatorship the workers had formed a confederation of trade unions, the Confederation of Free German Trade Unions - and had elected a national executive committee. That body had become the largest and most powerful organization in the country, comprising more than nine million members. Articles 44 and 45 of the Constitution provided that, inter alia, the free trade unions had the right to conclude agreements with government authorities, to initiate legislation and safeguard the rights of the working people and their living and working conditions. Trade unions were under the protection of the State and, in turn, protected the rights of the workers. Judges in the labour courts must have the support of the trade union boards who submitted lists from which judges were elected. At a labour court, there must be one senior judge, one professional judge and three lay judges proposed by the national executive of the Confederation of Free German Trade Unions. He found it difficult to imagine that any worker would try to found a separate trade union, which could never be so important and influential as the present one.

533. As regards private farmers, who were not in a position of economic dependence on an enterprise as other workers were, they had seen no need to form unions. Those farmers who wished joined collectives which were free to choose how to realize their own aims. The Congress of Farmers which met every five years discussed their affairs and made proposals to the Government for new legislation.

534. As regards the formation of political parties, he said that there were five political parties which had been re-established after the liberation from fascism, taking account of the lessons learned from history. They represented the different strata and interests of society. The main one was the Socialist Unity Party, which was Marxist-Leninist. The others were the Christian Democratic Party, which refused the Marxist-Leninist ideological basis and reflected the Christian view of the world; the Liberal Democratic Party, which reflected the interests of craftsmen; the National Democratic Party which was favoured by the intelligentsia; and the Democratic Peasants' Party. In general, they had common political aims, which led them to join in a democratic block. They were not confrontational because of the stable political situation and had an agreed proportion of places in the People's Chamber. As an example of the parties' participation in government, he pointed out that the President of the Supreme Court was a leading member of the Christian Democratic Party, the Minister of Justice was a leading member of the

Liberal Democratic Party and one of his deputy ministers was a leading member of the National Democratic Party. Judges and other legal officials included many people coming from different parties. In the early days there had been differences but they now co-operated for the benefit of all.

Protection of family, including the right to marry

535. Members of the Committee wished to receive information on the restrictions, if any, on the right of citizens of the German Democratic Republic of marriageable age to marry aliens.

536. The representative said that the Family Code of the German Democratic Republic provided for marriage rules similar to those of most European countries. For marriage to an alien, some formal prerequisites were necessary, determined for each of the two spouses by the law of the State of which they were nationals. Where such a marriage was contracted outside the German Democratic Republic, the law of the State where the marriage took place prevailed, provided it was compatible with the law of the country of which one of the spouses was a national.

Political rights

537. With reference to this issue, members of the Committee wished to receive information on the restrictions on the exercise of the rights set forth in article 25 of the Covenant. The representative stated that a socialist State needed the participation of all its citizens more than any other form of society did and that all were entitled to vote and to be elected, and secrecy was guaranteed. Exceptions were people who had been deprived of their rights by court order, who were mentally incapacitated or prisoners whether before or after sentence. Of course, special qualifications were necessary for such people as judges, medical officers and financial experts.

General observations

538. Members of the Committee thanked the representative of the German Democratic Republic for his extensive and careful replies and for his close co-operation with the Committee. They welcomed the desire shown by the Government of the German Democratic Republic to continue the constructive dialogue. Some members of the Committee noted that the representative had been unable to deal with several important questions, and stated that they were disappointed with a number of answers of too general a nature. In addition, they expressed the hope that the remaining questions would be replied to in writing. The fact that the proceedings of the Committee would be transmitted to the Government was encouraging. It was hoped that the questions, answers and observations made would be published in extenso by the press. Some members welcomed the fact that, despite disagreements, a dialogue had been initiated and expressed the hope that benefits would be derived from this mutual encounter.

539. Further general observations were made concerning the interpretation of the Covenant. One member commented on the many references made by the delegation of the German Democratic Republic to the specific socialist concept of human rights. He pointed out that the wording and spirit of the Covenant as an international instrument was the yardstick; the specific approach of a State had to be consistent with it. Another member stressed that the uniform application of the Covenant had to be ensured by the Committee. It was finally said by a third member that

although different social systems made it inevitable that there should be different concepts, the Committee had to ensure the implementation of the minimum provided for in the Covenant.

540. The representative stated that his Government would study the various approaches to the question of human rights in an effort to create all conditions necessary for the full realization of the human rights covered by the Covenant by progressively developing economic, social and political relations.

C. Question of the reports and general comments of the Committee

Introduction

541. Earlier annual reports of the Human Rights Committee have given accounts of its discussions of the question of its reports and general comments under article 40, paragraph 4, of the Covenant following its study of State reports. 17/ It may be recalled that on the basis of this experience and without prejudice to the further consideration of its duties under article 40, paragraph 4, the Committee began to give specific attention to the question of the adoption of general comments.

542. The statement on the Committee's duties under article 40, adopted at its 260th meeting (eleventh session), noted that having examined initial reports received from many States parties from different regions of the world and with widely differing political, social and legal systems, the Committee should proceed to formulate general comments, based on the consideration of reports, for transmission to the States parties. The Committee agreed that in formulating general comments it would be guided by the following principles:

(a) They should be addressed to the States parties in conformity with article 40, paragraph 4, of the Covenant;

(b) They should promote co-operation between States parties in the implementation of the Covenant;

(c) They should summarize experience the Committee had gained in considering State reports;

(d) They should draw the attention of States parties to matters relating to the improvement of the reporting procedure and the implementation of the Covenant;

(e) They should stimulate activities of States parties and international organizations in the promotion and protection of human rights.

The Committee further agreed that the general comments could be related, inter alia, to the following subjects:

(a) The implementation of the obligation to submit reports under article 40 of the Covenant;

(b) The implementation of the obligation to guarantee the rights set forth in the Covenant;

(c) Questions related to the application and the content of individual articles of the Covenant;

(d) Suggestions concerning co-operation between States parties in applying and developing the provisions of the Covenant. 18/

543. Pursuant to the above-mentioned decisions, the Committee, at its thirteenth session, in 1981, adopted a set of general comments relating to its experience with the reporting obligation of States parties, their obligation to implement the Covenant under article 2 as well as articles 3 and 4 of the Covenant. 19/ In the introduction to these general comments, the Committee reiterated its desire to assist States parties in fulfilling their reporting obligations. It pointed out that its general comments drew attention to some aspects of this matter but did not purport to be limitative or to attribute any priority as between different aspects of the implementation of the Covenant. It added that the purpose of the general comments was to make its experience available for the benefit of all States parties in order to promote their further implementation of the Covenant; to draw their attention to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedure; and to stimulate the activities of States and international organizations in the promotion and protection of human rights.

544. At its sixteenth session, in 1982, the Committee adopted general comments on articles 6, 7, 9 and 10. 20/ At its nineteenth session, in 1983, further general comments were adopted on articles 19 and 20. 21/

545. During the period covered by the present report, the Committee adopted general comments on articles 1 and 14 at its twenty-first session in 1984 (see annex VI).

Method of preparation

546. The method followed by the Committee in the drafting of general comments has been to entrust the preparation of an initial draft to a representative working group of members. This working group solicits the views of its members as well as of other members of the Committee, who are all invited to submit written proposals for consideration. The various proposals received are then discussed within the working group, which attempts to prepare a text capable of reaching consensus within the Committee as a whole.

547. The working group on general comments usually prepares a draft for consideration in the Committee which is circulated as a conference room paper for discussion in public session. The members of the Committee are then given full opportunity to comment on the proposals of the working group, ask questions, seek explanations or clarifications, and propose modifications or additions. In many instances, the draft is referred back to the working group for further elaborations and deliberations and the process is repeated in the working group as well as in the Committee. After these processes have been gone through and when all members of the Committee are satisfied, the general comments are formally adopted and included in the annual report of the Committee. The translations of texts adopted only in one working language at the twenty-first session were considered and approved separately at the twenty-second session, at which a number of difficulties had to be overcome.

General comment on article 1

548. The Committee discussed its general comment on article 1 at its 476th, 478th, 503rd, 504th, 513th, 514th and 516th meetings, on the basis, first, of an initial draft provided by its working group and later of a revised draft prepared by the working group in the light of discussions in public sessions of the Committee. At its 537th meeting, it considered and approved the translations into the other working languages of the text adopted in English at its 516th meeting.

General comment on article 14

549. The Committee considered the working group's draft general comment on this article at its 504th, 505th, 506th, 510th and 516th meetings. Translations into all working languages were considered and approved at the 537th meeting.

The use of general comments

550. In line with the declared purposes of the Committee's general comments (see para. 543 above), the Committee itself has placed importance on their use, primarily within the reporting system but also in other connections, and has welcomed any observations on them or publicity given to them.

551. Thus, the guidelines for reports from States under article 40, paragraph 1 (b), 22/ of the Covenant mentions information taking the general comments into account among matters on which the contents of reports should concentrate. The Committee and its members have often referred to the general comments when examining reports and putting questions to State representatives. Some States have also done so.

552. Under article 40, paragraph 5, of the Covenant States parties may submit observations on general comments. However, formal use of this opportunity has so far not been made by any State party.

553. On the other hand, debates in the United Nations General Assembly (Third Committee) on the Committee's annual reports have shown interest in the general comments, and views on their substance and function have sometimes been expressed, to which members of the Committee have responded in their turn.

554. At its 490th meeting, the Committee was informed that the Centre for Human Rights regularly drew attention to the general comments in the various organs serviced by the Centre and had circulated consolidated versions of them.

555. In the consultations between the President of the Economic and Social Council and the Chairman of the Committee and in the Council's recent debate, a potential role has been suggested for the Council as a forum where the Committee's general comments could be considered and policy recommendations might be made.

Further work on general comments

556. At its twenty-second session, the Committee considered which articles of the Covenant or other subjects it should now take up for general comments and what procedure to follow to ensure continued progress in this field. The need for better planning and more system was stressed, and it was pointed out that its

method of preparation could be greatly assisted by the Secretariat in the way suggested by the Assistant Secretary-General for Human Rights at the twenty-first session.

557. The Committee decided to ask its next working group under article 40 to prepare for the next session a programme for its further work on general comments in the light of the Committee's discussion and to consider, if possible, any tentative drafts put before the working group by any member.

III. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

Introduction

558. Under the Optional Protocol to the International Covenant on Civil and Political Rights, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit written communications to the Human Rights Committee for consideration. Thirty-four of the 80 States which have acceded to or ratified the Covenant have accepted the competence of the Committee to deal with individual complaints by ratifying or acceding to the Optional Protocol. These States are Barbados, Bolivia, Cameroon, Canada, the Central African Republic, Colombia, Congo, Costa Rica, Denmark, the Dominican Republic, Ecuador, Finland, France, Iceland, Italy, Jamaica, Luxembourg, Madagascar, Mauritius, the Netherlands, Nicaragua, Norway, Panama, Peru, Portugal, Saint Vincent and the Grenadines, Senegal, Suriname, Sweden, Trinidad and Tobago, Uruguay, Venezuela, Zaire and Zambia. No communication can be received by the Committee if it concerns a State party to the Covenant which is not also a party to the Optional Protocol. Communications have been received with respect to 17 State parties.

Procedure

559. Consideration of communications under the Optional Protocol takes place in closed meetings (art. 5 (3) of the Optional Protocol). All documents pertaining to the work of the Committee under the Optional Protocol (submissions from the parties and other working documents of the Committee) are confidential. The texts of final decisions of the Committee, consisting of views adopted under article 5 (4) of the Optional Protocol, are however made public. As regards decisions declaring a communication inadmissible, which are also final, the Committee has decided that it will normally make these decisions public, substituting initials for the names of the alleged victim(s) and the author(s).

560. In carrying out its work under the Optional Protocol, the Committee is assisted by Working Groups on Communications, consisting of not more than five of its members, which submit recommendations to the Committee on the action to be taken at the various stages in the consideration of each case. The Committee has also designated individual members to act as Special Rapporteurs in a number of cases. The Special Rapporteurs place their recommendations before the Committee for consideration.

561. The procedure for the consideration of communications received under the Optional Protocol consists of several main stages.

(a) Registration of the communication

Communications are received by the Secretariat and are registered in accordance with the Committee's provisional rules of procedure. They are numbered consecutively, indicating also the year of registration

(e.g. No. 1/1976).** For each session of the Committee the Secretariat prepares a list of communications registered since the last session, which contains summaries of new cases brought to the attention of the Committee. An annex to the list contains summaries of communications which, although they relate to alleged violations of human rights by States parties to the Optional Protocol, have not yet been registered as cases by the Secretariat, but which are brought to the attention of the Committee as borderline cases. The Secretariat may also, when necessary, request clarification from the author concerning the applicability of the Protocol to his communication.

(b) Admissibility of communication

Once a communication has been registered, the Committee must decide whether it is admissible under the Optional Protocol. The requirements for admissibility, which are contained in articles 1, 2, 3 and 5 (2) of the Optional Protocol, are listed in rule 90 of the Committee's provisional rules of procedure. Under rule 91 (1) the Committee or a Working Group may request the State party concerned or the author of the communication to submit, within a time-limit which is indicated in each such decision (normally between six weeks and two months), additional written information or observations relevant to the question of admissibility of the communication. Such a request does not imply that any decision has been taken on the question of admissibility (rule 91 (3)). The decision to declare a communication admissible or inadmissible rests with the Committee. The Committee may also decide to terminate or suspend consideration of a communication if its author indicates that he wants to withdraw the case or if the Secretariat has lost contact with the author. A decision to declare a communication inadmissible or otherwise to terminate or suspend consideration of it may, in a clear case, be taken without referring the case to the State party for its observations.

(c) Consideration on the merits

If a communication is declared admissible, the Committee proceeds to consider the substance of the complaint. In accordance with article 4 of the Optional Protocol, it requests the State party concerned to submit to the Committee explanations or statements clarifying the matter. Under article 4 (2), the State party has a time-limit of six months in which to submit its observations. When they are received, the author is given an opportunity to comment on the observations of the State party. The Committee then normally formulates its views and forwards them to the State party and to the author of the communication, in accordance with article 5 (4) of the Optional Protocol. The State party may be requested to transmit a copy of the views to an imprisoned victim. In exceptional cases, further information may be sought from the State party or the author by means of an interim decision before the Committee finally adopts its views. A Committee member may also write an individual opinion, which is appended to the Committee's views.

** The numbering system was changed at the eighteenth session of the Committee. Previously, the reference number of each case consisted of the serial number of the case in the register, preceded by the number of the list of communications in which it was summarized and the letter "R" indicating "restricted" (e.g. R.1/1).

Duration of procedure

562. Since the Committee, which meets three times a year, must allow both the author and the State party sufficient time to prepare their submissions, a decision on admissibility can only be taken between six months and a year after the initial submission; views under article 5 (4) may follow one year later. The entire procedure normally may be completed within two to three years. The Committee tries to deal expeditiously with all communications.

Progress of work

563. Since the Committee started its work under the Optional Protocol at its second session in 1977, 174 communications have been placed before it for consideration (147 of these were placed before the Committee from its second to its nineteenth session; 27 further communications have been placed before the Committee since then, i.e. at its twentieth, twenty-first and twenty-second sessions, covered by the present report). During these seven years, some 342 formal decisions have been adopted. A volume containing a selection of decisions from the second to the sixteenth session is being published.

564. The status of the 174 communications placed before the Human Rights Committee for consideration, so far, is as follows:

- (a) Concluded by views under article 5 (4) of the Optional Protocol;
- (b) Concluded in another manner (inadmissible, discontinued, suspended or withdrawn);
- (c) Declared admissible, not yet concluded;
- (d) Pending at pre-admissibility stage (15 thereof transmitted to the State party under rule 91 of the Committee's provisional rules of procedure).

565. At its twentieth session, held from 24 October to 11 November 1983, the Human Rights Committee, or its Working Group on Communications, examined 22 communications submitted to the Committee under the Optional Protocol. The Committee concluded consideration of two cases by adopting its views thereon. These are cases Nos. 83/1981 (Raúl Noel Martínez Machado v. Uruguay) and 103/1981 (Batlle Oxandabarat Scarrone v. Uruguay). Decisions were taken in 10 cases under rule 91 of the Committee's provisional rules of procedure, requesting information on questions of admissibility from one or both of the parties. Consideration of six cases was postponed. Secretariat action was requested in the remaining four cases, mainly for the purpose of obtaining additional information from the authors to allow further consideration by the Committee.

566. At its twenty-first session, held from 26 March to 13 April 1984, the Human Rights Committee, or its Working Group on Communications, examined 44 communications submitted to the Committee under the Optional Protocol. The Committee concluded consideration of four cases by adopting its views thereon. These are cases Nos. 85/1981 (Hector Alfredo Romero v. Uruguay), 109/1981 (Teresa Gómez de Voituret v. Uruguay), 110/1981 (Antonio Viana Acosta v. Uruguay) and 123/1982 (Jorge Manera Lluberas v. Uruguay). Sixteen communications were declared admissible (under rule 88, paragraph 2, of its provisional rules of procedure the Committee decided to deal jointly with eight of these communications)

and two communications were declared inadmissible. Decisions were taken in five cases under rule 91 of the Committee's provisional rules of procedure, requesting information on questions of admissibility from one or both of the parties. Consideration of five cases was discontinued. Secretariat action was requested in the remaining 12 cases, mainly for the purpose of obtaining additional information from the authors to allow further consideration by the Committee.

567. At its twenty-second session, held from 9 to 27 July 1984, the Human Rights Committee, or its Working Group on Communications, examined 17 communications submitted to the Committee under the Optional Protocol. The Committee concluded consideration of one case by adopting its views thereon. This is case No. 124/1982 (Tshitenge Muteva v. Zaire). One communication was declared admissible and one inadmissible. A decision was taken in one case under rule 91 of the Committee's rules of procedure, requesting information on questions of admissibility from the State party. Consideration of two cases was discontinued. Secretariat action was requested in the remaining 11 cases, mainly for the collection of further information.

568. The texts of the views adopted by the Committee at its twentieth, twenty-first and twenty-second sessions are reproduced in annexes VII to XIII of the present report. The texts of three decisions on inadmissibility, adopted at the Committee's twenty-first and twenty-second sessions (Nos. 117/1981, M.A. v. Italy; 163/1984, Group of associations for the defence of the rights of disabled and handicapped persons in Italy v. Italy; and 78/1980, A.D. v. Canada), are reproduced in annexes XIV to XVI.

Issues considered by the Committee

569. The following summary illustrates the nature and results of the Committee's activities under the Optional Protocol. It does not constitute an exhaustive restatement; for the full text of the Committee's findings and views the reader should consult the annual reports and the forthcoming volume of Selected Decisions of the Human Rights Committee.

1. Procedural issues

570. A number of questions relating to the admissibility of communications have been dealt with in the Committee's earlier reports to the General Assembly or in the Committee's decisions on particular communications. These issues always depend, directly or indirectly, on the terms of the Optional Protocol, and concern, inter alia, the following matters.

(a) The standing of the author

571. Normally, a communication should be submitted by the individual himself or by his representative; the Committee may, however, accept to consider a communication submitted on behalf of an alleged victim when it appears that he is unable to submit the communication himself (rule 90 (1) (b)). In practice, the Committee has accepted communications not only from a duly authorized legal representative, but also from a close family member acting on behalf of an alleged victim, but in other cases the Committee has found that the author of a communication lacked standing. In case No. 128/1982, the author was a member of a non-governmental organization

and had taken interest in the alleged victim's situation. He claimed to have authority to act because he believed "that every prisoner treated unjustly would appreciate further investigation of his case by the Human Rights Committee". The Committee decided that the author lacked standing and declared the communication inadmissible. The Human Rights Committee has thus established through a number of decisions on admissibility that a communication submitted by a third party on behalf of an alleged victim can only be considered if the author justifies his authority to submit the communication.

572. The Committee has also held that an organization as such cannot submit a communication. In case No. 163/1984 (see annex XV below) it stated: "According to article I of the Optional Protocol, only individuals have the right to submit a communication. To the extent, therefore, that the communication originates from the [organization], it has to be declared inadmissible because of lack of personal standing". Similarly, in case No. 104/1981, the Committee declared a communication inadmissible, partly because "the W.G. Party is an association and not an individual, and as such cannot submit a communication to the Committee under the Optional Protocol".

(b) The victim

573. The Committee has clarified in case No. 35/1978 that "a person can only claim to be a victim in the sense of article 1 of the Optional Protocol if he or she is actually affected. It is a matter of degree how concretely this requirement should be taken. However, no individual can in the abstract, by way of an actio popularis, challenge a law or practice claimed to be contrary to the Covenant. If the law or practice has not already been concretely applied to the detriment of that individual, it must in any event be applicable in such a way that the alleged victim's risk of being affected is more than a theoretical possibility". That is, a person is not a victim unless he has personally suffered a violation of his rights. In case No. 61/1979 the Committee stressed "that it has only been entrusted with the mandate of examining whether an individual has suffered an actual violation of his rights. It cannot review in the abstract whether national legislation contravenes the Covenant, although such legislation may, in particular circumstances, produce adverse effects which directly affect the individual, making him thus a victim in the sense contemplated by articles 1 and 2 of the Optional Protocol".

(c) Date of entry into force of the Covenant and the Optional Protocol

574. The Committee has indicated frequently that it "can consider only an alleged violation of human rights occurring on or after 23 March 1976 (the date of entry into force of the Covenant and the Protocol for [the State party] unless it is an alleged violation which, although occurring before that date, continues or has effects which themselves constitute a violation after that date". The Committee has declared a number of communications inadmissible ratione temporis (or parts of said communications) when the alleged violations occurred prior to the entry into force of the Covenant and the Optional Protocol for the State party concerned. Although this issue is mostly disposed of at the admissibility stage, the Committee may indicate in its views that "the facts as found by the Committee, in so far as they continued or occurred after [the date of entry into force of the Covenant and the Optional Protocol for the State party concerned] disclose violations ..." etc. (No. 123/1982, see annex XII below).

(d) Individuals subject to a State party's jurisdiction

575. In several cases the Committee has had to address the question whether an alleged victim is "subject to the jurisdiction" of the State party for the purposes of article 1 of the Optional Protocol. In case No. 110/1981 (see annex XI below), the State Party contended that the communication was inadmissible because the alleged victim had been released from imprisonment and "he left the country to live abroad and he was therefore not subject to the jurisdiction" of the State party. The Committee noted in its views that "by virtue of article 2, paragraph 1 of the Covenant, 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. Article 1 of the Optional Protocol was clearly intended to apply to individuals subject to the jurisdiction of the State party concerned at the time of the alleged violation of the Covenant. This was manifestly the object and purpose of article 1". The same question was dealt with in case No. 25/1978.

576. A related issue arises when the alleged violation of the human rights of a national of a State party occurs when that person is not residing in his country at the time of the alleged violation. This was the situation in case No. 57/1979 where the author, while living abroad, requested the renewal of her passport. It was the Committee's view that "the issue of a passport to a [State party's] citizen is clearly a matter within the jurisdiction of the [State party's] authorities and he is 'subject to the jurisdiction' of [the State party] for that purpose. Moreover a passport is a means of enabling him 'to leave any country, including his own', as required by article 12 (2) of the Covenant. It therefore follows from the very nature of the right that, in the case of a citizen resident abroad it imposes obligations both on the State of residence and on the State of nationality". The Committee expressed a similar view at its twenty-first session when it declared communication No. 125/1982 admissible. It stated: "The question of the issue of a passport by [the State party] to a national [of the State party] wherever he may be, is clearly a matter within the jurisdiction of the [State party's] authorities and he is 'subject to jurisdiction' of [State party] for that purpose".

