REPORT
OF THE
HUMAN RIGHTS COMMITTEE

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-THIRD SESSION

SUPPLEMENT No. 40 (A/43/40)

UNITED NATIONS

New York, 1988

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(26 September 1988]

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I, ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Covenant

1. As at 29 July 1988, the closing datr of the thirty-third session of the Human Rights Committee, ther.. were 87 States parties to the International Covenant on civil and Political Rights and 42 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 Now York on 19 December 1966. Both instruments ● ntorrd into force on 23 March 1976 in accordance with the provisions of their articles 49 and 9 respectively. Also a8 at 29 July 1989, 22 States had made the declaration ● nviraged under article 41, paragraph 1, of the Covenant, which came into force on 28 March 1979.

2. A list of States parties to the Covenant and to the Optional Protocol, with an indication of those that have madr the declaration undor article 41, paragraph 1, of the Covenant is contained in annex I to the present report.

3. Reservations and other declaration8 have barn made by a number of States parties in respect of the Covenant and/or the Optional Protocol. These reservations and other declaration8 are rot out verbatim in documents of the Committee (CCPR/C/2/Rev.1). By a note of 22 March 1989, the Government of France notified the Secretary-General of the withdrawal of its reservation to article 19 of the Covenant.

B. Sessions and agendas

4. The Human Right8 Committee ha8 hold three sessions since the adoption of its last annual report. The thirty-first session (758th to 756th meetings) was held at the United Nation8 Office at Geneva from 26 October to 13 November 1987, the thirty-second session (787th to 812th meetings) war held at United Nation8 Headquarters from 21 March to 8 April 1988 and the thirty-third session (813th to 840th meetings) was held at the United Nations Office at Geneva from 11 to 29 July 1988. The agenda8 of the sessions are contained in annex III to the present report.

C. Membership and attendance

5. The membership remained the same a8 during 1987. A list of the member8 of the Committee is given in annex II to the present report. Except for the absence of Mr. Aguilar at the thirty-first session, of Mr. Wako at the thirty-second session and Messrs. [illegible]an and Serrano Caldera at the thirty-third session, all ths members attended the [illegible] sessions.

D. Working groups

6. In accordance with rules 62 and 89 of its provisional rules of procedure, the Committee established working groups to meet before its thirty-firrt, thirty-second and thirty-third sessions.

7. As a result of the financial crisis, the Committoe was only able to establish one working group, composed of five members, to meet before the thirty-first session. In addition to making recommendation8 to the Committee regarding communications under the Optional Protocol, that Working Qroup was also mandated to prepare a concise list of issues concerning second periodic reports scheduled to be taken up for consideration at the thirty-first session and to consider a draft general comment on article 17 of the Covenant. The Working Qroup was composed of Ms. Chanet and Messrs. Cooray, El-Shafei, Ndiaye and Zielinski. It met at the United Nations Office at Geneva from 19 to 23 October 1967. Mr. Cooray was elected Chairman/Rapporteur for matters regarding communications and Mr. Ndiaye for those regarding article 40.

8. Since it had become clear that one working group could not cope adequately with the large volume of pro-sessional preparatory work, it was necessary for the Committee to revert to its normal practice of establishing two pre-sessional working groups, consisting of four members each. The Working Qroup established under rule 89 to meet prior to the Committee's thirty-second and thirty-third sessions was entrusted with the task of making recommendations to the Committee regarding communications under the Optional Protocol. At the thirty-second session, the Working Group was composed of Messrs. Cooray, Prado Vallejo, Wennergren and Zielinski. It met at United Nations Headquarters, from 14 to 18 March 1988. Mr. Cooray was elected Chairman/Rapporteur. At the thirty-third session the Working Group was composed of Messrs. Dimitrijevic, El-Shsfei, Pocar and Prado Vallejor it met at the United Nations Office at Geneva from 4 to 8 July 1988 and elected Mr. Pocar as its Chairman/Rapporteur.

9. The Working Group established under rule 62 to meet prior to the Committee's thirty-second and thirty-third sessions was mandated to prepare concise lists of issues or topics concerning second periodic reports scheduled for consideration prior to those sessions and to consider the formulation of recommendations relating to the meeting from 10 to 14 October 1988 of chairmen of the supervisory bodies entrusted with the consideration of reports submitted under United Nation8 instruments on human rights. The Working Group that met before the thirty-second session was also mandated to continue the consideration of a draft general comment relating to article 17 of the Covenant. At the thirty-second session, its members were Messrs. Aguilar and El-Shafei, Mrs. Higgins and Mr. Movchan. It met at United Nations Headquarter8 from 14 to 18 March 1988 and elected Mr. Aguilar a8 its Chairman/Rapporteur. At the thirty-third session, the Working Group was composed of Messrs. Mavrommatis, Movchan, Ndiaye and Wennergren; it met at the United Nations Office at Geneva from 4 to 8 July 1988 and elected Mr. Ndiaye an its Chairman/Rapporteur.

E. Other matters

Thirty-first session

10. The Under-Secretary-General for Human Rights informed the Committee of the report of the Secretary-General to the General Assembly at its forty-second session 1/ and drew attention, in particular, to the Secretary-General's reference to the Organization's importance as a forum for "concerted action aimed at encouraging rectification of unsatisfactory human rights situations wherever they may be". He assured the Committee of his intention to pursue that objective as a matter of the highest priority and noted that the existing services of the Centre

for Human Rights had *boon* restructured and ● trongthened to permit 8 more ● ffeative response to the growing needs of Governments and national institutions for various types of assistance. He ● xpror8md hi8 conviction that communication and the provision of information about human right8 matters were particularly important and referred with satisfaction to thr ● etabli8hment *of* the Section for External Relations within the Centre. He hoped that it would be possible through that Section to expand and deepen the Centre's ties and co-operation with the media, the academic world and non-governmental organisations, am well a8 to reach out more ● ffeotivoly to world public opinion a8 a whole. To respond in greater depth to thr interest of the media and othrrr in human rights matters, it was alro his intention that the Centre should undertake a new and ● rp8ndad programme *of* publiaationr and increase the dissemination *o f* information.

11, The Under-Secretary-General also informed the Committee of the Centre's ● aooloratad trainingactivities, including thr holding of • training course in New York for legislative draftsmen on the preparation of national legislation against racism and racial discrimination and a second training course in Bangkok on the teaching *of* human rights, a8 well am of planned training courses concerning the preparation and presentation *of* reports under international human rights instruments in Lusaka and San José, Corta Riaa. In addition, ho informed the Committee of variour special reports and studies that had been submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities at it8 thirty-ninth session, including those relating to states of emergency (E/CN.4/Sub.2/1987/19), the abolition of the death penalty (E/CN.4/Sub.2/1987/20), thr practice of ● dminirtrativr detention without ahargr or trial (E/CN.4/Sub.2/1987/16) and work on the elaboration of guidelines, principles and guarantees for persons detained on grounds of mental ill-health or suffering from mental disorder (see E/CN.4/Sub.2/1987/32 and Corr.1).

<u>Thirty-second session</u>

12. In ☙ message • ddrerred to the Committee at it8 thirty-second session, the Under-Secretary-General for Human Right8 informed the Committee of his participation in the consideration of human right8 related items at the forty-second session of the General Assembly, where the • ctivitior being carried out under the variour human right8 instruments had received thorough consideration. He had noted with special satisfaction that many delegations, representing different regions and political viewpoints, had ● xpro88od strong support and high esteem for the Committee's work. In thr light of the growing number and complexity of reporting obligations under the varioua international human right8 instruments, ho also drew attention to the special importance of General Assembly resolution 42/105 of 7 December 1987 and ● xpro88od confidence that the Committee's views would be particularly useful in achieving positive results at the forthcoming mooting of chairmen of the relevant treaty bodies.

13. The Under-Secretary-General informed the Committee of the outcome of the second session of the Committee on Economic, Social and Cultural Rights, noting that agreement had been reached at that session on a number of important procedural and organisational questions am well as on the structure, content and periodiaity of State Party reports. In all of those respects, the Committee on Bconomia, Social and Cultural Right8 intended to bring it8 method8 and procedures into line with those of the Human Right8 Committee. He also informed the Committee that the States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46, annex of

10 December 1984), had held their first meeting, at which the 10 members of the Committee against Torture had been elected and agreement on financing thrt Committee's operations had been reached. In addition, he noted that, at the forty-fourth session of the Commission on Human Rights, the working group on a draft convention on the rights of the child had completed the first reading of the full text of the draft convention. The Under-Secretary-General stated that helping to lay the foundations of nations1 human rights institutions and mechanisms might make it possible to prevent human rights violations. That was why the Centre was setting particular store by its programme of advisory services, support for which had been expreased by all region8 in the Commission on Human Rights. Lastly, he outlined some of the measures and activities being planned for the fortieth anniversary year of the Universal Declaration of Human Rights, including the Centre's new and expanded publications programme, the planned issuance of a special postage stamp and the possible launching by the General Assembly of a world-wide campaign of information on human rights. He also mentioned that the Centre was planning to organize a special human rights workshop in Lomé, in commemoration of the fortieth anniversary of the Universal Declaration, to which the Government of Togo had invited a number of African countries.

14. The Committee was informed by the Assistant Secretary-General (Controller), Office of Programme Planning, Budget and Finance, that, in response to a requeat of the Committee for Programme and Co-ordination, an in-depth evaluation was being carried out on the United Nations programme for human rights to determine the efficiency, effectiveness and result of the various activities carried out within the framework of the programme, to identify problems of delivery and to suggest possible improvementa. A relevant questionnaire was distributed to all members of the Committee for completion.

15. After having been informed that the similarity in the titles of the Yearbook of the Human Rights Committeu and the Yearbook on Human Rights had led to some confusion, the Committee agreed to change the title of the former to "Official Records of the Human Rights Committee".

Thirty-third session

16. In welcoming tha members of the Committee, the Under-Secretary-General for Human Rights extended special greeting8 to the Chairman and members of the African Commission on Human and Peoples' Rights, who had been invited to participate in the Committee'8 proceedings during the first week of its session and to familiarize themselves with the Centre for Human Rights. He reaffirmed the importance attached by the Centre to its co-operation with the African Commission and expreaaed the hope that such co-operation would be further strengthened and expanded in the future.

17. Noting that the supervisory bodies established under the International Covenants on Human Rights were at the core of the effort to achieve the human rights objectivea of the United Nations, the Under-Secretary-General reaffirmed that meeting the requirements of tho Committee for the effective discharge of its mandate would remain one of the Centre's highest priorities. He expressed the hope that, despite the continuing uncertainties relating to the Organization's financial proapecta, the worst could be avoided and that the human rights programmes could be carried forward in the future without serious hindrance. Reporting on the progress achieved over the past year in atrengthening the programmes of the Centre, he said that the restructuring of some of the relevant services had helped to make it

possible both to expand and ♦□ ● aaolrrata the ● ativitirr of thr Centre under thr programme of advisory services as well as to mount a more dynamic information and education campaign, which had helped ♦□ ● ■♒♋■□♋ the international scope of the Centre. He referred to a number of recent human rights events carried out under the programme of● dvirory services, including training courses in ruah areas • m legislative drafting, the teaching of human right8 and the preparation of national reports. In addition, a number of requests from States for assistance in developing their national human right8 infrastructure were under consideration as well as thr organisation of further regional or subregional training courses, such 88 a planned course in Tunis for Arabic-speaking countries on the administration of justice. The Centre's efforts to reach tho general public with relevant human right8 information had also boon intensified and the firrt two of 8 series of planned fact sheets - relating to ● xisting international human rights machinery and to the International Bill of Human Rights - had already been issued.

18. In addition, the Under-Secretary-General informed the Committee of relevant decisions adopted by the Economic and Social Council at it8 firrt regular session in 1988, In particular, tho Counail had ● ndor8ad • number of major recommendations submitted by the Committee on Economic, Social and Cultural Rights, including recommendations relating to the form and periodicity of State party reports, and had authorized a special mooting of the working group on a draft convention on the rights of the child of the Commission on Human Rights before the end of the year. He also informrd the Committee of the outcome of the first session of the Committee against Torture, pointing out that the rulor of procedure adopted by the Committoo had been modelled on the Human Right8 Committee's own ruler.

19. Thr Committao took note with appreciation of the statement made by the Under-Secretary-General for Human Right8 and ● xpro88od particular satisfaction with the progress being achieved in expanding and accelerating the Centre's ● dvi8ory services and publications activities. It was noted, in that aonnootion, that ono or moro members of tho Commkttoe had participated in nearly all of tho training courses and workshops hold within the part yoar as well a8 in tho fortieth anniversary colebration and tho national human rights seminar organised by tho Government of Togo.

20. Referring to the Centre's accelerated publications ● chrdule, members recalled with appreciation the Under-Secretary-General's intontion to ● liminato thr ● xi8ting backlog in publishing tho Committee's official records and to rpood up work on the rocond volume of tho Committee's selected decisions undor the Optional Protoaol, containing decisions from tho seventeenth to tho thirty-second sessions, and ● xprorrad tho wish that rignfficant progress rhould be achieved in the foregoing regard by the ond of 1988.

21. Momborr also notod with satisfaction tho information concerning the activities of tho Committoo against Torture at its firrt session and tho Economic and Social Council's approval of tho important recommendations submitted to it at it8 firrt rogular session in 1988 by tho Committee on Economic, Social and Cultural Rights.

22. Tho Committoo took note with rpocial appreciation of Economic and Social Council resolution 1988/42 of 27 May 1988, in which thr Council roforrod to tho fundamental rolo of tho offectivo functioning of troaty bodior ● rtablirhrd in accordance with the various international human rights instruments. Several members observed that, in viow of tho significant increase in tho work-load of the Committoo and tho Socrotariat in rocont yearn undor the Covenant and tho Optional

Protocol, It would become more and more difficult for the Committee to maintain its currant high standards without the provision of additional staff resources and meeting time. The Committee requested the Under-Secretary-General to make every possible effort to strengthen the Committee's secretariat to enable it to cope adequately with the increased work-load.

23. The Committee welcomed the participation of the Chairman and some members of the African Commission on Human and Peoples' Rights in its proceedings. The visitors also met the Bureau of the Committee as well as individual members and had an opportunity to become fully acquainted with the Committee's role, activities and procedure.

F. Future meetings of the Committee

24. At its thirty-second session, the Committee confirmed its calendar of meetings for 1989, as follows: thirty-fifth session to be held at United Nations Headquarters from 20 March to 7 April 1989, thirty-sixth session at the United Nation8 Office at Geneva from 10 to 28 July 1989 and thirty-seventh session also at ths United Nations Office at Genova from 23 October to 10 November 1989. In each case, its working groups would meet during the week preceding the opening of each session.

G. Adoption of the report

25. At its 039th and 840th meetings, held on 20 and 29 July 1988, the Committee considered the draft of its twelfth annual report covering its activities at the thirty-first, thirty-second and thirty-third sessions, held in 1987 and 1968. The report, as amended in the course of the discussions, was unanimously adopted by the Committee.

IX. ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SECOND SESSION

26. At its 804th meeting, hold on 4 April 1988, the Committee considered the ● ♑❒■🕮 item in the light of the relevant summary records of the Third Committee and of General Assembly resolutions 42/103 and 42/105 of 7 December 1987.

27. The Committee discussed the relevant resolutions adopted by the General Assembly at it8 forty-second session. With regard to Assembly resolution 42/103, members felt ● naouragod by the recognition accorded to the importance of the Committee's role in promoting the implementation of th8 Covenant on Civil and Political Rights. Members also welcomed the General Assembly's renewed call in paragraph 7 of that rorolution for all States that had not yet done so to become parties to the Covenant and ● %prON88d agreement with th8 comment made in the Third Committee that accession to the Covenant would be one of the best ways to demonstrate ● dherenao to the Charter itself.

28. With regard to General Assembly resolution 42/105, relating to reporting obligations of States parties United Nation8 instruments on human rights, particularly paragraph 4 thereof, th8 Committee, after giving extensive consideration at it8 thirty-firrt, thirty-second and thirty-third sessions to the preparations for the meeting of the persons chairing the various human right8 treaty bodies to be hold from 10 to 14 October 1968, adopted the following recommendations and observations for use by its Chairman at that mooting:

"<u>Introduction</u>

"1. The Committee considered the problems relating to State party reporting under th8 various international human right8 instruments at its thirty-firrt, thirty-second and thirty-third sessions, in the light of General Assembly resolution 42/105 and documents A/40/600 and Add.1 and A/41/510. On the basis of recommendations submitted by it8 Working Group the Committee, at it8 thirty-third session, adopted the following recommendations and observations for use by the Chairman of the Committee at the mooting of the persons chairing the treaty bodies:

"<u>Recommendations and observations</u>

"2. Th8 Committee considers that thr draft agenda for the mooting, prepared and circulated by the Secretary-General pursuant to paragraph 4 (a) and (b) of General Assembly resolution 42/105 is sufficiently comprehensive to allow the persons chairing the treaty bodies to consider 811 relevant issues.

"3. With reference to item 5 (a) of the draft agenda concerning the porribility of harmonizing and consolidating reporting guidelines, the Committee agrees that thr elaboration of a document reflecting common ● lrm8ntr could facilitate, to some extent, the propsration and submission of reports. However, since each treaty body is different and has specific needs, attempts tc harmonize and unify the guidelines should remain within reasonable limits. If reporting guidelines were to be fully standardised, the treaty bodies would undoubtedly receive a great deal of information of little or no relevance to their concerns, whereas States parties would not be relieved of the necessity to provide additional specific information. Such problems could not be avoided even if only the introductory part8 of State party reports were

consolidated. In this connection, the Committoe recalls that the reporting guidelines under the International Covenant on Civil and Political Rights cover a broad range of human rights and have been well tested. Accordingly, the Committee is of the opinion that efforts to harmonize reporting guidelines should take the foregoing considerations into account, but it remains open to any proposals compatible with those considerationa.

"4. The Committee further believes that efforts towards harmonization and unification may also find an appropriate eolution within a State party, particularly through the creation of a co-ordination mechanism. The Committee urges that the questions of co-ordination and harmonization should be kept under study by the Secretary-General, the General Assembly, the Economic and Social Council, the States parties and the treaty bodies themselves and that the results should be made available to the latter. In addition, the Committee believes that it would be highly desirable to establish a repository of basic legal documents of the States parties within the Secretariat.

"5. With reference to item 5 (b) of the draft agenda, the Committee believes that, if a five-year reporting cycle were applied by all treaty bodies, it would help States parties which had acceded to or ratified instruments at different times to avoid having to submit reports each year. The Committee considers that compliance by States parties with their periodic reporting obligations would be facilitated if duplication were reduced through such means as utilizing in one report information submitted in reports to other treaty bodies, provided that the Committee's competence is not restricted in any way. Similarly, the Committee remains open to all practical suggestions for co-ordination provided that they do not weaken the reporting obligations in any way. Au a corollary. the Secretariat should make available to each supervisory body State party reports that have been aubmitted to other supervisory bodies, as it is already doing in the case cf the Human Rights Committee.

"6. Regarding the consideration of periodic reports, the Committee suggests that the peraons chairing the treaty bodies ahould, in the first instance, appeal to States parties to adhere closely to reporting guidelines so that the consideration of reports can be conducted in an orderly and efficient manner. The length of reports, as such, has not been an insurmountable problem. The importance of presenting information that is both relevant and complete does, however, require emphasis. State party delegations should be requested to keep their introductory remarks and oral responses to questions as germane and concise as possible.

"7. Possibilities for providing, at the request of States parties, training and technical assistance, including subregional an& national training courses on reporting and, where reporting problems are particularly serious, missions by experts to furnish practical assistance in areas such as the preparation of reports and the elaboration of a human rights infrastructure, should be expanded. A manual on report writing should also be prepared and distributed to States parties.

"8. The persons chairing tho treaty bodies should encourage more frequent exchanges and contacts between members of the various treaty bodies as well as between the Secretariat of the Centre for Human Rights and the Centre for Social Development and Humanitarian Affairs."

29. The Committee also took note of the view e xprossed by some delegations in the Third Committee that its procedure in considering rraond periodic roportr was unduly formalised and time-consuming. Members pointed out in that connection that the Committee's specific questions relating to rraond periodic roportr helped to increase knowledge of the practices followrd in e aah State, focured interest on matters of paramount importance in a given State, and hrlpod reporting States to prepare their replies. The Committoo was not a tribunal and was moroly trying to promote implementation of tho Covonant. Accordingly, the Committoo felt that tho current aothod used in considering second periodic roportr was appropriate and helped tho Committee to discharge its mandate under tho Covenant e ffoctivoly.

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

A. Submission of reports

30. States parties have undertaken to submit raports in accordance with Article 40, paragraph 1, of the International Covenant on Civil and Political Rights within one year of the entry into force of the Covenant for the States Parties concerned and tharenfter whenever the Committee so requests.

31. In order to assist States parties in submitting the reports required under Article 40, paragraph 1 (a), of the Covenant, the Human Rights Committee, at its second session, approved general guidelines regarding the form and content of initial reports. 2/

32. Furthermore, in accordance with article 40, paragraph 1 (b), of the Covenant, the Committee, at its thirteenth session, adopted a decision on periodicity requiring States parties to submit subsequent reports to the Committee every five years. 3/ At the same session, the Committee Adopted guidelines regarding the form And content of periodic reports from States parties under article 40, paragraph 1 (b), of the Covanant. 4/

33. At each of its sessions during the reporting period, the Committee was informed of and considered the status of the submission of reports (see Annex IV to the present report).

34. The action taken, information received and relevant issues placed before the Committee during the reporting period (thirty-first to thirty-third sessions) are summarized in paragrnphs 35 to 41 below.

Thirty-first session

35. The Committee devoted its 760th meeting to a discussion of problems relating to the submission of reports by States parties under Article 40 of the Covanant both in general terms and in respect of certain individual cases. The Committee noted that there were various reasons for default or delay by States parties in the submission of reports, including technical reasons such as the lack of adequate expertise and personnel, thn assignment of insufficient priority, the increasing burden of reporting obligations stemming from the proliferation of human rights supervisory bodies and, rarely, the aimpls reluctance of States parties to expose themselves to scrutiny.

36. It was generally agreed that there was no single method of inducing States parties to comply with their reporting obligations but rather a choice of methods to be applied case by case. Members also agreed that, in seeking to ascertain the reasons for non-submission of A given report or to induce compliance with reporting obligations, the Committee should continue to rely on a diplomatic but persistent Approach to States parties, including personal contacts with State party representatives by the Chairman or individual members, whenever the opportunity arose. The traditional practice of the Secretariat sending reminders to States parties should also be continued. Strong uupport was expressed for the Centre's strengthened training and publications Activities, which were seen by members As

being very • ffective in assisting States parties to aomply with their obligations under the Covenant.

37. With regard to thr roportr submitted since thr thirtieth session, tho Committee was informrd that the initial roportr of the Central African Republic • d Guinea and a new version of thr second periodic report of Colombia had boon received.

38. The Committee decided to send reminders to the Governments of Belgium, Bolivia, Cameroon, Gabon, Niger, Saint Vinaont and the Grenadines, San Marino, the Sudan, Taqo and Viet Nun, whose initial roportr were overdue. In addition, tho Committee decided to send reminders to the Governments of the following States parties whose roaond poriodia roportr worn overdue: Bulgaria, Costa Rica, Cyprus, Dominican Republic, Gambia, Guyana, India, Iran (Islamic Ropublia of), Italy, Jamaica, Japan, Jordan, Kenya, Lebanon, Libyan Arab Jamahiriya, Madagascar, Mali, Mauritius, Mexico, Morocco, Nothorlrndr, Now Zealand, Nicaragua, Norway, Panama, Sri Lanka, Suriname, Syrian Arab Republic, United Kingdom of Great Britain and Northern Ireland (with regard to its dopondont territories), United Ropublia of Tanzania, Uruguay and Venesuela.

Thirty-second session

39. The Committee was informed that Belgium had rubmittod its initial roport, thrt second poriodia roportr had been received from Japan and [illegible] • nC\ that Ecuador had rubmittod • report supplementing its second periodic report.

40. In view of the growing number of outstanding State party reports, the Committee • grood that members of the Bureau rhould moot individually with the permanent representatives of those States parties whose initial or second periodic roportr had boon overdue for periods of three to five years. Aaaordingly, members of the Bureau mot tho representatives of Bolivia, Gabon, Iran (Islamic Ropublia of), the Libyan Arab Jamahiriya, Madagascar, Mauritius, Saint Vincent and the Grenadines, Togo, Uruguay and Viot Nun, who • grood to convey the Committee's concerns to their Governments. It was not possible to • rtablirh contact with the Permanent Mission of Cameroon. In addition, the Committee decided to send reminders to all States whoro initial roportr or roaond or third poriodia reports rhould have boon rubmittod before tho end of tho thirty-second session. Initial roportr were ovorduo *from* Argentina, Bolivia, Cameroon, Gabon, Niger, Saint Vincent and tho Oronrdinor, the Sudan, Togo and Viet Nam; roaond poriodia roportr were overdue from Bulgaria, Costa Rica, Cyprus, the Democratic People's Ropublia of Korea, the Dominican Ropublia, the Gambia, Guyana, Iceland, India, Iran (Islamic Ropublia of), Italy, Jamaica, Jordan, Kenya, Lebanon, tho Libyan Arab Jamahiriya, Madagascar, Mali, Mauritius, Morocco, the Netherlands, Now Zealand, Nicaragua, Panama, Saint Vincent • nd tho Grenadines, Sri Lanka, Suriname, tho Syrian Arab Ropublia, the United Republic of Tanzania, Uruguay and Venesuela; and third periodic roportr were ovorduo from Czechoslovakia, the German Democratic Republic, Iran (Islamic Ropublia of), Lebanon, tho Libyan Arab Jamahiriya, Tunisia and Uruguay,

Thirty-third session

41. The Committee was informed that thr Initial report of thr Philippines, the rraond periodic reports of Italy, Mexico, the Netherlands, Now Zealand, the United Kingdom of Great Britain and Northern Ireland - relating to tho dependent

territories and Uruguay, as well au the third periodic report of the German Democratic Republic - had been received.

B. Consideration of reports

42. During its thirty-first, thirty-second and thirty-third sessions, the Committee considered the initial reports of Belgium, the Central African Rspubllc, Guinea and Zambia, as well as the second periodic reports of Auetralia, Barbados, Colombia, Denmark, Ecuador, France, Japan, Rwanda and Trinidad and Tobago.

43. 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 thirty-first, thirty-second and thirty-third sessions. These sections are summaries baaed 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 5/ and in the ewnmary records referred to.

Trinidad and Tobago

44. The Committee considered the second periodic report of Trinidad and Tobago (CCPR/C/37/Add.7) at its 764th to 767th meetings, held on 29 and 30 October 1987 (CCPR/C/SR.764-SR.767).

45. The report was introduced by the repreosntativs of the State party, who said that by electing a new Government, on 15 December 1986, the people of Trinidad and Tobago had changed a régime that had ruled the country for 30 years and bad taken an important step towards achieving greater: democracy. A Constitution Review Commission had teen appointed to study possible amendments to the Constitution and the public had also been invited to submit its views on that subject. A number of potentially significant institutional innovations of relevance to human rights had been diecueesd at the Eighth Caribbean Community Summit, held in 1987 in Saint Lucia, including the possibility of establishing a Caribbean court of appeal and a Caribbean human righte commission. The Government was currently in the process of following up on a number of such proposals. On 1 July 1987, it had granted amnesty to eligible illegal immigrants from Commonwealth Caribbean countries. A new citizenship bill, providing for the possibility of holding dual citizenship, was also receiving consideration by Parliament as a matter of priority. Trinidad and Tobago took a great deal of pride in the peaceful political and civil evolution of the country's democratic system.

Constitutional and legal framework within which the Covenant is implemented

46. With regard to that issue, members of the Committee wished to know what significant changes, if any, had occurred that were relevant to the implementation of the Covenant since consideration of the initial. report, what the legal statue of the Covenant was compared with domestic law, particularly law existing when the Conetitution had first come into force, whether the High Court of Justice was guided by the provisions of the Covenant in interpreting the Constitution, whether it was possible to invoke the Covenant before a court, whether any legal remedy could be sought on the baeie of an alleged violation of the Covenant not covered by domestic law and whether there had been cases in which damages had been awarded for

thr infringement of hum&n right8 by the State. Members also asked whether activities relevant to the implementation of the Covenant had be ›n undertaken by the ombudsman since the conridoration of the initial report and with what results, what efforts *had* been undertaken to disseminate information abou the Covenant and the Optional Protocol *and* what factors and difficulties, ii *any*, had ● ffaatmd the implementation of tho Covannnt.

47, Regarding thr reference in section 6 of the Constitution to "existing laws" which might affect right8 and freedoms contained in sections 4 *and* 5 *of* the Conrtitution, members requested examples of such laws *and* asked what specific areas of law were involved in the findings of the Privy Council on two cases that had been referred to it. In addition, members wished to know to what ● xtont the spheres of competence of the Court of Appeals and the Privy Council coincided and the extent to which the competence of the ? tter affected the interpretation of the Covenant, how many appeals there were each year to the Privy Council, how much such an appeal cost and to what extent the poor were able to avail themselves of that recourse, and how much time ● lapaad between a judgement by the High Court and it8 resolution on appeal to the Privy Council,

48. In her reply, the representative of the State party ● xplainod that the main difficulty in implementing the Covenant wan one of human resources, since there were many urgent issues requiring attention. Thr Covenant could not be regardod a8 constituting a sufficient basis in itself *for* redress in the courts, since no effort had been made to enact legislation to incorporate it in domestic legislation. While the court8 would be aware of international law on a particular point, they would not be able to apply such provisions. Nevertheless, in *a* recent case, in order to determine whether *a* law was "reasonably justifiable", *a* judge had referred to the Covunant in concluding that there had been an infringement of human rights. The term "existing law" referred to the body of *common* law which Trinidad and Tobago had inherited, as well as to thr law8 ● nactod under the 1962 Conrtitution. Thr judgements delivered in two 1979 canon heard by the Privy Council had indicated that existing law wan not invalidated by the entry into force of the Constitution even where such laws appeared not to be in conformity with sections 4 an& 5.

49. Concerning the dissemination of information rolating to human rights, the representative said that the media, members of the legal profession and governmental and non-governmental organizations had alerted the population to their right8 and to the procedure8 available for seeking redress. Social studies programme8 in the school8 highlighted the freedoms contained in the Universal Declaration of Human Rights. The fact that the Committee had currently before it a case of a prison inmate in Trinidad and Tobago provided an indication of the people's awareness of the Optional Protocol.

<u>Non-discrimination and equality of the sexes</u>

SO. With reference to that issue, members of tho Committao asked why section 4 of the Conrtitution did not prohibit discrimination on the ground of political and other opinion and how a victim of discrimination on that ground would obtain effective redress, to what extent the Constitution and law8 of Trinidad and Tobago were in conformity with articles 2, paragraph 1, and 26 of the Covenant, what the law and practice *wan* to protect the varioua ethnic groups from discrimination in areas such *an* access to employment and housing and how he right8 of aliens were restricted as compared with those of citizens. Rogarding equality of the sexes, it

was asked what difficulties, if any, were encountered by woman with regard to the effective enjoyment of equal rights provided for in chapter 1, part 1, of the Conrtitution and whether the authorities at all levels were taking positive action to ensure that women were adequately protected. Members also requested statistical data on women's participation in political, economic, social and cultural life, including their proportion in schools, universities, the civil service, and in parliamentary and other governmental organizations.

51. In her reply to the questions raised by members of the Committee, the representative of Trinidad and Tobago noted that neither the Conatitution nor any other statutory measure contained any restriction on the right Lo freedom of opinion and expression, apart from statements which were in contempt of court, blasphemy, sedition and defamation, but that it might be uroful in the future to incorporate into law a broad and positive enunciation of the right to freedom of political opinion. There was no discrimination based on taco or religion and, in practice, the follow-up given to an application for housing was never based on ethnic or religious consideration. Aliens, once they acquired resident status, enjoyed equal treatment to the extert permitted by that status. Trinidad and Tobago did not regard itself as a country of asylum for refugees, oving to its economic and demographic situation, but applications for refuges status were examined with dispatch and humanity.

52. With reference to the equality of the sexes, the representative said that the situation in Trinidad and Tobago was not entirely satisfactory, since men were at the head of most institutions and women had only limited access to promotion. The existence of some relatively eminent and influential women tended to convey an inaccurate impression of the real role of women in society. However, the Government had signed the Convention on the Elimination of All Forma of Discrimination against Women (General Assembly rsaolution 341180, annex, of 10 December 1979) and would soon ratify it and even incorporate it into national legislation. It had also given its approval for an expert group meeting on women And development. Subsequent to the 1986 elections, there was one woman member of the Cabinet out of 11, three women Deputy Ministers, four women Directora in the Civil Service, 18 women at the head of important departments and 10 women out of the 67 members of both Houaea of Parliament. Women also occupied a prominent place in schools and universities.

State of emergency

53. With reference to that issue, membora of the Committee wished to know what the current poaition of Trinidad and Tobago was vith respect to its reservation concerning article 4, paragraph 2, of the Covenant, whether there had been a state of emergency since the entry into force of the Covensnt during which one or more of the rights enumerated in article 4, paragraph 2, had been derogated from and what safeguards and remedies were available to the individual during a state of emergency, particularly in case the writ of habeas corpus was suspended. They also asked whether a person who had bean detained during a state of emergency could apply to an ordinary court for a ruling on the lawfulness of his detention, whether a particular legal text declared not reasonably justified by a court was automatically annulled or was tabled before Parliament and what would happen if the President dissolved Parliament after the proclamation of a state of emergency. Clarification was also requested of section 13 of the Constitution, which seemed to permit derogation from fundamental rights even in periods other than states of emergency. Some members suggested that, in view of the serious implicationa of the

State party's reservation to article 4, paragraph 2, the problem of possible derogations from the provisions of the Covenant during a state □↗ ● morgenay rhould be considered by the Conrtitution Review Commission.

54. In her reply, the representative of the State party raid that her Government had not given consideration to withdrawing its reservation to article 4. paragraph 2, of the Covenant. The Presidentwas ● mpowored under the Constitution to proclaim a rtato of ● morganay provided that the ● aope and nature of the disturbance wassuch as to be likely to endanger public safety or to deprive the aommunity of ● 88ential services. During statesof ● mergenay, persons could be detained for up to six months, by virtue of a special Act that could be passed during that period, bu : such an Act had the force of law only during the state of emergency and became null and void thereafter. If a person wasstill in dmtmntion when the Act ceased to have effect, he could claim hi8 release through the habeas corpus procedure. The Constitution stipulated that any law or executive action that infringed upon an individual's human right8 could be declared null and void by the Supreme Court. In that connection, it was to be noted that the Conrtitution made provision for a person lawfully detained during a period of public ● morgonay to have hi8 case reviewed by an independent and impartial tribunal. No special tribunal currently existed, since the legal instrument ● otabli8hing it had been repealed in 1978. During periods of public ● morgonay, the President was not empowered to override or amend provisions of the Conrtitution, such a8 those establishing Parliament and the Supreme Court. There had not boon a state of ● mergoncy in Trinidad and Tobago since 1970.

Right to life

55. With reference to that issue, members of the Committee wished to know how many times the death penalty had been pronounced and how often it had boon carried out since the entry into force of the Covmnant for Trinidad and Tobago, how many people had been pardoned by the Amnesty Act promulgntod in August 1986, how many were still awaiting execution and how long thmy had been waiting, whether thm ruling by the High Court in favour of some convicted persons could bm applied to othmr persons rtill under sentence of dmath and why thm Government did not avail itself of its right to pardon such persons. It was also asked whmthmr thm list of offmncms involving the death penalty was restrictive and whether the sentence was always carried out in the same way.

56. Members of the Committee also requested additional information regarding article 6 of the Covenant in accordance with the Committee's genmral comments Nob. 6 (16) and 14 (23), the activities of the National Committom for the Abolition of the Death Penalty and the Government's attitude towards those activities. Thmy wished to know further what measures had been takmn by the Government in the field of health care, particularly with a view to reducing infant mortality and raising life ● xpactancy, whether there were regulation8 governing the use of firearms by thm police, how many persons had lost their lives a8 a result of the excessive use of firearms by the police, the military and other law enforcement agencies, whether investigations had been carried out to establish responsibility in such cases, whether those responsible had been prosecuted or disciplined and whether the Government had given thought to organizing special courses for law enforcement officials.

57. In her reply, the representative said that the issue of the death penalty was under discussion in her country and that since the entry into force of the Covenant

in 1978 no death sentence had been carried out. On the twenty-fifth anniversary of independence, on 31 August 1906, the President had pardoned 12 persona although 8 were still awaiting execution. The Committee would be informed in due course of the outcome of the Constitution Review Commission's work, which would influence the direction of government policies relating to the death penalty and to amnesties.

58. On the measures taken to reduce infant mortality and to raise life expectancy, the representative stated that infant and maternal mortality had declined notably between 1970 and 1981, although rates ware still far too high. Regarding the use of firearms by the police forces, the Government was determined to take action against unlawful killings by public officers. In 1985, a Commission had been appointed to inventigate the factors leading to the unneceaaary use of force by policemen and in 1986 the Commissioner of Police had been arrented. Members of the police and security forces received continuous training on all issues relating to the proper performance of police duties. Recommendations relating to the need for higher levels of training and for raising the level of qualifications required at the time of recruitment were recently put into effect.

Liberty and security of person

59. With reference to that issue, members of the Committee wished to know whether the practice in Trinidad and Tobago was consistent with article 9, paragraph 3, of the Covenant, whether there was a statutory maximum period of pro-trial detention, what measures had been taken to ensure that persons arrested or detained were brought to trial within a reasonable time or were released, what the average time was between arrest and trial in a case of murder or another serious offence, under what conditions release on bail could be granted, whether bail was available to all categories of the population regardless of their means and whether there were any other possibilities for release pending trial. It was observed that the heavy work-load of the courts could hardly justify excessive delays. Additional information was also requested on the remedies available to parsons who believed that they were being detained wrongfully.

60. In her reply, the representative explained that magistrates and judges might grant bail to any person charged with an offence not involving the death penalty. In particular, offenders under 16 who could not be brought forthwith before a magistrate immediately could be released, with or without bail. Parliament had before it a draft bill for the refusal of bail in cases of trafficking in narcotic drugs, possession of firearms, armed robbery and rape. As to pre-trial detention, the representative stated that there was a statutory limit of 48 hours within which any person arrested had to be brought before a judge, and that any person falsely or wrongfully arreated could lodge a complaint against the official responsible for the arreat. Nevertheless, she acknowledged that the accumulation of cases on court lists and the attendant delays, obstacles and frustrations could lead to a loss of confidence in the administration of justice. Some improvement was expected to result from the establishment of a proposed family court and a small claims court. In addition, a jury amendment Act concerning Preliminary inquiry procedures had been drafted and special courts had been established to deal with offences relating to narcotics and firearms. Parliament also had before it a draft bill designed to increase the resource8 of the judiciary to enable the Ministry of Justice to recruit judges in order to speed up the legal procosa.

Treatment of prisoners and other detainees

61. With reference to that issue, members of the Committee wished to know whether the Prison Rule8 established under the West Indian Prison Act of 1883 had boon replaced, how priaona were currently organised, whrthar priron regulation8 were known and accessible to prisoners, what ● ♦□□■ had boon taken to improve priron conditions and whether prisoners could lodge oomplainta with a court or social agency. They also asked whether police and priron officials have boon made aware of the United Nations Standard Minimum Rules for the Treatment of Prisoners, whether such officiala had ever boon charged for violating the rights of prisoners and, if so, what penalties or punishment had been imposed and under what procedures complaints of mistreatment could be lodged. It waa also asked whether children under the age of 10 were subject to penal law and whether such offenders were placed in orphanagsa irrespective of whether or not they had parents, whether, in connection with the Debtor's Act, the proviaiona of article 11 of the Covenant were fully respected, whether keeping condemned person8 on death row for a prolonged period could amount to cruel and inhuman trratmont and why it had boon necessary to keep a special budget for the judiciary.

62. In responding to tha questions that had been raised, the representative of the State party raid that the question of priaona and priron rules war being ● xaminod under the general question of law reform, for which a Law Reform Commiaaion had br-n established. The Standard Minimum Rulaa for the Troatmant of Prisoners had been adapted without deviation from their spirit and purpoaa. Most of the Rules had been applied and any problem8 encountered were likely to have been caused by budgetary, cultural and security conatrainta. It was univoraally recognised in the country that prison conditions left much to be desired and that had led to the establishment of two commissions of inquiry in the past. In his report tabled in Parliament in May 1986, the ombudsman had drawn attention to a number of practicoa which, in his opinion, were condemnable, and had made a number of relevant recommendations. The uae of excessive force against a person was a criminal offence and offenders could be prosecuted. The normal liability of police and prison officials under civil and criminal law was supplemented by codes of discipline which specifically provided that prisoner8 were not to be subjected to any form of torture. However, aome violations of the coder of discipline had recently been reported. All prisoners were interviewed on admission, when regulations concerning treatment and discipline, complainta procodurea, and information on their rig ts and obligations were explained to them. Abstracts of the priaon rules were posted at accessibl points. The special budget for the judiciary had been requested in order to give the judiciary the flexibility to respond more rapidly to the requirement8 of justice.

Right. to a fair trial

63. With regard to that issue, members of the Committee wished to receive additional information on article 14 of the Covenant in connection with the Committee' s general comment No. 13 (21), legal guarantees for a fair and public hearing by a competent, independent and impartial tribunal, the organiaation and functioning of the bnr and the provisions of the Legal Aid and Advice Act, particularly in respect of its compatibility with article 14, paragraph 3, of the Covenant. It was also asked how aoon after arrest a person could contact his family or a lawyer, whether there was a special procedure for the removal of a judge of the Supreme Court and by whom and for what reasons he could be removed, whether the registry of the Supreme Court was completely under the control and

supervision of the courts, through whom the necessary resources for the preparation of case records were provided and whether there had been delays in the provision of such resources, whether women were allowed to sit on juries and whether- in certain cases juries were aequeatered until the and of the case and, if so, whether there waa any special arrangement to allow women to opt out of jury service. In addition, one member aaked why it was deemed necessary to amend the Conatitution in order to allow for the appointment of temporary judyes, since it appeared that that could be done under section 104 of the Constitution.

64. In replying, the representative of Trinidad and Tobago explained that the salaries of judgos were paid from the Consolidated Fund and could not be reduced. The procedure governing the removal of a judge from office waa provided for in the Constitution but had never been utilized. Under the Jury Act, women were also required to serve on juries and juries could be sequestered on certain occaaiona. The previous Government had used retired judges and eminent members of the bar as temporary judges, but that situation had created problems and had therefore been stopped. The usefulness of reverting to that practice was recognized, but was not favoured by everyone and had accordingly been placed before the Constitution Review Commission for consideration.

Freedom of movement and expulsion of aliens

65. With reference to that issue, members of the Committee wished to know whether there were any restrictions on travel abroad other than those relating to tax payments, how many people had been denied the right to leave the country for being in arrears in the payment of their taxes or for any other reasons, how long it normally took to obtain a tax clearance exit certificate and whether departure taxes were levied on persons leaving the country. Noting that the measures taken to prevent tax evasion were clearly allowable under article 12, paragraph 3, of the Covenant, members asked whether on that basis the Government of Trinidad and Tobago envisaged the possibility of withdrawing its reservation to article 12, paragraph 2, of the Covenant.

66. Members also wished to receive additional information on the position of aliens, in accordance with the Committee's general comment No. 15 (27) and wished to know whether an appeal against an expulsion order had suspensive effect, whether aliens were entitled to have recourse to the courts to challenge decisions relating to deportation and whether, and under what circumstances, a citizen could be deported.

67. Replying to questions raised by members of the Committee, the representative of the State party explained that the Tax Clearance Certificate procedure was simple and took less than an hour if the individual had no arrears; if there were outstanding taxes, the certificate was withheld until they were paid. The requirement of A certificate could be waived if the purpose of the trip was to obtain medical treatment. The taxes covered by the certificate related to income, property, interest and investment. The Government placed no other restrictions on travel abroad and the certificate itself was valid for every trip taken during one year.

68. Responding to other questions, the representative said that her Government was aware of the difficulties experienced by illegal aliens, especially those coming from the Commonwealth Caribbean and it had therefore decided that all citizens of those countries who had been in Trinidad and Tobago illegally before

16 December 1986 and who were not facing criminal charges would be granted an amnesty and a period of a year to apply for permanent residence leading to citizenship. The number of illegal aliens concerned was aetimated at between 115,000 and 200,000, In addition, any alien against whom an ● rpulrion order was issued had the right to appeal. While the appeal was being processed, the order was auapended. However, bail could be refured if there war justification ↗□□ ● uch refusal.

Right to privacy

69. With reference to that issue, members of the Committea requested details on protection against arbitrary and unlawful interference with privacy, family, homo and correspondence, particularly with regard to portal and telephone aommuniartione. It was also asked whether evidence obtained in violatioq of the right to privaay could be used in the courts and, if so, whether ruah instances had occurred and what the reaction of the court had been, whether authorities other than judges could order a house to be searched and under what ciraumrtanaer and whether wire-tapping war authorized by law.

70. In replying, the representative of Trinidad and Tobago stated that the Constitution recognised the right to privacy. No authority had the right to interfere with tho individual's right to privacy, family, home or correspondence, rave ae provided for by law. During a state of emergency interference with privacy was not arbitrary if curried out in accordance with the provirionr of the Constitution. In the case of Maharaj y. the Attorney-General it had boon contended that evidence produced in court had been gathered illegally. The local aourte had ruled in favour of the State but Mr. Maharaj had been granted permission to prerent his case to tha Privy Council which had decided in his favour. Wire-tapping was not permitted. Search warrants could be issued by a justice of the peace, magistrate or judge.

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

71. With reference to that issue, memberr of the Committee requested further information on laws and regulations partaining to recognition of religious ● octe by public authorities and on controls exercised on the freedom of thr press in accordance with the law. They also asked whether the prohibition against publishing "blasphemous . . . matter" was consistent with the right to freedom of expression undor article 19 of the Covenant, whether individuals could be arrested or detained for expressing political opinions, whether public funds were allocated to religious denominations and, if so, whether the criteria in that respect had been ● rtablished in such way au to avoid any dirarimination, whether any teachers at denominations1 establishments whore salaries were paid by the State enjoyed the status of civil acrvants and whether tha criminal penaltiaa for infringement of freedom of religion had actually been applied. With reference to two cases that had occurred in 1983, it was asked whether religious movements were protected against the false portrayal of their conviationr.

72. In connection with freedom of expression, members asked whether any reforms were under consideration or before the Parliament, whether it waa planned to establish an independent telecommunications authority, whether the foreign press was distributed in the country and whether it was possible to appeal against a decision banning a publication.

73, In her reply, the representative of the State party explained that the coexistence of different confessions and creeds was a fact of lifo in her country. Some religious denominations had entered into an agreement with the State in respect of education whereby the Government paid the emoluments of teachers in religious schools, but such funds were not intended for places of worship an such. Religious denominations could apply to the Parliament for approval and if accepted the denomination concerned was granted official status.

74. The Constitution provided that the rights to freedom of conscience, religious belief and observance, thought and expression could not be abrogated, abridged or infringed by law and that alterations of those constitutional provisions would require the aupport of two thirds of all the members of each House of Parliament. The Constitution also specified that tha right of a parent to provide for the education of his child in the school of his choice was a fundamental right. There were no discriminatory reatrictionn on the establishment and maintenance of charitable and humanitarian institutiona. Teachers at denominational establishments enjoyed the same opportunities for promotion as teachers at public schools, and they could request a transfer to the public education ayatem.

75. Roman Catholica represented the largest percentage among Christians. There were no statistics on the number of non-believers, atheists or agnostics. All members of the population were bound to respect the rights of others and the various religious groups were united in an inter-religious organisation, which helped to enhance the atmosphere of non-discrimination and tolerance in the country. The construction of places of worship was guaranteed by the Constitution and was subject to approval by the planning authorities.

76. The press was not subjected to any governmental censorship or control. The Government wan endeavouring to ensure equal access to the media and an independent authority had been established for that purpose. Some foreign publicationa could be prohibited if they were found to harm the national interests, but an appeal could nlwaya be lodged.

Freedom of assembly and association

77. With reference to that issue, members of the Committee requested clarification of the term "recognized majority union" used in paragraph 61 of the report. They also wished to know how many political parties there were in Trinidad and Tobago and whether they were all represented in Parliament, what the ideological, ethnic, religious or other criteria underlying their establishment were and why some peraona had been disqualified from membership of the House of Representatives and some other public bodies. Regarding freedom of assembly, they wished to know whether any restriction8 had been placed on the exercise of that right and whether the organizers of a public march or meeting could contest a decision of the police imposing conditions on or prohibiting such events.

78. In addition, it was asked how many registered trade unions thero were, what their total membership and the proportion of their members in relation to the number of workers was, whether there were trade-union federation8 and who had the right to decide whether a union had broken the law. Members also requested information on the activity and the role of non--governmental organizations concerned with human rights.

79. Replying to the questions that had boon raised by members of the Committee concerning politiaal parties, the representative of the State party notrd that about 20 parties were registered, but only 4 had presented candidates at the latest elections. ✌♦ ● lrationr, the parties usually presented a candidate of the • mo rthnia origin • 8 the predominant group in the aonrtituonay concerned; thus, some minorities might feel ● xaludod ● lthouqh they aould be represented in the parties and hold seats in the Senate. The dirqualifiaation of certain perso~s from membership of tho prinaipal publia bodies had been based on the principle Of aonfliat of interest since the persons concerned were in charge □↗ ● orviaoa that were ● rrontial, to the aountry.

80. A trade union aould apply to the Registration Recognition and Certificate Roard at the place of work for roaoqnition by the ● mployor concerned. The union that obtained the largest number of votes during a secret ballot would be recognised as the majority union. That did not prevent thr registration of minority unions, but ● mployor8 negotiated only with the majority union unless another union had obtained almost the same number of votes, in whiah case it would also be permitted to take part in the negotiations. A8 8 general rule, workers were free to organise themselves in ● aaordanao with established procedures. Trade unions were all affiliated with the Trade Union Congress.

01. Referring to freedom □↗ ● r8ombly and the means of recourse open to the organizers of meetings or marches, the representative ● aknowlodqmd that if a prohibition was snnouncod only 24 hour8 before an event was due to take plaao, very little could be done by way of recourse. In the ● xorai8o of that right, • aaount had to be taken of considerations relating to security and any disadvantages to the general publia. Authorisation to hold demonstrations was not normally refused. Non-qovornmontal associations were not subject to special regulations and the Government was determined to consult thorn to a greater extent in the future.

Protection of the family and children, including the right to marry

82. With reference to that issue, members of the Committee requested fuller information on the equality of rights and responsibilities of spouses a8 to marriage, during marriage and at it8 dissolution and on the system of protection of children. In addition, they inquired whether discrimination was still practised against children born out of wedlock, particularly in the matter of succession, • d whrthrr such children were entitled to full or partial roaoqnition.

83. In her reply, the representative of the State party referred to certa legislative provinionn whose purpose was to remove the legal disabilities of children born out of wedlock and to remedy the disadvantages faced by women and children stemming from their extramarital status. Effort8 had been made to ensure respect for the rights of children, particularly when problems were ● ncountorod in regard to the exploitation of labour. child abuse and juvenile delinquency. The term "illegitimate" was no longer in usc . and the principal concern of the authoritiar was ta ensure that a child born out of wedlock received maintenance support. Such a child could alro take his father'8 name. In cases where the father died intestate, hi8 children had the same inheritance rights whether born in or out of wedlock.

Rights of minorities

84. With reference to that issue, members of the Committee observed that paragraph 75 of the report stated that there were no minority groups in Trinidad and Tobago. They wished to receive an explanation of that statement in the light of the fact that various ethnic and religious communities existed in the country.

85. In her reply, the representative pointed out that, while there were no minority groups in the country from a statistical standpoint, it could equally be claimed that all the population belonged to minorities. Two important groups constituted 81.5 per cent of the population; Likewise, although there were numerous religious groups, none of them was really predominant and it could well be said that the country as a whole was composed of religious minorities.

General observation5

86. Members of the Committee expressed appreciation to the representative of the State party for their collaboration. Although they had not been able to reply to all the numerous and specific questions that had been raised, their responses had helped to supplement the very brief second periodic report submitted by Trinidad and Tobago. While progress had been made in Trinidad and Tobago regarding the recognition of fundamental 'rights, which was remarkable in a society of such religious, cultural and racial diversity, a number of areas of concern still remained. These included questions relating to the death penalty and the lengthy period of waiting and uncertainty in prison to which persons sentenced to capital punishment were exposed, excessive use of firearms by the police, the length of pre-trial detention, states of emergency, the riqht to leave the country, the situation of women and of children born out of wedlock and the wide latitude enjoyed by the State in respect of derogations from certain fundamental rights. It was agreed that the Committee's concerns and comments in the foregoing regard would be brought to the attention of the authorities of Trinidad and Tobago and that the required additional information would be supplied.

87. The representative of the State party thanked the members of the Committee for the keen and critical interest they had shown in her country's second periodic report and assured them that her delegation would do its utmost to provide replies to the questions that had remained unanswered.

88. In concluding the consideration of the second periodic report of Trinidad and Tobago, the Chairman/reiterated the importance of maintaining an adequate dialogue between the Committee and the States parties and thanked the State party's representative for the assurances she had provided in that regard.

Zambia

89. The Committee considered the initial report of Zambia (CCPR/C/36/Add.3) at its 772nd, 773rd and 776th meetings held on 4 and 6 November 1987 (CCPR/C/SR.772, SB.773 and SR.776).

90. The report was introduced by the representative of the State party who pointed out that his country had made provision in its Constitution and other statutes for the enjoyment of basic human rights by all its people and had ratified the most important instruments in the field of human rights.

91. In the report, an attempt had been made to highlight the provisions of the Constitution and other legislation that related to various human rights. Its brevity did not mean that the Government attached little importance to human rights. Indeed, Zambia's stand - which held that human rights must be safeguarded in such a way that all people, whatever their race or nationality, were treated with dignity and respect - was known to the whole world. Despite the very difficult position it occupied in southern Africa, Zambia was making every effort to comply with the terms of international human rights instruments.

92. Members of the Committee expressed appreciation of Zambia's readiness to submit its initial report despite the numerous serious problems it was facing. While the report itself was far too brief and did not conform to the Committee's guidelines, its submission was clearly a positive step which indicated that the provisions of the Covenant would not remain a dead letter in Zambia.

93. With regard to article 2 of the Covenant, members of the Committee wished to know what the legal status of the Covenant was in Zambia, how any eventuaf conflict between the Covenant and domestic legislation would be resolved, whether a legal remedy could be sought on the basis of au alleged violation of a provision of the Covenant not recognised under existing domestic law and whether the provisions of the Covenant had ever actually been invoked by individuals or by the courts. Members also wished to know what steps had been taken to disseminate information about the rights guaranteed under the Covenant, whether the people of Zambia were aware of their fundamental rights stemming from the Covenant and whether such rights were taught in the schools and to law enforcement and prison officials.

94. More generally, several members noted that the rights guaranteed under article 13 of the Constitution appeared to be subject to an unlimited degree of restriction as a result of article 4 of the Constitution, which established the United National Independence Party as the sole legal political party in Zambia. They considered, accordingly, that a great deal of additional information about Zambia's legal and political system would be needed before it would be possible to assess the extent to which its laws and practices were consistent with the Covenant.

95. With reference to article 3 of the Covenant, members requested information regarding the factual status of women in Zambia, such as statistics concerning the proportion of women to men in educational institutions, the civil service, Parliament and private employment - especially at the management level and the degree to which women enjoyed equality in everyday life. It was also asked whether the principle of equal rights was fully implemented in the case of divorce and whether any measures of affirmative action had been introduced in favour of women to improve their condition.

96. In connection with article 4 of the Covenant, members of the Committee requested clarification of the extent to which article 26 of the Constitution authorioed derogations from fundamental rights and freedoms during periods of emergency and wished to know specifically whether permissible derogations under that article included any rights listed in article 4, paragraph 2, of the Covenant. Members pointed out that States parties were obliged, under article 4, paragraph 3. of the Covenant to give notice of any derogations from their obligations under the Covenant during a public emergency and that a number of political opponents had been arrested and detained without trial since 1986. They therefore wished to know whether a state of emergency had actually been proclaimed in Zambia and, if so, whether and to what extent there had been derogations from

obligation8 under the Covenant. It was also asked whether the remedy of habeas corpus could be removed during a stats of emergency.

91. Regarding article 6 of the Covenant, members wished to receive information concerning the death penalty, particularly ths nature of the offences punishable by the death penalty, the number of death sentences impoaed over the past three years, the number of such sentences actually carried out, the numher of persons awaiting execution and the length of time that they had been waiting. Information was also requested regarding infant mortality statistics and about measures taken to reduce infant mortality as well as exposure of the population to epidemics. It was also asked what. measures had been taken to control the use of firearms.

98. With reference to article 7 of the Covenant, members of the Committee wished to know whether instructions with regard to the Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials were given to police and military personnel, what procedures existed for prompt and impartial investigation of any allegations of torture and redress for the victims and whether any police officers had been charged with such offences and, if so, in how many cases they had been found guilty and punished. Members also asked how allegations of torture or ill-treatment, such as those relating to the case of seven foreigners who had been arrested in northern Zambia in July 1986, were investigated and how and in what form the findings of such investigations had been made public. Noting that article 17, paragraph 2, of the Constitution did not appear to provide protection against torture or inhuman treatment under laws enacted prior to the entry into force of the Constitution and that, as such, the provision seemed to be incompatible with article 7 of the Covenant, one member asked whether the Government of Zambia intended to bring its legislation into conformity with the Covenant. Another member. also referring to article 17 of the Constitution, wished to know what machinery had been established to give that article effect and how fully the rights enumerated therein were actually protected.

99. With regard to article 8 of the Covonant, it was asked whether articles 40 and 41 of the Zambian Rules of Public Order, under which public service employees could be forced in certain circumstances to remain in their jobs against their will, had actually been repealed as the Government had promised.

100. In connection with article 3 of the Covenant, membrra of the Committee requested information on the duration of pre-trial detention and appeals procedures, including procedures that might be available during a state of emerqency . In that regard, one member wondered how, when, and in what contaxt special procedures, such as habeas corpus, were applied and whether a law could be appealed on grounds of unconstitutionality. Members also requested clarification of certain preservation of public security regulations under which the President was empowered to detain persons for definite or indefinite periods - as well as of article 27,. paragraph 4, of the Constitution, which appeared to deprive detainees of adequate legal assistance.

101. With reference to article 10 of tho Covenant, members requested information about priaon conditions in Zambia, particularly with respect to the separation of juveniles from adults, men from women and convicted prisoners from persons awaiting trial, and about measures being taken to rehabilitate former convicts. One member requested clarification of article 15, paragraph 1 (c), of the Constitution which, in his view, appeared 1.0 be in conflict with article 19 of the Covenant.

102. Regarding article 12 of the Covenant, members of the Committoe requested information about regulations covering the issuance of passports and more generally about the riqht to leave one's country, whiah did not room to be provided for under article 24 of the Constitution. Clarification was 8180 requested of an apparent conflict between article 12, paragraph 3, of the Covenant 8nd article 26, paragraph 3 (b), of the Constitution, since the latter placed no limitations on restrictions that could be imposed on the freedom of movement of aliens.

103. Concerning article 13 of the Covenant, members asked how many South African, Namibian and Sudanese refugees there were in Zambia 8nd whether their presence had caused any problems. Members 8180 wished to receive information about the position in Zambia of aliens othmr than refugees, including the procedures relating to their expulsion. It was asked, in thm latter connection, whether an alien could lodqm an appeal against a deportation order and whether suchanappeal had suspensive ● ↗↗🏳♦🖐

104, With reference to article 14 of the Covenant, members of the Committee requested additional information on how the principle of ● qu81ity before the law and the competence and independence of the courts 8nd of judges were assured under the Zambian legal system. In the latter regard, more information was requested about the conditions rmlatinq to the appointment and removal of judges and magistrates as well a8 the heavy influence of the executive on the Judicial Service Commission, which dealt with the appointment, transfer and discipline of judges. Members also wished to know whether special court8 - especially military court8 - existed and whet the extent of their competence was, what languages were used in the courts, how long the legal delays actually ● ncountorod in practice were and whether the possibility of an appeal ● xintod in all criminal cases, in conformity with the Cover nt.

105. Concerning srticlm 15 of the Covenant, it was asked whether there worm 8ny laws or regulations undrr whiah persons could be prosecuted for an offence which did not constitute an offence at thm time it was committed.

106. Concerning article 17 of thm Covenant, one member, observing that article 19 of the Constitution did not clearly indicate the limit8 of authorized interference with privacy, requested detailed information in that regard.

107. In connection with article 19 of the Covenant, members requested information on the nature, control or ownership of newspapers, radio 8nd television and ths opportunities open to the people to obtain information, the ● xi8tonco of pre-publication or post-publication censorship, the possibilities for lawful expreaaion of opinion critical of the Government or of it8 members and special restrictions, if any, applicable to foreign correspondents. Several members were of tha view that article 4 of the Constitution and article 19 of the Covenant might not be fully compatible, particularly in respect of freedom of opinion, and asked for additional clarification. It was also asked whether anyonr had been arrested for his political. opinions.

108. Regarding articles 21 and 22 of the Covenant, members of the Committee wished to know whether there were any restrictions on political or trade-urion meetings or on the right to strike and whether individuals could join, or occupational groups form, trade unions.

109. In connection with article 25 of the Covonant, several members asked whether it was possible, in view of Zambia's one-party political system, to protect the

right of citizens to take part in the conduct of public affairs, and to have access to public service, without distinctions based on political or other opinion. Information was also requested concerning the required qualifications for entry into the public service or Parliament.

110. With regard to article 27 of the Covenant, members of the Committee requested statistical data on the composition of the Zambian population. Members also wished to know whether there were any problems relating to the coexistence of various ethnic groups within Zambia and whether representation in the House of Chiefs was based on such considerations as membership of tribal, religious or linguistic groups.

111. Turning first to the broader concerns voiced by members of the Committee regarding Zambia's legal and political system, the representative of the State party recalled that Zambia had known no peace since gaining independence in 1964 owing to the unswerving support it had given to the liberation movements in Zimbabwe, Angola and Mozambique. The effects of the fierce armed struggle in these areas had spilled over into Zambia, which had become a target of aggression from Portuguese and Rhodesian forces and a host to thousands of refugees, some of whom were clearly agents sent to destabilize the country. Zambia currently had the highest concentration of African refugees from many countries, in addition to thousands of illegal alien residents.