(e) Preclusion under article 5 (2) (a) of the Optional Protocol if the same matter is being examined under another procedure of international investigation or settlement

577. The Optional Protocol precludes the competence of the Committee to consider cases which are simultaneously being examined under other procedures of international investigation or settlement, such as the procedures of the Inter-American Commission on Human Rights (IACHR) and the European Commission of Human Rights. When this situation arises, the practice of the Committee has been to instruct the Secretariat to explain to the author that consideration by the Committee is precluded under article 5 (2) (a) of the Optional Protocol. In the majority of such cases (which have concerned examination of the same matter by the Inter-American Commission on Human Rights) the authors have then withdrawn their communications from the IACHR in order to enable the Committee to proceed with their examination. In one case the author preferred to withdraw the case from the Human Rights Committee in order to have it considered by the European Commission of Human Rights.

578. In case No. 10/1977 the Committee concluded "that it is not prevented from considering the communication submitted to it by the authors on 10 March 1977 by reason of the subsequent complaint made by an unrelated third party under the

procedures of the IACHR". The rationale for this decision was explained in case No. 74/1979 where the Committee observed that the provision of article 5 (2) (a) "cannot be so interpreted as to imply that an unrelated third party, acting without the knowledge and consent of the alleged victim, can preclude the latter from having access to the Human Rights Committee".

579. As to what constitutes the "same matter", the Committee decided in case No. 6/1977 that a two-line reference to the person concerned in a case before the Inter-American Commission on Human Rights, which listed in a similar manner the names of hundreds of other persons allegedly detained in the State party, "did not constitute the same matter as that described in detail by the author in his communication to the Human Rights Committee".

580. The Committee has also held that the submission of a similar case concerning a third party to another international procedure does not constitute the "same matter". Thus in case No. 75/1980 the Committee explained: "... the concept of the 'same matter' within the meaning of article 5 (2) (a) of the Optional Protocol must be understood as including the same claim concerning the same individual, submitted by him or someone else who has the standing to act on his behalf before the other international body".

581. In the first case placed before it under the Optional Protocol, the Committee had occasion to determine that the examination of a particular human rights situation in a given country under Economic and Social Council resolution 1503 (XLVIII), which governs a procedure for the examination of situations which appear to reveal "a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms", does not within the meaning of article 5 (2) (a) of the Optional Protocol constitute an examination of the "same matter" as a claim by an individual submitted to the Human Rights Committee under the Optional Protocol. The procedure governed by Economic and Social Council resolution 1503 (XLVIII) therefore does not bar the Human Rights Committee from considering an individual case. Also in one of the early cases considered, the Human Rights Committee determined that a procedure established by a non-governmental organization (such as the Inter-Parliamentary Council of the Inter-Parliamentary Union) does not constitute a procedure of international investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol.

582. At its twenty-first session, the Committee also observed, when declaring admissible a number of similar and related cases concerning the same country, "that a study by an intergovernmental organization either of the human rights situation in a given country (such as that by the IACHR) or a study of the trade union rights situation in a given country (such as the issues examined by the Committee on Freedom of Association of the ILO), or of a human rights problem of a more global character (such as that of the Special Rapporteur of the Commission on Human Rights on summary or arbitrary executions), although such studies might refer to or draw on information concerning individuals, cannot be seen as being the same matter as the examination of individual cases within the meaning of article 5 (2) (a) of the Optional Protocol. Secondly, a procedure established by non-governmental organizations (such as Amnesty International, the International Commission of Jurists or the International Committee of the Red Cross, irrespective of the latter's standing in international law) does not constitute a procedure of international investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol".

(f) Reservations by States parties

583. Several States parties have further limited the competence of the Human Rights Committee to deal with communications under the Optional Protocol. With reference to article 5 (2) (a) the Governments of Denmark, Iceland, Italy, Norway and Sweden made reservations upon ratification of the Optional Protocol, precluding the competence of the Committee to consider a communication from an individual if the matter had already been examined under another procedure of international investigation or settlement. This reservation goes beyond the provision in the Optional Protocol which only precludes consideration with respect to cases which are simultaneously being considered elsewhere but not with respect to cases the consideration of which has been concluded under another procedure. In case No. 121/1982, the author had first submitted his communication to the European Commission of Human Rights, which had declared it inadmissible as manifestly ill-founded. The Committee at its sixteenth session concluded that it was not competent to consider the communication in the light of the State party's reservation. In a subsequent case concerning another State party, the author approached the European Commission of Human Rights but was informed that it was already too late to submit an application. The State party itself informed the Committee that it would not object to the admissibility of the communication on the basis of its reservation, because the case had not been examined by the European Commission of Human Rights.

(g) Exhaustion of domestic remedies

584. Under article 5 (2) (a) of the Optional Protocol, the Committee shall not consider any communication unless it has ascertained that the author has exhausted all available domestic remedies. Numerous communications before the Committee have been declared inadmissible on this ground. In its decisions on admissibility, the Committee has clarified the meaning of article 5 (2) (b) of the Optional Protocol, explaining, inter alia, that "exhaustion of domestic remedies can be required only to the extent that these remedies are effective and available" and further clarified that "an extraordinary remedy, such as seeking the annulment of decision(s) of the Ministry of Justice" does not constitute an effective remedy within the meaning of article 5 (2) (b) of the Optional Protocol.

585. In a number of early cases a State party had contended that the authors had failed to exhaust domestic remedies and submitted to the Committee a general description of remedies provided under the law of that State, without, however, linking these remedies to the specific circumstances of each case. The Committee considered that this was insufficient and informed the State party that it would be necessary to give "details of the remedies which it submitted had been available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective" (No. 4/1977).

586. The Rules of Procedure also provide that a decision on admissibility may be reviewed in the light of any explanations or statements submitted by the State party under article 4 (2) of the Optional Protocol (rule 93 (4)). Such review requires that the State party give "specific details of domestic remedies which it claims to have been available to the alleged victim, together with evidence that there would be a reasonable prospect that such remedies would be effective".

(h) Inadmissibility ratione materiae

587. The Committee can consider communications only in so far as they relate to alleged violations of rights contained in the International Covenant on Civil and Political Rights. Communications relating to alleged violations of other rights must therefore be declared inadmissible ratione materiae. For instance, the Committee at its seventh session had to declare inadmissible communication No. 53/1979 because "the right to dispose of property, as such, is not protected by any provision of the International Covenant on Civil and Political Rights". Similarly, in its eighteenth session, the Committee declared communication No. 129/1982 inadmissible because "the assessment of taxable income and allocation of houses are not in themselves matters to which the Covenant applies".

(i) Substantiation of allegations

588. Although at the stage of admissibility an author of a communication need not prove his case, he must submit sufficient evidence in substantiation of his allegations as will constitute a prima facie case. The Committee has declared a number of communications inadmissible on the grounds of non-substantiation of allegations.

(j) Abuse of the right of submission

589. Under article 3 of the Optional Protocol, the Committee shall declare inadmissible a communication which it considers to be an abuse of the right of submission. In case No. 72/1980, where the author had alleged violations of rights not protected in the Covenant, had failed to substantiate in fact or law other allegations which pertained to rights protected by the Covenant and had himself indicated that he still intended to pursue further domestic remedies, the Committee concluded that "in these circumstances, the submission of the communication must be regarded as an abuse of the right of submission under article 3 of the Optional Protocol".

2. Substantive issues

590. In its views on the merits of communications under article 5 (4) of the Optional Protocol the Committee has applied and explained its understanding of many provisions of the International Covenant on Civil and Political Rights. The substantive issues considered are discussed below.

(a) The right to life (article 6 of the Covenant)

591. In case No. 45/1979 the Committee, commenting generally on article 6, stated inter alia: "The requirements that the right [to life] shall be protected by law and that no one shall be arbitrarily deprived of his life mean that the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State. In the present case it is evident from the fact that seven persons lost their lives as a result of the deliberate action of the police that the deprivation of life was intentional. Moreover, the police action was apparently taken without warning to the victims and without giving them any opportunity to surrender to the police patrol or to offer any explanation of their presence or intentions ...". In case No. 84/1981 the Committee observed that while it could not arrive at a definite conclusion as to whether the victim had

committed suicide, was driven to suicide or was killed by others while in custody, "the inescapable conclusion is that in all the circumstances the [State party's] authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant".

(b) The right not to be subjected to torture or to cruel, inhuman or degrading treatment (article 7)

592. In a number of cases (in particular Nos. 4/1977, 5/1977, 8/1977, 9/1977, 11/1977, 25/1978, 28/1978, 30/1978, 33/1978, 37/1978, 49/1979, 52/1979, 63/1979, 73/1980, 110/1981) concerning various forms of torture and other cruel treatment, the Committee has expressed the view that article 7 had been violated. A recurring theme in such cases has been the burden of proof. In this respect the Committee has established that it "cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, especially when such allegations are corroborated by evidence submitted by the author of the communication, and to furnish to the Committee the information available to it. In cases where the author has submitted to the Committee allegations supported by substantial witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party" (No. 30/1978). Furthermore, the Committee has repeatedly held that "a refutation of [the author's] allegations in general terms is not sufficient" (Nos. 11/1977, 37/1978).

(c) The right to liberty and security of person (article 9)

(i) Arbitrary arrest and detention (article 9 (1))

593. Although many communications submitted to the Committee claim that the victim has been subjected to arbitrary arrest, this allegation has proved to be difficult to establish, since State parties have been able to show in most cases that the arrest was carried out according to the law of the State concerned. In cases, however, where the facts showed that no arrest warrant had been issued or that the victim was not released from imprisonment after serving his term or after issuance of a release order, the Committee has found violations of article 9 (1).

594. In case No. 56/1979 the victim was abducted by agents of the State party in another country, brought across the border and charged with "subversive association". The Committee found a violation of article 9 (1), "because the act of abduction into [the State party's] territory constituted an arbitrary arrest and detention".

595. In case No. 37/1979 the Committee found a violation because the victim "was not released until one month after an order for her release was issued by the military court"; similarly, in case No. 33/1978, because the victim "was not released until approximately six or seven months after an order for his release was issued by the military court"; in case No. 25/1978 with respect to one victim,

"because she continued to be detained after having served her prison sentence on 9 November 1977", and with respect to the other victim, "because she was subjected to arbitrary detention under the 'prompt security measures' until 12 August 1978 after having signed on 15 August 1974 the document for her provisional release".

596. In case No. 16/1977 the Committee found that the victim had been "arrested on 1 September 1977 in order to force him to disclose the whereabouts of [S.B] and that he was not released from detention until late in 1978 or early in 1979. The State party has not claimed that there was any criminal charge against him. In the view of the Committee, therefore, he was subject to arbitrary arrest and detention contrary to article 9 of the Covenant."

(ii) The right to be brought promptly before a judge and tried within a reasonable time (article 9 (3))

597. One of the most fundamental rights of persons who have been arrested or detained on a criminal charge is the right to be brought "promptly" before a judicial officer and to "trial within a reasonable time". The Committee has received many communications concerning alleged violations of this right, but it has not yet established the precise meaning of the terms employed in article 9 (3) of the Covenant. The Committee has, however, held that the article had been breached with respect to a victim who had been arrested on 24 March 1977 and detained until 9 January 1978 (i.e. over nine months) without having been brought before a judge (No. 90/1981). In another case of a breach the victim was arrested on 2 December 1980, was kept incommunicado and not brought before a judicial authority until 23 March 1981, i.e. over three months later (No. 84/1981). On the other hand, the Committee found no violation of article 9 (3) where the person was arrested on 28 September 1978 and charged before a military examining judge on 7 November 1978, i.e. six weeks later (No. 43/1979).

(iii) The right to challenge one's arrest and detention (article 9 (4))

598. The Committee has considered many communications in which the authors have alleged that the right to take proceedings before a court in order to challenge their arrest has been violated, in particular because they were denied the remedy of habeas corpus. The Committee has found violations of article 9 (4) in cases where it was established that the victims had no way of challenging their arrest, because the remedy of habeas corpus was not applicable to persons arrested under the so-called "prompt security measures" in the State party concerned (Nos. 4/1977, 5/1977, 6/1977, 8/1977, 9/1977, 10/1977, 11/1977, 25/1978, 28/1978, 32/1978, 33/1978, 37/1978, 43/1979, 44/1979).

599. In case No. 46/1979, involving another State party, the Committee noted: "As to the allegations of breaches of the provisions of article 9 of the Covenant, it has been established that the alleged victims did not have recourse to habeas corpus". The Committee concluded that the provision had been violated because the victims "could not themselves take proceedings in order that a court might decide without delay on the lawfulness of their detention".

(iv) The right to compensation for unlawful arrest or detention (article 9 (5))

600. In a number of cases the Committee has expressed the view that the State party is under an obligation "to provide effective remedies to the victim, including compensation in accordance with article 9 (5) of the Covenant" (No. 9/1977; see also 8/1977, 25/1978, 30/1978, 90/1981, 107/1981).

(d) The right to be treated humanely during imprisonment (article 10)

601. A violation of this article has been found in a number of cases, including case No. 49/1979, where the victim had been held "in a cell measuring 1 m x 2 m in the basement of the political police prison at ... and has been held incommunicado ever since"; in case No. 109/1981 "because [the victim] was kept in solitary confinement for several months in conditions which failed to respect the inherent dignity of the human person"; in case No. 85/1981 "because [the victim] has not been treated with humanity and with respect for the inherent dignity of the human person, in particular because he was kept incommunicado at an unknown place of detention for several months (from November 1976 to the middle of 1977) during which time his fate and his whereabouts were unknown". (See also Nos. 4/1977, 5/1977, 8/1977, 10/1977, 11/1977, 25/1977, 27/1978, 28/1978, 30/1978, 33/1978, 37/1978, 44/1979, 56/1979, 63/1979, 70/1980 and 73/1980.)

(e) The right to freedom of movement and to leave any country (article 12)

602. While the Committee has not had the occasion to pronounce itself on alleged violations of the right of freedom of movement within a State (article 12 (1)), it has had a number of cases raising issues under article 12 (2) concerning the right to leave any country, including one's own, and, in particular, the question as to how a refusal to issue a passport to a citizen may affect the exercise of that right ("passport cases"). The first case involved a journalist living abroad, whose passport had not been renewed upon expiry on 27 September 1977; in response to the Committee's decision on admissibility (case No. 31/1978), the State party informed the Committee that it had instructed the relevant consulate to renew the claimant's passport, whereupon the Committee decided to discontinue consideration of the case. In another case the Committee found a violation of article 12 (2) of the Covenant, because the victim had been "refused the issuance of a passport without any justification therefore, thereby preventing her from leaving any country including her own" (No. 57/1979). In another case the Committee clarified further the content of article 12 (2): "As to the alleged violation of article 12 (2) of the Covenant, the Committee has observed that a passport is a means of enabling an individual 'to leave any country, including his own' as required by that provision: consequently, it follows from the very nature of that right that, in the case of a citizen resident abroad, article 12 (2) imposes obligations on the State of nationality as well as on the State of residence and, therefore, article 2 (1) of the Covenant cannot be interpreted as limiting the obligations of [the State party] under article 12 (2) to citizens within its own territory. The right recognized by article 12 (2) may, in accordance with article 12 (3), be subject to such restrictions as 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'. There are, therefore, circumstances in which a State, if its law so provides, may refuse passport facilities to one of its citizens. However, in the present case, the State party has not, in its submissions to the Committee, put forward any such justification for refusing to renew the passport of [the victim]" (No. 106/1981, see also No. 108/1981).

(f) The right of an alien not to be expelled arbitrarily from his country of residence (article 13)

603. The Covenant does not provide for a right to asylum, but "an alien lawfully in the territory of a State party ... may be expelled therefrom only in pursuance of a

decision reached in accordance with law". The application of this provision of article 13 was examined in case No. 58/1979, where the Committee underlined that "the article applies only to an alien 'lawfully in the territory' of a State party ... The only question is whether the expulsion was 'in accordance with law' ... The Committee takes the view that the interpretation of domestic law is essentially a matter for the courts and authorities of the State party concerned. It is not within the powers or functions of the Committee to evaluate whether the competent authorities of the State party in question have interpreted and applied the domestic law correctly in the case before it under the Optional Protocol, unless it is established that they have not interpreted and applied it in good faith or that it is evident that there has been an abuse of power." No violation was found.

(g) The right to a fair hearing (article 14)

(i) Fair and public hearing by competent, independent and impartial tribunal (article 14 (1))

604. In case No. 70/1980 the Committee made findings of fact that the victim "was tried in camera, the trial was conducted without her presence and the judgement was not rendered in public" and held that these facts disclosed a violation of article 14 (1), "because she did not have a fair and public hearing". Similarly, in case No. 10/1977 the Committee found that article 14 (1) had been violated "because he did not have a fair and public hearing". In case No. 44/1979 the Committee made a finding of fact that the victim was sentenced "in a closed trial, conducted in writing and without his presence and the judgement of the Court was not made public", and based thereon a finding of a violation of article 14 (1). (See also cases Nos. 28/1978, 32/1978.)

(ii) Minimum guarantees in the determination of any criminal charge (article 14 (3))

The right to communicate with counsel (article 14 (3) (b))

605. Violations of article 14 (3) (b) have been found in numerous cases, e.g. No. 83/1981 "because the conditions of his detention from November 1980 to May 1981 effectively barred him from access to legal assistance", and No. 49/1979 "because he has been denied adequate opportunity to communicate with his counsel, [...], and because his right to the assistance of his counsel to represent him and prepare his defence has been interfered with by [the State party's] authorities".

(iii) Right to legal assistance of one's own choosing (article 14 (3) (b) and (d))

606. In numerous cases the Committee found that the victims were denied the right to defend themselves through counsel of their own choosing and were compelled to accept ex officio counsel (Nos. 52/1979, 56/1979, 73/1980) in violation of article 14 (3) (b) and (d).

(iv) The right to be tried without undue delay (article 14 (3) (c))

607. A violation of this provision of the Covenant is frequently accompanied by a violation of the right to be brought promptly before a judge and tried within a reasonable time (article 9 (c)). In neither case has the Committee defined the relevant terms, since the circumstances of each case must always be taken into

account. In case No. 43/1979 a victim who had been arrested on 28 September 1978 and tried before a military court in July 1979 (10 months later) was deemed to have suffered a violation of his right to be tried without undue delay. The Committee has also found a violation of article 14 (3) (c) where the victim was arrested many years before the entry into force of the Covenant and the Optional Protocol and was not tried until some time after the entry into force of these instruments for the State party concerned. A violation was found in case No. 80/1980 where the victim had been arrested on 4 June 1972, the Covenant and Optional Protocol had entered into force on 23 March 1976 for the State party concerned and judgement was not pronounced by the court of first instance until 14 December 1977. (See also Nos. 4/1977, 5/1977, 6/1977, 8/1977, 10/1977, 27/1978, 28/1978, 32/1978, 33/1978, 44/1979, 46/1979, 52/1979, 56/1979, 63/1979, 70/1980, 73/1980.)

(v) The right to examine witnesses (article 14 (3) (e))

608. In case No. 63/1979 the Committee found a violation of article 14 (3) (e) because the victim "was denied the opportunity to obtain the attendance and examination of witnesses on his behalf".

(vi) The right not to incriminate oneself (article 14 (c) (g))

609. The use of forced confessions in order to convict accused persons has been found by the Committee to be in violation of article 14 (c) (g) in cases Nos. 52/1979 and 73/1980.

(vii) The right to review of conviction and sentence (article 14 (5))

610. In case No. 64/1979 the Committee noted "that the expression 'according to law' in article 14 (5) of the Covenant is not intended to leave the very existence of the right to review to the discretion of the States parties, since the rights are those recognized by the Covenant, and not merely those recognized by domestic law. Rather, what is to be determined 'according to law' is the modalities by which the review by a higher tribunal is to be carried out". The Committee found that the facts of the case disclosed a violation of article 14 (5), because the victim "was denied the right to review of her conviction by a higher tribunal".

611. In case No. 27/1977 the Committee observed "that the right under article 14 (3) (c) to be tried without undue delay should be applied in conjunction with the right under article 14 (5) to review by a higher tribunal, and that consequently there was in this case a violation of both of these provisions taken together".

(h) Nulla poena sine lege (article 15)

612. In case No. 28/1978 the Committee found that article 15 had been violated "because the penal law was applied retroactively against" the victim; the charge of conspiracy (Asociación para delinquir) was found to be tantamount to prosecution for membership in a political party, which had been lawful at the time when the victim was affiliated with it and which had been banned only afterwards. (See also Nos. 44/1979, 46/1979, 91/1981.)

613. The purpose of the main principle of article 15 is to protect individuals against ex post facto criminal laws operating to their detriment. The last sentence of paragraph 1 of article 15 departs from this safeguard when this purpose

is absent; on the contrary, it not only allows, but prescribes the retroactive operation of a new law imposing a "lighter penalty". The Committee has been seized of two cases where it was claimed that a new law changing the conditions of parole should have been applied retroactively to two convicted criminals. In the specific circumstances of the cases, the Committee decided that no violation of the Covenant had taken place (Nos. 50/1979, 55/1979).

(i) The rights to family life and protection of the family (articles 17 and 23); Discrimination on ground of sex (articles 2 (1), 3 and 26)

614. The Committee found a violation of these provisions taken together in a case where the State party's immigration law and deportation law subjected foreign husbands of native women to certain restrictions, whereas foreign wives of native men were not so subjected (No. 35/1978). The State party has subsequently informed the Committee that the laws in question have been amended, so as to remove the discriminatory provisions of those laws on the ground of sex. 23/

(j) The right to freedom of religion (article 18)

615. The Committee has not been seized of cases concerning an alleged violation of the right to adopt and practise a religion, but it has examined the right of atheist parents to exempt their children from religious instruction pursuant to article 18 (4) of the Covenant, which provides that "States parties ... undertake to have respect for the liberty of parents ... to ensure the religious and moral education of their children in conformity with their own convictions". Although in case No. 40/1978 the Committee found that the author's submissions did not substantiate his allegation of a violation of article 18, the State party has taken action in response to the Committee's views by revising a law and charging the Board of Education with closer inspection of instruction of ethics and the history of religions. 24/

(k) The right to hold opinions, freedom of expression (article 19)

616. In case No. 28/1978 the Committee found a violation of article 19 (2) because the victim "was detained for having disseminated information relating to trade union activities". In case No. 44/1979 the Committee similarly found a violation because the victim had been "arrested, detained and tried for his political and trade-union activities" and explained its finding as follows: "As regards article 19, the Covenant provides that everyone shall have the right to hold opinions without interference and that the freedom of expression set forth in paragraph 2 of that article shall be subject only to such restrictions as are necessary (a) for respect of the rights and reputations of others or (b) for the protection of national security or of public order ("ordre public"), or of public health or morals. The Government of [the State party] has submitted no evidence regarding the nature of the activities in which [the victim] was alleged to have been engaged and which led to his arrest, detention and committal for trial. Bare information from the State party that he was charged with subversive association and conspiracy to violate the Constitution, followed by preparatory acts thereto, is not in itself sufficient, without details of the alleged charges and copies of the court proceedings. The Committee is therefore unable to conclude on the information before it that the arrest, detention and trial of [the victim] was justified on any of the grounds mentioned in article 19 (3) of the Covenant." (See also Nos. 11/1977, 8/1977, 33/1978, 52/1979.)

617. This right has also been invoked in connection with alleged censorship in radio and television programmes dealing with homosexuality. In this connection the Committee had to look into the role of mass media and the application of the criteria of article 19 (3) to self-imposed restrictions. In its views in case No. 61/1979 the Committee noted "first, that public morals differ widely. There is no universally applicable common standard. Consequently, in this respect, a certain margin of discretion must be accorded to the responsible national authorities. The Committee finds that it cannot question the decision of the responsible organs of the [State party's] Broadcasting Corporation that radio and television are not the appropriate forums to discuss issues related to homosexuality, as far as a programme could be judged as encouraging homosexual behaviour. According to article 19 (3), the exercise of the rights provided for in article 19 (2) carries with it special duties and responsibilities for those organs. As far as radio and television programmes are concerned, the audience cannot be controlled. In particular, harmful effects on minors cannot be excluded." No violation was found.

(1) The right to engage in political activity (article 25)

618. Restrictions on the right to engage in political activity have been examined by the Committee in the light of State party contentions that such restrictions were necessary because of a state of emergency. In case No. 44/1979 the Committee found a violation of article 25, noting "that the sanction of deprivation of certain political rights is provided for in the legislation of some countries. Accordingly, article 25 of the Covenant prohibits "unreasonable" restrictions. In no case, however, may a person be subjected to such sanctions solely because of his or her political opinion (articles 2 (1) and 26). Furthermore, the principle of proportionality would require that a measure as harsh as the deprivation of all political rights for a period of 15 years be specifically justified. No such attempt has been made in the present case."

619. In case No. 34/1978 the Committee found a violation, noting that "even on the assumption that there exists a situation of emergency in [the State party] the Human Rights Committee does not see what ground could be adduced to support the contention that, in order to restore peace and order, it was necessary to deprive all citizens, who as members of certain political groups had been candidates in the elections in 1966 and 1971, of any political right for a period as long as 15 years. This measure applies to every one, without distinction as to whether he sought to promote his political opinions by peaceful means or by resorting to, or advocating the use of, violent means. The Government of [the State party] has failed to show that the interdiction of any kind of political dissent is required in order to deal with the alleged emergency situation and pave the way back to political freedom."

(m) Protection of minorities (article 27)

620. Article 27 has been invoked before the Committee primarily in connection with the rights of North American Indians to their cultural heritage. In case No. 24/1977 a native Indian had been denied, by operation of the Indian Act, the legal right to reside on an Indian reserve because she had married a non-Indian. The Committee found a breach of article 27. The State party subsequently informed the Committee that the Indian Act is in process of amendment so as to remove therefrom any discriminatory provisions. 25/

(n) Questions of action subsequent to the adoption of the Committee's views under the Optional Protocol or to a decision declaring a communication to be inadmissible

621. At previous sessions the Committee has been seized with the questions as to which possibilities might be open to it under the Optional Protocol to take any further action in cases which have already been concluded by adoption of views and cases which have been declared inadmissible. In a number of cases concluded by adoption of views under article 5 (4) of the Optional Protocol, the authors have asked the Committee to take additional steps to persuade the State parties concerned to act in conformity of the views expressed by the Committee. Also, in a number of cases which have been concluded by adoption of inadmissibility decisions, the authors have asked the Committee to review such decisions. The opinion of the Committee is, that its role in the examination of any given case comes to an end by the adoption of views or by the adoption of another decision of a final nature. Only in exceptional circumstances may the Committee agree to reconsider an earlier final decision. Basically, this would only occur when the Committee is satisfied that new facts are placed before it by a party claiming that these facts were not available to it at the time of the consideration of the case and that these facts would have altered the final decision of the Committee. 26/

622. The Committee, however, takes an interest in any action which may have been taken by a State party as a consequence of the Committee's views under the Optional Protocol, or in any action taken by the State party which concerns either the legal issues involved or the situation of the person concerned. Thus, when forwarding its views to a State party, the Committee invites the State party to inform it of any action taken pursuant to the views. 27/

623. During the period covered by the present report States parties have informed the Committee about the release of persons whose cases have been concluded by adoption of views under article 5 (4) of the Optional Protocol. By note dated 31 May and 10 July 1984 the Government of Uruguay furnished the Secretary-General with lists of persons released from imprisonment in 1983 and 1984 with the request that these lists be brought to the attention of the Human Rights Committee. The lists include the names of two persons whose cases have been considered and concluded by final views by the Human Rights Committee (case No. 10/1977, Alberto Altesor and case No. 28/1978, Ismael Weinberger Weisz). From other sources, the Committee has learned about the release of Jose Luis Massera (No. 5/1977), Lillian Celiberti (No. 56/1979) and Rosario Pietraroia (No. 44/1979).

624. During the reporting period, the Government of Madagascar informed the Committee that Mr. Dave Marais Jr. (whose case, No. 49/1979, was concluded by the adoption of views at the Committee's eighteenth session in October 1983) was released from imprisonment upon completion of his sentence and that he had left Malagasy territory.

625. The Committee welcomes the co-operation of States parties in forwarding to it information and positive responses relevant to the views adopted by the Committee under the Optional Protocol.

Notes

1/ Official Records of the General Assembly, Thirty-eight Session, Supplement No. 40 (A/38/40), para. 8.

2/ Ibid., paras. 42-43.

3/ Ibid., Thirty-second Session, Supplement No. 44 (A/32/44 and Corr.1), annex IV.

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

5/ Ibid., annex VI.

6/ Ibid., Thirty-eighth Session, Supplement No. 40 (A/38/40), para. 58.

7/ Ibid., Thirty-fourth Session, Supplement No. 40 (A/34/40), paras. 15-20.

8/ See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex IV. For States parties not having submitted initial reports or additional information before the end of the thirteenth session, the five years are to be counted from the date when their initial report was due.

9/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex IV

10/ Ibid., annex VI.

11/ The reports and additional information of States parties are documents of general distribution and are listed in annexes to the annual reports of the Committee; these documents as well as the summary records will be published in the bound volumes which are being issued, beginning with the years 1977 and 1978.

12/ See footnote 10.

13/ See footnote 9.

14/ See footnote 9.

15/ These observations (CCPR/C/SR.531) will be summarized in the next report of the Committee together with further questions and replies on the remaining issues concerning Chile.

16/ See footnote 10.

17/ Under this heading, see Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 40 (A/35/40), paras. 370-383; *ibid.*, Thirty-sixth Session, Supplement No. 40 (A/36/40), paras. 380-389; *ibid.*, Thirty-seventh Session, Supplement No. 40 (A/37/40), paras. 336-346; and paras. 374-377 of the present report.

18/ See footnote 9.

Notes (continued)

19/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII.

20/ Ibid., Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V.

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

22/ See footnote 10.

23/ Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40), annex XXXII.

24/ Ibid., annex XXXIII.

25/ Ibid., annex XXXI.

26/ Ibid., paras. 391-396.

27/ For information received from States parties after the adoption of views under the Optional Protocol, see Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40), para. 396 and annexes XXXI to XXXIII.

ANNEX I

States parties to the International Covenant on Civil and Political Rights and to the Optional Protocol and States which have made the declaration under article 41 of the Covenant, as at 27 July 1984

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

<u>State Party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Afghanistan	24 January 1983 (a)	24 April 1983
Australia	13 August 1980	13 November 1980
Austria	10 September 1978	10 December 1978
Barbados	5 January 1973 (a)	23 March 1976
Belgium	21 April 1983	21 July 1983
Bolivia	12 August 1982 (a)	12 November 1982
Bulgaria	21 September 1970	23 March 1976
Byelorussian Soviet Socialist Republic	12 November 1973	23 March 1976
Cameroon	27 June 1984 (a)	27 September 1984
Canada	19 May 1976 (a)	19 August 1976
Central African Republic	8 May 1981 (a)	8 August 1981
Chile	10 February 1972	23 March 1976
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Cyprus	2 April 1969	23 March 1976
Czechoslovakia	23 December 1975	23 March 1976
Democratic People's Republic of Korea	14 September 1981 (a)	14 December 1981
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 (a)	4 April 1978
Ecuador	6 March 1969	23 March 1976
Egypt	14 January 1982	14 April 1982
El Salvador	30 November 1979	29 February 1980
Finland	19 August 1975	23 March 1976
France	4 November 1980 (a)	4 February 1981
Gabon	21 January 1983 (a)	21 April 1983

<u>State Party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Gambia	22 March 1979 (a)	22 June 1979
German Democratic Republic	8 November 1973	23 March 1976
Germany, Federal Republic of	17 December 1973	23 March 1976
Guinea	24 January 1978	24 April 1978
Guyana	15 February 1977	15 May 1977
Hungary	17 January 1974	23 March 1976
Iceland	22 August 1979	22 November 1979
India	10 April 1979 (a)	10 July 1979
Iran (Islamic Republic of)	24 June 1975	23 March 1976
Iraq	25 January 1971	23 March 1976
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Japan	21 June 1979	21 September 1979
Jordan	28 May 1975	23 March 1976
Kenya	1 May 1972 (a)	23 March 1976
Lebanon	3 November 1972 (a)	23 March 1976
Libyan Arab Jamahiriya	15 May 1970 (a)	23 March 1976
Luxembourg	18 August 1983 (a)	18 November 1983
Madagascar	21 June 1971	23 March 1976
Mali	16 July 1974 (a)	23 March 1976
Mauritius	12 December 1973 (a)	23 March 1976
Mexico	23 March 1981 (a)	23 June 1981
Mongolia	18 November 1974	23 March 1976
Morocco	3 May 1979	3 August 1979
Netherlands	11 December 1978	11 March 1979
New Zealand	28 December 1978	28 March 1979
Nicaragua	12 March 1980 (a)	12 June 1980
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	28 April 1978	28 July 1978
Poland	18 March 1977	18 June 1977
Portugal	15 June 1978	15 September 1978
Romania	9 December 1974	23 March 1976

<u>State Party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Rwanda	16 April 1975 (a)	23 March 1978
Saint Vincent and the Grenadines	9 November 1981 (a)	9 February 1982
Senegal	13 February 1978	13 May 1978
Spain	27 April 1977	27 July 1977
Sri Lanka	11 June 1980 (a)	11 September 1980
Suriname	28 December 1976 (a)	28 March 1977
Sweden	6 December 1971	23 March 1976
Syrian Arab Republic	21 April 1969 (a)	23 March 1976
Togo	24 May 1984 (a)	24 August 1984
Trinidad and Tobago	21 December 1978 (a)	21 March 1979
Tunisia	18 March 1969	23 March 1976
Ukrainian Soviet Socialist Republic	12 November 1973	23 March 1976
Union of Soviet Socialist Republics	16 October 1973	23 March 1976
United Kingdom of Great Britain and Northern Ireland	20 May 1976	20 August 1976
United Republic of Tanzania	11 June 1976 (a)	11 September 1976
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Viet Nam	24 September 1982 (a)	24 December 1982
Yugoslavia	2 June 1971	23 March 1976
Zaire	1 November 1976 (a)	1 February 1977
Zambia	10 April 1984 (a)	10 July 1984

B. States parties to the Optional Protocol

Barbados	5 January 1973 (a)	23 March 1976
Bolivia	12 August 1982 (a)	12 November 1982
Cameroon	27 June 1984 (a)	27 September 1984
Canada	19 May 1976 (a)	19 August 1976
Central African Republic	8 May 1981 (a)	8 August 1981
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Denmark	6 January 1972	23 March 1976

<u>State Party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Dominican Republic	4 January 1978 (a)	4 April 1978
Ecuador	6 March 1969	23 March 1976
Finland	19 August 1975	23 March 1976
France	17 February 1984	17 May 1984
Iceland	22 August 1979 (a)	22 November 1979
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Luxembourg	18 August 1983 (a)	18 November 1983
Madagascar	21 June 1971	23 March 1976
Mauritius	12 December 1973 (a)	23 March 1976
Netherlands	11 December 1978	11 March 1979
Nicaragua	12 March 1980 (a)	12 June 1980
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	3 October 1980	3 January 1981
Portugal	3 May 1983	3 August 1983
Saint Vincent and the Grenadines	9 November 1981 (a)	9 February 1982
Senegal	13 February 1978	15 May 1978
Suriname	28 December 1976 (a)	28 March 1977
Sweden	6 December 1971	23 March 1976
Trinidad and Tobago	14 November 1980 (a)	14 February 1981
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Zaire	1 November 1976 (a)	1 February 1977
Zambia	10 April 1984 (a)	10 July 1984

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

<u>State Party</u>	<u>Valid from</u>	<u>Valid until</u>
Austria	10 September 1978	Indefinitely
Canada	29 October 1979	Indefinitely
Denmark	23 March 1976	Indefinitely
Finland	19 August 1975	Indefinitely

<u>State Party</u>	<u>Valid from</u>	<u>Valid until</u>
Germany, Federal Republic of	28 March 1979	27 March 1986
Iceland	22 August 1979	Indefinitely
Italy	15 September 1978	Indefinitely
Luxembourg	18 August 1983	Indefinitely
Netherlands	11 December 1978	Indefinitely
New Zealand	28 December 1978	Indefinitely
Norway	23 March 1976	Indefinitely
Peru	9 April 1984	Indefinitely
Senegal	5 January 1981	Indefinitely
Sri Lanka	11 June 1980	Indefinitely
Sweden	23 March 1976	Indefinitely
United Kingdom of Great Britain and Northern Ireland	20 May 1976	Indefinitely

ANNEX II

Membership of the Human Rights Committee 1983-1984

<u>Name of member</u>	<u>Country of nationality</u>
Mr. Andrés AGUILAR*	Venezuela
Mr. Mohammed AL DOURI*	Iraq
Mr. Néjib BOUZIRI**	Tunisia
Mr. Joseph A. L. COORAY**	Sri Lanka
Mrs. Gisèle COTE-HARPER*	Canada
Mr. Vojin DIMITRIJEVIC**	Yugoslavia
Mr. Felix ERMACORA*	Austria
Mr. Roger ERRERA**	France
Sir Vincent EVANS*	United Kingdom of Great Britain and Northern Ireland
Mr. Bernhard GRAEFRATH**	German Democratic Republic
Mr. Vladimir HANGA*	Romania
Mr. Andreas V. MAVROMMATIS*	Cyprus
Mr. Anatoly MOVCHAN*	Union of Soviet Socialist Republics
Mr. Birame NDIAYE**	Senegal
Mr. Torkel OPSAHL**	Norway
Mr. Julio PRADO VALLEJO**	Ecuador
Mr. Alejandro SERRANO CALDERA*	Nicaragua
Mr. Christian TOMUSCHAT**	Germany, Federal Republic of

* Term expires on 31 December 1984.

** Term expires on 31 December 1986.

Agendas of the twentieth, twenty-first and twenty-second sessions
of the Human Rights Committee

Twentieth session

At its 437th meeting, held on 24 October 1983, the Committee adopted the following provisional agenda, submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its twentieth session:

1. Adoption of the agenda.
2. Solemn declaration by the new member of the Committee under article 38 of the Covenant.
3. Election of a Rapporteur.
4. Submission of reports by States parties under article 40 of the Covenant.
5. Consideration of reports submitted by States parties under article 40 of the Covenant.
6. Consideration of communication received in accordance with the provisions of the Optional Protocol to the Covenant.

Twenty-first session

At its 490th meeting, held on 26 March 1984, the Committee adopted the following provisional agenda, submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its twenty-first session:

1. Adoption of the agenda.
2. Solemn declarations by the newly-elected members of the Committee under article 38 of the Covenant.
3. Election of a Rapporteur.
4. Organizational and other matters.
5. Action by the General Assembly at its thirty-eighth session on the annual report submitted by the Human Rights Committee under article 45 of the Covenant.
6. Submission of reports by States parties under article 40 of the Covenant.
7. Consideration of reports submitted by States parties under article 40 of the Covenant.

8. Consideration of communications under the Optional Protocol to the Covenant.
9. Future meetings of the Committee.

Twenty-second session

At its 418th meeting, held on 9 July 1984, the Committee adopted the following provisional agenda, submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its twenty-second session:

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

ANNEX IV

Submission of reports and additional information by States parties under article 40 of the Covenant during the period under review*

A. Initial reports

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of written reminder(s) sent to States whose reports have not yet been submitted</u>
Afghanistan	23 April 1984	NOT YET RECEIVED	-
Belgium	20 July 1984	NOT YET RECEIVED	-
Bolivia	11 November 1983	NOT YET RECEIVED	-
Central African Republic	7 June 1982	NOT YET RECEIVED	23 November 1983
Democratic People's Republic of Korea	13 December 1982	23 October 1983 2 April 1984	-
Dominican Republic	3 April 1979	NOT YET RECEIVED	(1) 25 April 1980 (2) 27 August 1980 (3) 27 November 1981 (4) 23 November 1983
Egypt	13 April 1983	8 March 1984	-
Gabon	20 April 1984	NOT YET RECEIVED	-
Panama	7 June 1978	15 May 1984	-
Saint Vincent and the Grenadines	8 February 1983	NOT YET RECEIVED	10 May 1984
Trinidad and Tobago	20 March 1980	23 March 1984	-
Viet Nam	23 December 1983	NOT YET RECEIVED	-
Zaire	31 January 1978	NOT YET RECEIVED	(1) 14 May 1979 (2) 23 April 1980 (3) 29 August 1980 (4) 31 March 1982 (5) 1 December 1982 (6) 23 November 1983

* From 31 July 1983 to 27 July 1984 (end of nineteenth session to end of twenty-second session).

B. Second periodic reports of States parties due in 1983

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of written reminder(s) sent to States whose reports have not yet been submitted</u>
Zaire	30 January 1983	NOT YET RECEIVED	10 May 1984
Czechoslovakia	4 February 1983	NOT YET RECEIVED	10 May 1984
German Democratic Republic	4 February 1983	3 November 1983	-
Libyan Arab Jamahiriya	4 February 1983	NOT YET RECEIVED	10 May 1984
Tunisia	4 February 1983	NOT YET RECEIVED	10 May 1984
Iran	21 March 1983	NOT YET RECEIVED	10 May 1984
Lebanon	21 March 1983**		
Uruguay	21 March 1983	NOT YET RECEIVED	10 May 1984
Panama	6 June 1983	NOT YET RECEIVED	-
Germany, Federal Republic of	3 August 1983	NOT YET RECEIVED	-
Madagascar	3 August 1983	NOT YET RECEIVED	-
Yugoslavia	3 August 1983	30 May 1983	-
Byelorussian Soviet Socialist Republic	4 November 1983	4 July 1984	-
Ecuador	4 November 1983	NOT YET RECEIVED	-
Mauritius	4 November 1983	NOT YET RECEIVED	-
Union of Soviet Socialist Republics	4 November 1983	9 April 1984	-

** At its nineteenth session, the Committee decided that, in the particular circumstances of Lebanon and considering that its initial report was considered by the Committee at the same session, the deadline for the submission of the second periodic report of Lebanon would be postponed until 21 March 1986 (see Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40, para. 56)).

C. Second periodic reports of States parties due in 1984***
(within the period under review)

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of written reminder(s) sent to States whose reports have not yet been submitted</u>
Dominican Republic	3 April 1984	NOT YET RECEIVED	-
Bulgaria	28 April 1984	NOT YET RECEIVED	-
Chile	28 April 1984	5 April 1984	-
Romania	28 April 1984	NOT YET RECEIVED	-
Spain	28 April 1984	16 July 1984	-

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

<u>State party</u>	<u>Date of submission</u>
Canada	7 September 1983
France	18 January 1984

*** For a complete list of States parties whose second periodic reports are due in 1984, see CCPR/C/32.

ANNEX V

A. Status of reports considered during the period under review and reports still pending consideration

A. Initial reports

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Meetings considered at</u>
El Salvador	28 February 1981	2 June 1983	468th, 469th, 474th, 485th (twentieth session)
Sri Lanka	10 September 1981	23 March 1983	471st, 472nd, 473rd, 477th (twentieth session)
Guinea*	23 April 1979	19 August 1980	475th, 476th, 485th, 486th (twentieth session)
New Zealand	27 March 1980	11 January 1982	481st, 482nd, 487th (twentieth session)
India	9 July 1980	4 July 1983	493rd, 494th, 498th (twenty-first session)
Egypt	13 April 1983	8 March 1984	499th, 500th, 505th (twenty-first session)
Gambia	21 June 1980	25 April 1983	501st, 502nd, 506th (twenty-first session)
Democratic People's Republic of Korea	13 December 1982	23 October 1983 2 April 1984	509th, 510th, 516th (twenty-first session)
Panama	7 June 1978	15 May 1984	521st, 522nd, 526th (twenty-second session)
Trinidad and Tobago	20 March 1980	23 March 1984	NOT YET CONSIDERED

B. Second periodic reports of States parties due in 1983

Yugoslavia	3 August 1983	30 May 1983	483rd, 484th, 488th (twentieth session)
German Democratic Republic	4 February 1983	3 November 1983	532nd, 533rd, 534th, 536th (twenty-second session)

* This report was considered in the absence of a representative from the State party (see paras. 136 to 138 above).

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Meetings considered at</u>
Byelorussian Soviet Socialist Republic	4 November 1983	4 July 1984	NOT YET CONSIDERED
Union of Soviet Socialist Republics	4 November 1983	9 April 1984	NOT YET CONSIDERED

C. Second periodic reports of States parties due in 1984

Chile	28 April 1984	5 April 1984	527th to 531st (twenty-second session)
Spain	28 April 1984	16 July 1984	NOT YET CONSIDERED

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

<u>State party</u>	<u>Date of submission</u>	<u>Meetings considered at</u>
Canada	7 September 1983	NOT YET CONSIDERED
France	18 January 1984	NOT YET CONSIDERED
Kenya	4 May 1982	NOT YET CONSIDERED
Venezuela	28 March 1982	NOT YET CONSIDERED

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

General comment 12 (21) d/ (article 1)

1. In accordance with the purposes and principles of the Charter of the United Nations, article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as article 1 apart from and before all of the other rights in the two Covenants.
2. Article 1 enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.
3. Although the reporting obligations of all States parties include article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of article 1.
4. With regard to paragraph 1 of article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.
5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination; namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence". This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.
6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having

responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with article 1 of the Covenant the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and co-operation between States and to strengthening international peace and understanding.

General comment 13 (21) d/ (article 14)

1. The Committee notes that article 14 of the Covenant is of a complex nature and that different aspects of its provisions will need specific comments. All of these provisions are aimed at ensuring the proper administration of justice, and to this end uphold a series of individual rights such as equality before the courts and tribunals and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. Not all reports provided details on the legislative or other measures adopted specifically to implement each of the provisions of article 14.

2. In general, the reports of States parties fail to recognize that article 14 applies not only to procedures for the determination of criminal charges against individuals but also to procedures to determine their rights and obligations in a suit at law. Laws and practices dealing with these matters vary widely from State to State. This diversity makes it all the more necessary for States parties to provide all relevant information and to explain in greater detail how the concepts of "criminal charge" and "rights and obligations in a suit at law" are interpreted in relation to their respective legal systems.

3. The Committee would find it useful if, in their future reports, States parties could provide more detailed information on the steps taken to ensure that equality before the courts, including equal access to courts, fair and public hearings and competence, impartiality and independence of the judiciary are established by law and guaranteed in practice. In particular, States parties should specify the relevant constitutional and legislative texts which provide for the establishment of the courts and ensure that they are independent, impartial and competent, in particular with regard to the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office; the

conditions governing promotion, transfer and cessation of their functions and the actual independence of the judiciary from the executive branch and the legislature.

4. The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized. The Committee notes the existence, in many countries, of military or special courts which try civilians. This could present serious problems as far as the equitable, impartial and independent administration of justice is concerned. Quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice. While the Covenant does not prohibit such categories of courts, nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in article 14. The Committee has noted a serious lack of information in this regard in the reports of some States parties whose judicial institutions include such courts for the trying of civilians. In some countries such military and special courts do not afford the strict guarantees of the proper administration of justice in accordance with the requirements of article 14 which are essential for the effective protection of human rights. If States parties decide in circumstances of a public emergency as contemplated by article 4 to derogate from normal procedures required under article 14, they should ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation, and respect the other conditions in paragraph 1 of article 14.

5. The second sentence of article 14, paragraph 1, provides that "everyone shall be entitled to a fair and public hearing". Paragraph 3 of the article elaborates on the requirements of a "fair hearing" in regard to the determination of criminal charges. However, the requirements of paragraph 3 are minimum guarantees, the observance of which is not always sufficient to ensure the fairness of a hearing as required by paragraph 1.