112. Political stability had been further threatened by the establishment of tribal-based political parties, which were encouraged by South Africa for the purpose of creating chaos. In a country composed of 73 ethnic tribes in a population of 7 million, such a threat was far from idle. Moreover, Zambia's economic situation had been deteriorating seriously owing to the economic sanctions that had been imposed by the international community against Rhodesia. It was against that background that the decision to mobilize the Zambian people in a single unit to promote development, and to declare a state of emergency, had been taken.

113. Despite the continuing state of crisis, fundamental human rights had been strictly respected as the corner-stone of Zambia's political philosophy. The institution of the one-party system was decidedly not incompatible with the enjoyment of civil and political rights. A reading of the Party's constitution would show that it was open to criticism and change by decision of the majority. Furthermore, free elections, by secret ballot, had been held regularly every five years and at the last elections, in 1903. 760 candidates had contested 125 parliamentary seats.

114. In view of its problems, Zambia required stability above all else. Its one-party system had enabled the nation to maintain its political stability and its people had enjoyed a peace which would not have been possible otherwise. Indeed, in an extremely difficult situation, Zambia's political system had worked remarkably well and the prevailing atmosphere of stability had even served to attract nationals of many other countries.

115. In his reply to questions concerning the status of the Covenant, the representative explained that, in general, almost all the civil and political rights enshrined in the Covenant were covered by the Constitution of Zambia, the Penal Code, the Code of Criminal Procedure, the Immigration and Deportation Act, the Refugees Act and the High Court and Supreme Court Acts. It was those courts

which had thr responsibility for determining whether or not fundamontal human rights had boon infringed and for providing the appropriate remedy in individual cases.

116. The provisions of the Covenant did not automatically become part of Zambian legislation but Zambia did intand to take appropriate steps under ● rtiulo 2, paragraph 2, of the Covenant an and when the prevailing social, politioal and ● oonomic circumstances made it porriblo to do 80. Although the introduction of some legislative Change8 would require lengthy consultations, Zambia had already started along the right path by taking the important step of ratifying the Covenant and submitting its initial report.

117. Regarding questions relating to non-discrimination and thr rtatur of women, the representative stated that hi8 Government recognised that women performed a leading role in the nation's life and recalled that undrr article 13 of the Constitution women were placed on an equal footing with men. Womrn were participating to an increasing extent in Zambia'8 social, economic and political life, holding senior positions as members of the Central Committoe, the Government and the judiciary (there were three women High Court judges), and in the business world and the legal, medical ond other professions. While woman in rural ● □□ᘓᘓ continued to play their traditional roles ● n8hrined in austom, the vernment had made groat efforts to improvo their rtatur. One example of the Government's determination to redress imbalances between mrn and womon dating from the part was thr policy decision to admit girl8 to State secondary schools with lower mark8 than boys.

118. Womrn enjoyed the same working conditions a8 mer ● mployod in similar job8 and had tho same access to loan facilities. Even if unmarried, they were entitled to paid materni ty leave. Undrr thr terms of the Law Reform (Miscellaneous Provisions) Act, women were ● titled to enter into aontractr and to sue and be sued in their own name, to marry freely, to divorce, and to vote and content elections. African aurtomary law was recognised and ● nforcad to the ● xtmnt that its principles were consistent with written law8 or principles of natural justice.

119. With reference to questions raised by members of the Committee concorning article 4 of the Covenant, the representative of thr State party confirmed that a state □↗ ● morgency, which had boon proclaimed and published in the Government Gazette, was still in effect. He pointed out, however, that certain rights, such as the right to life, freedom from slavery and forced labour, freedom from inhuman treatment and the right to protection of the law could not be derogated from even in times of emergency. The only rights that could be derogated from were the rightr to personal liberty, protection from deprivation of propotty, privacy of thr home, freedom of expression, assembly and association, freedom of movement and protection from discrimination. In actual fact, few law8 removing liberties had been enacted and most alleged violations, according to law reports, related to freedom of movement.

120. An individual could successfully challenge the deprivation of such rights in the High Court if ho could show that the measures taken exceeded action which could be justified by the circumstances prevailing at the time. In the case of some appeals, the courts had ruled against the State and the persons involved had been released and even awarded damages.

121. Replying to questions relating to the right to life, the representative of the State party stressed that Zambia abhorred the taking of life and the Party and Government were deeply concerned about the quality of life of every citizen. Among various health measures that had been taken, he drew attention to thm establishment throughout the country of a network of hospitrls, health centres and clinics, the launching of a primary health care programme to ensure that children were immunised and that mothers wore taught about nutrition. the initiation of various programmes to deal with epidemics and the broadcasting in various local language8 of numerous health-related information programmes on the natianal radio.

122. The death penalty wax mandatory for murder and treason and for aggravated robbery where the use of a firearm or other offensive weapon caused grievous bodily harm. However, the death penalty could not be passed on a person who was under 18 years of ago at the time of the commission of the offence. Persona convicted under that age would not be executed once they reached the age of 18 year8 but detained at the President's pleasure under specified conditions. The death penalty could not be carried out on a pregnant woman. The sentence in such a case became one of life imprisonment. Every effort was being made to reduce undue delays in executing death sentences but the procedurea for clemency required some time. The use of firaarms by law enforcement officers was authoriaad only in exceptional circumstances anti as a general rule the police did not carry firearms.

123. Responding to question8 raised under article 7 of the Covenant, the representative noted that inhumane treatment was contrary to Zambia's philosophy of humanism and that torture was unlawful. Allegation8 of torture, particularly of persons being held in custody, had been investigated and court-ordered medic 1 examinations had been conducted. Some police officers accused of assaulting suspects had been tried and convicted. Statements obtained under duress were not admissible in court and whenever such coercion was alleged in open court, proceedings were held to determine whether the alleged confession nad been made voluntarily.

124. The representative rejected the allegation8 of torture by some foreigners who had been arrested as false and defamatory. Some of the individuals involved had been found in compromising circumstances while others had been sent into the country to masquerade as tourists in order to carry out subversive acts. In a number of such cases, the relevant accredited missions had admitted publicly that their nationala had been treated humanely while in custody. Victim8 of alleged mistreatment by the police could file charges privately in cases where the police authorities were unwilling to prosecute the alleged offendera.

125. Turning to questions raised by members of the Committee relating to article 9 of the Covenant, the repreaontative noted that, under article 20 of tho Constitution, anyone charged with a criminal offence had to be informed of the charge, which must be in strict accordance with legislative proviaiona. Adequate opportunity was given for the preparation of a defence and, if tho accused did not understand English, the Government made sure he had the assistance of an interpreter. The rights and privilege8 normally accorded to accused persons in democratic societies were provided for: an individual could testify in his own defence, call witnesses and croae-examine those called by the State and, if he declined to testify, his decision could not be used against him by the prosecution. The prosecution was conducted by the Director of Public Proaocutiona, an independent official assisted by qualified legal experts and, in some cases, by member8 of the police force.

126. The representative acknowledged that there were occasions when the judicial process was not as rapid as it nhould be, but everything possible was done, within ● ☒)(♋♦)(■♍ resourcelimitations,toimprovethee ituation. An provided in the Protection of Fundamental Human Right8 Rules, adopted in 1969, individual complainants could file petitions for redress to tho High Court. In cases of complaints against the State, a aopy *of* the petition hrd to be served on the Attorney-General. Thn relevant legislation did not lint specific remedies, but: a petitioner was free ♦□ ● ugqont desired remedies which, if the aourt ● nw fit, were awarded.

127. Preventive detention was implemented in accordance with the Constitution *and* lawn of Zambia. Resort to that measure, which wan recognised an not boing an ideal one, wan necessary at times In view of the existing ● orioun throat8 to the nation's ● oaurity. Detained persons were informed of the reasons for the detention within 14 days, the faot of the detention was published in tha Government Gazette within one month, and cases of detention were reviewed periodically - in some instances long before the one-year period specified in the Constitution had ● lap8.d.

128, Regarding prison conditions, the representative ● xplsinod that, pursuant to section 60 of the Prisons Act, prisoners were separated according to sex. Juveniles were not hold in the same prisons an adults. The Government was greatly concerned about the inadequacy of prison conditions *end* was interested in developing alternatives to imprisonment. Unfortunately, in view of the country's limited financial resources, it had not yet been possible to create the rehabilitation facilities and programmes needed.

1.29. Responding to questions relating to the right to freedom of movement, the representative agreed that the Constitution did not provide for the right to leave the country, but stated that, in fact, Zambian citizens were free to leave the country if they wished to. Those desiring to travel abroad were issued with passports, but the Government reserved tho right to revoke a passport if its bearer committed a crime or defaulted on financial obligations while abroad.

130. While law-abiding foreigners were welcome in Zambia, the country wan beset by thousands of illegal entrant8 who held false passports and who had come primarily to plunder the country'b resources, particularly precious stones and minerals. This had made it necessary for the Government to carry out periodic checks and to deport those who were found to be in the country illegally. Procedures relating to the deportation of aliens were net out *in* sections 22 and 24 of th8 Immigration and Deportation Act, Deportees were given fair treatment and no country to which aliens had been deported had had cause for complaint.

131. Regarding the position of aliens, the representative said that Zambia's large and multinational population of alien8 enjoyed tho name rights an citizens, were entitled to *work* permits, were tried for any offences in the same courts as citizens and worn free to observe their own cuatomr, traditions and religions.

132. Turning to the questions raised by members of the Committee concerning article 14 of th8 Covenant, the representative of the State party ● xplninod that Zambia's hierarchical judicial system was headed by the Supreme Court, which served as the final court of appeal . The Court wan composed of the Chief Justice, thr Deputy Chief Justice and three Supreme Court judges - all of whom had to be highly qualified and experienced lawyers, Immediately below the Supreme Court wan the High Court, composed of the Chief Justice and 12 puisne judges. That court

had unlimited original jurisdiction for both criminal and civil proceedings, was responsible for supervising proceedings before magistrates' courts, and had jurisdiction concerning human rights-related complaints treated by subordinate courts. When so requested by the parties concerned, the lower court8 were required to refer any human rights cane to the High Court. Noxt in order were the magistrates' courts, which wore presided over by magistrate8 who had received legal training and which had limited civil and criminal powers a8 defined in the Subordinate Courts Act, the Penal Code and the Code of Criminal Procedure. Local or traditional courts were inferior to the magistrates' court8 and had only limited civil powers relating mainly to such matters coming under customary law a8 divorce and inheritance. Under a reform introduced by the Judicial Service Commission, local magistrates now had to be literate and to have a good working knowledge of English.

133, There was a magistrates' court in every district in Zambia and the High Court went on circuit at regular intervala. The Government's ultimate aim, as fundu became available, wau to station a High Court judge in every provincial capital.

134. The Constitution provided a number of safeguards of judicial independence. For example, the number of Supreme or High Court judges could not be reduced while such posts were occupied nor could such judges be dismissed except for incapacity or misbehaviour, as determined by a special three-man judicial tribunal. Article 113 (5) of the Constitution provided that the findings of such a tribunal were binding upon the President. The judiciary wan satisfied with the composition of the Judicial Service Commission, particularly since the Constitution prescribed that only legally qualified persons could be appointed to judicial office.

135. All decisions were appralable through the hierarchy, from local courts to the Supreme Court. The courtu were available to all persons without discrimination an% there were no military tribunala. Proceeding6 wore open to the public. Article 20 of the Constitution set out the rules for due procsaa which corresponded to the provisiona of article 14 of the Covenant. In all courts, interpretation facilities were available and, in serious criminal cases, limited legal aid was Provided. The Zambian Bar Association had recently instituted a system to supplement such legal aid. The same standard - that of proof beyond reasonable doubt -- wau applied in Zambia as in other common-law countries.

136. Responding to questiona relating to article 19 of the Covenant, the representative atated that the press in Zambia was hoth free and very lively. Foreign visitors had often boon struck by the stinging editorial comments in the Times of Zambia and the Zambian Daily Mail, and the letters published by those newspapers criticizing the Govsrnment'a operations. There were two other daily newspapers - the National Mirror and the Mining Mirror -- which were published, respectively, by a religious organisation and by Zambia Consolidated Copper Mines, Ltd. A number of provincial papers were published in varioua local languages by Zambia Information Services, which was a government organization. No newspaper had ever failed to appear because of government censorship. Radio and television were State-owned. Froquent panel discussion programmes provided for a wide range of views on Zambian issues. There was no ban on ths receipt or purchase of foreign newspapers and magaainsa, although economic constraints had made it difficult for bookasllers and news agents to procure them and, even when available, their prices were beyond the means of moot Znmbiana.

137. In addition to being able to road whatovrr they liked, whether of foreign or domestic provrnanao, Zambians were free to express themselves both in private and in public.

138. Turning to tho questions that had been raised in aonnaation with article 22, the representative of thr State party said that the trade-nnion movement in Zambia dated baak to the period before independence and it was accepted that the participation of trade unions in the industrial and social development process was thr • 88onao of democracy. Thr right to form or join trade union8 was mentioned in article 23 of the Conetitutian, while the Industrial Relation8 Act describes that right in detail ♋■♎ ● xpleined how union8 could be formed and run. That Act enjoined ● mployor8 not to dater ● mplayrar from participating in trade-union activities or penalize thorn for ● xorciring union right8 ● b?d also provided for the withholding by ● mployorr of union dues from the wages of union members and the tranrmittal of such fund8 directly to the trade union concerned.

139. Union leaders had frequently used their positions to voice conaorn on matters affecting the community at large. The Government itself had often consulted the unions. The Congress of Trade Unions, to which all union8 were affiliated, war represented at mooting8 of the National Council and the General Conference of the United National Independence Party. Trade union official8 were chosen in free ● loction8, without Government involvement.

140. In hi8 reply to questions concerning article 25 of the Covenant, the representative pointed out that both presidential and parliamentary ● loationr were held every five years. Voting war by secret ballot and all citisens, whether members of he party or not, were ● liyiblo to vote. Presidential and parliamentary ● loction8 would nrxt be hold in 1988 and the registration □↗ ● loator8 war currently under way. There war no requirement that civil servants should belong to the party.

141, With reference to a question raised by a member of the Committee regarding article 27 of the Covenant, the representative ● xplainod that the House of Chiefs was ● rrentially an advirory body in whiah every province was represented, ● lthouqh not on a strictly proportional basis. Members of the House of Chiefs provided information about grass-roots-level problems of relevance to matters under consideration by the Government.

142. In conclusion, the representative of the State party ● xpre88.d regret that time constraints had made it impossible for him to inform the Committee of certain statutes and court decisions relating to some of the points that had boon raised which could have more fully illustrated the situation in the country. However, by their questions, members of the Committee had made it easier for hi8 delegation to plan ahead and compile A more detailed second periodic report. He was confident thst that report would be more complete and contain indications of prog ess made in implementing the right8 contained in thr Covenant.

143. Members of the Committee thankrd the representative for hi8 candid answers, which had given the Committee a clearer idea of the factors and difficulties relating to tha implementation of the Covenant in Zambia. They also expressed gratification that he had accepted the Committee's procedure a8 reflecting it8 desire for dialogue rather than confrontation. Although a number of questions had remained unanswered, members were confident that the second periodic report would contain the required responses.

144. In concluding the consideration of Zambia's initial report, the Chairman thanked the representative of the State party for having participated in a fruitful dialogue with the Committee And expressed the hope that A more detailed report would be provided to the Committee in 1990.

Denmark

145. The Committee considered the second periodic report of Denmark **(CCPR/C/37/Add.5)** at its 778th to 781st meetings, held from 9 to 10 **November** 1987 **(CCPR/C/SR.778-SR.781).**

146. The report WAS introduced by the representative of the State party who said that his Government welcomed the opportunity afforded by the Committee's consideration of Denmark's second periodic report to continue its fruitful dialogue with the Committee as well as to maintain its awareness of its obligations under the Covenant in both the legislative And administrative fields. The representative also drew attention to the fact that his country had ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 26 May 1987.

Constitutional and **legal** framework within which the Covenant is **implemented**

147. With reference to that issue, members of the Committee wished to receive information on any significant **changes** relevant to the implementation of the Covenant since the consideration of the initial report, the extent to which domestic law was consistent with the provisions of the Covenant And the means for ensuring such consistency, cases where the application of the "rules of interpretation and presumption*' by the Danish authorities or the courts resulted in decisions favouring the provisions of the Covenant, factors and difficulties, if any, affecting the implementation of the Covenant and activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol, including greater awareness among institutions and law enforcement officers. Members also wished to know whether domestic laws for the implementation of all the rights set out in the Covenant had been enacted, how a conflict between domestic laws and the Covenant would be resolved in cases where the rules of interpretation were not applicable, whether the text of the Covenant had been translated into Greenlandic, whether Danish courts had made it a practice to include in their decisions, where appropriate, a reference to the fact that the Optional Protocol **provided** for direct recourse to the **Human** Rights Committee, and whether the ombudsman was entitled to inquire into cases where an administrative, authority might be in violation of A **provision** of the Covenant.

148. Clarification **was** also **requested as** to the precise role of Danish courts in protecting human rights, in view of the extensive powers of the administrative authorities in that regard, the general rule laid down in article 63, paragraph 1, of the Constitution, particularly as it related to the **right** of **appeal** in cases involving the dissolution of political associations, And the reasons for certain Danish reservations to the Covenant, particularly article 14, **paragraphs** 1 and 7, and article 20. It was observed, in the **latter** connection, that the Committee was unanimously of the view that the prohibition of war propaganda WAS fully consistent with article 19 of the Covenant. With regard to Denmark's reservation to article 10, paragraph 3, one **member** wondered whether the Danish authorities had closely monitored the results of their policy of not segregating juvenile offenders from adults.

1.49. In his reply, the representative of the State party raid that the only significant change relevant to the implementation of the Covenant that had occurred since the consideration of the initial report was the passage of Act No. 235 of 1982, relating to protection against dismissal on ground8 of membership of an association. That law was enacted following a judgement by the European Court of Human Rights that the dismissal of ♋■ ● mplOyeo because of a "closed shop" agreement concluded after tha ● mploymo had boon engaged contravened ● rtialo 11 of the European Convention on Human Rights.

150. As to the consistency of domestic law8 with the provirionr of tho Covenant, ho explainad that, when the Danirh ratification of the Covenant war under consideration, it was found that principlez and rules similar to the provirionr of the Covenant were to alarge ● xt6ut already in force in Denmark by virtuo of tho Constitution, of express statutory provirionr and of general principles of Danirh law. Special legirlation had boon passed in respect of the few provirionr of the Covenant where that had not been considered to bo the case. Where *Danirh* law or practice was not fully consistent with the provirionr of the Covonant, a8 was the case in respect of article 10, paragraph 3, article 14, paragraph8 1 and 7, and article 20, paragraph 1 of the *Covonant*, Denmark had made reservations. *In* addition, special care wan taker. during thr law-making process to ● nruro that now laws or administrative regulations were not in contravention of the provirionr of tho Covenant and Danish ● dmini8trativ6 authorities were under an obliqrtion to exercise discretionary powers in such *a* way that administrative act8 conformed with Denmark's international obligations, including the Covenant. Judicial authorities were also undor an obligation to chock whothrr Danirh law8 complied with the provisions of the Covonant.

151. Although thrro was no record in legal publication8 of thm invocation or use in court decisions of the provisions of the Covonant, counsel for the defence had used the provisions of the European Convention on Human Rights in some court proceedings an&, in such cases, tho court8 had, From time to time, used the European Convention directly by applying the rules of interpretation and presumption to ensure that Danish legislation complied with that Convantion. In a hypothetical case of conflict between domestic law and the Covonant where the rules of intorprotation could not be used, the court8 would have to apply Danirh law and it would then be the Government's responsibility to propose to change the statute in question to bring it. into conformity with the Covonant. No such case had a8 yet arisen.

152. Replying to additional questions, the representative stated that hi8 Government had not encountered any significant problems in implementing the provisiona of the Covenant. Article 63, paragraph 1, of the Danirh Constitution was couchad in broad term8 and meant that, in any case involving an act by a public authority which directly affected persons or companies, the parties concerned could briny the matter before the couttr. Undor the Conrtitution, the court8 wore thon obliged to determine thr legality of the action taken by the authority concerned. The court8 had also to determine thr limits of any discretionary power of the authority. Article 78, paragraph 4, of the Constitution provided for direct and immediate appeal to the Supreme Court in cases of dissolution of a political association as an exceptional procedure because such dissolution was viewed 68 an extremely serious matter. Where Danish court8 considered it appropriatr to mention the various possibilities open to persons appearing before them under the provisions of various international human rights instruments, they would ho obliged to no so. The Ministry of Justice often had occasion to provide information concerning such possibilities. Denmark continued to consider it. preferable to

treat juvenile offenders in the same institutions as adult offenders and therefore intended to maintain its reservation concerning article 10, paragraph 3, of the Covenant.

153. Referring to the dissemination of information concerning human rights and the text of the Covenant, the representative explained that human rights issues were part of the curriculum in schools and universities, that the text of the Covenant was disseminated to individuals and groups largely through Amnesty International and the Danish Ministry of Foreign Affairs and that the translation of the Covenant into Greenlandic had not yet been completed. The establishment of a Human Rights Institute in Copenhagen had been a particularly important recent development in relation to the promotion of public awareness of human rights since its tasks were to include undertaking multidisciplinary research on human rights, disseminating information, including replying to questions from lawyers and journalists, establishing documentation centres and conducting human rights seminars on a regular basis.

Self-determination

154. With regard to that issue, members of the Committee wished to receive information on any recent developments regarding the transfer of responsibilities to the home rule Government of Greenland, the extent of autonomy actually exercised by the Government of Greenland vis-à-vis the central Danish authorities, particularly, how potential conflicts between legislative acts adopted by the legislative assemblies would be resolved, and the impact, in respect of equality before the law, of Greenland's withdrawal from membership of the European Community. Clarification was also requested as to whether the system of home rule in Greenland could be changed by a decision of the Danish Parliament, irrespective of the will of the residents of Greenland, and as to measures taken to ensure that Greenland legislation conformed to the Covenant. Members also wished to know what position Denmark had been taking in international forums with respect to apartheid and the right to self-determination of the people of Namibia and Palestine.

155. In his reply, the representative of the State party pointed out that, since 1 January 1987, two further areas of responsibility - housing and the planning and execution of infrastructural works - had been transferred to the home rule Government of Greenland. The transfer of the two remaining areas of responsibility - health and environmental protection - was still a subject of negotiations between the Danish Government and the home rule Government. Other recent changes included the increase in the number of seats in Greenland's legislative assembly from 25 to 27, an increase in the number of seats held by the Inuit Atagatigiit party in that assembly from three to five and an increase in Greenland's indigenous population from 43,000 to 44,000.

156. The home rule Government of Greenland was empowered to make laws or to issue regulations, without any involvement whatsoever of the Danish Government, in all areas where full responsibility had been transferred to it. With respect to areas that were still within the competence of the Danish Government, the home rule authorities had to be consulted on any legislation or regulations that could affect the residents of Greenland and, if they expressed opposition, the measure would have no effect on the residents of Greenland. There had as yet been no cases of conflict between legislative acts adopted by the Danish Parliament and those adopted by the Greenland Legislative Assembly and such conflicts were unlikely to arise, since the acts of each legislature were applicable only within their own

respective geographic boundaries. If such a legislative conflict were ever to arise, the courts would have to determine which legislature had the authority to legislate on the matter in question. Greenland's decision to withdraw From the European Community had indeed made it possible for the residents of Greenland to be treated differently from the rest of the Danish population, but that was a consequence of the will of Greenland'8 residents themselves, expressed through a referendum. The Home Rule Act could, in fact, be repealed by the Danish Parliament at any time, but the passage of that Act had demonstrated the latter's commitment to home rule for Greenland and it was unlikely that that attitude would change. Responsibility for ensuring that Greenland's legislation was consistent with the Covenant rested with the authorities of Greenland in the first instance, but, in the last resort, the Danish Government would itself have an obligation to enforce the Covenant.

157. With reference to Denmark's position on the question of apartheid and the right to self-determination of the Palestinian and Namibian people, the . representative explained that his country had worked actively for more than two decades in all the relevant international forums to translate its strong and unequivocal condemnation of South Africa's apartheid system into concrete action. Denmark, together with the other Nordic countries, had adopted, in October 1985, a joint programme of action against apartheid, which had resulted in the implementation of a general Nordic trade embargo against South Africa and had repeatedly made clear, within the framework of European political co-operation, that apartheid was totally unacceptable and indefensible, Denmark had repeatedly condemned South Africa's illegal occupation of Namibia and strongly supported the Namibian people's right to self-determination. It supported granting immediate independence to Namibia on the basis of Security Council resolution 435 (1978) and recognized the United Nations Council for Namibia as representing the Namibian people until it gained independence.

158. Denmark also supported fully the right of the Palestinian people to self-determination and had expressed such support both in its bilateral contacts with the parties to the Middle East conflict and through declarations by the European Council, including in particular the Venice Declaration of 13 June 1980. Denmark's attitude to the Palestinian people's right to self-determination was further reflected in statements made by the European Council on more specific problems, such as the situation in the territories occupied by Israel.

Non-discrimination and equality of the sexes

159. With reference to those issues, members of the Committee wished to know how the provisions of article 2, paragraph 1, and article 26 of the Covenant were given effect, apart from laws and practices relating to non-discrimination on grounds of sex, whether the procedure provided for under Act No. 157 of 24 April 1985 had led to increased representation of women in public bodies, whether further departure8 from the Equal Treatment Act, in favour of women, were planned, whether citizens belonging to the Evangelical Lutheran Church enjoyed greater access to certain official posts than others in consequence of article 6 of the Constitution and whether, in the absence of provisions in the Danish Constitution guaranteeing equality before the law, the Parliament could adopt discriminatory legislation and what recourse would be available to individuals in such a case. Members also wished to receive additional information concerning the effectiveness and operations of the Equal Status Council, including the number and type of cases handled, the number of decisions rendered, the legal force of such decisions and

the extent to which such decisions were translated into legislation or applied in practice.

160. Responding to the questions raised by member8 of the Committee, the representative of the State party said that his country had ratified the Convention on the Elimination of All Form8 of Discrimination against Women and that all discriminatory provisions against women had been removed from Danish legislation. Women received preferential treatment in the field8 of education and employment and the Government had also introduced an action plan designed to promote equality in ths ministries and administrative services. Act No. 157 of 1985, which expressed intentions rather than imposing obligations, had clearly helped to promote greater awareness and had increased the percentage of women on public bodies from 15.7 per cent to 30 per cent. Although the importance of the issue had not yet been fully grasped and the goal of 50 per cent female membership had not yet been achieved, public opinion was gradually changing in a positive direction. A pending amendment to the Equal Treatment Act would have the effect of enlarging the possibilities for extending preferential treatment of women. The requirement in article 6 of the Constitution relating to the Danish sovereign's obligatory membership of the Evangelical Lutheran Church, which was traditionally the religion of the State, was linked more to the function than the person of the sovereign.

161. The principle of equality before the law, together with a number of other fundamental principles, was not set forth in the Danish Constitution, which was rather brief. Nevertheless, that principle, as well as other unwritten principles, were commonly recognized as fundamental by judicial precedents. Violation of such principles by Parliament, while theoretically possible, was in practice unthinkable. Parliament was of course also required to respect Denmark's international obligations and the Ministry of Justice, to which all draft legislation was submitted, ensured that all laws were in conformity with fundamental principles of human rights. Section 266 (b) of the Danish Criminal Code specifically prohibited statements having the effect of threatening or humiliating a person by reason of his race, colour, or national or ethnic origin and, more generally, the Danish courts ensured full observance of article 26 of the Covenant.

162. The Danish Rqual Status Council had been set up by the Prime Minister in 1975 and its establishment had been confirmed by the legislature in 1978 on the occasion of the promulgation of Act No. 161, which guaranteed women the same access to employment as men and complemented the 1976 Equal Remuneration Act. The Council, which was attached to the Prime Minister's Office, was responsible for promoting equality in all areas of society: the family, education, employment and training. The Council's decisions were not binding but had effects comparable to those of the decisions of an ombudsman.

<u>Right to life</u>

163. With reference to that issue, members of the Committee wished to receive information concerning regulations governing the use of firearms by the police and any appropriate information or views relating to article 6 of the Covenant and the Committee's general comments Nos. 6 (16): and 13 (24).

164. In his reply, the representative stated that under the relevant regulations issued by the Commissioner of Police, firearms could be used only to avert an attack on an individual or institution and only if other means had proved

inefficient. A policeman who had made use of a firearm was obliged to submit a written report to the Commissioner of Police. The infant mortality rate in Denmark was among the lowest in the world.

Liberty and security of person

165. With reference to that issue, member8 wished to receive information on law and practice relating to preventive detention in both penal institution8 and institutions other than prisons, or for reasons unconnected with the commission of a crime, as well as additional information relating to the implementation of article 10 of the Covenant, including details and statistics concerning the results achieved in reforming or rehabilitating prisoners and regarding recidivism. They also wished to know what the maximum period of pre-trial detention was, how quickly after arrest the person's family was informed, whether the administration of justice had in fact been speeded up as a result of the amendments to the Administration of Justice Act and the Bankruptcy Act, whether there was any maximum limit to consecutive solitary confinement in cases where a detainee's offence was punishable by imprisonment of six years or more or any limit to the imposition of repeated extensions of solitary confinement and whether the treatment of prisoners was consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

166. Members also requested clarification of the term "principle of dilution", mentioned in paragraph 61, of the report, and of the competence and responsibility of the National Board of Health in relation to medical experimentation or drug testing. They also wished to know whether a decision under the Mental Health Act to commit a person to a psychiatric institution could be taken by a single medical practitioner and whether such decisions could be appealed, whether court decisions imposing solitary confinement on detainees could be appealed, what the practice was with regard to compulsory isolation of persons with infectious diseases and what kind of tests or restrictions were applied to victims of acquired immunodeficiency syndrome (AIDS) and whether excesses committed by the police in the context of maintaining public order or in evicting illegal occupants of certain premises had been investigated.

167. Responding to questions raised by members of the Committee, the representative of the State party explained that, while the Administration of Justice Act did not prescribe any limit to the period of pre-trial detention, it did stipulate that the first period of pre-trial detention must not exceed four Week8 and could only be extended to a maximum of four additional weeks at a time. Pre-trial detention was prohibited where it did not seem proportionate to the facts of the case and to the possible legal consequences if the accused were to be found guilty. Juvenile offenders between the ages of 15 and 18 were normally placed under supervision in social welfare institutions as a means of avoiding preventive detention. Section 68 of the Criminal Code provided that courts could commit criminally afflicted and mentally deficient persons to mental institutions when other expedients, such as additional psychiatric treatment, were considered inadequate. Institutionalization was resorted to by the courts only in about 20 case8 annually. Detention in a psychiatric hospital for reasons unrelated to the commission of a crime could be recommended by a medical practitioner, with the concurrence of the institution's chief physician, in cases where the person concerned was deemed to present a danger to himself or to others. However, the person concerned could challenge the validity of that decision in the courts by applying to the appropriate administrative authorities. A new Mental Health Act, designed to improve the legal

position of persons subjected to preventive detention in a mental institution, was currently under consideration in Parliament.

168. It was generally left to the accused to decide whether his family should be informed of his arrest, except in juvenile cases where the parents were informed automatically. While statistics were not available, the Danish Ministry of Justice considered that the amendments to the Administration of Justice Act and the Bankruptcy Act, mentioned in paragraph 48 of the report, had served to reduce delays in bringing cases before the Supreme Court. However, in view of the steady increase in the number of cases presented to the Supreme Court, the Government was considering further amendments to the Administration of Justice Act. There was no limit to the maximum length of consecutive solitary confinement or to the imposition of repeated extensions of solitary confinement. However, the necessity for proportionality in that regard, as indicated in paragraph 56 of the report, meant that a maximum length existed de facto, depending on the circumstances in each case. Since the entry into force of Act No. 299 of 6 July 1984, the number of prisoners held in solitary confinement for a period longer than eight weeks had fallen steadily. Detainees being held in solitary confinement, who were mostly drug addicts charged with serious offences, could appeal to the courts for relief and the courts were obliged to rule on such appeals within two or three days.

169. In the view of the Government, the treatment of prisoners in Denmark was consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners, except for article 8 (d) of those rules. The exception resulted from Denmark's experience which showed that the treatment of offenders belonging to different age groups in the same institution was advantageous to younger and older alike. The **principle of dilution" referred to the integration of prisoners irrespective of sex and age, with the aim of creating living conditions in prisons resembling those of the outside world as far as possible. In the view of the Danish authorities, such integration served to minimiae the negative effects of imprisonment, including dependence, apathy, anti-social aggressivity, diminished self-esteem and close identification with deviant behaviour. Prison rules and directives were accessible and known to detainees.

170. A list of eight contagious diseases had been drawn up and all necessary precautions had been taken to isolate persons with one of those diseases. AIDS was not considered to be an infectious disease and persons with AIDS were not subject to any restrictions. There was no compulsory screening test for AIDS and persons who were sero-positive could freely choose whether or not to receive treatment. Medical experiments and drug testing were the responsibility of the physicians and institutions concerned. Affected individuals were entirely at liberty to sue them for damages where appropriate. Groups or individuals who considered themselves to have been victimized by excesses committed by the police could file complaints with either the police or the Ministry of Justice. Allegations of police misconduct were investigated by local boards established within each administrative district and disciplinary or criminal sanctions were applied in appropriate cases.

Right to a fair trial

171. With reference to that issue, members of the Committee requested clarification as to whether the provisions of the Administration of Justice Act allowing for the rejection or removal of defence counsel by the courts and the last sentence of article 71, paragraph 3, of the Constitution were compatible with article 14, paragraph 3 (b), of the Covenant. Members also wished to know whether the

Committee on the Administration of Justice had made any recommendations concerning reorganization, whether article 29 of the Administration of Justice Act, dealing with in camera judicial proceedings, was compatible with article 65, paragraph 1, of the Constitution and whether Denmark's reservation on article 14, paragraph 7, of the Covenant indicated that further action could be brought against a person who had already been convicted or acquitted of a crime.

172. In his reply, the representative explained that, in certain circumstances, such as when the protection of the interests of co-defendants so required or where there was a risk that the course of justice would be obstructed, a court could reject a defence counsel chosen by the accused, but the defendant was then given the opportunity to choose another lawyer. Resort to that measure, which was consistent with article 14, paragraph 3 (b), of the Covenant, was an extremely rare occurrence. The provision of the Constitution that allowed for a departure in Greenland from the rule that persons taken into police custody had to be presented to a judge within 24 hours was justified by the special geographical and meteorological situation of Greenland, which made compliance with the rule impossible at times. However, once the material obstacles had been removed, the 24-hour time-limit had to be respected. The Committee on the Administration of Justice was expected to produce its recommendations within the next year. Although the Constitution specified that trials should be held in public, article 24 of the Administration of Justice Act allowed for certain exceptions to that rule, mainly in cases where the interest of third parties, such as witnesses, required that they should take place in camera. The legislature had made provision for the courts to nullify that article if it was held to be incompatible with the Constitution but, to date, no court had found that to be the case. While a person who had been acquitted could theoretically be brought to trial again, in practice that was done only in cases where new facts of substance had come to light.

Freedom of movement and exoulsion of aliens

173. With reference to those issues, members of the Committee wished to know whether section 25 (2) (i) and (ii) of the Aliens Act was in conformity with the Covenant and whether there had been any actual expulsions under that section, what was the basis, referred to in article 24 (iii) of the Aliens Act, for expecting that an alien would commit further offences during a continued stay in Denmark and whether the appeal mentioned in paragraph 72 of the report had suspensive effect. Regarding refusal of entry, it was asked which authority was competent to decide upon the expulsion of prohibited aliens, whether such a decision could be appealed, even in the courts if necessary and whether such appeals had suopensive effect.

174. Responding to questions raised by members of the Committee, the representative of the State party said that some expulsions had, in fact, been carried out pursuant to section 25 (2) of the Aliens Act, but that expulsion8 under section 25 (2) (i) were very rare and section 25 (2) (ii) was not applied in cases where aliens were in possession of only a small quantity of hashish for personal use. Section 25 was in conformity with the Covenant since expulsion decisions were taken only after the provisions of section 26 of the Alien8 Act had been taken into account. The relevant criteria for deciding that an alien might be expected to commit further offences in Denmark were set out in article 24 (iii) of the Aliens Act and it was left to the criminal courts to decide, case by case, whether those criteria had been met. The fact of previous conviction8 and the number of offence8 with which the aliens were being charged were among the relevant considerations in the foregoing connection. The appeal mentioned in paragraph 72 of the report had

automatic suspensive effect only when filed within a specified period of time by aliens who were subject to the rule8 of the European Economic Community, nationals of another Nordic country or holders of residence permits. However, the Minister of Justice had the option of giving suspensive effect to an appeal and often did 80. Decision8 to refuse entry to an alien were taken by the Directorate for Aliens and could be appealed before the Minister of Justice. Such appeals were referred to the ombudsman, who could apply to the Minister for suspensive effect while he examined the file.

Right to privacy

175. With reference to that issue, members of the Committee wished to receive information on legislation concerning the collection and safeguarding of personal data, the frequency of use of the techniques of eavesdropping and telephone tapping in a given year, the implementation of the procedure for assigning a lawyer in cases of surveillance, as mentioned in paragraph 92 of the report and on the measures other than telephone tapping used by the authorities, and it was asked whether court orders were required in all cases of encroachment on the principle of privacy. Members asked what means were available to individuals for ascertaining whether personal data relating to them was being stored and for verifying the accuracy of such data and whether such means were applicable to information collected both by State authorities and private entities. Information was sought on the procedure used to obtain the consent of the individual to the collection of sensitive personal information and the purposes for which State authorities collected personal data on the entire population. It was also asked how the Danish public reacted to the computerized collection of personal data, whether the collection of such information did not militate against the presumption of innocence and how much information on civil service applicants was gathered without the individual's knowledge. One member, while agreeing on the need for gathering sensitive information in relation to the commission of a crime, expressed doubt as to the necessity for collecting sensitive personal data relating to such matters as racial origin, political opinion, religious or other belief or sexual habits. He also voiced concern about the possibility of linkage among various data files, including the transferral of personal data across national borders and, in the latter regard, requested information concerning safeguards. Members also wished to know the circumstances under which children and young persons in institutions could be deprived of their right to visits and whether their correspondence was subjected to censorship.

176. In his reply, the representative stated that there were two laws in Denmark relating to the protection of confidential data, one of which dealt with data assembled by individuals or private enterprises and the other with data collected by the public authorities. The law on the private sector specified that private data users might collect personal data only to the extent that registration of such data was part of theft normal business or professional activity. The collection of "sensitive" data was forbidden unless the data subject had given his consent and unless collection served legitimate purposes. Data relating to race, religious belief, colour, political, sexual or criminal matters, health, serious social problems or drug abuse were considered to be "sensitive". Such data could be communicated to a third party only with the consent of the person concerned. A data surveillance authority was responsible for enforcing the relevant laws and had the right to inspect computerised files containing sensitive information which, in any case, had to be registered with the authorities. The linking of computerised files held by different companies was prohibited without the express permission of

the surveillance authority, except in order to update names, addresses, etc. An individual had the right of access to information concerning him in computerized files held by companies or private individuals and to check their accuracy. Failure by companies to comply with requests for access rendered them liable to sanctions.

177. Regarding data collection and the establishment of data registers by public bodies, the guideline8 were very precise. A data register could be established only with prior ministerial authorization and only information of unquestionable importance for the public authorities could be collected. Information of a political nature in respect of individuals was forbidden and "sensitive" information could be collected only when necessary for the purposes of the register and could be disclosed to another public body only if absolutely necessary and with the agreement of the concerned individual. At the time of registration, the public body concerned had to notify the individual concerned, both that he was being registered and that he had right of access to his file for the purpose of correcting any data contained therein. Access was denied only to police files being used in connection with a criminal investigation or other confidential police files.

178. Personal data files were a delicate subject in Denmark, a8 elsewhere, and the Government attempted to meet any public concerns in that regard by taking adequate precautions. The Data Protection Act of 1978 was quite strict and had been made even more 50 by several recent amendments. Sensitive data were collected only in areas where they were specifically required, such as health and social welfare. Information flows across borders were governed by the relevant provisions of the European Convention on Human Rights. Authorisation for linking was granted infrequently and mainly for the purpose of updating files. It was the general opinion in Denmark that the system of protection was effective and that there were few breaches of the rules either by private companies or the public authorities. In the case of applicants for civil service positions, regulations provided that police records should be checked to ascertain whether they had ever been convicted of a crime and the applicants' consent was sought for that purpose. Such consent could be refused but in such cases it was unlikely that the individual would receive the appointment.

179. The police were authorized to resort to bugging or telephone tapping only in connection with a criminal offence punishable by at least six years' imprisonment and only when such encroachment on privacy was of paramount importance to the investigation and did not cause an inordinate degree of humiliation and inconvenience. Lawyer8 assigned to act on behalf of individuals to whom technical surveillance techniques were being applied were prohibited from informing their clients of such surveillance, but could later argue in court that the relevant provisions of the Administrative Justice Act had not been properly observed. Court orders were required in all cases of telephone tapping except where urgent action was needed; in such cases, retroactive court authorisation had to be sought within 24 hours of the installation of the device.

180. Children and young persons in institution8 could be deprived of their right to visits or have their correspondence censored only if it were deemed absolutely necessary for the protection of their well-being. It was within the competence of the local social welfare committee to determine whether the connection between a child and its parents should be interrupted for a certain period of time.

Normally, such committees took great care to safeguard the links between a child and its family and regarded any interference with family rights as a most serious matter.

Freedom of religion

181. With reference to that issue, members of the Committee wished to know what the consequences of the existence of an established Church in Denmark were, notably with regard to other religions, and what the status of the various other churches was, particularly the so-called "dissenting churches", whether article 4 of the Constitution was compatible with article 18 of the Covenant and whether Danish law contained any reference to the right not to profess any religion. They also asked whether religious bodies were subject to registration and, if so, on what grounds such registration could be refused, whether the State extended support, in practice, to churches other than the established Church, whether there were any primary schools in Denmark which offered no religious instruction at all or instruction in the tenets of religions other than that of the established church, whether children in State elementary schools could-receive, on request, instruction in religious faith other than the Evangelical Lutheran faith, whether the Evangelical Lutheran Church and other churches were financed out of taxes imposed by statute and whether the Danish authorities took any steps to curb possible excesses by certain religious sects.

182. In his reply, the representative of the State party explained that, while the Evangelical Lutheran Church was the established Church in Denmark and received State support, it was not a State Church and no one was expected to be a member of it or to make a personal contribution to any denomination unless he so desired. A member of the established Church could dissociate himself from it by a simple written petition or by joining another religious community. The Constitution did not preclude State support for other religious beliefs. Religious instruction in the public elementary schools was based on the concept of Christianity held by the established Church, but a child could be excused from religious instruction if his parents so requested. There were many private primary schools sponsored by various other religious denominations where instruction in other religious beliefs was offered. The Evangelical Lutheran Church was financed by taxes paid only by members of that Church. Other persons paid taxes to other religious communities or to none. Ministers of the established Church had the right to celebrate marriages but authorisation to do so was normally'also granted to the clergy of other denominations. Religious communities founded as associations were also exempt from tax.

183. Article 4 of the Constitution was in conformity with the Covenant in view of the fact that 85 per cent of the population of Denmark were members of the Evangelical Lutheran Church and had been for centuries. The practical consequences of that article were very limited and, since the established Church enjoyed only a few special legal privileges, its status posed no serious problems.

184. Danish law contained no reference' to the right not to profess any religion but articles 67 and 68 of the Constitution had been interpreted as including that right. Civil rights that had usually been associated with church membership - for historical reasons - were also available to persons not professing any religion. Religious bodies were not subject to registration, but where such bodies had been granted certain privileges that fact was duly registered. No special control was

exercised over religious sects but the police would respond to complaints in the normal way.

Freedom of expression, prohibition of war propaganda anationalacy of racial or religious hatred

185. With reference to those issues, members of the Committee wished to receive information on article 19 in accordance with the Committee's general comment No. 10 (19). They also asked whether Denmark was giving any consideration to withdrawing its reservation to article 20, paragraph 1, of the Covenant, whether the scope of Act No. 572 of 19 December 1985 extended to fields of activity affecting public life other #an private energy-supply enterprises and whether that Act also covered computerised information. Clarification was also requested of the definition of secrecy under Danish law as reflected in section 152 (3) of the Danish Criminal Code.

186. Referring, in his reply, to article 19, paragraph 2, of the Covenant, the representative pointed out that the European Convention on Human Rights, to which Denmark was also a party, did not prevent States from requiring the licensing of broadcasting, television or cinema enterprises, nor did it exclude in any way a public television monopoly. In Denmark's view, the same interpretation also applied to the Covenant. However, arrangements had been mad% in recent years for local independent broadcasting and many such stations had begun operating. The reception of satellite television from foreign sources had also been authorioed and the Government was building a long-distance transmission and distribution network. No restriction had ever existed on receiving ordinary foreign broadcasts, newspapers or other printed matter.

187. Denmark was not considering withdrawing its reservation to article 20, paragraph 1, of the Covenant because it considered that provision to be inconsistent with the right to freedom of expression. The scope of Act No. 572 only extended to documents since computerized data were covered by other legislation. The Act applied to various kinds of private enterprises and not only to the energy sector. Among the considerations mentioned in the Administrative Procedure Act on the need to observe secrecy "in order to safeguard public or private interests'* were those of State security and defence, prevention. investigation and prosecution of criminal acts and information held by the public authorities on private individuals.

Freedom of assembly and association

188. With reference to those issues, members of the Committee wished to know whether there were any restrictions, in practice, on the right to freedom of assembly and association and whether Act No. 285 of 4 June 1982 was compatible with article 22 of the Covenant and with ILO Convention No. 87 of 1948.

189. In his reply, the representative of the State party said that questions relating to the right to freedom of assembly and association seldom arose in his country. Act No. 285 of 9 June 1982 on protection against dismissal of workers on grounds of membership of an association had come before the courts several times and, in one major case, relating to the dismissal of eight employees of a bus company on the grounds that they were not members of the same union as their fellow bus drivers, the Supreme Court had found, on 24 October 1986, that the dismissals had been illegal and ordered the payment of compensation. The Act applied only to

the private sector. No restrictions of any kind on the right to freedom of association of public sector employees was permitted. The provision of the Act authoriaing political parties or religious bodies to restrict employment to their own adherents was considered reasonable.

190. While Act No. 285 had been adopted in order to bring Denmark into conformity with a judgement of the European Court of Human Rights affecting the United Kingdom, some doubts had arisen as to whether the provisions of the Act went far enough to meet the terms of the relevant international instruments. Accordingly, the Government had been considering what adjustments should be made. Any eventual changes in the Act would be brought to the Committee's attention in Denmark's third periodic report,

Equality of the spouses as to marriage, during marriage and at its dissolution

191. With reference to that issue, members of the Committee wished to know how disputes between parents over the custody of children were resolved in Denmark, whether the parent not having custody had the right to regular visits and how that right was enforced and what distinctions existed between the powers of ministers of religion and mayors in respect of civil or religious marriages. They also requested additional information on the status of children born out of wedlock and procedures for preventing non-payment of maintenance in respect of children.

192. In his reply, the representative of the State party said that where there was a dispute between spouses regarding such issues as child custody and maintenance payments, it was not possible to obtain a divorce or separation except by court decree. Section 23 of the Custody Act provided for visiting rights to the parent not having custody of the child. Disputes between parents over visiting rights, if not resolved amicably, could be referred to the administrative authorities or the courts. The latter had various means at their disposal for enforcing decisions, including the imposition of a fine of varying severity and resort to the police authorities. The very possibility of legal action was usually enough to ensure that the recalcitrant parent complied with the relevant administrative decree. Marriages could be performed by both ministers of religion and mayors. One difference in their respective responsibilities was that the mayor was obliged to ensure, prior to the elaboration of either a religious or a civil marriage, that all requirements for contracting marriage had been met, whereas the minister of religion did not have that obligation. However, neither could celebrate a marriage if he knew of an impediment. There was no difference in the status of children born in wedlock or out of wedlock in respect of basic rights, such as civil and political rights and the right to inheritance, except that an illegitimate child born of a Danish mother automatically acquired Danish-citisenship, whereas in the case of a legitimate child the normal rules of jus sanguinis applied.

Riaht to participate in the conduct of public affairs

193. With reference to that issue, members of the Committee wished to know whether there were any restrictions on the right of certain categories of persons to accede to public office, whether'parliament, which had the right to decide on the validity of a person's election and his eligibility to sit in that body, took such decisions in plenary session or in committee and whether such decisions were taken on a case-by-case basis or in accordance with some general rules. It was also asked whether aliens actually availed themselves of opportunities to vote in local elections and to be elected.

194. In his reply, the representative explained that there were no general restrictions on access to public office. In certain cases, however, the law provided that a person elected or appointed to public office had to be of Danish nationality. This was the case, for example, with respect to eligibility for election to parliament, for service in the armed forces or the Home Guard or as members of a lay jury, and for appointment to the national civil service. The rule did not apply to service in local or regional government. A person who had been convicted of a serious offence punishable under the Criminal Code or by law was generally considered to be unfit to participate in public affairs. Thus, article 30 of the Constitution provided that a person "convicted of an offence which, in the eyes of the public, rendered him unworthy of being a member of the Folketing", was not eligible to stand for election to that body. In deciding whether or not a person was worthy of membership, the parliament treated each case separately and since such controversial situations were rare it was difficult to say whether previous cases were viewed by parliament as established precedents. Aliens who were entitled to do so did participate and were elected to office in local elections.

Riuhts of minorities

195. With reference to that issue, members of the Committee wished to know whether there were any minorities in Denmark and, if so, whether any difficulties had been encountered in implementing the relevant provisions of the Covenant and whether the Danish Government considered it necessary to adopt positive measures to ensure the right of ethnic, religious or linguistic minorities to preserve and enjoy their own culture, practise their own religion or use their own language. They also asked whether the residents of Greenland, including the Inuit, were also accorded the preferential treatment given by the State to minorities, whether officials in Greenland had been associated with the preparation of Denmark's second periodic report, whether the German-speaking minority had the possibility of arranging for their children to be educated in the German language and, if so, whether German was the first or second language of instruction, whether the German-speaking minority could use German for official business and whether the people of the Faroe Islands enjoyed autonomy or desired home rule.

196. In his reply, the representative of the State party said that while there were ethnic, religious and sexual minorities in Denmark, all were equal before the law regardless of whether they were Danish nationals or aliens, Greenlanders living in southern Denmark were regarded as a minority and while they enjoyed equal rights they were often economically and socially disadvantaged and therefore had difficulty in integrating with the rest of the nation. Efforts were undertaken by the social services to assist that group. The law provided that the children of minorities could be educated in their own language at State schools provided that there were enough pupils (at least 10 or 12). Education in German was provided to the German-speaking minority, but the representative was unaware of the precise conditions under which such instruction was provided. Evening courses could also be provided to adults where teachers and adequate educational materials were available. Both children and adults had the opportunity to assemble at local cultural centres where cultural activities were organized for minorities. Greenland officials had taken part in the preparation of the report and had been consulted in connection with the additional information that had been requested by members of the Committee. It was hoped that a representative of Greenland would be present during the consideration of Denmark's third periodic report. The Faroe Islands had had home rule since 1948 and enjoyed a broad degree of autonomy.

The home rule system adopted for Greenland had in fact been modelled on that of the Faroe Islands.

General observations

197. Members of the Committee expressed appreciation to the Danish delegation for responding to their questions so open-mindedly and competently. The quality of the report and the additional information provided was highly satisfactory and the Committee's exchange of views with the delegation had been fruitful. Members hoped that the dialogue uith Denmark would continue and that the information and clarifications that were still naeded on certain points, including those relating to the existence of fundamental principles not set forth in the Constitution, the implementation of article 27 of the Covenant, and Denmark's reservations to some of the provisions of the Covenant, would be provided in due course.

198. The representative of the State party said that his delegation had also felt that it had participated in a friendly dialogue and appreciated the fact that the Committee viewed human rights not only from the standpoint of violations, but also in terms of the progress and improvements that could be made in both human rights-related legislation and practice. He assured the Committee that its concerns and wishes would be brought to the attention of the Danish authorities and would be taken into account in preparing Denmark's third periodic report.

199. The Chairman, in concluding the consideration of the second periodic report of Denmark, also expressed his gratification at the continuation of the Committee's satisfactory dialogue with the State party and said that he looked forward to the consideration by the Committee of the third periodic report, which was due in 1990.

Rwanda

200. The Connnittee considered the second periodic report of Rwanda (CCPR/C/46/Add.1) at its 782nd to 785th meetings, held on 11 and 12 November 1987 (CCPR/C/SR.782-SR.785).

201. The report was introduced by the representative of the State Party who expressed his country's desire to do everything tbat was possible to ensure the protection of human rights. Rwanda's ambition to become a State that was genuinely subject to the rule of law and its constant concern to promote justice in the service of all citizens had been reaffirmed by the Head of State, His Government had also been concerned at all times to strengthen the country's judicial institutions. In its efforts to ensure respect for human rights, Rwanda was prepared to continue its sincere co-operation with the Committee and hoped, in turn, to receive the Committee's co-operation and understanding.

Constitutional and legal framework within which the Covenant is implemented

202. With reference to that issue, members of the Committee wished to know what significant changes relevant to the implementation of the Covenant had taken place since the consideration of Rwanda's initial report in 1982, what role the judiciary played in the adoption of legal texts under the third Five-year Development Plan and what the relationship was between the judicial and legislative authorities. They also asked how the provisions of the Covenant related to domestic laws, whether legislation had been enacted to implement all the rights guaranteed under the Covenant, what factors and difficulties had been encountered, if any, in the

implamentation of the Covenant and what efforts had boon made to disseminate information about it,

203. Members also wished to know what steps would be taken if a conflict arose between the Constitution and international treaties and what court was ● mpoworod to take decisions in such a case. They asked how the procedure for popular consultation, provided for under article 10 of the Constitution, was carried out, how often it had been resorted to and how it related to the work of thm National Development Council. It was also asked what provision had bmen made to ensure a speedy decision on cases handled under the extraordinary recourse procedure and for the immediate release of persons who had been detained unlawfully, whether the relatives of victims of judicial error were entitled to moral as well as material compensation, whether an alleged violation of a right set out in the Covenant could be brought up before any Rwandose court and whether the provisions of the Covenant were actually cited by judges in their decisions. Members also inquired how the bar was organiaed, how many lawyers there were in Rwanda and what arrangements had been made to provide legal assistance to persons without the moans to hire a lawyer, what procedure was used by the Constitutional Court when declaring a decree-law that had already been promulgated unconstitutional and who had the power to decide whether a legislative proposal or amondment might havm the effect of reducing public resources, in the sense of articles 65 and 66 of the Constitution.

204. Additional information was also requested concerning the competence of the State Security Court, its rules of procedure, the division of authority betwemn that court and ordinary courts and the nature of the cases brought before that court, and it was asked whether there was a higher court before which appeals against State Security Court decisions could be brought. One member noted that apparently no defence counsel had been available since 1981 in cases brought before the State Security Court and that no counsel had been present at the trials in criminal court.8 of persons who were currently under sentence of death, and recalled that under article 14 of the Constitution legal defence was an absolute right in all types of judicial proceedings. The member accordingly expressed the hope that Rwanda would find a way to give priority to the eatabiishment of a bar and the encouragement of legal education.

205. In his reply to questions raised by members of the Committee, the representative of the State party said that a number of relevant laws had been adopted since 1982 or were currently under consideration. They included an Act, adopted in 1987, which established procedures for the monitoring of the Government's activities by Parliament (the National Development Council), a 1985 Act increasing the time-limit for appeal against criminal convictions from 10 to 30 days and reducing the period for decisions on appeals from four to two months and another 1985 Act, relating to transport costs, which was designed to facilitate travel by the court to outlying areas to hear civil or commercial cases, such as those concerning land disputes. Among the draft bills submitted by the Government and currently under consideration by the legislature were: a draft code on the individual and the family, which was deaigned to strengthen child protection and improve the atatus of women, particularly in the home; a press bill, prohibiting prior censorship and enhancing the enjoyment of freedom of opinion; and a bill to reorganiao the higher courts to improve their operation. A bill relating to the bar was also about to be submitted to the National Development Council.

206. Except for some legislative drafting within the Ministry of Justice and responsibility for applying lews enacted by the legislature, the judicial

● uthoritiw had no direct relationship with the legislative authorities in view □↗ the principle of separation of powers. The Constitutional Court was made up of an equal number of magistrates from tho Court of Cassation and the Council of State. International Conventions to which Rwanda was a party were integrated into domestic legislation, with the rule8 of the relevant conventions prevailing in cases of conflict. Thus, in order to conform to article 11 of tho Covenant, the provisions allowing for imprisonment for debt had been deleted from the Civil Code. The Conrtitutional Court had as yet had no occasion to rule on any possible incompatibility between the Constitution and the provisions of international treaties. All of the right8 covered by the Covenant were guaranteed, either by the Conrtitution or by logirlation adopted specifically to ● n8ure their implementation. Although the provisions of the Covenant as ..ch were not disseminated to the population, there were regular radio programmes informing citizens of their rights.

207. Many difficulties affecting the implementation of the Covenant had been encountered, most of thorn resulting from a lack of material resources. For example, the scarcity of material resources made it difficult to provide adequate hoalth care to the ● ntiro population. In the investigation of criminal cases, moan8 of transport needed for gathoring evidence and statements from witnesses at the scene of a crime were not always availablm. Adequately trained senior staff worm lacking both in tho administrative services and the judiciary. The situation had imgrovmd somewhat over time, through tho country'8 own educational efforts and through grants for study abroad, but such problem8 were far from resolved.

208. In the event of conflict between tho Constitution and the Covenant, the provisions of the latter would prevail. Presumably, the constitutional provision would then be regarded a8 a dead lsttor and ultimately removed when the Conrtitution was revised. Article 10 of the Constitution simply referred to the fact that thm country's electoral régime, whether presidential or legislative, was doterminmd by law. In cases of judicial error,. the erroneous decision was annulled and a new docirion of acquittal was issued. Compensation was accorded for both material and moral damage, if proved, in such cases. Thm Covmnant could be invoked in the court8 although, in practice, the corresponding provisions of Rwandese loqislation were usually invoked. Similarly, judges usually referred to legislation but there was nothing to prevent a judge from citing the Covenant since it had also been incorporated in Rwandese law. Allegations of incompatibility between international instrument8 and the Constitution could be made before an ordinary court. The Prosidmnt of the National Development Council, or, in case of emergency, the President of the Republic, was empowered to ark the Constitutional Court for a ruling on the constitutionality of a decree-law. The constitutionality of a law had to be decided before its enactment and there was no recourse on ground8 of unconstitutionality once a law had boon promulqsted. In accordance with articles 65 and 66 of the Constitution, Deputies who proposmd bills or amendments having financial implication8 were required to submit accompanying proposals to cover such financial implications.

209. There was currently no bar association in Rwanda and only a few lawyers in the administration, the private sector and the courts. There were also some legal counsellors practising out in the country, not all of whom had completed their legal studies, but they were called "general agents" and not lawyers. The Government was well aware of the need to establish a bar as soon as possible. A bar association bill was currently under consideration and would be transmitted to the Government. The need to encourage legal studies at the National University was

also recognized and it was hoped that in duo course there would be a larger number of trained lawyers i Rwanda, including lawyer8 who aould act as defence counsel. While the President of the Court was ● mpoworod, under the Code of Criminal Procedure, to appoint a defence lawyer on behalf of those who aould not afford a legal defence, that was not done very often because of a lack of public funds. The bar association bill would provide for free legal aid in case of need. The State Security Court had competence solely in matters relating to State security. Its rule6 of procedure were the same a8 those of ordinary courts. Decisions of the Stat8 Security Court were appealable Only before the Court of Cassation, subject to the possibility of an appeal for review in last resort.

Non-discrimination and equality of the sexes

210. With reference to that issue, members of the Committee wished to know what practical measures had been taken to ensure non-discrimination, particularly on ground8 of political opinion, ethnic origin and sex, whether there had boon any prosecutions and conviction8 of individuals or groups under article 393 of the Penal Code, whether the requiremert for authorisation of a married woman'8 change of residence by her huoband or a legal judgemsnt was compatible with article 2, paragraph 1, article8 3 and 23 of the Covenant and whether the right8 of alien8 were restricted, as compared with those of citizens.

211. Members also asked whether both married and unmarried women had the right to join occupational organiaationn, whether it was compatible with article 26 of the Covenant to subject certain governmental, legislative and party leader8 to the jurisdiction of the Court of Cassation acting a8 a court of first and last instance, whether in addition to their political right8 the civil right8 of aliens could also be restricted under article 95 of the Constitution, whether Rwandese citizens had the right to express, without risk of discrimination, idea8 or opinions other than those of the National Revolutionary Movement and, if so, how individuals could exercise their right to freedom of opinion, and what legislation existed in Rwanda relating to a state of emergency. Clarification was also requested of ths events of 1986, in which a large number of persons who had refused to perform national service because of their religious beliefs had been deprived of their right to freedom of conscience and to express their political opinion.

212. In his reply, the representative of the State party said that all ethnic groups were represented in the various sectors of national life. Tutsis held important posts in the civil service, the senior judiciary and the armed forces, and were also prominent in commerce and industry. The admission of the Twa, who constituted only 1 per cent of the population and wore of inferior social status. to secondary and higher education was especially facilitated. Women were al80 well represented in all sectors: 12 of the 70 members of the National Development Council and 4 of the 20 members of the Central Committee of the National Revolutionary Movement were women. Women also held senior posts in the civil service and the judiciary and played an increasingly prominent role in business. There had been no prosecutions under article 393 of the Penal Code and there had been a healthy atmosphere of racial harmony since the start of the second Republic in 1973. The provisions relating to the requirement for the husband'8 consent to a change in the residence of a married woman was necessary to ensure family atability. Such a change of residence was subject to judicial decision in cases of divorce. Restrictions on the rights of aliens were those also normally obtaining in other countries, namely, that aliens were not entitled to hold posts in the civil service or to stand for public office.

213. Responding to other questions, the representative explain88 that both married and unmarried women were ● ligiblo to join oaaupational organizations. The specific reference to married women in the relevant provision of the Labour Cod8 merely reflectedthe legislature's intention to ensure that the activity of married women was not restricted to their family obligations. Subjecting Certain pe sons to trial by the Court of Carration was not a question of granting favourable treatment but of ● n8uring that justice was done without indulgence or undue severity and without pressure on the judges. Any exceptions to the equality of treatment of aliens authorised under article 95 of the Constitution related only to political right8 and not to civil rights.