6. The publicity of hearings is an important safeguard in the interest of the individual and of society at large. At the same time article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public for reasons spelt out in that paragraph. It should be noted that, apart from such exceptional circumstances, the Committee considers that a hearing must be open to the public in general, including members of the press, and must not, for instance, be limited only to a particular category of persons. It should be noted that, even in cases in which the public is excluded from the trial, the judgement must, with certain strictly defined exceptions, be made public.

7. The Committee has noted a lack of information regarding article 14, paragraph 2, and, in some cases, has even observed that the presumption of innocence, which is fundamental to the protection of human rights, is expressed in very ambiguous terms or entails conditions which render it ineffective. By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is therefore a duty for all public authorities to refrain from prejudging the outcome of a trial.

8. Among the minimum guarantees in criminal proceedings prescribed by paragraph 3, the first concerns the right of everyone to be informed in a language which he understands of the charge against him (subparagraph (a)). The Committee notes that State reports often do not explain how this right is respected and ensured. Article 14, subparagraph 3 (a) applies to all cases of criminal charges, including those of persons not in detention. The Committee notes further that the right to be informed of the charge "promptly" requires that information is given in the manner described as soon as the charge is first made by a competent authority. In the opinion of the Committee this right must arise when in the course of an investigation a court or an authority of the prosecution decides to take procedural steps against a person suspected of a crime or publicly names him as such. The specific requirements of subparagraph 3 (a) may be met by stating the charge either orally or in writing, provided that the information indicates both the law and the alleged facts on which it is based.

9. Subparagraph 3 (b) provides that the accused must have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. What is "adequate time" depends on the circumstances of each case, but the facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel. When the accused does not want to defend himself in person or request a person or an association of his choice, he should be able to have recourse to a lawyer. Furthermore, this subparagraph requires counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communications. Lawyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgement without any restrictions, influences, pressures or undue interference from any quarter.

10. Subparagraph 3 (c) provides that the accused shall be tried without undue delay. This guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgement be rendered; all stages must take place "without undue delay". To make this right effective, a procedure must be available in order to ensure that the trial will proceed "without undue delay", both in first instance and on appeal.

11. Not all reports have dealt with all aspects of the right of defence as defined in subparagraph 3 (d). The Committee has not always received sufficient information concerning the protection of the right of the accused to be present during the determination of any charge against him nor how the legal system assures his right either to defend himself in person or to be assisted by counsel of his own choosing, or what arrangements are made if a person does not have sufficient means to pay for legal assistance. The accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defences and the right to challenge the conduct of the case if they believe it to be unfair. When exceptionally for justified reasons trials in absentia are held, strict observance of the rights of the defence is all the more necessary.

12. Subparagraph 3 (e) states that the accused shall be entitled to examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. This provision is designed to guarantee to the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.

13. Subparagraph 3 (f) provides that if the accused cannot understand or speak the language used in court he is entitled to the assistance of an interpreter free of any charge. This right is independent of the outcome of the proceedings and applies to aliens as well as to nationals. It is of basic importance in cases in which ignorance of the language used by a court or difficulty in understanding may constitute a major obstacle to the right of defence.

14. Subparagraph 3 (g) provides that the accused may not be compelled to testify against himself or to confess guilt. In considering this safeguard the provisions of article 7 and article 10, paragraph 1, should be borne in mind. In order to compel the accused to confess or to testify against himself frequently methods which violate these provisions are used. The law should require that evidence provided by means of such methods or any other form of compulsion is wholly unacceptable.

15. In order to safeguard the rights of the accused under paragraphs 1 and 3 of article 14, judges should have authority to consider any allegations made of violations of the rights of the accused during any stage of the prosecution.

16. Article 14, paragraph 4, provides that in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. Not many reports have furnished sufficient information concerning such relevant matters as the minimum age at which a juvenile may be charged with a criminal offence, the maximum age at which a person is still considered to be a juvenile, the existence of special courts and procedures, the laws governing procedures against juveniles and how all these special arrangements for juveniles take account of "the desirability of promoting their rehabilitation". Juveniles are to enjoy at least the same guarantees and protection as are accorded to adults under article 14.

17. Article 14, paragraph 5, provides that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. Particular attention is drawn to the other language versions of the word "crime" ("infraction", "delito", "déshonneur") which show that the guarantee is not confined only to the most serious offences. In this connection, not enough information has been provided concerning the procedures of appeal, in particular the access to and the powers of reviewing tribunals, what requirements must be satisfied to appeal against a judgement and the way in which the procedures before review tribunals take account of the fair and public hearing requirements of paragraph 1 of article 14.

18. Article 14, paragraph 6, provides for compensation according to law in certain cases of a miscarriage of justice as described therein. It seems from many State reports that this right is often not observed or insufficiently guaranteed by domestic legislation. States should, where necessary, supplement their legislation in this area in order to bring it into line with the provisions of the Covenant.

19. In considering State reports differing views have often been expressed as to the scope of paragraph 7 of article 14. Some States parties have even felt the need to make reservations in relation to procedures for the resumption of criminal cases. It seems to the Committee that most States parties make a clear distinction between a resumption of a trial justified by exceptional circumstances and a retrial prohibited pursuant to the principle of ne bis in idem as contained in paragraph 7. This understanding of the meaning of ne bis in idem may encourage States parties to reconsider their reservations to article 14, paragraph 7.

Notes

a/ For the nature and purpose of the general comments, see Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII, introduction. For a description of the history of the method of work, the elaboration of the present general comments and their use, see above paras. 541-551. For the text of the General Comments already adopted by the Committee, see Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII and ibid., Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V; Thirty-eighth Session, Supplement No. 40 (A/38/40), annex VI. Also issued separately in documents CCPR/C/21 and Add.1 and 2.

b/ English version adopted by the Committee at its 516th meeting (twenty-first session), held on 12 April 1984. The Arabic, French, Russian and Spanish versions were approved by the Committee at its 537th meeting (twenty-second session), held on 23 July 1984.

c/ Also issued separately in document CCPR/C/21/Add.3.

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

ANNEX VII

Views of the Human Rights Committee under article 5 (4)
of the Optional Protocol to the International Covenant
on Civil and Political Rights - twentieth session

concerning

Communication No. 83/1981

Submitted by: Victor Ernesto Martínez Machado on behalf of his brother,
Raúl Noel Martínez Machado

Alleged victim: Raúl Noel Martínez Machado

State party concerned: Uruguay

Date of communication: 24 February 1981

Date of decision on admissibility: 15 October 1982

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

- meeting on 4 November 1983;
- having concluded its consideration of communication No. R.20/83 submitted to the Committee by Víctor Ernesto Martínez Machado under the Optional Protocol to the International Covenant on Civil and Political Rights;
- having taken into account all written information made available to it by the author of the communication and by the State party concerned;

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The author of the communication (initial letter dated 24 February 1981 and further submissions dated 18 and 28 June 1981, 27 September 1981 and 12 August 1982) is a Uruguayan national, residing at present in France. He submitted the communication on behalf of his brother, Raúl Noel Martínez Machado, who is imprisoned in Uruguay.

1.2 The author states that his brother, a teacher of history, born on 7 July 1949, was arrested in Uruguay on 16 October 1971 by members of the armed forces. In 1974, his brother had come under the jurisdiction of the military courts. In 1979 - eight years after his arrest - he was sentenced to nine and a half years' imprisonment. His defence lawyer, Dr. Rodríguez Gigena abandoned the case after fruitless attempts to remedy the irregularities of the procedure.

1.3 On 26 November 1980 Raúl Martínez was transferred from Libertad prison where he has been held since January 1973 and was kept at an unknown place of detention for five months. During this period his family had no contact with him and felt great concern for his state of health. The remedy of habeas corpus was not available to them because Raúl Martínez was subjected to military jurisdiction.

1.4 The author states that on 26 November 1980 his brother "disappeared". On 26 September 1980 the detainee Mario Teti Izquierdo was taken out of Libertad prison to an unknown destination. On 25 November 1980, the public was informed by the authorities of a suspected subversive conspiracy which included the invasion of Uruguay and which was allegedly planned and directed by detainees in Libertad prison. The allegation implied, according to the author, the involvement of relatives, including children, of the detainees as a link for communicating with the outside world. The author points out that anybody who knows the prison will realize that this was impossible. He stresses that the disappearance of his brother has to be seen in this context. He adds that during the first weeks of December 1980 Orlando Pereira Malanolti and other detainees also disappeared from Libertad. The author further states that in the last days of November and in the first days of December 1980, several relatives of political detainees were arrested. On 20 December 1980, an official communiqué announced that Raúl Noel Martínez Machado, Orlando Pereira and others were the leaders of the alleged invasion plan. The author also observes that the disappearance of his brother and other detainees was no doubt linked to the fact that all of them were soon to complete their prison sentences.

1.5 The author further alleges that his brother's disappearance violated the internal laws of Uruguay, because detainees who were serving their sentences were theoretically at the disposal of a judge and could not be transferred or held incommunicado without an order of the judge and then only subject to the limitations imposed by the law of the country.

1.6 The author submits that on 16 May 1981 his brother was seen again when as a result of growing international protest, a French lawyer who had travelled to Uruguay specifically to take up his brother's case was granted a "visit" with him at the No. 4 Infantry Battalion barracks in the Departamento of Colonia. This visit took place in an atmosphere of tension and pressure and lasted for only five minutes, during which the two were allowed to speak only of the detainee's health and family.

1.7 Subsequently, Raúl Martínez was taken back to Libertad prison where, on 18 June 1981 he received a family visit. The author submits that during this visit his brother informed his relatives that he had been re-tried (reprocesado) and that at the court of first instance he had been sentenced (penado) to a year's detention in a military prison, plus three months precautionary detention (medidas de seguridad) and six years "conditional liberty". The author adds that his family did not know the "charges" which had been brought against his brother. He also states that his brother's physical condition had noticeably deteriorated after six months of torture and "disappearance", but that he was apparently mentally well.

1.8 As to the question of admissibility, the author states that he has not submitted the same matter to another procedure of international investigation or settlement and that domestic remedies were not available in his brother's case.

1.9 The author claims that his brother is a victim of violations of articles 6, 7, 10 (1) and 14 of the International Covenant on Civil and Political Rights.

2. By its decision of 17 March 1981, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the admissibility of the communication and asking for: (a) copies of any court orders or decisions relevant to this case and (b) information as to the whereabouts of Raúl Noel Martínez Machado.

3. In its notes dated 14 August and 6 October 1981 and 2 June 1982, the State party objected to the admissibility of the communication on the ground that since domestic remedies had not been exhausted, it did not fulfil the requirements of article 5, paragraph 2 (b) of the Optional Protocol. The State party informed the Committee that any person on Uruguayan territory has free access to the public and administrative courts and authorities and is free to invoke all the remedies guaranteed by the domestic legal system. The State party also stated that in mid-December 1980, the population was informed of the discovery of plans for the reactivation of the Tupamaros National Liberation Movement, reorganized under the name of "seispuntista", from within Military Detention Establishment No. 1. At that time, the identity of several of the conspirators was made known and information was given on each one's legal status. Raúl Martínez Machado, allegedly a subversive and one of the ringleaders of the movement operating from within the Establishment, was brought to trial (procesado) on 11 May 1981 for the offence of "conspiracy to subvert". The State party added that the accused, under military justice, had access to the following internal remedies: appeal against the decision to refuse to allow a trial (procesamiento), appeal, complaint for refusal of leave to appeal, appeal for annulment, and the special remedies of appeal to vacate a judgement and appeal for review.

4.1 In his comments dated 27 September 1981 and 12 August 1982, the author reiterates that, in his brother's case, no domestic remedies were available which could have been invoked. He recalls that his brother had been detained incommunicado for several months (after 26 November 1980) and thus he was deprived not only of free access to the administrative authorities and courts, but of any opportunity to give anyone a sign of life or of his whereabouts, that he had been at the mercy of his captors who did not admit that they were holding him. Thus, the author claims his brother had been cut off from any contact with the outside world and deprived of all rights, including the right to security of life. In such circumstances any recourse to internal remedies had been made virtually impossible.

4.2 In connection with the alleged participation of his brother in an alleged plan to reactivate the MLN-Tupamaros, the author stresses again that, after the plebiscite held on 30 November 1980 and due to the fact that the majority of the Uruguayan population voted against the draft Constitution proposed by the authorities, a policy of repression was directed against political prisoners and their relatives. This led to new arrests and trials. He considers that in such context of repression and of non-respect for the law, his brother's re-trial (reprocesamiento) can only be seen as illegal. The author also affirms that his brother was denied a proper defence since his ex officio defence counsel, Colonel Ramírez, was a member of the armed forces who had to obey his superiors rather than defend his brother's interests. He adds that, although the Government stated that his brother was re-tried on 11 May 1981, his family had been assured by

his defence counsel that he was not re-tried but would be released in October 1982. The author expresses the hope that this would prove true.

4.3 In summary, the author maintains that his brother's re-trial (reprocesamiento) took place after six months of "disappearance" during which he had been subjected to torture; that he was "brought to trial" (procesado) on 11 May 1981 although he had completed his prison sentence on 16 April 1981; that he had no possibility of a fair defence; and that he was a victim of the arbitrariness of military judges.

4.4 In substantiation of his allegations, the author submits various enclosures (approximately 200 pages), in particular two publications, entitled "Les camps de concentration" and "La politique de rejugement", from the Comité des Familles des Prisonniers Politiques Uruguayens (FFPU, Paris, 26 November 1981). It is stated therein, inter alia, that in 1979 Raúl Martínez was sentenced to nine years and six months imprisonment on grounds of attempt against the Constitution, unlawful association, deprivation of freedom, co-author of theft; that as in the cases of other detainees he is subject to inhuman prison conditions at Libertad (a detailed description of such conditions is given); and that in November-December 1979 he had been taken urgently to the military hospital due to inhuman treatment inflicted upon him.

5. With regard to article 5 (2) (a), the Committee noted that the author's assertion that the same matter had not been submitted to any other procedure of international investigation or settlement had not been contested by the State party.

6. With regard to article 5, paragraph 2 (b), the Human Rights Committee took note of the State party's assertion that Raúl Noel Martínez Machado had not yet exhausted the domestic remedies available to him. In this connection the Committee understood that the State party's assertion related merely to the proceedings which were initiated or took place on 11 May 1981 and not to events prior to that date. However, in the absence of any specific indications as to which remedies would have been applicable in the particular circumstances of this case, the Committee was unable to conclude that Raúl Noel Martínez Machado had failed to exhaust domestic remedies. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b). It observed that this decision, in so far as it related to events after 11 May 1981, could be reviewed in the light of further explanations which the State party might submit under article 4 (2) of the Optional Protocol, giving details of any domestic remedies claimed to have been available to the alleged victim, together with evidence that there would be a reasonable prospect that such remedies would be effective.

7. On 15 October 1982, the Human Rights Committee therefore decided:

(1) That the communication was admissible in so far as it related to events said to have continued or taken place on or after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay;

(2) That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

(3) That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must relate

primarily to the substance of the matter under consideration. The Committee stressed that in order to perform its responsibilities, it required specific responses to the allegations which had been made by the author of the communication, and the State party's explanations of the actions taken by it. The State party was requested, in this connection, to enclose copies of any court orders or decisions of relevance to the matter under consideration.

8. By a note dated 22 November 1982, relating to the author's submission of 12 August 1982, the State party reiterates that Raúl Martínez was one of the principal leaders of the Seispuntista Movement. It points out "that the action taken with respect to the emergence of the subversive organization concerned was based on investigations carried out in accordance with the requirements of the law. Mr. Martínez Machado was not the subject of a 'forced disappearance', as suggested in the author's communication, but was merely moved from his place of imprisonment for security reasons, with a view to frustrating the Seispuntismo plan by thus impeding communication among its members. While Mr. Martínez Machado's unconditional release might have been effected recently, the discovery of his participation in this movement made it necessary to institute new proceedings which prevented its materialization." With respect to the conduct of the ex officio defending counsel, the State party further points out that the persons concerned are independent lawyers who are not subject to the military hierarchy in the performance of their technical functions. "These were in strict conformity with the principles that should regulate any counsel of a technical and legal nature."

9. In its submission under article 4 (2) of the Optional Protocol dated 4 October 1983, the State party rejects - without providing additional facts - the author's contention that his brother was subjected to ill-treatment, that he "disappeared", that he has been denied a proper defence and that the effective application of domestic remedies available under the procedural laws of the country is not possible. The State party reiterates that military tribunals enjoy total independence in the exercise of their judicial function and it asserts that procedural guarantees are duly observed during all stages of the proceedings and that the defence may apply for such remedies as it considers appropriate.

10. When adopting its decision on admissibility on 15 October 1982, the Committee observed that this decision, in so far as it related to events after 11 May 1981, could be reviewed in the light of further explanations which the State party might submit under article 4 (2) of the Optional Protocol. The Committee notes that, despite the receipt of the State party's most recent submission, no details have been furnished to it of any domestic remedies claimed to have been available to the alleged victim, together with evidence that there would be a reasonable prospect that such remedies would be effective. The Committee therefore sees no reason for reviewing its decision on admissibility.

11.1 The Committee decides to base its views on the following facts which have been either essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation.

11.2 Raúl Noel Martínez Machado was arrested on 16 October 1971. In January 1973 he was transferred to Libertad prison. In 1974 he came under the jurisdiction of the military courts. In 1979 he was sentenced to nine and a half years' imprisonment. He was to have completed the sentence on 16 April 1981. On 26 November 1980 he was moved from Libertad prison to another detention establishment for interrogation in connection with his alleged involvement in

operations aimed at reactivating a subversive organization (the "Tupamaros" movement) from within Libertad prison. From November 1980 to May 1981 he was held incommunicado. On 11 May 1981, Raúl Martínez was again brought to trial (procesado) for the offence of "conspiracy to subvert". His ex-officio lawyer is Colonel Ramírez.

12.1 In formulating its views the Human Rights Committee takes into account, in particular, the following consideration:

12.2 In operative paragraph 3 of its decision of 15 October 1982, the Committee requested the State party to submit copies of any court orders or decisions of relevance to the matter under consideration. The Committee notes with regret that it has not been furnished with any of the relevant documents or with any information about the outcome of the criminal proceedings commenced against Raúl Martínez Machado in 1971 and 1981. Taking into account the delay in the first trial, it must be concluded in this respect that he has not been tried without undue delay as required by article 14 (3) (c) of the Covenant.

13. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay) disclose violations of the International Covenant on Civil and Political Rights, particularly:

- of article 10 (1) because Raúl Martínez was held incommunicado for more than five months;
- of article 14 (3) (b) because the conditions of his detention from November 1980 to May 1981 effectively barred him from access to legal assistance;
- of article 14 (3) (c), because he was not tried without undue delay.

14. The Committee, accordingly, is of the view that the State party is under an obligation to take immediate steps to ensure strict observance of the provisions of the Covenant and in particular (i) that Raúl Martínez Machado is treated with humanity as required by article 10 (1) of the Covenant; (ii) that the guarantees prescribed by article 14 are fully respected and, in so far as this has not been done in any proceedings already taken, an effective remedy will be applied; and (iii) that a copy of these views be transmitted to him.

ANNEX VIII

Views of the Human Rights Committee under article 5 (4)
of the Optional Protocol to the International Covenant
on Civil and Political Rights - twentieth session

concerning

Communication No. 103/1981

Submitted by: Estela Oxandabarat on behalf of her father,
Batlle Oxandabarat Scarrone

Alleged victim: Batlle Oxandabarat Scarrone

State Party concerned: Uruguay

Date of communication: 30 June 1981

Date of decision on admissibility: 27 October 1982

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

- meeting on 4 November 1983;
- having concluded its consideration of communication No. R.24/103 submitted to the Committee by Estela Oxandabarat under the Optional Protocol to the International Covenant on Civil and Political Rights;
- having taken into account all written information made available to it by the author of the communication and by the State party concerned;

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The author of the communication (initial letter dated 30 June 1981 and further letter dated 23 September 1982) is a Uruguayan national residing at present in Spain. She submitted the communication on behalf of her father, Batlle Oxandabarat Scarrone, alleging that he is imprisoned in Uruguay and that he is a victim of a breach by Uruguay of several articles (specified by the author) of the International Covenant on Civil and Political Rights.

1.2 The author states that her father, a 57-year-old Uruguayan national, had been personnel chief of the electric shop at the Administración Nacional de Combustibles, Alcohol y Portland, co-founder of the Federación de Empleados de ANCAP and President of the Convención Nacional de Trabajadores for the Salto district. She states that because of his trade union activities he was arrested in June 1972 and kept incommunicado for six months at the Unidad Militar de Infantería in Salto, where he was allegedly subjected to torture including physical beatings, electric shocks (picana) and immersion in water (submarino). He was then taken to the "Penal de Libertad" and submitted to military justice. Since he was detained

under "prompt security measures" recourse to habeas corpus was not available. The author does not mention when sentencing by the military tribunal of first instance took place. A final sentence of 13 years' imprisonment was imposed in 1980 by the Supreme Military Tribunal of second instance. The author alleges that her father did not commit any act punishable under the law and that his trade union activities were protected by the Uruguayan constitution.

1.3 The author also submitted a copy of a statement written by Dr. J. J. Arén, a medical doctor who was himself a detainee at the Penal de Libertad, where he had the opportunity to examine several prisoners, including the alleged victim. The report states that in 1976-1977 Batlle Oxandabarat suffered a cranioencephalic traumatism and that since then his faculty of perceiving time and space is impaired. Moreover, as a result of prolonged imprisonment and ill-treatment, Batlle Oxandabarat suffers from physical and mental deterioration, anaemia and premature aging.

2. The author states that domestic remedies have been exhausted and indicates that the same matter has not been submitted under any other procedure of international investigation or settlement. She claims that her father is a victim of violations of articles 7, 9 (1), 9 (2), 9 (3), 9 (4), 10 (1), 10 (3), 14, 15, 17, 19, 21, 22 and 26 of the Covenant.

3. By its decision of 13 October 1981, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. The Working Group also requested the State party to transmit to the Committee any copies of court decisions against Batlle Oxandabarat Scarrone, and to give the Committee information of his state of health.

4. In a submission dated 29 June 1982 the State party informed the Committee that Batlle Oxandabarat "was lawfully detained after being found to have committed offences expressly defined in the Ordinary Penal Code in force in Uruguay since 1934. Contrary to what was stated by the author of the communication, Oxandabarat was not harassed or arrested on account of his trade union activities; he had been a member of the Tupamaros National Liberation Movement since 1968 and his criminal activities included participation in the raid on the Salto branch of the Banco de la República and in the escape of two prisoners from Salto gaol. He was sentenced on 4 March 1980 by the court of second instance to 13 years rigorous imprisonment and to precautionary detention (medidas de seguridad eliminativas) of 1 to 2 years for the following offences: 'Criminal conspiracy' with the aggravating circumstances as set out in article 151 (1), (2) and (3), 'action to upset the Constitution in the degree of conspiracy followed by criminal preparations', 'disloyal assistance and counselling', 'escape from custody', 'receiving stolen goods', 'theft', all in the Ordinary Penal Code." The State party further informed the Committee that the present state of health of Batlle Oxandabarat is good.

5.1 In a further letter dated 23 September 1982, the author claims that since the end of 1975 her father had not had counsel of his choice but a court-appointed lawyer; that the lawyer never visited her father nor informed him of developments in his case; that the conditions of his imprisonment have remained inhuman and have led to her father's progressive physical and mental deterioration, alleging that the prison regime to which her father is subjected is not designed to produce any kind of reform or rehabilitation but aims at his psychological and physical

annihilation. She further alleges that many times when she went to the penitentiary to visit her father she was informed that he was being held incommunicado and could not be visited. She claims that medical care for the prisoners is inadequate, and resubmits a copy of the statement by Dr. J. J. Arén on her father's state of health (paragraph 1.3 above).