214. Rwanda'8 single political movement had been created in 1973, after centuries of ethnic strife, in order to unsure cohesion between all ethnic: groups. The objectives of the National Revolutionary Movement for Development were not incompatible with the ● xerci8e of the right to freedom of expression. Every citizen, within the Movement, could express opinions and criticism, including opposition to the idea8 of the authorities, and no one was prosecuted for dissidence. Rwandese public opinion considered that maintaining national peace and understanding was more important than the multi-party principle. Article 147 of th8 Code of Criminal Procedure provided that a state of siege could be declared only in the event of imminent danger resulting from foreign war or domestic armed uprising. The proclamation of a state of siege made it possible to modify the competence of the courts, in particular by expanding that of the military courts. Members of certain religious sects who had been brought before the State Security Court in 1986 had not only oppoaud community work but had incited the population to disobey the law and to desist from seeking medical treatment and from working. Ultimately, the persons concerned were pardoned by the President and released.

Right to life

215. With reference to that issue, member8 of the Committee wished to know how many death sentences had been pronounced during the past five years and for what crimes, and how many such sentences had actually been carried out and for what crimes, how many persons were currently under sentence of death and why some of them had been kept in prison for years and how the large number of death sentences could be explained, given the substantially improved situation in Rwanda with respect to public order. Members also asked what regulationa governed the use of firearms by the police, whether there had been any loss of life as a result of excessive use of force by the police, the military forces or other law enforcement agencies and, if so, whether investigations had been carried out and those responsible punished. It was also asked whether the term "any other form of violence", used in paragraph 43 (b) of the report, covered only violence against persons or also violence against property, whether the death penalty would actually be imposed for attempted poisoning, and what the infant mortality rate was in Rwanda and whnt measures had been taken to reduce it. Additional information was also requaated on article 6 of the Covenant in accordance with the Committee's general comments Nos. 6 (16) and 14 (23).

216. In his reply to questions raised by members of the Committee, the representative of the State party said that between 500 and 600 persona had been sentenced to death in Rwanda and that the last execution had taken place in 1982. The death penalty was pronounced only in cases involving homicide. The high number of death penaltiea could be explained largely by the fact that, unfortunately, a high number of murders had been committed. Data concerning the number of persons

who had been sentenced to death since the mort recent presidential pardon was not available. Persons under sentence of death often had to spend several years in prison, since the process for appeals and applications for cassation and for pardon was lengthy. The use of firearms by e.g. enforcement officials was regulated, but improper use of force by the army, police or other security forces did sometimes occur. In three recent cases of that kind, the persons responsible - a soldier and two policemen - had been tried and convicted. The term "any other form of violence" must be placed in the context of article 164 of the Penal Code and meant any violence, other than terrorism or armed force, directed at the human person. While the Rwandese Code provided that attempted offences were punishable in the same manner as the offences themselves, special circumstances which made it possible to reduce the sentence could be taken into consideration. Measures being taken or envisaged to reduce infant mortality included vaccination campaigns, the medical examination of infant8 and the counselling of mothers at nutrition centres or by means of rogular radio broadcast;.

217. Responding to the Committee's request for additional information on article 6 of the Covenant, the representative pointed out that article 155 of the Penal Code prohibited the establishment of relations with a foreign Government or foreign institution, or with their agents, with the intention of causing or inciting a war, an armed uprising or acts of violence against the country. In Rwanda there had never been any disappearances in circumstances indicative of a violation of the right to life. Rwanda did not yet envisage abolishing the death penalty, but the application of that penalty was very strictly limited. Penal procedure was scrupulously respected, in order to enable judges to hand down equitable decisions free of ull pressure. When a person was sentenced to death, the Public Prosecutor's Office automatically lodged an appeal. Presidential pardon was granted very often. In the past five years, there had been three general measures commuting death sentences to life imprisonment: in January 1984, July 1985, and July 1987.

Liberty and security of person

218. With reference to that issue, members of the Committee wished to know under what circumstances persons might be held in preventive detention without being charged with a criminal offence and for how long, whether a person could be detained in institutions other than prisons, what the maximum period of pro-trial detention was, how soon after arrest a person could contact a lawyer and how quickly families were notified of an arrest. They also asked what the arrangements were for the superviaion of prisons and other places of detention and for receiving and investigating complainta, whether grouping prisoners by social and cultural level was in conformity with article 10 of the Covenant, what controls had been instituted to ensure that detainees were not subjected to torture or to cruel, inhuman or degrading treatment, what sanctions were provided for punishing such treatment and how often such sanctions had been applied in the last five years, and what criteria were used to determine that the work to which prisoners might be assigned outside prison was "in the public interest".

219. Members also wished to know whether pre-trial detention, although subject to periodic review, could in fact be extended indefinitely, whether the case of an individual who had reportedly been held incommunicado for 14 months without being charged or having his family notified reflected a general practice, whether the dungeons (cachots noirs), where prisoners were sometimes hsld for up to 30 days, were used during an investigation in order to extract information and whether the

● xirtenco □x↗ ruah dungeons wan compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners. One member also wondered whether the aonditions of detention aould not be improved, despite resource limitations, by such measures as placin lamps in the cachots.

220. Responding to questions raised by members of the Committee, the representative of the State party explained that committal without charge could not exceed 48 hours and war only resorted to pending a decision whether or not to issue a detention order. Thereafter, a provisional arrest order had to be issued, which was valid for five days, during which time the prosecution had to present the case in court. Where the court determined that pre-trial detention was necessary, a 30-day detention order was issued and that order was renewable from month to month if the aourt felt. that continued detention was required for the investigation or for reasons of public order. The period of pro-trial detention could not exceed the duration of the imposable penalty for the offence. A detainee could contact his defence counsel immediately after being arrested, since the right to defence was guaranteed at all stages of the proceedings, including the investigation stage. The detainee's family was notified promptly but the prison services were often forestalled by the public grape-vine since news travelled very quickly. Prisons were supervised by the Directorate-General of Prison Services, by the Public Prosecutor's Office and by a physician-in-charge. Detainees were afforded an opportunity to voice complaints during inspections. It was sometimes necessary to assign certain detainees to separate quarters for reasons of security. Members of the Public Prosecutor's staff took turns in monitoring the conditions of pro-trial detention and ensuring that no one was subjected to torture or cruel, inhuman or degrading treatment. If a case of torture was reported, the offender was prosecuted for causing bodily injury. That had happened recently in a case involving a gendarme. The criteria used to determine whether prison work was in the general interest varied, but the usefulness of certain jobs, such as cleaning public highways, was obvious. Other typical tasks involved carpentry or farming, which enabled prisoners to acquire vocational training.

221. Turning to other questions, the representative stated that, except in very serious cases, individuals were usually released pending trial, Continuing detention was ordered only where the court conaidersd that it was essential for the purpose8 of the investigation, which was rare, or in the general interest and for reasons of public order. He was not familiar with the circumstances relating to the lengthy pre-trial detention of the person to which reference had been made by a member of the Committee, but had no doubt that regrettable abuses could sometimes occur despite every precaution. It was up to the competent authorities to prevent or to punish such abuses. The existence of the cachots noirs, which dated from colonial times, was a constant source of concern to the authorities of Rwanda. Although a few modern prisons had been built, the State was unfortunately obliged, owing to the lack of adequate resources, to continue to use the old prisons including the cachots when a prisoner had to be isolated or punished. The judicial authorities were determined that tho situation in that regard should be gradually improved. The suggestion for placing lamps in the cachots might be considered by the authorities in their efforts to improve prison conditions.

Right to a fair trial

222. With reference to that issue, members of the Committee wished to receive additional information on the organization of the judiciary pursuant to the judicial reform of 1982 and the impact of that reform on the independence of the

judiciary, any cases that had been brought before the State Security Court ● inco the consideration of the initial report, article 14, in accordance with the Committee's general comment No. 13 (21), and the ● yrtem for training and recruiting lawyers, prosecutors and judges and the authoritier comprtent to appoint, dismiss and promote prosecutors and judges. Members also asked whether the national bar had become operational, whether there was a free legal aid and advisory scheme in Rwanda and, if not, how compliance with article 14, paragraph 3 (d), of the Covenant was anaured, how long an average trial lasted, how many political prisoners were currently in custody, what the term "total amnesty", used in paragraph 54 of the report meant and whether provisions or practices relating to forced labour or community work were consistent with the Covenant.

223. In his reply, the representative explained that the judicial reform of 1982 had introduced two major changes: bringing both the members of the Office of the Public Prosecutor and judges under a single legal régime, which had strengthenad the unity of the judiciary and led to improvements in the administration of justice, and creating separate Prosecutor's Offices at the various judicial levels (i.e., court of first instance, court of appeal and thr Court of Cassation), which had helped to protect the interests of defendants better, particularly in the course of the appeals process. The new Code of Judicial Organisation and Competence also placed great emphasis on judicial independence, which was now more firmly established. In addition to the case involving members of religious sects discussed earlier, two main cases had been brought before the State Security Court: one of the cases involved persons abroad who had engaged in activitier likely to jeopardize State security and the other concerned a former departmental head of the ational Police who had bean prosecuted for plotting to murder several political prisoners in 1975 and 1976. Young lawyers were trained either at the National University's Law Faculty or through a system of rapid tuition consisting of two short (8 to 9 months) courses. The appointment, dismissal and promotion of judges came within the competence of the President of tho Republic. Judges could be dismissed only with the agreement of the Higher Council of the Judiciary, which was itself composed of judges.

224. Responding to other questions, the representative explained that since the Fourth National Development Plan was still being finalised the national bar had not yet been organized. However, the relevant bill was about to be presented to the Council of Ministers. Legal assistance was envisaged under arrangements for the bar once it became operational. For the time being, presiding judges could, in serious cases, appoint a defence counsel provided sufficient public funds were available to meet defence costs. Since there were relatively few judges in Rwanda and the country's courts were encumbered with 5,000 to 6,000 lawsuits, delays in bringing cases to trial were inevitable. On average, the courts heard from 60 to 100 civil cases per month, a rate that could be regarded as satisfactory given the paucity of judges and the complexity of land disputea. On average, criminal trials laated about two days. Complex civil actions often took considerably longer. Articles 199 and 200 of the Cods of Judicial Organisation and Competence provided for public trials and publicly delivered judgementn. Under the Code of Criminal Procedure the burden of proof in criminal case8 rested with the Office of the Public Prosecutor and judges were under an obligation to consider all the evidence, both for and against the accused. Persons accused of an offence were given a minimum of eight days for preparing their defence tnd a verdict had to be given within eight days of the conclusion of the hearing. No one was detained in Rwanda unless charged or sentenced for offences under the Penal Code. Only three or four persons whose offences had been politically motivated were currently in detention,

most others having already beenamnestied. The term "total amnesty'*, used in paragraph 54 of the report, was in respect of convictions pronounced by court martial on 29 June 1974. Article 4 of the Rwandese Labour Code clearly prohibited forced labour. Community work for development purposes, to which most citizens were perfectly willing to devote one day a week, was regarded as part of a citizen's civic duties and was clearly compatible with the relevant provisions of the Covenant.

Freedom of movement and expulsion of aliens

225. With reference to that issue, members of the Committee wished to know whether the required formalities relating to changes of residence were compatible with article 12, paragraph 3, of the Covenant, and on what basis passports could be refused or withdrawn. They also asked what circumstances could lead to the assignment of an undesirable alien to a prescribed residence rather than expulsion, which authority was responsible for determining that a person was "undesirable" and according to what criteria and whether aliens could be prevented from leaving Rwanda and, if so, for what reasons.

226. Members also asked whether a person who was refused permission to change residence could appeal against that decision and, if so, whether such procedure provided an adequate remedy, what the reason was for requiring Persons to report a change of residence to the authorities within such a short period as three days and why certain provisicas of domestic law restricted fundamental rights without being clearly justified on grounds of public order or security. Noting with some concern the restrictions placed on the freedom of movement of women, members also wished to know what opportunities were provided to women to exercise their rights that dia not require the consent of their husbands or of the State. It was also asked whether desertion on the part of the wife was considered to be a more serious offence than on the part of the husband.

227. In his reply, the representative of the State party explained that the regulations governing changes of residence were needed mainly to ensure that a person's needs in a new location would be met adequately and imposed no real restriction on freedom of movement. The main concern of the legislature had been to ensure that no one could leave a commune without having somewhere else to live, in view of the fact that the country's agricultural land was limited. Persons who were refused authorixation to change their residence could lodge an appeal with the prefecture or could bring the matter before the Council of State for adjudication. Passports could be refused to persons who were at liberty but awaiting trial or whose freedom of movement had been restricted by court order. The Minister of the Interior could withdraw the passport of a person whose movement was under legal restriction when there was reason to believe that the person intended to leave the country. The Minister of the Interior could decide to impose restrictions on an alien's residence, rather than to order his expulsion, in cases where the possible threat was likely to be only temporary. An alien might be prevented from leaving the country for the same reasons applicable to a national, namely that legal restrictions had been imposed on his freedom of movement. The requirement that a residence permit be obtained within three days of arrival at a new locality was intended to prevent vagrancy and delinquency in urban areas. The law on immigration and the conditions of entry and residence of aliens was perfectly in accordance with article 21 of the Constitution, which authorized the imposition of restrictions on freedom of movement on grounds of threats to public order or State security. There were no special conditions restricting the freedom of women as

compared to that of men. The provision of law requiring the consent of the husband to the change of residence of his spouse was not designed to prevent any normal movement, but merely to require the husband's consent to any prolonged absence of his wife, such consent being notified to the authorities. Wives were free to join a variety of organisations in Rwanda without the consent of their husbands and within which they were able to participate in the national development effort. Article 380 of the Penal Code laid down equal penalties for men and women who deserted their family, and there was thus no discrimination against women in that regard. The Code on the Individual and the Family was designed to place men and women on an equal footing.

Right to privacy

228. With reference to that issue, members of the Committee wished to know what laws had been adopted restricting the right to confidentiality of correspondence and communication and the inviolability of the home.

229. In his reply, the representative stated that under article 344 of the Penal Code, the Government Attorney's Office could order the seizure of correspondence if that action was deemed essential to an investigation. Article 32 of the Penal Code authorised entry and search of the home in cases where evidence of offences might be found. Entry could take place only between 5 a.m. and 7 p.m. unless it was suspected that evidence of a crime might disappear. Except in the case of flagrant offences, searches were subject to authoriaation by the relevant Ministry and householders could require proof of identity of the officers seeking to conduct a search.

Freedom of religion

230. With reference to that issue, members of the Committee wished to know whether there were different religions in Rwanda, how many members each of them had and whether such religions could be practised freely, whether a fine of 100 to 1,000 francs was an effective punishment for offences against the free exercise of religion and whether such punishment was provided for under the Penal Code or another law relating specifically to religious activities. Members of the Committee also requested additional information regarding the trial, in 1986, of a large number of persons belonging to four different religious sects, including Jehovah's Witnesses, and asked in particular for assurances that the charges brought against such persons were, in fact, exclusively concerned with violations of Rwandese law and were not related to their religious beliefs.

231. In his reply, the representative of the State party said that there were several religious denominations in Rwanda - the main ones being Catholic, Protestant and Muslim - and all of these religions could be practised freely. Any breach of religious freedom was punishable under article 243 of the Penal Code by a term of imprisonment ranging from eight days to three months. Any offence committed by members of religious denominations was punishable in the same way as one committed by any other member of the community and no penalties were imposed on account of membership of a particular sect. While the trial in 1986 of members of certain religious sects had touched upon the xefusal of the accused to participate in the activities of the National Revolutionary Movement for Development, the offence of which such persons had been convicted was that of incitement to breach of the law. Members of the religious group in question had sought to incite the public to disruptive behaviour and the Government had been obliged to protect the

general public interest. The Government did not interfere in the activities of any religious group as long as its members practised their faith without prejudice to public order. All those convicted at the 1986 trial had received presidential pardons even before recourse procedures envisaged under the law could be set in motion.

Freedom of the press, assembly and association

232. With reference to those issues, members of the Committee wished to know what controls were placed on freedom of the press and on the mass media, whether any person had been arrested, detained or convicted for offences of a political character or involving the expression of opinion, whether there were currently any political prisoners in Rwanda, whether the existence of a single party restricted the exercise of the rights set forth in articles 19, 20 and 21 of the Covenant and what legislative restrictions were placed on the exercise of trade-union rights. Members also wished to know what specific provisions had been made for the expression of a multiplicity of views within the single-party system of Rwanda, what specific means were available to individuals to seek, receive and disseminate information, whether new press legislation that had been under consideration had actually been enacted and, if so, what its main provisions were, whether foreign newspapers and periodicals were available in Rwanda and whether there were any special restrictions applicable to the activities of foreign correspondents. They also asked what some of the religious practices conforming to "local custom" were that required no prior authorisation, whether article 186 of the Labour Code, which stipulated that agricultural workers did not have the right to form trade unions and which seemed to be incompatible with both articles 19 and 31 of the Constitution and IL0 Convention No. 87, had been repealed in accordance with the Government's promise, whether persons in different professions, unmarried women and minors had the right to join trade unions and whether the term "political activity", as used in article 7 of the Constitution, concerned activities directly related to gaining political power or to the expression of political views.

233. In his reply to questions raised by members of the Committee, the representative of the State party said that, while article 18 of the Constitution guaranteed freedom of the press, the authorities were permitted to place restrictions on the exercise of that right when necessary for the preservation of public order. The Government was currently studying a press bill that would prohibit prior censorship and would authoriae sanctions only if violations, such as libel or slander, had actually been committed during the exercise of freedom of expression. Foreign newspapers and journals were available in Rwanda and the public could and often did procure them freely. Foreign correspondents visited the country frequently'and were free to collect any information they wished. The gatherings -referred to in paragraph 118 of the report that required no prior authorization included such activities as weddings and carnivals.

234. As earlier indicated in discussing the State security trial involving member:: of some religious sects in 1986, no one had been arrested, detained or convicted for offences involving the expression of opinion nor were there any "political" prisoners in Rwanda currently, but only three or four persons whose actions might have been politically motivated but who had been sentenced for criminal acts. The National Revolutionary Movement for Development was in no way hostile to the rights set out in the Covenant. The Movement was not a political party consisting of a group of like-minded people and excluding other sections of the population, it encompassed all citizens in an effort to ensure national cohesion and unity as well

as an adequate response to Rwanda's problems. Within the Movement there was complete freedom of expression and every effort was made to ensure that decisions were taken on the basis of consensus and true dialogue.

235. There were no restrictions on trade-union rights, subject to the prevention and punishment of offences committed in connection with the exercise of such rights. Trade unions were usually formed by the same profession, but different unions were not prohibited from joining together in a confederation. The specific mention of the right of married women to join trade unions was a progressive factor, since in some countries married women were excluded from enjoyment of that right. Minors could also join trade unions unless their parents had serious grounds for objecting to it - a situation that was hardly ever encountered. Civil servants and officers of the armed forces were free to form trade unions but had no right to strike. It was possible that agricultural workers were excluded from trade-union rights because such work was usually of a seasonal nature.. The term "political activity" as used in article 7 of the Constitution should be interpreted narrowly as meaning access to political functions, and did not apply to the expression of opinion.

Riaht to participate in public affairs

236. With reference to that issue, members of the Committee wished to know what circumstances were envisaged under article 8 of the Constitution for the exercise of indirect rather than direct suffrage and what legislation and practice existed with regard to access to public office. Information was also requested on the relative proportion of Hutus and Tutsis in the legislature, the Cabinet and the judiciary, as well as in education and senior government positions.

237. In his reply, the representative of the State party explained that the electoral law stipulated that presidential, legislative and local elections had to be conducted by direct suffrage. The conditions of recruitment to the civil service were governed by the applicable statutes relating to public servants, the judiciary and commissioned and non-commissioned officers. Recruitment was based on the submission of candidatures and took post vacancies into account. Overall statistics relating to the relative proportion of Hutus and Tutsis in the various public affairs sectors were not compiled, but the Tutsis, who were in a minority, were in fact represented in parliament, the Government, the legal sector, the teaching profession, including at the university level, and is senior positions in the Ministries and public institutions.

General observations

238. Members of the Committee expressed appreciation for the clear and candid explanations that had been provided by the representative of the State party in response to the questions that had been posed and complimented Rwanda for having submitted its report exactly on time. The report and the clarifications that had been provided showed that, despite the constraints imposed by tradition and the consequences of Rwanda's recent unsettled history and its economic difficulties, considerable progress had been achieved in recent years in the field of human rights. At the same time, certain aspects of the situation in Rwanda continued to give rise to concern, such as the restrictions on the freedom of movement of married women, problems relating to the rights of agricultural workers and prison conditions. Several members referred to problems associated with the obligations arising from the Covenant in a single-party system. Members of the Committee

expressed the hope that the Rwandese authorities would take the Committee's concerns into account and that the State party's third periodic report would reflect further progress.

235. The representative of the State party expressed his delegation's gratitude for the understanding that had been shown by members of the Committee and reaffirmed his country's determination to do its utmost to protect human rights. He assured the Committee that Rwanda would endeavour to do all that was necasaary to achieve progress in the fields where members of the Committee had expreaaed concern.

240. In concluding the consideration of the second periodic report of Rwanda, the Chairman also thanked the delegation for being so well prepared and for having engaged in a genuine dialogue with the Committee.

Guinea

241. The Committee considered the initial report of Guinea (CCPR/C/6/Add.11) at its 788th and 762nd meetings, held on 22 and 24 March 1988 (CCPR/C/SR.788 and 792). This report was submitted by the Government of Guinea pursuant to the requeat made by the Human Rights Committee after considering the initial report of Guinea (CCPR/C/6/Add.5) in the absence of a representative of the State party at its twentieth session (CCPR/C/SR.475 and 476 and 485 and 486).

242. The report was introduced by the representative of thb State party who emphasized his Government's willingness to implement gradually the provisions of the Covenant. He pointed out that the report of Guinea summarised the ways in which fundamental rights and freedoms were being applied to his country and stressed that, in evaluating the progress made since 3 April 1984, it was necessary to keep in mind that the army, in taking power, had been imbued with the ideal of equal justice for all.

243. Referring to the period which followed Guinea's accession to independence, the representative stated that the régime of the Parti démocratique de Guinée (PDG), the single party then in power, was characterized by arbitrary arrests and detention, mutilation and the taking of life. Magistrates had been replaced by "people's judges" and defendants by "people's attorneys", who were political figures without legal training. Fundamental rights and freedoms were violated in many respects through the adoption of laws modifying the Criminal Code, the Code of Criminal Procedure and other codes.

244. The new Military Committee for National Recovery (CMRN) had set out to establish a liberal democracy and a state of law in Guinea, but a liberal democratic régime could not replace a totalitarian régime immediately. Nevertheless, the President had stated that the military's wish wss that all Guineans should be able to express themselves freely, and that the military would retain power until true social justice had been eatabliahed. In that roapect, the representative referred to numerous reforms carried out by the authorities, which were indicative of their willingness to ensure respect for human rights and fundamental freedoms, such as Ordinance No. 22/PRG/86 of January 1986, which depoliticized the civil service and Ordinance No. 009/PRG/84 of 18 August 1984, which had removed from the legislation any proviaions contrary to the notions of private ownership, free enterprise and individual and collective rights and

freedoms. Thus, the 1965 Criminal Code and Code of Criminal Procedure, based on universal principles of criminal law, had been ro-•rtablirhed.

245. Members of the Committee welcomed the report of Guinea, which demonstrated the efforts made by the Government in it8 attempt to comply entirely with the international system of human rights. They noted, however, that the report had not been compiled in accordance with the general guidelines regarding the form and contents of reports and stressed that fuller information on both the law and practice in Guinea was needed by the Committee if it was to carry out its tasks effectively.

248. Referring to article 2 of the Covenant, members of the Committee expressed their concern about the absence of a Constitution in Guinea. In that connection, they requested further information on the progress made in the drafting of thr new Constitution, including the individual8 involved, the process itself and the projected time frame. They requested clarification on the exact status of the Covenant in the current context and asked how the Government actually guaranteed and protected all fundamental rights. They also asked what role the Government envisaged for the Covenant, whether it would be relf-executing or incorporated into domestic law and whether it8 provisions would be invokable before Guinean courts. Clarification was also requested of the term "monistic approach'*, referred to in section I.C. of the report, and of the legal basis, in the absence of any Constitution, for the laws, rules, decisions and communiqués issued by the Government since 1984. It was alro asked to what extent the ● xocutivo, lmgislativo and judicial branches were separate in Guinea, what action had bemn taken against politidal opponents belonging to thm prmviour régime or against those who were in opposition to the current authorities, whether thm Covenant had bomn published in the Journal officiel and what new provision8 had been enacted rmgarding discrimination.

247. Regarding article 3 of the Covenant, members of the Committee inquired about thm status of women in Guinea and asked about the proportion of females in schools and in public life.

248. With regard to article 4 of the Covenant, one member observed that a number of right8 were not fully yuarantesd or were derogated from in Guinea and recalled that any derogation had to be in conformity with paragraph 2 of that article.

249. With reference to article 6 of the Covenant, members of thm Committee wished to know how many persons had been subjmctecl to the death penalty and executed during the period undmr consideration and how many of those sentences were related to the 1986 trials. Noting the prohibition against applying the death penalty to youngsters under the age of 13, members inquired whether children over that age but under 18 were subject to the death pmnalty, which would be in contradiction with the Covenant. Clarification was requested on cases of disappearances which remained unsolved and on the application of the death penalty in cane of infanticide. It was also asked whether there were any limits on the use of firearms by the military and police force.

250. Referring to article 9 of the Covenant, members of the Committee, requeated further information on the procedure8 for keeping persons in preventive custody and time-limits before a case was taken to court; they also asked whether pro-trial proceedings were open to the public and for information on regulations relating to the right of defendanta to retain a lawyer.

251. Regarding articlm 10 of the Covmnant, member8 of thm Committmm wished to receive additional information on thm situation, in law and in practice, with regard to incommunicado detention, in particular they asked whether detainees were permittmd to see visitors and what time-limits were involvmd. Thmy also inquired what action had been takmn by the Government concerning thm propmr trmatmmnt of prisoners.

252. With refmrmnce to articlm 12 of thm Covenant, members of thm Committmm requested additional information on the application of restrictions on freedom of movement in timer of public emergency and on the law regarding travel documents.

253. With reference to article 14 of thm Covenant, members of the Committmm wished to know what guarantees • Xi8ted to protect thm independence of thm judiciary. In that connection, they inquired how lmgal personnel were rmcruitmd, trainmd, appointmd and rmmovmd, how the certification of barristers by thm Minister of Juaticm was carried out, whether a commission for the revision of thm Codm of Criminal Procedure existed, whether changes worm contemplated with respect to sentences and punishments and how the judiciary was organized. Further information was requested on thm naturm and function8 of thm spmcial courts, especially thm Statm Security Court. In particular, member8 asked about the plannmd duration of that Court'8 jurisdiction, and inquired how many cases it had judgmd, what method8 it uemd in applying penalties under the Criminal Cods, how crimes and offmncms worm refmrrmd to it and whether therm were any special procoduros to ensure that it respected the rights guaranteed under article 14 of the Covenant. Members also expressed concern over the use of in camera procedurea and secret judgements by thm State Security Court, and the impossibility of appeal against it8 decisions, which did not seem to comply with articlm 14 of the Covenant. With rmgard to thm 1986 trials, some members wondered whmthmr there had been any formal charges, whether thm names of thm judges were known, why the trials had been held in camera and why thm defendants had not appearmd before the Court.

254. In relation to articlm 18 of the Covenant, members of the Committem asked how many religions existed in Guinea and how co-operation between them was promoted. Clarification was requested of the sentence appearing on page 16 of the report stating that "any disturbance caused by ministers of religion arm bound to meet with a criminal sanction".

255. Rmgarding article 19 of the Covenant, members of thm Committmm asked what steps the Government was taking to guarantee the right to freedom of expression, how many political parties therm were and what their basis of affiliation was, how many newspaper8 were published and in what languages, whether there were alternatives to the State-owned radio, television and press for freedom of expression, whether foreign book8 and periodical8 were available and what the illiteracy rate was. It was also asked what the conditions were for establishing a newspaper, whether the Journalists Association had been dissolved and, if 80, why, what the scope and function8 of the national commission for film censorship were and whether any arreat or trial had resulted from the denunciation by the Government of the opposition pamphlets published in May 1987.

256. In relation to articles 21 and 22 of the Covenant, members of the Committee requested further information on the norms governing freedom of association and the procedure for the recognition of new associations by the Government and aaked whether any meetings had been prohibited on the grounds that they were likely to endanger national security.

257. With rrqard to article 23 of thm Covenant, members wondmrmd whmthmr it was possible to obtain a divorce in Guinea and on what grounds, how property war divided and whmthmr wives could retain their own property during marriaga. Since polygamy was permittmd with tha wife's consent, it was asked what procmdurm was used to ascertain the gmnuina consent of the wife or wives. It war also observed that thm institution of compulsory dowry did notseem compatible with article 3 of tha Covenant.

258. Regarding artialm 25 of tha Covmnant, one mambmr ● xpra88md a wish for early action to guarantee the right8 embodiad therein.

259. Responding to questions raised by members of the Committea undmr article 2 of the Covmnant, the representative of tha State party pointed out that thm drafting of the Guinean Constitution by a Commission of 40 experts was at an advanced stage. Thm slow pace of tho drafting of fundamantal lmgal instruments governing the enactment and execution of laws, regulation8 and decisions was mxplainmd by the extent of Statm intervention in various realms of activity. Moreovor, there was a severe 8hortagm of public funds, which were inadaquate even for meeting the immediate need8 of daily life. The representative also mxplained that hi8 Government was establishing a basic structure based on neighbourhood or village council8 for which any citizen ovmr 15 year8 of age was eligible to vote. After tha Constitution had been drafted, it would be referred to these council8 for consideration and adoption. The fundamental rules to be included in the Constitution were those of a liberal and republican democracy foundmd on the principle of separation of powers. However, for the time being, tho only source of legislation was the President of the Republic,

260. With regard to the "monistic approach", the representative notmd that article 2 of thm Civil Code placed international treaties before thm Constitution and above the law8 and the Civil Code a d that therm was no difficulty in invoking tha Covenant before the Guinean courts. Lastly, he explainad that, although thm Coveuant had not been published in the Journal officiel, it had been displayed on posters in public place8 and was taught in the course8 of the law and social sciences faculties.

261. Referring to article 3 of the Covenant, the representative stated that in hi8 country women had the same right8 a8 men. Boy8 and girl8 had equal opportunities in schools, public education was free and the abilities and effort8 of each pupil determined his or her level of education. Regarding employment policy and public affairs, women had equal access to all positions.

262. In connection with article 6 of the Covenant, the representative explained that the death penalty might be imposed for violation8 of State security and for murder and assassination and that the judge might recognize extenuating circumstances. He was unable to say whether there had been any summary execution8 with regard to the 1986 trials and he pointed out that there were no public execution8 in Guinea. Minor8 between 13 and 20 year8 of age could not be sentenced to death, in accordance with Act 022/AL/77, which had amended the Criminal Code, but only made ward8 of court, placed under supervision or subjected to measures of assistance. With regard to infanticide, he said that, since the law was more severe toward8 the father, a special punishment had been provided for the mother. Regarding alleged disappearances, he could not furnish any data and requested the member8 of the Committee to provide him with any information they might have 80 that he might draw it to the attention of the competent authorities. Laatly, he

raid that thm police and gendarmes seldom used their weapons and were controlled by thm State promacutor (procurcurs). Tha use of weapons against a thief, for instance, would entail vmry serious consequences.

263. With ragard to article 9 of thm Covanant, thm representative draw attention to thm fact that, under articlm 100 of tha Criminal Code, preventive arrest and dmtention could *not* exceed 72 hours, after which time the accused must be brought bmform thm courts. Severesanctions against arbitrary and unlawful arrest and prolongad detention warm providmd by tha Criminal Codm.

264. Regarding articlm 10 of the Covanant, he pointed out that prisoners had the righ to receive visitor8 and to send and receive correspondence.

265. With regard to articlm 12 of the Covmnant, he explained that thm restrictions on traval documents warm intended to • n8ura that citizens carried their identity documents.

266. Referring to articlm 14 of the Covenant, tha representative of Guinea drew attention to Ordinance 109/PRG/86 of 5 July 1986, which providad for tha independence *of* the judiciary. Pending thr promulgation *of* thm Constitution, it had been deemed appropriate to ensure that the powers of the judiciary were not encroached upon by local administrative authorities. Thus, the registrars, who had formerly presided over the courts, had been replaced by serving judge8 with legal training. All judges, barrister8 and notaries would be required, in the future, to hold a law degree or an equivalent or higher degrem. The method of recruitment had ye' to be decided. A presidential decree had providad for thm establishment of a national school of administration which would accept university graduates in ordar to provide them with practical training. The criteria for choosing judges would include certain moral qualities and would be strict in term8 of recruitment.

267. The statute8 of tha judiciary stipulated strict condition8 for thm recall of judges who aould only be removad for violation *of* the obligation of impartiality and integrity or for impropar conduct, such a8 corruption or mngaging in scandalous bmhaviour. The Magistrates' Disciplinary Council was responsible for such cases. Judge8 were appointed by thm President, who was the guarantor of their independence and presided over the Council of the Judiciary, which was responsible for their discipline. Regarding barristera, the representative refarrad to Ordinance 111/PRG/86 of 10 July 1986 and pointed out that the power of the Minister of Justice to grant recognition and authorization to practise law was not discretionary.

268. Replying to othar questions, the representative said that, undmr Ordinance 152/PRG/85 of 10 August 1985, which had amended article 136 of thm Code of Criminal Procedure, the President *of* the State Security Court was a Supreme Court Judge and thm four members of tho Court consisted of two professional judges and two senior army officers. Referring to the 1985/1986 session of the State Security Court, ho informed the Committee that the Court'8 member8 had been appointad by a decree of 5 Augunt 1966, that the Court had examined tha material evidence on thm basis of the principle of the individuality of criminal responsibility and that the three counsel8 for the defence had had access to case file8 and had been heard. Since the trial had taken place at a particularly difficult time and had involved delicate political and racial issues, the court had met <u>in camera</u> in order to protect the accused from their victims and to ensure that the fact8 were considered objectively. Re-examination of the case had not been envisaged since the State

Security Court's decisions were not subject to appeal. Nevertheless, since it had been claimed that the Court's procedures violated the Covenant, the relevant provision of the Ordinance would be reviewed during the redrafting of legal texts. Some of the persons sentenced had received a presidential pardon. The representative stressed that in its review of the legal system the Government would consider the appropriateness of retaining special courtr.

269. In connection with article 18 of the Covenant, the representative rtated that there wore three major religions in Guinea, namely Islam, Christianity and animism and that incitements to acts of violence or disturbances of the peace wore offences which might lead to the punishme of ministers of religion.

270. Referring to articles 19 to 22 of the Covenant, the representative of the State party explained that there were no political parties pending the promulgation of the Constitution, but that the matter would be addressed therein. There were no private newspapers, since no one had, perhaps for financial reasons, expressed the desire to establish one. Two companies shared the foreign press market in Guinea. A large number of humanitarian, commercial or professional associations were to be authorised in order to impede the formation of any association based on ethnic, tribal or racial considerations. The Executive Board of the Journalists' Association had been dissolved because of malfeasance and had been replaced by persona of higher integrity. The Government required the names of authors to appear with their published articles in order to prevent the circulation of anonymous publications, which in the past had led to loss of life, and to encourage citizens to acknowledge their opinions.

271. With regard to article 23 of the Covenant, the rsprerentative of Guinea explained that in marriage, with the exception of the provisions of the Civil Code ntipulatinq that the husband was the head of the family, the role of women was equal to that of men. The division of property depended on a freely chosen matrimonial régime and women had their own property and could control it freely. Either spouse participated in the moral and material supervision of the family in proportion to individual abilities. Men and women also had the same right to initiate divorce and decisions in that regard were based on the contract and the facts of the case. Responding to other questions, the representative explained that the dowry was a symbolic amount of 500 francs, and was given to the women to express the man's desire to share the burden and benefits of conjugal life. Its reduction had encountered strong resistance from all segments of the population and there was no way to prevent families from giving each other gifts. Lastly, he pointed out that the practice of polygamy required the consent of the existing spouse or spouses as certified by a civil status official at the time of the marriage.

272. Members of the Committee thankod the representative of Guinea for replying to moat of their queations in a candid fashion, but nevertheless observed that some questions, including those concerning the special courts, in camera proceedings, fair and public trials, guarantees for the independence of judges and freedom of expression and association, had not been answered or needed a more detailed answer.

Central African Republic

273. The Committee considered the initial report. of the Central African Republic (CCPR/C/22/Add.6) at its 790th, 791st and 794th meetings, held on 23 and 25 March 1988 (CCPR/C/SR.790, 791 and 794).

274. The report was introduced by the representative of the State party, who informed the Committee that all of the political institution6 provided for in the Constitution of 28 November 1980, including the National Assembly, the Economic and Regional Council, the Supreme Court and the High Court of Justice, had now been established. Thus, the Central African Republic had become a State in which individual freedoms were recognioad and guaranteed. However, thnt did not mean that all of the provisions of the Covenant had been implemented affectively and much remained to be done, both by the authorities and by the population.

275. The Contra1 African Republic was one of the least developed countries and the bulk of its population continued to live in poverty and ignorance. The Government had only limited means of publicizing the provisions of the Covenant snd other human rights instruments and many civil servants were unaware of them. Accordingly, the Government wished to reiterate, througb the Human Rights Committee, its request for United Nations assistance in tha promotion of human rights, either through training grants or the organization at Bangui of a national or regional seminar on United Nations human rights conventions.

276. Members of tho Committee woicomed the frankness of the report which showed the Governmont'a awareness that much remained to be done in the field of human rights. At the same time, they pointed out that the Covenant imposed obligations for the present and not the distant future and that it was therefore necessary to place emphasis on what could be accomplished to resolve tho more immediate problems. Members also drew attention to the absence in the report of detailed information on actual human rights practices in the country.

277. With regard to article 2 of the Covenant, members of the Committee requested further information concerninq the political system in the Central African Republic. They wished to know, in particular, how the National Assembly had been elected and whether several political parties had sought representation in it, how the other political inatitutiona had been established, how Government leaders were appointed, how it had been possible to respect the fundamental rights of citizens while the Conatitution was suspended, why it had been necessary to restrict political activity to one movement, the Raasemblement démocratique centrafricain (RDC), whether all citizens wore automatically mambera of the RDC, and what the difference was between the party and the State. Members also asked what measures were being undertaken by the Government to prevent the recurrence of a dictatorship in the country, whether any laws had been changed since the departure in 1979 of the dictator Bokaasa to ensure that the old, repressive laws could not be applied in the current improved climate. whether such practicea as arbitrary arrest and ill-treatment still survived and whether people were still being held incommunicado longer than the law prescribed and without trial. In that connection, aeveral members expressed concern that the Constitution granted a number of absolute powers, with no legal restrictions on their exercise, and that the powers of the current President appeared virtually unlimited.

278. Members of the Committee also noted that the report did not indicate the status of the Covenant in the legislation of the Central African Republic and requeated clarification, particularly as to how any eventual conflict between its provisions and those of the Constitution and domestic law would be resolved. It was also aaked whether the Covenant could be directly invoked before the courts and whether the Covenant had, in fact, been incorporated into Central African law and had binding force in the country. One member drew attention to the fact that no account had been taken of articles 9, 10, 18 and 19 of the Covenant in the

national legislation. Members also inquired about the steps being taken by the Government to ensure that both government official8 and citizens wore aware of the Covenant's provisions as well as of othor human rights instruments such as the African Charter on Humen and People's Rights. It was also asked whether the propoaad national human rights committee would be a non-governmental organisation or a governmental body that would ● uporvise the observance of human rights and assist the victims of human rights violations.

279. With reference to article 3 of the Covenant, members of the Committee wished to receive information on tho specialised institutions that had been establiahed to enablo women to catch up with men in career training for the private sector and on the number of women who held senior positions in various sectors of private and public life.

280. Noting that article 14 of the Constitution permitted derogation from any right, which was incompatible with article 4, paragraph 2, of the Covenant, members wondered to what extent rights that could not be derogated from were, in fact, legally protected in the Central African Republic.

28.2. Regarding article 6 of the Covenant, members of the Committee requested further information on the death penalty, including the nature of the offences that. were punishable by deeth and the number of times that the penalty had been carried out in pant years; they also asked what had happened in certain cases of forced disappearance. Noting that the death penalty was apparently applicable incases of unlawful arrest or detention and that such a penalty seemed disproportionate to the offence, one member wished to know why that provision had been maintained on the statute books, Another member asked for clarification of the principles of zo kwe zo and so zo la, contained in the preamble to the Constitution.

282. With reference to articles 7 and 10 of the Covenant, members wished to know whother corporal punishment was still included in the Criminal Code and asked for additional details concerning the most severe disciplinary penalties to which detainees could be subjected.

383. In connection with article 9 of the Covenant, members of the Committee wished to know why it had been necessary to increase the maximum time-limit ot eight days for police custody, as provided in the old law, to a period of two months in the case of political offences and what guarantees existed for testing the legality of detention in such cases and for ensuring that political detainees were actually brought to court at the end of the two-month period. In that connection, they noted that, while the frequent release of persons held in police custody by order of the Head of State was to be welcomed, that procedure was not an adequate substitute for the rule of law. It was also observed that resort to such a long period of police custody was not in conformity with article 9 of the Covenant. One member voiced concern over the reported arrest, for threatening State security, of nine students who had merely protested about the awarding of scholarships and expressed the hope that measures would be taken as part of the reorgnniaation of the legal structure in the Central African Republic to prevent the recurrence of such incidenta.

204. Concerning articles i2 and 13 of the Covenant, members requosted clarification of the procedure regarding aliens who wished to leave the national territory and of the policy reasons for restricting the movement of aliens in mining areas. It was

also asked whether the requirement of exit visas for citizens travelling abroad was compatible with article 13 of the Covenant.

285. In connection with article 14 of the Covenant, members of the Committee wished to receive additional information concerning the position and competence of all existing courts in the Central African Republic including, in particular, the Special Court, the Permanent Military Court and the Supreme Court. In that regard, they wished to know specifically how judges were recruited, appointed and trained and how their indepandance and impartiality were guaranteed, whether the time-limits eatabliahed for lodging appeals were sufficient to protect the rights of convicted persons, whether the State Prosecutor (Procureur), who waa appnrsntly empowered to atrnul Supreme Court decisions, was a judge or an official of the executive and whether the decisions of an administrative tribunal could be appealed before an ordinary court. Members also wished to know whether a verdict had ever been annulled because of tho adverae effects of previous procedures under special jurisdiction. Noting that the decisions of the Supreme Court and of the High Court of Justice were not subject to appeal or review, aeveral members questioned the compatibility of that practice with article 14, paragraph 5, of the Covenant. One member requeated clarification of a roport that senior judges of the Court of Appeal in Bangui had been removed by the Government in 1902.

286. Regarding article 17 of the Covenant, members of the Committee wished to receive information concerning the ordinary circumstances under which house aearchea wore permitted between 5 a.m. and 6 p.m. and the clrcumatances in whch searches might have been prescribed by lnw exceptionally outside the daylight hours.

287. With reference to article 18 of the Covenant, members of the Committae raqueated further information about the problems that had led to tha prohibition of the Jehovah's Witnesses.

288. In connection with article 19 of the Covenant, members of the Committee wondered whether freedom of expression could be affectively exercised within the current legal framework. They wished to know, in particular, whether freedom of expression, which was not mentioned in the Constitution, was nevertheloas constitutionally guaranteed, whether an individual could express and disseminate views critical of the Government, and whether possibilities for freedom of expression existed outside the country's single party. Regarding cenaorahip, information wan requested as to the type of censorship practised in the Central African Republic, which bodies were empowered to censor and what plann there were for increasing freedom of the press. It was asked how many newspapers and journals there were in the country, how much radio covorags was given to views other than those of the Government, whether progrnmmea in languages other than Sango could non be broadcast and whether progress had been made since the fnatallation of the National Aasembly with respect to freedom of the press and the unrestricted circulation of foreign newspapers. In the view of one member, it waa a particularly serious matter that the freedom of expression of members of the National Assembly did not appear to be protected in the Constitution.

289. With reference to article 21 of the Covenant., mombera of the Committee wished to receive additional information concerning the actual implementation of the regulation prohibiting meetings of a political character outside the party and aaked whether prior approval Erom the authorities had to be obtained for all meetings.

290. In connection with article 22 of the Covenant, members of the Committee wished to know whether any new laws had been ● naated that could lead to the re-eatabliahment of trade unions and the restoration of the right to strike.

291. Regarding article 23 of the Covmnant, members requested clarification concerning the rights of women in marriage and current practice in respect of the dowry.

292. With respect to article 27 of the Covenant, members of the Committee requested additional information concerning the status of minorities in the Central African Republic.

293. Responding to the question8 raised by members of the Committee concerning article 2 of the Covenant, the representative of the State party reviewed the development of the political party system in the Central African Republic over the past nine years, stating that, although there was a single political party under the current system, the Rassemblement démocratique centrafricain (RDC), many vi··points could none the lees find ● xpresrion. During the legislative electiona of 1987, for example, there were more than 200 candidates - all of whom had been sndorred by the party - for thu 52 available seats. RDC was open to all Central African citizens, adherence being free and voluntary. The functions of the Government and the party were different, with the former being responsible for implementing the laws and administering the country and the latter occupying itself with educating and organising the population. The principle of zo kwe zo and zo zo la, which had been ● ndorrod by RDC, referred to thm equality of all pmrronr before the law, and to thr sanctity of the human person end the State's obligation to respect and protect it. As for preventing the re-establishment of a dictatorship, it should be noted that, in general, the people of the Contra1 African Republic, particularly those living in urban areas, were politically mature and would not allow their rights and freedoms to be usurped.

294. Under the interim procedure adopted after the dissolution of the National Assembly in 1966, the Covenant had been ● xaminod by the Ministry of Foreign Affairs, approved by the Council of Ministers and ratified by the Head of State. After its publication in the Journal officiel of 8 May 1981, it had entered into force and became part of the country's legal order. The text of the Covenant was available only In French and only to a select few, both because it was difficult to uao Sango in written form and because funds were lacking to disseminate it as well as other documents, such as the African Charter on Human and People's Rights. However, the national lawr and the Criminal Code reflected many of the Covenant's provisions and these wore available to the public. The national human rights committee was planned as a consultative body that would assist the Government in familiarizing itself with the various human rights instruments and in meeting its reporting obligationa, as well an disseminating human rights information in the country.

295. Referring to questions raised by members of the Committee concerning non-discrimination, the representative of the State party noted that women in the Central African Republic had always had an important role to play in family councila, the education of children and managing financial affairs. Although no women were members of the National Assembly, they wore active in the party and formed a aubatnntial part of the Administration. Women were also active in the

professions and in business. Female circumcision was illegal but those who practised it were not prosecuted except in cases where serious injury or death had resulted.

296. Regarding article 6 of the Covenant, the representative stated that 23 persons had boon sentenced to death since 1981, six of whom had been executed and one pardoned. Death sentences imposed on minors were commuted because of their age.

297. With reference to article 8 of the Covanant, the representative explained that prisoners who had been sentenced to forced labour for life no longer had to work in the quarries but only within the prison and under improved conditions.

298. Responding to questions concerning articles 7 and 10 of the Covenant, the representative stated that the inviolability of the person was strictly observed in respect of detainees, including political prisoners, and that corporal punishment was no longer practised. Minors under the age of 14 could not be imprisoned.

299. Regarding article 9 of the Covenant, the representative explained that persons in pro-trial detention were held in places other than prisons and under a committal order. Those in police custody could normally be detained for 48 hours only, extendible to eight days in complicated cases. Only in exceptional circumstances could custody be prolonged under a renewable committal order issued for a one-month period. While such time periods might appear excessive, the political offences involved were complex and it was important not to hurry the investigation. Also, judges often had to travel long distance8 to try cases. The release of detainees under presidential orders was undertaken to prevent an excessive buildup of the prison population.

300. With reference to articles 12 and 13 of the Covenant, the representative explained that under earlier regimes freedom of movement had been impeded by lack of proper roads combined with police barricades at various regional borders intended to control the movements of citizens. Consequently, tht current leadership had given priority to opening up the entire country, through the reopening and maintenance of roads and the dismantling of the barricadus. Officials of the Central African Republic were authorized to verify that citizens travelling abroad had the proper documents for the country they were planning to visit. Such regulations were in effect simply to prevent difficulties at the border or in the host country. Measures had also been taken to prevent foreigners and Central African citizens from leaving the country without first fulfilling their tax obligations. The regulations relating to travel of foreigners in mining areas were intended to curb the illegal export of the country's gold and diamond deposits.

301. Replying to questions raised by members of the Committee concerning article 14, the representative of the State party explainad that the country had 56 courts of first instance at the sub-prefectoral level, which were competent to deal with minor offences and with civil matters involving up to 40,000 CFA francs. There were 16 courts at the prefectoral level with competence in handling crimes and the more important civil suits. There was one Court of Appeal and one Criminal Court at Bangui as well as a Special Labour Court. The Permanent Military Court at Bangui was competent to try cases concerning members of the armed forces accused of crime in peacetime, and cases concerning both the military and civilians in wartime. The jurisdiction of the Permanent Military Court was subject to appeal in

the Court of Caaaation. The High Court of Justice, which had replaced the Special Court in 1917, dealt with offences against the internal and external security of the State, including high treason, conapirncy and subversion. Ministers or any other persons who had committed acts endangering State security could be summoned to appear before the High Court. Insulting the Head of State was no longer considered a crime against State arcurity. The President of the High Court could order that a trial be held in camera, but the Court'a decisions had to be handed down in public. There was no appeal against the judgementa of the High Court of Jua tic.. Tha Supremr Court consisted of four chambers, dealing respectively with constitutional, judicial, administrative and financial matters, and also acted as a Court of Cassation.

302. Regarding the recruitment, training, appointment and discipline of judges, the representative explained that judges were trained in France and were required to sit for a competitive examination. They were appointed by the President of the Republic and were subject to discipline by two disciplinary councils. Five judges had been impeached for failure to do their duty or misconduct since 1980. The President was the guarantor of judicial independence but the judiciary itself also insisted upon it. The time-limits for the first and second appeals in criminal cases were 10 days and three days, respectively; admittedly, they were rhort periods but they had been set so as to allow for the consideration of cases as soon as possible. Accused persons who had escaped from detention could be convicted and sentenced in absentia, but their trials would be reopened after their recapture or voluntary surrender. Under article 32 of the Constitution, laws could be referred to the Supreme Court for verification of their constitutionality by the President of the Republic, the President of the National Assembly or by one third of the membsra of the National Assembly. The Public Prosecutor (Procureur de la République), mentionad in article 32 of the Constitution, existed only on paper and reference to that office should probably be eliminated from that article.

303. Regbrding article 17 of the Covenant, the repreaantative said that house searches without a search warrant between 5 a.m. and 6 p.m. were authorized only with the express consent of the house-owner. Otherwise a search warrant had to be obtained. Searches after 6 p.m. were outhoriaed when they wore in the interest of the owner or in State security cases.

304. In connection with article 18 of the Covenant, the representative atated that freedom of expression was guaranteed to all religious groups. The only exception concerned the Jehovah's Witnesses, who were prohibited from holding services, but were free to pursue their other religious activities. The measures regulating them ware baaed on their practice of prohibiting their followers from voting and from giving blood. Such behaviour was considered anti-civic and a violation of article 78 of the Criminal Code.

305. With reference to article 19 of the Covenant, the representative explained that the number of periodicals in the country was limited owing to the high rate of illiteracy. The television station, radio and the local press were State-owned and functioned as educational tools as well as purveyors of national and international news. A wide range of foreign publication6 WAS available, but few people could afford to buy them. The Censorship Commission, which had been established for the sole purpose of reviewing films and pornographic materials, was not very active since there were only a few cinemas in the country.

306. Regarding article 23 of the Covenant, the representative stated that women enjoyed the same rlqhtr in respect of marriage, divorce and inheritance as men. Although the traditional practice of the dowry had been abolished, it was still commonly resorted to because of its symbolic value. The general approach to its suppression was one of dissuasion rather than punishment.

307. Finally, with reference to article 27 of the Covenant, the representative of the State party said that there was no problem of racial minorities in the Central African Republic. The pygmies were entitled to the same riqhtr as the rest of the population and they wore slowly increasing their participation in society as their very different life-style was integrated into the cultural. mainstream.

308. Members of the Committee thanked the representatives of the State party for their frank, precise and informative replies to the Committee's questions and commended the Government's efforts to introduce a new Constitution and ● ntabliah now institutions. At the same time, they expressed concern as to the implementation of the Covenant in the Central African Republic and fslt that additional information was needed, particularly regarding articles 2, 6, 9, 14 anu 15 of the Covenant. Members also noted that national legislation had apparently not taken articles 9, 10, 18 an& 19 of the Covenant into account. They expressed the hope that such information would be provided in the State party's second periodic report and that the Committee's observations would be brought to the attention of the Government.

309. Tns representative said, in conclusion, that the Central African Republic relied on the Human Rights Committee and other competent international bodies to assist it in promoting human rights. The protection of such rights in his country would improve as the economic and social situation improved. He assured the Committee that its observations would be taken into account by his Government in preparing future reports.

Ecuador

310. The Committee considered the second periodic report of Ecuador (CCPR/C/28/Add.8 and 9) at its 796th to 799th, 831et and 832nd meetings, held on 28 and 29 March and on 22 July 1988 (CCPR/C/SR.796-799) and SR.831 and 832).

311. The report was introduced by the representative of the State party who emphasized that the situation in his country could not be understood by means of a simple comparison between the constitutional order of Ecuador, with its laws and various political, administrative, criminal and civil procedures, and the norms of the Covenant. Rather, it had to be studied in the light of the material conditions affecting Ecuador and the intarnational context. The country was facing major problems of drug trafficking and terrorism, as were its neighbours, and it was impossible to understand the alleged human rights violations in Ecuador without examining the conflicts taking place in noighhouring countries, such as Colombia. A; the same time, the Covernment was beset by other major difficulties: the external debt, the drop in oil prices, which had been the main source of domestic financing, the aftermath of the March 1986 earthquake, the destruction of the oil pipeline six months earlier, which had delayed oil exports, and devastating rains in 1987. The problem of drug trafficking was related to that of terrorirm, since terrorists provided protection to drug producers, who in turn supplied the funds to arm the terrorist groups. There had been a series of serious terrorist incidents in recent years.

312. The reprssentntivo also pointed out that Ecuador was still in the process of adjusting to the restoration of democracy aftar two decades of military dictatorship and rule by arbitrary decree, that the legislative reforms begun in 1960 had not yet been completed and that parliament continued to operate through interim regulations rather than by adopting laws, as provided in the Constitution.

Constitutional and legal framework within which the Covenant is implemented

313. With regard to that issue, members of the Committee wished to receive additional information concerning the functioning of the Tribunal of Conatitutional Guaranteea and to be provided with some concrete examples of the latter's role in ensuring compliance witn the Constitution and in redressing violations of individual rights. They also wished to know how the authorities implemented the decision8 of the Tribunal of Constitutional Guarantees and requested specific examples of cases where the Government had acted upon the findings of the Triounal. They asked whether it was true that no action could be taken on the Tribunal's findings unless they were publiahed in the official gazette and whether there were any proposals for special legislation to strengthen the Tribunal. Members also inquired whether there were judicial decisions in which the Covenant had been directly invoked before the courts, whether complaints concerning human rights violations had been lodged before bodies other than the Tribunal of Constitutional Guarantees and what the results of such complaints had been, what the relationship was between the Covenant and domestic laws and regulations and what steps had been taken to ensure the latter's consistency with the Covenant, what the functions and activities of the national Human Rights Committee had been since 1978 and how the Congressional Commission on Human Rights had reacted to that Committee's recent report. Additional information was also sought on activities relating to the promotion of greater public awareness of the proviaiona of the Covenant and the Optional Protocol.

314. In addition, some members wished to know how judges were appointed and removed, how the separa.ion of powers and the rule of law operated in practice, who decided what should be placed on the parliamentary agenda, who promulgated laws, who monitored the President, what legal actions had the force of law and whether a legal decision could ho suspended. Further information was also sought regarding the impeachment proceedings against the Minister of the Interior.

315. In his reply, the representative of the State party said that the structure of the Tribunal of Constitutional Guarantees had been completely revised in the new Constitution, but that the norms and regulations governing its functioning remained those of the 1968 Constitution. Accordingly, the Tribunal's decisions could not yet be enforced. Under the Constitution, the Tribunal was responsible, *inter alia*, for ensuring the observance of the Constitution, making observationa regarding decrees that were enacted in violation of the Constitution or the laws and taking coqniaance of complaints made by any individual or legal entity regarding violations of the Constitution. The President of Ecuador had never opposed the promulqation of any decisions of the Tribunal relating to human rights. Propoaals to strengthen the Tribunal of Constitutional Guaranteea would be implemented to the extent that they were compatible with economic, social and political development objectives.

316. The Constitution guaranteed the right to submit complaints and petitions directly to the authorities as wall as to receive relevant replies within an appropriate time-limit and in accordance with the law. The Constitution also

gusrantead the sanctity and legal protection of human rights and fundamental freedoms as set forth in the Univsraal Declaration of Human Rights and under the relevant international instruments, which were legally binding in Ecuador. The Covenant could be, and had been, directly invoked before Ecuadorian courts. The national press and the government information office endeavoured to promote public awareness of human rights.

317. The task of interpreting the Constitution fell to the parliament. The Constitution was the supreme law of the land and provisiona deviating from it were void. If the President objected to a bill, the parliament could not consider it again for at least a year, but it could ask the President to hold a reforendum on the matter. The President promulgated the laws and could temporarily suspend the force of law under special circumstances provided for in the Constitution. In addition, the President was empowered to declare a state of national emergency, at which time he could suspend the enforcement of constitutional guarantees. The Tribunal of Constitutional Guarantees could at any time suspend partially or totally the effect of laws or other provisions that were unconstitutional.

318. The separation of powers enshrined in the Constitution was a tradition, but each branch performed some of the functions of the other two. Thus, the legislative branch not only legislated but also conducted political trials, as provided under the Constitution, and certain administrative courts and judges dealing with fiscal matters and administrative disputes were appointed by the executive branch. Judges were appointed by parliament for a term of six years, with the possibility of reappointment. Vacancies were filled on a provisional basis by the respective courts until parliament made regular appointments to fill the posts. The Minister of the Interior, Luis Robles Plaza, had been tried and removed from office for violating an internal regulation.

Self-determination

319. In connection with that issue, members of the Committee wished to know Ecuador's position with regard to self-determination in general and specifically with regard to the struggle for self-determination of the South African, Namibian and Palestinian peoples.

320. In his reply, the representative of the State party said that Ecuadorian foreign policy championed the right of peoples to self-determination and repudiated all forma of colonialism and apartheid. Ecuador had at all times opposed South Africa's illegal occupation of Namibia and had oupported all United Nations resolutions calling for Namibian independence. Ecuador had also supported all the United Nations resolutions calling on Israel to withdraw from the territories it had occupied in 1967, including Jerusalem, and opposed Israeli settlements in the occupied territories.

Non-discrimination and equality of the sexes

321. With reference to that issue, members of the Committee wished to receive information concerning the outcome of the elections held on 31 January 1988 in so far as the election of women was concerned, the proportion of women to men attending secondary schools and universities, and the number of professional women, such as doctors, economists, lawyers, engineers, architects and chemists, in Ecuador. Members also wished to know whether article 34 of the Code of Civil Procedure, relating to equality before the courts, and articles 135 and 138 of the

Civil Code, relating to thm equality of spouses, were compatible with articles 3 and 14, paragraph 1, of the Covenant and what discriminatory legal provisions were to be abolished under the planned reform. It was also asked what the situation of the Bsaquea who had been expelled from other countries to Ecuador war and whether they enjoyed all the rights guaranteed to nationala by the Constitution, including the right to liberty and security of person and thm right freely to chooao their residence, and whether the rights of aliens were restricted as compared with thoas of citizens and, if so, in what respect. It war also observed that the Committee was generally interoated in any factors and difficulties affecting the implementation of the Covenant, any measures adopted to give effect to the rights recognised in the Covenant and any progress made in the enjoyment of those rights. Regarding the recent emergency situation, members asked how it had been proclaimed, what had caused it, whether the Ecuadorian Government had informed the other States parties to the Covenant and what changes had occurred during the emergency.

322. In his reply, the representative explained that he did not have detailed statistics on the January 1988 elections, as the Supreme Election Tribunal had processed ballots only the week before. Women practised professions on an equal footing with men and there were approximately the same number of males and females in primary schools, at the intermediate levels and in secondary achoolr. Only one Basque was currently interned in his country and his rights to personal safety, a limited amount of freedom and choice of residence remained inviolable. Aliens enjoyed the same constitutional rights and guarantees as Ecuadoriana with the exception of political rights. They could enter or leave the country freely depending on their visa status. However, their freedom of movement could be restricted if they had not met their obligations towards creditors and did not have real assets which could be attached. Under the Constitution and the laws on citizenship, they could not own real estate in border aonea, in certain restricted areas along the Pacific coast, or in island territories, for reasons of national security and sovereignty.

323. Responding to other questions raised by members of the Committee, the representative drew attention to the progress that had been made in the protection of human rights in Ecuador, referring to certain provision8 of the new Code of Criminal Procedure, the new Code of Civil Procedure, the Civil Code and the draft code of the family. While the Constitution conferred on the President of the Republic the power to suspend the applicability of constitutional guarantees, he could not auapend the right to life or order an Ecuadorian to be expelled or exiled. Under the curren administration, constitutional guarantees had been suspended on only one occasion, for 24 hour because of a national strike with overt political motives. The Government had promptly notified the States parties, through the Secretary-General of the United Nations, of the imposition of the state of emergency and then of its lifting, in accordance with article 4, paragraph 3, of the Covenant.

Right to life and prohibition of torture

324. With regard to that issue, members of the Committee wished to know what respective roles were played by the national police and the military police in the interrogation of suspects, what rules and regulation8 governed the use of firearms by the police and aocurity forces, whether there had been any violations of those rules and regulationa and what measures had been taken to prevent their recurrence. Members also sought additional information concerning the implementation of the provisions of article 7 of the Covenant concerning torture

and cruel, inhuman and dograding treatment or punishment, in particular, on concrete measures taken by the authorities to ensure strict observance of that article and the penalties imposed on violators. Further information was also sought concerning measures taken by the Government to prevent public forces or prison guards from boating and torturing suspects or inmates, the number of persons who had died in custody in the period under review, the public health system, particularly the progress made since 1978 to expand health services covering the rural population and vulnerable persons, such as mothers, children and pregnant women, positive action taken to reduce the infant mortality rate, and regarding article 6 of the Covenant, pursuant to the Committee's general comments Nos. 6 (16) and 14 (23).