5.2 With respect to the criminal proceedings against her father, the author claims that although they started before the entry into force of the Covenant for Uruguay (23 March 1976), the critical phase of the trial, evaluation of evidence allegedly obtained by torture, and sentencing took place after the Covenant had entered into force.

6. On the basis of the information before it, the Committee found that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication, as there was no indication that the same matter had been submitted to another procedure of international investigation or settlement. The Committee was also unable to conclude that in the circumstances of this case there were effective remedies available to the alleged victim which he had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

7. On 27 October 1982, the Human Rights Committee therefore decided:

(1) That the communication was admissible so far as it related to events which allegedly continued or took place after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay;

(2) That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

(3) That the State party be informed that the written explanations or the statements submitted by it under article 4 (2) of the Optional Protocol must relate primarily to the substance of the matter now under consideration. The Committee stressed that, in order to perform its responsibilities, it required specific responses to the allegations which had been made by the author of the communication, and the State party's explanations of the actions taken by it;

(4) That the State party be again requested to furnish the Committee with (a) specific information on the state of health of Batlle Oxandabarat and the medical treatment given to him, and (b) copies of any court decisions taken against Batlle Oxandabarat, including the decision of the military court first instance.

8.1 In its submission under article 4 (2) of the Optional Protocol, dated 27 May 1983, the State party informed the Committee "that Mr. Oxandabarat Scarrone was at no time subjected to physical maltreatment and that he was detained not because of his trade union activities, but after being found to have committed offences established by the Uruguayan legal system, on which the Committee has already been informed. With regard to Mr. Oxandabarat's health, on 26 December 1975 he was discharged after having been treated with Calciparine and Tromexan for a pulmonary illness. Check-ups on his health were subsequently made at the polyclinic of EMR No. 1. In December 1981 he was treated at the surgical polyclinic

for haemorrhoidal prolapse. A haemorrhoidectomy was carried out, with good post-operative recovery, and a rectosigmoidoscopy showed no pathological lesions. He continues to undergo examinations and is being treated with Fluxan and Hemuval. The finding of the latest general examination is that he is in good health."

8.2 No additional information or observations have been received from the author in this connection.

9.1 The Human Rights Committee, having examined the present communication in the light of all the information made available to it by the parties as provided in article 5 (1) of the Optional Protocol, hereby decides to base its views on the following facts, which appear to be uncontested.

9.2 Batlle Oxandabarat was a trade-union leader and had been a member of the Tupamaros National Liberation Movement since 1968. He has been kept in detention continuously since he was arrested in June 1972. A final sentence of 13 years' imprisonment was imposed on 4 March 1980 by the court of second instance. He did not have counsel of his choice, but a court-appointed lawyer, who did not visit him nor inform him of developments in the case.

10.1 In formulating its views, the Human Rights Committee also takes into account the following considerations, which reflect a failure by the State party and by the author to furnish the information and clarifications necessary for the Committee to formulate final views on all allegations.

10.2 In operative paragraph 4 of its decision of 13 October 1981 and again in operative paragraph 4 of its decision on admissibility of 27 October 1982, the Committee requested the State party to enclose copies of any court decisions taken against Batlle Oxandabarat, including the decision of the military court of first instance. The Committee notes with deep concern that in spite of its repeated requests in this case and in many other cases, no such documents have ever been received from the State party. The Committee recalls in this connection the assurances given to it by the Representative of the Government of Uruguay on 8 April 1982 (see summary record of the Committee's 359th meeting, document CCPR/C/SR.359, para. 17) that these documents are readily available to any interested party. In the light of these assurances given before the Committee by the Representative of the Government of Uruguay, and which assurances the Committee does not wish to doubt were given in good faith, it is all the more disturbing that, 18 months later, not a single such document has been received from the State party, in spite of the Committee's continued and repeated requests. In these circumstances and considering that the State party has never offered any explanation as to why the documents in question have not been made available to it, the failure to produce these documents inevitably raises serious doubts concerning them. If reasoned decisions exist, it is not understandable why such pertinent information is withheld. The lack of precise information seriously hampers the discharge of the functions of the Committee under the Optional Protocol.

10.3 With respect to the state of health of the alleged victim, the Committee finds that the information before the Committee in regard to the treatment of Mr. Oxandabarat after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay) does not justify a finding of a violation of article 10 (1) of the Covenant.

11. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976, disclose violations of the International Covenant on Civil and Political Rights, particularly of:

- Article 14, paragraph 3 (b), because Batlle Oxandabarat did not have adequate legal assistance for the preparation of his defence;
- Article 14, paragraph 3 (c), because he was not tried without undue delay.

12. The Committee, accordingly, is of the view that the State party is under an obligation to provide Batlle Oxandabarat with effective remedies, and, in particular, to ensure that he continues to receive all necessary medical care and to transmit a copy of these views to him.

ANNEX IX

Views of the Human Rights Committee under article 5 (4) of the
Optional Protocol to the International Covenant of Civil and
Political Rights - twenty-first session

concerning

Communication No. 85/1981

Submitted by: Nelly Roverano de Romero on behalf of her husband,
Hector Alfredo Romero

Alleged victim: Hector Alfredo Romero

State party concerned: Uruguay

Date of communication: 2 March 1981

Date of decision on admissibility: 22 July 1983

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

- Meeting on 29 March 1984;
- Having concluded its consideration of communication No. R.21/85 submitted to the Committee by Nelly Roverano de Romero under the Optional Protocol to the International Covenant on Civil and Political Rights;
- Having taken into account all written information made available to it by the author of the communication and by the State party concerned;

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of the communication (initial letter dated 2 March 1981 and further letters dated 15 October 1982, 7 June 1983 and 22 February 1984) is a Uruguayan national, residing at present in Sweden. She submitted the communication on behalf of her husband, Hector Alfredo Romero, who is detained at Libertad prison (EMR No. 1) in Uruguay. The author does not specify which articles of the International Covenant on Civil and Political Rights have been allegedly violated.

2.1 In describing her husband's situation, the author relies partly on information provided by Edgardo Carvalho, a former Uruguayan defence lawyer now residing in Spain, and on a more recent report given to her by David Cámpora Schweizer, a/ who, in December 1980, arrived from Uruguay in the Federal Republic of Germany, and according to whom Hector Alfredo Romero was being detained in a cell alone at Libertad prison and had been subjected during the entire month of November 1980 to punishment at a cell called "la Isla", where rainwater filters in and one lives in the midst of human excrement.

2.2 It is stated that Mr. Romero was a worker at an industrial plant, a militant trade unionist and member of the Resistencia Obrero Estudiantil, a leftist organization which was declared illegal by the military Government in Uruguay in December 1973. He was reportedly arrested for the first time in September 1970 on charges of attempted robbery and illicit association. He subsequently escaped from prison in September 1971 and was rearrested in December 1971. At the end of 1975 he was sentenced to a five-year prison term which, counting the time he had already spent in detention, was soon finished and his release was ordered. However, he was immediately transferred by order of the military authorities to the central police prison where he allegedly was held at the disposal of the executive authorities. His application to opt to leave Uruguay (a right applicable to a person so held and still valid at present) was rejected. From then on, Hector Romero was allegedly transferred from one police detention centre to another, held incommunicado, and during that time allegedly subjected to torture and ill-treatment in order to have him confess crimes he had not committed. At the end of May 1976, Hector Romero, together with other political prisoners, was brought briefly before journalists in order to silence rumours from abroad that he and other political prisoners had disappeared in Uruguay.

2.3 According to José Valdes Pieri, a former Uruguayan prisoner at present residing in Spain, Hector Romero was transferred by the military in November 1976 to an unknown place and kept incommunicado until the middle of 1977, when he again appeared in Libertad prison, awaiting another trial before a military tribunal. The author alleges that the new trial was a travesty of justice.

3. By its decision of 18 March 1981 the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the admissibility of the communication and asking for copies of any court orders or decisions relevant to that case.

4. By a note of 3 June 1981 the State party objected to the admissibility of the communication on the ground that the same matter was already being examined by the Inter-American Commission on Human Rights (IACHR) as case No. 3106.

5. Further proceedings before the Human Rights Committee were delayed until it was ascertained that the case had been effectively withdrawn from IACHR pursuant to a written request by the author, dated 4 May 1982, subsequently confirmed by IACHR in December 1982. The State party was informed of the withdrawal by note of 1 March 1983.

6. In its reply dated 4 May 1983 the State party submitted

"that the person in question was arrested because of his links with the Tupamaros National Liberation Movement and while attacking a branch office of a bank. A sentence of second instance has been handed down in the case of Mr. Romero: he was sentenced to 25 years' imprisonment and to from 1 to 5 years' precautionary detention, having been found guilty of the offences of 'criminal conspiracy', 'aggravating circumstances', 'action to upset the Constitution amounting to a conspiracy followed by criminal preparations', 'co-perpetration of robbery', 'co-perpetration of deprivation of freedom', 'co-perpetration of the use of bombs, mortars or explosives in order to cause fear in the community', 'co-perpetration of usurpation of functions' and 'co-perpetration of damage', all offences in the Ordinary Criminal Code.

"Mr. Romero is currently imprisoned in EMR No. 1. The criminal trial was held in accordance with the relevant legal provisions. What the author wrongly presents as a travesty of justice is the stage in the trial when the sentence of first instance was handed down, and not a new trial. Finally, Mr. Romero was at no time subjected to physical maltreatment. In Uruguay, the integrity of prisoners is protected by strict provisions of positive law and also in fact."

7. In a further submission dated 7 June 1983 the author alleges that, according to information obtained through the Swedish Embassy in Uruguay, her husband has been subjected to three judicial proceedings, two under civilian and one under military justice, and that he has been sentenced to 25 years' imprisonment and to 1 to 5 years' precautionary detention.

8.1 With regard to article 5 (2) (a) of the Optional Protocol, the Committee ascertained from the secretariat of the Inter-American Commission on Human Rights that the case concerning Hector Alfredo Romero, submitted to the Commission by a close family member on 20 July 1979 and registered under number 3106, had been withdrawn from active consideration in September 1982. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (a) of the Optional Protocol.

8.2 With regard to the exhaustion of local remedies the Committee was unable to conclude, on the basis of the information before it, that there were effective remedies available to the alleged victim which he should have pursued. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

9. On 22 July 1983, the Human Rights Committee therefore decided:

(1) That the communication was admissible in so far as it related to events which allegedly continued or took place on or after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay;

(2) That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

(3) That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that, in order to perform its responsibilities, it required specific responses to the allegations which had been made by the author of the communication, and the State party's explanations of the actions taken by it. The State party was requested, in this connection, (i) to enclose copies of any court orders or decisions of relevance to the matter under consideration and in particular to Mr. Romero's continued detention after he had served a five-year prison term to which he was sentenced in 1975, (ii) to inform the Committee of the reasons for his continued detention and of any further proceedings against him, and (iii) to inquire into the allegations made concerning the conditions in which Mr. Romero has been detained (paras. 2.1, 2.2 and 2.3 above) and to inform the Committee of the result of its inquiries.

10.1 In its submission under article 4 (2) of the Optional Protocol, dated 23 January 1984, the State party reiterated what was stated in its reply to the Committee dated 4 May 1983, explaining the grounds on which Mr. Romero was imprisoned. The State party also reiterated "that the conditions to which prisoners are subject have been observed by international officials and diplomats accredited in Uruguay, in the course of numerous visits made by them to the various prison establishments".

10.2 In her letter of 22 February 1984, the author maintains her allegations and points out that the State party has not specified who are the international officials and diplomats who have visited the prison establishments, whereas she mentions all her witnesses by name, e.g., Edgardo Carvalho, David Cámpora Schweizer and José Valdes Pieri.

11.1 The Human Rights Committee, having examined the present communication in the light of all the information made available to it by the parties as provided in article 5 (1) of the Optional Protocol, hereby decides to base its views on the following facts, which appear uncontested.

11.2 Hector Alfredo Romero was a militant trade unionist and member of the Resistencia Obrero Estudiantil; he was arrested for the first time in September 1970 on charges of attempted robbery and illicit association; in second instance he was sentenced to 25 years' imprisonment and to from 1 to 5 years' precautionary detention; from November 1976 to the middle of 1977 he was held incommunicado at an unknown place of detention.

12.1 In formulating its views the Human Rights Committee also takes into account the following considerations.

12.2 In operative paragraph 3 of the Working Group's decision of 18 March 1981 and again in operative paragraph 3 of the Committee's decision of 22 July 1983, the State party was requested to enclose copies of any court orders or decisions of relevance to the case, and in particular with respect to Mr. Romero's continued detention after he had served a five-year prison term to which he had been sentenced in 1975. The State party was also requested to investigate the author's allegations with regard to the conditions of Mr. Romero's detention (paras. 2.1, 2.2 and 2.3 above) and to inform the Committee of the result of its inquiries. The Committee notes with regret that it has not received the requested information.

12.3 With regard to the burden of proof, the Committee has already established in other cases (e.g., No. 30/1978) that this cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its authorities and to furnish to the Committee the information available to it. In cases where the author has submitted to the Committee allegations supported by witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

13. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay), disclose violations of:

- Article 10, paragraph 1 of the International Covenant on Civil and Political Rights, because Hector Alfredo Romero has not been treated with humanity and with respect for the inherent dignity of the human person, in particular because he was kept incommunicado at an unknown place of detention for several months (from November 1976 to the middle of 1977) during which time his fate and his whereabouts were unknown.

14. The Committee, accordingly, is of the view that the State party is under an obligation to ensure that Hector Alfredo Romero is henceforth treated with humanity, and to transmit a copy of these views to him.

Notes

a/ The Committee's views in the Cámpora Schweizer case were adopted at its seventeenth session (CCPR/C/D/(XVII)/66/1980).

ANNEX X

Views of the Human Rights Committee under article 5 (4)
of the Optional Protocol to the International Covenant
on Civil and Political Rights - twenty-first session

concerning

Communication No. 109/1981

Submitted by: María Dolores Pérez de Gómez

Alleged victim: Teresa Gómez de Voituret (author's daughter)

State party concerned: Uruguay

Date of communication: 17 August 1981

Date of decision on admissibility: 22 July 1983

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

- meeting on 10 April 1984;
- having concluded its consideration of communication No. R.25/109 submitted to the Committee by María Dolores Pérez de Gómez under the Optional Protocol to the International Covenant on Civil and Political Rights;
- having taken into account all written information made available to it by the author of the communication and by the State party concerned;

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of the communication (initial letter dated 17 August 1981, further letters dated 20 November 1981 and 18 September 1982) is María Dolores Pérez de Gómez, a Uruguayan national living in Montevideo, Uruguay, writing on behalf of her daughter, Teresa Gómez de Voituret, who is allegedly detained in Uruguay and is not in a position to present her case herself to the Human Rights Committee. Mrs. Pérez de Gómez claims that her daughter is a victim of a breach by Uruguay of article 10 (1) of the International Covenant on Civil and Political Rights.

2.1 The author states that Teresa Gómez de Voituret, a medical doctor, was arrested on 27 November 1980 at the airport of Carrasco, Uruguay, upon her return from a medical seminar held in Buenos Aires, Argentina, from 24 to 27 November 1980.

2.2 The author submits that her daughter was arrested by plainclothes men without any warrant and taken to Military Unit No. 1 of the Artillery in the area of Cerro, where she allegedly was held in solitary confinement in a cell almost without natural light and which she was not allowed to leave until she was brought to trial

in June 1981. From then on she was allowed periods of recreation outside her cell, hooded and forced to walk without interruption during this time.

2.3 The author was allowed to visit her daughter in the Military Unit 30 days after the arrest occurred. The visit took place in the presence of three guards who listened to every word of the discussion between mother and daughter. The author states that these kinds of visits continued, once every two weeks, until Teresa Gómez de Voituret was transferred to the Punta de Rieles prison where she is still detained. In Punta de Rieles prison she is allowed one half-hour visit by close family members every two weeks.

2.4 Mrs. Pérez de Gómez states that at her first visit in the Military Unit she could observe that her daughter's state of health had visibly deteriorated since the time before her arrest. She claims, based upon information she received from a person who had been detained for some time in the same place as Teresa Gómez de Voituret and who had later been released, that her daughter was subjected to torture during interrogation in order to extract confessions from her.

2.5 Thus, Teresa Gómez de Voituret falsely confessed that she was a member of a political group which kept close links with persons in and outside Libertad prison where her husband has been detained since 27 December 1974. Teresa Gómez de Voituret later revoked this statement in her written declarations before the court. She further admitted during interrogation that she had tried to mobilize international human rights bodies and related religious institutions, inside and outside Uruguay, drawing their attention to the critical situation of her husband and other prisoners in Libertad prison, claiming thereby that her husband's life was in grave danger because of death threats he allegedly had received from prison personnel.

2.6 The author claims that the Uruguayan authorities perceived her daughter's efforts before these human rights bodies as a threat to the country's image abroad.

2.7 In June 1981, Teresa Gómez de Voituret was charged with "subversive association and attempt against the Constitution followed by preparatory acts".

2.8 The author alleges that the proceedings in her daughter's case before the military court of first instance do not provide the necessary guarantees for a fair judicial process as they do not permit her daughter to be brought before the judge in person, but provide only for written statements by her daughter which are taken by a court clerk. The author further alleges in this connection that, although her daughter had been given the possibility to appoint a defence lawyer of her own choice, in reality she can expect only very little assistance from him because she is prevented from consulting him freely. The conversations have to take place by telephone, while the defence lawyer and her daughter are separated by a glass wall and continuously watched by guards standing at their side.

2.9 The author maintains that there are no domestic remedies which could be effectively pursued in her daughter's case. The author also submits that to her knowledge the same matter has not been submitted to the Inter-American Commission for Human Rights.

2.10 Finally, the author states that she submits the case of her daughter to the Human Rights Committee with the request that the Committee take appropriate action to secure a fair trial for her daughter and her subsequent release.

3. By its decision of 16 March 1982 the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. The State party was also requested (a) to provide the Committee with copies of any court orders or decisions relevant to this case; and (b) to inform the Committee whether the alleged victim was brought before the military judge of first instance in person and what were the relevant laws and practices in this respect.

4.1 By a note dated 24 June 1982 the State party informed the Committee that Teresa Gómez de Voituret was tried on 23 March 1982, charged with the offence of "subversive association" under article 60 (V) of the Military Criminal Code. The State party adds that Teresa Gómez de Voituret had been accused of this offence "on the basis of evidence confirming her active participation in the subversive movement known as 'Seispointismo', which sought to reactivate MLN and about which the Committee has already been informed". The State party stresses that "Teresa Gómez de Voituret was a member of the most active centre of agitation and propaganda and [that] her primary task was to try to recruit new members for this seditious organization".

4.2 The State party did not however submit copies of any court orders or decisions of relevance to the case or reply to the specific questions set out in paragraph 3 above.

5.1 On 18 September 1982, the author of the communication forwarded her comments in reply to the State party's submission of 24 June 1982. She rejects the State party's contention that her daughter ever was an active member of MLN. She claims, in this connection, that "the Military Government of Uruguay simply invented the subversive movement known as 'Seispointismo' in order to bring to trial once again a group of prisoners who had completed or almost completed their sentences in Libertad prison".

5.2 Mrs. Pérez de Gómez asserts that her daughter merely reported to the Red Cross and to the organization "Justicia y Paz" in Buenos Aires the physical, psychological and moral pressure that was being exerted at that time in Libertad prison against her husband Jorge Voituret Pazos and other political prisoners. She maintains that acting thus in defence of her husband was the only offence her daughter committed.

6. In reply to the author's comments and observations on its submission of 24 June 1982, the State party, in a further note dated 28 December 1982, reaffirms its statement on the case as contained in its note of 24 June 1982.

7. On 3 May 1983 the State party was again requested to furnish additional information inter alia as to whether judgement of first instance had already been rendered in the case. The time-limit for the State party's response expired on 20 June 1983. No such additional information had been received from the State party when the Committee decided on the admissibility of the communication in July 1983.

8. With regard to article 5 (2) (a), the author's assertion that the same matter had not been submitted to any other procedure of international investigation or settlement was not contested by the State party. As to the question of exhaustion of domestic remedies, the State party did not contest the author's statement

concerning the absence of effective remedies in her daughter's case. The Committee noted in this regard that it would appear that the trial of Teresa Gómez de Voituret, although begun on 23 March 1982, might not yet have been concluded, since the Committee had no information that judgement had been given. However, the allegations of violations of the Covenant related to ill-treatment in prison and the lack of guarantees of a fair trial, as required by the Covenant, in respect of which the State party did not claim that there was an effective domestic remedy which the alleged victim had failed to exhaust. The Committee therefore was unable to conclude that in the circumstances of this case there were domestic remedies which could have been effectively pursued. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (a) and (b) of the Optional Protocol.

9. On 22 July 1983 the Human Rights Committee therefore decided:

1. That the communication was admissible;

2. That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of transmittal to it of the decision, written explanations or statements clarifying the matter and the remedy, if any, that might have been taken by it;

3. That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that, in order to perform its responsibilities, it required specific responses to the allegations which had been made by the author of the communication and the State party's explanations of the actions taken by it. The State party was again requested (a) to enclose copies of any court orders or decisions of relevance to the matter under consideration, (b) to inform the Committee whether the alleged victim was brought before the military judge of first instance in person and what were the relevant laws and practices in that respect, and (c) to inform the Committee as to the outcome of the trial at first instance of Teresa Gómez de Voituret and whether the judgement of the court of first instance was subject to appeal.

10. By a note of 22 August 1983 in response to the Committee's request of 3 May 1983, the State party submitted the following additional information:

"In the proceedings against Teresa Gómez de Voituret, the accused was sentenced at first instance on 28 September 1982 to five years' rigorous imprisonment on conviction of the offences of 'subversive association' and 'conspiracy to undermine the Constitution followed by criminal acts'.

"On 15 June 1983 judgement was given at second instance confirming the sentence. The proceedings were conducted with all the guarantees provided for under the Uruguayan legal system, including that relating to the right of the accused to appropriate legal assistance."

11.1 In its submission under article 4 (2) of the Optional Protocol, dated 14 December 1983, the State party added:

"In all cases the legally established trial procedures are observed, which includes appearance before the competent judge. With respect to the

judgements of first and second instance there are remedies to which recourse may be had within the prescribed periods. Finally, it must be pointed out that in Uruguay maltreatment and threats are not methods employed, and the physical integrity of prisoners is fully protected."

The Committee notes with concern that, in spite of its repeated requests, it has not been furnished with any copies of court orders or decisions of relevance to the matter under consideration.

11.2 No further submission has been received from the author.

12.1 The Human Rights Committee, having examined the present communication in the light of all the information made available to it by the parties as provided in article 5 (1) of the Optional Protocol, hereby decides to base its views on the following facts, which appear uncontested.

12.2 Teresa Gómez de Voituret was arrested on 27 November 1980 by plainclothes men without any warrant and taken to Military Unit No. 1, where she was held in solitary confinement in a cell almost without natural light and which she was not allowed to leave until she was brought to trial in June 1981. She was subsequently transferred to Punta de Rieles prison, where she is still detained. In June 1981 she was charged with "subversive association and attempt against the Constitution followed by preparatory acts". Her trial at first instance began on 23 March 1982 and she was sentenced on 28 September 1982 to five years' rigorous imprisonment. On 15 June 1983 judgement was given at second instance confirming the sentence.

13. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee disclose a violation of article 10 (1) of the International Covenant on Civil and Political Rights, because Teresa Gómez de Voituret was kept in solitary confinement for several months in conditions which failed to respect the inherent dignity of the human person.