325. In addition, members ● xprasaod concern about cases of disappearance and assaults by paramilitary squads. They wished to know in that regard what complaints had been made recently and what measures had been taken by the Government to investigate such complaints and to punish the persons responsible. They asked about the outcome of cases submitted to the Tribunal of Constitutional Guarantees, inquired whether cases of mistreatment by prison wardens in the penitentiaries had been thoroughly investigated and requested further information about the atatus of "flying squadrons". Lastly, clarification was sought of an incident that had occurred on 10 January 1988 involving the mining co-operative, which had allegedly resulted in deaths, injuries and diaappearancea.

326. In his reply, the representative of the State party explained that the essential functions of the national police in the interrogation of suspects were established in article 3 of the Organic Law on the National Police of 7 March 1975 and police investigations were regulated by articles 49 to 51 and 67 of the Code of Criminal Procedure of 1983. While that Code also provided an inatitutionaliaed basis for the criminal police, that police force had not yet been established because of budgetary limitations. The Offico of the Public Prosecutor had sent out to all police offices copies of basic documents, including the Universal Declaration of Human Rights, the Standard Minimum Rules for the Treatment of Prisoners and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and wished to see them faithfully observed by all police peraonnel. A human rights aeminar had been held in July 1986 for chiefs of police and Ecuador would soon deposit its instrument of ratification of the Convention against Torture. In some isolated cases, where members of the Ecuadorian police had been accused of violating article 7 of the Covenant, they had been tried by competent judges and, when found guilty, had been sentenced in accordance with the law. No one had died in custody in the period under review. The police had orders to exercise reatraint in the use of firearms and to cause as little harm as posaible. Grounds for using firearms included self defence, cases of mutiny or rebellion by subordinates, and attempts by prisoners to escape. If the police violated the regulations concerning the use of firearms, they were subject to trial and punishment in accordance with the provisions of the Police Code.

327. Responding to other questions raised by members of the Committee, the representative explained that three-month vaccination campaigns had been organiaed and a programme providing free medicine to children under six years of age had been established. The death penalty had been abolished by the 1906 Constitution, the maximum priaon sentence being 16 years. Ecuador supported the principle of the inadmissibility of war in international relations and had repeatedly agreed to the need for general and complete disarmament, beginning with nuclear disarmament.

328. Attempts had boon made to portray Rcurdor am a country of terrorism whore group8 of idealists were fighting against a repressive State. On the aontrary, human right8 were respected in Eouador and, although certain violation8 might occur from time to time, such incidents in no way constituted a pattern. Most cases of disappearance could be explained by the fact that a person might be declared a8 missing before the police had had a chance to notify anyone. The Ministry of the Interior had reported that, since 1986, there had been no complaint8 of disappearances. There were no paramilitary squads in Ecuador nor any death squads. Bared on a few exceptions to the general principle of respect for human rights, parallels were being drawn between Ecuador and another country where there had boon grave human rights violations. Such a comparison was inaccurate and completely unacceptable. The term "flying squads" might refer to group8 of from four to six policemen who patrolled the streets in small truck8 and dealt with serious situations; they were regular members of the police force and subject to the rule8 governing that force. Detail8 concerning the incident at the mining co-operative had been distorted erroneously in order to place the blame for human rights violation8 on the Government. The people involved had been removed under a perfectly legal procedure. It was true that. two deaths had resulted, but the allegation that 35 persons had disappeared wan [illegible] xaggoration on the part of those who wished to imply that a massacre had taken place.

Liberty and security of person

329. With reference to that issue, member8 of the Committee asked under what circumstance8 and for how long persons could be held in preventive detention without being charged with a criminal offence, what measures the Government was taking to address problem8 in that area, what the maximum length of detention and detention pending trial was, what was done to ensure that a person's arrest and whereabouts were reported, who was responsible for contacting tho family of a person who had been arrested and how quickly after an arrest that was dons. Members also wished to have additional information on the law and practice relating to institution8 othar than prisons, on tha apparent jurisdictional conflict between mayors and presidents of municipalities, on tho one hand, and judges or other official8 responsible for the custody of detainees on the other, on remedies, other than habeas corpus, available to persons detained wrongfully and their effectiveness and on recant practice8 concerning the grantiay of habeas corpus.

330. Members also wished to know whether there were any safeguards to ensure that persons in preventive detention were not subject to treatment inconsistent with the Covenant, whether there were provision8 prohibiting incommunicado detention and granting access to other detainee8 or to persons, such a8 doctors, lawyers and family members, am well a8 ensuring that detainees were held in publicly recognised place8 and whether the detention, the name of the detainee and the place of detention were entered in a contra1 register. One member also expressed concern that approximately 60 per cent of detainees remained unsentenced.

331. Reaponding to questions raised by member8 of the Committee, the representative of the State party indicated that preventive detention and detention pending trial could not exceed 24 hours, even in cane8 of flagrante delicto. In practice, a person could be held pending trial for more than 24 hours, depending on a number of circumstances, such a8 the type of crime or public reaction to a particularly monstrous crime; such cases, however, were exceedingly rare. When a person was detained, his lawyer and family were informed immediately. There were no institutions of detention other than prisons, which were known as social

rehabilitation centres. The apparent conflict between municipal authoritiea and judgesresulted from the fact that the 1946 Conrtitution had given mayors the power to intervene in cases which had been decided by judges. Such intervention was impossible under aurrent law hut municipal authorities in the oppositon sometimes attempted to apply the 1946 law.

332. Iterponding to other questions, the reprmrentative said that remedies other than habeas corpus included the remedy of complaint (recurso de queja), application for review (recurso de revisión) and the possibility oi being released on bail. Furthermore, under the Code of Criminal Procedure, a judge was required to refrain from issuing an order of preventive detention if the maximum sentence in a came under investigation did not exceed one year. It was inconceivable that anyone aould be imprisoned indefinitely in Ecuador without claims being brought by his family. There was no constitutional or legal provision for a central register of persons held in preventive detention.

Treatment of prisoners and other detainees

333. With reference to that issue, members of the Committee wished to have further information on the term, "classification by biotype", referred to in article 9 of the General Regulations for Application of the Code of Execution of Sentence:, and Social Rehabilitation. They also wished to know whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and whether relevant regulationa and directives were accessible to prisoners, what the practical situation was concerning sanitary conditions and medical services, what the conditions of detention were in the four types of social rehabilitation centres referred to in paragraph 34 of the report (CCPR/C/28/Add.8), whether non-governmental organizations could monitor conditions of detention or visit detainees and how the treatment of those awaiting trial differed from that of convicted prisonera. It was also asked what remedies were available to detainees, whether wardens could be challenged before the courts, whether measures were taken to expedite the trial of juveniles in accordance with the requirements of article 10, paragraph 2 (b), of the Covenant, whether the period of detention prior to conviction was automatically taken into account, whether there was any provision for remission on grounds of good conduct and whether there was any system of review of parole whereby a prisoner could be released under supervision.

334. In his reply, the representative explained that the concept of "biotype" was necessary in order to develop a scientific classification of people for the purpoao of social rehabilitation. The establishment of specific criminal tendencies, deriving from factors ranging from abnormality to immaturity, made it possible to standardiae therapeutic norms, thereby not only saving money but also reducing recidivism and time spent in prison. The United Rations Standard Minimum Rules for the Treatment of Prisoners were observed to the extent that social rehabilitation centres made compliance possible. All social rehabilitation centre8 had professional staff whose function it was to make rmgulations and directives known and accessible. Owing to economic constraints, conditions varied from one prison to another but, in so far as the infrastructure allowed, prisoners enjoyed the minimum conditions established by the United Nations. Spouses had visiting rights in prisons and all detention centres and prisons had medical facilities. There was no judicial body responsible for monitoring prisoners in Ecuador. However, every year the judges of the provincial higher courts mat to discuss problems that arose in their work and in connection with priaona.

335. The treatment of offender6 varied according to the category of offence. Persons on trial, suspects, and certain economic offenders, ouch as debtors, wore held in detention centres or in the detention sections of prisons, never in the prisons themselves. Juveniles received protection under the Minors' Code. Special minors' courts were presided over by lawyers and had doctors and ● ducationali6ta on the panel. Such courts were accountable to the Ministry of Social Welfare. Sentencer took effect from the first day that the offender had been deprived of his liberty and could be reduced if there were extenuating circumstances. They were subject to review by the Supreme Court or by the judge who had passed the original sentence, if there was sufficient evidence to suggest that the parson concerned was innocent.

Right to a fair trial

336. With regard to that issue, members of the Committee wished to know whether there were guarantees for the independence of the judiciary and sought Further information on the disagreement that had arisen in 1985 between the executive and legislative branches concerning the independence of the judiciary and the constitutional machinery established for appointing its members. In that connection, it was asked what specific action had boon taken by the Minister of the Interior on his own responsibility. Mombera also inquired whether there were legal guaranteea with regard to the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal, whether there were measures to ensure in practice that an accuasd person could offer a defence, whether free legal services and assistance to criminal defendants was available, whether any judges had been dismissed or obliged to pay damages for having unduly delayed the administration of justice, what the practice was with regard to article 227 (4) of the Penal Code and what constituted a punishable delay in the administration of justice. Information was also sought on the removal of eight judge6 in 1986, on the dismissal of judges in 1987 and on the length of criminal proceeding6 in Ecuador.

337. In his reply, the representative of the State party said that the Constitution guaranteed the autonomy of the judiciary and prohibited any authority from intervening in its affairs. The National Congreaa had been in violation of the Constitution when it had declared that the terms of office of Supreme Court judges had ended. However, the dieagreement between the executive and tha legislative branchaa had been aettlad by an agreement on the election of the current Supreme Court. Regarding the independence of the judiciary, the representative stated that members of both the Supreme Court and the other tribunals were elected by Congrosa. He noted that reforms were needed in that regard and that the st ·ture of the judiciary should be improved.

338. Accused persons were tried in public by a panel of three judges and could, with the permission of the presiding judge, examine the witnesses. A judge could be diaquulified from a trial if he had formerly presided over trials with the same parties or if there were blood, financial or legal ties between him and the parties. Article 277 of the Penal Code eatabliahed prison penalties for biased judges and court officials. The State was required to provide public defence counsel for peraons belonging to indigenous populationa, workers and all persona lacking economic means. The main problems hampering the administration of justice in Ecuador were undue delays in the conduct of trials, the parties' non-compliance with legal requirementa, biased judgements, bribery and corruption. Legal sanctions to correct such problems ranged from fines and criminal charge6 to

dismissal of judges. In that connection, it was very significant that the Supreme Court had had the courage to sanction eight of its members in 1986.

Freedom of movement and expulsion of aliens

339. In connection with that issue, members 0f the Committee wished to know what restrictions these were on the freedom of movement of aliens and their choice of residence, what legal provisions existed and what the practice was concerning the expulsion of aliens, in the light of article 13 of the Covenant and the Committee's general comment No. 15 (27), and what legislation governing the right of asylum for political offences had been adopted pursuant to article 43 of the Constitution. Observing that the Minister of the Interior could, at the request of a foreign State, order aliens to be interned, some members wondered how long such internment lasted and whether it was compatible with tho Covenant. Regarding deportation proceedings, it was asked whether the alien was permitted to choose his own counsel and whether he could be expelled to a country where he might be in danger of persecution.

346. In reply to those questions, the representative of the State party emphasized that the restrictions on the freedom of movement and choice of residence of aliens were prescribed by law and concerned incitement to domestic or foreign political conflict and to civil war. Furthermore, he drew attention to the legal provisions governing the expulsion of aliens. The grounds for expulsion were aimed, inter alia, at illegal entry into the country and conviction of a flagrant offence. In addition, the Migration Act stipulated that the alien would have a counsel designated by the court. No alien would be deported to a country in which he could suffer the death penalty and no aliens were currently interned in Ecuador. Lastly, he referred to the various national and international rules which guaranteed the enjoyment of the right of asylum in Ecuador.

Right to privacy

341. With reference to that issue, member8 of the Committee asked what legal régime governed lawful interference with correspondence, telephnne and telegraphic communications and what the practice was in that regard, whether there had been any complaint8 concerning abuses and arbitrary actions by the police against citizen8 and, if so, what measures had been taken to prevent the recurrence of such acts.

342. In reply to those questions, the representative of the State party said that Ecuadorian law guaranteed the inviolability and secrecy of correspondence. Those principles applied equally to cables, telegrams and telephone conversations, and the only exception8 were those Prescribed by the National Security Act. Furthermore, the Fundamental Law on Communications provided that in the event of war or internal disorder or in an emergency the commander of the armed force8 should take control of communications. In addition, the use of private papers as evidence in judicial proceeding8 could not be contemplated unless the investigation established that they had a direct bearing on the offence in question. A8 to possible abuses and arbitrary action by the police in that connection, the representative Stated that, when such case8 occurred, an investigation was carried out and, where appropriate, penalties were applied. Thus in 1986, the Minister of the Interior had asked the General Commander of Police to investigate such activities on the part of certain police officers.

Freedom of religion and expression

343. With regard to that issue, members of the Committee asked what procedures existed for legal recognition, authorization or toleration of various religious denominations and what limitations there were on freedom of the press and the mass media under the law. They wished to receive further information on any cases involving arrest and detention for the expression of political views and on the implementation of the provisions of the Constitution guaranteeing freedom of conscience and religion. In addition, they asked whether authorizations for the operation of television channels and broadcasting stations and for the publication of periodicals had been denied and, if so, what reasons had been given for such refusals, In this connection, one member requested clarification as to whether the television station "Ortel" had been granted authority to broadcast.

344. In reply to those questions, the representative explained that anyone could worship as he chose, subject to the restrictions prescribed by law to 'protect security, public morality or the fundamental rights of others. With regard to freedom of the press and the mass media, he drew attention to the constitutional and legal provisions protecting that freedom and explained that the Government was its guarantor and that all currents of political opinion or religious faith had access to the mass media. Nevertheless, in the event of an incorrect statement or aspersion on the honour of another, a right to free rectification was available and the Code of Criminal Procedure contained provisions concerning libel and slander. In that connection, only one case of insult to the President of the Republic had been reported since 1984.

345. With regard to the closure of broadcasting stations, the representative explained that they had come about as a result of politically motivated work stoppages. Such closures had,. for example, taken place in October 1987 during a 24-hour state of emergency and on the occasion of the kidnapping of the President of the Republic. Lastly, the representative drew attention to the fact that the Director of the Telecommunications Institute had decided, despite the opposition of the Association of Engineers and the Association of Television Workers, to accept the decision of the Court of Constitutional Guarantees granting "Ortel" authority to broadcast.

Freedom of assembly and association

346. With regard to that issue, members of the Committee asked what legislation existed to implement the provisions of article 19, paragraph 3, of the Constitution and what the actual situation was with respect to the existence and functioning of trade unions in Ecuador. In addition, it was also asked how trade unions could be dissolved and whether civil servants had the right to strike. Noting that trade unions were permitted in Ecuador only if they did not engage in political or religious activities, some members requested.clarification of the scope of Decree No. 105, which stated that the act of inciting to or participating in a collective work stoppage was a punishable offence.

347. In reply to those questions, the representative of the State party reviewed the various legal provisions guaranteeing the right of association and of free assembly for peaceful purposes and the right to form trade unions and works committees. In addition, he emphasized the distinction between legitimate strikes and work stoppages on political grounds, stating that the latter, organixed by infiltrators, were illegal and violated social harmony.

Protection of the family and children, including the right to marry

348. Members of the Committee wished to receive further information on the practice in Ecuador with respect to the protection of the family nnd children. In addition, clarification was sought of the meaning of the term *'responsible parenthood*' used in the report.

349. In reply to those questions, the representative stated that the Constitution afforded the family ample protection and guaranteed moral, cultural and economic conditions in which it could flourish. Marriage was baaed on the free consent of the future spouses and on the equal rights and equal legal capacity of husband and wife. Free, stable and monogamous union was also protected. With respect to the encouragement of responsible parenthood provided for in article 24 of the Constitution, he highlighted the efforts which were being made in order to educate and inform parents about family planning. In addition, the representative explained the successive reforms concerning the legal status of the family, which had made it possible, in particular, to increase the protection and legal capacity of married women. He also emphasised the legal provisions concerning assistance to and protection of minors, in particular of those who had been materially, morally or legally abandoned.

Right to participate in the conduct of public affairs

350. With reference to that issue, members of the Committee wished to know what was being done to protect the security of congressmen in carrying out their duties, how many political parties were recognized under the law and what the current level of the electoral quotient established under article 38 of the Constitution was. In particular, it was asked whether the electoral quotient was constant and why any party that failed to obtain such a quotient in an election should be dissolved by law.

351. In his reply, the representative said that the security of congressmen was assured by a special guard operating in the Congress building under the orders of the President of the Congress. He also stated that the electoral quotient, by which minorities were represented, was obtained by dividing the total votes cast by the number of representatives to be elected, and that 16 political parties were legally recognized.

Rights of minorities

352. With regard to that issue, members of the Committee wished to know the size of each major ethnic group in Ecuador and of the indigenous population and asked how their rights provided for in article 27 of the Covenant were ensured. It was observed that some ethnic groups seemed to suffer from modern development, in particular, from the activities of oil companies and, it was asked, in that connection, what protection was afforded to them.

353. In responding, the representative explained that in the coastal regions the indigenous population was mainly of mixed race, except in the Province of Esmeraldas where it was mainly black. Various indigenous groups were found in the mountain areas where a type of feudal protection system was practised. There was a special problem in relation to the aboriginal population in eastern Ecuador where oil prospecting was disrupting their way of life and eliminating their distinctive

culture. Nevertheless, ethnic minorities were protected by the State and matters of land titles were regulated by the Institute of Agrarian Reform.

General

354. Members of the Committee expressed appreciation for the State party representative's co-operation and readiness to engage in a dialogue with the Committee. They observed, however, that, while the representative had endeavoured to reply to many questions, some important ones had remained unanswered. Members explained that their concerns with respect to a number of issues had not been fully allayed, pointing, inter alia to involuntary disappearances of persons, the behaviour of the military and'paramilitary forces, freedom of association, the granting of *habeas corpus*, the independence of the judiciary and the situation of ethnic minorities. They hoped that such concerns would be brought to the attention of the Government.

355. The representative of the State party thanked the members of the Committee for their attentiveness and assured tham that his country would continue to respect human rights within the framework of the rule of law.

356. In concluding consideration of the second periodic report of Ecuador, the Chairman also thanked the representative for his co-operation.

France

357. The Committee considered the second periodic report of France (CCPR/C/46/Add.2) and the additional information (CCPR/C/20/Add.4) submitted following examination of its initial report at its 800th to 803rd meetings, held from 30 to 31 March 1988 (CCPR/C/SR.800-803).

358. The report was introduced by the representative of the State party who said that the fortieth anniversary of the Universal Declaration of Human Rights, the forthcoming celebration of the bicentennial of the Declaration of the Rights of Man and of the Citizen and the commemoration of the French Revolution were appropriate occasions for reflecting on human rights and the foundations of French democracy. The establishment of a secretariat of State for human rights, the recent reorganization of the Consultative Committee for Human Rights, the acceptance of the individual petition procedure provided for under the International Convention on the Elimination of All Forms of Racial Discrimination and the accession to the Optional Protocol to the International Covenant on Civil and Political Rights were indicative of the French Government's concern for human rights issues.

359. Since submission of France's initial report, recognition of the equal dignity of individuala had been given further expression de jure and de facto and, in particular, efforts had been made to reach complete quality between men and women and to improve the situation of children. A national advisory committee on ethics had also been established in order to deal with new questions arising from scientific and medical progress and a report had been drafted by the Council of State concerning certain ethical questions relating, inter alia, to intervention in the human body and human procreation.

360. The representative also drew attention to the fact that France had been the first country to adopt complete and consistent anti-racist legislation. The Act of 3 January 1985 had allowed anti-racist associations to bring civil suit in respect

of certain racially motivated crimes or offences, the Acts of 13 and 25 July 1985 had introduced a new criterion regarding discrimination based on mores, and the Act of 30 June 1987 had eliminated any possibility of invoking "legitimate motive" when discrimination was based on race. Some problems of illegal immigration, which was dangerous in many ways, were handled in a humanitarian manner by the Office for the Protection of Refugees and Stateless Persons, the decisions of which were subject to appeal. New legislation concerning the entry and length of stay of aliens in France had been adopted containing provisions regarding expulsion and escort to the frontier and resort to emergency procedures.

361. Referring to other measures, the representative explained that, in order to relieve the Council of State of a heavy burden of cases, it had been decided to establish five administrative chambers of appeal. In addition, owing to the constant increase in the prison population, a modernization plan had been adopted in 1986 that would increase prison capacity. Lastly, with regard to the overseas departments and territories, régimes had been established to take into account the unique conditions in those areas and to give their inhabitants the power to control their own destiny.

Constitutional and legal framework within which the Covenant is implemented

362. With regard to that issue, members of the Committee wished to receive information on the relationship between a general principle of law derived from the judicial practice of the Council of State and rights explicitly mentioned in the Constitution or in legislation, on Act No. 86-1020 and its amendments concerning the new legal procedure for terrorist offences, particularly the separate procedures, the absence of a jury and the exclusive competence of Parisian courts and on activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol. In that connection, it was asked whether any publicity had been given to the fact that the second periodic report was being considered by the Committee, what measures had been taken in order to publicise the Covenant in the overseas departments and territories and whether there were any courts of appeal and legal practitioners and training institutions existing in New Caledonia. Members also requested examples of the activities of the Consultative Committee for Human Rights and the ombudsman (médiateur) and additional information concerning the recent report of the Council of State on legal ethics.

363. In addition, members wished to know whether there had been judicial or administrative decisions in which the Covenant had been directly invoked, what legal status the Covenant had in the French legal system, especially with regard to the relation between the Covenant, the Constitution and the European Convention on Human Rights, whether the Constitutional Council had necessarily to be consulted before a treaty was ratified, what means were provided in French law to resolve conflicts between a treaty and a law after the former had entered into force and whether any individual had the right to challenge the constitutionality of proposed legislation. Clarification was also sought as to the legal system in the overseas territorial units: one member wondered, in connection with the "Hienghène case" in New Caledonia, whether criminal law was applied differently in New Caledonia and in France.

364. In his reply, the representative of the State party explained that the general principles of law could be defined as unwritten rules identified by the judicial precedents of the Council of State based on an interpretation of the preamble to

the Constitution or on French practice. They playod an important part in the functioning of the Administration, especially since the Constitutional Council largely followed the judicial precedents of thr Council of State.

365. The Consultative Committee for Human Rights *nad* given its opinion on ● arios of draft laws relating, inter alia, to the reform of the Nationality Code, French foreign policy in the field of human rights, racism and xenophobia, the implications of biological sciences for *human* rights, instruction in human rights in secondary achoolr and the rights of the child and *of* refugees. The ombudsman (médiateur) was empowered to make recommendations and draw the attention of the Government and political officials *to* the shortcomings and ● rrorm of thr services under their authority. Citizens could apply to him only through their parliamentary representatives. In 1987, of the 4,547 canes considered, the intervention *of* the ombudsman had resulted in the decision being changed in 1,018 cases.

366. With regard to the enactment of legislation to combat terrorism, the Act of 9 September 1986, as amended, had ● atabliahed a special procedural régime applicable to offences deemed to be related to an individual or collective undertaking aimed at ● orious disturbance of public order (ordre public) through intimidation or terror. In view of the vary nature *of* terrorist act it had not been thought appropriatr to categorize terrorism as a specific, single offence. Nevertheless, although the Government had not wished to re-establish the State Security Court to try terrorist offences, a specific legal régime had been introduced. Under the new legislation, terrorist offences were dealt with by *a* special Court of Assize and triad by a panel of six independent judges appointed for a strictly limited period by the President of the Court of Appeal.

367. With reference to the dissemination of information, the representative said that the two Covenants had been published in the Journal officiel on 1 February 1981 and in collections of treaties *and* diplomatic documents. They were studied in secondary schools as part of a special course in civics. A reform had been initiated, which would require students to take an examination in civics before they could receive their bachelor's degree. The Covenants were also taught at law faculties as well as the Ecole nationale da la magistrature.

368. Turning to questions concerning the status of the Covenant, he ● ald that there had been about 20 judicial decisions in cases where the Covenant had boon directly invoked before the courts. Those decisions had dealt, in particular, with the scope of freedom of movement, the regulations for ● laction to the European Parliament and the application of the principle of non bis in idem. Moreover, the influence of the Covenant was gaining ground, especially among members of the legal profession. While compatibility of the Covenant and the Constitution was not a problem, the relationship between it and national laws was more complicated. If a law preceded a treaty, the latter took precedence in all cases. However, if a law was promulgated after a treaty, judicial courts tended to grant priority to the treaty while administrative courts tended to apply the law. The Covenant and the European Convention on Human Rights *differed* widely as one was regional *and* the other international. France had acceded first to the European instrument; however the French Government's declaration regarding articles 19, 21 and 22 of the Covenant did not imply that the provisions of the European Convention on Human Rights took predecence over those of the Covenant.

369. With regard to questions concerning the citizens of the French overseas territories, the representative stressed that they enjoyed the same rights and freedoms as in metropolitan France. Although certain legislation enacted in France wan adapted in the overseas territories, legislation relating to civil and political rights applied automatically to both France and its territories. The court system in an overseas territory was the same as that of metropolitan France and judges were called upon to serve either in metropolitan France or overseas. In the "Hienghène case", the jury had been selected by ballot in accordance with the procedure ● rtablishsd under the Penal Cods, an examining magistrate had been placed in charge of the case and the prosecution had been conducted under the authority of the public prosecutor. Nevertheless, although the State had called for severe penalties, the accused had ultimately been acquitted.

Self-determination

370. In connection with that issue, members of the Committee wished to know what France'8 position was with regard to self-determination in general and specifically with regard to the struggle for self-determination of the South African, Namibian and Palestinian peoples. Information was also sought concerning the special atatua of the island of Mayotte and clarification was requested as to whether any individual rights were currently not applicable to the overseas territories. It was asked whether the derogation in respect of Polynesia had been reported in accordance with the Covenant, why the derogation was needed and what the current situation was in that regard, whether a state of emergency had been proclaimed in Mew Caledonia in 1985 and in Wallis and Futuna, and if so, whether article 4, paragraph 3, of the Covenant had been complied with, and which authority de lt with violations of human rights in territories outside metropolitan France. Additional information was requsated concerning the outcome of the referendum of 13 September 1987 in New Caledonia and subsequent developments relating to self-determination in that territory. It was further asked how the people living in New Caledonia were considered from the point of view of the concept of a "people" as expressed in article 1 of the Covenant, what the legal atatua of the Kanaks was, what proportion of the voting population in the referendum had been indigenous and whether there had been an increase in the non-indigenous population over the past three years. Membora wondered whether self-determination should be allowed for people who only had a temporary connection with the country in which the right was to be exercised and whether people from New Caledonia had been able to testify before the courts on that question. They also aaksd whether people who had lived in the territory for only a few years had had the right to participate in the referendum and whether people who did not normally live in New Caledonia had been able to vote in the referendum.

371. Responding to questions raised by members of the Committee, the representative oi the State party said thrt the right of peoples to self-determination was enshrined in the preamble to the French Constitution and was one of the basic principles of French policy. For many years, France had insistently and unequivocally called for the abolition of apartheid, which denied the majority of the people of South Africa their basic rights. In order to induce the South African Government to engage in a dialogue with all components of South African society, France had implemented a policy of pressure and had takon a number of measures at both the national and the international levels; far instance, it had been at the origin of Security Council resolution 569 (1985). In order to find a aolution to the Namibian problem, France had participated in the formulation of the United Natfcna plan for the independence of Namibia, embodied in Security

Council resolutions 385 (1976) and 435 (1978) which constituted, in the view of the French Government, the only acceptable basis for a final solution of the question. The establishment, in June 1985, by the South African authorities of an interim Government in Namibia was in total contravention of the United Nations • ottlomont plan and France was committed to measures to induce the South African Government to respect its obligations.

372. Regarding the question of Palestine, the French position was baaed on the principles set. forth in the Venice Declaration of June 1980. A French-Egyptian draft resolution on Lebanon and Palestine had confirmed the right to • xirtonco and security of all States of the region and the legitimate tights of the Palestinian people. The convening of an international conference restricted to permanent members of the Security Council and the parties directly concerned was considered by the French Government au the most realistic way to secure peace in the Middle East.

373. Responding to other questions raised by members of the Committee, the representative explained that the people of Mayotte had voted *in* 1976 to remain part of the French Republic. Mayotte *had a* sui generis régime, intermediate between the overseas departments and territories and some consideration had been given to making it an overseas department. All civil *and* political rights applied in the overseas territories, the sole peculiarity of the legal system *in* the territories being the matter of "personal status", which was a concept under traditional customary law.

374. Regarding the proclamation of states of emergency in the overseas territories, the representative explained that a latent social crisis had existed between the Government of the Territory of French Polynesia and groups of dockers since the end of 1986 and that, after a number of disturbances and fires, the High Commissioner had proclaimed a state of emergency on 24 October 1987. The measures taken had been confined to a night-time curfew and tho closure of drinking establishments. Calm had been rapidly restored and the state of emergency had been ended on 5 November 1987. By the end of 1987, all claims for compensation had boon met and the French Government had allocated FF 110 million in reparations for the damage suffered by the victims. A state of emergency had also been declared in New Caledonia on 12 January 1985, following serious incidents that had occurred during electiona to the territorial asaembly in November 1984; it had lasted until 30 June 1985, In the Wallis and Futuna Islands, after a very short confl ict between traditional chiefs, which had posed the risk of the violent expulsion of a member of the administration, tha senior administrator had decreed a state of emergency which had lasted only 25 houro.

375. Referring to the referendum of 13 September 1987 on self-determination for New Caledonia, the repraaantntive explained that his Government had had three major concerns in conducting the exerciser to allow the people of New Caledonia to determine their future, to ensure that the wishes of thv people of the territory were respected and to restrict the electoral roll to inhabitants with a direct interost in the future of the territory, The vote had been restricted to inhabitant8 of the territory with at least three *years'* residence and hod been placed under the protection of the judiciary. Although the pro-independence parties had called for a boycott, 59 per cent of the electorate had voted; 98 per cent had stated their preference for remaining within the Republic, a figure that represented 57 par cent of the electorate. Following the referendum, new legislation had been enacted to provide the territory with a stable institutional

system. It had been difficult to find an objective and simple criterion for eligibility to take part in the referendum in Now Caledonia other than a period of residence. The three-year period had been chosen because that was the term of service for military personnel. The composition of the electorate had been determined by Parliament and had been approved by the Constitutional Council. Statistics on the indigenous component of the population did not exist because all citirenr, regardless of ethnicity, were considered to he citizens of the French Republic.

Non-discrimination and equality of the sexes

376. With reference to that issue, members of the Committee wished to have information about the activities undertaken by the equal opportunity boards attached to various ministries and asked in which respects the rights of aliens were restricted as compared with thcsa of citirena. They also wished to know how France dealt with migrant workers' rights. Referring to the French reservation to article 27 of the covenant, one member raised the question of France's compliance with article 2, paragraph 1, and article 26 of the Covenant, which prohibited discrimination on the basis of language, regardless of whether an individual waa a member of a minority. In that connection, it waa asked to what extent a language other than French could be used in official business and in dealing with the authorities. With respect to the legal régime of property in marriage, it was asked whether wivaa needed to obtain the consent of their husbands when taking important decisions concerning common possessions.

377. Responding to quertiona raised by members of tho Committee, the representative of the State party pointed out that the Conseil supérieur de l'égalité professionnelle (Supreme Council for Professional Equality) was a body which advised various miniatries, dealt with job equality for women and made recommendations in such areas as profsssionnl equality, the status of women, f-raining and opportunities for women to start their own business. Alien0 enjoyed the same rights au French nationals as long as they did not disturb French internal order. The right to reside in France, however, could be denied to those likely to threaten public order, and the right to work might be denied under specific conditions. Aliens did not have the right to vote, but some local communities had allowed them to participate in advisory bodies. Although there was no generally established channel through which they could make themselves heard, various informal or aemi-formal means of doing so were available. Efforts wore made to take the views and problems of foreign residents into account.

378. Responding to other queationa rained by members of the Committee, the representative pointed out that the status of French as the only official language dated back to the early sixteenth century. All official acts were drafted in French. However, the language used in Alaace-Lorraine and Polynesia had a special status. In some regions, there was a renewed interest in local languages, such as Breton and the langue d'oc, which could be taught in schools in the same way as foreign languages. In criminal cases, courts were obliged to provide an interpreter if the defendant did not speak or understand French, and that also applied in the case of a Breton who maintained that he did not speak French. Regarding the régime of community property, under the French régime wives had equal rights with regard to the management and disposal of all property acquired during the marriage. Either spouse could dispose of property individually except real estate and other major items which could affect the family as a whole. In the latter cases, spouses would have to take a joint decision.

Right to life

379. With reference to that issue, members of the Committee wished to receive additional information on article 6 of the Covenant to the extent made necessary by the Committee's general comments Nos. 6 (16) and 14 (23) and on the level of child mortality in metropolitan France and in the overseas departments and territories. They also asked what the regulation8 were governing the use of firearms by the police and gendarme8 and whether there were differences between normal police regulations and those applying to anti-terroriat activities.

380. In his reply, the representative stated that France had the right and the duty to defend itself in accordance with Article 51 of the Charter of the United Nations. Frsnce considered its nuclear arsenal as weapons of deterrence, the aim being to avert a poaaibla attack. Since 1945, it had been responsible for only 9 per cent of the total number of nuclear teats performed and it submitted an annual report to the United Nation8 Scientific Committee on the Effects of Atomic Radiation. The level of ambient radioactivity in the area of Mururoa was lower than in the reat of the world. Frsnce was ready to contribute to efforts to reduce the arms race, but that would take time. Calls for ending nuclear tests would only be significant when diaarmament had been achieved.

381. Regsrding child mortality, the representative pointed out that the differences in rates in metropolitan France and in tho overseas departmenta and territories could be explained by the fact that overseas departmenta and territories were, to a large extent, rural communities in parts of the world more often affected by endemic diseasea. The geographical nature of those areas, particularly the large number of islands they comprised, also made it more difficult to maintain effective health facilities. Nevertheless, it was hoped that it would aoon be possible to achieve a greater degree of uniformity.

382. Regarding the use of weapons by security forces, the representative explained that force could only be uaed in exceptional circumstancea and individual policemen were entitled to use force only as a means of self-defence, subject to strict conditions. Gendarmes were permitted to use force when warnings or police commands had been ignored and no other means of arresting or immobilizing the offender were available and he cleary intended to eacape. If the use of force was not in accordance with the law, thoae responsible could be tried for murder or manslaughter. In 1986, 12 persons had died as a result of the use of firearms by policemen and six had died in 1.987. There was no special yroviaion regulating the use of weapons by police in application of anti-terrorist laws.

Liberty and security of person

343. With reference to that issue, members of the Committee wished to have information about law and practice concerning preventive detention in penal inatitutiona and in institutions other than prisons or for reasons unconnected with the conuniaaion of a crime. They also asked whether reaort to the "immediate appearance" procedure had actually produced the expected benefits and whether the application of tbat procedure had created any difficulties with respect to the protection of the right to defence. It was also asked what the rsspoctfve maximum period of detention in custody and of pre-trial detention was, how soon after arrest a detainee's family was informed and when the detainee could contact a lawyer, under what circumstances an accused person might be kept in prison alone, day and night, and whether there was a form of incommunicado detention. Referring

to the case of two persons who had been detained in one of the overseas territories for periods of up to 790 days, one member wished to know whether such persons, if convicted, would be entitled to have the period already served tsksn into account in their sentencee.

384. In his reply, the representative of the State party said that provisional detention was a measure authorized by a judicial authority, was always implemented in detention centres and only applied to serious offences. A special régime was accorded to minors, who were supposed to be housed separately from the adult population or, failing that, in a apscial prison location. A study undertaken in 1982-1983 had shown, however. that 72 of 109 detention centres did not make special provisions for minors. Under the Government's plan for moclerniaation of penal institutions, it was envisaged that that situation would be corrected. Accused individuals who wore separated from convicted individuals had specific rights concerning communication, correspondence and conditiona of detention. Overcrowding in prisons was a serious problem, since only 34,100 places were available for 49,330 detainees as of January 1988. Proviaiocal detention in inntitutiona other than detention centres did not occur, although in special circumstancea an individual could be trannfsrred to a medical or psychiatric facility.

385. Rsaponding to other questions raised by members of the Committee, the representative said that "immediate appearance" and other rapid procedures ha& produced poaitivo results while continuing to guarantee the rights of the defendant. Detention in custody could not exceed 48 hours. However, in cases involving drug trafficking or terrorism, two further prolongationn were possible, bringing the total amount of time to four Clays. Regarding provisional detention, in cases lnvolving minor offences the maximum period of provisional detention was normally four months. Provisional. detention for minors under 16 years of age was limited to 10 days. Under the law, there was no theoretical limit to provisional detention for serious crimes. However, a detainee could request the examining magistrate to release him. If the decision was in favour of continued detention, the accused had the right to appeal to a higher court which, under a 1987 law that. would enter into force on 1 December 1988, was obliged to decide on the matter within 15 days. The detainee usually requested that his family should be informed. Once the 24-hour period of custody had expired an& the case came before a judge, the accuaad had tho right to contact a lawyer and to consult him freely. Long periods of detention were deducted from an eventual sentence. The provisions for keeping accused persona in prison alone in order to prevent them from being with persons who might harm them should not be confused with solitary confinement. The latter wan regulate& by other rules that were applicable to specific cases.

Right to a fair trial

386. In connection with that issue, members of the Committee wished to know whether article 115 of the Code of Criminal Procedure, which provided for the formality of "first appearance", except in cases of emergency, was compatible with article 14, psraqraph 3 (b), of the Covenant and whether provisions of French legislation relating to the bearing of costs by the accused were compatible with article 14 of the Covenant. Additional information on article 14 of the Covenant, Pursuant to the Committee'a general comment No. 1.3 (21) was also sought.

387. In his reply, the representative explained that article 115 of the Code of Criminal Procedure, which allowed examining magistrates to question the accused immediately, was only applicable in cases of emergency. The examining magistrate

and the Procureur both had to be present ● imultanoourly at thr scene of a flagrant crime in order for the provision to be applied. Article 281 of the Code of Criminal Procedure provided that the cost of summoning witnesses, when they were summoned at the request of the accused, waa borne by him. In practice, this provision was applied when witnesses who had no knowledge of a case were asked by the accused to he summoned au witnesses before the Assize Court. A decree providing that the State had to boar the costs of en interpreter for a defendant unable to pay for an interpreter himself was issued on 4 Auqunt 1987.

Freedom of movement and expulsion of aliens

386. With regard to that issue, members of the Committee wished to receive additional information about the special regulations governing the movement of aliens within French territory, Clarification was sought on the circumstances which might lead the Ministry of the Interior to order special surveillance measures in respect of aliens and on the circumstances under which administrative authoritisa might refuse to issue a pasaport. It was alro asked whether employment with or assistance to an internationnl organization of which France was not a member had ever led to a declaration of loss of French nationality, whether an alien who was facing expulsion under the emergency procedure had ■ ● ffoctivs opportunity to request a stay of proceedings prior to his expulsion, whether an appeal against an expulsion order had suspensive effect and what procedural guarantees ensured that a person was not expelled to a jurisdiction whore he might be subjected to torture. In the light of the Committee's general comment No. 15 (27), supplementary information was also requested on the position of aliens in France.

309. One member wished to receive clarification on the differences between thr normal and the emergency expulsion procedure. It was asked, in particular, whether the emergency procedure was not in fact becoming the norm, which of the two procedurea had been uaed in the expulsion in 1967 of a group of aliens to Gabon, whether, since group expulsions were not compatible with article 13 of the Covenant, the cases had been reviewed individually, and whether it had been posaible to appeal against the decision in a way that made the remedy under article 13 an effective one. Additional information was also sought on a new law which had allowed the expulsion in 1986 of 101 Malian immigranta and, on the expulsion of Basque separatists from Prance to Spain.

390. In his reply, the representative stated that aliens had an absolute right to live anywhere within French territory, but had to inform the authorities within one week of any change of residence. In certain cases, an alien could be required to restrict his movement to a certain number of departments. Nationala and al fens could be barred from certain portions of the territory on the same judicial basis. In addition, aliens wore subject to an' administrative measure restricting their movements to certain areas if the Government could show that their presence in a given location could be dangerous. Special surveillance in reapsct of aliens was ordered only in exceptional circumstances and was subject to review by a judge.

391. The power of the administrative authority to revoke paaaports had been limited by separate decisiona involving the Court of Cassation in 1984, the Jurisdictional Conf 1 ict Court, in 1966 and the Council of State in 1987. The Court of Cassation had ruled that the Government. could not prevent a poraon from leaving the national teritory by refusing to issue a passport or by revoking it. even if the person was a tax evader. The Council of State had ruled that the Government could not, on the

basis of an individual's past record and without a court order, prevent him from leaving the national territory. Therefore, freedom to come and ga could only be restricted in cases involving either convictions for procuring or trafficking in drugs or threats to national security or public safety.

392. Responding to other questions, the representative said that the employment of a French national in an international organization of which France was not a member had never led to the loss of French nationality, An appeal against an expulsion order did not have suspensive effect: such a measure was suspended only if an administrative court granted a stay of proceedings at the request of the person involved or his attorney - requests that could be made under either the normal or the emergency procedure. In no case could a person be expelled to a country where his life and freedom would be at risk. An alien was free to indicate that he did not wish to be expelled to his country of origin and could not be expelled to a third State without his consent. With regard to the Basque separatists, Spain being a democratic country in which human rights were protected, persons expelled there were in no danger. Aliens enjoyed the same rights as French nationals and measures limiting freedom of expression could only be applied when the exercise of that right posed a threat to public order.

393. The expulsions to Gabon had involved persons belonging to two revolutionary movements. As for the Malians, some of them lacked visas, others had re-entered the country illegally after having been convicted of crimes, and still others were subject to expulsion for other reasons. It had been necessary, for technical reasons, to charter an aircraft and that was why they had all been transported out of France at the same time,

Right to privacy

394. With regard to that issue, members of the Committee wished to have clarification of the basis for determining whether the establishment of a computer file on an individual was submitted for approval or merely brought to the notice of the National Committee on Computer Science and Freedom. In that connection, it was asked whether the National Committee had ever refused to establish a file and, if so, on what grounds and whether there had been any complaints from individuals regarding their personal files and what the outcome of such cases had been. Additional information was also sought as to the meaning of the terms "family" and "home" in the context of the protection of private life, and on the law and practice relating to telephone tapping, the use of listening devices and "bugging". In particular, it was asked whether there was any form of control of official telephone tapping for reasons of national security, public order or similar situations and what listening devices could be used in police investigations.

395. In replying to the questions posed by members of the Committee, the representative of the State party explained that under the Act of 6 January 1978 the establishment of a computer file on individuals was based on a number of distinctions, such as whether a file posed a real danger to privacy and whether it had been compiled by a public or a private person. Computer files containing personal information established for the State, a public institution, a territorial subdivision or a private judicial person managing a public service were submitted for approval to the National Committee, while files established by other persons were merely brought to the Committee's notice. The Committee had refused 20 out of 3,059 requests to establish a file. In certain cases, the Committee's approval had

also been conditional on compliance with certain prerequisite8 and it had made numerous recommendations for preventing abuses. It had also become customary for individuals to consult their files and, if they ncounterrd any obataclaa to their right of access, the Committee was empowered to enjoin public or private perronr to provide the information requested. In some cases, problems had to be referred to the judiciary by interested parties or the Committee itself.

396. The notion of private life was not necessarily limited to the definitions of "home" and " family" . It sufficed for a judge to determine whether a violation of an individual's emotional life, basic aspects of his personality or his identity constituted invasion of privacy. Private life was protected whenever it was threatened irrespective of the place where the attack was committed or of the persons involved. Telephone tapping by private individuals was punishable by two months' to onr year's imprisonment. Provisions of the Penal Code had stipulated the Council of State would draw up A list oil the devices developed for carrying out operations that interfered with private life, but rapid technological developmenta had made it impossible to draft a regulatory text. Judicial tapping was not expressly provided for under the law, but was baaed on the Code of Criminal Procedure, which permitted the examining magistrate to take any action to obtain information which ha deemed useful to establish the facts. The legality of telephone tapping by the judiciary had boon upheld by the Court of Cassation. Tapping for the purpose of criminal investigations could only be ordered by an examining magistrate and had to be carried out under his supervision. If the Court of Cassation considered that such telephone tapping had been carried out in violation of the right of the defence, the tapping would be terminated and the information withdrawn from the file. As to other sophisticated devices which made it poaaiblo to intercept private conversations, the representative pointed out that, since French criminal procedure was essentially a written procedure, evidence that could not be readily transmitted in writing and put into a file could not be submitted for frae discussion by the parties and could therefore not serve as grounds for bringing charges against an accused person.

Freedom of religion and expression, prohibition of propaganda for war and advocacy of racial and religious hatred

397. With reference to that issue, members of the Committee wished to have information on new legislation concerning the ownership of the media and its impact on freedom of expression. In that connection, it was asked whether, in view of the legalisation of private radio and television broadcasting, France was giving consideration to withdrawing its reservations to article 19 of the Covenant. Members also wished to know the legal basis for France's declaration that articles 19, 21 and 22 of the Covenant would be implemented in accordance with articles 10, 11 and 16 of the European Covention on Human Rights, whether service by conscientious objectora under the Act of 27 June 1983 conferred the same rights as regular military service and whether the Act of 28 July 1894 was still in effect and, if so, what was meant by "anarchist propaganda" in the modern context.

398. In addition, members asked what the basic philosophy behind French legislation governing freedom of expression was, why certain books had been banned by the Ministry of the Interior as being harmful to Prance's relations with other countries, whether freedom of expression was curtailed during election campaign6 and whether elections had ever been invalidated on the ground of abuse of freedom Of expression, what the situation had been during the referendum in New Caledonia in that respect and whether the results of the referendum could have bean

challenged before the courts on that ground, whether the National Committee on Communication and Freedoms (CNCL) had jurisdiction in overseas territories, whether operating licences had been obtained by radio stations in New Caledonia and whether journalists were protected from the owners of powerful media. It was also asked whether the requirement that officials be reserved with regard to the expression of their opinions was compatible with article 19, paragraph 2, of the Covenant, and information was requested on the regulations governing the conduct of senior officials and career members of the armed forces and on the extent to which the French public was informed about developments within the public administration.

399. In his reply, the representative of the State party drew attention to the fact that the legal régime governing the media had been completely revised in 1986 with the introduction of new laws designed to prevent concentration of ownership liable to affect freedom of expression. The 1986 laws were based on four major principles with regard to ownership: transparency, guarantees with regard to the publisher, restriction of foreign investment in existing companies and prevention of monopolies. In the area of television, no individual company could own more than 25 per cent of a national channel and there were strict rules with regard to the ownership of more than one channel. It was forbidden to set up two national channels or two regional channels in the same region, and excessive concentration of ownership involving more than one type of medium was also prohibited. Since the principle of a broadcasting monopoly was no longer upheld, France had withdrawn its reservation to article 19 of the Covenant.

400. Turning to other questions, the representative explained that service by conscientious objectors conferred the same rights as normal military service. He also stated that, as a country bound by the provisions of the Covenant and the European Convention on Human Rights, France was eager to ensure that the two were legally consistent and that their provisions were applied uniformly. In particular, France was concerned that article 21 of the Covenant did not, as the European Convention did, provide for the possibility of restricting the exercise of the right of assembly by the armed forces, the police and public officials. In the interest of public order, France wished to retain that possibility. The Act of 28 July 1894 had not been applied in practice for over 50 years and the term "anarchist propaganda" had to do with the disruption of social order by non-constitutional means. The enforcement of freedom of expression varied according to the sector. The exercise of some forms of expression, such as the theatre, could be limited by economic problems. In connection with morality and pornography, a system of ratings was applied to films. The Act of 29 July 1681 on freedom of the press allowed the Minister of the Interior to ban foreign publications, but for many years that prerogative had been exercised only in cases of pornography, racist propaganda and publications prejudicial to France's foreign relations. Consideration was being given to modifying the legislation.

401. There was concern in France over the fact that the publication of opinion polls might influence election results, and consideration was being given to further legislation on this subject. All referendums were preceded by political campaigns during which equality of access to the media was ensured by law. The Council of State and the Constitutional Council could declare elections invalid if there had been irregularities. The National Committee on Communication and Freedoms (CNCL) was the competent regulatory body in France's overseas territories as well as in metropolitan France. As to the freedom of expression of public officials, the preamble to the Constitution of 1946 as well as Act No. 83-634 of 1983 on the rights and obligations of public officials ensured that no official

would suffer in his work because of his opinions, belief or ethnic origin. The obligation to be reserved in the expression of opinions had been carefully defined in French judicial precedents. Public officials could belong to any political party, stand for elected office and be seconded to serve if elected, without losing their civil service status. With regard to the dissemination of public information, the Committee on Public Access to Documentation had been established to determine what could be printed by the press. Within each Ministry, the Minister issued instructions on what should or should not be publicised.

Freedom of assembly and assocaation

402. With regard to that issue, members of the Committee wished to receive additional information on the law and practice relating to demonstrations, including demonstrations by students and unions as well as the practice under article 7 of Act No. 86-1020 of 9 September 1986 relating to action to combat terrorism and attacks on State security.

403. In his reply, the representative pointed out that the basic Act of 1881 guaranteeing freedom of assembly had been developed by a decree-law of 23 October 1935 which covered all public demonstrations. That law required that mayors or prefects should be given advance notice of demonstrations by the organizers. Those authorities then either issued a permit or banned the meeting in the interest of public order. Although the law prescribed penalties for unannounced demonstrations, they had rarely been applied. Article 7 of the Act of 9 September 1986 was an administrative measure to be taken at the highest level of Government - by decree of the President of the Republic in the Council of Ministers. Two groups had been dissolved under article 7: an Iranian terrorist group on 26 June 1987 and a Basque separatist group on 27 July 1987.

Protection of the family and children

404. In connection with that issue, members of the Committee wished to know whether the legislation concerning the establishment of joint parental authority for children of divorced parents had been adopted by Parliament.

405. In his reply, the representative of the State party said that the Act of 27 July 1987, providing for parental authority over children of divorced parents, which had just been adopted, greatly simplifed the legal proceedings involved and made joint parental authority the norm, although a judge could rule otherwise if it was in the child's interest. The Act also provided that the child's own wishes should be heard.

Riaht to participate in the conduct of public affairs

406. With regard to that issue, members of the Committee wished to have additional information on the effect of the Act of 27 June 1983, amending the National Service Code with regard to eligibility for election to public office or appointment to the civil service.

407. In reply, the representative stated that service as a conscientious objector had no effect on eligibility for public office or the civil service.

Rights of minorities

408. With reference to that issue, members of the Committee inquired whether the Government had taken any measures to assist in maintaining native cultural traditions or languages in various regions of the Republic where such traditions existed.

409. In his reply, the representative of the State party pointed out that the Government's concept of State neutrality applied to the field of culture, where State intervention was generally considered unlawful and even dangerous. The Government encouraged the development of regional cultural associations and activity centres and regional languages were taught in secondary education on an optional basis. Under the Constitution, in New Caledonia, Wallis and Futuna and Mayotte, civil status, marriage, adoption, affiliation, inheritance and ownership were governed by the customary law of the territories concerned. In New Caledonia, the Act of 22 January 1988, on the status of the territory, provided for the establishment of a customary assembly. The Act of 6 September 1984 on the status of French Polynesia recognised the cultural identity of the territory and that principle was protected under the Polynesian Constitution which provided for the teaching of the Tahitian language as part of the normal curriculum of primary schools. In general, the overseas community itself laid down the policies for developing their cultural traditions and the State provided financial support for activities carried out within that framework.

General observations

410. Members of the Committee expressed appreciation and satisfaction to the delegation of the State party for its co-operation and competence in responding to the Committee's questions. However, members stated that more detailed information, perhaps in a separate report, should be provided on the situation in the overseas departments and territories with respect to all the articles of the Covenant, not merely article 26. They also considered that it would be potentially useful for the authorities in those departments and territories to participate in the preparation of subsequent reports. Members indicated that all of their concerns had not been fully allayed. Some referred in that regard to the right to liberty and security of person, while others referred to the right to privacy and still others to the rights of minorities. They also expressed the wish that public awareness of the rights guaranteed under the Covenant, especially in the overseas departments and territories, should be increased.

411. The representative of the State party said that the dialogue with the Committee had been a very constructive exercise and that he would transmit the observations and recommendations made by the Committee to his Government.

412. In concluding consideration of the second periodic report of Prance, the Chairman also thanked the delegation for its spirit of co-operation and expressed satisfaction at the very constructive dialogue that had taken place.

Australia

413. The Committee considered the second periodic report of Australia (CCPR/C/42/Add.2) at its 806th to 809th meetings, held on 5 and 6 April 1988 (CCPR/C/SR.806-809).

414. The report was introduced by the representative of the State party who reaffirmed his Government's support for the Committee's work and noted that the rcrutinity of reports by the Committee and its dialogue with States parties had resulted in increased understanding by all parties of their obligation8 under the Covenant. The representative recalled that the implementation of the Covenant in Australia was significantly affected by the division of political and legal responsibilities between the Federal Government and thr governments of the various Australian Staten and Territories, as provided by the Constitution, and that thr implementation of a given article of the Covenant depended on the jurisdiction that had the constitutional power to enforce it. A small number of civil and political rights were protected by the Constitution while others were embodied in general legislation and common law. Legislation protecting certain specific hwnan rights nad been added at the federal level, ouch as the Racial Discrimination Act of 1975 and the Sex Discrimination Act of 1984, and four of the six Staten had adopted similar laws.

415. Reviewing developments since the consideration of Australia's initial report in October 1982. the reprsaantative pointed out that the former Human Rights Commission had been replaced, in December 1986, by the Human Rights and Equal Opportunity Commission, of which tho International Covenant on Civil and Political Rights formed the basic chatter, and that Australia had ratified the Convention on the Elimination of All Forma of Discrimination against Women in 1983 and had enacted the Affirmative Action (Equal Opportunity for Women) Act in 1986. Legislation had also been introduced recently to allow ratification by Australia of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Australia also remained committed to the adoption of A second Optional Protocol to the Covenant outlawing capital pcniahment. Other relevant development8 included the elaboration of guidelines based on th6 United Nations btandard Minimum Rules for the Treatment of Prisoners, the establishment of a constitutional commission to recommend desirable changes in the Constitution in the area of individual and democratic rights, initiatives to establish a data protection agency and to enact a Privacy Bill, and a variety of initiatives and propoaaln relating to the improvement of the status and condition of Aboriginal8 and Torres Strait Islanders, including, in particular, improving the position of Aboriginal8 in the criminal justice ayatem. Efforts were also under way to ensure the continued improvement of the status of woman through programmes that enabled them to exercise a real choice in their careers and life-atylaa, and to make access to government programmes broader and more equitable.

Constitutional and legal framework within which the Covenant is implemented

416. With reference to that issue, members of the Committee wished to receive information concerning the effectiveness of the ombudaman'a powers in providing remedies or necessary legislative changes, the relationship between the Federal Court and the High Court, thr circumstances under which appeals were permitted against the decisions of non-judicial persons and authorities, the atatua of the new Human Rights and Equal Opportunity Commission and its ability to monitor compliance with the Covenant and to receive complaint.8 from individuals, and the efforts under way to make the entire population aware of the rights guaranteed under the Covenant. Members also asked about. the meaning of the statement in paragraph 53 of the report that, "prior to or without legislative Implementation, some of the requirement8 of the Covenant. mny be implemented at an administrative level" nnd wondered whether all tho rights guaranteed under the Covenant were

vailable under State end federal law, notwithstanding the abrrnce of lsgiolation incorporating the Covenant or a bill of rightn.

417. Further, members wished to know whether thn fact that tha Covenant had been annexed to the Human Rights end Equal Opportunity Commission Act meant that it had actually been incorporated into national law, whether that Commission was empowered to intervene in court proceedings, whether it had taken concrete measures to familiarise the judiciary with the guarantees provided under the Covenant, what typical complaints were received by the Commission and how it had dealt with them. They also asked on what grounds, other than lack of jurisdiction, the ombudoman could decline to investigate a complaint, whethor the High Court could suspend the application of a law end had competence to interpret all parts of the Constitution, what type of instruction was provided to prison officials and police officers with regard to the rights contained in the Covenant and whet steps had been taken by the fedora1 Government to ensure the implementation of the Covenant In the Northern Territory. It wee also asked whether the Constitutional Commission had responsibility for bringing State constitutiona into line with the provisions of the Covenant, why a bill had been introduced to incorporate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishmsnt into national law, when no attempt had been made to incorporate article 7 of tho Covenant, why it was considered necessary, since Australia had withdrawn most of its reservations to the Covenant, to maintain the reservation to article 20 and why the advocacy of national or racial hatred was not punishable under the Racial Discrimination Act, and whether human rights information was provided in all Australian schools end as part of Aboriginal education programmes.

418. Members also obaerved that informing the media of the fact that Australia's report. was before the Committee would havo boen a useful way to alert public opinion to the Committea'n concern that the Covenant did not have the force of law in Auatralia. They recalled, in addition, that article 50 of! the Covenant stipulated that its provisions sxtonded to all parts of federal States without any limitations or exceptiona.

419. Responding to question8 raised by members of the Committee, the representative of the State party explained that the phrase relating to administrative implementation uaed in paragraph 53 of the report was intended only to convey that not all the rights in the Covenant noeded to be implemented through legislation, since some of the requirements of the Covenant could be met in whole or in part through administrative measures, such as inatructiona issued by police authorities. Not all rights guaranteed by tha Covenant were necessarily available through specific State or federal legislation but they wore nevertheless fully protected. For example, freedom of expreaaion was not specifically quarnnteod by law but the only limitations on that right were thoaa provided by law. Thn Government and its officials had no powers independent of the law by which thoy could act to affect adveraoly the interests of Australians. Prior to ratification of the Covenant, there had been extensive consultations between the Federal Government and State governments with a view to identifying any provisions in the law which were inconsistent with the Covenant, and action which might be needed to ensure compliance with the Covenant. Where inconsistencies or obstacles had been perceived, laws or administrative practices had been changed or an appropriate reservation had been formulated.

420. Ragarding the effectivomrr of the ombudrman, the representative stated that the ombudsman's powers were recommendatory and his recommendations were not always followed. During the 1986/87 reporting year, the ombudrmsn had dealt with 3,708 written complaints and 12,107 oral complaints, About 25 per cent of the written complaints and 39 par cent of the oral complaints had been resolved substantially or partially in favour of the aomplainant. The decision of the ombudrman not to investigate a particular case could be based on the grounds that the complaint was frivolous or that the complainant had not had recourse to the appropriate remedies. Where a complaint could not otherwise be resolved, the ombudsman was empowered to submit a report to the Prime Minister and, ultimately, to Parliament. Also the onbudsman was an ex officio member of the Administrative Review Council, which was a high-level body established to advise the Attorney-General on administrative law issues.

421. The Federal Court was subordinate to the High Court, which had been set up under the Constitution and was at the apex of the Australian judicial system. Many of the decisions taken by non-judicial persons and authorities under Commonwralth law were subject to review by the Administrative Appeals Tribunal, which had broad powers in moat cases. The Federal Court had jurisdiction to hear appeals on questions of law concerning any decision by the Tribunal. The High Court's role in respect of the Administrative Appeals Tribunal was limited to the determination of appeals from the Federal Court.

422. The Human Rights and Equal Opportunity Commission was a permanent, independent body established by federal law with broad atatutory powers to investigate matters relating to human rights on its own initiative, at the request of the Attorney-General or on tho basis of a complaint from an individual. The President of the Commission wan a judge in the Federal Court. The other three members of the Commission - The Human Rights Commissioner, the Race Discrimination Commissioner and the Sex Discrimination Commissioner - were qualified lawyers and had broad experience in human rights and public administration. The Human Rights Commissioner generally dealt with the Federal and State governments at a very senior level and had ths same rank as the secretary of a federal department. The Commiaaion could inquire into any act or practice that might be inconsistent with or contrary to human rights. Its jurisdiction with respect to individual complaints covered seven international instruments, including the Covenant. There was no limit to the intervention of the Commission in court cases except that it had to have the conesnt of tho judges involved. The Commission conducted education programmes in schools in conjuction with State education authorities as well as information programmes outside formal educational structures that focused on groups of particular concern, such as homeless children and migrant women, and programmes with other organisations on subjects such as racism in the place of work. Among its information activities, the Commission issued newsletters, published papers and reports and distributed posters and other materials. An intensive public education programme was carried out during Human Rights Week in Australia. Lastly, the Commission conducted conferences and seminars on subjects of particular concern where the law was deficient and the Covenant was especially important. For example, common law had little to say regarding the rights of such minorities as the disabled, the mentally ill or children, and the Commission had tried to compensate for the absence of a bill of rights by focusing on them.

423. As to questions concerning the incorporation of the Covenant into Australian law, the representative pointed out that a whole range of remedies were utilized to implement. the Covenant within the limit.8 of the Australian system of government, to

which the common-law background was fundamental. It was important not to approach reports from an over-theoretical ntandpoint. The Australian system, complex as it was, worked reasonably well, and respect for human rights in Australia was on a par with that in any other country. Australia had inherited a cultural difficulty with principles that wore enshrined in lofty declaratory constitutions that might ultimately serve to restrict rights. The vitality of the constitutional debate in Australia had produced a dynamic system bringing minorities at the State and federal levels into close consultation and fostering great familiarity with the Covenant.