15. The Committee, accordingly, is of the view that the State party is under an obligation to ensure that Teresa Gómez de Voituret is treated with humanity and to transmit a copy of these views to her.

Views of the Human Rights Committee under article 5 (4)
of the Optional Protocol to the International Covenant
on Civil and Political Rights - twenty-first session

concerning

Communication No. 110/1981

Submitted by: Antonio Viana Acosta

Alleged victim: The author

State party concerned: Uruguay

Date of communication: 12 August 1981

Date of decision on admissibility: 31 March 1983

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

Meeting on 29 March 1984;

Having concluded its consideration of communication No. R.25/110 submitted to the Committee by Antonio Viana Acosta under the Optional Protocol to the International Covenant on Civil and Political Rights;

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

Adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of the communication (initial letter dated 12 August 1981 and further submissions dated 26 October 1981, 27 September 1982 and 11 June and 22 November 1983) is a Uruguayan national, residing at present in Sweden. He submits the communication on his own behalf.

2.1 The author (born on 30 October 1949) describes the background to the case as follows. Between 1969 and 1971 when he worked for Senator Zelmar Michelini of the Uruguayan opposition party Frente Amplio he was arrested several times on the suspicion of association with subversive movements but no charges were ever retained against him. After the defeat of Senator Michelini's party in the elections of November 1971, he left Uruguay with his family for Buenos Aires, Argentina. He continued to work for Zelmar Michelini, mostly as a journalist.

2.2 The author alleges that on 24 February 1974 he was kidnapped by a joint Uruguayan-Argentinian commando at his home in Buenos Aires, Argentina. After having been subjected to severe torture at several places of detention and interrogated with a view to making him admit that he had been involved in the

activities of the Argentinian ERP (Ejército Revolucionario del Pueblo) and the Uruguayan MLN (Movimiento de Liberación Nacional, Tupamaros) he was brought on 4 April 1974 to the Metropolitan Airport of Buenos Aires, where he met his family. They were put on a regular flight to Montevideo, Uruguay. Members of the Uruguayan police were waiting for them at Carrasco Airport and they were taken to police headquarters.

2.3 The author claims to have been held at the following detention places in Uruguay: Batallón de Infantería No. 12, where he allegedly was tortured for two months in 1974, and Batallón de Infantería No. 11, where he was also subjected to torture of which he gives a detailed description. On 23 December 1974 he was taken to Libertad prison, where he remained until his "advanced release" on 13 February 1981. On 24 October 1974 he was brought before a judge to be indicted. Subsequently his wife was released. The background to the case, as described above, relates to events said to have taken place prior to the entry into force of the International Covenant on Civil and Political Rights for Uruguay on 23 March 1976.

2.4 On 26 April 1976 the author was taken before a military tribunal of first instance (Juzgado Militar de Primera Instancia, 5 Turno). There he replied to a questionnaire prepared by his defence lawyer, Dra. María Elena Martínez Salgueiro. The military judge, Colonel Eduardo Silva, listened to his replies but no witnesses were heard. The author then was taken back to Libertad prison and held there incommunicado. His defence lawyer was informed two weeks later that he indeed was at Libertad prison but that no visits were allowed. Before the tribunal of first instance the author was charged with subversive association and sentenced to seven years' imprisonment.

2.5 On 18 April 1977 the author was taken before the Supreme Military Tribunal and new charges were brought against him, such as attempting to subvert the Constitution at the level of conspiracy followed by preparatory acts, possession of arms and explosives and use of false identity papers. On that date the author was sentenced to 14 years' imprisonment.

2.6 The author states that both his first and second defence lawyers, Dr. Martinez Salgueiro and Dra. Susana Andreasen, had to renounce his defence in 1976 and later to leave the country. Before the Supreme Military Tribunal the author had to accept a military ex officio counsel, Colonel Otto Gilomen, although a civilian defence lawyer, José Korsenak Füks, was ready to take up his defence.

2.7 The author alleges that in 1976 he was subjected to psychiatric experiments (giving the name of the doctor) and that for three years, against his will, he was injected with tranquilizers every two weeks. He alleges in this connection that in May 1976 when he put up resistance to the injections, Captain X (name is given) ordered a group of soldiers to subdue him forcibly in order to inject the drug and that he was subsequently held incommunicado in a punishment cell for 45 days. He further claims, without providing any detail, that on 14 and 15 April 1977 he was interrogated and subjected to torture at Libertad prison, that on 22 November 1978 he was again subjected to torture (giving the names of his torturers in both instances), that he started a hunger strike protesting against this ill-treatment and that in retaliation he was held incommunicado in a punishment cell for 45 days without any medical attention. He claims that in April 1980 he was again held incommunicado because he had spoken with members of the International Red Cross visiting Libertad prison. The author lists the names of several Uruguayan officials who allegedly practised torture.

2.8 The author states that he was released on 13 February 1981 under the régime of "advanced release", that he had to report every day to a particular unit and that he did so from 13 February up to 14 April 1981 when he went to Brazil. He states that his family continues to be subjected to harassment in Uruguay.

2.9 With regard to the question of admissibility, the author states that he has not submitted his case to another procedure of international investigation or settlement. He further alleges that, because of the state of lawlessness prevailing in Uruguay with regard to cases submitted to military jurisdiction, there are no further domestic remedies which could be invoked.

2.10 The author claims that he is a victim of violations of articles 7, 8, 9, 10 (paras. 1, 2 and 3), 12, 14, 16, 17, 18, 19 (paras. 1 and 2), 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights.

3. By its decision of 16 March 1982 the Working Group of the Human Rights Committee decided to transmit the communication under rule 91 of the Committee's provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

4. By a note dated 18 August 1982 the State party informed the Committee that the Government of Uruguay wished to state that, in view of article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights, which provides that a State party to the Covenant recognizes the competence of the Committee to receive and consider communications "from individuals subject to its jurisdiction", it considered the communication in question to be inadmissible. Mr. Viana Acosta was not entitled to request the implementation of the machinery provided for in the Covenant because, once he was unconditionally released on 5 April 1981, he left the country to live abroad and he was therefore not subject to the jurisdiction of the Uruguayan State. The Government of Uruguay nevertheless wished to explain that the author of the communication was not a "political prisoner" but, rather a common criminal who was connected with the seditious "Tupamaros" movement and was tried for the offence of "aiding and abetting a conspiracy to subvert".

5. Commenting on the State party's submission, the author argued, in his letter of 27 September 1982, that it was impossible for him to submit the communication from his own country, since no individual guarantees existed there.

6. When discussing the admissibility of the communication the Human Rights Committee observed that the events complained of allegedly occurred in Uruguay while the author was subject to the jurisdiction of Uruguay. The Committee recalled that, by virtue of article 2, paragraph 1 of the Covenant, 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. Article 1 of the Optional Protocol was clearly intended to apply to individuals subject to the jurisdiction of the State party concerned at the time of the alleged violation of the Covenant. This was manifestly the object and purpose of article 1.

7. On the basis of the information before it, the Committee found that it was not precluded by article 5, paragraph 2 (a), of the Optional Protocol from considering the communication, as there was no indication that the same matter had been submitted to another procedure of international investigation or settlement. The Committee was also unable to conclude that in the circumstances of this case there

were effective remedies available to the alleged victim which he had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

8. On 31 March 1983, the Human Rights Committee therefore decided:

1. That the communication was admissible in so far as it related to events which allegedly continued or took place after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay;

2. That the author be requested to submit to the Committee, within six weeks of the date of transmittal of this decision, further, more precise information (together with any relevant medical reports) concerning the psychiatric experiments to which he alleged that he was subjected (see para. 2.7 above);

3. That any information received from the author be transmitted as soon as possible to the State party to enable it to take such information into account in the preparation of its submission under article 4, paragraph 2, of the Optional Protocol;

4. That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

5. That the State party be informed that the written explanations or statements submitted by it under article 4, paragraph 2, of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that, in order to perform its responsibilities, it required specific responses to the allegations which had been made by the author of the communication, and the State party's explanations of the actions taken by it. The State party was requested, in this connection, to enclose copies of any court orders or decisions of relevance to the matter under consideration.

9. By a note dated 5 April 1983, the Government of Uruguay repeated "what it stated in the reply given to the Committee in its note dated 18 August 1982 concerning the same case" (see para. 4 above).

10. In a letter dated 11 June 1983 the author regrets not being able to provide the Committee with the requested precise information concerning the psychiatric experiments he allegedly had been subjected to during his detention. He explains that all information of this kind remained in the hands of the doctors, some of whom he identifies by name, who belonged to the military health establishment in Uruguay. He repeats his earlier allegations that every fortnight for more than three years he was injected against his will with a psychotropic drug. He claims that the doctors stopped administering the drug after he had informed the Chief of the Red Cross mission which visited Libertad prison in April 1980. The author alleges that no competent medical supervision was exercised when the drug was administered to him and he lists in this connection several members of the Armed Forces Health Corps, who allegedly collaborated in the psychological and physical destruction of detainees. He further completes his earlier list of names of

Uruguayan officials having allegedly practised torture (see para. 2.7 above), mentioning a total of 62 names. He also encloses two medical reports, one from a Brazilian doctor dated 16 June 1981 and one from a Swedish hospital covering the period 29 September to 18 December 1981. In the first medical report it is stated inter alia that "... examination reveals ... a number of scars on the fists, ankles, penis and gluteal region, caused by electric shocks".

11. In its submissions under article 4 (2) of the Optional Protocol dated 27 September and 4 October 1983, the State party reiterates its views previously expressed to the Committee (see para. 4 above).

12. Commenting on the State party's submissions, the author in a letter dated 22 November 1983 points out that the Government of Uruguay, despite the Committee's requests, has failed to respond in substance and to provide the Committee with copies of court orders or decisions of relevance to his case. He further disputes the State party's contention that he was "unconditionally" released.

13.1 The Committee decides to base its views on the following facts which have been either essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation. However, it follows from the Committee's decision on the admissibility of the communication that the claims relating to events said to have taken place before 23 March 1976 (see paras. 2.1, 2.2 and 2.3 above) are inadmissible for the purpose of any finding by the Committee.

13.2 Antonio Viana Acosta was seized by a joint Uruguayan-Argentinian commando on 24 February 1974 at his home in Buenos Aires, Argentina, and was flown on 4 April 1974 to Uruguay, where he was detained in custody. He was subsequently held at various places of detention in Uruguay until 23 December 1974 when he was taken to Libertad prison where he remained until his release from prison on 13 February 1981. On 26 April 1976 he was taken before a military tribunal of first instance where he replied to a questionnaire prepared by his defence lawyer in the presence of a judge. He was thereafter taken back to Libertad prison and held incommunicado for several weeks. He was charged with subversive association and sentenced by the military tribunal of first instance to seven years' imprisonment. On 18 April 1977, Antonio Viana Acosta was brought before the Supreme Military Tribunal where new charges were brought against him. He was forced to accept a military ex-officio counsel, Colonel Otto Gilomen, although a civilian defence lawyer, José Korsenak Füks, was ready to take up his defence. He was sentenced to 14 years' imprisonment. On three occasions, one starting in May 1976, one in November 1978 and one in April 1980, he was held incommunicado in a punishment cell. He was released from detention on 13 February 1981. On 14 April 1981 he left Uruguay.

14. Concerning the author's allegations of torture, the Committee notes that the periods of torture, except for 14 and 15 April 1977 and 22 November 1978, (see para. 2.7 above) occurred before the entry into force of the Covenant and the Optional Protocol thereto for Uruguay, and that regarding torture alleged to have occurred after 23 March 1976 no details have been provided by the author. These allegations are therefore, in the opinion of the Committee, unsubstantiated. Nevertheless, the information before the Committee evidences that Antonio Viana Acosta was subjected to inhuman treatment.

15. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay), disclose violations of the International Covenant on Civil and Political Rights, with respect to:

- articles 7 and 10 (1) because Antonio Viana Acosta was subjected to inhuman treatment;
- article 14 (3) (b) and (d) because before the Supreme Military Tribunal he did not have counsel of his own choosing;
- article 14 (3) (c) because he was not tried without undue delay.

16. The Committee, accordingly, is of the view that the State party is under an obligation to provide Antonio Viana Acosta with effective remedies and, in particular, with compensation for physical and mental injury and suffering caused to him by the inhuman treatment to which he was subjected.

ANNEX XII

Views of the Human Rights Committee under article 5 (4)
of the Optional Protocol to the International Covenant
on Civil and Political Rights - twenty-first session

concerning

Communication No. 123/1982

Submitted by: Gabriel Manera Johnson on behalf of his father, Jorge Manera Lluberas

Alleged victim: Jorge Manera Lluberas

State Party concerned: Uruguay

Date of communication: 10 June 1982 (date of initial letter)

Date of decision on admissibility: 25 March 1983

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

- Meeting on 6 April 1984;
- Having concluded its consideration of communication No. R.26/123 submitted to the Committee by Gabriel Manera Johnson under the Optional Protocol to the International Covenant on Civil and Political Rights;
- Having taken into account all written information made available to it by the author of the communication and by the State party concerned;

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of the communication (initial letter dated 10 June 1982 and further letter dated 11 February 1983) is a Uruguayan national, residing at present in France. He submitted the communication on behalf of his father, Jorge Manera Lluberas, alleging that he is imprisoned in Uruguay and that he is a victim of a breach by Uruguay of several articles (specified by the author) of the International Covenant on Civil and Political Rights.

2.1 The author describes the background to the case as follows:

Jorge Manera Lluberas (born on 18 November 1929), a civil engineer, was a principal founder of the Movimiento de Liberación Nacional-Tupamaros (MLN-T).

2.2 Jorge Manera Lluberas was arrested in Uruguay for the third time in July 1972. He was kept incommunicado during the first 195 days of his detention and allegedly subjected to severe torture. The author further states that in September 1973 his father was transferred as "hostage" from Libertad prison to the Batallón de Ingenieros No. 3 in Paso de los Toros and he alleges that up to the present his father continues to be held as "hostage". This status has caused him

to be transferred 17 times from one prison to another, to be detained under extremely harsh prison conditions and to live under the continuous fear of being executed if MLN-T takes any action. In this connection the author encloses a statement from Elena Curbelo, a former hostage.

2.3 Concerning the events that took place after 1976, the author states that from January to September 1976 his father was held at the Pavilion of Cells at the Batallón de Infantería No. 4 "Colonia". He states that the cells measured 1.60 x 2 m, that the electric light was continuously on, that the only piece of furniture was a mattress provided at night and that detainees had to remain in the cells 24 hours per day in solitary confinement.

2.4 From September 1976 to August 1977, Mr. Manera was held at Trinidad prison. Concerning this period of imprisonment, two statements are enclosed: (a) from David Cámpora who alleges that he was held at Trinidad from March 1975 to August 1977 and (b) from Waldemir Prieto, allegedly held there from June 1976 to March 1977. They both state that prison conditions were inhuman (dirty cells, without light, without furniture, extreme temperatures, very hot in the summer, very cold in the winter, lack of food, no medical attention). In particular, they state that Jorge Manera was in poor health (glaucoma, infected tooth) and that he did not receive adequate medical treatment. They point out that Manera, even more than other detainees, was continuously subjected to harassment by the guards and they give the names of several prison officials. For instance, they mention that Manera's cell was searched almost every night by the prison guards. W. Prieto adds that detainees were often beaten by the guards without any reason or subject to "plantones" for 10 to 12 hours.

2.5 From August 1977 to April 1978, Jorge Manera was kept at the Regimiento de Infantería No. 2 Durazno. The author mentions that he has no first-hand information (by former detainees) on his father's conditions of imprisonment for the last five years. In April 1978, Jorge Manera was transferred to Colonia where he remained until March 1980. The author alleges that at Colonia his father was again subjected to torture, that he was kept for six months in complete isolation and that between May and November 1980 he was not allowed to sleep more than two hours at a time. In May 1980, Jorge Manera was transferred to the Batallón de Ingenieros No. 3 in Paso de los Toros where he is detained at present. The author states that his father is kept 24 hours a day in a cell with electric light only, without any daylight, and that his state of health is extremely poor. (He lists his father's illnesses.)

2.6 With respect to the judicial proceedings against his father, the author states that on 12 January 1973 his father was brought before a military judge and charged with the following offences: attempt to subvert the Constitution; production, trading in and storage of explosive substances; manslaughter; association to break the law and escape from prison. He further states that six years later, in 1979, his father was sentenced to the maximum penalty of 30 years of imprisonment and 15 additional years of precautionary detention (medidas de seguridad eliminativas) by a military tribunal of first instance. The author claims that his father's trial was not public and that he was not given the opportunity to call his own witnesses. In his further submission of 11 February 1983, the author mentions that his father has been sentenced by the court of second instance, without giving further details.

2.7 Concerning his father's defence, the author alleges that from 1969 to 1971 Alejandro Artucio defended Manera; Dr. Arturo Dubra was his second defence lawyer; and then in March 1975, Dr. José Corbo became Manera's third defence lawyer. In mid-1977 Dr. Corbo had to leave Uruguay. He had never been allowed to see his client. The author encloses a statement from Dr. Corbo. The author maintains that the present official lawyer assigned to his father has never done anything on his behalf.

2.8 The author claims that his father is a victim of violations of the following articles of the International Covenant on Civil and Political Rights: of articles 2 and 26, because he was discriminated against and treated worse than a common criminal because of his political ideas; of article 6, because he is held as a "hostage" and his life is in danger; of articles 7 and 10, because he has been subjected to torture, he has been detained under inhuman prison conditions and he is denied proper medical attention; and of article 14, because he did not have a fair and public hearing by a competent, independent and impartial tribunal since a military tribunal does not fulfil these criteria; he was not presumed innocent; he could never communicate with counsel of his own choosing and he had no facilities for the preparation of his defence; he was not tried without undue delay and he was denied the opportunity to obtain the attendance and examination of witnesses on his own behalf or to dispute the evidence against him, often obtained under torture.

2.9 The author claims that domestic remedies have been exhausted. He maintains that the domestic remedies which are provided for in the Uruguayan legislation cannot protect his father, because none of them is allegedly applicable in practice, if the human rights violation has been committed by military personnel or by members of the police in connection with State security as interpreted by the military forces.

2.10 The author states that the same matter is not being examined under another procedure of international investigation or settlement. He encloses a copy of a letter dated 9 February 1982 addressed by Olga Johnson de Manera to the Executive Secretary of the Inter-American Commission on Human Rights (IACHR), requesting that consideration of case No. 1872 concerning Jorge Manera Lluberas should be discontinued before that body.

3. By its decision of 7 July 1982 the Working Group of the Human Rights Committee decided that the author was justified in acting on behalf of the alleged victim and transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. The Working Group also requested the State party to transmit to the Committee any copies of court decisions against Jorge Manera Lluberas, to give the Committee information on his state of health and to ensure that he receives adequate medical care.

4. By a note dated 11 October 1982 the State party informed the Committee that, notwithstanding the fact that it remained to be determined whether the communication was admissible, the Government of Uruguay wished to make the following comments with respect to Mr. Manera Lluberas:

"This communication is further proof that, even today, instead of the truth about the situation in Uruguay gaining ground, the real situation remains unknown, with a distorted picture prevailing in the international sphere, where there has been exploitation of manifestly untrue and

ill-intentioned information, such as the information which has been used to depict Mr. Manera Lluberas as a 'victim of political repression'. Political opinions have not been suppressed in Uruguay; rather, steps have been taken to punish criminal acts which are duly defined in Uruguayan law and which have been committed by those who would replace the traditional means of expressing the views and wishes of the people through direct and secret balloting in free elections by organized violence which serves the interests of groups that are by no means representative of the people on whose behalf they claim to be acting and for whose supposed happiness they do not shrink from committing outrages and heinous crimes, which are universally repudiated in the country. The declared 'devotion' of such groups to the people's causes had not kept them from attempting to create the conditions for an insurrection by means of assault, robbery, kidnapping, murder, etc., crimes for which much of the blame belongs to Mr. Manera Lluberas in his capacity as a leader of MLN Tupamaros.

"Mr. Manera Lluberas is described in the communication as a 'hostage'. The Government of Uruguay rejects the use of that term to describe someone who has treacherously indulged in the kidnapping of foreign diplomats and in depriving them of their liberty in an attempt to put pressure on the legitimate Government of the Republic in order to attain his objectives, and has thereby jeopardized the lives of the human beings taken as hostages and undermined the relations of sincere friendship and co-operation with countries which are traditionally friends of Uruguay. Mr. Manera Lluberas is not in any sense of the term a hostage, since he enjoys the same rights as any other prisoner. The only circumstance which distinguishes his situation from that of others imprisoned for crimes of subversion is that he is being held in a different place of detention, a matter with regard to which the Government of Uruguay reserves the right of decision since it falls exclusively within its domestic jurisdiction.

"...

"The Government of Uruguay rejects the whole series of accusations contained in the communication, such as the allegations of torture and ill-treatment, failure to provide medical care, inadequate food, lack of medicines and so on. It should be emphasized in this connection that Mr. Manera Lluberas, like all prisoners, is subjected to periodic medical examinations and that, in the specific case of the urinary infection and bilateral lumbar myalgia from which he has recently suffered, he was given adequate medical care and the necessary medicines by the official health services; he is at present in good health.

"The author of the communication has resorted to false evidence to assemble a set of truthless accusations with the aim of compiling a document that, by its excessive length, would impress the Committee and lead it astray in its decisions. Moreover, the similarities between paragraphs contained in the communication to which this reply relates and expressions used in other communications provide clear proof of the existence of an apparatus which has been established for the sole purpose of drawing up complaints to be submitted for the consideration of relevant international organizations."

5. Commenting on the State party's submission, the author reiterates, in his letter of 11 February 1983, that his father has been subjected to torture and inhuman treatment for the last 10 years, that his trial of both first and second

instance were a travesty of justice and that his father received the inhuman sentence of 45 years' imprisonment. The author further alleges that because of his father's status as "hostage" he has been kept incommunicado from time to time and this has amounted to approximately 21 months during which his relatives could not visit him. The author also argues that the State party "confirmed" in fact that his father is held in solitary confinement since it has admitted that he was being held "in a different place of detention". The author informed the Committee that since June 1982 (the date of his initial letter) his father's state of health has deteriorated. In particular he states that owing to inadequate medical attention and lack of medicines his father was urgently taken to the Central Hospital of the Armed Forces in December 1982 to be operated on again. The author, who has often referred in his submission to the views adopted by the Human Rights Committee in the case of Raúl Sendic (R.14/63), explains that he does so mainly because both of them are considered as "hostages" and because he wishes to rely on the jurisprudence of the Human Rights Committee.

6.1 The Committee has noted that the observations submitted by the State party on 11 October 1982 did not affect the question of the admissibility of the communication under the terms of the Optional Protocol.

6.2 On the basis of the information before it, the Committee found that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication, as the case submitted to IACHR on behalf of Jorge Manera had been withdrawn and the same matter was not being examined under any other procedure of international investigation or settlement. The Committee was also unable to conclude that in the circumstances of this case there were effective remedies available to the alleged victim which he had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

7. On 25 March 1983, the Human Rights Committee therefore decided:

1. That the communication was admissible in so far as it related to events which allegedly continued or took place after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay;

2. That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

3. That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that in order to perform its responsibilities, it required specific responses to the allegations which had been made by the author of the communication, and the State party's explanations of the actions taken by it. The observations contained in the State party's note of 11 October 1982, to the extent that it contained only refutations of these allegations in general terms, were deemed insufficient for this purpose;

4. That the State party again be requested to furnish the Committee with (a) information on the present state of health of Jorge Manera and (b) copies of any court decisions taken against Jorge Manera, including the decision of the military court of first and second instance.

8.1 By a note dated 9 June 1983, the Government of Uruguay reiterates what it had stated in its submission of 11 October 1982. Regarding the state of health of Mr. Manera, the State party adds that

"on 27 December 1982 an internal urethrotomy was performed on him, with satisfactory results. It is intended to check his condition by means of a urethrocystoscopy to be carried out by the urological service of the Armed Forces Central Hospital. He is also being treated for lumbalgia, which has responded to oral medication."

8.2 The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 28 October 1983. The Committee has not received any further explanations or specific responses to the author's allegations, as requested in operative paragraph 3 of the Committee's decision on admissibility. Moreover, the State party has not furnished the Committee with copies of any relevant court decisions, as requested in operative paragraph 4 of the decision on admissibility.

8.3 No further submissions have been received from the author.

9.1 The Human Rights Committee, having examined the present communication in the light of all the information made available to it by the parties as provided in article 5 (1) of the Optional Protocol, hereby decides to base its views on the following facts, which appear uncontested, except for denials of a general character offering no particular information or explanations.

9.2 Jorge Manera Lluberas was a civil engineer and a principal founder of the Movimiento de Liberación Nacional-Tupamaros (MLT-T). He was arrested in July 1972; from January to September 1976 he was held at the Pavilion of Cells at the Batallón de Infantería No. 4 "Colonia", where cells measure 1.60 x 2 m, electric lights were kept continuously on, the only piece of furniture was a mattress provided at nights and where detainees had to remain in the cells 24 hours per day in solitary confinement. From September 1976 to August 1977 he was held at Trinidad prison, where prison conditions were described by two witnesses as being characterized by dirty cells without light, without furniture, very hot in the summer and very cold in the winter. In April 1978, he was transferred to Colonia, where he was kept in complete isolation for six months; in May 1980 he was transferred to the Batallón de Ingenieros No. 3, where he is detained at present.

9.3 Mr. Manera was indicted on 12 January 1973. Six years later, in 1979, he was sentenced to the maximum penalty of 30 years' imprisonment and 15 additional years of precautionary detention (medidas de seguridad eliminativas) by a military tribunal of first instance; he was subsequently sentenced by the court of second instance. From March 1975 to mid 1977 Mr. Manera was not allowed to see his defence lawyer.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay), disclose violations of the International Covenant on Civil and Political Rights, particularly of:

- Article 10 (1), because Jorge Manera Lluberas has not been treated with humanity and with respect for the inherent dignity of the human person;

- Article 14 (3) (b), because he was not allowed adequate facilities to communicate with his counsel;
- Article 14 (3) (c), because he was not tried without undue delay.

11. The Committee, accordingly, is of the view that the State party is under an obligation to provide Jorge Manera Lluberas with effective remedies and, in particular, to ensure that he is treated with humanity, and to transmit a copy of these views to him.

ANNEX XIII

Views of the Human Rights Committee under article 5 (4)
of the Optional Protocol to the International Covenant
on Civil and Political Rights - twenty-second session

concerning

Communication No. 124/1982

Submitted by: Nina Muteba, on behalf of her husband, Tshitenge Muteba (also represented by John N. Humphrey) and later joined by Tshitenge Muteba as co-author

Alleged victim: Tshitenge Muteba

State Party concerned: Zaire

Date of communication: 30 June 1982 (date of initial letter)

Date of decision on admissibility: 25 March 1983

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

- Meeting on 24 July 1984;
- Having concluded its consideration of communication No. R.26/123 submitted to the Committee by Nina and Tshitenge Muteba under the Optional Protocol to the International Covenant on Civil and Political Rights;
- Having taken into account all written information made available to it by the authors of the communication and noting that no information has been received from the State party concerned;

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The initial author of the communication (initial letter dated 30 June 1982; further submission posted 21 September 1982 by the author's legal representative John N. Humphrey) is Nina Muteba, a national of Zaire, at present living in France, writing on behalf of her husband, Tshitenge Muteba, a Zaire national born in 1950, who at the time of the submission of the communication was detained in Zaire.

2.1 Nina Muteba enclosed a copy of a brief note from her husband, addressed to the International Red Cross and received by her in February 1982. In this note her husband stated that he had been living in France since 1979 as a political refugee from Zaire, that he was arrested on 31 October 1981 by members of the Military Security of Zaire (G 2) when arriving from Paris via Brazzaville (Congo), that he was at that time detained at the prison of "OUA II" in Kinshasa, Zaire. He further stated that he had no contact with the outside world, that he did not receive visits and that food was insufficient. He claimed to be a political detainee.

2.2 Nina Muteba, in her statement, repeated the information given by her husband, adding that he was arrested at Ngobila Beach in Zaire. She also stated that her husband had been granted political asylum in France in June 1980.

2.3 She further added that she had been informed by one of her brothers and by a former detainee that her husband had been subjected to such severe torture that he became unrecognizable and that he continued to be held under inhuman prison conditions. She stated that the authorities of Zaire allege that documents and pamphlets considered subversive were found in her husband's luggage. She claimed, however, that her husband had not been charged or brought before a judge.

2.4 Concerning the exhaustion of domestic remedies, Nina Muteba stated that no such steps could be taken because her husband had never been allowed to establish contact with a lawyer or a judge, and that no member of his family dared to do anything on his behalf because they were afraid of retaliation. She mentions that all the members of her family, still living in Zaire, were under house arrest and that their mail was interfered with. She also mentions that one of her brothers had been arrested and subjected to torture on grounds of his relationship with the alleged victim.

2.5 Nina Muteba stated that the same matter was not being examined under another procedure of international investigation or settlement.

2.6 She claimed that her husband was a victim of violations of articles 9, 10, 14 and 19 of the International Covenant on Civil and Political Rights.

3.1 By its decision of 7 July 1982 the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned requesting information and observations relevant to the question of admissibility of the communication.

3.2 The State party was further requested in the decision to inform the Committee whether Tshitenge Muteba had been able to contact a lawyer and whether he had been brought before a court, and to transmit to the Committee any copies of court decisions taken against Mr. Muteba.

3.3 In view of the observations made by Mrs. Muteba on the health of her husband, information on the state of health of Mr. Muteba was also sought from the State party and the latter requested to ensure that Tshitenge Muteba received adequate medical care.

3.4 The time-limit for the observations requested from the State party under rule 91 of the provisional rules of procedure expired on 13 October 1982. No submissions were received from the State party.

4.1 In a further submission on behalf of Mr. Muteba of 21 September 1982, Mr. John N. Humphrey, a British attorney appointed by Mrs. Muteba to represent her husband before the Committee, reiterated and supplemented some of the information already provided by Mrs. Muteba.

4.2 He affirmed, inter alia, that Mr. Muteba arrived in Brazzaville (Congo) on 28 October 1981; that "on or about 31 October 1981 he crossed the river Zaire by ferry and was arrested at the ferry terminal at Ngobila Beach by members of the Military Security (G 2)". He stated that it appeared that Mr. Muteba was arrested

for political reasons and accused of being the leader of the Popular and Democratic Union of the Congo (Union populaire et démocratique du Congo). From the time of his arrest until about March 1982 he was detained at the "OUA II" detention centre. Mr. Humphrey stated that his client's whereabouts were then unknown.

4.3 Mr. Humphrey stressed that because the powers of the Military Security to arrest and detain do not come within the ambit of the constitutional and legal provisions of Zaire, no court review could be requested and that therefore domestic remedies did not exist in the case of Mr. Muteba.

4.4 Mr. Humphrey concluded that Mr. Muteba was a victim of breaches by Zaire of articles 2, 7, 9, 14 and 16 of the International Covenant on Civil and Political Rights.

5. The submission from the legal representative of Mr. Muteba was transmitted to the State party for information on 17 December 1982. No comments from the State party were received.

6. The Committee found, on the basis of the information before it, that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that, in the circumstances of the case, there were domestic remedies available to the alleged victim. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

7. On 25 March 1983 the Human Rights Committee therefore decided:

1. That the communication was admissible;

2. That, in accordance with article 4 (2) of the Optional Protocol the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

3. That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that, in order to fulfil its responsibilities, it required specific responses to the allegations which had been made, and the State party's explanations of the actions taken by it. The State party was again requested to enclose copies of any court orders or decisions of relevance to the matter under consideration and to inform the Committee whether the alleged victim had effective contacts with a lawyer and whether he had been brought before a court;

4. That the State party again be requested to provide the Committee with information about Mr. Muteba's state of health and to ensure that Mr. Muteba received adequate medical care.

8.1 By a letter dated 28 March 1984 Mr. Tshitenge Muteba informed the Committee that pursuant to an amnesty of 19 May 1983 he was released from imprisonment and that he joined his family in France in August of 1983. He enclosed a detailed report on his detention substantiating the allegations made by his wife and legal representative.

8.2 With regard to his arrest and subsequent treatment he states, inter alia:

"I was arrested at Ngobila Beach on 31 October [1981] and taken to 'G 2', the service responsible for military security ... I was interrogated for nine days ... All kinds of methods were used to torture me and force me to speak. On the first day I was beaten up at the 'OUA' prison on orders given by Mr. Nsinga, Mr. Bolozi and Mr. Seti and executed by Colonel Zimbi. I was arrested in the very early morning, when I still had an empty stomach, so that by about 5 p.m. I was hungry and tired. This was the very time that was chosen for the first session of interrogation and beatings. Mr. Zimbi was accompanied by his officers and by ordinary soldiers who did the dirty work. I was stripped and subjected for an hour or more (I don't know how long) to a hail of blows from cords, slaps and kicks administered by officers to a solitary defenceless individual. Only the Colonel kept his hands off me ... After this session I was taken back naked to my cell, which they took care to soak with water, and Sergeant-Major Lisha, a friend of Zimbi's, assured me that I would not survive for more than two days. He then expressed the hope that I would refresh my memory in my flooded cell and would be able to give them all the information they wanted.

After this there were mock executions ... First comes the mock execution in order to extract confessions from the prisoner and then the genuine execution once there is no further purpose in keeping him. The 'typist' - another form of torture which consists of squeezing the prisoner's fingers after pieces of wood have been placed between them - electric shocks and withholding of food were also used during the interrogation.

After nine days of questioning, I was returned to my cell - I had been taken out a few days after my arrest and transferred to a secret villa in a rich area of Kinshasa, where members of the various security services came and interrogated me as a committee, the celebrated Committee of Analysts which prepared a consolidated report for submission to the National Security Council (CNS) that was to meet to take a decision on my case. I would recall that the National Security Council is a body which meets to deal with serious cases and includes the President of the Republic among its membership. Mr. Seti, his special security adviser, co-ordinates the activities of CNS ...

Major Buduaga, who is the legal adviser to Colonel Bolozi, the chief of 'G 2', personally escorted me back to the 'OUA II' prison. My long struggle against death then commenced.

My committal order specified my crime, namely an attack on the internal and external security of the State. I was accused of having established a clandestine political party and of having, while abroad, sought ways of changing the established institutions - acts which are provided for and punished by death under Zairian law. However, they had very little evidence. Special instructions were given on how I was to be treated: no contact with the outside world; no family visits; solitary confinement; lashings morning, noon and night; no food. This special treatment is expected to result in death by torture, starvation or sickness. The régime also hopes that the prisoner will go mad.

However, they failed to take into account the solidarity among the prisoners and the discontent among the soldiers of the Presidential guard, who

are very unhappy with their material situation. Some of these soldiers also came to prison and sometimes shared my cell. I did not miss an opportunity to talk politics with them and show them how aberrant it was to serve a régime that exploited them. I established contact with these young soldiers, and today I have friends among them who will support me to the end. Paradoxically, it was these young soldiers who fed me - very sporadically, it is true, but they enabled me to survive ...

After being cut off from the outside world for nine months, I received visits from some members of my family without the Zairian authorities' knowledge, thanks to those young soldiers. My relatives and I were not able to see each other, but they brought me food which the soldiers passed on to me. This game of hide-and-seek continued for the last four months of my detention in the 'OUA'.

Thanks to these contacts, I was able to smuggle out letters to my wife, who had stayed in Europe, to the French Embassy and to other bodies that were already helping me.

During my lengthy period of detention, the International Committee of the Red Cross did not succeed in visiting me in my place of imprisonment, but the Kinshasa office received news of me owing to the help of numerous well-wishers. Soldiers of Mobutu did me a lot of personal favours. Whenever the ICRC representatives came to see me in prison I would be taken away from the gaol, but the next day they would be informed of what was going on. The régime's official position was that I had been transferred to another prison, and the confusion created on this point was long used in order to whisk me away quietly ...

On 17 November 1982, Major Shaliba, Security Officer for the President of the Republic and Commander of the Battalion of Presidential Bodyguards, came to the prison to carry out an inspection. When he found that I was still alive, he ordered that I should be locked up and relieve myself in the cell. On 20 November the situation took a turn for the worse. They had apparently received instructions to execute me. At about 10 a.m. they came and took away the clothes with which I had been provided a few days previously by a member of my family. I was also deprived of the blanket which the ICRC had managed to send me on a very unofficial basis and was left naked ...

On 5 February [1983] I was banished to my native region, where I remained in a village at Demba, 60 kilometres from the town of Kananga, until 19 May 1983, the date of the amnesty. On 10 June [1983] I left Kananga for Kinshasa and arranged my return to France, where my wife and children had been waiting for me for two years."

9. The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 6 November 1983. A copy of Mr. Muteba's submission of 28 March 1984 was transmitted to the State party on 24 May 1984 with an indication that the Human Rights Committee intended to conclude examination of the case during its twenty-second session in July 1984. No submission was received from the State party.

10.1 The Human Rights Committee, having considered the present communication in the light of all the information made available to it by the authors as provided in

article 5 (1) of the Optional Protocol, hereby decides to base its views on the following facts, which, in the absence of any submission from the State party, are uncontested.

10.2 Mr. Tshitenge Muteba was arrested on 31 October 1981 by members of the Military Security of Zaire at Ngobila Beach, Zaire, when arriving from Paris via Brazzaville (Congo). From the time of his arrest until about March 1982 he was detained at the "OUA II" prison. During the first nine days of detention he was interrogated and subjected to various forms of torture including beatings, electric shocks and mock executions. He was kept incommunicado for several months and had no access to legal counsel. After nine months of detention members of his family, who did not see him in person, were allowed to leave food for him at the prison. Although in the prison register he was charged with attempts against the internal and external security of the State and with the foundation of a secret political party, he was never brought before a judge nor brought to trial. After more than a year and a half of detention he was granted amnesty under a decree of 19 May 1983 and allowed to return to France. Mr. Muteba was arrested, detained and subjected to the ill-treatment described above for political reasons, as he was considered to be an opponent of the Government of Zaire.

11. In formulating its views the Human Rights Committee also takes into account the failure of the State party to furnish any information and clarifications necessary for the Committee to facilitate its tasks. In the circumstances, due weight must be given to the authors' allegation. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. In no circumstances should a State party fail to duly investigate and to properly inform the Committee of its investigation of allegations of ill-treatment when the person or persons allegedly responsible for the ill-treatment are identified by the author of a communication. The Committee notes with concern that, in spite of its repeated requests and reminders and in spite of the State party's obligation under article 4 (2) of the Optional Protocol, no submission whatever has been received from the State party in the present case.

12. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that these facts disclose violations of the Covenant, in particular:

- of articles 7 and 10, paragraph 1, because Mr. Tshitenge Muteba was subjected to torture and not treated in prison with humanity and with respect for the inherent dignity of the human person, in particular because he was held incommunicado for several months;
- of article 9, paragraph 3, because, in spite of the charges brought against him, he was not promptly brought before a judge and had no trial within a reasonable time;
- of article 9, paragraph 4, because he was held incommunicado and effectively barred from challenging his arrest and detention;
- of article 14, paragraph 3 (b) (c) and (d), because he did not have access to legal counsel and was not tried without undue delay;
- of article 19, because he suffered persecution for his political opinions.

13. The Committee, accordingly, is of the view that the State party is under an obligation to provide Mr. Muteba with effective remedies, including compensation, for the violations which he has suffered, to conduct an inquiry into the circumstances of his torture, to punish those found guilty of torture and to take steps to ensure that similar violations do not occur in the future.

APPENDIX

Individual opinion submitted by five members of the Human Rights
Committee under rule 94 (3) of the Committee's provisional
rules of procedure

Communication No. 124/1982

Individual opinion appended to the Committee's views at the request of
Messrs. Aguilar, Cooray, Ermacora, Errera and Mavrommatis:

In our opinion the facts as appearing in the file of the communication are
insufficient to sustain a finding of a violation of article 19 of the Covenant.

Decision of the Human Rights Committee under the
Optional Protocol to the International Covenant on
Civil and Political Rights - twenty-first session

concerning

Communication No. 117/1981

Submitted by: The family of M.A., later joined by M.A. as submitting party [names deleted]

Alleged victim: M.A.

State party concerned: Italy

Date of communication: 21 September 1981 (date of initial letter)

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

Meeting on 10 April 1984,

Adopts the following:

Decision on inadmissibility

1.1 The authors of the communication (initial letter dated 21 September 1981 and three subsequent letters) are the parents, brother and sister of M.A., a 27-year-old Italian citizen and right-wing political militant and publicist, who joined as submitting party by letter of 16 February 1982 and numerous further letters.

1.2 The alleged victim is M.A. who at the time of submission was serving a sentence upon conviction of involvement in "reorganizing the dissolved fascist party", which is prohibited by an Italian penal law of 20 June 1952. By order of the Court of Appeals of Florence, M.A., was conditionally released and placed under mandatory supervision on 29 July 1983.

1.3 The authors do not specify which articles of the Covenant have allegedly been violated. It is generally claimed that M.A. was condemned to prison solely for his ideas and that he has been deprived of the right to profess his political beliefs.

2.1 In his communication of 16 February 1982 M.A. stated inter alia that, although he had had contacts with some of the organizers of the Fronte Nazionale Rivoluzionario (FNR), he had not participated in the constitutive meeting of 22 January 1975. He disputed the accusation that he was one of the organizers of FNR and challenged the fairness of the trial against him.

2.2 In their letter of 27 January 1982 the family of M.A. stated that he was born in Lucca, Italy, on 14 July 1956 and was 15 years old when he joined the Movimento Politico Ordine Nuovo, which was dissolved by order of the Italian Ministry of the Interior on 23 November 1973. Thereafter, M.A. participated in the cultural

organization of Movimento Sociale Italiano (right-wing party represented in the Italian Parliament, MSI). In May 1977 he founded the "Committee against repression and for the defence of the civil rights of anti-Marxist political prisoners". In June 1977 he founded the monthly newspaper "Azione Solidarietà" and in October 1977 he became the cultural organizer of MSI in Bologna. He went into exile in France in October 1978.

2.3 Court proceedings against M.A. were initiated in 1974, when he was 17 years of age and he was sentenced to four years imprisonment on 11 May 1976 by the Arezzo Court of Assizes. He was detained from September 1976 to April 1977, when he was released on mandatory daily supervision. The Florence Court of Appeals confirmed the sentence on 30 November 1977 and the Rome Court of Cassation confirmed the judgement on 1 December 1978. In the meantime, however (October 1978 according to the authors), M.A. went into exile in France. There is no indication as to whether the mandatory daily supervision had been lifted or other information explaining the circumstances in which he left Italy. (The French "Carte de séjour" indicates that he entered France on 6 January 1979.) All these events, based on the information furnished by the authors, took place prior to the entry into force for Italy of the Covenant and Optional Protocol on 15 December 1978. Subsequent to this date, on 6 September 1980, M.A. was extradited from France and imprisoned at the Casa Circondariale di Ferrara in Italy. He claims that the extradition order violated his rights, because he had been convicted of a political offence.

3. On 28 January 1982 the M.A. family stated that the same matter had not been submitted to another procedure of international investigation or settlement.

4. The authors do not specify which articles of the Covenant have allegedly been violated. It is generally claimed that M.A. was condemned to prison solely for his ideas, and that he has been deprived of the right to profess his political beliefs.

5. Various documents submitted with the communication include copies of the judgements of the Court of Assizes of Arezzo and Court of Appeals of Florence; a request for amnesty directed to the President of the Republic of Italy; original of a memorandum commenting on the evidence before the courts and the original of a brief challenging the constitutionality of the Italian law of 20 June 1952.

6. By its decision of 16 July 1982, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of admissibility of the communication, in particular in so far as it may raise issues under articles 19 (right to hold opinions and freedom of expression), 22 (freedom of association) and 25 (right to take part in the conduct of public affairs) of the International Covenant on Civil and Political Rights.

7.1 By a note dated 17 November 1982, the Italian Government objected to the admissibility of the communication, inter alia, because the author "did not specify in any way the violation of which he claims to be a victim ... but is merely asking for a review of his trial, since he believes that the Human Rights Committee would have competence to declare him 'not guilty'. In these terms, it is obvious that, so far as the 'request' of the authors of the communication is concerned, the Committee is not competent to review the sentence passed by the Italian courts".

7.2 The State party notes, however, that:

"when the Human Rights Committee examined the documents received in the light of the relevant provisions of the Covenant and, in so doing, acted 'ex officio', it considered that it would be advisable to obtain information regarding such connection as might exist between the legal proceedings instituted against M.A. and articles 19, 22 and 25 of the Covenant.

"In this connection, the Italian Government, while considering that the conclusions referred to in the preceding paragraph make any further comment superfluous, does not challenge the examination carried out ex officio by the Committee and, in a spirit of co-operation, wishes to make the following observations regarding the admissibility of the communication on the basis that the latter does have some bearing on the above-mentioned articles of the Covenant.

"...

"The legal proceedings against M.A. led to the decision of the Arezzo Court of Assizes dated 28 April 1976, confirmed by the decision of the Florence Court of Appeals dated 30 November 1977 and made final when the appeal to the Court of Cassation was dismissed by decision of 1 December 1978.

"The chronological order of events, together with the legal decisions, show unequivocally that, at the said periods, Italy was not bound by the United Nations Covenants or by the Optional Protocol which came into force for Italy on 15 December 1978, that is, after the decision of the Court of Cassation.

"Accordingly, in the opinion of the Italian Government, it follows that the communication is inadmissible on the ground of lack of competence 'ratione temporis'.

"The Italian Government is aware, however, that the Committee, while stressing the communications will be inadmissible if the facts which are subject of the complaint occurred before the entry into force of the Covenant, deems itself competent, by virtue of its earlier decisions, to take such facts into account if the author asserts that the alleged violations had not ceased after the date of entry into force of the Covenant. But in the present case it is clear from the dossier that the author of the communication has not alleged any violation, nor has he asserted that the alleged violations did not cease after 15 December 1978.

"... The author of a complaint, communication or even request addressed to an international body can only invoke the same violations as those already alleged in national proceedings and for which he has not obtained satisfaction.

"Accordingly, with a view to ensuring that this aspect of the matter is properly reviewed, it is necessary to consider the alleged violations referred to in the communication in the light of the action taken in his defence by M.A. and his lawyer in the proceedings before the Arezzo and Florence courts, and also before the Court of Cassation.

"On the basis of the papers submitted in connection with the dossier, the reply is clearly in the negative. ... If, on the other hand, it is decided to follow the course adopted by the Human Rights Committee and to assume that the applicant is in fact alleging violations of articles 19, 22 and 25 of the Covenant, it is necessary to determine whether the author invoked the same rights before the Italian courts.

"In this connection, although the said provisions of the Covenant could not be invoked by M.A. - because the Covenant was not in force for Italy - it must be recognized that corresponding provisions are to be found in articles 9, 10 and 11 of the European Convention on Human Rights.

"As is well known, the latter Convention, which was ratified by Act No. 848 of 4 August 1955, forms an integral part of Italian law. The application of these provisions can therefore be referred directly to the Italian courts.

"If M.A. considered in the present case that his rights had been violated by the application of the Act No. 645 of 20 June 1952, he should have asked for the relevant articles of the European Convention to be applied immediately at first instance or, failing that, on appeal to the Court of Cassation.