424. Rsaponding to other questiona, the representative noted that courts had the power to declare a law invalid and to grant specific remedies where appropriate. The primary forum for ensuring that the States agreed to propooad federal action, and took action themselves, was tha Standing Committee of the Attorney-General, which held regular discussions concerning 'human rights. The exception relating to the judicial interpretation of laws, mentioned in paragraph 55 of the report, applied not only to the Northern Territory but to all States, the Northern Territory being treated as a State by the Federal Govsrnmcnt.. The Constitutional Commission wae to report by 30 June 1988 on propoaed amendments to the Constitution. The scope of its review did not extend to each State Constitution, but such aonatitutions were subject to the Federal Constitution. Furthermore, the Individual and Democratic Rights Committee of the Commission had recommended that all existing constitutional guarantees should be made to apply to the Staten. That Committee had also recommended that certain rights, such as the right to vote and to due process of law, ahould be enshrined in the Constitution and that a referendum ahould be held to that end. The President of the Human Rights and Equal Opportunity Commission had given the education of judges the highest priority and had established a high-level committee whose sole function was to conduct courses and seminars for judges. The complaints lodged with the Commission covered the entire spectrum of the articles of the Covenant, with about one third relating to discrimination on grounds of sex or race. The reason for introducing legislation in relation to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, with which Australia already complied fully, was to give effect to the requirement of universal jurisdiction.

425. Finally, reqarding Australia's reservation to article 20 of the Covenant, the Government had not decided to take action ta remove it because Australia had difficulty with any restriction on freedom of speech. There were a number of areas, however, such as under the Human Rights and Equal Opportunity Act 1986, where the Government *could* and did take legal action to proscribe incitement to racial or religious hatred.

Self-determination

426. In connection with that issue, members of the Committee wished to know Australia's position with regard to self-determination in general, and specifically with regard to the struggle for self-determination of tho South African, Namibian and Palestinian people. They also asked what Australia's views and actions had been with regard to the situation in Now Caledonia. It waa also asked whether it would be possibie to allow the Torres Strait Islanders, some of whom were apparently pressing for independence according to news reports, to express their views on self-determination in a referendum, RR the people of the Cocos (Keeling) Islands had done.

427. In his reply, the representative of the State party raid that his Government had actively advcaated and voted for decolonisation and for the right of Non-Self-Qovrrn!ng Territories to self-determination. Australia had been the administering Power for Papua New Guinea, Nauru and the Cocoa (Keeling) Islands, and each of those Territories, in clorr co-ogoration with the Spe lal Committee on the Situation with regard to the Implementation ot the Declaration on the Granting of Independence to Colonial Countries and Peoples, of which Australia was a member, had been able to exercise the right to self-determination. Moat recently, in 1984, tho Cocos (Keeling) Islanders had opted fot integration with Australia in an rot of self-determination undor Unitod Nations supervision. Australia had also givon vigorous support to Security Council resolution 435 (1978) on Namibian independence. Australia unequivocally rejected apartheid and had takon a number of specific steps, including various restrictions on contacts with South Africa an8 tupport for the imposition of mandatory ● anctionr, to bring pressure to boar on the South African authorities to dismantle that system. With regard to tho Middle East, Australia believed that the security of all States in the region should be protected amd that a resolution of the conflict in the territories occupied by Israel required recognition of the right of the Palestinians to self-determination, including their right to choose independence if thoy so desired.

428, Australia considered that the right of self-determination was not fully exercised by simply gaining independence after a colonial era. It interpreted self-dotormination as the matrix of civil, political and other rights required for the meaningful participation of citizens in the kind of decision-making that enabled them to have a aay in their future. Self-determination included participation in free, fair and regular elections and the ability to occupy public office and enjoy freedom of speech and association. The Torres Strait Islands, unlike the Cocos (Keeling) Islands, which had been adminiatrrod under A United Nationn Trusteeship Agreement, had always formrd part of Australia. The concerns of some Torrrr Strait Islanders relating to self-management and autonomy had already received attention and an inter-departmental committee had been ret up by the Primo Minister to study whether thoso concerns could be addressed more appropriately. Australia's position with regard to New Caledonia was that thr Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countrims and Peoples should play a role in the exercise of self -determination by all Non-Golf -Governing Territories, and Australia had therefore supported the inclusion of New Caledonia in tha list of such territories.

Non-discrimination and equality of the sexes

429. With reference to that issue, members of the Committoe wished to receive information concerning the implications of the constitutional inability of the Federal Qovornment to enact national legislation on all aspects of non-discrimination against women, the area in which such discrimination still existed in law and in practice, any plans to extend the Federal Affirmative Action (Equal Employment Opportunity for Women) Act 1986 lo Aboriginal peoples and restrictions on tha right of aliens as compared with those of citizens. It was alro asked whether the 550 Aboriginal civil servants in Queensland ware employed under conditions equal to those offered to non-Aboriginala.

430. In his response, the representative of the State party said that the Federal Parliament had the power Co give effect to international convsntionu and the implications of constitutional limitations on the powers of the Federal Parliament

had not yet proved significant. The Federal Sex Discrimination Act allowed for some temporary exemptions from full compliance with its provisions in such areas as restricting the employment of women in the processing and handling of lead or in mining, but such exemptions were kept under regular review. There were also some exemptions of indefinite duration which related to differential entitlements to certain benefits, principally benefits available to widows but not widowers and benefits made available at an earlier age to women.

431. There were no plans to extend the Fedora1 Affirmative Action Act of 1986 to Aboriginals, but each federal department and statutory authority was required under the Public Service Act, to produce an equal employment opportunity programme for women, immigrants, Aboriginals, islanders and the disabled. Aliens had no right to vote in elections to the Australian Federal and State parliaments or to stand for election, could not become members of the federal public service or the Defence Force, were not entitled to passports or to protection by Australian diplomatic representatives while overseas, had to have a resident return visa in order to re-enter the country and had no right to register any child born overseas as an Australian citizen by descent. Access by aliens to social security or federal medical benefits depended to some extent on residency requirements. In general, Aboriginals and islanders employed in the public service were entitled to the same benefits as other public servants.

Right to life

432. With regard to that issue, members of the Committee wished to receive information concerning article 6 of the Covenant, pursuant to the Committee's general comments Nos. 6 (16) and 14 (23), regulations on police use of firearms and complaints, if any, of violations of such regulations and infant mortality rates and life-expectancy rates for Aboriginals as compared with the rest of the Australian population. Members also wished to receive clarification of the apparent overlapping between Australian criminal law and Aboriginal customary law and the consequent exposure of Aboriginals to double jeopardy and asked about the outcome of the inquiry into the deaths in prison of 17 Aboriginala since 1980 by the Royal Commission on Aboriginal Deaths.

433. In his reply, the representative of the State party said that Australia regarded the nuclear non-proliferation régime as central to the preservation of international peace and security and was also committed to a comprehensive nuclear test ban as well as to comprehensive nuclear disarmament. His Government considered the world overarmed and supported the reduction of nuclear and conventional arsenals to levels consistent with legitimate defence needs. Australia's own military force structure were defensive in nature. As a member of the South Pacific Forum, the Government had in 1985 joined in declaring the South Pacific a nuclear free zone and had signed and ratified the Treaty of Rarotonga.

434. Police officers were entitled to use reasonable force when making an arrest and, under the Australian Federal Police Act, might be justified in using a firearm in specific circumstances, such as self-defence, the defense of other persons threatened with serious violence and the apprehension of fugitives. Any police officer who discharged a firearm was required to furnish a report and improper use of such arms was investigated and sanctioned under criminal law. Infant mortality rates for Aboriginala, while declining, were still nearly three times as high as for the non-Aboriginal population and life expectancy was 20 years less than for Australians. Maternal and infant health were important parts of the activities of

the Department of Aboriginal Affairs. The Government's approach was based on improving the environmental conditions in which Aboriginals lived. Work had started on the preparation of a comprehensive Aboriginal and Torres Strait Islander health policy with the establishment of a working party, scheduled to report in early 1989.

435. Regarding the role of Aboriginal law, the representative said that it would be difficult to reconcile the two systems of law. For example, tribal law did not accord equal rights to women, whereas the promotion of women's rights was required by the Australian legal system snd the international human rights instruments to which Australia was a party. The issue of customary law had originally been approached from the standpoint of the English common-law system, but an effort was now being made to devise a new approach, perhaps baaed on the "family law" model, which provided an alternative to standard adversarial proceedings. The question of double jeopardy did not arise as such, since Aboriginal customary law was not formally recognised. Australian courts sometimes imposed lesser sentences in cases where the offender had already been the object of tribal punishment, but they would not do so in the case of a serious crime such as murder. The Royal (Muirhead) Commission had been established in August 1987 to investigate Aboriginal deaths in prison and was scheduled to complete its work in December 1988. The Minister for Aboriginal Affairs and the Minister of Justice drew up a code of conduct, in September 1987, to protect Aboriginals in prison.

Liberty and security of person

436. With regard to that issue, members of the Committee wished to know what the maximum period of pre-trial detention was and how soon after arrest the person involved could contact his lawyer or have his family informed, under what circumstances solitary confinement was permitted, whether corporal punishment was permitted in private schools and within the family, whether the use of corporal punishment in schools had given rise to litigation or complaints and, if so, how such matters had been handled, whether a person detained against his will in a psychiatric institution could apply to an independent body to challenge his detention and whether there had been any legislative follow-up to the report of the Australian Law Reform Commission (No. 31) in respect of the interaction of Aboriginal laws and the general law. Members also asked the representative to comment on the retention of whipping in the criminal codes of certain States and Territories, in the light of the Committee's general comment No. 7 (16). and inquired whether a convicted person's sentence was automatically suspended upon appeal until it had been reconfirmed.

437. In his reply, the representative of the State party said that, generally, there was no statutory limit to pre-trial detention. Persona in police custody had to be presented before a magistrate as soon as was practicable - in the State of Victoria, the period for doing so was specified as six hours. It was up to the court to decide whether or not a person was to be kept in custody until his trial, but a person could apply for bail - and reapply if necessary - until he was convicted. Some jurisdictions also allowed the accused to apply for presentation of an indictment to permit an immediate trial. The sentence imposed by a court took effect as of the date of conviction. A relative, friend or lawyer could normally be contacted immediately after arrest and a person could contact a lawyer as soon as practicable after being brought to a police station. Solitary confinement was permitted only in Queensland and Western Australia, where such confinement could be ordered for a maximum period of 72 hours by prison

superintendents and up to 30 days by the Director of Prisons. Prisoners could be held in protective custody when at risk from other prisoners in all jurisdictions. Draft guidelines, based on the United Nations Standard Minimum Rules for the Treatment of Offenders, were currently under consideration. They would prohibit all cruel and inhuman or degrading punishment, including prolonged solitary confinement, Whipping, which had not been resorted to in practice since 1943, had now been dropped from Western Australian law - the last State where that form of punishment had still been on the books.

438. Australian logislation took conscious and deliberate account of the rights of children as laid down in the Declaration of the Rights of the Child (General Assembly resolution 1386 (XIV) of 20 November 1959), as well as those provided for in the Covenant. Among those rights were the right to "special protection" and to protection from cruelty and abuse. Corporal punishment had been abolished in government schools in New South Wales, Victoria and the Australian Capital Territory and was being phased out in South Australia. Where parents specifically objected to it, corporal punishment could not be administered and excessive use of it could lead to disciplinary proceedings against the teacher involved or to actions in tort by the parents. However, the use of corporal punishment in schools had given rise to very little litigation, with most cases being resolved by negotiation. A national inquiry being conducted on the situation of homeless childred indicated that various forms of abuse in the home were involved in the majority of cases. Corporal punishment both at school and in the home was matter of great concern and the cause of problems in society with which the country was not coping very well.

439. Persons forcibly detained in mental institutions could generally apply to the magistrate's court for release. All States provided for the right of appeal to an administrative body comprising mental health specialists, lawyers and lay persons, with a further right of appeal to a court on questions of law. Report No. 31 of the Law Reform Commission contained 38 recommedations, relating mainly to sensitive and complex administrative questions currently falling within the exclusive jurisdiction of State and Northern Territory governments. Federal State discussions were under way on the implications of each of the recommendations and it was generally agreed that no federal legislation should be enacted until those implications had been fully examined and the desire of the Aboriginal and Torres Strait Island communities for federal legislation - and their need for it - had been clearly established. In general, the Law Reform Commission had concluded that: special measures for the recognition of Aboriginal customary laws would not be racially discriminatory and would not involve denial of equality before the law, provided such measures were reasonable responses to the special needs of the Aboriginal people, were generally accepted by them and did not deprive them of basic human rights. Particular rights were conferred only on Aboriginal persons who suffered the disadvantages or problems which justified such action and were not conferred on the Aboriginal people as a whole. An Aboriginal accused of committing a serious offence could be punished only under the law of the State or Territory in which he resided. However, for less serious offences, the recent practice of the courts had been to recognise customary law and to mitigate the sentence or impose no sentence in cases where an offender had earlier been tried under customary law.

Right to a fair trial and equality before the law

440. With reference to that issue, members of the Committee requested additional information on article 14 of the Covenant, pursuant to the Committee's general comment No. 13 (21). They also wished to know whether Parliament hrd ever adopted retrospective criminal legislation, whether administrative procedures wore adequate to guarantee full compensation for miscarriages of justice and what limitations on the capacity of married women to deal with property were still in effect following enactment of the Married Person's Property Ordinance of 1986 In the Australian Capital Territory. Members also requested further information concorning Tasmanian statutory provisions relating to the presumption of innoconce, the reasons for maintaining Australia's reservation to article 14 of the Covenant, the legal disabilities of childrad born out of wedlock, the absence of legislation guaranteeing the right to legal aid in the Territories of Christmas Ialaad and the Cocos (Keeling) Islands, the controversy relating to the removal of judges, the circumstances under which the burden of proof in a criminal trial might be shifted to the accused and the limitations on the rule against double jeopardy. They also asked whether any progress had been made with regard to the statutory right of an accused person to the assistance of an interpreter during trial, to what extent resort was had to imprisonment for inability to fulfil a contractual obligation and whether any affirmative action had been taken to ensure that judges were not drawn exclusively from the privileged sections of society.

441. In his reply, the representative of the State party said that retrospective criminal law had never been enacted in any Australian jurisdiction and that administrative procedures fully guaranteed the provision of compensation for a miscarriage of justice. In Yew South Wales, a peraon convicted of an offence who considered that there had been a miscarriage of justice could apply under the Crimea Act either to the Governor or to the Supreme Court for an inquiry subsequent to conviction, which could result in the quashing of the conviction. While there was no explicit provision as to compensation, in practice a petition for an ex gratia payment would be made. In Tasmania, the provision of compensation for a miscarriage of justice was guaranteed under the Coats in Criminal Case6 Act 1976 and remedies might also he available for false imprisonment. There were no limitations on the capacity of married women to deal with property, either in the Australian Capital Territory or in the States, apart from restrictions contained in instruments executed before the current legislation came into force.

442. The presumption of innocence was a fundamental precept of the Australian system cf justice and the prosecution in criminal trials had the traditional burden of proving guilt "beyond a reasonable doubt", The evidentiary burden of proof was shifted to the accused only under certain limited circumstances, for example, to establish the defence of provocation. It was the general rule that, if the accused produced sufficient evidence to raise the issue, the judge in a jury trial waa required to put to the jury the question of whether a defence existed. The Tasmanian Law Reform Commission had auggested a number of procedural improvements in that regard in its report of July 1987. There was currently a vigorous debate in Parliament concerning legislation which sought either to reverse the presumption of innocence or to establish a different standard. All States except Western Australia and the Northern Territory had enacted equality of status legislation, under which all distinctions between children born in or out of wedlock had been eliminated. In Western Australia, various statutes had been amended to abolish existing disabilities that had affected children born out of wedlock. The provisions relating to children in the Family Law Act, as amended by the Federal

Parliament in 1987, concerning maintenance, custody, guardianship and access, applied to all children and to their parents, whether or not they were married, in Now South Wales, Victoria, South Australia, Tasmania, the Australian Capital Territory, the Northern Territory and Norfolk Island. Elsewhere, the provisions applied only to children born of a marriage and to parties to a marriage. Judicial office was held in high respect in Australia and was open only to suitably qualified and ● sperionced lawyers. The Australian political system draw a sharp line between the executive and the judiciary and the standards expected of judges were different from those expected of politicians. While there had been considerable controvrray over the trial of the High Court Judge who had been convicted of acting improperly in relation to a social acquaintance, the removal of a judge was a very rare occurrence. The reason for maintaining Australia's reservation to article 14 of the Covenant was the requirement in paragraph 6 of that article for statutory compensation in cases of miscarriage of justice, whereas in Australia the procedures for granting compensation did not necessarily have a statutory basis. The compensation procedure for miscarriage of justice related to situations where there had been judicial error, not to errors that might have been committed by A jury. Remedies available under State Debt Acts allowed for seizure of property for non-fulfilment of contractual obligations but not imprisonment. Where required, interpreters were made available in court in accordance with national guidelines. In the period covered by the report, there had been more appointments of women and minority ethnic groups, not only to superior courts but also to courts of summary jurisdiction. Recently, an Aboriginal woman had been appointed am a magistrate in Sydney.

Freedom of movement and expulsion of aliens

443. With reference to that issue, members of the Committee wished to receive information on the position of aliens in Australia, pursuant to the Committee's general comment No. 15 (27), and on the application of the conditions for refusal of a passport, including the number of such refusals. Members also wished to know whether appeals against deportation orders had suspensive effect and whether, in doporting an alien couple who had stayed beyond the authorised time-limit for their visit and who had had a child in Australia, the Government was not, in effect, requiring an Australian citizen - the child - to leave the country of his nationality.

444. In his reply, tha representative of the State party explained that under Australian law any individual, whether or not he was a citizen, could bring an action in court to defend his legal interests. Similarly, an alien charged with an offence was in the same position as a citiaen. The fact that a conviction might lead to deportation was not considered to be discriminatory. Australian law allowed an alien, lawfully within Australia but subject to deportation, to challenge that deportation in the Federal Court and to appeal to the High Court if granted leave. Under the Passporta Act of 1938, the Minister could refuse a passport, but his decision was appealable. No record of refused paasporta was maintained, but refusals were extremely rare and probably there had been none within the past five years. The courts could and did issue interim injuctiona to prevent deportation until the relevant appeal was heard. Regarding the deportation of an alien couple with an Australian-born child, the representative said that Australia's non-discriminatory immigration policy, baaed on skills, employment in Australia and family ties, was subject to abuse, since aliens who gave birth to a child in Australia could invoke the child's citizenship as grounds for remaining in

the country. However, the Human Rights and Equal Opportunity Commission was continuing to pursue the examination of the issue with the Government.

Right to privacy

445. With regard to that issue, members of the Committee wished to know what the term "prescribed authority", mentioned in the report meant, whether licensed commercial and inquiry agents were authorised to monitor personal conversations by means of a listening device, whether there had been any developments in Parliament with respect to draft legislation relating to privacy and data protection and why the recent attempt to simplify and unify the defamation laws had failed. Members also wished to know whether the Privacy Bill that had recently been introduced in Parliament would provide for the general protection of privacy, including regulation of data collection by private individuals and businesses as well as by government agencies, what specific remedies were available in cases of violation of the right to privacy and how the Statement of Principles of the Australian Press Council and the Code of Ethics affected the audio-visual media.

446. In responding, the representative of the State party explained that the Attorney-General was the "prescribed authority" in cases involving national security and a judge of the State Supreme Court was the authority in matters involving narcotic offences. Under foderal law, it was an offence for commercial and inquiry agents to intercept telecommunications by the use of listening devices. The use of listening or recording devices to monitor or record personal conversations was a matter regulated by State law, he stated, and legal provisions varied Prom State to State except that, in general, a conversation could be recorded or monitored only by a person who was party to it and with the consent of the other party or parties. The Privacy Bill and related legislation were reintroduced in the House of Representatives in September 1987 and a Senate committee was also currently considering proposals relating to a national identification system, privacy legislation and data protection. On 29 September 1987, the Prime Minister had announced that the Government would not be proceeding with the Australian Card legislation but would go ahead with privacy legislation and proposals to establish a Data Protection Agency. It was very difficult to achieve uniformity in the area of defamation and the situation remained unsatisfactory in that respect.

447. The Privacy Bill was limited to federal matters and was not designed to regulate the collection of personal information by individuals and businesses. The right to privacy being a new area of jurisdiction, the relevant federal and State legislation was still in the process of being sorted out. The Principles of the Australian Press Council were non-legal in nature and purely voluntary. Visual media, on the other hand, were governed by legal standards established by the Australian Broadcasting Tribunal. General remedies protecting the right to privacy included the right of access to records held by federal agencies, as provided for under the Freedom of Information Act, and the right of access to data protection agencies, as set forth in the Human Rights and Equal Opportunity Commission Act and the Privacy Bill.

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

440. With reference to those issues, members of the Committee wished to know whether the Government had taken any decision to prohibit, through legislation, the

dissemination of racist propaganda and, if so, what provisions such legislation contained. Members also wished to receive additional information on the status and composition of the Australian Press Council and the procedure for the renewal of broadcasting licences. They also wished to know about the Australian Broadcasting Corporation's policy of neutrality and asked whether it could be challenged before the Australian Broadcasting Tribunal or the courts.

449. In his reply, the representative of the State party said that his Government had some difficulty with any proposals that would restrict freedom of speech and had, accordingly, maintained a reservation to article 19 of the Covenant. The whole issue of restricting freedom of expression had been examined by the former Human Rights Commission and was under active consideration at the federal level. Applications for the renewal of broadcasting iicencoa were considered at a public inquiry by the Australian Broadcasting Tribunal, which inquired, in particular into the applicant's record with respect to the fair presentation of public issues. The Australian Broadcasting Corporation's policy of neutrality, which consisted of presenting opposing points of view, was protected by legislation and bolstered by tradition. The Corporation did not come under the jurisdiction of the Tribunal. The Australian Press Council was a voluntary body composed of managers of the leading newspapers and its role was to consider complaints from the public and to guard against offensive reporting.

Freedom of assembly and association

450. With reference to that issue, members of the Committee requested clarification of the legal situation on peaceful assembly in Australia and asked whether it was consistent with the Government's obligations under the Covenant. They also asked for an elaboration of the circumstances which led to the deregistration of the Builders Labourers' Federation and inquired whether there was any judicial remedy in cases where an industrial union was deregistered and what measures had been taken to prevent abuse of laws relating to freedom of association.

451. In his reply, the representative of the State party explainod that under common law the rights of peaceful assembly and freedom of association could be exercised, subject only to restrictions based on Public order and public safety. Statutory provisions required the organizers of public assemblies to notify the public authorities of proposed assemblies and processions and to enable those authorities to object to or prohibit such assemblies in the interest of public order. The scope for judicial, and administrative review of such decisions varied from State to State. In certain respects, the laws of the States could be amended to bring them more closely into line with the Covenant. Regarding the deregiatration of the Builders Labourers' Federation, the Australian Conciliation and Arbitration Commmission had found that the Federation had, on numerous occasions, committed fuodnmental breaches of industrial agreements and of undertakings given to the Industrial Registrar, employers, the Minister of Employment and Industrial Relations and the Commission itself. Deregistration did not restrict freedom of association at all, since the position of trade unions even outside the industrial system - outside the Australian conciliation and arbitration sys tern - was fully guaranteed under law. Deregistration simply removed the Privilege of taking part in the arbitration system. It was always possible for actions to be challenged in the courts and, in the case of the Builders Labourers' Federation, several such challenges had in fact been made, all of them

unsuccessfully. The Commonwealth Crimes Act had never been used against trade unions, even in extreme circumstances, and had not led to any infringement of rights.

Right to participate in public affairs

452. With reference to that issue, members of the Committee requested clarification of the measures taken that ha& enabled Australia to withdraw its reservation to article 25 (b) of the Covenant, as well as of the factors responsible for the form of weighted voting that was in effect in Australia. Members also wished to know what progress had been made in implementing the equal employment opportunities programmes required by the Public Service Act and what the position was with respect to equal employment opportunity in the public service at the State level.

453. In his reply, the representative of the State party explained that no particular measure had been taken to make the withdrawal of the reservation possible and that its removal had followed a review of all the reservations and declarations made by Australia and consultations with the governments of the States and the Northern Territory. The Government had observed that the withdrawal of that interpretative declaration would not impose any additional international obligations on Australia and considered that its retention would have been undesirable, since it might have suggested that Australia did not give its unqualified support to the important principles embodied in article 25 (b). It was the policy of the Australian Government to favour the one-vote+one-value system and, despite continuing controversy over the issue, there was a clear move towards that standard throughout the electoral system. The Attorney-General was considering a referendum on the subject during the current year. The origin of the existing system, which also took various factors other than population into account in determining electoral roles, was probably geographical, reflecting the fact that Australia was an enormous country where some very large electoral districts were sparsely populated. All federal departments had affirmative action programmes to achieve equal employment opportunity and the greatest progress to date had been made with respect to the advancement of women, Aboriginals and Torres Strait Islanders. The States had not laid down similar requirements in respect of their own public services departments.

Rights of minorities

454. With regard to that issue, members of the Committee wished to receive additional information concerning affirmative action measures adopted in the economic and cultural spheres in favour of aboriginala living both inside and outside Aboriginal communities and concerning the reasons for the removal from section 51 (XXVI) of the Constitution of the clause referring to the 'boriyinal race. Members also wished to know whether the Government had any plans to establish an electoral Aboriginal commission and to address the issue of Aboriginal land rights, what percentage of the total budget had been allocated to the Ministry of Aboriginal Affairs, whether Aboriginala had a language of their own and if any measures had been taken to promote its teaching and what kind of system had replaced the earlier arrangements for the care of Aboriginal children which had been characterized as "excessive intervention" by governments. One member, who was of the view that article 27 of the Covenant had never really been meant to cover indigenous people! but rather the religious and ethnic minorities of the kind found in European countries, wished to know Australia's views concerning the need for a separate convention covering the rights of autochthonous peoples.

455. In his response, the representative of the State party said that successive federal governments had taken special measures to accelerate access to services for Aboriginals and Torrea Strait Islanders *and* to provide the basin *for* further economi·, *social* and ·al advancement. The aim was to build a more secure future for those people and t provide not only a solid foundation for future achievement, but alro choice of options not previously available. Significant improvements had been made and increased assistance had been provided in such areas as health and legal services, education, employment and enterprise development, housing, land rights and the protection of cultural heritage. Despite such achievements, much remained to be done and many Aboriginal and Island people still lived in unratirfactory conditiona. Section 51 (XXVI) of the Constitution had provided, before it wan amended in 1967, that Parliament could make laws with respect to the people of any race other than the Aboriginal race. Aboriginals and Islanders had been specifically excluded since they were considered to fall within the jurisdiction of the individual States. The 1967 amendment had removed that discriminatory provision and had enabled the Commonwealth Parliament to make special laws *for* those groups, including the establishment of a broad range of assistance programmes. The Federal Government's plans to establish an elected Aboriginal and Torres Strait Islander Commission, as well an its policy with respect to Aboriginal land rights, had been set out in a statement delivered o Parliament on 10 December 1987 by the Miniater for Aboriginal Affairs. Initial consultations with the groups concerned indicated general support for the principle of establishing such a commission as well as a desire for additional information on key issues. A series of follow-up meetings were to be held as soon as possible with a view to receiving further feedback regarding those issues.

456. The Ministry of Aboriginal Affairs had been allocated some $A 394 million in the 1987/88 budget, to be divided among *a* wide *range of* legal, social *and* cultural programmes. There were several hundred Aboriginal dialects, and the Australian Institute *for* Aboriginal Studies had programmes to preserve them and teach them in the schools. It was now acknowledged that the public policy regarding the care of Aboriginal children, particularly during the post-war period, had been a seriouo mistake. The practice of taking Aboriginal children away from their parents and placing them in foster homes or institutions had been extremely offensive to Aboriginal and Island communities. The erroneous and paternalistic view on which that practice had been based had been replaced by the recognition that Aboriginal people should be treated like anyone else.

457. Regarding the need for a separate convention applying to Aboriginals, the representative said that Australia had from the outset actively supported the Working Group on Indigenous Populations, which was drafting principles and minimum international standards applicable to indigenous populations. The Working Group was making a very useful contribution by focusing on those aspects that were distinctly applicable to indigenous populations and taking care not to undercut the existing framework. Australia had also been closely involved in the negotiations within the Sub-Commission on Prevention of Discrimination and Protection of Minorities relating to the drafting of a declaration on the rights of minorities. There could be no question, however, of the Covenant's central importance.

General observations

458. Members of the Committee expressed appreciation to the delegation of Australia, noting that the answers to the Committee's questions had been frank and complete and that the Committee's dialogue with the delegation has been

satisfactory from every point of view, Several members expressed their great appreciation for the vigour with which the Human Rights and Egual Opportunity Commission was carrying out its mandate. The Committee felt that the creation of institutions such as the Commission could also prove invaluable to other countries in their efforts to promote equality of opportunity for disadvantaged and minority groups, The Committee noted that the situation of the Aboriginal people in Australia continued to present a real problem and welcomed the fact that the Government had frankly acknowledged the persistence of many difficulties in that regard and was endeavouring to deal with them.

459. The representative of the State party said that his delegation has found the proceeding8 inntructivs, useful and fruitful and assured the Committee that its comments, which would provide a new element in an already lively debate in his country on how best to protect human rights, would be brought to the attention of the Australian authorities. Auatralia was aware that thera was still room for improvement in its treatment of human rights, but the representative believed that his country's record was on a par with that of any other country in the world.

460. In concluding the consideration of the second periodic report of Auatralia, the Chairman once again thanked tho delegation for engaging in an extremely constructive dialogue with the Committee. The ability and willingness of each member of the Australian delegation to reapond to the many questions that had been raised was particularly appreciated.

Belgium

461. The Committee considered the initial report of Belgium (CCPR/C/31/Add.3) at its 815th, 816th, 821st and 822nd meetings, held on 12 and 15 July 1988 (CCPR/C/SR.815 and 816, 821 and 822).

462. The report was introduced by the representative of the State party who, underscoring the long national tradition of respect for human rights, stated that an extensive campaign to disseminace the text of the Covenant In several languagea had been conducted prior to its ratification by Belgium on the occasion of the thirtieth anniversary of the Universal Declaration of Human Rights. That tradition had been further strengthened by the incroaaingly important role played by the right of individual recourse to the organs set up by the European Convention on Human Rights. He emphasized that his Government intended to ratify the Optional Protocol to the International Covenant on Civil and Political Rights and make the declaration provided for in article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

463. The repreaencative then referred to certain legislation in force when the report had been drafted. He described the relevant provisions relating to compensation for unlawful arreat or detention, religious freedom and the protection of ideological and philosophical minorities. In connection with the latter, he drew particular attention to the moat recent report of the National Commission of the Cultural Pact containing statistical information on the complaints lodged concerning violations of the law known as the "Cultural Pact".

464. With regard to new developments which had occurred since the report had been drafted, the representative outlined the reforms being undertaken at the level of each community in respect of the legal protection of young people. Similarly, he drew attention to the Act of 14 July 1.987 relating to the procedure for recognition

of the status of political refugees which, inter alia, had extended the scope of activities of the General Commission of Refugees and Stateless Persons. Lastly, he referred to the reform of the law on filiation, the main object of which was to abolish any hierarchy and any discrimination among filiatione, and which had been carried out by adoption of the Act of 31 March 1967.

465. The members of the Committee welcomed the report, which contained much inforaation and had been drafted strictly in conformity with the Committee's general guidelines on the form and content of reports. They also expressed particular ratirfaction at the information furnished by the representative of Belgium in his introductory statement. They considered, however, that the report could have laid greater stress on the factors and, possibly, the difficulties affecting the implementation of the Covenant and particularly those stemming from the country's muiti-ethnic and multi-cultural character. They also wished to have additional information on any difficulties that might have been experienced by Belgium in respect of its obligation to submit reports under the various international human rights instruments ratified by it, and more particularly the Covenant, as well as on the way their preparation was organised in Belgium. Finally, members pointed out that the general comments adopted by the Committee had not given rise to sufficient obeervatione in the report.

466. Referring to article 1 of the Covenant, members wished to have information on Belgium's position in respect of apartheid and the right of the peoples of Namibia and Palestine to self-determination. In that regard it was asked whether economic sanctions had been adopted again, the South African apartheid régime.

467. With regard to article 2 of the Covenant, members of the Committee wished to receive additional information on the prohibition of discrimination on grounds of race and language. In particular, they inquired about the respective spheres of competence of the communities and regions in Belgium and the exact status, composition and powers of the National Commission of the Cultural Pact. Moreover, noting that Belgium had many foreigners on its territory, particularly migrant workers, they inquired to what extent the principle of equality before the law, defined in article 26 of the Covenant, was guaranteed to them and what the exceptional cases, referred to in article 128 of the Constitution were, in which they did not enjoy the same rights au nationals. Further, members wondered whether the distinction drawn between foreign minors and Belgian minors in the implementation of the law providing for the social and judicial protection of young persons might not lead to discrimination. Lastly, clarification was sought as to the representation of the various ideological and philosophical trends in the composition of the management or administration of cultural institutions, services and facilities.

468. The members of the Committee also wished to have more detailed information on the legal status of the international instruments relating to human rights, and more especially the Covenant, in Belgian internal law. In particular, they inquired about the place occupied by the Covenant within the Belgian legal order and asked whether there was a system to monitor the constitutionality of laws and which authorities were competent to interpret the provision8 of the Covenant and settle any conflicts between them and the provisfono of internal law. Noting a divergence of opinion between the Court of Cassation, on the one hand, and the Government and the Council of State, on the other, they inquired whether the provisions of the Covenant wore directly applicable. Moreover, members indicated their concern about the apparent difference in status between the Covenant and the

European Convention on Human Rights, and requested additional information on the reservation deposited at the time of ratification, whereby articles 19, 21, and 22 of the Covenant were applied in conformity with articles 10 and 11 of the European Convention. In addition, it was asked what the limitations on the competence of the courts ware in cases of a political nature, whether the special régime for ministers mentioned in articles 90 and 134 of the Constitution applied only to questions of impeachment or whether it afforded wider protection for ministera against legal proceedings, what the dividing line was between civil and political rights and whether there were any administrative decisiona which could not be contested before a court. Lastly, it was asked whether measures had been taken to give wide publicity in all official languages to tho provisions of the Covenant in schools and universities and to the police.

469. With reference to article 3 of the Covenant, members of the Committee wished to have statistical information on the proportion of women in the main institutions of the State. Questions were also raised regarding the scope of application of the limitation provided in respect of employment in educational establishments and the practical consequences of the withdrawal by Belgium of one of its reservations to the Convention on the Political Rights of Women. It was also asked whether an amendment of the constitutional provision restricting the exercise of royal powers to men, which had led Belgium to enter a reservation to that provision of the Covenant, was envisaged.

470. With regard to article 4 of the Covenant, members of the Committee inquired why, in time of war, aliens could be removed from certain places even if they were not nationals of an enemy country.

471. With reference to article 6 of the Covenant, members of the Committee wished to know why Belgian legislation, under which a minor over the age of 16 could incur the death penalty, had not been brought into line with the Covenant and how often the death penalty provided for in the Military Penal Code had been carried out. Observing that the death penalty was in fact not applied, a member asked why capital punishment had not been abolished. Referring to general comments Nos. 6 (16) and 14 (23) of the Committee, members also wished to receive additional information regarding the measures taken by the Government in order to reduce infant mortality, increase life expectancy and combat malnutrition and epidemica.

472. In connection with articles 7 and 10 of the Covenant, members of the Commitee asked what remedies were available to persons claiming that they were tortured, whether provision was made in Belgian legislation to ensure that, any statement obtained under torture was not used as evidence in any proceedings and how many police officer-a, prison warders and other public officials had been charged and convicted for the physical torture of a person. More detailed information was also requested on the treatment of transsexuals, the implicit permission for organ transplants given by the donor or his family and the situation of the patient in the context of psychiatric treatment and medical experiments. It was also asked what the functions and composition of the administrative commissions attached to each prison establishment were, what the conditions of detention for minors were and, in particular, whether they were held separately from adults, why there was no total separation between unconvicted persons and convicted persons, whether Belgium had probloms of over-population in prisons, how soon the family of the accused was informed in case of a prohibition on commurication and whether the conditions governiny life imprisonment: varied depending on whether it was handed down directly

by the courts or resulted from the commutation of the death penalty handed down by a civil or military court.

473. With regard to article 9 of the Covenant, additional information was requested on the recourses available to persons deprived of their freedom, the system of release on security, particularly in the case of security paid by a third person, the maximum duration of pro-trial detention, the average time-span between the arrest of an accused person and his trial at first instance and the reasons why a person committed for trial might not communicate with his counsel before the first hraring. Lastly, further information was sought on the other types of deprivation of liberty mentioned in the report such a8 administrative detention or custody.

474. With regard to article 11 of the Covenant, additional information was requested on imprisonment for debt under Belgian law.

475. With reference to article 12 of the Covenant, members of the Committee asked what the situation was in respect of the status of aliens in Belgium and what problems and difficulties had arisen in practice. In particular, further information was sought as to whether it was possible to derogate from the right of an alien freely to choose his residence and it was asked whether any such provisions fell within the framework of the exceptions listed in article 12, paragraph 3.

476. With regard to article 13 of the Covenant, concern was expreaaed over the recent expulsion of foreigners of Asian origin and, in that connection, it was asked what provisions had been made far appeal against such decisions.

477. With respect to article 14 of the Covenant, members of the Committee wished to secure more information about the representation of the three Belgian linguistic communities in tne Court of Caseation, the organixation of the bar, the system of legal aid, the circumstances and conditions in which a judge might be dismissed or suspended, the system of remuneration of judges, the procedure applicable to minors and, particularly, the period of time during which proviaional measures might be taken before the hearing by the children's judge. Lastly, one member pointed out that the term "proof of innocence" uaed in the Act of 20 April 1974 seemed to be incompatible with the principle of presumption of innocence provided for under the Covenant.

478. Regarding article 16 of the Covenant, further information was sought concerning the procedure of "judicial interdiction" mentioned in the report.

479. With regard to article 17 of the Covenant, the members pointed out that the Committee had adopted general comment No. 16 (32) at its thirty-second session. In that connection, they asked what interpretation was given by Belgium to the terms "family" and "domicile", what Belgium's practice was in respect of the automatic processing of personal data and what rights individuals had in that regard, whether individual petitions had been brought and what their consequences had been. Additional information was also requested on the auppressicn of telegraph and telephone communications and on the difference of treatment that appeared to exist between Belgian minors and foreign minors in the protection of their private life.

480. In relation to article 18 of the Covenant, members wished to receive additional nformation concerning the religious denominations recognized in Belgium, the rights enjoyed by non-recognizod denominations and the criterion of

national interest on which the granting of legal recognition was baaed. One member also inquired about the situation of conscientious objectors with regard to access to civil service posts and asked whether compulsory voting was compatible with article 18, paragraph 2, of the Covenant.

481. With reference to article 19 of the Covenant, some members asked whether Belgium had enacted legislation concerning the dissemination of information by the authorities.

482. With reference to articles 21 and 22 of the Covenant, some members asked for further particulars concerning the restrictions applied to public open-air meetings. They also asked whether action had been taken to give effect to the recommendations of the International Labour Organisation concerning the settlement of industrial disputes, and whether military personnel alone were denied the right to strike.

483. With reference to article 23 of the Covenant, it was asked whether the amendments made in the legislation concerning descents had abolished all difference of treatment between children born out of wedlock and those born in wedlock. It was wondered why active members of the police force could not contract marriage unless previously authorized to do so and whether there were any other exceptions to article 23 of the Covenant, and it was asked what the Belgian view of the best interests of the child was, especially where they might be held to conflict with the interests of a parent.

484. With regard to article 25 of the Covenant, it was asked to what extent aliens, and, and more specifically migrant workers, had an opportunity of participating in public life. So far as compulsory voting was concerned further particulars were requested concerning penalties applicable to citiaena who did not vote.

405. With reference to article 27 of the Covenant, the members regretted that the subject had not been elaborated more fully in Belgium's report. In that respect they asked, inter alia, for particularo concerning the enjoyment hy minorities of the rights guaranteed by the Covenant, the effect of linguistic differences on civil and political rights, and the meaning of the terms "ideological and philosophical minorities" mentioned in article 6 (b) of the Constitution.

486. In reply to questiona aaked by members of the Committee concerning difficultlea encounterad by Belgium in preparing its initial report, the representative of the State party explained that changes had occurred in some of the services concerned and that in addition, because the task was a novel one, the officials reaponaible had had to change their methods of work. Furthermore, the report had been drafted in co-operation with various miniaterial departments and services, including those responsible for justice and foreign affairs, with the consequence that the process had taken quite a long time. Despite the difficulties it had had to contend with, the Belgian Government stressed that the system of submitting reports had the merit of encouraging the States party to carry out a kind of examination of conscience demanded by the international community. Nevertheless, the Government hoped that the forthcoming meeting of presiding officers of the bodies set up under human rights instruments would consider in detail measures that might be adopted in order to improve in certain respects the procedure of preparation and submission of reports by State authorities.

487. Referring to the questions concerning his country's position with respect to apartheid an& peoples' rights to self-determination, the representative stressed that the apartheid policy in South Africa was in utter conflict with the moat fundamental human rights. Nevertheless, it was Belgium'6 consistent policy to decline to apply comprehensive economic sanctions; it preferred to use, au a political signal, any means of pressure at the disposal of the international community. Regarding the application of the sanction8 ordered by the United Nations, he said that Belgium's position might change if South Africa failed to heed the appeals addressed to it. So far as the Namibian and Palestinian peoples were concerned, he said that Belgium's position was based on Security Council resolution 435 (1978) and on the Venice Declaration of the States members of the European Community, respectively.

488. Regarding the problems connected with discrimination based on race or language, he referred, first, to the various reports submitted since 1978 to the Committee on the Elimination of Racial Discrimination and explained the provisions of the 1981 Act concerning the prevention and punishment of racist and xenophobic agitation and utterances. With regard to the language problem in Belgium, he drew attention to the three atagea in the process of institutional reform. The first had been the 1970 Constitution which had recognized the existence of cultural communities, language groups and economic regions: French, Dutch and German regions and a bilingual region for Brussels, together with three socio-economic regions - Walloon, Flemish and for Brussels - had thus been created. The second stage had been the 1980 constitutional reform which had extended the powers of the communities and established a court of arbitration to settle conflicts between national laws and community or ragional decrees. Following a prolonged political crisis, a new adjustment was under discuaaion furthering the above-mentioned trends. Lastly, with regard to the special status of the eight communes along the language frontier between the Flemish and Walloon communities, he drew attenion to the significant differences in the concepts of law of the Dutch-apeaking and French-speaking communities.

489. In reply to other questions concerning equality before the law and non-discrimination, he explained that under article 128 of the Constitution there were certain exceptions to the equality of treatment of aliens and nationals. For example, only certain categories of alien were eligible for the benefit of judicial assistance, and only non-profit-making associations, at least three fifths of whose members were Belgians or aliens entered in the population register and living in the territory, could claim their rights and obligations with respect to third parties. Similarly, certain restrictions were applicable with respect to deprivation of liberty and the right to vote and to be eligible for office. He added that there was a possibility of discrimination between foreign minors and Belgian minors, depending on the attitude take by the courts. Some judges held that they had jurisdiction with respect to aliens under the aqe of 21 years by reason of their peraonal status, whereas others applied the legislation concerning the protection of young persons. This discrimination should however disappear, for parliament was considering a bill that would fix the age of majority at 18 years.

490. In reply to a number of questions concerning the status of the Covenant in Belgian law, he explained that traditionally Belgian doctrine was divided into two opposing schools of thought, known respectively as the dualist and the monist school. In order that it should be operative in domestic law a treaty must first have been "received" according to a specific procedure and must have been ratified by the King. Having been ratified and havfnq been published in the Moniteur belge,

the Covenant had accordingly become part of Belgian domestic law. Nevertheless, in orderto produce its effects in internal law a treaty must furthermore have a legal object and its provisions must be directly applicable. Since the Covenant did not contain any provision exprassly specifying that last point, it was for the court to determine whether a rule of the Covenant produced direct effects for the benefit of individuals. It was in keeping with that attitude that on 17 January 1984 the Court of Cassation had ruled that article 9, paragraph 2, of the Covenant was directly applicable - a ruling conflicting with the view of the Council of State and the Government of the time, Furthermore, an international norm producing direct effects prevailed over rules of domsrtic law, even those enacted subsequently. Referring to the status of the Covenant and of the European Convention, he explained that neither of the two inrtrumentr was subordinate to the other, even though the public and practitioners of law were more aware of the European instrument because it had been ratified earlier and providod for different machinery.

49k. In reply to other questions in connection with article 2 of the Covenant, he gave an explanation concerning the legislative provisions which made an exception regarding the institution of criminal proceedings against ministers. The object of those provisions was to avoid a situation in which ministers might be expored to ths risk of large numbers of judicial proceeding6 by reason of the exercise of their functions, and to leave it to the highest court of the land to deal with problems requiring careful consideration. The provisions had only rarely been applied. He added that penalties other than removal from office were prescribed by the Penal Code, that the demarcation between civil rights and political rights had become very complex, inasmuch as the citizen possessed more and more political rights a8 a beneficiary of services provided by the State, that the Council of Stats issued its rulings by mean8 of orders on applicatione to set aside act8 under regulations by the administrative authorities, that the Belgian Government had taken all necessary action to publicise information relating to the Covenant, and that human rights were given great prominence in the programmes of training of pupils, students, the military, the gendarmerie and the police.

492. In reply to questions in connection with article 3 of the Covenant, he provided a large number of statistical data showing the increase in the number of women holding responsible poets in the various agencies of the State. Regarding State establishments of supervised education and observation centres, he said that the aupervirory personnel had to be of the same sex as the minors entrusted to them. With regard to the withdrawal of a reservation made by Belgium to the Convention on the Political Rights of Women, he said that, under the International Labour Conventions, special provisions might still be preecribad, according to the sex of the person concerned, regarding access to certain jobs, in the light of the working conditions. Lastly, referring to the provision debarring women from acceding to the throne, he explained that that was one of the provisions of the Constitution proposed to be amended and that for historic reasons questions relating to the royal family had always been very delicate.

493. With reference to article 4 of the Covenant, he explained that the statutory provisions concerning the removal of aliens in time of war dated from the Second World War; those provisions were to he reviewed.

494. In reply to questions asked by members concorning attic18 6 of the Covenant, ho explained that, as the death penalty was no longer enforced in Belgium, it had never boon envisaged to repeal th8 provisions under which a minor over the age of 16 years might be liable to that penalty. Besides, in time of peace the death penalty was invariably commuted, whether the person concerned waa a member of the armed forcer or A civilian, into imprisonment for life. The possible ratification of Protocol No. 7 to the European Convention on Human Rights concerning the abolition of the death penalty was under consideration. That was, however, a delicate question since the authorities were frarful of reviving a dispute which was no longer topical and which might have unforeseen repercussions.

495. In reply to questions asked by members in connection with articles 7 and 10 of the Covenant, he explained that, regarding confession6 that might have been extracted under torture, the person concerned could withdraw the confession at any time and that the judge evaluated the situation as a who18 according to his conscience. So far as the authorities wore aware, only on8 or two cases of torture, in the mitigated meaning of the term, were reported in any one year; the persons responsible had been reprimanded or suspended from office or dismissed. He added some particulars concerning the treatment of transsexuals and the consequential change in personal status. An Act dated 13 June 1986 concerning organ transplants had entered into force; it stated that, in the event of the removal of an organ from a living person, the knowing consent of the donor was required; whereas, in the case of the removal of an organ from a corpse, consent was presumed, since transplants were prohibited only in cases where there was an objection in writing. On the protection of persons suffering from mental diseases, he said that such a person, with respect to whom a judicial decision had been made and who had accordingly been committed to the psychiatric section of a prison establishment, was free to apply for discharge on the basis of a medical report by a doctor of his choice and was free to use any legal remedies to produce evidence of his state of health. Furthermore, a psychiatrist could recommend that a patient should be treated outside a psychiatric establishment if the family or friends of the patient provided support. He added that, so far as medical experiments were concerned, the knowing consent of the person concerned was likewise required, and in Any case such experiments on prisoners were prohibited.

496. In reply to other questions Asked by members concerning conditions of detention, he explained that the Administrative committee Attached to every penetentiary establishment included Among its members - depending on the size of the establishment - between three And nine members appointed for six years by the Minister of Justice; the Procureur du Roi And the burgomaster were ex officio members of such Committees. They communicated to the Minister any relevant information and proposal6 And performed the function of supervising the conditions of detention. In addition, in pursuance of a decision by the European Court of Human Rights, the legislation concerning the detention of minors would be Amended. In general it WAS the object of the authorities to reduce the prison population through early discharge, the possible abolition of short-term sentences, An adjustment of the terms of imprisonment, And recourse to alternative penalties. An order banning all communication could not be made by A judge for A period exceeding three days, such period not being renewable; such An order applied to all persons concerned, including the prisoner's lawyer, And the prisoner And his family were informed accordingly. He added that, in cases where the death penalty was commuted, the legal régime Applied, including the rules governing conditional release, was the same as that applicable to A sentence of life imprisonment.

497. With reference to article 9 of the Covenant, he stated that the court of summary jurisdiction was henceforth empowered to determine whether A particular case of detention contravened the law. As a consequence, the time-limits had become very short, since the summary jurisdiction procedure was extremely rapid. Bail required for the purpose of Obtaining A person's release could be posted by A third party. There was no specific rule concerning the duration of detention pending trail; such detention might continue as long a6 there were grounds for it in the light of the public interest And security. Nevertheless, the Government intended to review the legislation concerning the grounds for detention pending trial AS appraised by the court and the rules concerning the duration of such detention. Any person detained was entitled to contact A lawyer immediately after the first hearing by the court, which had to take place within 24 hours. So far as other kinds of deprivation of liberty were concerned, the representative explained that an Act of 11 February 1908 provided Additional safeguards with respect to custody or administrative detention.

498. In reply to questions in connection with article 12 of the Covenant, he explained that A Royal Order dated 7 May 1985 had forbidden aliens to settle in air communes of the Brussels urban area, the reasons for the ban including financial constraints, the obsolete state of the dwellings and the lack of infrastructure. Tha answer to the question whether the enactment, pursuant to which exceptions could be made to the principle of An alien's freedom to choose his residence, was Compatible with the relevant provisions of the Covenant depended on how the expression "public interest" And "ordre public" used in the relevant provision were interpreted.

499. With reference to Article 14 of the Covenant, he explained that the Court Of Cassation was composed of 26 judges, of whom 13 were Dutch-speaking And 13 French-speaking. With regard to the independence of the judiciary, he stated that the Government had no means of exerting pressure on judges, that judges were appointed for life, that they could not be moved without their consent, and that their salaries were fixed by law. Belgian law fully respected the principles that an accused was invariably presumed to be innocent And that the onus Of proof fell on the prosecution.

500. Commenting on questions raised under Article 17 of the Covenant, the representative stated that wire-tapping WAS formally prohibited, that in a court of law a judge could obtain information on the times, the names of callers And subscribers And the number of calls, but that the content of telephone conversations remained confidential, and that the national register contained data such as name, date of birth, place of birth and 88x.

501. In reply to questions asked by members of the Committee concerning Article 18 of the Covenant, he stated that the six religions recognised were the Catholic, Protestant, Israelite, Anglican, Islamic And Orthodox religions, the decisive test being the number of persons practising the religion in question in Belgium. The 6018 consequence of the statutory recognition of a religion was that the State paid the salaries Of the ministers Of religion and established the appropriate managment bodies; the State had no right to intervene in other matters And all other religions could be freely practised And professed. He added that conscientious objectors who respected the obligations implicit in their status were deemed to fulfil the statutory conditions concerning access to the public service. so far as compulsory voting was concerned, he stated that that requirement WAS not

incompatible with paragraph 2 of the article in question, for it was open to the elector8 at any time to deposit a blank or void ballot paper.

502. With reference to article 19 of the Covenant, he stated that, despite differences of opinion on the subject, the Belgian Government was planning to make provision in the Constitution for the principle that administrative actions muet be public and substantiated by reasons, and to improve the relationship between member8 of the public and the authorities.

503. Regarding questions raised under article8 21 and 22 of the Covenant, the representative stated that no preference was given to the negotiation procedure rather than the dialogue procedure in dealing8 between the authorities and trade-union organisations. Although in theory the law forbade Belgian civil servants from striking, in actual practice they had resorted to strike.

504. Replying to questions asked under article 23 of the Covenant, the representative said that in the case of divorce the interests of the children took precedence over those of the parents. In addition, he explained that it was essential that the spouses of police officer8 should be above suspicion; therefore, the marriage of a member of the police force had to be authorised by the commanding officer.

505. With respect to article 25 of the Covenant, he rtated that the psnaltiee applicable to persons who did not appear at the voting stations were very mild and rarely enforced.

506. The members of the Committee warmly thanked the representative of Belgium for having answered mort of the question8 in such detail; it was noted, however, that some of those questions had not been touched upon or called for a more specific answer. They expressed the hope that the second periodic report would contain the necessary information and clarifications.

507. The Chairman expressed his thanks to the delegation of Belgium both for the infarmation provided and for the clear and objective answers given to questions asked by members.

Colombia

508. The Committee considered the second periodic report of Colombia (CCPR/C/39/Add.6/Rev.1) at its 817th to 820th and 822nd meetings held fron 13 to 15 July 1988 (CCPR/C/SR.817-820 and 822).

509. The report was introduced by the representative of the State party who gave a general idea of the economic, social and political situation in Colombia, its constitutional and institutional evolution, the considerable changes that had occurred in Colombian society as a result of rapid evolution and the problems stemming therefrom, which the Government was endeavouring to cope with while respecting the democratic political tradition, the rule of law and respect for human rights .

510. The representative of the State party referred to the difficulties arising from economic restrictions, terrorism and drug trafficking encountered by the Colombian Government in implementing the provisions of the Covenant and emphasized that the current crisis in Colombia was not due to any aging of the national

institutions, but rather to the structural changes which had become necessary in the light of the economic realities of the contemporary world. In that difficult situation, the Colombian Government, endeavouring to maintain the rule of law despite advessity, had launched a campaign to promote human rights, particularly in military institutions, schools and universities and legal and political circles. At the institutional level, a post of Presidential Adviser for Human Rights had recently been established while a bill had been drafted on the office of the personero (a kind of mediator appointed by a municipal council) and would be submitted to parliament at its next session. He also mentioned that the Office of the Presidential Adviser for Human Rights had, in co-operation with other institutions, begun the establishment of a data bank which would make it possible to centralise all information concerning the situation of citizens in regard to human rights. In that connection, reference had been made to article 121 of the Constitution with the indication'that, from 1968 onwards, all decrees issued by the President of the Republic by virtue of the powers conferred upon him by that article were subject to automatic review for constitutionality. Lastly, the representative of the State party declared that the Colombian Government was determined to resolve all the difficulties encountered in the application of the rights set forth in the Covenant in the democratic ways which it regarded as the sole means of ensuring respect for fundamental rights and freedoms.

Constitutional and legal framework within which the Covenant is implemented particularly during the state of siege

511. In that connection, members of the Committee asked for information concerning the impact of the state of siege on the exercise of the rights guaranteed by the Covenant, particularly with regard to the functioning of the judicial system. They asked whether there had been judicial decisions in which the Covenant had been directly invoked before the courts and, if so, whether examples could be given. Questions were asked about the procedure employed for the exercise of the right of petition referred to in chapter II, paragraphs 12 to 14, of the report (concerning article 2 of the Covenant), and whether a petitioner who had failed to obtain satisfaction by means of that procedure could appeal to the courts. The members also asked questions concerning the respective powers of the Government, parliament and the courts when the state of siege was in force, the effects of decisions by the Supreme Court declaring certain decrees and laws to be unconstitutional, the position of the Covenant in relation to the Constitution, laws and decrees and the effects of a declaration by the Supreme Court that a law or decree was incompatible with the Covenant. Questions were also asked regarding the current state of the bill amending article 121 of the Constitution and how the existing restrictions on civil liberties would be reduced if the state of siege currently in force were replaced by a "state of alarm" or a "state of internal strife". It was also asked what measures had been adopted to familiarise the general public with the provisions of the Covenant and the Optional Protocol.

512, Furthermore, the members of the Committee asked questions concerning the training of the members of the armed forces and police forces and their sensitization to human rights problems and the role and influence of the non-governmental organizations in Colombia with regard to the protection of human rights: it was also asked whether military courts existed in Colombia and, if so, what their powers were, particularly during the state of siege. Additional information was also requested on the actual organixation of the state of siege and, in particular, concerning the many legislative texts adopted in the context of the state of siege which might entail derogations from some articles of the

Covenant. It was asked whether current legislation permitted members of the armed forces to be judged by military courts for acts not connected with their military duties. It was also asked what happened if there was a contradiction between the Covenant and domestic legislation and whether a citizen could appeal to a higher court against any decision under that legislation which he considered to be in violation of the provisions of the Covenant, whether the right of petition meant the right to petition the courts and how many petitions had been submitted and what their nature and outcome had been. Members also asked whether any specific legislation had been enacted to incorporate the Covenant into the legal system of Colombia, whether the Suprsme Court had jurisdiction over cases in which domestic law was at variance with the Covenant and whether it had given a ruling on any such cases, and whether the Covenant took precedence over Colombiat legislation that pre-dated it, over legislation promulgated subsequently and over emergency decrees in respect of rights that could be derogated from under article 4 of the Covenant. More information was requested about the decrees that had been enacted under the state of siege, the area covered by them and how they affected the everyday life of the people, how far the military courts complied with articles 4 and 19 of the Covenant and what steps had been taken to ensure the independence and impartiality of the judges of a higher military court. In connection with article 121 of the Constitution, it was asked whether it was possible for all ministers to be held jointly responsible if the state of siege had been wrongly declared or improper measures had been taken, and whether the responsibility of the President could be challenged.

513. Replying to the questions by the members of the Committee, the representative of the State party declared that article 121 had always been applied in Colombia with full respect for the rights of the citizens. The procedure for implementing that article had been described. It had been pointed out that there were laws which could not be suspended, even during the state of siege, and relevant examples had been quoted. At the same time, once the state of siege had been proclaimed, the Government was empowered to take certain steps to restrict political quarantees. Such steps were still automatically subject to the constitutionality checks carried out by the Supreme Court. In the event that the Supreme Court declared the provisions of a decree to be unconstitutional, they were no longer applicable. Information concerning the bill to amend article 121 of the Constitution had been supplied and, in particular, the Committee had been informed that the bill provided for three separate situations, according to the degree of seriousness and the nature of the circumstances, namely, "the state of alarm", "the state of internal strife" and "the state of siege", the last of which could be proclaimed only in the case of foreign war or aggression. As for actual practice, the representative of the State party said that recourse to article 121 of the Constitution had never been genuinely linked with the state of siege. Restrictions on freedom had been very minor and only temporary. It had been mentioned that the state of siege proclaimed under article 121 of the Constitution did not affect the operations of the judicial system. Since the provisions of the Covenant formed an integral part of the Colombian juridical structure and legislative system, they could be invoked before the courts. At least one case was known in which the provisions of the Covenant had been invoked before the competent court: the complaint had been judged admissible and the State had been sentenced to pay compensation. As for the right of petition, not only Colombian citizens but also foreigners had the right to submit petitions to the authorities. In some cases, a petitioner who had not obtained satisfaction could,appeal to the courts. The effect of decisions by the Supreme Court declaring certain decrees and laws to be unconstitutional were very important, since in that way the Supreme Court exercised

ongoing constitutional supervision of legislation: if the Court declared a certain instrument to be unconstitutional, it imnunediately became null and void. The measures adopted to familarize the general public and the members of the armed forces, in particular, with the provisions of the Covenant had been described.

514. With respect to other questions raised by the members of the Committee, the representative of the State party said that a conflict between domestic legislation and the Covenant was unlikely to arise, because constitutional and legal texts in Colombia had been drafted in line with the provisions of the Covenant, that under article 121 of the Constitution some laws could be suspended, but under no circumstances could the death penalty be imposed and that the rights under articles 6, 7, 8 and 15 of the Covenant were protected irrespective of the state of siege. A detailed description was given of the role played by the military forces in the Colombia political system and, in that connection, it was stated. that in Colombia the military could not be considered to have become a "State within a State", a force above the law. Since it was essential to have a procedure for dealing with any offences committed by military personnel, two new codes, a military penal code and a military code of procedure had been drafted and were expected to be adopted by the end of 1988. Concerning the collective responsibility of ministers, he pointed out that Colombia had a presidential and not a parliamentary system of government. Thus the President did not act alone, but with the collective agreement of all the ministers. Political control over presidential action rested with the National Congress, and judicial control was exercised by the Supreme Court. As for the position of non-governmental organisations in Colombia, many of them were engaged in work on human rights, with a particular role in that field being played by the Colombian Human Rights Commission.

Self-determination

515. On that point, some members of the Committee asked what Colombia's position was with regard to the right of self-determination in general and, more specifically, with respect to the struggle of the South African, Nemibian and Palestinian peoples for self-determination.

516. The representative of the State party, responding to that question, said that Colombia had pursued a consistent policy of support for self-determination in general. It had been a member of the United Nations Council for Namibia since its establishment, and supported the just struggle of the Namibian people for self-determination. Colombia had no relations of any kind with South Africa. St sympathized with the Palestinian people's efforts to obtain self-determination and supported the various Security Council resolutions on the matter.

Non-discrimination and equality between the sexes

517. On that subject, some members of tbe Committee asked for information concerning the measures adopted to ensure equality with regard to tne enjoyment of the rights set forth in the Covenant, with an indication of the results of such measures, and concerning the status of women, particularly statistical data on their participation in the political life of the country. They also asked about the effects of marriage on a woman's nationality, the status of aliens and the extent to which the rights of aliens were restricted compared with those of citizens, and the status of women belonging to the indigenoue population of Colombia.

518. In his reply, the representative of the State party declared that the Colombian Government was making efforts in difficult circumstances to achieve effective enjoyment by all of the rights specified in the Covenant. In particular, the Office of the Pxesidential Adviser for Human Rights was active in promoting human rights and was studying the possibility of establishing an ombudsman ox public advocate for human rights. Women enjoyed all political rights and, since 1957, wben women were granted the right to vote, they had held posts as ministers and deputy ministers. He provided the data on the percentage of women in the labour force, demonstratiny that between 1964 and 1983 their participation had risen from 18 per cent to 40 per cent. However, the unemployment rate among women was higher than among men, and women also tended to be paid lower salaries than men, Married women enjoyed the same rights in regard to nationality as their husbands. Aliens in Colombia did not enjoy political rights but had equal civil rights with citizens, except in respect of certain regulations concerning entry into or departure from the country, and where criminal offences were concerned. As fox the status of women belonging to the indigenous population, the representative of the State party said that their situation was less encouraging than that of women in general and that indigenous women suffered discrimination because of cultural traditions.

Ri to life and prohibition of torture

519. In that connection, members of the Committee expressed the wish to have some extra information on article 6 of the Covenant, in accordance with the Committee's general comment 6 (16), particularly paragraph 4 thereof, and general comment 14 (23). They also wished to know what laws and regulations were applicable to the use of firearms by the police and security services, whether there had been any violations of those laws and regulations and, if so, what steps had been taken to prevent them recurring, whether there had been any prosecutions under article 279 of the Criminal Code or for acts of torture liable to a heavier punishment than those provided for in the said article, and, if so, what the result of such prosecutions *had* been, and what positive steps had been taken to reduce infant mortality.

520. It was also asked whether Decree No. 0070 of 1978 was still in force and, if so, whether the Government intended to repeal it, whether: the armed forces applied the 1949 Geneva Conventions 6/ whencombating insurgents, whether the Code of Conduct for Law Enforcement Officials was in force in Colombia and whether the responsible officials were aware of its provisions. Statistical data were reguested concerning the number of police officers who had been punished for exceeding their powers in some other way, together with the number of offences of the kind that had been committed. With reference to terrorism and, in particular, to the activities of paramilitary organizations, it was asked whether the members cf such organizations were prosecuted and sentenced and whether the Colombian Government was effectively combating the "death squads" and other private militias as well as the phenomenon known as "drug-related terrorism". Further information to supplement that contained in the second periodic report was requested with regard to the effective application in Colombia of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

521. The members of the Committee were also interested in knowing how the Colombian Government was trying to resolve the serious problem of the involuntary disappearance of persons and, more precisely, what specific steps had been taken by the Government and how many persons were currently missing, In the same context,

it was asked what the specific purpose of the Colombian Government had been in inviting the Working Group on Enforced or Involuntary Disappearances to visit the country. It was aiso asked whether article 279 of the Criminal Code also applied to armed forces personnel, and particularly to the special police corps, or whether acts committed by those categories of persons came under the Military Criminal Code, whether any special courts had been established in the country by legislative decree to deal with political offences, whether the law provided for compensation of the victims of torture and whether confessions or statements obtained under torture could be used in a trial. In view of the climate of violence prevailing in Colombia, the members wished to know how the legitimate objective of repressing the violence could be achieved by means which were compatible with respect for human rights and what the powers of the Presidential Adviser for Human Rights were and whether he could take initiatives in specific cases. With reference to paragraph 32 of the report, it was asked whether abortion was also punishable in the event that it had been ordered or practised by a doctor to save the mother,

522. The representative of the State party, replying to the questions asked by the members of the Committee, said that the Constitution of his country clearly stipulated that the State was obliged to protect the lives of the citizens and of persons present in Colombia and that the Colombian Government was doing its best to comply with that obligation in difficult circumstances, while preserving the legal system and the functioning of the courts. In a situation of confrontation and violence, one of the Government's objectives was to disarm the population, since only the security services should be entitled to resort to armed force. Moreover, the security services could make use of their weapons only in accordance with administrative regulations; failure to observe those regulations gave rise to administrative and criminal sanctions. He emphasized, however, that the initiatives should not come from the Colombian Government alone, the international community was also bound to take action knowing that, for the right to life to be respected, collective solutiona would have to be found. As for enforced or involuntary disappearances, he said that the problem should be considered not in a bilateral context, but in the context of multilateral conflicts in which groups of insurgents against the authorities, the drug-trafficking underworld and, possibly, agents of the State were implicated. The State had the situation in hand and the number of missing persons was relatively small. In that connection, he recalled that the Colombian Government had invited the Working Group on Enforced or Involuntary Disappearances to visit the country to help it to shed light on the cases of missing persons, since that would enable it to resolve them.

523. As for torture, Colombia had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which consequently formed part of the domestic legal order and the Criminal Code, which defined torture as a punishable offence entailing, in the least serious case, one year's imprisonment. Thus, every member of the police or the armed forces who engaged in acts of torture was guilty of an offence. In addition, in accordance with the Code of Criminal Procedure, confessions or statements made under torture had no legal value, and no exception was permitted in that area. The provisions punishing acts of torture were rigorously applied. On the problem of infant mortality, he said that the reduction in infant mortality was a constant concern of the Colombian Government and he quoted examples of steps taken by the Government. Abortion was regarded by Colombian law as an offence, even where the purpose was to save the mother, That fact was due to the cultural traditions - particularly Catholic ones - which prevailed in Colombia, but the Colombian authorities were considering the possibility of modifying legislation in that area.

524. In reply to the other questions asked by the members of the Committee, the representative stated that Decree No. 0070 of 1978 was no longer in force, since it had lapsed with the lifting of the stats of siege. On the subject of the obrervation by officials of the armed forces and security forces of the 1949 Geneva Conventiona, it had been indicated that anyone who violated the law, whether a civilian or a soldier, was regarded as an offender. In addition, the Government had taken preventive action by launching an information campaign to sensitise the members of the armed forces to the question of human rights. As for the exact number of policemen and soldiers found guilty, the statistics were unfortunately rather summary. Nevertheless, two recent examples had been mentioned. With reference to the problem of combating terrorism, he emphasized that the Government was endeavouring to combat political terrorism with the greatest respect for legality and, both in the cases of acts of terrorism committed by private militia6 and those committed by drug traffickers, it had not remained inactive, despite the difficulties and serious dangers with which it was confronted. As for the exact nature of the powers entruetsd to the Presidential Adviser for Human Rights, the representative of the State party pointed out that the type of port in question did not exist in any other Latin Amer' can country and that the Adviser was neither an ombudsman nor a public advocate h : was responsible, In accordance with the mandate given him by the Government Attorney, for supervising the co-operation of the executive power with the judiciary in all matters relating to respect for human rights. He was not empowered to carry out investigations and could not influence members of the judiciary, but was responsible for ensuring that the State reacted promptly and effectively to solve all problems concerning human rights.

Freedom and security of person

525. With respect to that question, member8 of the Committee asked in what circumstances and for how long private individuals could be held in pre-trial detention without being charged and which authorities wore entitled to order such detention, what remedy was available to persons (and their families) who considered they had been detained illegally and how effective such remedies were, what the maximum period of pro-trial detention was, and how soon after a person had been arrested his family was informed and bow soon he was able to contact his lawyer. They also asked for information concerning detention in establishments other than prisons for reasons other than breaches of the law.

526. In his reply, the representative of the State party explained that provisional detention was regulated by the Code of Criminal Procedure, that detainees could not be held incommunicado for more than three days and that every detainee could request the services of a lawyer. If, within eight days of hio arrest, no charges had been laid against him, the detainee had to be released by the director of the establishment in which he was being held; as for the authorities entitled to order detention, everything depended on the type of jurisdiction covering the offence. The detainee was entitled to engage his own lawyer to ensure his defence. In the event of arbitrary detention, the detainee or his family could take action against the State and obtain compensation. If it was not a case of provisional detention, according to article 439 of the Code of Criminal Procedure, a person who had not been indicted after 120 days of deprivation of freedom was released, without pre judice, however, with the possibility of subsequent prosecution. As for detention in establishments other than prisons, it had already been stated that, in the case of Colombia, there was no detention in psychiatric establiciunents. However, there were in fact mil tary prisons.

Treatment of persons deprived of their liberty

527. With reference to thnt issue, members of the Committee wished to know whether the United Nations Standasd Minimum Rule6 for the Treatment of Prisoners were complied with, what the role of the Prison Social Service was in ensuring such compliance and whether the relevant regulations and directives were known and accessible to prisoners. With reference to paragraph 51 of the report, additional information was requested concerning the role of the Prison Social Service in assisting former prisoners and concerning the problem of overcrowding in prisons.

528. The representative of the State party, responding to the questions raised, said that the Office of the Presidential Adviser for Human Rights informed prisoners and prison authorities of the relevant regulations and directives with the help of the Ministry of Justice and the Assistant Prosecutor-General for Human Rights. It was also promoting the work of the Prison Social Service by encouraging prisoners to follow courses In prison with a view to finding employment on completion of their sentence. Turning to the question of overcrowding in prisons, the representative of the State party said that he had no relevant statistics but that they would be supplied to the Committee later. The Ministry of Justice was plannfny the construction of additional prisons in order to provide more space for prisoners.

Right to a fair trial

529. With regard to that. issue, members of the Committee wished to have necessary additional information on article 14 in accordance with the Committee's general comment 13 (21) and requested further information concerning the availability of free legal assistance to criminal defendants and the organization and functioning of the bar in Colombia. They also wished to know more about the actual implementation of the comprehensive judicial reform adopted in January 1987, and asked whether the "systamatization plan" mentioned in paragraph 81 of the report had been implemented and to what extent it had helped to reduce the backlog of case8 before municipal criminal courts in Bogota, and whether the Senate had completed action on the government proposal relating to the planned reform of the civil, 1 abour , juvenile and adminietrbtive courts.

530. Members also wished to have additional information on the role and functions of the judicial police and the changes that had taken place with respect to the roles of the judge and the jury. They also wished to know what type of punishment was prescribed for a lawyer who refused to act as defence counsel, how and by whom the evaluation of magistrates and judge6 was carried out, and, since the degree of probability that could be taken as proof of guilt could have far-reaching consequences for judicial action, what level of proof was required under Colombian legislation.

531. In his reply, the representative of the State party said that the substance of the provisions of article 14 of the Covenant had been incorporated in title III of the Constitution and in the revised Code of Criminal Procedure, that the defendant lacking financial resources had the right to free legal assistance from a registered lawyer through the Office of the Public Advocate, that the implementation of a comprehensive judicial reform in January 198'7 and the "systematization plan" had encountered a number of difficulties, but that the backlog of cases awaiting a final decision would be processed by the end of 1988, and that a code for the protection of juveniles was being prepared. He also

indicated that the Congress currently had before it bills dealing with the reform of the civil and administrative courts and explained the organization of the bar in Colombia.

532. Responding to other questions raised by members of the Committee, the representative of the State party explained that the term "judicial police" was used, since the term "criminal police" might be considered to infer that tire police themselves were involved in criminal activities, that under the earlier system the judge initiating the investigation had remained in charge of the case throughout the trial, but under the new system there was one judge with technical expertise who carried out the investigation and another who conducted the trial, and that one of the shortcomings of the judicial system was that there were no modern investigation agencies. Referring to paragraph 93 (a) of the report, he said that the provision concerning presumption of innocence was categorical, It was also indicated that the gravity of the offence was not determined subjectively by the judge; article 421 of the Code of Criminal Procedure contained a list of offences punishable by imprisonment. With reference to the question concerning the obligation to act as defence counsel, he said that the sanctions were of an administrative nature and were applied on the ground of a breach of professional ethics.

Right to privacy, freedom of religion and expression

533. With regard to those issues, members of the Committee wished to know what procedures existed for legal recognition and authorization of various religious denominations, whether legal recognition had ever been refused on the grounds that a religious cult was aontrary to Christian morality and, if so, which authority determined what was aontrary to Christian morality, and what limitations, if any, were aurrently placed on the freedom of the press and the mass media in view of the existing state of siege. It was also asked whether the Government, in its commitment to human rights, aould do anything to protect journalists whose human rights were threatened or who had received death threats or had been kidnapped because they had published unpopular views.

534, In his reply the representative of the State party said that the Constitution provided for religious tolerance and freedom for all religions that were not contrary to Christian morality and not in breach of public order. The Ministry of Justice was responsible for relations with particular denominations. A rule providing for recognition of the Catholic Church had been extended to other churches in recent years. No authorization was needed for a person to practise his religion. With respect to freedom of the press he said that various shades of political opinion were represented in the Colombian press and in that connection he referred to the Inter-American Press Association, which had recognised that freedom of the press had been given practical effect in Colombia.

Freedom of assembly and association

535. With respect to that issue, members of the Committee wished to have more information on the situation of trade unions in Colombia.

536. The representative of the State party informed the Committee of the current situation of trade unions in Colombia and stated in particular that freedom of association and the right to strike were constitutionally guaranteed in Colombia except in the case of the public services. However, the exact definition of the

latter was currently being reconsidered. Trade-union activities and workers' rights were governed by the Labour Code. In numerical terms, trade-union membership was extremely low: only about 20 per cent of the overall labour force belonged to a trade union.

Protection of the family and children, including the right to marry

537. With reference to that issue, the membere of the Committee wished to have additional information concerning the law and practice regarding the equality of spouses.

538. In his reply, the representative of the State party said that spouses enjoyed full equality before the law in Colombia.

Right to participate in the conduct of political affairs

539. With regard to that issue, the members of the Committee wiehed to have more information on the exercise of and restrictions on political rights. and on legislation and practice regarding access to public services. They also wished to know what problems were associated with the mayoral elections held in March 1988 and what lessons could be drawn from them.

540. In his reply, the repreesntative of the State party declared that the political rights established in article 25 of the Covenant were enshrined in the Colombian Constitution. All Colombian citizens over 18, both men and women, enjoyed abeolute equality. Regarding access to public service, some qualifications were required for public posts but there were no restrictions as such. The mayoral elections represented a great step forward in terms of decentralization of the election procedure and no claims had been made that the Government had brought any presaure to bear on voters.

Rights of minorities

541. With regard to that issue, the members of the Committee wished to know how large the indigenous population was compared to other ethnic groups in Colombia and how the rights provided for in artfcla 27 of the Covenant were ensured with regard to such groups. It was also asked what the percentage of participation by Colombian citizens of African origin was in the judiciary, the administration, the National Assembly and schools. Further information was also requested on the actual orgnnication of indigenous communities. With reference to the two "Indian leaders" who had been the victims of no-called death squads, clarification was requested of the term "Indian leader" in that context.

542. Replying to the questions raised by the members of the Committee, the representative of the State party said that, technically speaking, the indigenous population in Colombia amounted to about 400,000 or 450,000 out of a total population of more than 20 million, They had been able to maintain their identity to some extent, although intermingling with the remainder of tho population over five centuries had in some cases resulted in a loss of cultural identity. Rsaervations had been established for the indigenous population and ware administered by an indigenous governor and indigenous mayors, functioning within the structure of the Colombian State. Recently, the President of the Republic had announced the granting of 5 million hectares of land to the indigenous population

with full rights over the soil and subsoil, which brought the total area of laud alloaated to the indigenous population to 10 million hectares.

543. Turning to the question of the situation of Colombian citizens of Afriaan origin, the representative of the State party said that the area occupied by that group was traditionally underdeveloped and that there was a lack of State presence in the form of education, h ılth services, and 60 on. One of the aims of the National Rehabilitation Plan was to remedy that situation and to develop the poorest areas - the so-aalled "forgotten zones". Such areas produaed many teachers and their political representation was in all respects equivalent to other areas. The Indian problem varied from region to region; it was aertafnly true that the Indians in the Pacific aosst area, who were sandwiched between guerrilla fighter6 on the one hand and traditionally hostile landowners on tho other, were very vulnerable to hostile aatfon. The solution whiah the Government was attempting to pursue, as in the case of other indigenous populations, was to make grants of land to Indian groups and at the same time to ensure that the land that they already owned wa6 not taken away from them,

General observations

544. Member6 of the Committee expressed appreciation to the representative of the State party for the spirit of co-operation and openness he had shown in informing the Committee of the very complex situation in Colombia and the difficulties the Government was facing in the field of human rights. They also noted that the exchange of view6 had been frank and that an impressive and genuine dialogue had taken place. While the Colombian Government's effort6 to maintain democracy and enforce the rule of law, especially those relating to the National Rehabilitation Programme, judicial reform and the appointment of the Presidential Adviser for Human Rights were to be welcomed, it was clear that the Government had not yet made sufficient progress in all those respects. The violent confrontation of different element6 in Colombia, political and drug-related terrorism, the excessive role played by the military and the almost permanent state of emergency seriously affected human right6 and were of the greatest concern. Some member6 also pointed out that for those reasons some article6 of the Covenant could not yet be implemented in Colombia.

545. The representative of the State party suggested that it would be useful if some machinery could be devised to enable the Committee to receive information between periodic reports so as to remain in touch with developments in Colombia. He shared the concern expressed by some member6 at tho continuing state of siege, but stressed that the Government of Columbia was determined to implement its plan6 for social change within the rulo of law.

546. In concluding consideration of the second periodic report of Colombia, the Chairman once again expressed the Committee's thank6 to the Colombian delegation for a sincere and co-operative discussion. He said that the democratic tradition6 of Colombia had been threatened by violence, but that the dialogue with the Committee had demonstrated that the Government of Colombia was determined to remain within the rule of law in its struggle to counter those threats.

Barbados

547. The Committee considered the second periodic report of Barbados (CCPR/C/42/Add.3) at its 823rd, 825th and 826th meetings, held on 18 and 19 July 1988 (CCPR/C/SR.823, 825 and 826).

548. The report was introduced by the representative of the State party who drew attention to certain new developments since the consideration of his country's initial report, notably the entry into force of the Community Legal Services Act in 1981, the Family Act in 1982 end the Administrative Justice Act in 1983. Those legislative measures helped to bring the laws of Barbados into closer conformity with the provisions of the Covenant and removed certain ambiguities that had been noted by the Committee when it examined the initial report. He also informed the Committee that an ombudsman, who enjoyed the confidence of both the Government and the opposition, had been appointed and was now in a position to exercise his functions fully.

Constitutional and legal framework within which the Covenant is implemented

549. With regard to the issue, members of the Committee wished to know what the Covenant's legal status was in relation to the Constitution and domestic laws, what happened in case of conflict between the latter and the Covenant, whether an individual had any recourse in cases where rights, guaranteed under the Covenant but not protected under the Constitution or laws of Barbados, were violated, what the powers, functions and activities of the ombudsman wore and whether he was fully independent of the executive power, whether there had been any factors or difficulties affecting the implementation of the Covenant, and what efforts had been mnde to disseminate information about the Covenant and the Optional Protocol, particularly to schools, universities and to law enforcement personnel.

550. Members also wished Lo know why the domestic law relating to the death penalty had not been brought into line with article 6 of the Covenant, whether all the rights guaranteed under the Covenant were in fact protected in Barbados, whether the provisions of the Covenant could be invoked before the courts directly or indirectly, whether appeals were still referred to the Privy Council in London, whether any laws adopted prior to 1966, such as the law of 1936 relating to emergency powers, were still in force, although not in conformity with articles 12 to 23 of the Constitution or with the Covenant, and whether the legal Profession and the bar in Barbados were adequately informed about the provisions of the Covenant.

551. In his reply, the representative of the State party explained that, although the Covenant did not have the force of law in Barbados, its provisions, with only a few exceptiona, were reflected in the Constitution and domestic law. The fact that the provisions of the Covenant had not been incorporated into domestic law did not mean that there was necessarily a conflict between such laws and the Covenant. At the same time, the law authorising the imposition of the death penalty on minors under the age of 18 was clearly in conflict with article 6 of the Covonant and required revision, a matter that would be brought to the attention of the appropriate authorities.

552. The ombudsman was also empowered to investigate alleged violations of rights through abusive, irregular or inadequate administrative actions by both central authorities and paraetatal bodies and to make observations concerning the general

comportment of administrative authorities, In addition, he could apply to the High Court whenever he considered that a right had been violated or was not protected under the Constitution and existing laws. The ombudsman's tenure - and henae his independence - wan protected under article 105 of the Constitution.

553. Regarding the dissemination of information aonaernfng the Covenant, he said that the members of the bar were very active in bringing the provisions of international human rights instruments to public attention - whfah was reflected in the increasing number of human rights complaints being lodged - and that Government ministers referred frequently in their public statements to the Universal Declaration of Human Rights and to the Covenant, There was also a very active Amnesty International chapter in Barbados, which frequently brought alleged human rights violations to the attention of the government authorities. National legislation was not identical in every respect with the provision& of the Covenant but the divergencies did not present major difficulties. The Government of Barbados was not indifferent to the need for compatibility between domestic law and international obligations and wee proceeding to make necessary modifications as rapidly as was practical. The ombudsman also had a role in that regard, since ho aould intervene in cases where he found that rights guaranteed under the Covenant were not adequately reflected in domestic legislation,

554. Responding to other questions, the representative said that he had alluded to certain difficulties relating to the implementation of the Covenant in his introductory remarks and that the matter would be treated more fully in his aountry's third periodic report. The courts of first instance in Barbados were the magistrates ' courts, which handled both criminal cases and minor civil cases. The High Court dealt with more serious civil and penal matters and had unlimited original jurisdiction as well as an appelate court function in respect of judgements rendered by lower aourts. Its own judgements aould only be appealed to the Privy Council. Cases involving minors were handled by minors' courts that sat alongside the magistrates' aourts. Litigation relating to labour law or administrative matters was handled by either the magistrates aourts or the High Court, depending on the seriousness of the matter. *Persona* seeking compensation for the violation of their aonstitutfonal rights could apply for redress to the Hight Court and there had been a number of instances in whiah such persons had obtained relief. No state of emergency had been proclaimed in Barbados since 1937 and the Government did not consider it necessary to adopt any special measures aurrently in that regard.

Non-discrimination and equality of the sexes

555. With regard to that issue, members of the Committee wished to *know* the nature of the relationship between the Women's Affairs Bureau and the National Commission on the Status of Women and asked what the former's actual or planned activities were, whether there were any current plans to ammend the Constitution, particularly by the deletion of paragraph 3 (a) and (b) of article 23, how many women there were in Parliament, in the judiciary, the public service, the universities and the professions, whether discrimination on the basis of sex in such areas as adoption, marriage, divorce, nationality or inheritance existed, what percentage of the population was of Asian origin and whether such persons were subjected to discrimination on the grounds of language.

556. In his reply, the representative of the State party explained that the establishment of the Women's Affairs Bureau had been recommended by the National

Commission on the Status of Women. The National Commission had been established to etudy the role of women in society and the beat way to ensure equality of sexes in Barbados . There had been notable progress in that regard in recent years, including the adoption of laws relating to the ownership of property, the status of children, family rights and inheritance. The Woman'6 Affair6 Bureau, on the other hand, was cornpored of civil servant6 and dealt with specific question6 of discrimination against women and provided advice to the Government in that area. There were no current plan6 to delete paragraph 3 (a) and (b) from article 23 of the Constitution.

557. Responding to questions relating to the extent of women's participation in various field6 of activity and the scholarisation rate for girls, the representative stated that his Government was seeking to promote equality of the sexes and that there were no longer any fields of activity strictly reserved to members of one or other sex. Women wore serving in the Assembly a6 well as the Senate, held leading posts in the public service, served a6 judges, doctor6 and lawyers, and played an important role in the school system. Their number6 in the professions and in higher port6 were still limited, but prospects for significant further improvements in that regard over the next decade were encouraging. There was no pay discrimination on the basis of sex and there was currently full equality of sexes with respect to adoption, marriage, divorce and inheritance. Undor the new legislation on the family, couple6 who had lived together for at least five years were recognirsd as constituting a family and each partner had custodial rights over the children. However, no action had been taken in the area of acquisition of nationality by marriage, despite a recommendation by the National Commission on the Status of Women that such inequality should be eliminated.

Right to life

558. With regard to that issue, members of the Committee wished to know how often and for what crimes the death penalty had been imposed and accually carried out since the consideration of the initial report of Barbados, whether there were any plan6 to bring the law concerning the imposition of the death penalty on persons under 18 years of age into conformity with article 6, paragraph 5, of the Covenant and what measures had been taken in the field of health care, particularly with a view to reducing infant mortality. It was asked whether there were law6 regulating the use of firearm6 by the police, whether such law6 had ever been violated and if so, whether such violation6 had ever led to loss of life and had been investigated and followed up. Members also requested additional information on article 6 of the Covenant, in accordance with the Committee's general comments Nos. 6 (16) and 14 (23).

559. In his reply, the representative of the State party said that, in the view of the Government of Barbados, the right to life had far greater implications than merely those relating to the death penalty. At the same time, it was clear that the Government would eventually need to address the question of eliminating the provision that allowed the imposition of the death penalty on minors under 18 years of age. As a general rule, the death penalty was commuted to a sentence of life imprisonment. The public authorities had taken a number of measures in the field of health care, including the creation of numerous polyclinics throughout the country and intensive campaigns for the mass vaccination of children. The health care of children and of older persons received priority and was provided free of charge under the social security system to children under 16 and adults over 65 years of age as well a6 to the chronically ill. The police in Barbados were

generally unarmed. Any abuse of regulation6 relating to the use of force was subject to sanction by a disciplinary committee. Police officers and security agents suspected of wrong-doing were subject to prosecution in the courts and in some instances prison sentences had been imposed. Victims of such abuse could also apply to the courto for compensation.

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

560. With regard to that issue, members of the Committee wished to know what the maximum period of detention was, whether bail was available to everyone regardless of their means and whether there were any possibilities for release pending trial other than bail, whether persona detained in mental institutions, or their families or lawyers, could apply to the courts for release, whether the State accepted responsibility for providing compensation to persons who had been unlawfully detained, whether persona awaiting trial were detained separately from convicts and whether juvenile6 were held separately from adults and whst regulation6 governed the treatment 01 prisoners and detainees. It was asked whether sanction6 had ever been taken against police officers or prison guards who had violated such regulations and, if 60, how common such occurrence6 were.

561. Members also asked whether there were any special prisons, what the maximum allowable period for holding prisoners in "temporary solitary confinement" was and whether such confinement was the most severe form of detention, how frequently detainees made use of their right of recourse to the High Court on the grounds of encountering unreasonably long delays before being brought to trial, whether nursing mother6 in detention were held in separate quarter6 from other detainees, what the law and practice was relating to the arrest of juvenile6 and what specific role parents or guardian6 plsyed in that regard, whether imprisonment for failure to honour a contractual obligation was permitted under the law, and what the relevant procedure6 and practices were in respect of habeas corpus.

562. In his reply, the representative of the Stats party said that a person under arrest was normally brought before a judge on the day of arrest or on the following day but there was no maximum limit to the length of preventive detention. Detainee6 could apply to the High Court for release pending trial under the habeas corpus procedure. Perooas confined in mental institutions or others acting on their behalf could also apply to the High Court for release. Bail was available for all crimes and offence6 except murder. In cases involving the payment of compensation for unlawful detention, the State conformed to the judgement of the courts. Detainees awaiting trial were separated from convicted persons and minors were held separately from adults. The conduct of prison official6 toward6 prisoners was subject to the relevant prison regulation6 and had to be in conformity with them.

563. Responding to other questions, the representative said female detainees accompanied by small children were kept in separate quarter6 away from other prisoner6 and that prison authorities were eager to faster, to the maximum extent possible, normal relations between mother6 and their children. It was up to the courts to determine the extent to which delays in bringing an accused person to trial were reasonable. There was no fixed minimum age in respect of the arrest or detention of juveniles, but they were held in special establishments, away from adults and there were separate facilities for boys and girls. A person could not be imprisoned for debt, but if he failed to settle the debt, after having been ordered by a court to do 60 an9 found to be capable of doing 60, he could be gaoled

for contempt of court. Complaints could be lodged against prison official6 for violations of human rights on the same basis a6 against any other official who had contravened the law. Police officers had been prosecuted and punished on several occasion6 for unlawful detention or mistreatment. Solitary confinement was a pubishment resorted to only for brief periods for violations of prison rules. Under the law, all detainee6 had the right of recourse to habeas corpus proceeding6 and to engage a lawyer for the purpose.

Right to a fair trial

564. With regard to that issue, member6 of the Committee wished to know how soon after arrest a person could contact his family or lawyer, whether any consideration was being given to withdrawing the reservation of Barbados to article 14, paragraph 3 (f), of the Covenant, since enactment of the Community Legal Services Act, 1981-33, and how the bar was organised. Members also requested additional information on article 14, in accordance with the Committee's general comment No. 13 (21) and asked for clarification as to whether persons acccused of theft or in detention could benefit from legal assistance under the new Legal Services Act.

565. In his reply, the representative of the State party eaid that all person6 taken into police custody had to be presented to a judge as quickly as possible and that usually occurred within hours after the arrest. The Bar Association was represented on the Coneultative Council of the Judiciary as well as on the relevant section of the Education Council dealing with the teaching of law at the University of the Caribbean. The Bar Association also reviewed draft legislation and could make recommendations and suggestions thereon to the Government. All detainee6 could apply for legal assistance on an equal footing. The independence of the judiciary in Barbados was fully guaranteed and all citizens who considered that their rights had been violated by the State could apply to the courts for redress.

Freedom of movement and expulsion of aliens

566. With reference to that issue, members of the Committee wished to know whether any restrictions on the freedom of movement of public servants or law enforcement officers were currently in effect and, if 60, whether such restrictions Were compatible with article 12 of the Covenant. They also requested additional information on the position of aliens, in accordance with the Committee's general comment No. 15 (27).

567. In his reply, the representative stated that there were no restrictions on the movement of public servants or law enforcement officers except those made necessary by the requirements of the public service. Security personnel who were sometimes away from their poets without authorization were declared to be "absent without leave". While aliens did not specifically enjoy constitutional protection, article 22 of the Constitution provided for liberal access to Barbados and afforded considerable protection against expulsion.

Right to privacy

568. With regard to that issue, members of the Committee wished to know whether any legislation regulating wire-tapping or electronic surveillance was being contemplated.

569. In his reply, the representative stated that his Government had no official position on wire-tapping or electronic surveillance and that such sophisticated methods were scarcely in use in countries like Bnrbadoo.

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

570. With regard to that issue, members of the Committee wished to receive information concerning laws and regulations pertaining to the recognition of religious sects by the public authorities, the controls exercised on the freedom of the press and the mass media, in accordance with the law, and the practice in Barbados in respect of the availability of information relating to administrative and governmental acts. Members also wished to know whether any legislation concerning the prohibition of propaganda for war was being contemplated, whether there were any plans to accord explicit constitutional protection to the right to seek information, whether laws relating to official secrets were still in effect and, if so, whether the Government envisaged their abolition.

571. In his reply, the representative of the State party said that freedom of religion was guaranteed under the Constitution and that there was no State religion in Barbados. The press and other media operated under ordinary laws and were not subjected to official control of any kind. Barbados had not formulated an official position in respect of the prohibition of war propaganda. The restrictions embodied in the Official Secrets Act were consistent with the provisions of article 19, paragraph 3 (b), of the Covenant and there were no plans to abolish that Act. The freedom to receive ideas, which was explicitly guaranteed in the Constitution, subsumed the freedom to "seek" information. There were, in practice, no restrictions on access to government information and such public documents as the records of parliamentary proceedings and the Official Gazette were available to anyone who wished to buy them.

Freedom of assembly and association

572. With reference to that issue, members of the Committee wished to receive additional information concerning the practical application of section 31 of the Public Order Act and the rslavant laws and practices relating to the establishment of political partiea, including the number of such parties and their representation in Parliament. Members also wished to know how trade unions were organized and regulated and what type of offences carried the penalty of lose of civic rights guaranteed under article 25 of the Covenant.

573. In his reply, the representative explained that, in one case involving the application of section 31 of the Public Order Act, in which that Act had been challenged in the magistrate's court, the court had found against the complainant, since it had been proven to its satisfaction that he had wrongfully acccused someone of murder at a public meeting. There were no restrictions on the activities of political parties in Barbsdoe. There were two major parties and three smaller parties, but the latter had only a limited appeal end, since independence, only the two main parties had been in public office. The activities of trade unions were regulated by a law enacted in 1964. Their officers wore elected by the membership annually. Some of the larger unions uponeored educational and training activities for their members. Under section 8 of ths Representation of the People Act, a person was disqualified from voting or holding office if he was actually serving a prison sentence or had been sentenced to a term

of imprisonment exceeding 12 months in Barbados, or if he had been sentenced to death by a court in any part of the Commonwealth.

Protection of the family and children, including the right to marry

574. With regard to that issue, members of the Committee wished to receive additional information concerning the system of protection of children, as envisaged under article 24, paragraph 1, of the Covenant and the right of children to acquire a nationality.

575. Responding to the questions raised by members of the Committee, the representative of the State party explained that, in cases where no paternity had been established or where there WAS no presumed paternity, the law provided that an application could be made to a court for a declaration of paternity. A child born in Barbadoe acquired the right to Barbadian nationality even if both parents were stateless. The relevant legislation provided an important protection for children and had been adopted upon the recommendation of the National Commission on the Status of Women. Further important protection for children was offered under the Family Act of 1981, which put the union of a cohabiting couple on the same legal footing as that of a married couple.

Rights of minorities

576. With regard to that issue, member6 of the Committee wished to know whether there were any special factors or difficulties affecting the enjoyment by minorities of their rights under the Covenant.

577. In responding, the representative stated that a considerable number of Asian immigrants had arrived in Barbados in recent years. The children of those Asian immigrant6 were fully integrated in the country'6 school system and provision6 had been made to enable immigrants to practise their various religions.

General observations

578. Membere of the Committee thanked the representative of the State party for his co-operation with the Committee and for having engaged in a useful and candid dialogue. Satisfaction was expressed over the improvement6 that had occurred since the consideration of the initial report of Barbados, including, in particular, the appointment of the ombudsman, the enactment of important legislation, such a6 the Community Legal Service6 Act, the Family Act and the Administration of Justice Act, the enhanced role of the Bar Association in the promotion and protection of human right6 and the steps that had been taken to heighten public awareness of human riyhts issues. At the same time, members noted that the second periodic report of Barbadoe was rather short and contained few detail6 in respect of relevant legislation, case law, public debate or the practical application of the provisions of the Covenant. It. was hoped that such information, including a systematic review of the compatibility of domestic legislation with the provision6 of the Covenant, would be provided in the third periodic report.

579. Attention was also drawn by members of the Committee to the fact that in certain respects the laws of Barbados were still not fully compatible with the Covenant, notably in respect. of article 6, relating to the death penalty for minors, article 3, regarding the position of women a6 far a6 the acquisition of citizenship was concerned, and article 11, in so far a6 it6 yuarantee against

imprisonment for debt did not seem to be fully effective in Barbados. Accordingly, they ● xpreasod the hope that the comments of members regarding those and other issues would be brought to the attention of the authorities.

580. The representative of the State party welcomed the foregoing comments and assured members that he would draw the Government's attention to the points they had raised and would urge the competent authorities to introduce improvements, before the next report was submitted. Barbados was proud of its human rights record and would continue to seek to meet the Committee's requirements as well as possible.

581. In concluding consideration of the second periodic report of Barbados, the Chairman ayadn expressed appreciation to the representative of the State party for thr considerable efforts he had made to reply to the many questions that had boon posed by members, as well. as to the points contained in the list of issues drawn up by the Committee earlier, which he had not had a chance to review prior to his arrival. Although more statistical data and information on legislation and practice would need to be provided in the third periodic report, during the open discussion with the representative of the State party, the Committee had become better acquainted with the progress that Barbados had achieved thus far in implementing the Covenant.

Japan

582. The Committee considered the second periodic report of Japan (CCPR/C/42/Add.4 and Corr.1 and 2) at its 827th to 831st meetings, held from 20 to 22 July 1908 (CCPR/C/SR.827-831).

583. The report was introduced by the representative of the State party who referred to legal measures taken by Japan both at the international and the national level to strengthen human rights since the consideration by the Committee of his Government's initial report in 1981. Those measures included ratification of the Convention on the Elimination of All Forms of Discrimination against Womsn, accession to the Convention relating to the Status of Refugees and the Protocol thereto, modification or enactment of domestic legislation relating to human rights matters, such as acquisition of nationality, equal employment opportunities, mental health, professional activities of foreign lawyers and registration of aliens.

584. The representative of Japan further explained the political structure and the judicial system of his country under the Constitution of 1946 which, inter alia, provided for the separation of and a balanced relationship among the legislative, the executive and the judicial powers. He emphasized, in particular, that the Constitution guaranteed the independence of the judiciary and he provided information on the structure and functions of the five kinds of courts existing in Japan in accordance with the Court Organisation Law of 1947. The Supreme Court, which was the highest Court in the country was vested with the power to make rules, the High Courts had jurisdiction over appeals lodged ayainst judgements rendered by the District Courts or the Family Courts, the District Courts tried all cases in the first instance except those specifically coming under the original jurisdiction of the other courts, the Family Courts had jurisdiction over all disputes and conflicts within the family as well as on all related domestic affairs of legal significance and cases involving juvenile delinquents and the Summary Courts tried civil cases involving claims not exceeding 900,000 yen and certain minor criminal cases.

585. The representative of Japan pointed out that his country's legislation was gradually and steadily evolving to deal with new phenomena emerging in Japanese society, which was becoming increasingly aware of the importance of human rights.

Constitutional and legal framework within which the Covenant is implemented

586. The members of the Committee wished to have further dstaila on the atatus of the Covenant in the Japanese legal system. They asked, for example, whether the Covenant could be invoked directly before the courts and, if so, whether there had bean cases in which that had been done. They also asked for information on the remedies available to individuals who claimed that their rights under the Covenant had been violated, particularly with regard to the right of access to the courts Provided for in article 32 of the Japanese Constitution. The members of the Committee also wished to know what other measures had been taken since the consideration of Japan's initial report to publicise the Covenant, what activities the Civil Liberties Bureau and the Civil Liberties Commissioners had carried out recently and what factors and difficulties, if any, affected the implementation of the Covenant in Japan.

507. Some members of the Committee exprebsed interest in knowing what would happen If, in a Japanese court, one party invoked the provisions of the Covenant, while the opposiny party relied on the Constitution, and in whose favour the court would find. They also asked whether any case of conflict between the provisions of the Covenant and those of domestic legislation had actually occurred and whether Japan had any permanent. procedure for challenging a law, before or after its adoption, on the grounds that it was unconstitutional or, in particular, that it was at odds with a fundamental right embodied in chapter III of the Constitution or in the Covenant. It was also asked whether the report submitted to the Committee by Japan was circulated nationally and whether 't was widely discussed, whether there was resistance to modern law on the part of the population, or behaviour which ran counter to the legislation, whether the inmates of Japanese prisons were informed of their right-s, whether there was a procedure enabling them to appeal to an independent authority and whether prison staff were familiar with the relevant United Nations rules. Further information was also requested on the proportion of Civil Libertios Commissioners who were from Ainu, Chinese and other minorities, the nature of the powers of investigat ion of national institutions concerned with the protect-ion and promotion of human rights, the relationships between such inquiries and judicial inquiries and the fundamental rights which were most frequently the sub ject of complaints. The Committee also wished to know the reasons which had prevented Japan from ratifying the Optional Protocol to the Covenant and requested information on the review of existing legislation which the Japanese Government had conducted before ratifying the Covenant and the interpretation of the provisions of articles 12 and 13 of the Japanese Constitution under which human rights could be restricted on account of "public welfare". Rogarding equality between men and women, the Committee asked whether it. was true that a Japanese working woman was automatically dismissed when she married, whether she had any administrative remedy and what at-tent ion was being acccorded by the authorities to "desertion", which seemed to be a fact of Japanese society.

588. Replying to the questions raised by the members of the Committee, the representative of Japan said that, under article 98 of the Japanese Constitution, in the event of a conflict, treaties concluded by Japan took precedence over national legislation. After referring to the provisions of the Constitution concerning the judiciary, access to the courts and the procedures whereby an

individual could apply to the State for redress, he provided detailed information on the various remedies available to injured parties in Japan in the event of violation of a right by a State authority or an individual and in cases where violation of human rights constituted an offence under the relevant provisions of the Code of Criminal Procedure. He pointed out that the State provided assistance to persons without the means to bring a civil suit, including aliens.

589. With regard to measures taken to publicize the Covenant, he said that a human rights week was held each year. The Ministry of Justice and other bodies were making efforts to publicize the Universal Declaration of Human Rights and the Covenants and to ensure that they were observed throughout the country. Those activities had taken on special significance in 1983, with the celebration of the thirty-fifth anniversary of the adoption of the Declaration. Ceremonies and publications were planned for the end of 1988 to commemorate the fortieth anniversary. The media also gave wide coverage to campaigns to promote human rights, and the press had given special attention to the submission of the report to the Committee. Human rights were also taught.in primary and secondary schools.

590. He explained that members of the Bureau and the Civil Liberties Commissioners co-operated closely to increase public awareness of human rights. The Ministry of Justice and the National Federation of Consultative Assemblies of Civil Liberties Commissioners organized yearly publicity campaigns with a central theme. In 1986 and 1987, those campaigns had focused on the elimination of ragging and corporal punishment in schools, the status of women and the rights of the disabled. In 1988, the main themes of the campaign were the internationalization of society and human rights, as well as the fortieth anniversary of the Universal Declaration of Human Rights. The information activities of the Bureau and Civil Liberties Commissioners also took the form of inquiries into human rights violations and advisory services to deal with specific problems. In 1986, more than 392,000 cases had been dealt with by the advisory services.

591. He said that the implementation of protection of human rights was hampered in Japan by a number of deeply-rooted prejudices and practices, as well as by new problems such as the influx of illegal foreign workers, remunerated forced labour and prostitution.

592. The provisions of article 9, paragraph 3, of the Covenant had in fact been invoked in proceedings in which an alien had applied for release on bail. No conflict between the provisions of the Covenant and Japanese legislation had ever arisen. Moreover, there existed in Japan a system whereby any court could pronounce on the constitutionality of a law, although the final decision lay with the Supreme Court. The reports submitted by Japan to the Committee were circulated to the members of the Diet (parliament) concerned and to interested individuals. While conflicts between ancient cultural traditions and current legislation were inevitable, the Japanese authorities were nevertheless endeavouring to bring those traditions into harmony with the modern legal system. Prison authorities and detainees were informed of the rights embodied in the Covenant, the Standard Minimum Rules for the Treatment of Prisoners and, in general, the substance of texts adopted by the United Nations in the field of human rights. The role of the Civil Liberties Commissioners was to endeavour to redress violations without it being necessary to resort to judicial proceedings. They had no judicial powers and, in order to obtain legal redress, individuals had to go through the courts. The grounds for the complaints made included abuse of authority, violence in the home and invasions of privacy by the media.

593. His Government had undertaken to carry out a careful study of the effect of national legislation with a view to the possible ratification of the Optional Protocol to the Covenant. At the time when the Covenant had been ratified, there had been no conflict between its provisions and Japanese legislation. There was no definition of "public welfare" in Japanese legislation, so that it was for the courts to adopt their own interpretation in each case. Nor wa6 there any rule compelling working women to give up their jobs when they married or had children, and any practice of that kind would be opposed by the authorities.

Self determination

594. With reference to that issue, members of the Committee wished to know what Japan's position was with regard to tbe struggle for self-determination of the South African, Namibian and Palestinian peoples and whether the authorities had taken any concrete measures against the apartheid régime in South Africa. They asked, in particular, whether consideration had been given to dealing with indirect investment in South Africa, whether any violations of the regulations on direct investment existed and, if so, what action had been taken and whether Japan was prenared to consider the imposition of economic and monetary sanctions against South Africa.

595. The representative of Japan stated that his Government co-operated fully with international efforts to eradicate apartheid It had no diplomatic relations with South Africa; it had imposed restrictions on'sporting, cultural and educational exchanges and suspended the issue of tourist visas to South African nationals as well as the air links with that country. All direct investment in South Africa had been banned. Furthermore, Japan provided humanitarian and educational assistance to the victims of apartheid in South Africa and participated in the United Nations programmes of assistance to those victims. His Government was convinced that Namibia should be given independence as soon as possible and it supported the recognition of the right of Palestinians to self-determination and survival as a nation. The banning of indirect investment in South Africa was legally outside the Japanese Government's control; in the few cases of contravention of the banning of direct investment, the Government had warned the firm6 in question with successful results. The question of comprehensive economic and monetary sanctions against South Africa should be discussed in United Nation6 forums.

State of emergency

596. On that subject, member6 Of the Committee wished to know what legal provisions relating to the introduction of a state of public emergency existed in Japan and whether they conformed to article 4, paragraph 2, of the Covenant.

597. The representative of Japan stated that there was no provision in the Japanese legal system for the suspension of public rights. No public emergency had in fact occurred in Japan. If such an emergency were to threaten the life of the nation, the Government would take appropriate measures.

Non-discrimination and equality of the sexes

598. With regard to that issue, members of the Committee wished to know what laws and practices gave effect to the provisions of article 2, paragraph 1, of the Covenant relating to non-discrimination based on colour, language, political and other opinion, national origin, property or other status, and whether the adoption,

in 1985, of the iaw concorning the promotion of equal opportunity and treatment for men and women in employment and other welfare measures for women workers and of other reforms had led to any measurable progress. They also wished to receive information concerning the number and proportion of women in parliament and in other high public offices, the liberal professions, the senior rank6 of the civil service and private business, and asked for clarification of the special problem6 of the resident6 of the Dowa districts and the extent to which the measures being taken to improve their circumstances had been successful. In addition, they asked in which respects the rights of aliens were restricted as compared with those of Japanese citizens.

599. Questions were raised, in particular, with regard to the situation of foreign women who had emigrated to Japan and did not have Japanese nationality, the problem of prostitution in Japan end measures taken to control it, the situation of Koreans living in Japan, the system of registration of aliens, especially in connection with compulsory fingerprinting, the legal measures for the protection of the Ainu and Okinawan peoples against discriminatory attitude6 of society, the requirement of Japanese nationality for teaching in schools and the existing legal measures concorning the mentally ill, which seemed to allow certain forms of discrimination. Furthermore, it was observed that there appeared to be a discrepancy between the Covenant and article 14 of the Japanese Constitution concerning equality as far a6 the enumeration of the ground6 for discrimination was concerned and clarification was requested on the subject.

600. In hi6 reply, the representative of Japan referred to provisions prohibiting all formr of discrimination in his country. The Law of 1985 concerning the promotion of equal opportunity and treatment for men and women in employment and other welfare measures for womon workers entailed, in particular, the inclusion of women in the majority of jobs. Women and men received equal treatment in vocational training. The Equal Employment Opportunities Act had induced enterprises to facilitate the working condition6 of women and, although the Act did not provide expressly for equal wages, it had contributed substantially to reducing the gap between the starting wages for men and women.

601. The representative stated that the number of women members of the Diet had increased from 21 out of 733 in 1970 to 29 out of 760 in 1987. He also provided figurer showing the increasing participation of women in local assemblies and public service. He added that the Japanese residing in Dowa districts had been the subject of social discrimination since the seventeenth century, but the situation was now in the process of being rectified through legal and other measures to improve their social and economic conditions. Regarding the rights of aliens whose status was not expressly mentioned in the Japanese Constitution, the representative referred, in particular, to recent legislation improving their situation and providing for rmgulation of their immigration and residence in the country. With regard to the immigration of women to Japan, especially from South-East Asian countries, the representative explained that, in most cases, it was illegal immigration and the immigrants were exposed to exploitation and other abuses. The Japanese Government was taking measures in consultation with the countries of origin of the immigrants to solve the problsm. Foreigners charged with being in Japan illegally could appeal to the Minister of Justice. Prostitution was illegal in Japan and was controlled by a prostitution prevention law, due attention being given to protecting the human rights of prostitutes. As for the Korean6 living in Japan, the representative stated that 130,000 of them had been granted Japanese nationality by the end of 1986. The others had the legal status of foreign

nationals and those who had been living in Japan before August 1945 were accorded special treatment. With the exception of suffrage and other rights, which by their nature belonged to Japanese nationals only, all fundamental human rights were guaranteed to Koreans and other foreigner6 living in Japan. Alien registration and the enactment of laws and regulations governing the entry of aliens and control of their activities under reasonable conditions were matters within the discretion of any sovereign State. Fingerprinting had been introduced to ensure the accuracy of registration details. It was applied without discrimination to all aliens of 16 years or more staying in the country for one year or more and was in no way designed to infringe their human rights,

602. The representative further stated that no discriminatory treatment was currently practised against the people of Okinawa, although the Civil Liberties Bureau in the Ministry of Juetica had received some complainto in relation to the Ainu. There was an adequate legal framework to protect them at the government level, but there was oome discrimination at the level of society, which the Civil Liberties Bureau was endeavouring to eradicate. Concerning the employment of foreigner& in education, the representative stated that his Government considered that posts connected with the public service or public activities, which involved the exercise of public power, should be held by Japanese citizens only. Teacherc at the elementary, middle and high-school levels were required to take part in the management of public activities. Except at university level, therefore, teachers had to be of Japanese nationality. As for the mentally handicapped, efforts were being made in Japan to ease their difficulties and help them to become full members of society. With reyard to the question of a discrepancy between article 14 of the Constitution and the provisions of the Covenant, the repreesntative of Japan stated that, on 28 December 3978, the Supreme Court had ruled that the fundamental human rights guaranteed in chapter III of the Constitution, with the exception of rights which by their nature should be restricted to Japanese citizens, should be equally guaranteed to foreigners living in Japan.

Right to life

603. With reference to that issue, members of the Committee requested additional information on the implementation by Japan of article 6 of the Covenant in accordance with the Committee'e general comments Noe. 6 (1.6) and 14 (23). Ttey wished to know, in particular, how many death sentences had been imposed during the period from 1985 to 1988 and what factors might account for any increasesor decreases in this respect over earlier periods. They recalled that, under article 6, paragraph 2, of the Covenent, the death sentence might be imposed only for the most serious crimes and they asked what crimes fell within that category, how many persons were on death row currently and how much time normally elapeed between the imposition and the execution of the death sentence. They also asked what rulee and regulations govarned the use of firearms by the police and security forces and how the infant mortality rate of minority groups compared to that of the rest of the population.

604. Some members also asked how many persons under sentence of death had been pardoned, had benefited from an amnesty or had had their sentences commuted, which authority was empowered to decide on the legitimcy of the use of firearms by the police, particularly when such use resulted in death, whether Japanese regulations were consistent with the principles set forth by the United Nations in the Code of Conduct for Law Enforcement Officials, whether any decision had been taken by the Japanese author3 ties to reduce, as envisaged in the initial report, from 17 to 9

the number of crimes listed in the Japanese Criminal Code as being punishable by the death penalty and in how many cases over the paet five years the reopening of the trial of an individual sentenced to death had resulted in a reveres1 of the verdict. Further details were also requested on the differences between tbe troatmont of prisoners awaiting • xmaution and the treatment of other prisoners.

605. In his reply, the representative of the reporting State referred to medical programmes and loyal measures taken in his country to control various categories of diseases. He stated that the average life expectancy in Japan in 1967 stood at 75.61 years for mrn and Ill.39 years for women. Under the Maternal and Child Health Law, the Child Welfare Law and related laws, measures to protect the health of expectant and nursing mothers and infant8 were being implemented. The infant mortality rate, which had rtood at 9.3 per thousand live births in 1976, had fallen to 5.2 per thoumand in 1986. As for the number of death sentences, the representative stated that they were steadily decreasing. During the decade from 1965 to 1974, there had been 90 irrevocable death sentences. During the period from 1975 to 1984, the number had fallen to 30 and, between 1985 and 17 June 1988, to 15.

606. In accordance with article 9 of the Code of Criminal Procedure, the death sentence was applied rparingly and only to the most serious crimes, which fell into two categories. The first coveted crimes resulting in death, the second, insurrection. An amendment to the Code of Criminal Procedure was under consideration to reduce the number of capital offences in the first category and to eliminate those in the second category. At the end of 1907, 27 persons had been awaiting execution. Tho average period between the irrevocable death sentence and execution was seven yaarr and one month, taking into account requests for the reopening of proceedings or applications for amnesty. The representative added that article 7 of the Police Duties Execution Law allowed policemen to use weapons only in circumstances in which there was a reasonable need to do so. During the part decade, there had boon only 13 cases in which the use of a hand-gun by a policeman had led to death, and in each case the rules had been strictly applied.

607. The representative explained the procedure by which an amnesty could be granted in Japan and added that, between 1945 and early 1988, in the cases of 25 persons sentenced to death, the penalty had been commuted to life sentences of hard labour. The total number of amnesties granted in respect of all • entsncss, including death • antonaoe, had been 187 in 1905, 199 in 1986, and 96 in 1987. Furthermore, the National Public Security Commission dealt with questions concerning the training and • quipmont of the police and the lawfulnsso of the use of force by the police. Complaints could, however, be submitted to the prosecutor, which would lead to the institution of inquiries in the police force, and where appropriate, to the institution of criminal proceedings under the relevant provisions of the Criminal Code. Prisoners under sentence of death received the same troatmont as other prisoners, except that they were held in separate quarterr. Between 1962 and 1986, the cases of three persona under sentence of death had been reopened.

Liberty and security of person

606. In that connection the members of the Committee asked for particulars concerning the practice of administrative confinement pursuant to the Prevention of Prostitution Act, the maximum period during which persons could be held in custody pending trial, and the time-limit within which the family of a detainee was

informed. Several questions were asked concerning, in particular, one of the forms of deprivation of liberty, namely, the committal to an institution of persons euf fering from mental disease. It was asked what eafeguarda were offered to such persons on the occasion of an involuntary committal, who made the diagnosis, who made the committal order, to which court an appeal could be addressed at the time of committal and subsequently, whether the statutory remedy of habeas corpus was available, whether there was a riqht to damages amd compensation in cases of irregul ar committal, what the function of the court was with regard to respect for the rights of mental patients, and how many mental patients were hospitalised. It was also asked what was the ratio of persons in custody Pending trial to the total number of persons being yroeecuted undsr the criminallaw. Furthermore, particulars were requested concerning the way in which the detention procedure was carried out and the procedure for obtaining damages and compensation on the grounds of mistakes made by the police or the judicial authority.

609. In reply, the representative of Japan stated that the Prevention of Prostitution Act, in section 5, prescribed A penalty of imprisonment for a term not exceeding six months and a fine not exceeding 10,000 yen for procuring on a public thoroughfare or incitement to prostitution by advertieemente. In section 17, paragraph 1, of the same Act, the sentence of imprisonment imposed under section 5 could be replaced by committal to a re-education centre. He gave particulars concerning the procedure for arrest and pro-trial detention under the Code of Criminal Procedure. He explained that the total time during which a suspect could be held without charge after arrest was 72 hours. If the time-limit was not respected, the suspect was released. The court was empowered to order detention for a period of 10 days, which could be prolonged for a further 10 days on the application of the prosecution. If at. that point the trial procedure had not been initiated, the suspect was released. A further limit to the period of detention was that the person concerned could be released on bail, which was generally granted except in cases of specially serious offences or if there was a risk that the accused might destroy evidence. Under Japanese law there was no provision requiring that the family must be informed after the arrest; in practice, however, the family was informed immediately if the detainee so requested, provided that the proper conduct of the inquiry was not thereby jeopardised. He provided some statistical data concerning persons under detention and compensation awarded in criminal cams. He added that under the Code of Criminal Procedure no arrest could take place without a court order and that. the decision to award compensation was a matter for the Prosecutor-General attached to the highest court in the district. If the person concerned was not satisfied with the decision he could institute civil proceedings in the courts in order to apply for additionnl compensation.

610. Regarding the committal of mentally- ill persons, under a recently enacted law, psychiatrists were responsible for deciding on the need for hospitalization and for any restriction6 on patients activities. A Psychiatric Review Board had been established in each prefecture to examine the need for continued hospital cation and, baaed on the results of the review, the Prefectural Governor- had to (nke the necessary action. If appropriate measures were not. then taken t.he patient was entitled 1.0 bring proceedings against. the Prefectural Governor. In addition to habeas corpus , the Administrative Litigation Law, the Code of Civil Procedure and the Code of Criminal Procedure provided opportunities for patients to bring proceedings in cases of alleged violation6 of their human rights in psychiatric hospitals.

Treatment of prisoners and other detainees

611. In that connection, the members of the Committee asked for particular6 concerning the practices and circumstances of "imprisonment with hard labour" and "detention in a labour centre" mentioned in the report. Furthermore, in connection with the general practice of holding persons awaiting trial in police cells, they asked what safeguards had been provided in conformity with the provisions of the Covenant, whether the United Nations Standard Minimum Rule6 for the Treatment of Prisoners were applied and whether the relevant regulation6 and directives were known to and could be consulted by detainees. Information was also requested on the current status of the draft legislation concerning detention centre6 and institutions for holding persons awaiting trial that were subject to the authority of the police of the prefecture.

612. Some members wondered whether the principle of using police cells as places for holding detainees was not in itself fraught with the risk of infringement of the human right6 of detainees, particularly since the information at their disposal reported disturbing practices regarding police cells and the condition6 of detainee6 in general. They pointed out, inter alia, that the regime of solitary confinement encouraged - according to many sources of information - physical and psychological maltreatment and they asked what procedure was followed in cases where a court found that confessions had been extracted by coercion, how article 38 of the Constitution, which contained provisions on that subject, was applied, whether member6 of the police had been brought to trial on a charge of having used torture, and what action had been taken as a result of inquiries conducted by associations that endeavoured to defend the human right6 of detainees.

613. In reply, the representative of Japan referred in particular to detention in a labour centre in pursuance of article 18 of the Japanese Criminal Code. He gave some particular6 concerning the '"police cells" in which persons might be held, provided that they were not kept there continuously. He added that member6 of the Japanese police force ware highly trained and had received guideline6 concerning human rights. Any complaint by a prisoner concerning the treatment he was receiving was promptly communicated to the chief of police of the prefecture, who would then institute an inquiry and inform the prisoner of the results. The Code of Criminal Procedure itemized all the cases in which confessions were not admissible in evidence and the court could dismiss any deposition if it had doubt6 regarding the circumstances in which the deposition had been made. Draft legislation providing for greater protection of prisoner6 had been submitted to parliament. The United Nation6 Standard Minimum Rule6 for the Treatment of Prisoners had been translated into Japanese and widely publicized in Japan and their implementation was guaranteed by administrative orders. Draft legislation concerning centre6 for holding person6 in custody pending trial, which took into account principles laid down in the legislation of other countries and the United Nations Standard Minimum Rule6 were under consideration in parliament. The draft legislation contained specific provisions concerning the treatment of any person held in a police cell after arrest.

614. The representative pointed out that during the period from 1983 to 1987, only one police officer had been prosecuted on the ground6 of abuse of power resulting in death and there had been no prosecution of such officers on the ground6 of acts of violence or cruelty. In that connection, he stated that, while he could not altogether deny the possibility of isolated case6 of excess by police officers, he had heard of no specific case in which such officers had tortured detainees.

Prisoners were entitled to file a complaint with the Office of the Public Prosecutor who exercised strict control over the police.

Right to a fair trial

615. With reference to that issue, member6 of the Committee wished to know why the principle of the preeurnption of innocence had not been reflected thus far in either the Japanese Constitution or legislation, and how Kokuku, quasi-Kokuku and extraordinary Kokuku appeals differed from each other. They recalled that, under article 2, paragraph 3, of the Covenant, each State party should undertake to develop the possibility of judicial remedy and they asked whether that requirement had been taken into acccount when the Mental Health Law had been revised in 1987. Explanations were requested, in particular, with respect to the right of a prisoner to communicate with hi6 counsel and the concept of "grey and indecisive innocence", which was expressed by the Chief Justice after the conclusion of a case with a verdict of not guilty.

616. In hi6 reply, the representative of Japan stated that the presumption of innocence was firmly established a6 a fundamental principle of criminal procedure and had been fully respected in judicial practice. He further explained that under the Code of Criminal Procedure, sentence was pronounced by court judgement. Other decision6 by a court of first instance or by a judge were generally made in the form of a ruling order. Kokuku appeals against a judgemant rendered in the first instance by adistrict court, family court or summary court could be lodged with the High Courtr those against a judgement in the first or second instance rendered by the Court with the Supreme Court and those against a ruling to which no objection wan allowed in the Code of Criminal Procedure with the High Court, An extraordinary Kokuku appeal could be filed with the Supr me Court only on such ground6 as violation of the Constitution and incompatibility with judicial precedent. Quasi-Kokuku appeal against a decision prescribed in article 429 of the Code of Criminal Procedure, which was rendered by a judge in respect of such matters as detention and release on bail, could be lodged with the court to which the judge was attached.

617. The representative then referred to the possibility of judicial remedy which had been developed by the law with regard to person6 in psychiatric hospitals and provided information concerning the structure and function6 of the Japanese bar under the Practising Attorney6 Lew of 1949. He pointed out that unconvicted persons were given sufficient guarantees to ensure that they could receive documents and other material from their counsel. As a general rule, detainees were also permitted t see persons other than their counsel and to receive document6 from them. Under article 39, paragraph 3, of the Code of Criminal Procedure, if it was essential for the investigation, the public prosecutor or investigating magistrate could designate the date, place and time at which an interview with the accused was to be held, provided that the ability of the accused to prepare his defence was not prejudiced thereby.

Freedom of movement and expulsion of aliens

618. On that subject, members of the Committee asked whether there were any restrictions on the freedom of movement of aliens within Japan other than those which were applicable also to citizens and restrictions relating to "provisionally landed nl iens" or special cases. Moreover, In the light of the Committee'6 general comment No. 15 (27), they requested additional information on the position of aliens in Japan.

619. In his reply, the representative of the reporting State referred to article 22 of the Japanese Constitution, which guaranteed freedom of movement to both Japanese citizens and aliens, and legislation relevant to the requirements for entry of aliens in Japan. He stated that an alien who had been refused entry by the immigration authorities might lodge an appeal with the Ministry of Justice. By a decision of the Supreme Court of 28 September 1978 foreigners living in Japan enjoyed the name fundamental human righte as Japanese citizens, apart from voting and certain other rights expressly reserved for Japanese citizens. The conditions governing the residence and activities of foreigners in Japan were laid down by the immigration authorities. Investigation of offences carrying the penalty of deportation was carried out initially by the immigration control officer. If grounds for deportation were found, the person concerned could request a hearing by the special inquiries officer and, in the event of an adverse ruling, lodge an appeal with the Ministry of Justice, which was the final authority on deportation.

Right to privacy

620. With regard to that issue, members of the Committee requested additional information on article 17, in accordance with the Committee's general comment No. 16 (32), and clarification on the concept of "the right to portrait". They also requested a description of Japanese laws and practices relating to the collection and use of personal data by public agencies or private entities. In addition, they asked how the use of electronic listening and viewing devices was regulated, whether an individual had the right to ascertain in intelligible form whether personal data relating to him were stored on data files, and, if so, what data and for what purpose, and which public authorities or private firms controlled such data.

621. In his reply, the representative of the State party said that, if the infringement of privacy constituted an offence, the individual concerned might lodge a complaint with the public prosecutor or investigating magistrate, in accordance with the Code of Criminal Procedure, requesting redress for the damage caused and restoration of the original condition. In addition, he could request an investigation by a civil liberties commissioner on grounds of violation of his human rights. Regarding the concept of "the right to portrait", he explained that the Supreme Court had ruled that the photographing of a person's face by the police without good reasons was contrary to article 14 of the Constitution. With reference to the other questions raised, he stated that. the Inetalmant Sales Act relating to computerised information in the private sector, amended in 1984, provided that information acquired in connection with credit transactions should not be used for any other purpose; article 21 of the Constitution guaranteed security of all means of communication, while the Telecommunications Act prohibited any violation of telecommunications security; a Bill recently submitted to the Diet would cover the handling of controversial personal data by public institutions, combining the protection of individual rights with efficient administration.