"M.A. never invoked the said provisions and never complained of the violation of rights which, according to the Human Rights Committee, are the subject of the communication under consideration.

"The Italian Government therefore considers that the communication is also inadmissible on the ground indicated above.

"Lastly, if it is none the less intended to invoke the said articles of the Covenant, it may be noted that paragraph 3 of article 19 contains an explicit provision whereby certain restrictions, which must, however, be expressly stipulated by law and which are necessary (a) for respect of the rights or reputations of others and (b) for the protection of national security or of public order, or of public health or morals, are deemed to be lawful. Similar restrictions are also provided under articles 22 and 25.

"However, an examination of the indictment against M.A. shows that it is for 'reorganizing the dissolved fascist party' that is, for organizing a movement which has as its object the elimination of the democratic freedoms and the establishment of a totalitarian régime.

"It is clearly a case of restrictions 'expressly stipulated by law (Scelba Law)' and 'which are necessary ... in a democratic society for the protection of national security, public order ...'.

"In light of the foregoing considerations, the Italian Government considers that M.A.'s communication, being inadmissible on the grounds referred to above, should also be deemed inadmissible, by virtue of the restrictions provided for under article 19, paragraph 3, article 22, paragraph 2, and article 25, since it is manifestly devoid of foundation."

8. In response to the State party's submission under rule 91 the author forwarded the following comments dated 6 January 1983:

"In its reply dated 17 November 1982, the Italian Government considers that the communication which I submitted to you should be 'inadmissible' because:

"(a) '... the Human Rights Committee is not competent to review the sentence passed by the Italian courts'.

"The Human Rights Committee should, however, be deemed to have the competence and the power to do so, inasmuch as it is the judicial organ which has to ensure that the provisions of the Covenant are implemented by the Governments that are signatories to it.

"(b) '... the legal proceedings against M.A. took place between 1971 and 1978' at which time 'Italy was not bound by the United Nations Covenants or by the Optional Protocol'.

"However, the Italian Government knows that the legal proceedings against M.A. did not end in 1978, but continued until 6 August 1980 (on which date I was being held in prison in Nice, France) when the French Government was asked by the Italian Government to arrest M.A. (the Italian Government then applied for his extradition on a charge of 'reorganizing the dissolved fascist party' and other charges).

"It thus follows '... that the alleged violations did not cease following the date of entry into force of the Covenant' but, in the present case, as is clear from the communication which I have submitted to you, they continued beyond the entry into force of the Covenant and the Protocol since, on 6 August 1980, after the arrest of M.A., the Italian Government applied for his extradition, under Act No. 645 of 20 June 1952, article 2 (1), in respect of the charge for which he had been sentenced in Italy to four years' imprisonment (as can be seen from the decision of the Aix-en-Provence Court (Chambre d'Accusation), France, dated 5 September 1980).

"The timing of events makes it quite clear that the violations of one or more provisions of the Covenant and subsequently the unlawfulness of his detention extend beyond the entry into force of the Covenant and the Protocol.

"(c) According to the Italian Government, I 'should have asked for the relevant articles of the European Convention to be applied immediately at first instance, or, failing that, on appeal to the Court of Cassation'.

"It is, however, a well known fact that, under articles 2 and 3 of the Italian Criminal Code it is for the court itself to apply the law that is most favourable to the accused.

"It is stated: 'Nobody may be punished for an act which, under a subsequent law, does not constitute an offence; and, in the event of a conviction, it shall not be enforceable nor have penal effects.'

"Consequently, it was not for M.A. to request that the relevant articles of the European Convention be applied; it was for the judges of the Arezzo Court of Assizes or of the Florence Court of Appeals or, in the final instance, of the Court of Cassation to apply them ...".

9. On 10 January 1983, the legal representative of M.A. submitted further comments, noting that:

"(a) The violations did not come to an end prior to 15 December 1978, which is obvious since he is currently serving the sentence for which he was tried. Thus, the law applied is still in force and the sentence against M.A. is being carried out;

"(b) The restrictions in the law applied in M.A.'s case are themselves based on a law which was purportedly enacted in order to protect public safety, but which in reality does not permit the expression of one particular ideology even by democratic and non-violent means. Therefore it is a law that persecutes or discriminates on the basis of ideology and as such is in violation of article 18 of the Covenant. It is also inherently discriminatory because it is aimed not at all allegedly 'anti-democratic' movements (anarchistic, Leninist, etc.) but solely at movements with fascist leanings;

"(c) These facts were also put forward by legal counsel in proceedings brought before the Italian Courts ..."

10. In a further letter, dated 25 June 1983, the author informed the Committee of a decision taken by the French Conseil d'Etat, dated 3 June 1983, published on 17 June 1983, annulling the French extradition decree of 5 September 1980. The author appealed to the Committee for assistance in obtaining his immediate release from imprisonment, recalling that he has been detained in Italian prisons since 6 September 1980. In an annex to this letter M.A. encloses the text of the annulment decision, which was taken on the grounds of administrative irregularities, in particular because the extradition decree was issued without taking due account of the Law No. 79-387 of 11 July 1979 relative to administrative acts in France.

11.1 In a letter of 16 May 1983, M.A. informed the Committee that his legal counsel Mr. M.B. [name deleted] had been arrested. There is no indication, however, that this has any bearing on or relevance to the present case. In a further letter, dated 6 September 1983, the author in reply to a Secretariat request for information informed the Committee that following the arrest of his attorney, he has not taken a new legal representative. He also points out that no further submissions on his behalf will be made in response to the observations of the Italian Government.

11.2 The author also indicates that, upon his application, the Court of Appeals of Florence on 29 July 1983 ordered his release from imprisonment and placed him under mandatory supervision, prohibiting him from leaving the town of Lucca or Italian territory and further restricting his political activity. The author thus appeals to the Committee to intercede on his behalf in order to end his state of "detention in liberty".

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

13.1 The Human Rights Committee observes that in so far as the author's complaints relate to the conviction and sentence of M.A. for the offence, in Italian penal law, of "reorganizing the dissolved fascist party" they concern events which took

place prior to the entry into force of the International Covenant on Civil and Political Rights and the Optional Protocol for Italy (i.e. before 15 December 1978) and consequently they are inadmissible under article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant, ratione temporis.

13.2 In so far as the authors' complaints relate to the consequences, after the entry into force of the Covenant and the Optional Protocol for Italy, of M.A.'s conviction and sentence, it must be shown that there were consequences which could themselves have constituted a violation of the Covenant. In the opinion of the Committee there were no such consequences in the circumstances of the present case.

13.3 The execution of a sentence of imprisonment imposed prior to the entry into force of the Covenant is not in itself a violation of the Covenant. Moreover, it would appear to the Committee that the acts of which M.A. was convicted (reorganizing the dissolved fascist party) were of a kind which are removed from the protection of the Covenant by article 5 thereof and which were in any event justifiably prohibited by Italian law having regard to the limitations and restrictions applicable to the rights in question under the provisions of articles 18 (3), 19 (3), 22 (2) and 25 of the Covenant. In these respects therefore the communication is inadmissible under article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant, ratione materiae.

13.4 M.A.'s additional claim that the extradition proceedings, initiated by Italy while he was living in France, constitute a violation of the Covenant, is without foundation. There is no provision of the Covenant making it unlawful for a State party to seek extradition of a person from another country. The claim is therefore inadmissible under article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant, ratione materiae.

14. The Human Rights Committee therefore decides:

The communication is inadmissible.

Decision of the Human Rights Committee under the Optional Protocol
to the International Covenant on Civil and Political Rights -
twenty-first session

concerning

Communication No. 163/1984

Submitted by: A group of associations for the defence of the rights of disabled and handicapped persons in Italy, and the persons signing the communication

Alleged victims: Disabled and handicapped persons in Italy - not specified

State party concerned: Italy

Date of communication: 9 January 1984

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

Meeting on 10 April 1984,

adopts the following:

Decision on inadmissibility

1. The authors of the communication, dated 9 January 1984, are a group of associations for the defence of the rights of disabled and handicapped persons in Italy (a non-governmental organization hereinafter referred to as the "Coordinamento") and the representatives of those associations, who claim that they are themselves disabled or handicapped or that they are parents of such persons. Although the representatives are primarily acting for the Coordinamento, they also claim to act on their own behalf.
2. The authors challenge article 9 of the Italian law decree of 12 September 1983, No. 463, which was later confirmed by Parliament and enacted as article 9 of law No. 638 of 11 November 1983. a/ They contend that this provision infringes article 26 of the International Covenant on Civil and Political Rights in that it violates the right to work of disabled and handicapped persons. No submissions have been made regarding individual cases. The authors apparently seek a pronouncement of the Human Rights Committee that article 9 of law No. 638 was enacted in violation of Italy's commitments under the Covenant.
3. Article 9 contains a modification of the legal régime providing for the compulsory employment of disabled and handicapped persons laid down in law No. 482 of 2 April 1968. According to articles 11 and 12 of that law, private as well as public undertakings whose work force exceeds 35 persons are obliged, in principle, to employ 15 per cent disabled or handicapped persons, a percentage which may rise to 40 per cent for "auxiliary personnel" in the case of public undertakings. At the same time, article 9 of the 1968 law divided the total number of disabled and

handicapped persons to be employed compulsorily into different categories, reserving, in particular, 25 per cent for military war victims and 10 per cent for civilian war victims, while 15 per cent were allotted for victims of labour accidents and 15 per cent for ordinary disabled or handicapped persons ("invalidi civili"). To the extent that any particular category could not be filled by persons within that category, the entitlement was transferred to persons in the other categories. Considering that few war victims remain, the redistribution scheme significantly benefited disabled and handicapped persons in other categories. By virtue of paragraph 4 of the impugned article 9, this redistribution scheme was abolished. As a consequence, the authors allege that the amendment has considerably reduced the number of work posts available to ordinary disabled or handicapped persons ("invalidi civili"). Furthermore, they criticize paragraph 3 of the same article which permits employers to take into account, for the purpose of demonstrating their compliance with the compulsory element of 15 per cent of the work force, also those workers whom they have hired outside the special procedure for the employment of disabled and handicapped persons, provided that their disability or handicap exceeds 60 per cent.

4. Before proceeding to the merits of a case, the Human Rights Committee must ascertain whether the conditions of admissibility as laid down in the Optional Protocol to the International Covenant on Civil and Political Rights are met.

5. According to article 1 of the Optional Protocol, only individuals have the right to submit a communication. To the extent, therefore, that the communication originates from the Coordinamento, it has to be declared inadmissible because of lack of personal standing.

6.1 As far as the communication has been submitted on their own behalf by the representatives of the different associations forming the Coordinamento it fails to satisfy other requirements laid down in articles 1 and 2 of the Optional Protocol.

6.2 The author of a communication must himself claim, in a substantiated manner, to be the victim of a violation by the State party concerned. It is not the task of the Human Rights Committee, acting under the Optional Protocol, to review in abstracto national legislation as to its compliance with obligations imposed by the Covenant. It is true that, in some circumstances, a domestic law may by its mere existence directly violate the rights of individuals under the Covenant. In the present case, however, the authors of the communication have not demonstrated that they are themselves actually and personally affected by article 9 of law No. 638 of 11 November 1983. Consequently, the Committee is unable, in accordance with the terms of the Optional Protocol, to consider their complaints.

7. The Human Rights Committee therefore decides

The communication is inadmissible.

Notes

a/ Article 9 of law No. 638 of 11 November 1983 reads as follows:

"Article 9

"1. Pending amendment of the compulsory employment régime, the provincial offices concerned with labour and promoting full employment shall, prior to the assignment to work of persons entitled to the benefits provided under Act No. 482 of 2 April 1968 and subsequent amendments thereto, ensure that such persons whose degree of disability is less than 50 per cent undergo a medical examination to be conducted by the competent health authority in order to verify whether their state of disability is unchanged. Arrangements shall be made for the examination to be given within fifteen days from the date of the decision to assign them to work. Otherwise, in every case they shall be assigned, subject to later confirmation.

"2. The names of persons failing to present themselves for the examination referred to in the foregoing paragraph shall be deleted from the relevant lists in article 19 of Act No. 482 of 2 April 1968.

"3. Persons employed under the regular placement procedure and subsequently found to be suffering from disabilities not incurred in their work or service and having a degree of disability of less than 60 per cent shall be considered for the purposes of the aggregate compulsory work percentage referred to in article 11, paragraph 1, of Act No. 482 of 2 April 1968.

"4. The provisions concerning them in article 9, last paragraph, of Act No. 482 of 2 April 1968 shall not apply."

ANNEX XVI

Decision of the Human Rights Committee under the Optional Protocol
to the International Covenant on Civil and Political Rights -
twenty-second session

concerning

Communication No. 78/1980

Submitted by: A. D. [name deleted]

Alleged victim: the Mikmaq tribal society

State party concerned: Canada

Date of communication: 30 September 1980 (date of initial letter)

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

Meeting on 29 July 1984,

adopts the following:

Decision on inadmissibility

1. The author of the communication (initial letter dated 30 September 1980; supplementary information of 9 December 1980; and further submissions dated 26 June, 3 October, 11 November 1981, 15 July 1982, 3 August 1983, 6 January and 6 February 1984) is A. D., "Jigap'ten of Santeoi Mawa'iomí" - Grand Captain - of the Mikmaq tribal society. He submits the communication on behalf of "the Mikmaq people" who claim as their territory the lands which they possessed and governed at the time when they entered into a protection treaty with Great Britain in 1952, and which are known today as Nova Scotia, Prince Edward Island, and parts of Newfoundland, New Brunswick and the Gaspe peninsula of Quebec.

2.1 The author alleges that the Government of Canada has denied and continues to deny to the people of the Mikmaq tribal society the right of self-determination, in violation of article 1 of the International Covenant on Civil and Political Rights. It is further submitted that Canada has deprived the alleged victims of their means of subsistence and has enacted and enforced laws and policies destructive of the family life of the Mikmaqs and inimical to the proper education of their children.

2.2 It is stated to be the objective of the communication that the traditional Government of the Mikmaq tribal society be recognized as such and that the Mikmaq nation be recognized as a State.

3. Responding to a request by the Committee for clarification (decision of 29 October 1980) A. D., in a letter dated 9 December 1980, reaffirms that the communication is concerned essentially with the violation of article 1 of the Covenant (... "article 1 is our goal, our vision" ...) and rejects categorically

the applicability of article 27 (concerning the rights of persons belonging to minorities). He also submits that he has been authorized by the Grand Council of the Mikmaq people to represent his kinsmen before the Committee. a/

4. By its decision of 9 April 1981, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

5.1 In its submissions, dated 21 July 1981 and 17 May 1982, the State party objects to the admissibility of the communication ratione materiae, on the ground that article 1 of the Covenant cannot affect the territorial integrity of a State, a principle asserted in United Nations declarations such as the "Declaration on the Granting of Independence to Colonial Countries and Peoples" (General Assembly resolution 1514 (XV) of 14 December 1960), the "Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" (General Assembly resolution 2625 (XXV) of 24 October 1970) and stated in a great number of legal opinions.

5.2 The State party further submits that the communication does not fulfil the requirements of articles 1 and 2 of the Optional Protocol. It is argued that, in the circumstances of the case, A. D. cannot claim either that his own rights have been violated, since according to article 1 (1) of the Covenant the right of self-determination is a collective right, or that he is duly authorized under the relevant provisions of the Optional Protocol to act on behalf of the Mikmaq nation.

5.3 The State party also maintains that the remedy sought in the case, namely the recognition of statehood, goes beyond the competence of the Committee.

5.4 Referring to allegations advanced by A. D. relating to self-government, education, enfranchising of aboriginal people, property rights, and subsistence, the State party rejects the claims, with one exception, as inadmissible, contending that these issues derive from the principal issue of the communication, the right of self-determination. The exception in this connection related to the situation of Indian women who marry non-Indians and thereby lose their status as Indians. The State party refers to the Indian Act 1970, which provides for limited self-government of the aboriginal peoples to laws and procedures governing their land claims and to the recently amended Canadian constitution, the Constitution Act 1982, which in its Charter of Rights and Freedoms envisages equal protection of the human rights of everyone and in its section 25 contains specific provisions as to the protection of rights and freedoms of the aboriginal peoples of Canada.

5.5 The State party does not consider the issues raised by the author concerning the legal aspects of the relationship between the United Kingdom, the Mikmaq tribe and Canada to be relevant in the present case, since it considers the communication inadmissible on the issue of self-determination.

6.1 By letters, dated 3 October 1981, 11 November 1981 and 15 July 1982, A. D. submitted his comments to the State party's submissions under rule 91 of the provisional rules of procedure. He refutes the State party's contention that the communication is inadmissible. With regard to the State party's argument based on territorial integrity, he contends that this is inapplicable in the circumstances of the case "because it assumed a disputed fact, viz. whether the territory of the 'Mi'kmaq Nationimouw' ever lawfully became part of the territory of Canada". The

author asserts in this connection that the territory never was ceded or surrendered to Great Britain and, therefore, not to Canada.

6.2 A. D. disagrees with the State party's contention that the right of self-determination constitutes only a collective right, citing in substantiation the United Nations study on the Right of Self-Determination, 1980, b/ prepared by Mr. Hector Gros-Espiell, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. A. D. submits that this study shows that the Commission on Human Rights has repeatedly invoked self-determination as the right of individuals as much as a right of peoples collectively.

6.3 The author further challenges the validity of the State party's submissions on the substance of "subsidiary violations of human rights", commenting in detail on the issues of self-government, involuntary enfranchisement, education rights, property and human rights issues relating to the Constitution Act, 1982. He suggests, however, that before more evidence is submitted on these matters, the question of the admissibility of the communication should be decided.

6.4 A. D. finally suggests that the Committee should, if it finds that the present communication calls outside its competence, bring the Mikmaq people's case to the attention of the Economic and Social Council with the recommendation that an advisory opinion be sought from the International Court of Justice.

7.1 Before considering a communication on the merits, the Committee must ascertain whether it fulfils all conditions relating to its admissibility under the Optional Protocol.

7.2 Articles 1 and 2 of the Optional Protocol provide for the competence of the Committee to receive and consider communications from individuals who claim to be victims of a violation of the rights set forth in the Covenant.

7.3 The communication poses in particular the question whether Canada has violated article 1 of the International Covenant on Civil and Political Rights. A. D. claims not to represent a minority within the meaning of article 27, but a people within the meaning of article 1 of the Covenant. In this context he also alleges that the right of parents and families provided for in article 23 in connection with article 18 has been violated, most particularly with regard to the religious education of the children.

7.4 The Committee agreed to clarify first the standing of the author in so far as he claims to represent the Mikmaq tribal society.

7.5 While seeking to clarify the standing of the author, the Committee received a "communiqué" dated 1 October 1982 from the Grand Chief of the Grand Council of the Mikmaq tribal society, D. M., stating that nobody was authorized to speak on behalf of the Mikmaq nation or on behalf of the Grand Council or the Grand Chief, unless the latter "will give this authority in writing to the person or persons for each separate correspondence". Consequently, the Committee requested the Grand Council of the Mikmaq to comment on or clarify A. D.'s authority to act on behalf of the Mikmaq tribe and to provide the relevant information not later than 1 February 1983. In response, R. B., legal counsel for A. D., informed the Committee by telegram of 31 January 1983 that the Mikmaq Grand Council had reaffirmed the authority of A. D. to pursue communication No. R.19/78 before the Committee and that a document signed to this effect by the Grand Council would be transmitted by registered mail.

7.6 Six months later, on 3 August 1983, a letter mandating the legal counsel of A. D., Mr. R. B., to represent the Grand Council was received. This "Commission" was signed by the author of the communication himself and by the Assistant Grand Chief. The content of the "Commission" shows clearly that it is not the Grand Council in its legal entity which authorizes A. D. to act but that it is the author himself who confirms his self-authorization.

7.7 Later submissions of the author dated 6 January and 6 February 1984 referred to the substance of his complaints without providing evidence on his standing in the case of the Mikmaq people.

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

8.2 The Human Rights Committee observes that the author has not proven that he is authorized to act as a representative on behalf of the Mikmaq tribal society. In addition, the author has failed to advance any pertinent facts supporting his claim that he is personally a victim of a violation of any rights contained in the Covenant.

9. The Human Rights Committee therefore decides:

The communication is inadmissible.

Notes

a/ The author states that the Grand Council, whose members are the Grand Chief, the Grand Captain and the Assistant Grand Chief, constitutes "the traditional Government of the Mikmaq tribal society".

b/ Document E/CN.4/Sub.2/405/Rev.1.

APPENDIX

Individual opinion

Mr. Roger Errera, member of the Human Rights Committee, submits the following individual opinion relating to the admissibility of communication No. 78/1980 (A. D. v. Canada):

A. D.'s communication is based primarily on a violation of article 1 of the Covenant relating to the right of all peoples to self-determination. The examination of the admissibility of this communication accordingly raises the following questions:

(1) Does the right of "all peoples" to "self-determination", as enunciated in article 1, paragraph 1, of the Covenant, constitute one "of the rights set forth in the Covenant" in accordance with the terms of article 1 of the Optional Protocol?

(2) If it does, may its violation by a State party which has acceded to the Optional Protocol be the subject of a communication from individuals?

(3) Do the Mikmaq constitute a "people" within the meaning of the above-mentioned provisions of article 1, paragraph 1, of the Covenant?

The inadmissibility decision adopted by the Committee does not answer any of these three questions, even though they are fundamental to the interpretation of article 1, paragraph 1, of the Covenant and article 1 of the Optional Protocol, and to the jurisprudence of the Committee relating to individual communications alleging violation of article 1, paragraph 1, of the Covenant. To my deep regret, therefore, I cannot endorse this decision.

ANNEX XVII

List of Committee documents issued

A. Twentieth session

CCPR/C/1/Add.61	Supplementary report of Tunisia
CCPR/C/1/Add.62	Supplementary report of Canada
CCPR/C/10/Add.7	Initial report of the Gambia
CCPR/C/10/Add.8	Initial report of India
CCPR/C/10/Add.10 and 11	Supplementary report of New Zealand
CCPR/C/14/Add.4 and 6	Initial report of Sri Lanka
CCPR/C/14/Add.5	Initial report of El Salvador
CCPR/C/22/Add.3	Initial report of the Democratic People's Republic of Korea
CCPR/C/28/Add.1	Second periodic report of Yugoslavia
CCPR/C/28/Add.2	Second periodic report of the German Democratic Republic
CCPR/C/30	Provisional agenda and annotations - twentieth session
CCPR/C/SR.465-489 and corrigendum	Summary records of the twentieth session

B. Twenty-first session

CCPR/C/2/Add.7	Reservations, declarations, notifications and communications relating to the International Covenant on Civil and Political Rights and the Optional Protocol thereto
CCPR/C/22/Add.4	Supplementary report of France
CCPR/C/22/Add.5	Supplementary report of the Democratic People's Republic of Korea
CCPR/C/26/Add.1/Rev.1	Initial report of Egypt
CCPR/C/31	Consideration of reports submitted by States parties under article 40 of the Covenant - initial reports of States parties due in 1984: note by the Secretary-General

CCPR/C/32

Consideration of reports submitted by States parties under article 40 of the Covenant - second periodic reports of States parties due in 1984: note by the Secretary-General

CCPR/C/33

Provisional agenda and annotations - twenty-first session

CCPR/C/SR.490-517 and
corrigendum

Summary records of the twenty-first session

C. Twenty-second session

CCPR/C/4/Add.8/Rev.1

Initial report of Panama

CCPR/C/10/Add.9

Initial report of Trinidad and Tobago

CCPR/C/32/Add.1 and 2

Second periodic report of Chile

CCPR/C/34

Provisional agenda and annotations - twenty-second session

CCPR/C/SR.518-544 and
corrigendum

Summary records of the twenty-second session

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