Freedom of religion and expression, prohibition of propaganda for war and advocacy of racial or religious hatred

622. On that subject, members of the Committee asked whether religions were officially recognised or registered in Japan and, if so, what.. the relevant legal basis and proceduree were, what controls were exercised on freedom of the press and mass media in accordance with the law and what concrete measures had been taken to ensure compliance with the provisions of article 20 of the Covenant:. Members of

the Committea stressed that legislative provisions against propaganda for war had to be enacted by a State party, if it wan to fulfil its obligations unde. that srtlcle.

623. In his reply, the representative of Japan referred to constitutional and other legislative provisions guaranteeing freedom of religion and expression and regulating the press and other mass media. He stated, in particular, that no religious education waa imparted by the Stats, that religious organisations were not required to be registered, that dissemination of war propaganda in his country was virtually inconceivable and therefore no need had arisen in his country for specific legislation on tha matter.

Freedom of assembly and association

624. With reference to that issue, members of the Committee asked about the relevant laws and practices relating to the establishment of political parties, the organisation of trade unions, the size of their membership and the percentage of the labour force belonging to trade unions.

625. The representative of the reporting State replied that political parties could be organised freely in Japan without restrictions. However, the Political Funds Regulation Law regulated expenditure on political activities and 27 organisations had been recognised an parties under that law. The main political parties had representatives in both houres of the Diet. The representative also referred to articles 21 and 28 of the Japanese Constitution relating to trade unione and the right to strike and recalled that Japan wan a party to the International Labour Organisation Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Protection of the family and children, including the right to marry

626. With reference to that issue, members of the Committee asked how the right of men and women of marriageable age to marry and to found a family was recognised in Japan, what measures the government wan taking to eradicate child prostitution and what the position was in Japan with regard to corporal punishment.

627. The representative replied that article 24 of the Japanese Constitution affirmed that marriage was based on the mutual consent of the intending spouses. In 1986, a total of 967 female juveniles under 20 years of ago had been counselled for prostitution. Relevant laws were the Child Welfare Law and the Prostitution Prevention Law, and the police endeavoured to locate and protect juvenile victims of prostl tution. Corporal punishment in school was prohibited by law.

Right to participate in the conduct of public af fairs

628. In respect to that subject, members of the Committee wished to receive information concerning the exercise of and restrictions on political rights. They also asked how equitable access of members of ethnic, religious or linguistic minorities to public services was ensured.

629. In his reply the representative of Japan referred t.o the Public Offices Election Law, which contained provisions regarding the election of members of the two houses of the Diet and members of the assemblies of local public bodies, and

the National Public Service Law and the Local Public Service Law, which guaranteed that the recruitment of public officials was based on fair and competitive examlnat'ons He stated that equal access to the conduct of publi c af fairs was guaranteed to everybody under law.

Rights of minorities

630. Regarding that issue, members of the Committee asked whether there were, in Japan, any special factors and difficulties concerning the effective enjoyment by minorities of their rights under the Covenant and, in particular, what the situation was in regard to Koreans, Chinese, the Utari people and the Dowa people.

631. In his reply, the representative of Japan provided figures concerning the composition of the groups of persons referred to in the question and stated that in Japan no one was denied the right to enjoy his own culture, to practise his own religion, or to use his own language.

General comments

632. The memhsrs of the Committee expressed satisfaction with the thorough, constructive and fruitful dialogue which had taken place between the representatives of Japan and the Committee. They noted with appreciat ion that the report had already been publicly discussed in Japan and that many non-governmertal organisations and groups had been involved; in their opinion that demonstrated ths keen interest In human rights matters that existed in Japan. They noted that many elements of traditional law existed in Japanese society; they had the impression that in the current state of affairs, Japanese legislation was an amalgam of various legal concepts and was expected to evolvo further. Hence it was sometimes difficult to determine with certainty whether some provisions of the legislation were compatible with the Covenant, They noted that some improvements in the Japanese legal system from the point of view of human rights could already he seen, in particular with regard to the ban on war propaganda, the human rights of mental patients, the management of penitentiary establishments and the use of police cells for holding persons awaiting trial in custody. They also referred to the comments made in the course of the consideration of the report concerning the difficulties in obtaining naturalisation in Japan, allegations of maltreatment of prisoners, the applicat ion of the death penalty, and certain forms of discrimination against certain ethnic groups and certain communities of the Japanese population as well as against women and al fens. The members expressed the view that the measures needed to deal with the questions raised related to both legislation and practice, and they expressed the hope that the Japanese Government would take the Commit ee's comments into account.

633. On the conclusion of consideration of Japan's second periodic report, the Chairman also thanked the Japanese delegation for- its contribution to a fruitful dialogue with the Committee and expressed the hope that all questions left in abeyance at the current session would be dealt with in Japan's ne. periodic. report.

IV. GENERAL COMMENTS OF THE COMMITTEE

A. General

634 .n the Committee's guidelines on the form and content of periodic reports (CCPR/C/20), States parties to the Covenant were urged to take the Co. mittee's yeneral comments into account in implementing the Covrnant whrn preparing their reports. During an extended discussion of the role of the goners1 comments in the preparation of periodic eports and of their important bearing on the implementation of a numbe.- of articles of the Covenant at its 758th meeting, members reiterated their concern that the general comments wore not yet being taken into account sufficiently by States parties. In order to elicit additional information concerning the implementation of relevant articles of the Covenant, the Committee decided to include, on a systematic basis, in tho lists of issues prepared for States parties prior to thu consideration of their periodic reports, appropriate questions relating to the degree to which the standardr contained in the general comments were being obrerved.

B. Work on general comments

635. The Committee began discussion of a general comment on article 17 of the Covenant at its thirtieth session on the basis of an initial draft prepared by its Working Group. It continued its consideration of that general comment at its 763rd, 770th, 771st, 777th, 778th, 781st and 791st meetings, during its thirty-first and thirty-second sessions, on the basis of ● uccosrive drafts revised by its Working Group in the light of the comments and proposals advanced by members. The Committee adopted its general comment on article 17 at the 791st meeting, held on 23 March 1988. Pursuant to the requeet of the Economic and Social Council, the Committee transmitted the general comment to the Council at. its first regular session in 1988.

636. At its 833rd meeting, the Commi[illegible] decided to start preparatory work on general comments on provisions of the Covenant regarding non-discrimination and on the protection of the family and the child.

V. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

637. 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 boon violated and who have exhausted all available domestic remedies may submit written communications to the Human Rights Committee for consideration. Of the 87 States that have acceded to or ratified the Covenant, 42 have accepted the competence of the Committee to deal with individual complaints by ratifying or acceding to the Optional Protocol (see Annex I to the present report, sect. B). No communication can be received by the Committee if it concerns a State party to the Covenant that is not alro a party to the Optional Protocol.

A. Progress of Work

636. since the Committee started its work under the Optional Protocol at it.6 second session in 1977, 316 communications concorning 28 States parties have been placed before it for consideration (236 of these were placed before tlr Committee from its second to its thirtieth sessions; 80 further communications have been placed before the Committee since then, that is, at its thirty-first, thirty-second and thirty-third sessions. covered by the present report). A volume containing selected decisions undsr the Optional Protocol from the second to the sixteenth session (July 1982) was published in English in 1985. 7/ The French and Spanish version of the publication came out in 1968. A volume containing selected decisions from the seventeenth to the thirty-second sessions is forthcoming. 7/ The Committee believes it extremely important that the publication of thin second volume uhould proceed at all due speed.

639. Tha status of the 316 communications so far placed before the Human Rights Committee for consideration is as follows:

(a) Concluded by views under article 5, parayraph 4, of the Optional Protocol: 85;

(b) Concluded in another manner (inadmissible, discontinued, suspended or withdrawn) : 125;

(c) Declared admissible, but not yet concluded: 22;

(d) Pending at the pre-admissibility stage: 84.

640. During the thirty-first to thirty-third sessions, the Committee examined a number of communications submitted under the Optional Protocol. It concluded consideration of eight cases by adopting its views thereon. These are cases Nos. 159/1983 (Cariboni v. Uruguay), 161/1983 (Herrera Rubio v. Colombia), 176/1984 (Lafuentc Peñarrieta et al. v. Bolivia), 188/1984 (Martínez Yortorreal v. the Dominican Republic), 191/1985 (Blom v. Sweden), 194/1985 (Miango v. Zaire), 19711905 (Kitok v. Sweden) end 201/1985 (Hendriks v the Nether-lands). The Committee also concluded consideration of 13 cases by declaring them inadmissible. These are cases Nos. 204/1986 (A. P. v. Ital.,), 212/1986 (P. P. C. v. the Nether lands), 22411987 (A. and S. N. v. Norway), 22711987 (0. W. v. Jamaica), 228/1987 (C. L. D. v. France), 236/1987 (V. M. R. B. v. Canada), 243/1987 (S. R. v. France), 245/1987 (R. T. 2. v. the Netherlands), 252/1987 (C. J. v. Jamaica),

25711987 (L. C. v. Jamaica), 267/1987 (M. J. G. v. the Netherlands), 285/1988 (L. G. v. Jamaica) and 286/1988 (L. S. v. Jamaica). The texts of the views adopted on the eight cases, as well as of the decisions on the 13 cases declared inadmissible, are reproduced in annexes VII and VIII to the present report. Consideration of two cases was discontinued. Procedural decisions were adopted in a number of pending cases (under rules 86 and 91 of the Committee's provisional rules of procedure or under attic18 4 of the Optional Protocol). Secretariat action was requested on other pending cases.

B. Growth of the Committee's case-load under the Optional Protocol

641. Since the Committee's 1987 report to the General Assembly, 8/ four more States have ratified or acceded to the Optional Protocol, thus raising the number of States parties to 42 out of the 87 States parties to the International Covenant on Civil and Political Rights. The Committee welcomes this increased participation in the procedure governed by the Optional Protocol and expresses the wish that the procedure will, in the coming years, become truly universal.

642. Increased public awareness of the Committee's work under the Optional Protocol has also led to an exponential growth in the number of communications submitted to it. In the period between the 1985 and 1986 reports, the Committee registered 22 new cases: in the period between the 1986 and 1987 reports, 25 new cases were registered; in the period covered by the present report, 80 new cases were registered. When the 1986 report was adopted, the Committee had before it 33 pending cases; by the adoption of the 1987 report, 49 cases were pending; by the time of adoption of the present report, the Committee had before it 116 pending cases. These figures show a very substantial increase in the Committee's work-load over the last two years.

643. While the Committee recognised that it must continue to deal with communications thoroughly and expeditiously, it stressed that its growing case-load and the substantive and legal complexity of communications necessitated increased Secretariat assistance. Unless the work-force at its disposal was increased, the Committee feared that it would not be able to fulfil its responsibilities. It therefore welcomed the assurances given to it at its thirty-third session by the Under-Secretary-General for Human Rights that, despite the existing financial limitations, he would look into the possibility of strengthening the staff.

C. Joinder of communications

644. Pursuant to rule 88, paragraph 2, of the Committee's provisional rules of procedure, "the Committee may, if it considers appropriate, decide to deal jointly with two or more communications". During the period covered by this report the Committee adopted three decisions to deal jointly with similar communications.

D. Nature of the Committee's decisions on the merits of a communication

645. The Committee's decisions on the merits are non-binding recommendations and as such are referred to as "views under article 5, paragraph 4, of the Optional Protocol". After the Committee has made a finding of a violation of a provision of

the Covenant, it always proceeds to ask the State party to take appropriate steps to remedy the violation. For instance, in the period covered by the present report, the Committee found that two States parties were responsible for the violation of the right to life (article 6) of the victims concerned. In its views in case No. 194/1985 (Mango v. Zaire), the Committee urged the State party "to take effective steps (a) to investigate the circumstances of the death of Jean Miango Muiyo, (b) to bring to justice any person found to be responsib18 for his death, and (c) to pay compensation to his family". In case No. 16111983 (Herrera Rubio v. Colombia) the Committee similarly indicated that the Stat8 party was under an obligation *'further to investigate said violations, to take action thereon as appropriate and to take steps to ensure that similar violations do not occur in the future".

646. Violations of the provisions of the Covenant have been found by the Committee in 73 of the 85 communications concluded with the adoption of views,

E. Individual opinions

647. In its work under the Optional Protocol, the Committee strives to reach its decisions by consensus, without resorting to voting. However, pursuant to rule 94, paragraph 3, of the Committee's provisional rules of procedure, members can append their individual opinions to the Committee's decisions.

648. During the sessions covered by the present report, individual opinions were appended to the Committee's views in case No. 201/1985 (Hendriks v. the Netherlands) and to the Committee's decision declaring communication No. 22811987 (C. L. D. v. France) inadmissible (see annex VII, sect. H and appendices I-II and annex VIII, sect. E).

F. Issues con-red by the Committee

649. For a review of the Committee's work under the Optional Protocol from its second session in 1977 to its thirtieth session in 1987, the reader is referred to the Committee's annual reports for 1984, 1985, 1986 and 1987 which, inter alia, contain a summary of the procedural and substantive issues considered by the Committee and of the decisions taken. 9/ The full texts of the views adopted by the Committee and of its decisions declaring communications inadmissible under the Optional Protocol have been reproduced regularly in annexes to the Committee's annual reports.

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

1. Procedural issues

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

651. Pursuant to article 5, paragraph 2 (b), of the Optional Protocol, the Committee shall not consider any communication unless it has ascertained that the author has exhausted all available domestic remedies. However, the Committee has

already established that the rule of exhaustion applies only to the extent that these remedies are effective and available and the State party is required 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" (case No. 4/1977, Torres Ramírez v. Uruguay). 10/ The rule also provides that the Committee is not precluded from examining a communication if it is established that the application of the remedies in question is unreasonably prolonged.

652. In case No. 224/1987 (A. and S. N. v. Norway) the authors did not bring their case before any judicial or administrative instance in Norway, arguing that remedies would not have been effective, because the practice they were challenging was legal in Norway and because the Covenant could not be directly applied by Norwegian courts. Moreover, the authors decided to appeal directly to the Committee, arguing that the exhaustion of domestic remedies would be prolonged and be "a waste of time and money". The Committee asked the Stat8 party to explain the remedies available to the authors, in particular to clarify whether there was a competent tribunal or constitutional court in Norway, in which the authors could test the legality of the Day Nurseries Act as amended in 1983. In an extensive reply, the State party submitted that "Norwegian courts have given considerable weight to international treaties and convention6 in the interpretation of domestic rules, even if these instruments have not been formally incorporated into domestic law", adding that "the possibility of setting aside a national statute altogether on the grounds of conflict with the Covenant cannot be disregarded". Moreover, the State party indicated that the author6 could have argued that the Act in question was in conflict with article 2 (1) of the Norwegian Constitution, under which "all inhabitants of the Kingdom shall have the right to free exercise of their religion". In the light of the State party's explanations and the author's comments thereon, the Committee observed:

> "that the authors have not pursued the domestic remedies which the State party has submitted were available to them. It notes the authors' doubts whether the International Covenant on Civil and Political Rights would be taken into account by Norwegian courts, and their belief that the matter could not be satisfactorily settled by a Norwegian court. The State party, however, has submitted that the Covenant would be a source of law of considerable weight in interpreting the scope of the Christian object clause and that the authors would have stood a reasonable chance of challenging the Christian object clause of the Day Nurseries Act and the prevailing practice as to their compatibility with the Covenant had they submitted the case to the Norwegian courts: the Committee notes further that there was a possibility for an expeditious handling of the authors' case before the local courts. The Committee finds, accordingly, that the pursuit of the authors' case before Norwegian courts could not be deemed *a priori* futile and that the authors' doubts about the effectiveness of domestic remedies did not absolve them from exhausting them. Thus, the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met" (see annex VIII, sect. C).

(b) No claim under article 2 of the Optional Protocol

653. Article 2 of the Optional Protocol provides that "individuals who claim that any of their rights enumerated in the Covenant have been violated and rho have exhausted all available domestic remedies may submit a written communication to the Committee for consideration".

654. Although at the stage of admissibility an author need not prove the alleged violation, he must submit sufficient evidence in substantiation of his allegation to constitute a prima facie case. A "claim" is therefore not just any allegation, but an allegation supported by a certain amount of substantiating evidence. Thus, in cases where the Committee finds that the author has failed to make at least a prima facie case before the Committee, justifying further examination on the merits, the Committee has held the communication inadmissible, declaring that the author "has no claim under article 2 of the Optional Protocol*'. During the period covered by the present report the Committee has used this formula in declaring four communications inadmissible (see annex VIII, sects. B, F, H and K).

(c) Interim measures under rule 86

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

656. In view of the growing number of communications from persons awaiting execution, the Committee appointed one of its members, Mr. Andreas Mavrommatis, Special Rapporteur on death penalty cases, and authorised him to take rule 86 decisions on behalf of the Committee.

2. Substantive issues

(a) Expulsion of aliens (Covenant, article 13)

657. The Committee has had the opportunity of expressing its views on the position of aliens under the Covenant in its general comment No. 15 (27) adopted at its twenty-seventh session. 11/ Its understanding of the scope and application of article 13 has also been reflected in the Committee's views in case No. 58/1979 (Maroufidou v. Sweden, adopted at the Committee's twelfth session) 12/ and No. 15511983 (Hammel v. Madagascar, adopted at the Committee's twenty-ninth session), 13/ and in the Committee's decision declaring inadmissible case No. 173/1984 (M. F. v. the Netherlands, adopted at the Committee's twenty-third session). 14/

658. At its thirty-third session, the Committeed examined communication No. 23611987 (V. M. R. B. v. Canada), which involved a number of issues related to asylum, immigration and deportation proceedings. In declaring that communication inadmissible, the Committee noted that a right of asylum was not protected by the Covenant and, with respect to article 13, observed:

> "that one of the conditions for the application of this article is that the alien be lawfully in the territory of the State'party, whereas Mr. R. has not been lawfully in the territory of Canada. Furthermore, the State party has pleaded reasons of national security in connection with the proceedings to deport him. It is not for the Committee to test a sovereign State's

evaluation of an alien's security rating: moreover, on the basis of the information before the Committee, the procedures to deport Mr. R. have respected the safeguards provided for in article 13" (see annex VIII, sect. F).

(b) Double jeopardy (Covenant, article 14, para. 7)

659. Article 14, paragraph 7, of the Covenant provides that "no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country".

660. In communication No. 204/1986 (A. P. v. Italy), the author claimed a violation of article 14, paragraph 7, because he had been convicted in 1979 by the Criminal Court of Lugano, Switzerland, for complicity in the crime of conspiring to exchange currency notes, which came from the ransom paid for the release of a person who bad been kidnapped, and because he was again convicted in absentia in 1983 by the Milan Court of Appeal for an offence arising out of the same kidnapping. In declaring the communication inadmissible ratione mater- under article 3 of the Optional Protocol, the Committee stated:

> "... article 14, paragraph 7, of the Covenant, which the author invokes, does not guarantee non bis in idem with regard to the national jurisdictions of two or more States. The Committee observes that this provision prohibits double jeopardy only with regard to an offence adjudicated in a given State" (see annex VIII, sect. A).

(c) Equality before the law. principle of non-discrimination (Covenant, article 26)

661. Following the adoption of the Committee's views at its twenty-ninth session, in 1987, in cases Nos. 172/1984 (Broeks v. the Netherlands) 15/ and 18211984 (Zwaan-de Vries v. the Netherlands) 16/ recognizing that the scope of article 25 extends to rights not otherwise guaranteed by the Covenant, the Committee has received an increasing number of communication6 concerning alleged discrimination in contravention of article 26 of the Covenant.

662. As the Committee, however, observed in the Broeks and Zwaan-de Vries cases:

> 'The right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26." 17/

663. A number of the communications received latterly have been declared inadmissible, since the authors failed to make at least a prima facie case of discrimination within the meaning of article 26.

664. In case No. 212/1986 (P. P. C. v. the Netherlands), the author had alleged discrimination because the application of a law providing for additional assistance 'to persons with a minimum income was linked to the person's income in the month of September. Since the author had not been unemployed in September, the annual calculation showed a figure higher than his real income for the year in question and he did not qualify for the desired additional assistance. In declaring the communication inadmissible, the Committee stated:

"The Committee has already had an opportunity to observe that the scope of article 26 can also cover cases of discrimination with regard to social security benefit6 (communications Nos. 17211984, 18011984, 182/1984). It considers, however, that the scope of article 26 does not extend to differences of results in the application of common rules in the allocation of benefits. In the case at issue, the author merely states that the determination of compensation benefits on the basis of a person's income in the month of September led to an unfavourable result in his case. Such determination is, however, uniform for all persons with a minimum income in the Netherlands. Thus, the Committee finds that the law in question is not pr' cie discriminatory, and that the author does not, therefore, have a claim under article 2 of the Optional Protocol" (see annex VIII, sect. B).

665. Two other cases concerned the different treatment of soldiers and civilians. In declaring communication No. 26711987 (M. J. G. v. the Netherlands) inadmissible, the Committee stated:

"The Committee notes that the author claims that he is a victim of discrimination on the ground of 'other status' (Covenant, art. 26, in fine) because, being a soldier during the period of his military service, he could not appeal against a summons like a civilian. The Committee considers, however, that the scope of application of article 26 cannot be extended to cover situations such as the one encountered by the author. The Committee observes, as it did with respect to communication No. 24511987 (R. T. Z. v. the Netherlands), that the Covenant does not preclude the institution of compulsory military service by States parties, even though this means that some rights of individuals may be restricted during military service, within the exigencies of such service. The Committee notes, in this connection, that the author ha6 not claimed that the Netherlands military penal procedure6 are not being applied equally to all Netherlands citizens serving in the Netherlands armed forces. It therefore conclude6 that the author has no claim Under article 2 of the Optional Protocol'* (see annex VIII, sect. X).

666. In case No.19111985 (Blom v. Sweden), which the Committee declared admissible and examined on the merits, the main issue was whether the author of the communication was the victim of a violation of article 26 of the Covenant because of the alleged incompatibility of the Swedish regulations on education allowances with that provision. In deciding that the State party had not violated article 26 by refusing to grant the author, as a pupil of a private school, an education allowance for the school year 1981/82, whereas pupils of public schools were entitled to education allowance6 for that period, the Committee stated:

"The State party's educational system provides for both private and public education. The State party cannot be deemed to act in a discriminatory fashion if it does not provide the same level of subsidy for the two types of establishments, when the private system is not subject to State supervision, As to the author's claim that the failure of the State party to grant an education allowance for the school year 1981182 constituted discriminatory treatment, because the State party did not apply retroactively its decision of 17 June 1982 to place grades 10 and above Under State supervision, the Committee notes that the granting of an allowance depended on actual exercise of State supervision; since State supervision could not be exercised prior to 1 July 1982 . . . . the Committee find6 that consequently it could not be expected that the State party would grant an allowance for any prior period

and that the question of discrimination does not arise, On the other hand, the question does arise whether the processing of the application of the Rudolf Steiner School to be placed under State supervision was unduly prolonged and whether this violated any of the author's rights under the Covenant. In this connection, the Committee notes that the evaluation of a school's curricula necessarily entails a certain period of time, as a result of a host of factor6 and imponderables, including the necessity of seeking advice from various governmental agencies. In the instant case the school's application was made in October 1981 and the decision was rendered eight months later, in June 1982. This lapse of time cannot be deemed to be discriminatory, as such" (see annex VII, sect. E).

(d) Protection o f the amily, protection of children at the dissolution of marriage (Covenant, article 23, paras. 1 and 4)

667. Communication No. 201/1985 (Hendriks v. the Netherlands) concerned a divorced parent who claimed that the Netherlands courts' failure to grant him access to his son constituted a violation of article 23. The Committee found *no* violation, stating that, while the Netherlands courts recognized the right of children to permanent contacts with both parents and the right of access of the non-custodial parent, that right could be denied in the best interests of the child and that it was for the local court and not for the Committee to determine what constituted the best interests of the child in the particular case. The Committee also explained its understanding of the scope of article 23 as follows:

> "In examining the communication, the Committee considers it important to stress tbat article 23, paragraph6 1 and 4, of the Covenant sets out three rules of equal importance, namely, that the family should be protected, that Step6 should be taken to ensure equality of rights of spouses upon the dissolution of the marriage and that provision should be made for the necessary protection of any children. The words 'the family' in article 23, paragraph 1, do not refer solely to the family home a6 it exists during the marriage. The idea of the family must necessarily embrace the relation between parents and child. Although divorce legally end6 a marriage, it cannot dissolve the bond uniting father - or mother - and child; this bond doe6 not depend upon the continuation of the parents* marriage. It would *seem* that the priority given to the child's interest6 is compatible with this rule" (see annex VII, sect. H).

(e) Protection of persons belonging to minorities (Covenant, art. 27)

668. Communication No. 19711985 (Kitok v. Sweden) concerned an ethnic Sami and reindeer breeder, who complained of an alleged violation of article 27 of the Covenant, because he had been excluded from membership in the Sami village (Sameby) by decision of the Sami community on the basis of the Reindeer Rusbandry Act. Mr. Kitok's appeal to a Swedish court, under the same Act, was unsuccessful. One of the questions examined by the Committee was whether reindeer husbandry constituted a cultural activity. The Committee observed:

> "The regulation of an economic activity is normally a matter for the State alone. However, where that activity is an essential element in the culture of an ethnic community, its application to an individual may fall under article 27 of the Covenant".

While the Committee found that the ratio legis of the Reindeer Hurbandry Act was reasonable and consistent with article 27, it none the less expressed grave doubts as to whether certain provisions of the Act and their application to Mr. Kitok could be deemed compatible with article 27 of the Covenant:

> "It can thux be seen that the Act provides certain criteria for participation in the life of an ethnic minority whereby a person who is ethnically a Sami can be held not to be a Sami for the purposes of the Act. The Committee has bean concerned that the ignoring of objective ethnic criteria in determining membership of a minority, and the application to Mr. Kitok of the designated rulec, may have been disproportionate to the legitimate ends sought by the legislation" (see annex VII, sect G).

Notes

1/ See Official Records of the General Assembly, Forty-second Session, Supplement No. 1 (A/42/1).

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

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

4/ Ibid., annex VI.

5/ The reports and additional information of States parties are documents for general distribution and are listed in the annexes to the annual reports of the Committee; these documents, as well as tho summary records of the Committee's meetings, are published in the bound volumes that are being issued, beginning with the years 1977 and 1978.

6/ United Nations, Treaty Series, vol. 75, Noe. 970-973.

7/ United Nations publication, Gales No. t.fJ4.XXV.2.

8/ Official Records of the General Assembly, Forty-second Session, Supplement No. 40 (A/42/40).

9/ Ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), paras. 569-625; ibid., Fortieth Session, Supplement No. 40 (A/40/40), parar. 690-706; ibid., Forty-first Session, Supplement No. 40 (A/41/40), parar. 418-424; and ibid., Forty-second Session, Supplement No. 40 (A/42/40), parar. 397-410.

10/ Ibid., Thirty-fifth Session, Supplement No. 40 (A/35/40), annex VIII, para. 5.

11/ Ibid.. Forty-first Session, Supplement NQ, 40 (A/41/40), annex VI.

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

13/ Ibid., Forty-second Session, Supplement No. 4Q (A/42/40). annex VIII, sect. A.

14/ Ibid., Fortieth Session, Supplement No. 40 (A/40/40), annex XIII.

15/ Ibid., Forty-second Session, Supplement No. 40 (A/42/40), annex VIII, sect. B.

16/ Ibid., annex VIII, sect. D.

17/ Ibid., pars. 13.

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 29 July 1988

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
A. States parties to the International Covenant on Civil and Political Rights (87)		
Afghanistan	24 January 1983 (a)	24 April 1983
Argentina	8 August 1906	8 November 1986
Auatralia	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
Byeloruaaian 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 Octcbsr 1983 (a)	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Cyprua	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 1961
Democratic Yemen	9 February 1987 (a)	9 May 1987
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 (a)	4 April 1978
Ecuador	6 March 1969	23 March 1976
Egypt	14 January 1982	14 April 1982
El Salvador	30 November 1979	29 February 1980

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Equatorial Guinea	25 September 1987 (a)	25 December 1987
Finland	19 August 1975	23 March 1976
France	4 November 1980 (a)	4 February 1981
Gabon	21 January 1983 (a)	21 April 1983
Gambia	22 March 1979 (a)	22 June 1979
German Democratic Republic	8 November 1973	23 March 1976
Germany, Foderal Republic of	17 December 1973	23 March 1976
Guinea	24 January 1970	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 1903	18 November 1983
Madrgaecar	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 1901 (a)	23 June 1981
Mongolia	18 November 1974	23 March 1976
Morocco	3 May 1979	3 August 1979
Netherlands	11 December 1978	11 March 1979
New Zealand	28 December 1978	28 March 1979
Nicaragua	12 March 1980 (a)	12 June 1980
Niger	7 March 1986 (a)	7 June 1986
Norway	13 September 1972	23 March 1976

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Panama	8 March 1977	8 June 1977
Peru	28 April 1978	28 July 1970
Philippines	23 October 1986	23 January 1986
Poland	18 March 1977	18 June 1977
Portugal	15 Juno 1978	15 September 1978
Romania	9 December 1974	23 March 1976
Rwanda	16 April 1975 (a)	23 March 197
Saint Vincent and the Grenadines	9 November 1981 (a)	9 February 1982
San Marino	18 October 1985 (a)	18 January 1986
Senegal	13 February 1978	13 May 1978
Spain	27 April 1977	27 July 1977
Sri Lanka	11 June 1980 (a)	11 September 1980
Sudan	18 March 1986 (a)	18 June 1986
Suriname	28 December 1976 (a)	7 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 Socialirt Republic	12 November 1973	23 March 1976
Union of Soviet Socialirt 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 Juno 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 1964 (a)	10 July 1984

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
B. States parties to the Optional Protocol (42)		
Argentina	8 Augurt 1986 (a)	8 November 1906
Auetria	10 December 1967	10 March 1988
Barbados	5 January 1973 (a)	23 March 1976
Bolivia	12 Auguat 1982 (a)	12 November 1982
Cameroon	27 June 1984 (a)	27 September 1964
Canada	19 May 1976 (a)	19 August 1976
Central African Republic	8 May 1981 (a)	8 August 1981
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983 (a)	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 (a)	4 April 1978
Ecuador	6 March 1969	23 March 1976
Equatorial Guinea	25 September lo87 (a)	25 December 1987
Finland	19 August 1975	23 March 1976
France	17 February 1984 (a)	17 May 1964
Gambia	9 June 1988 (a)	9 September 1988
Iceland	22 August 1979 (a)	22 November 1979
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Luxembourg	18 August 1983 (a)	18 November 1983
Madagascar	21 June 1971	23 March 1976
Mauritius	12 December 1973 (a)	23 March 1976
Netherlands	11 December 1978	11 March 1979
Nicaragua	12 March 1980 (a)	12 June 1980
Niger	7 March 1986 (a)	7 June 1986
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	3 October 1980	3 January 1981
Portugal	3 May 1983	3 August 1983
Saint Vincent and the Grenadines	9 November 1981 (a)	9 February 1982
San Marfno	18 October 1985 (a)	18 January 1986

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Senegal	13 February 1978	13 May 1978
Spain	25 January 1985 (a)	25 April 1985
Suriname	28 December 1976 (a)	28 March 1977
Sweden	6 December 1971	23 March 1976
Togo	30 March 1988 (a)	30 June 1988
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 (22)

State party	Valid from	Valid until
Argentina	8 August 1986	Indefinitely
Austria	10 September 1978	Indefinitely
Belgium	5 March 1987	Indefinitely
Canada	29 October 1979	Indefinitely
Denmark	23 March 1976	Indefinitely
Ecuador	24 Auguet 1904	Indefinitely
Finland	19 August 1975	Indefinitely
Gambia	9 June 1988	Indefinitely
Germany, Federal Republic of	28 March 1979	27 March 1991
Iceland	22 August 1979	Indefinitely
Italy	15 September 1978	Indefinitely
Luxembourg	18 August 1983	Indefinitely
Netherlands	11 December 1978	Indefinitely
New Zealand	28 December 1978	Indefinitely
Norway	23 March 1976	Indefinitely
Peru	9 April 1984	Indefinitely
Philippines	23 October 1986	Indefinitely
Senegal	5 January 1981	Indefinitely

State party	Valid from	Valid until
Spain	25 January 1985	25 January 1988
Sri Lanka	11 June 1980	Indefinitely
Sweden	23 March 1976	Indefinitely
United Kingdom of Great Britain and Northern Ireland	20 May 1976	Indefinitely

ANNEX II

Membership and officers of the Human Rights Committee, 1987-1988

A. Membership

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

* Term expires on 31 December 1989.

** Term expires on 31 December 1990.

B. Officers

The officers of the Committee, elected for two-year terms at the 702nd meeting, held on 23 March 1987, are as follows:

Chairman: Mr. Julio Prado Vallejo

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

Rapporteur: Mr. Vojin Dimitrijovic

ANNEX III

Agendas of the thirty-first, thirty-second and thirty-third sessions of the Human Rights Committee

Thirty-first session

At its 758th meeting, on 26 October 1987, the Committee adopted the following provisional agenda (see CCPR/C/49), submitted by the Secretary-General In accordance with rule 6 of the provisional rules of procedure, as the agenda of its thirty-first session:

1. Adoption of the agenda.

2. Organisational 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 tho Covenant.

5. Consideration of communications under the Optional Protocol to the Covenant.

Thirty-second session

At its 787th meeting, on 21 March 1988, the Committee adopted the following provisional agenda (see CCPR/C/53), submitted by the Secretary-General in accordance with rule 6 of the provisional agenda of its thirty-second session:

1. Adoption of the agenda.

2. Organisational and other matters.

3. Action by the General Assembly at its forty-eecond session:

   (a) Annual report submitted by the Human Rights Committee under article 45 of the Covenantr

   (b) Reporting obligations of States parties to United Nations conventions on human rights.

4. Submission of reports by States parties under article 40 of the Covenant.

5. Consideration of reports submitted by States parties under article 40 of the Covenant,

6. Consideration of communications under the Optional Protocol to the Covenant.

7. Future meetings of the Committee.

Thirty-third session

At its 813th meeting, on 11 July 1988, the Committee adopted the following provisional agenda (see CCPR/C/55), submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its thirty-third session:

1. Adoption of the agenda.

2. Organisational and other matters.

3. Submission of reports by States parties under article 40 of the Covenant.

4. Reporting obligations by States parties under United Nations instruments on human rights.

5. Consideration of reports submitted by States parties under article 40 of the Covenan;.

6. Consideration of communications under the Optional Protocol to the Covenant.

7. Annual report of the Committee to the General Assembly, through the Economic and Social Council, under article 45 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/

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
A. Initial reports of States parties due in 1983 b/			
Saint Vincent and the Grenadines	8 February 1983	ROT YET RECEIVED	(1) 10 May 1984 (2) 15 May 1985 (3) 13 August 1985 (4) 15 Navember 1985 (5) 6 May 1986 (6) 8 August 1986 (7) 7 April 1987 (8) 1 December 1987 (9) 6 June 1988
Bolivia	11 November 1983	NOT YET RECEIVED	(1) 17 May 1985 (2) 5 August 1985 (3) 6 May 1986 (4) 8 August 1986 (5) 7 April 1987 (6) 1 December 1987 (7) 6 June 1988
Viet Nam	23 December 1983	NOT YET RECEIVED	(1) 22 May 1985 (2) 9 August 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 7 April 1987 (7) 1 December 1987 (8) 6 June 1988
B. Initial reports of States parties due in 1984			
Gabon	20 April 1984	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 1985 (3) 15 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 7 April 1987 (7) 1 December 1987 (8) 6 June 1988

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
	C. Initial reports of States parties due in 1985		
Togo	23 Augurt 1985	NOT YET RECEIVED	(1) 15 November 1985 (2) 6 May 1966 (3) 8 Augurt 1986 (4) 7 April 1987 (5) 1 December 1987 (6) 6 June 1988
Cameroon	26 September 1965	NOT YET RECEIVED	(1) 15 November 1985 (2) 6 May 1986 (3) 8 Augurt 1966 (4) 7 April 1987 (5) 1 December 1987 (6) 6 June 1986
	D. Initial reports of States parties due in 1987		
San Marino	17 January 1987	NOT YET RECEIVED	(1) 1 May 1987 (2) 1 December 1987 (3) 6 June 1988
Niger	9 June 1967	NOT YET RECEIVED	(1) 1 December 1987 (2) 6 June 1988
Sudan	17 Juno 1987	NOT YET RECEIVED	(1) 1 December 1987 (2) 6 Juno 1988
Argentina	7 November 1987	NOT YET RECEIVED	(1) 1 December 1987 (2) 6 June 1988
	E. Initial reports of States parties due in 1988		
Phil ippines	22 January 1986	22 March 1968	
Democratic Yemen	8 Nay 1988	NOT YE! RECEIVED	

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
F. Second periodic reports of States parties due in 1983			
Zaire	30 January 1983	NOT YET RECEIVED c/	
Libyan Arab Jamahiriya	4 February 1983	NOT YET RECEIVED	(1) 10 May 1984 (2) 15 May 1985 (3) 13 Augurt 1985 (4) 18 November 1985 (5) 6 May 1986 (6) 8 August 1986 (7) 1 May 1987 (8) 24 July 1987 (9) 1 December 1987 (10) 6 June 1988
Iran (Islamic Republic of)	21 March 1983	NOT YET RECEIVED	(1) 10 May 1984 (2) 15 May 1985 (3) 13 August 1965 (4) 18 November 1985 (5) 6 May 1986 (6) 8 August 1986 (7) 1 May 1987 (8) 24 July 1987 (9) 1 December 1987 (10) 6 June 1988
Uruguay	21 March 1983	28 July 1988	
Madagascar	3 August 1983	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 Augurt 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 1 May 1987 (7) 24 July 1987 (8) 1 December 1987 (9) 6 June 1988

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Mauritius	4 November 1983	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 Auguet 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 1 May 1987 (7) 24 July 1987 (8) 1 December 1987 (9) 6 June 1988

G. Second periodic reports of States parties due in 1984

Bulgaria	20 April 1904	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 198 (3) 18 November 1985 (4) 6 May 1986 (5) 8 Auguet 1986 (6) 1 May 1987 (7) 1 August 1987 (8) 1 December 1987 (9) 6 June 1988
Cyprur	18 August 1984	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 Auguet 1986 (6) 1 May 1987 (7) 7 August 1987 (8) 1 December 1987 (9) 6 June 1988
Syrisn Arab Republic	18 August 1984	NOT YET RECEIVED	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1.986 (6) 1 May 1987 (7) 7 August 1987 (8) 1 December 1987 (9) 6 June 1988

States parties	Date due	Date of submission	Date of written reminder(s sent to States whose reports have not yet been submitted
United Kingdom of Great Britain and Northern Ireland - dependent territories	18 Augurt 1984	25 Way 1988	-

H. Second periodic reports of States parties due in 1985

New Zealand	27 March 1985	22 June 1968	
Gambia	21 June 1985	NOT YET RECEIVED	(1) 9 Augurt 1985 (2) 18 November 1985 (3) 6 May 1986 (4) 8 August 1986 (5) 1 May 1987 (6) 1 December 1987 (7) 6 June 1968
India	9 July 1985	NOT YET RECEIVED	(1) 9 August 1985 (2) 18 November 1985 (3) 6 May 1986 (4) 8 August 1986 (5) 1 May 1987 (6) 1 December 1987 (7) 6 June 1968
Costa Rica	2 August 1905	NOT YET RECEIVED	(1) 20 November 1985 (2) 6 May 1986 (3) 8 August 1986 (4) 1 May 1987 (5) 1 December 1907 (6) 6 June 1988
Suriname	2 Augunt 1985	NOT YET RECEIVED	(1) 18 November 1985 (2) 6 May 1986 (3) 8 August 1986 (4) 1 May 1987 (5) 1 December 1987 (6) 6 June 1988
Italy	1 November 1985	25 July 1988	

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Venezuela	1 November 1985	NOT YET RECEIVED	(1) 20 November 1985 (2) 6 May 1986 (3) 8 Auguot 1986 (4) 1 May 1987 (5) 1 December 1987 (6) 6 June 1988

I. Second periodic reports of States parties due in 1986

El Salvador	28 February 1986	NOT YET RECEIVED d/	
Lebanon	21 March 1986	NOT YET RECEIVED	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987 (4) 13 August 1987 (5) 1 December 1987 (6) 6 June 1988
Dominican Republic	29 March 1986	NOT YET RECEIVED	(1) 6 May 1986 (2) 8 August 1986 (3) 1 May 1987 (4) 1 December 1987 (5) 6 June 1988
Kenya	11 April 1986	NOT YET RECEIVED	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987 (4) 1 December 1987 (5) 6 June I.988
Mali	11 April 1986	NOT YET RECEIVED	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1907 (4) 1 December 1987 (5) 6 June 1988
United Republic Of Tanzania	11 April 1986	NOT YET RECEIVED	(1) 10 May 1986 (2) 8 August 1966 (3) 1 May 1987 (4) 1 December 1987 (5) 6 June 1988
Nicaragua	11 June 1986	NOT YET RECEIVED	(1) 8 August 1986 (2) 1 May 1987 (3) 1 December 1987 (4) 6 June 1988

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Jamaica	1 August 1906	NOT YET RECEIVED	(1) 1 May 1987 (2) 1 December 1987 (3) 6 Juno 1988
Norway	1 August 1986	4 January 1988	
Sri Lanka	10 Septembe. 1986	NOT YET RECEIVED	(1) 1 May 1987 (2) 1 December 1987 (3) 6 June 1988
Morocco	31 October 1986	NOT YET RECEIVED	(1) 1 May 1987 (2) 1 December 1987 (3) 6 June 1988
Netherlands	31 October 1986	21 Juno 1908	
Panama	31 December 1986 e/	NOT YET RECEIVED	(1) 1 May 1987 (2) 13 Auguot 1987 (3) 1 December 1987 (4) 23 June 1988

J. Second periodic reports of States parties due in 1987

Jordan	22 January 1987	NOT YET RECEIVED	(1) 1 May 1987 (2) 1 December 1967 (3) 6 June 1988
Guyana	10 April 1987	NOT YET RECEIVED	(1) 1 May 1987 (2) 1 December 1987 (3) 6 June 1988
Mexico	22 Juno 1987	23 March 1988	
Contra1 African Republic	7 August 1987	NOT YET RECEIVED f/	-
Icelani	30 October 1987	NOT YET RECEIVED	(1) 1 December 1987 (2) 6 June 1988
Democratic People'8 Republic of Korea	13 October 1987	NOT YET RECEIVED	(1) 23 June 1988

States parties	Date due	Date of submission		Date of written reminder(s) sent to States whose reports have not yet been submitted
K. Second periodic reports of States parties due in 1988 (within the period under review) g/				
Saint Vincent and the Grenadines h/	8 February 1988	NOT YET RECEIVED	(1)	6 June 1988
Canada i/	8 April 1988	NOT YET RECEIVED		
Austria	9 April 1988	NOT YET RECEIVED		
Peru	9 April 1988	NOT YET RECEIVED		
Egypt	13 April 1988	NOT YET RECEIVED		
L. Third periodic reports of States parties due in 1988 (within the period under review) j/				
Czechoslovakia	4 February 1988	NOT YET RECEIVED	(1)	6 June 1988
German Democratic Republic	4 February 1988	8 July 1988		
Libyan Arab Jamahiriya k/	4 February 1988	NOT YET RECEIVED	(1)	6 June 1988
Tunisia	4 February 1988	NOT YET RECEIVED	(1)	6 June 1988
Iran (Islamic Republic of) k/	21 March 1988	NOT YET RECEIVED	(1)	6 June 1988
Lebanon k/	21 March 1988	NOT YET RECEIVED	(1)	6 June 1988
Uruguay	21 March 1988	NOT YET RECEIVED	(1)	6 June 1988
Panama k/	6 June 1988	NOT YET RECEIVED		

Notes

a/ From 26 July 1987 to 29 July 1988 (end of the thirtieth session to end of the thirty-third session).

b/ For a complete list of States parties whose initial reports are due in 1988, see CCPR/C/50.

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

d/ At the Committee's twenty-ninth session, the deadlire for the submission of El Salvador's second periodic report was set for 31 December 1986.

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

f/ Pursuant to the Committee's decision taken at its 794th meeting, the new date for submission of the second periodic report of the Central African Republi is 9 April 1989.

g/ For a complete list of States parties whose second periodic reports are due in 1988, see CCPR/C/51.

h/ The State party's initial report has not yet been received.

i/ See Official Records of the General Assembly, Fortieth Session, Supplement No. 40 (A/40/40), para. 40.

j/ For a complete list of States parties whose third periodic reports are due in 1988, see CCPR/C/52.

k/ The State party's second periodic report has not yet been received.

ANNEX V

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

States parties	Date due	Date of submission	Meetings at which considered
A. Initial reports			
Central African Republic	7 June 1982	28 October 1987	790th, 791st, 794th (thirty-rocond session)
Belgium	20 July 1984	15 December 1987	815th, 816th, 821st, 822nd (thirty-third session)
Zambia	9 July 1985	24 June 1987	772nd, 773rd, 776th, (thirty-firrt session)
Guinea	31 October 1985	12 October 1987	788th, 792nd (thirty-second session)
Philippines	22 January 1988	22 March 1988	NOT YET CONSIDERED
B. Second periodic reports			
Uruguay	21 March 1983	28 July 1988	NOT YET CONSIDERED
Ecuador	4 November 1983	14 Augurt 1985	796th-799th, 831st, 832cd (thirty-second and thirty-third sessions)
United Kingdom of Great Britain and Northern Ireland - dependent territories	18 Augurt 1984	25 May 1988	NOT YET CONSIDERED
Trinidad and Tobago	20 March 1985	19 May 1987	764th-767th (thirty-firrt session)
New Zealand	27 March 1985	22 June 1988	NOT YET CONSIDERED
Colombia	2 August 1985	24 September 1987	817th-820th, 822nd (thirty-third session)
Denmark	1 November 1985	15 July 1986	778th-781st (thirty-first session)
Italy	11 November 1985	25 July 1988	NCT YET CONSIDERED

States parties	Date due	Date of submission	Meetings at which considered
Barbadoe	11 April 1966	24 Juno 1967	823rd, 825th, 626th (thirty-third ● wrion)
Norway	1 August 1966	4 January 1966	NOT YET CONSIDERED
Portugal	1 August 1966	1 May 1967 30 Juno 1966 a/	NOT YET CONSIDERED
Japan	31 October 1966	24 December 1967	827th-831st (thirty-third session)
Australia	12 November 1966	14 May 1987	806th-809th (thirty-•ocond session)
Netherlands	31 October 1986	21 June 1966	NOT YET CONSIDERED
France	3 February 1967	18 May 1987	800th-803rd (thirty-second ● eraion)
Rwanda	10 April 1967	10 April 1967	782nd-785th (thirty-firrt session)
Mexico	22 June 1967	23 March 1986	NOT YET CONSIDERED

C. Third periodic reports

German Democratic Republic	4 February 1988	8 July 1966	NOT YET CONSIDERED

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

States parties	Date of submission	Meetings at which considered
Kenya b/	4 May 1962	NOT YET CONSIDERED
France c/	16 January 1964	800th-803rd (thirty-eecond session)
Gambia b/	5 June 1964	NOT YET CONSIDERED
Panama b/	30 July 1964	NOT YET CONSIDERED

States parties	Date of submission	Meetings at which considered

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

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

Notes

a/ Date of resubmission.

b/ At its twenty-fifth session (601st mooting), tho Committee decided to consider the report together with the State party's rocond periodic report,

c/ The report was considered together with France's second periodic report.

ANNEX VI

General comment a/ under article 40, paragraph 4, of he International Covenant on Civil and Political Pights b/ c/

General comment 16 (32) d/ (art. 17)

1. Article 17 provides Cor the right of every person to be protocted againrt arbitrary or unlawful interference with his privacy, family, home or correspondence, a8 well as against unlawful attack8 on hi8 honour and reputation. In the view of the Committee, this right is required to be guaranteed against all such interference8 and attacks whether they emanate from State authorities or from natural or legal persons. The obligation8 imposed by this article require the State to adopt legislative and other measures to give ● ↗↗□♍♦ to the prohibition against such interferences and attack8 a8 well as to the protection of this right.

2. I'n this connection, the Committee wishes to point out that, in the report8 of States parties to the Covenant, the necessary attention is not being given to information concerning the manner in which respect for this right is guaranteed by legislative, administrative or judicial authorities and in general by the competent organs established in the State. In particular, insufficient attention is paid to the fact that article 17 of the Covenant deal8 with protection against both unlavful and arbitrary interference. That moan8 that it is precisely in State legislation above all that provision must be made for the protection of the right Bet forth in that article. At present, the report8 either ray nothing about such legislation or provide insufficient information on the subject.

3. The term "unlawful" mean8 that no interference can take place except in cases envisaged by the law. Interference authorised by State8 can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant.

4. The expression "arbitrary interference" is also relevant to the protection of the right provided for in article 17. In the Committee's view, the expression "arbitrary interference" can also extend to interference provided for under the law. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objective8 of the Covenant and should be, in any event, reasonable in the particular circumstances.

5. Regarding the term "family", the objective8 of rho Covenant require that, for the purposes of article 17, this term be given a broad interpretation to include all those comprising the family a8 understood in the ● ociety of the State party concerned. The term "home" in English, "manzel" in Arabic, "zhichái" in Chinese, "domicile" in French, "zhilishche" in Russian and "domicilio" in Spanish, a8 used in article 17 of the Covenant, is to be understood to indicate the place where a person resides or carries out his usual occupation. In this connection, the Committee invites States to indicate in their report8 the meaning given in their society to the terms "family" and "hone".

6. The Committee considers that the report8 should inc. ide information on the authoritiea and organs set up within the legal system of the State which are competent to authorize interference allowed by the law. It is also indispensable

to have information on the authorities which are entitled to exercise control over such interference with strict regard for the law, and to know in what manner and through which organs persons concorned may complain of a violation of the right provided for in article 17 of the Covenant. In their reports, States rhould make clear the extent to which actual practice conforms to the law. State party report8 rhould also contain information on complainta lodged in respect of arbitrary or unlawful interference, and the number of any finding8 in that regard, as well as the remedies provided in ● uCh cases.

7. As all persons live in ● ocioty, the protection Of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual'8 private life, the knowledge of which is ● aaontial in the interests of society as understood under the Covenant. Accordingly, the Committee recommends that State8 rhould indicate in their reports the laws and regulation8 that govern authorised interference8 with private life.

6. Even with regard to interferences that conform to the Covenant. relevant legislation murt specify in detail the precise circumstances in which such interferences may be permitted. A decision to make use of such authorised interference must be made only by the authority designated under the law, and on a case-by-case basis. Compliance with article 17 require8 that the integrity and confidentiality of correspondence rhould be guaranteed de jure and de facto. Correspondence rhould be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, whether electronic or otherwise, interception8 of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited. Searches of a person's home rhould be restricted to a search for necessary evidence and should not be allowed to amount to harassment. So far as pereonal and body searches are concerned, ● ffoctivo measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being ● ubjOCted to a body Bsarch by State officials, or medical personnel acting at the request of the Stats, should only be examined by persons of the same sex.

9. States parties are under a duty themselves not to engage in interforencea inconsistent with article 17 of the Covenant and to provide the legislative framework prohibiting ouch acts by natural or legal persons.

10. The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of person8 who are not authorised by law to receive, process and use it, and is never used for purposes incompatible with the Covenant. In order to have the most effective protection of his private life, every individual should have ths right to ascertain, in an intelligible form, whether, and if so, what personal data is stored in automatic data files and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provision6 of the law, every individual should have the right to request rectification or elimination.

11. Article 17 affords protection to personal honour and reputation and States are under an obligation to provide adequate legislation to that end. Provision must

also be made for ● voryone ● ffoctively to be able to protect himself against any unlawful attacks that do occur and to have an ● ffective remedy against those responsible. States parties rhould indicate in their reports to what ● xtont the honour or reputation of individuals is protected by law and how this protection ix achieved according to their legal system.

Notes

a/ For the nature and purpose of the gonoral 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 gonoral comments and their use, see ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), paras. 541-557. For the text of the gonoral comments already adopted by the Committee, see ibid., Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII; ibid., Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V; ibid., Thirty-eighth Session, Supplement No. 40 (A/38/40), annex VI; ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), annex VI; ibid., Fortieth Session, Supplement No. 40 (A/40/40), annex VI J and ibid., Forty-first Session, Supplement No. 40 (A/41/40), annex VI. Also issued ● eparatsly in documents CCPR/C/21 and Add.1-5/Rev.1.

b/ Adopted by the Committee at its 791rt meeting (thirty-second session), hold on 23 March 1988.

c/ Also issued separately in document CCPR/C/21/Add.6.

d/ The number in paronthesis indicator the session at which the general comment was adopted.

ANNEX VII

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights

A. Communication No. 159/1983, Cariboni v. Uruguay (Views adopted on 27 October 1987 at the thirty-first session)

Submitted by: Ruth Magri de Cariboni (alleged victim's wife) - later joined by Raúl Cariboni as co-author

Alleged victim: Raúl Cariboni

State party concerned: Uruguay

Date of communication: 18 October 1983 (date of initial letter)

Date of decision on admissibility: 22 October 1985

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

Meeting on 27 October 1997,

Having concluded its consideration of communication No. 15911983, submitted to the Committee by Ruth Magri de Cariboni and Raúl Cariboni under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The original author of the communication (initial letter dated 18 October 1.983 and further submission dated 10 July 1984), Ruth Magri de Cariboni, is a Uruguayan national residing in Uruguay. She submitted the communication on behalf of her husband Raúl Cariboni da Silva, a Uruguayan national born on 22 December 1930, former profesoor of history and geography, who was detained in Uruguay from 1973 until 13 December 1984. He joined as co-author of the communication after his release (letter of 26 August 1985).

2.1 Ruth Magri de Cariboni states that her husband was arrested on 23 March 1973 and alleges that he was subjected to torture. Confessions obtained under torture were allegedly later used in the penal proceedings leading to his conviction. On the fourth day after his arrest he suffered a heart attack, Subsequent to the entry into force of the Optional Protocol for Uruguay on 23 March 1976, Mr. Cariboni was allegedly again subjected to torture (in April and May 1976) and suffered a second heart attack.

2.2 Mrs, Cariboni alro states that on 4 May 1973 Mr. Cariboni's case was submitted to the military judge of first instance, who ordered his preventive detention. He was kept incommunicado for 42 dayr with no access to counsel. On 25 May 1973, he was transferred to Libertad Prison. On 4 May 1973, Mr. Cariboni was charged with "subversive association" and "attempts against the Constitution in the degree of conspiracy, followed by preparatory acts". Proceedings against him lasted for six years and the Supreme Military Tribunal sentenced him in 1979 to 15 years' imprisonment on the basis of confessions that had been extracted by torture. No further remedies were available to Mr. Cariboni following the sentence of the Military Tribunal, since the extraordinary review by cassation can only examine errors of law, but not reopen the case to verify the facts, Mrs. Cariboni draws attention to the irregularities in the proceedinga which were instituted against Mr. Cariboni by thb military courts, in which violationa of his right to a fair and public hearing allegedly took place with regard to his right to an independent and impartial tribunal, since military courts during the years of military dictatorship were neither independent nor impartial, his right to be presumed innocent until proven gui 1 ty, because he was presumed guilty as of the arrest and treated as such, his right to be tried without undue delay, because the sentence was pronounced six and a half years after the arrest, his right to counsel, because he had no legal assistance while he was incommunicado, and the sentence was based on confessions obtained under torture during that period and his right not to be compelled to testify against himself or to confess guilt, since he was tortured to obtain a confession against himself in 1973 and in 1976. Mrs. Cariboni states that all these alleged violation6 of his right to a fair hearing made possible his arbitrary 15-year sentence.

2.3 Mrs. Cariboni further states that the conditions under which her husband served his sentence were cruel, inhuman and degrading. The prison was used exclusively for political offenders and it was administered by military personnel on short-term service and not by specialised personnel. Prisoners remained in their small cells for 23 hours a day; the one-hour "recreation" was allegedly efforded arbitrarily and in an unpredictable manner. Prisoners were allowed to read only certain books and many had been withdrawn or even destroyed (books donated by the International Committee of the Red Cross (ICRC) were openly burnt in February 1983). Visits from relatives were frequently cancelled arbitrarily] prisoners were isolated from the outside world and kept under constant psychological pressure. Allegedly, the purpose of detention in Libertad Prison was thus not to rehabilitate the prisoner but to break him physically and psychologically. The goal was to depersonalise prisoners, to keep them in uncertainty, to deprive them of routine a. an orderly schedule of activities, to intimidate them by unannounced raids on their cells.

2.4 Mrs. Cariboni expressed deep concern about her husband'r: state of health. She mentioned that he had suffered two heart attack6 during torture. He was examined in December 1976 at the Central Hospital of the Armed Forces and the medical boatd concluded that only heart surgery could save him. He was examined again in December 1978 and in 1982 nt a private clinic and advised to have special examinations (phonocardiograms) every six months, but such examinations were not made possible in the prison. Mrs. Cariboni also stated that her husband was listed by ICRC among the prisoners in the most precarious state of health, after visits made in 1980 and in 1983, and that he was in danger of dying suddenly unless he received adequate medical attention and could enjoy conditions of life different from those he was subjected to in prison.

2.5 Mrs. Cariboni indicated that the same matter had been submitted to the Inter-American Commission of Human Right8 (IACHR) but that the case had been withdrawn by letter of 23 August 1983. The secretariat of IACHR confirmed that the case of Raúl Cariboni da Silva was not before that body.

3.1 By it8 decision of 22 March 1984, the Working Group of the Human Right8 Committee decided that Mrs. Cariboni was justified in acting on behalf of her husband 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 provide the Committee with information on the state of health of Raúl Cariboni da Silva.

3.2 Under cover of a note dated 6 February 1985, the State party furnished the Committee with a list of name8 of persons who had been released from prison since Augurt 1984. The list contained the name of Mr. Cariboni da Silva, and gave the date of hi8 release as 13 December 1984. No further information has been received from the State party concorning hi8 case.

4. By a letter of 26 Augurt 1985, the alleged victim himself, Raul Cariboni da Silva, requerted the Human Right8 Committee to continue consideration of the case against the State of Uruguay, although the current Government of Uruguay, which took office on 1 March 1985, should not be held morally responsible for the violations of the International Covenant on Civil and Political Right8 which he had suffered. He confirmed the information submitted by hi8 wife, but added the following detail8 and clarification8 concerning his trial and treatment while in detention:

> "In the communication it is stated that I was apparently convicted on the basis of statements extractsd from me under torture in Mechanised Cavalry Regiment No. 4, the unit where I was detained. I confirm this, with the following clarification. In the light of the statements in question, the Office of the Prosecutor requerted a sentence of nine years' imprisonment and then, on the basis of the same charges, without further judicial investigation, without any further charges and hence without further evidence, I was sentenced on first instance to 13 years' imprisonment and on final instance by the Supreme Military Court, to 15 years' imprisonment. Of this 15 years' sentence, I served 11 years and 8 month8 in prison.
>
> "It is thus apparent that, on the same charge, I was sentenced to six years more than the penalty requested by the Office of the Prosecutor.
>
> "From the foregoing, it will be clear that the effect8 of the violations of human right8 prior to the entry into force of the International Covanant on Civil and Political Rights in connection with my arrest, interrogation and trial in March-April 1973 extended well beyond the date of the entry into force of the Covenant. The legal irregularities mentioned (increasing the sentence from 9 to 15 years' imprisonment without any further evidence) occurred subsequent to the entry into force of the Covenant: the sentence on first instance was handed down in 1977 and the sentence on second instance in 1979.
>
> "The statements which were extracted from me under torture do not include any reference to a classifiable offence or any act of violence and relate

solely to participation in political, ideological and trade-union activities conridered as offences by virture of the rules enacted under the state of emergency and applied during that period by the military courts. Thus, even under torture, not a shred of evidence was obtained to substantiate the penalty requeated by the Office of the Prosecutor and still less the heavier penalties handed down by the courts of first and final instance,

"With regard to the torture to which I was subjected subsequent to the entry into force of the International Covenant on Civil and Political Rights, I wish to state the following:

"On 4 April 1976, I was unexpectedly taken from Libertad Prison early in the morning. My head was covered with a hood and I was taken, lying on the floor of a military vehicle, to the headquarters of a military unit which I am now able to identify as one of the places of interrogation of the . Antisubversion Commandos Organisation (OCOA) at the barrack8 of Mechanised Infantry Battalion No. 13, at Aveaida de las Inetruccionee No. 1933,

"There I was kept hooded and sitting up straight day and night ('plantón de silla' or 'cine', in the jargon of the torturers) until 11 April 1976. I was not allowed to move, and the little food I was given had to be eaten by kneeling on the floor and using the same chair as a table.

"We were given the food - usually a very hot clear soup with hardly anything in it - in a tin bowl and nothing else, so that we had to use our fingers. Under the hood, I had been blindfolded with towelling material which made my eyes inflamed and purulant, something that continued for a number of days even after the blindfold was removed when I left OCOA on 11 April 1976. My wrists were bound with wire all the time and I was taken only twice a day to the bathroom.

"The only opportunity I had to eleep was on the cement floor when I fell unconscious from the chair, fainting from exhaustion or overcome by sleep. I was roueed with kicks, even to my head, and only when I fell down repeatedly, thus showing that I had no strength to stay seated in the chair, was I permitted to lie on the floor. I was then allowed to sleep, for periods I cannot estimate precisely. I was not given any regular medical care, and was watched over only by a male military nurse who was on guard all the time.

"I fainted on several occasions and for two of them I have definite reason to believe I was injected with substances about which I was not told anything. There is no doubt that I was given hallucinogenic substances, but I do not know whether this was done orally (with the food) or by injection. Drugs of this kind were certainly used, because their effects are clearly perceptible.

"The method chiefly used in my case was mental torture. For many hours at a time I could hear piercing shrieks which appeared to come (and perhaps did come) from an interrogation under torturer the shrieks were accompanied by loud noises and by music played at a very high volume. I was repeatedly threatened with torture and on several occasions I was abruptly transferred to other places, amid threat6 and ill-treatment.

"I loot any notion of time because I was hocded for such a prolonged period, and it was impossible ta keep count of day or night. I suffered a feeling of opprerrion and persistent pain in the chart. On two occasions, I experienced suffocation and acute pain in the chest snd shouted out to the guard. The result was that I was made to swallow pills, but was still kept sitting up straight, with the hood on.

"On one occasion, I fainted wlth breathing trouble; while I wae semi-unconscious and in acute pain, I realized I wae being given an injection and I heard someone cay that it was a 'heart attack'. After that incident (perhaps on the Thurrdsy or Friday of that week), I was allowed to lie longer on the floor, but after auscultation by somebody (as I said, the hood was never removed), I wae taken back to the chair.

"Two, perhape three day8 later, I was sent to the prisoner's depot at Infantry Battalion No. 4, which had it8 htadquartere in Colonia; there I was examined, on admission to the depot, by the unit's Army Medical Corps doctor. He ordered that I should be provided with pillows and that my hood should be lifted while I was in the cramped space (a stable box without doors) where I wae to etay for approximately one and a half months, after which I wae once again transferred to Libertad Prison. I wae taken back to the prison at the end of May 1976."

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether the communication is admissible under the Optional Protocol to the International Covensnt on Civil and Political Rights.

5.2 The Human Rights Committee therefore ascertained, as required under article 5, paragraph *2 (a),* of the Optional Protocol, that the same matter wae not being examined under another procedure of international investigation or settlement. As regard8 the requirement of prior exhaustion of domestic remedies, the Committee concluded, based on the information before it, that there were no further domestic remedies that the author could have resorted to in the particular circumstance6 of his case.

6. On 22 October 1985, the Committee therefore decided that the communication was admieoible in so far ae it related to events said to have occurred on or after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay.

7. In its submission under article *4,* peragraph *2,* of the Optional Protocol, dated 24 July 1986, the new Government of the State party observed!

"1. The unfortunate events which occurred in Uruguay In 1973 led to a breakdown in the rule of law. This state of affairs lasted until the year 1985, when the authorities elected democratically *in 1984* took *over.*

"2. On 8 March 1985, the democratic Government of Uruguay promulgated Act No. 15,737 for the purpose of ensuring national reintegration and peace. In this context, *among* other measures, a broad and generous amnesty was promulgated in respect of all political offences, as well as all ordinary military offences connected with political offences, committed since 1 January 1962.

"3. Pursuant to the above-mentioned Act, prisoners covered by it were released, budgetary allocations for prisons were cancelled, all restrictive measures still pending with regard to the property of the amneatied peraons wore lifted and all sums of money deposited as bail were returned.

"4. As for public officials dismissed on ideological, political or trade-union grounds, or in a purely arbitrary fashion, Act No. 15,783 of 28 November 1985 acknowledged their right to be reinstated in their respective posts, with restoration of their career rights.

"5. Since neither the original author of the communication, Mrs. Ruth Magri de Cariboni, nor Mr. Raúl Cariboni da Silva, seem to have appeared before the democratic authorities of Uruguay to claim their rights, it would be appropriate for the person concerned to be informed that all the procedures provided for in the Constitution and laws of the Republic of Uruguay are available to him for the submission of his case."

8. The State party's submission, together with the text of Act No. 15,737 were forwarded to the author for comments on 4 September 1986. No further comments from the author have been received.

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, paragraph 1, of the Optional Protocol, hereby decides to baae its views on the following facts, which appear uncontested.

9.2 Raúl Cariboni was arrested on 23 March 1973, charged with "subversive association" and "attempts against the Constitution in the degree of conspiracy, followed by preparatory acts". He was forced to make a confession, which was later used as evidence in the military penal proceedings against him. Proceedings against him lasted six years. Although the prosecutor requested a sentence of nine years' imprisonment, he was sentenced in 1979 to 15 years' imprisonment by the Supreme Military Court, partly on the basis of his forced confession. He served 11 years and eights months of his sentence before his release on 13 December 1984. From 4 to 11 April 1976, he was subjected to torture for the purpose of extracting information with regard to his ideological convictions, political and trade-union activities. His treatment during detention at Infantry Battalion No. 4 and at Libertad Prison was inhuman and degrading.

9.3 In formulating its views, the Committee has taken account of the change of government in Uruguay on 1 March 1985 and the enactment of special legislation aimed at tho restoration of rights of victims of the previous military régime.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee, in so far as they 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 7, because Raúl Cariboni was subjected to torture and inhuman and degrading treatment;

Article 10, paragraph 1, because he was subjected to inhuman prison conditions until his release in December 1984; and

Article 14, parsgraph 1, paragraph 3 (c) and paragraph 3 (g), because he was compelled to testify against himself and was denied a fair and public hearing, without undue delay, by an independent and impartial tribunal.

11.1 The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy the violations which Raúl Cariboni has suffered and, in particular, to grant his adequate compensation.

Il.2 The Committee expresses its appreciation for the measures taken by the State party since March 1985 to ensure observance of the Covenant and co-operation with the Committee.

B. Communication No. 161/1983, Herrera Rubio v. Colombia (Views adopted on 2 November 1987 at the thirty-first session)

Submit dby: Joaquin Herrera Rubio

Alleged victim: The author and his deceased parents, José Herrera and Emma Rubio de Herrera

State party concerned: b i a

Date of communication: 1 December 1983 (date of initial letter)

Pate of 'decision on @JEW-: 26 March 1985

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

Meeting on 2 November 1987,

Hav' concluded its consideration of communication No. 16111983, submitted to the Committee by Joaquín Herrera Rubio under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication (initial letter dated 1 December 1983 and subsequent letter dated 4 October 1986) is Jaoquín David Herrera Rubio, born on 3 December 1958, a Colombian citizen, living in Bogota, Colombia. He submits the communication on his own behalf and in respect of his deceased parents, José Joaqin Herrera and Emma Rubio de Herrera.

1.2 The author alleges that on 17 March 1981 he was arrested in Cartagena del Chairá, Colombia, by members of the armed forces, taken to a military camp and subjected to torture in an attrmpt to extract from him information about a guerrilla movement. The author describes in detail the tortures to which he was allegedly subjected, including being hanged by his arms and beaten until ho lost consciousness and being thrown into tho river Caguán inside a sack until ho nearly drowned. Ho states that he did not have any information concerning the movement, but that his interrogators kept on insisting and ho was severely beaten. After three days he was transferred to the military barracks of Doncello and again subjected to torture ("submarine", "hanging" and beatings). In addition, ho was told that his Parents would be killed if he refused to sign a confession prepared by his captors. After several days he was moved to the military barracks of Juananbú in the city of Florencia. He was again beaten (the name of the responsible officer is given) and threatened with him parents' possible death. Ha was then taken before Military Tribunal No. 35 and allegedly forced to sign a confession, pleading guilty, inter alia, of having kidnapped a man called Vicente Baquero who later declared that he had never been kidnapped.

1.3 On 5 April 1981, the author was taken to the prison in Florencia and informed that his parents had been killed. At his request, he was immediately brought again before the military judge, before whom he retracted his "confession" and donouncod the death threats received earlier concerning his parents. His new declaration sllegsdly disappeared from his dossier.

1.4 The author states that on 13 December 1982 he was released from prison dus to Amnesty Law No. 35 of 1982 concerning political detainees.

1.5 With regard to his parents' deaths, the author states the following:

> His father, José Joaquin Herrera, 54 years old, was treasurer of the Council of Community Action (Junta de Acción Comunal) in the village of Gallineta belonging to the municipality of Doncello; his mother, Emma Rubio de Herrera, 52 years old, had been elected town Councillor for the Frente Democrático; they were both farmers. In February 1981, his parents' home was searched by approximately 20 members of the armed forces and the author's father was ordrred to follow them. He returned one hour later bearing signs of beatings.
>
> One week later the same group, part of the Battallón Colombia, led by a captain, a lieutenant and a corporal (their names are given), detainod his father for soveral houro during which he was subjected to torture. The same happened the following day.
>
> On 27 March 1981, at 3 a.m., a group of individuals in military uniforms, identified as members of the "counter-guerrilla", arrived at the home of tho author's parents and ordered his father to follow them. When his mother objected, she was also obliged to follow them.
>
> The author's brothers reported the disappearance of their parents immediately afterwards to ths Tribunal of Doncello. One week later they were called by the authorities of Doncello to identify the bodies of their parents; their father's body was decapitated and his hands tied with a rope.

1.6 With regard to the question of exhaustion of domestic remedies, the author states that from prison he wrote to the President of Colombia, to t he Office of the

Attorney-General and to the responsible military authorities, but never received a reply. He further states that the copies which he had kept of these letters were removed from his cell by the prison authorities during a search. He adds that all incidents complained of occurred in a region under military control where violations of the rights of the civilian population have allegedly become general practice.

1.7 The author claims that his communication reveals violations of articles 6, 7, 9, 10 and 17 of the International Covenant on Civil and Political Rights. He indicates that the present case is not being examined under another procedure of international investigation or settlement.

2. By its decision of 22 March 1984, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. The Working Group also requested the State party to provide the Committee with (a) copies of any court orders or decisions relevant to the case of Joaquin David Herrera Rubio and (b) copies of the death certificates and medical reports and of the reports of whatever inquiry was held in connection with the deaths of José Joaquin Herrera and Emma Rubio de Herrera.

3. No reply was received from the State party in this connection. The time-limit established by the Working Group's decision expired on 15 July 1984.

4. The Committee found, on the basis of the information before it, that is was not precluded by article 5, paragraph 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 effective domestic remedies which had not been exhausted. Accordingly the Committee found that the communication was not inadmissible under article 5, paragraph (b), of the Optional Protocol.

5. On 26 March 1985 the Human Rights Committee therefore decided:

(a) That, in addition to acting on his own behalf, the author was justified in raising the case of his deceased parents, José Joaquin Berrera and Emma Rubio de Herrera;

(b) That the communication was admissible;

(c) That in accordance with article 4, paragraph 2, of the Optional Protocol, the State party should be requested to submit to the Committee, within six months of the date of the transmittal to it of the current decision, written explanations or statements clarifying the matter and the remedy, if any, that might have been taken by it;

(d) That the State party again be raquested to furnish the Committee with (i) copies of any court orders or decisions,taken against Joaquin David Herrera Rubio and (ii) copies of the death certificates and autopsy reports and of the reports of whatever inquiry was held in connection with the deaths of José Joaquin Rerrera and Rmma Rubio de Herrera.

6.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 11 August 1986, the State party indicate6 that the killings of José Herrera

and Emma Rubio de Herrera were duly investigated and that no evidence was found to support charger against military personnel. The investigation was therefore closed by order of the Attorney-General delegate for the Armed Forces, dated 15 Auguut. 1984. In a ● ubrequont letter of the Attorney-General delegate for the Armed Forcer to the Colombian Attorney-General, dated 20 October 1985, it is stated that the dossier was closed:

> "... because it was established that no member of the armed forcer took part in those events. The report includes telegram No. 5047, dated 24 May 1984, signed by the commanding officer of the Ninth Brigade with headquarter8 in Neiva, etating that the Honourable Disciplinary Court had on 29 March 1984 ascribed jurisdiction to investigate these murders to the Third High Court of Florsncia (Caquetá) which, by telegram No, 157 of 18 September 1988 addressed 'to this office, reported that proceedings to date had revealed no involvement of any member of the armed forces and that the dossier had been temporarily closed in conformity with article 473 of the Code of Criminal Procedure."

6.2 'The State party also forwarded the text of a decision of the Penal Chamber of the Superior Court of Florencia, dated 18 February 1.983, finding, after a judicial investigation lasting from 24 September 1982 to 25 January 1983, that the killings had bean perpetrated by armed persons, without, however, being able to determine to which group they belonged. This decision also quotes the testimony of the author's brother Luio Herrsra Rubio, who rtatad that his parents had no enemies in the community and that they had only had problems with members of the Colombian army, who had repeatedly searched their home and detained his father on a previous occasion.

6.3 With re6 ect to the criminal proceedings instituted against the author and to the author's allegations that he had been subjected to torture, the Attorney-General Delegate for the Armed Forces stated that:

> "The Military Court of Criminal Investigation No. 37 [hereinafter: Court No. 37] attached to the Juanabú Battalion (Florsncia), acting on a report dated 17 February 1981, signed by the officer commanding the Colombia Airborne Battalion, opened on 18 February 1981 a criminal investigation againot Alvaro Hurtatis and others on the charge of rebellion (involvement in the PARC (Fuerzas Armadas Rnvolucionarias de Colombia) rebel group), in connection with events that occurred in Caquetá in the years 1979, 1980 and 1981. During thie investigation, the accused's etatement given on 3 April 1981 implicated Joaquín Herrera Rubio (alias El Guara), who was arrested by a patrol of the Colombia Battalion on 17 March 1981 in Cartayena del Chiará (Caquetá). By decision dated 8 April 1981, Court No. 37 ordered the pro-trial detention of Joaquín Herrsra Rubio on the charge of rebellion. In applications dated 7 May and 11 June 1981, Joaquín Herrera Rubio requested the permission of Court No. 37 to make an addition to his unsworn statement. In this etatsment to the Court on 15 June 1981 he gave an account of the tortures to which he had been subjected by members of the Colombia Battalion. The charges of torture were also made on oath during the inquiry and Court No. 3'1 also received a sworn statement about them during its proceedings. Joaquín Herrera Rubio stated that the torture described in the reports of the Office of the Attorney-General of the nation and in those in the possession of the United Nations Human Rights Committee were inflicted on him in the Colombia Battalion, that he did not know the names of the soldiers who tortured him since they blindfolded him first, that he brought no charges

against the Military Court but that he did bring charger against military personnel, namely, Captain Péres and Lieutenant Moncaloano.

"By decision dated 24 Juno 1982, the Command of the Ninth Brigade - the Court of First Instance - referred tha proceedings to the Florencia High Court (Allocation Division) as having jurisdiction. By prior decision No. 44 dated 20 April 1981, issued by the Command of the Ninth Brigade, Joaquín Herrera Rubio had boon sentenced to three years' imprisonment for breach of article 10, paragraph 2, of Decree 1923/78.

"The Florancia High Court, according to the Photocopy of the register annexed, by court order dated 23 June 1983,* declared the amnesty applicable to the investigation by virtue of the provisions of Act 35/82 and consequently ordered that all proceedings against Joaquin Herrera Rubio and others on the charges of rebellion, extortion and aggravated theft should be stayed. The court decision . . . made no reference to and did not investigate the torturing of Joaquin David Hrrrera Rubio."

6.4 On 21 March 1986, the Attorney-General Delegate for the Armed Forces decided not to open a formal investigation with regard to the allegations of torture in the author's case. The decision reads in part:

"Mr. Herrera Rubio complained of the alleged tortures to Court No. 37 in additions, made on 15 June 1981 and 28 October 1981, to his statement a6 an accused person. These statements assert that, when he was arrested on 17 March 1981, army personnel from the Doncsllo Military Bass and the Cartagena del Chair6 Military Bare tortured him, but as they blindfolded him before doing so, he could not identify them.

"The Florencia regional office of the Attorney-General was instructed to take a further statement from the complainant but it was not possible to discover his whereabouts in the Department of Caquetá; it was stated that he was possibly living in Puerto Lleras.

"Inquiries were ordered to be made at the Municipal Prison into the physical condition of the complainant on his arrival there. The medical officer in charge of prisons under the HighjCourt states that, since medical records for each inmate had begun to be kept only from tha lest three months of 1983, he cannot oubstentiate the allegation.

"On the index card kept by the legal counsel's office, relating to Horrors Rubio hold on a charge of rebellion, there is no record that he entered the prison with marks of torture or injuries. It states that he entered the prison of the judicial district on 11 Augurt 1981.

"In view of the difficulties of obtaining evidence about events which happened five years ago, this office can take a decision only on the basis of the account given by the alleged victim to Court No. 37 in 1981.

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* The author states in paragraph 1.4 above that. ho had already been released from imprisonment on 13 December 1982.

"His statement on the alleged acts of torture are not credible in view of the fact that three months elapsed from the time of the alleged ill-treatment before the complainant reported it to the Court. On witnessing his statement as an accused person made on 3 April 1981, this office put on record that 'the accused appeared normal physically and mentally , . . ' ; the person in question under investigation for rebellion had been sentenced for illegally carrying weapons. Finally, his charges contain no specific details."

7.1 In his comments, dated 4 October 1986, the author dismisses the State party's response a8 "a prime example of the various legal rubter fuge; used by the armed forcer, with the collusion of the other branches of government, Lo safeguard their impunity ".

7.2 The author refuter the State party's arguments in the following way:

"In its reply concerning the murder of my parents, the Colombian Government totally absolves the armed forces from blame, claiming that the fact of wearing military uniform is in no way proof of the presence of members of the armed forces and insinuating that the crime might have been committed by the FARC guerrilla group.

"This reply is completely at odds with the facts of the case, as reported to the committee; members of the armed forces repeatedly searched the home of my parents, tortured my father and repeatedly told me, while I was in prison, that they would kill my parents, as indeed they did.

"Tho complaint submitted to the committee gives the names of various serving members of the armed forceo responsible for the searches, torture and threate, yet the Attorney-Genaral has nothing to say on tho subject.

"...

"The insinuation that a guerrilla group such as FARC carried out these killings is absolutely inconsistent with other information in the case. One of the documents attached by the Attorney-General states that I was charged with rebellion because of my alleged links with FARC. It also notes that my mother was a councillor for the Democratic Front, a political organisaton enjoying FARC support in the region. It would therefore be absurd to imagine that PARC could have committed this crime, when it thereby have been killing its own sympathisers.

"Regarding the torture of which I was a victim, the Attorney-General states that the investigation into this matter was also closed because, inter alia:

"At the time, prisoners were not given a medical examination;

"There are difficulties in obtaining evidence about events which happened five years ago;

"It was only three months after the ill-treatment that the injured party decided to report it.

"The Attorney-General fails to explain why the petitions written by me in prison and addressed to the Office of the President of the Republic, the office of the Attorney-General and the Ninth Army Brigade went unanswered.

"

"The Attorney-general would also appear to be unaware of the psychological presure on a prisoner who has been subjected to cruelty and hsrasnment and iacke any means of defence. Such prieonere often decide not to file a complaint so as to save themselves or their families from further and even more cruel acts in retaliation. So it was with me, in deciding to report the torture and threats which I had suffered only when I learned that my parents had been killed by the armed forces and could not therefore be eubjectsd to further criminal reprisals.

"Lastly, in order to underetand the nature of this crime, the Committee needs to have some idea of its context.

"In 1981, the Department of Caquetá was the scene of a military counter-insurgency operation under cover of which all kinds of crimes were committed.

"Since this is a semi-forest area somewhat isolated from the centre of the country and with poor communications, this operation was largely passed over in silence by the media.

"Most villager in the area were subjected to stringent controls by the armed forces on the supposition that every peasant was 'collaborating with the guerrillas'. Moet of the population suffered searches, intimidation, plunder of their household goods, crops and cattle, and cruel, inhumen and degrading treatment; toreure was widely and systematically practised and there were numerous disappearances and killingo. Many peaoanto were arrested and then taken by military helicopter to villages where they were not known; there they were killed and their bodies thrown on to a road or into a river (the number of persons killed may approach 1,000).

"This array of premeditated crimes had the full backing of the various branches of Government. That is why domestic complaint6 were useless and all these crimes have so far gone aboolutely unpunished."

8 1 The author's comments were tranomitted to the State party on 27 November 1986.

6.2 In *view of* the *conflicting* statements by the parties, the Working Group of the Human Rights Committee, at a special session in December 1986, decided to request more detailed information from the State party. By note verbale of 18 December 1986, the following specific questions were formulated8

(a) What investigations have been undertaken with regard to those military officers who have been specifically named by the author and accused 04 having committed torture, carried out raids and made threats7

(b) What investigations aro now being carried out with regard to the deaths of the parents of Mr. Herrera Rubio and with regard to his allegations of torture?

(c) Have charges bean brought against anyone7

9.1 Under cover of a note dated 22 January 1987, the State party forwarded copies of varioua document6 relating to the investigation of the author'6 case, but did not provide specific answers to the questions posed by the Working Group. No reference was made to the specific issues raised by the author in hi6 comment6 of 4 October 1986.

9.2 The document6 forwarded by the State party appear to confirm that no further investigations have boon undertaken or are pending in the Herrera case.

9.3 By a further letter, dated 8 July 1907, the Ministry of Foreign Affair6 of Colombia confirmed that the investigations in the author'6 case have been concluded and that no legal proceeding6 against mlitary personnel could be initiated because of lack of sufficient evidence. The State party therefore requests the committee to consider the explanation6 and statements already submitted in adopting its views in the case.

10.1 The Human Rights Committee, having examined the present communication in the light of all the information made available to it by the parties a6 provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following fact6 and considerations.

10.2 Joaquín Herrera Rubio was arrested on 17 March 1981 by members of the Colombian armed forces on suspicion of being a "guerrillero". He claims that he was tortured ("submarine", "hanging" and beatings) by Colombian military authorities who also threatened him that unless he signed a confession hi6 parent6 would be killed. On 27 March 1981, persons in civilian clothe6 and others wearing military uniforma, identifying themselves a6 members of the counter-yuerrilla, came to the home of the author'6 pnrente and led them away by force. One week later the bodies of José Herrera and Emma Rubio de Herrara were found in the vicinity. At that time the District of Caquetá is reported to have been the scene of a military counter-insurgency operation, during which most villages in the area were subjected to stringent control6 by the armed forces. The State party has shown that a judicial investigation of the killings was carried nut from 24 September 1982 to 25 January 1983, and claims that is was established that no member of the armed forces had taken part in the killinga. With respect to the author's allegations of torture, the State party contends that they are not credible in view of the fact. that three month6 elapsed from the time of the alleged ill-treatment before the author'6 complaint was brouyht to the attention of the Court.

10.3 Whereas the Committee considers that there is reason to believe, in the light of the author'6 allegations, that Colombian military persons bear responsibility for the deaths of José Herrera and Emma Rubio de Herrera, no conclusive evidence ha6 been produced to establish the identity of the murderers. In this connection ths Committee refers to it6 general comment No. 6 (16) concerning article 6 of the Covenant, which provides, inter alia, that States parties should take specific and effective measures to prevent the disappearance of individuals and establish effective facilities and procedure6 to ivestigate thoroughly, by an appropriate impartial body, cases of missing and disappeared persons in circumstances which may involve a violation of the right to life. The Committee has duly noted the State party's submission6 concerning the investigations carried out in this case, which, however , appear to have been inadequate in the light of the State party's obligations under article 2 of the Covenant.

10.4 With regard to the author's allegationo of torture, the Committee notes that the author har given a very detailed descripton of the ill-treatment to which he was subjected and has provided the names of members of the armed forces allegedly responsible. In this connection, the Committee observes that the initial investigations conducted by the State party may have been concluded prematurely and that further investigations were called for in the light of the author's submission of 4 October 1986 and the Working Group's request of 18 December 1986 for more precise information.

10.5 With regard to the burden of proof, the Committee hart already eetabliehed in other cases (for example, Nos. 30/1978 and 85/1981) a/ that this cannot rest alone on the author of the communications, 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. In the circumetanceo, due weight must be given to the authors' allegations. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covsnant made against it and its authorities, and to furnish to the Committee the information available to it, In no circumstances should a State party fail to investigate fully allegations of ill-treatment when the person or persons allegedly responsible for the ill-treatment are identified by the author of a communication. The State party has in this matter provided no precise information and reports, inter alia, on the questioning of military officials accused of maltreatment of prisoners, or on the questioning of their superiors.

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

Article 6, because the State party failed to take appropriate measures to prevent the disappearance and subsequent killings of José Herrera and Emma Rubio de Herrera and to investigate effectively the responsibility for their murders; and

Article 7 and article 10, paragraph 1, because Joaquín Herrera Rubio was subjected to torture and ill-treatment during his detention.

12. The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violation6 that Mr. Herrera Rubio has suffered and further to investigate said violatione, to take action thereon as appropriate and to take steps to ensure that similar violationa do not occur in the future.

C. Communication No. 176/1984, Lafuente Peñarrieta et al. v. Bolivia (Views adopted on 2 November 1987 at the thirty-first session)

Submitted by: Juana Peñarrieta, Maria Pure de Toro, et al., later joined by Walter Lafuente Peñarrieta

Alleged victim: Walter Lafuente Peñarrieta, Miguel Rodríguez Candia, Oscar Ruíz Cáceres, nnd Julio Céar Toro Dorado

State party concerned: Bolivia

Date of communication: 2 April 1984 (date of initial letter)

Date of decision on admissibility: 28 March 1985

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

Meeting on 2 November 1987,

Having concluded its consideration of communication No. 176/1984, submitted to the Committee by Juana Peñarrieta et al. under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communicatio" and by the State party concerned,

Adopt the following'

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the communication (initial letter dated 2 April 1984 and subsequent letters dated 14 and 10 June 1905, 17 January 1986, 18 March and 19 July 1987) are Rose Mary García, a Bolivian citizen living in the United States of America, and Juana Peñarrieta, Maria Pura de Toro, Nelva B. de Toro. Etty Cáceres, María Luisa de Ruis, Aurora de Lafuente and Sofia do Rodríguez, Bolivian citizens residing in Bolivia, an behalf of their relatives Walter Lafuente Peñarrieta, Oscar Ruíz Cáceres, Julio César Toro Dorado and Miguel Rodríguez Candia, all Bolivian citizens, and on behalf of three other peraone, Simón Tapia Chacón, a Bolivian citizen (not related to the authore), René Patricio Lizama Lira and Pablo Manuel Zepeda Camillieri, both Chilean citizens (not related to the authors). The authors stated that the alleged victims were being held at the San Jorge Barracks in Bolivia and that they ware not in a position to present their own case to the Human Rights Committee. The authors claimed to have authority to represent all seven alleged victims.

1.2 Miguel Rodríguez Candia, Oscar Ruíz Cáceres, Simón Tapia Chacón and Julio César Toro Dorado were released on 24 April 1986, Walter Lafuente Peñarrieta, Pablo Manuel Zepeda and René Patricio Lizama were released on 24 October 1986.

1.3 The authore stated that the alleged victims were arrested on 24 October 1983 in the neighbourhood of Luribay (approximately 70 kilometres from La Paz) by members of the armed forces on suspicion of being "guerrilleros". It is further alleged that during the first 15 days of detention they were subjected to severe torture, including physical beatings, electric shocks (picana) and immersion in water (submarino). They were allegedly kept incommunicado for 44 days. They were allegsdly held under inhuman priron conditiona, in solitary confinement in very small and humid cells (two metres by two meters), and were denied proper medical attention. Their state of health was very poor. It was not until 10 February 1984 that Pablo Manuel Zepeda C.millieri, who was suffering from a skull fracture, was attended to by a neurologist.

1.4 Concerning the right to legal counsel, guaranteed under article 16 (4) of the Bolivian Constitution, it is nlleged that the detainees had no access to a defence lawyer until 44 days after their detention.

1.5 On 16 December 1983, the first public hearing took place. Defence counsel argued that his clients could not be subject to military jurisdiction, since the National Constitution itself clearly established that military jurisdiction could be applied only in times of war or when a criminal act had taken place in a territory under military jurisdiction, and that the case should therefore be transferred to the regular courts.

1.6 On 8 February 1904, defence counsel again requested a change of jurisdiction. He also pleaded that moet of the provisions of the Military Penal Code were in fact unconstitutional. On 13 February 1984, the appeal for annulment was presented before the Supreme Tribunal of Military Justice without success. According to the authors, all legal remedies to obtain a change of jurisdiction were turned down by the military authorities.

1.7 The authors state that the relatives of the detainees tried in vain to secure their transfer to San Pedro Prison on the grounds that detention in military barracks was not lawful. They maintained that, owing to the political instability in Bolivia and the arbitrary acts committed by a number of officers. there were no guarantee6 of security for the seven detainees.

1.9 The indictment against the seven defendants was preeented by the Military Prosecutor on 18 July 1984, nine months after their detention. The def endants submitted their plea on 10 Auguet 1984. On 3 October 1984, they began a hunger-strike, which continued until 2 November 1964. On 12 October 1984, the Standing Court of Military Justice (Tribunal Permanente de Justicia Militar) convicted the accused of robbery and illegal possession of weapons and ammunition belonging to the Bolivian army and of the use of false documents.

1.9 The authors stated that Presidential Decree (Decreto Supremo) No. 20,565, of 25 October 1984, ordered unrestricted amnesty (amnestía amplia e irrestricta) far the seven Luribay detainees, but the armed forces refused to comply with the decree. On 30 October 1984, the Standing Court of Military Justice referred the case for ex officio review to the Supreme Court of Military Justice (Tribunal Supremo de Justicia Militar), which, on 1 November 1984, returned the case to the Standing Court for appropriate action, without itself issuing a release order. It is further reported that, on 15 November 1984, the Luribay detainees applied fox habeas corpus to the District Court of La Paz (Corte Distrital), a civilian court, which found, on 16 November 1984, that the Presidential Decree of amnesty was

constitutional and that the military court rhould implement it. This decision was reviewed by the highest judicial authority of Bolivia, the Supreme Court of Justice, which found that the amnesty decree wan constitutional and that the competent organs of the armed forces were responsible for issuing the release order. Nevertheless, the Luribay detainees were not then released.

2.1 After ascertaining that the cases of the alleged victims had not been registered for examination by the Inter-American Commission on Human Rights, the Working Group of the Human Rights Committee, by its decision of 3 July 1985, transmitted the communication, under rule 91 of the Committee's provisional rule6 of procedure to the State party concerned, requesting information and observations relevant to the question of the admissibility of the communication. The Working Group also requested the State party; (a) to provide the Committee with copies of any orders or decisions relevant to the case; and (b) to inform the Committee of the state of health of the alleged victims.

2.2 The Working Group found that the authors were justified in acting on behalf of Walter Lafuente Peñarrieta, Miguel Rodriguez Candia, Oscar Ruíz Cáceres and Julio César Toro Dorado. With regard to the other alleged victims, the Working Group requested the authors to provide written evidence of their authority to act on their behalf.

3.1 In its response, dated 22 October 1985, to the Working Group's decision, the State party said that, on 12 October 1984:

> "The Standing Court of Military Justice of Bolivia, by virtue of its jurisdiction, handed down a verdict and sentence at first instance againet the detainees, who had been charged with robbery and illegal possession of weapons belonging to the Bolivian army, use of false documents and other offences. On 25 October 1984, the Constitutional President of the preceding Government, by Supreme Decree No. 20,565, granted a broad and unrestricted amnesty to the seven detainees, ordering them to be released and the record of the case to be filed.
>
> "On being informed of this Decree, the Standing Court of Military Justice transmitted the 'record of the case to the Supreme Court of Military Justice in order that, through its Appeals and Review Section, by means of interpretation and review as referred to in article 38 (3) of the Military Judicial Organization Act, it may take a decision concerning priority in the application of article 220 of the Constitution, with reference to article 96 (13) of the Constitution, in respect of Supreme Decree No. 20,565 of 25 October 1984, so that as a result of this review the appropriate legal course may be determined'. "

3.2 The State party furnished the Committee with copies of Presidential Decree No. 20,565 of 25 October 1984 and of the decision of the Standing Court of Military Justice, dated 30 October 1984, to refer the case for ex officio review to the Supreme Court of Military Justice.

3.3 The State party further indicated that the detainees were in good health.

3.4 Lastly, the State party requested that the communication be declared inadmissible for non-exhaustion of domestic remedies, since the case was still pending before the Supreme Court of Military Justice.

4.1 In a further submission, dated 31 October 1985, the State party informed the Committee that the Supreme Court of Military Justice had, on 14 October 1985, handed down final sentence in the case:

> "amending a previous sentence by the Standing Court of Military Justice, which sentenced the seven detainees, who had been charged with a number of offences, to six, four or two years of imprisonment.
>
> "The decision of the Supreme Court of Military Justice, which is unappealable, emends the sentence through its Caaaation and Single-Instance Section, reducing the sentence of imprisonment to three years for the detainees René Patricio Lizama Lira, Pablo Manuel Zepeda Camillieri and Walter Lafuente Peiiarrieta, and to two years and six months for Simón Tapia Chacdn, Julio César Toro Dorado, Oscar Ruíz Cáceres and Miguel Rodríguez Candia. The latter will have served their sentence on 24 April 1986 and the former on 24 October 1986, since the penalty runs from the first day of detention."

4.2 The State party furnished the Committee with the text of the judgement of the Supreme Court of Military Justice of 14 October 1985 and reiterated its request that the Committee declare the communication inadmissible, this time "on the grounds that the proceedings have been concluded" ("ya que este proceso concluyó").

5.1 In their comments, dated 17 January 1986, the authors noted that the State party in its two submissions made no mention whatever of the decision of the Supreme Court of Military Justice, dated 1 November 1984, which, according to the authors, provided for the implementation of the amnesty decree by the lower court. They further pointed out that the amnesty decree had not been abrogated and that the alleged victims were still in detention, 15 months after the issuance of the decree.

5.2 With respect to the state of health of the alleged victims, the authors noted that the State party had not submitted any medical certificates nor any information about their psychological state. Furthermore, they claimed that the alleged victims had been deprived of medical attention for the last 18 months.

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

6.2 Article 5, paragraph 2 (a), of the Optional Protocol precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement. The Committee again ascertained that the case was not under examination elsewhere.

6.3 Article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication unless domestic remedies have been exhaustod. In that connection the Committee noted that in its submission of 31 October 1985 the State party had informed the Committee of the conclusion of proceedings against the Luribay detainees. The Committee thus concluded that domestic remedies had been exhausted and that it was not precluded by article 5, paragraph 2 (b), of tho Optional Protocol from considering the case.

7. Although the authors did not specify which articles of the Covenant might have been violated, the Committee observed that the allegations raised issues relating to several of the rights guaranteed by the Covenant, including the rights protected by articles 7, 9, 10 and 14.

8. With respect to the standing of the authors, the Committee noted that they had not submitted evidence of their authority to act on behalf of Simón Tapia Chacón, René Patricio Lizama Lira and Pablo Manuel Zepeda Camillieri.

9. On 2 April 1986, the Human Rights Committee therefore decided:

(a) That the communication was admissible in so far as it related to Walter Lafuente Peñarrieta, Miguel Rodríguez Candia, Oscar Ruiz Cáceres and Julio César Toro Dorado;

(b) That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party should be requested to submit to the Committee, within six months of the date of the transmittal to it of the current decision, written explanations or statements clarifying the matter and the remedy, if any, that might have been taken by it;

(c) That the State party should be requested (i) to provide the Committee with copies of such court orders or decisions relevant to the case that hitherto had not been furnished, including the judgement of the Standing Court of Military Justice dated 12 October 1984, and (ii) to inform the Committee of the current state of health of the alleged victims by furnishing relevant medical certificates concerning them.

10.1 In a further submission, dated 30 May 1986, the authors claim that the Bolivian Government has violated articles 3, 6, paragraph 4, 7, 9, 10, 14, 17, paragraph 1, 23 and 26 of the Covenant.

10.2 With regard to article 3, the authors contend:

> "In no case has there been equality of rights, on the contrary, rights have been restricted even to the extent of preventing the use of mechanisms recognized by Bolivian laws themselves (Political Constitution of the State).**

10.3 With regard to article 6, paragraph 4, the authors repeat that:

> "on 25 October 1984, the Constitutional President of Bolivia, Mr. Hernán Siles Suazo, issued a Supreme Decree (No. 20,565) declaring an amnesty for the seven Luribay detainees. This Decree was issued under the authority provided for in article 96, paragraph 13, of the Bolivian Constitution and with the approval of the entire cabinet of President Siles.
>
> "In this case, because of unknown interests involving the administrators of military justice, the latter have not complied with a decree having the above-mentioned characteristics despite the fact that the relevant military legislation itself states in article 38, paragraph 4, that legal proceedings brought against any person shall cease when an amnesty is decreed.*'

10.4 With regard to article 7, the authors contend that the medical certificates of the detainees provide "evidence of the torture and degrading treatment to which our relatives were subjected".

10.5 With regard to article 9, the authors claim that:

"All the paragraphs of this article have been violated in that our relatives were arbitrarily arrested; at the time of their arrest, they were in a civilian village and were in no way endangering the country's internal security, let alone external security, since Bolivia was not and is not at war.

"Article 9 of the Bolivian Constitution stipulates that, for a person to be arrested, an order must be issued by a competent authority; in this case the military forces did not have the authority to deprive our relatives of their freedom. The same article 9 states that no one may be held incommunicado, even in obviously serious cases, for more that 24 hours; in violation of this constitutional provision, our relatives were held completely incommunicado without medical attention or proper food for 44 days, and no court was informed of their situation.

"Furthermore, despite our demands and petitions, including those to human rights institutions, our relatives were not told of the reasons for their detention.

"The right of recourse to the courts to redress the illegality of our relatives' arbitrary detention was not made effective, despite an application to have the jurisdiction of the military, courts quashed and the case transferred to the ordinary courts."

10.6 With regard to article 10, the authors maintain that:

"The provisions of this article have not been complied with since our relatives have been treated as dangerous criminals without even having been charged. Furthermore, they have been ferried about from one place to another with an escort of 100 or so soldiers, who were pointing their weapons not only at them, but also at us and their defenders."

10.7 With regard to article 14, the authors contend that:

"Once the military trial began - despite everything stated about its lack of competence and jurisdiction - the court was in no way impartial and even disregarded its own regulations, for the sole purpose of securing maximum sentences against our relatives for non-existent offences.

"Choice of defence counsel was also restricted since the Code of Military Justice (Judicial Organization Act, art. 75) stipulates that persons charged with an offence shall have as defence counsel court-appointed military attorneys in cases where the defence counsel freely chose-1 by the persons charged doer not meet the requirements of the Standing Court of Military Justice."

10.8 With regard to article 17, the authors maintain that:

"Our relatives' privacy, honour and reputation have been severely attacked. Our homes have been illegally searched at night (violation of article 21 of the Bolivian Constitution) in an atmosphere of violence and with an excessive display of repressive force, since defenceless women and children were confronted with a group of heavily-armed men."

10.9 With regard to article 23, the author6 claim:

"At no time ha6 the State protected the detainees' families. On the contrary, we have been insulted and ill-treated, and in many cases thrown out of offices where we went to request information on the fate of our relatives. Thus, the provisions contained in articles 6 to 21 of the Constitution have also been violated."

10.10 With regard to article 26, the authors add:

"At no time have the detainee6 been given equal treatment; this is simply because of their different political ideas, and despite the fact that article 6 of the Constitution guarantee6 all citizens equality before the law and provides for protection of their right6 and guarantees in accordance with the Constitution.**

11.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 24 October 1986, the State party argues that the full judicial proceedings, which the State party encloses, establish that "the military laws and the Political Constitution of the State were applied correctly". Thus, the State party contends that there has been no violation of the Covenant by Bolivia and continues:

"The fact is that the defendants were found guilty of various offences which led to sentences in first instance by the Standing Court of Military Justice of six, four and two years' imprisonment on the seven detainees.

"Subsequently, the Appeals Division and Sole Instance of the Supreme Court of Military Justice of the Nation reduced the penalties to three years' imprisonment in the case of Walter Lafuente Peiiarrieta, René Patricio Lizama Lira and Pablo Manuel Zepeda, and to two year6 and six months' imprisonment for the remaining detainees.

"According to the report of Colonel René Pinilla Gadoy Dema, Judge Reporter of the Standing Court of Military Justice, Mr. Miguel Rodriguez Candia, Mr. Oscar Ruíz Cáceres, Mr. Simón Tapia Chacón and Mr. Julio César Toro Dorado were unconditionally released and are now with their families and in good health, as the Centre for Human Right6 may ascertain through the United Nations Resident Representative in Bolivia.

"With regard to the last three detainees, Mr. Walter Lafuente Peiiarrieta, Mr. Pablo Manuel Zepeda and Mr. René Patricio Lizama Lira, the last two of Chilean nationality, they were released on this very day, according to an official communication, in conformity with the judgement of the Appeal6 Division and Sole Instance of the Supreme Court of Military Justice, which forms part of the Bolivian judicial system and acts independently in accordance with the separation of powers provided for in article 2 of the Political Constitution of the State."

11.2 The State party then requests the Committee to reverse its decision on admissibility and to close the examination of the Luribay case, since "the seven detainee6 have been unconditionally released and since the legal proceedings have been concluded".

12. In their comments, dated 18 March 1987, the author6 contend that the State party has not refuted "in any way the statements by the relative6 of the ex-detainees in our note of 30 May 1986, which deals with the problem of substance and not of form, that our children's detention was accompanied by torture, solitary confinement, harassment, partiality, denial of justice and a whole series of violations of the human rights set forth in the International Covenant on Civil and Political Rights".

13. By a letter dated 19 July 1987, one of the seven Luribay detainees, Walter Lafuente Peiiarrieta, who was released on 24 October 1986, confirmed the description of the fact6 set out in paragraph6 1.1 to 1.9, 5.1 and 5.2, and 10.1 to 10.10. Mr. Lafuente also confirmed that it was his wish that the Committee continue consideration of his Case.

14. The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. Before adopting its views, the Committee took into consideration the State party's objection to the admissibility of the communication, but the Committee can see no justification for reviewing its decision on admissibility on the basis of the State party'6 contention that, because the victims have been released, the case should be considered closed.

15.1 The Committee therefore decide6 to base its views on the following facts, which are either uncontested or are implicitly or explicitly contested by the State party only by denials of a general character offering no particular information or explanations.

15.2 Walter Lafuente Peñarrieta, Miguel Rodriguez Candia, Oscar Ruíz Cáceres and Julio César Toro Dorado were arrested on 24 October 1983 near Luribay by member6 of the Bolivian armed forces on suspicion of being "guerrilleros". During the first 15 day6 of detention they were subjected to torture and ill-treatment and kept incommunicado for 44 days. They were held under inhuman prison conditions, in solitary confinement in very small, humid cells, and were denied proper medical attention. They had no access to legal counsel until 44 days after their detention. On 16 December 1983 the first public hearing took place before a military court. The indictment was framed by the Military Prosecutor on 18 July 1984, charging the accused with robbery and illegal possession of weapons belonging to the Bolivian army and with the use of false documents. On 12 October 1984, they were convicted of those crimes by the Standing Court of Military Justice. On 25 October 1984, the Constitutional President of the Republic, Hernán Siles Suazo, granted a broad and unrestricted amnesty to the Luribay detainees, ordering that they be released and that the record of the case be filed. They were, however, not released. On 30 October 1984 the Standing Court of Military Justice referred the case to the Supreme Court of Military Justice, which did not order the release of the detainees, but handed down a final judgement on 14 October 1985, sentencing the detainees to three and two and a half years of imprisonment. The detainee6 were released on 24 April and 24 October 1986.

15.3 In formulating its views, the Human Rights Committee also takes into account the failure of the State party to furnish certain information and clarifications, in particular with regard to the allegations of torture and ill-treatment of which the authors have complained. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party ha6 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 relevent information where it contest6 the authors' allegation. In the circumstances, due weight must be given to the authors' allegations.

16. The Human Right6 Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee disclose violations of the Covenant with respect to:

Article 7, because Walter Lafuente Peñarrieta, Miguel Rodriguez Candia, Oscar Ruíz Cáceres and Julio César Toro Dorado were subjected to torture and inhuman treatment;

Article6 9, paragraph 3, and 10, paragraph 1, because they were not brought promptly before a judge, but were kept incommunicado for 44 day6 following their arrest; and

Article 14, paragraph 3 (b), because during the initial 44 days of detention they had no access to legal counsel.

17. The Committee lacks sufficient evidence to make findings with regard to the other claim6 made by the authors.

18. The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provision6 of article 2 of the Covenant, to take effective measures to remedy the violations suffered by the victims, to grant them compensation, to investigate said violations, to take action thereon as appropriate and to take steps to ensure that similar violations do not occur in the future.

D. Communication No. 188/1984, Martinez Portorreal v. The Dominican Republic
(Views adopted on 5 November 1987 at the thirty-first session)

Submitted by: Ramón B. Martinez Portorreal

Alleged victim: The author

State party concerned: Dominican Republic

Date of communication: 10 October 1984 (date of initial letter)

Date of decision on admissibility: 2 April 1986

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

Meeting on 5 November 1987,

Having concluded its consideration of communication No. 188/1984, Submitted to the Committee by Ramón B. Martínez Portorreal under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and noting with regret that no information ha6 been received from the State party concerned,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1, The author of the communication (initial letter dated 10 October 1984 and further letter dated 30 September 1985 is Ramón B. Martínez Portorreal, a national of the Dominican Republic born in 1943, at present a practising attorney, Law Professor and Executive Secretary of the Comic6 Dominicano de los Derechos Humanos (CDH). He claims to be the victim of violations by the Government of the Dominican Republic of article 9 paragraph6 1 to 5, and article 10, paragrapha 1 and 2 (a), of the International Covenant on Civil and Political Rights.

2.1 The author alleges that on 14 June 1984 at 6 a m. six members of the National Police came to his home in Santo Domingo and told him that an assistant of the prosecutor was with them and had received an order to have him arrested. He was taken to the headquarter6 of the National Police, where he saw several political opposition leader6 (four names are given) who had also been arrested in the early morning. They were taken to the Caaa de Guardia of the Secret Service where they wore put in a cell (known a6 the "cell of the drivers"), where approximately 50 individual6 were being held. They learned that the Government had ordered a police raid that day against all leaders or personalities considered to be member6 of the leftist opposition.

2.2 Later the same day, the author was allegedly separated from the other political opposition leader6 and transferred to another cell (known as the "Viet Nam cell"), measuring 20 by 5 metres, where approximately 125 persona accused of common crimes were being held. Conditions were allegedly inhuman in this overcrowded cell, the heat was unbearable, the cell extremely dirty and owing to lack of space some detainees had to sit on excrement. The author further states that he received no food or water until the following day.

2.3 On 16 June 1984, after 50 hour6 of detention, the author and the others were released. The author points out that at no time during hi6 detention was he informed of the reasons for hi6 arrest. He maintain6 that his detention was aimed at nerving the following putposear

To intimidate CDH because it had internationally criticised the Government's repression of a demonstration in April 1984 (no other details are given);

To prevent the Executive Secretary of CDH from denouncing the police raid against all individual6 considered to be leftist leaders;

TO damage the reputation of CDH. The fact that the Executive Secretary of CDH was arrested on the same day as leftist opponents of the Government war used by some media to affirm that CDH wasan anti-govornmontal and subversive organization.

2.4 Concerning the exhaustion of domestic remedies, the author states that, although the Penal Code of the Dominican Republic provides that civil ● ervantm, agents or officials of the Government who have ordered or committed arbitrary acts or acts against the freedom and political rights of one or several individuals may be sentenced to civilian demotion (degradación cívica), there is no recourse available in the national penal law that would enable him to present his accusations and to seek redress. The author does not indicate whether the same matter is being examinad under another procedure of international investigation or settlement.

3. By its decision of 5 July 1965, tha Working Group of the Human Rights committee transmitted the communication under rule 91 of the Committee's provisional rules of procedure to the State party concerned, requesting information and obaervations relevant to the question of admissibility of the communication. The Working Group also requested the author to provide the Committee with more detailed information concerning the grounds for alleging that there was no recourse available in the national penal law that would enable him to present the accusations made in his communication and to seek redress.

4. By letter dated JO September 1985, the author indicates that chapter IX, section 2, the Penal Code of the Dominican Republic refers to infringement8 of liberty and that articles 3.14 to 122 deal with the penalties Co ne imposed on civil servants and agents or representatives of the Government ordering or committing an act that is arbitrary or conatitutea an infringement of individual freedom, the Political rights of one or more citizens of the Constitution, According to the article in question, the penalty is civilian demotion (degradación cívica). The author alleges, however, that the articles in question are a dead letter in the Dominican Republic, since in the 141 years of the Republic'8 existance, no civil servant has been brought to trial for an offence against this provision. Ha further alleges that the Dominican Code of Criminal Procedure lays down no procedure for the enforcement of the above-mentioned articles of the Penal Code. There is no court to deal with applications of this kind. Thur, the author concludes, it is quite inconceivable that any attompt to make use of the procedures established by the present Code of Criminal Procedure will prove successful.

5. The time-limit for tho observations requested from the State party under rule 91 ot the Committee's proviaional rules of Procedure expired on 1 October 1985. No aubmiasiona were received from the State party.

6.1 With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee ascertained that tho case wan not being examined under another procedure of international investigation or aettlement.

6.2 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee could not conclude, on the basis of the information before it, and in the absence of a submission from the State party, that there were available remedies in the circumatancea of the present cane which could or ahould have been pursued.

7. On 2 April 1988, thr Human Rights Committee therefore decided that the communication was admissible, and in accordance with article 4, paragraph 2, of the Optional Protocol, requested the State party to submit to the Committee, within six monthr of the date of the transmittal to it of the Committee's decision, written explanations or statements clarifying the matter and the remedy, if any, that might have been taken by it.

8. The time-limit for the State party's submission under article 4, paragraph 2 of the Optional Protocol expired on 6 November 1988. No submission has been received from the State party, apart from a note, dated 22 July 1987, stating that the Government of the Dominican Republic intended "to submit its explanations concerning communication No. 18811984 . . . and the admissibility decision adopted by the Human Rights Committee on 2 April 1988, during the forthcoming General Assembly". The Committee informed the State party that any submission should be addressed to the Committee, care of the Centre for Human Rights. No further submission has been received.

9.1 The Auman Rights Committee, having considered the present communication in the light of all the information made available to it, as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts and uncontested allegations.

9.2 Mr. Ramón B. Martínez Portorreal is a national of the Dominican Republic, a lawyer and Executive Secretary of the Comité Dominicano dW los Derechos Humanos. On 14 Juno 1984 at 6 a.m., ha was arrested at his home, according to the author, because of his activities as a loader of a human rights association, and taken to a cell at the secret service police hoadquartera, from where he was tranaferrsd to another cell measuring 20 by 5 metres, where approximately 125 peraona accused of common crimes were being held, and where, owing to lack of space, some detainees hsd to sit on excrement. He received no food or water until the following day. On 16 June 1984, after 50 hours of detention, he was releaaad. At no time during his detantion wad he informed of the reasons for his arrest.

10.1 In formulating its views, the Human Rights Committea also takes into account the failure of the State party to furnish any information or clarificationa. It is implicit in article 4, paragraph 2, of the Optional Prc ocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. The Committee notes with concern that, despite its repeated requests and reminders and despite the State party's obligation under article 4, paragraph I, of the Optional Protocol, no explanationa or statementa clarifying the matter have been received from the State party in the present case. In the circumatancaa, due weight must be given to the author's allegations.

10.2 The Committee observes that the information before it does not justify a finding as to the alleged violation of articles 9, paragraphs 3 and 4, and 10, paragraph 2, of the Covenant.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that these facts disclose violation8 of the Covenant, with respect to:

Articles 7 and 10, paragraph I, because Ramón Martínez Portorreal was subjected to inhuman and degrading treatment and to lack of respect for his inherent human dignity during his detention;

Article 9, paragraph 1, because ho was arbitrarily arrested; and

Article 9, paragraph 2, because ho wan not informed of the reasons for his arrest.

12. The Committee, aaaordingly, is of the view that the State party is under an obligation, in acaordanco with the provisions of article 2 of the Covenant, to provide Mr. Martínez Portorreal with ● ffoctive remedies, including componration under article 9, paragraph 5, of the Covonant, for the violations that he has suffered, and to take steps to ensure that similar violationa do not occur in the future.

E. Communication No. 191/1985, Blom v. Sweden (Views adopted on 4 April 1988 at the thirty-second session)

Submitted by: Carl Honrik Blom (represented by legal counsel)

Alleged victim: The author

State party concerned: Sweden

Date of communication: 5 July 1985 (data cf initial letter)

Date of decision on admissibility: 9 April 1987

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

Meeting on 4 April 1988,

Having concluded its consideration of communication No. 191/1985, submitted to the Committee by Carl Henrik Blom under tne Optional Protocol to the International Covenant on Civil and Political Rights.

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

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication (initial letter dated 5 July 1985 and further letters dated 24 February 1986 and 19 January 1988) is Carl Henrik Blom, a Swedish citizen, born in 1964. He is represented by legal counsel. He claims to be a victim of violation8 by the Swedish authorities of article 2, paragraph 3, and article 26 of the International Covenant on Civil and Political Rights in conjunction with article 3 (c) and article 5, paragraph (b), of the UNESCO Convention against Discrimination in Education of 1960. Article 13 of the International Covenant on Economic, Social and Cultural Rights is also invoked.

2.1 During the rchool year 1981/82, the author attended grade 10 at the Rudolf Steiner School in Göteborg, which is a private school. According to Decree No. 418 on Study Aid, issued by the Swedish Government in 1973, a pupil of an independent private school can only be entitled to public assistance if he attends a programme of courses which is placed under State supervision by virtue of a governmental decision under the Ordinance. The government decision is taken after consultation with the National Board of Education and the local school authorities.

2.2 The author states that the Rudolf Steiner School submitted an application on 15 October 1981 to be placed under State supervision with respect to grade 10 and above (the lower grades were already in that category), After the local echocl authorities and the National Board gave a favourable opinion, the decision to place grade 10 and above under State supervision was taken on 17 June 1982, effective as of 1 July 1982, that is for the school year 1982/83 onwards, and not from autumn 1981, as the rchool had requested.

2.3 On 6 June 1984, the author applied for public financial aid in the amount of SKr 2,250, in respect of the rchool year 1981/82. By a decision of 5 November 1984, his application was rejected by the National Board for Educational Assistance on the grounds that the school had not been under State supervision during the school year in quaotion. The author alleges that this decision was in violation of the provisions of the international treaties invoked by him. He states that an appeal against the decision "was not allowed". Believing, however, that the decision of the National Board for Educational Assistance violated his rights under the 1960 UNESCO Convention, the author submitted, at the beginning of 1985, a claim for compensation to the Chancellor of Justice (Justiekanslorn). By a decision of 14 February 1985 the Chancellor of Justice declared that the decision of tho National Roard for Educational Assistance was in accordance with domestic law in force and could not give rise Lo State liability. It was also pointed out that the Decree on Study Aid was a government decision, in respect of which an action for compensation could not be permitted under the relevant provision6 of the Damages Ect. The Chancellor finally mentioned that Mr. Blom would be free to pureue the matter before the courts. The Chancellor pointed out, however, that the courts would be duty bound, ex officio, to apply Swedish law, including the relevant provisions of the Damages Act to which he had referred.

2.4 From the decision of the Chancellor of Justice, the author draws the conclusion that it would be of no avail to initiate court proceedinqe against the state. Consequently, he maintains, there are no further domestic remedies to exhaust. This situation, he claims, constitutea, in itself, a violation of article 2, paragraph 3, of the Covenant.

2.5 The author's allegation, that the decision not to grant him public assistance was in violation of article 26 of the Covenant, is baaed on the argument that he was subjected to discrimination as a pupil of a private school. Pupils of public schools are eaid to have received public assistance for the school year 1981/82. This discriminatory treatment allegedly contravenes the basic idea of equality for all in education and it also allegedly interferes with the parents' right to choose independent private schools provided for in article 1. of the International Covenant on Economic and Social Rights and article 5, paragraph 1 (b), of the UNESCO Convention against Discrimination in Education of 1.960 to which Sweden is a State party. The author also claimo to be a victim of a violation of article 3 (c) of that same Conventton.

2.6 The author requests the Committee to condemn the alleged violation8 of article 2, paragraph 3, and article 26 of the Covenant, to invite the State party to take the necessary steps to give effect to its obligation8 under article 2, paragraph 3, and to urge the State party to discontinue the alleged discriminatory practices based on the 1973 Study bid Act. Furthermore, he asks the Committee to urge the Swedish Government to pay him and hi8 class-mates the amount of public assistance due for the school year 1981/82 with accrued interest according to Swedish law a6 roll as hi8 expenses for legal advice.

3. By its decision of 15 October 1985, the Working Group of the Human Rights committee transmitted the communication under rule 91 of the provisional ruler of procedure to the State party concerned, requesting information and observations relevant to the question of the admissibility of the communication. The Working Group also requested the State party to explain, in 80 far a8 such explanation might be relevant to the question of admissibility, why grade 10 of th8 Rudolf Steiner School in Göteborg was placed under State supervision only am of 1 July 1982 but not for the preceding school year, a8 requested.

4.1 In it8 submission dated 8 January 1986, the State party indicate8 that the 1962 Act on School8 recognises the existence of private schools independent of the public sector school system. The private school8 are, in principle, financially sufficient, and there is no legal obligation for the State or local government to provide any financial contribution. However, there are no legal impediment8 excluding various form8 of public rupport, and in practice most of the private schools are in one way or another supported by local government and, in addition, approximally half of them, including the Rudolf Steiner School, receive State contributions.

4.2 The State party indicates further that, in accordance with regulation8 ret forth in the 1973 Act on Study Aid (studiestödslag 1973:349) and the 1973 Decree on Study Aid (studiestödskungörelse 1973:418), pupil8 attending schools, whether public or private, may be eligible for various forma of public financial rupport. As far as is relevant for the consideration of the present case, chapter 1, section 1, of the Decree provide8 that financial support may he granted to pupil8 attending public schools or schools subject to State supervision. Consequently, for pupil8 attending a private school to be eligible for public financial support, the school ha8 to be placed under State supervision. Decision on such supervision is taken by the Government upon application submitted by the school. In the present case, the Rudolf Steiner School. applied in October 1981 to have the part of its educational programme corresponding to the gymnasium, that is grade8 10 to 12, placed under State supervision. Education on this higher level had not previously been offered by the school. After having considered the application, a8 well a8 observations on the application submitted by the Municipal School Administration, the Education Committee of the County of Göteborg and Bohus, and the National Board of Education, the Government on 17 June 1982 granted the application a8 of 1 July 1982.

4.3 On 5 November 1984, the National Board for Educational Assistance informed the author that financial rupport for his studies could not be granted on the ground that the school was not at that time subject to State supervision with respect to the educational programme of grade 10.

5.1 As to the alleged violations of the International Covenant on Civil and Political Rights, the State party submits the following:

"Blom contends that the refusal to grant him public financial support for the school year 1981/82 amounts to a violation of article 26. In the Government's view, however, the notion of discrimination implies a comparison between two or more different groups or categories of individuals and a finding, first, that one group or category is being treated differently from another group or category and, secondly, that this different treatment is based on arbitrary and unjustified grounds, such as those enumerated in article 26. Accordingly, different treatment does not constitute discrimination when the distinction is based on objective and reasonable criteria. There is no obligation under article 26, or under any other provision of the Covenant, to provide public financial support to pupils. Therefore, the State is at liberty to decide whether to give such support and, if financial support is provided, to set the conditions under which it should be granted, provided only that the State's considerations are not based on unjustified grounds, such as those enumerated in article 26."

5.2 The State party further argues that:

"As regards schools, like any other institution or activity in society, it is naturally legitimate for the State, before granting public financial support to the school or its pupils, to consider whether the school meets reasonable standards of quality and whether it fulfils a need of society or the presumptive pupils. It is equally justified if financial support is provided, that the State take the necessary measures in order to assure itself that the facts and circumstances underlying the decision are not subsequently changed. These are - and on this point no other view has been expressed by Blom - the motives for the requirement that a private school be State-supervised in order for its pupils to be eligible for public financial support. The Government submits that this does not constitute discrimination within the meaning of article 26."

5.3 The State party adds:

"In view of the aforesaid, and for the following reasons, the Government further maintains that Blom's communication as regards this point should be declared inadmissible in accordance with the provisions of article 3 of the Optional Protocol. Blom contends, as the sole *discriminatory basis' for the alleged violation of article 26, that he chose to attend the Rudolf Steiner School because of his, and his parents*, 'religion, political or other opinion', and that the different treatment regarding public financial support was a direct result of this choice. In the opinion of the Government, this obviously does not amount to saying that the State's policy of different treatment of public and private schools is based on such grounds as religion or political or other opinion . . . What Blom appears to be arguing is that, because he chose the school for religious and political reasons, and because the State, although not for religious or political reasons, treated this private school differently from public schools, he has been treated in a discriminatory way on the ground of his religion and his political opinion. The lack of merits in this line of arguing must in the Government's opinion be considered so obvious as to make the communication inadmissible under article 3 of the Optional Protocol."

5.4 The State party further submits:

"Blom further alleges that article 2, paragraph 3, has boon violated since the decision not to grant him public financial rupport could not be appsalod. This provision guarantees an effective remedy only when the rights and freedoms, as recognised in the Covenant, have boon violated. In the present case, the only such violation that har been contended is the one under article 26. Therefore, tha obvious lack of merit in the argument6 put forward by Blom regarding the alleged violation of article 26 is equally relevant hero. Consequently, the communication as regards this point as well should be declared inadmissible."

5.5 Am regards the question pored in the decision of the Committee's Working Croup as to the reasons why the school was placed under State supervision only as of 1 July 1962, the State party explains

"that the application for State supervision was made very late - three and a half months from the outset of the fiscal year 1981/82 and a long time after the education of that school year had begun - and that ths decirion, which depended on various opinions from other authorities, could not be made until a couple of weeks before the *end* of the said fiscal year. It seems au if the role reason *for* the present case is that those responsible *for* the Rudolf Steiner School did not act with sufficient promptnear in applying for State supervision."

5.6 Finally, the State party mentions that two other applications concerning rslated issues with respect to pupils of the Rudolf Steiner School of Norrköping have been declared inadmissible by the European Commission of Human Rights in Strasbourg (applications 10476/83 and 10542/83).

6.1 In him comments, dated 24 February 1986, the author stresses that the refural to grant him financial support "was in fact directed against him as belonging to a distinct group", this group being composed of himself and his class-mates, as compared with pupils attending public schools or private schools already subject to State supervision. He further states that at the time of application in October 1981 the Rudolf Steiner School was already complying with the five administrative requirements imposed on private schools subject to Stato supervision.

6.2 The author challengee the State party's arguments for considering the communication inadmissible under arrticle 3 of the Optional Protocol by stressing that he was invoking "the grounds enumeratad in article 26 of the Covenant referring to the passage 'discrimination on any ground', which includes a reference to 'other status'. Accordingly, for whatever reasons [he] and his class-mates chose to attend the Rudolf Steiner School, they all belong, because of this choice, to the dirtinct group . . . [and] this 'other status'... is obviously the ground for the different treatment impoeed on him reeulting from the State's deliberate policy. "

6.3 With respect to the State party's statement that two other applications by other authors have been declared inadmissible by the European Commission of Human Rights, the author explains that the applicants there had complained of discrimination based upon the fact that some municipalities in Sweden do not grant free textbooks to pupils attending private schools, as do most other municipalities. According to the author, these decisions have no relevancy whatever to the question of financial support under the Act on Study Aid.

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Options1 Protocol ta the Covenant.

7.2 With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee observed that the mattercomplained of by Carl Henrik Blom was not being ● xaminmd and had not boon examined under another procedure of international investigation or settlement. The Committee noted that consideration by the European Commission of Human Rights of applications submitted by other students at the same school relating to other or similar facts did not, within the meaning of article 5, paragraph 2 (a), of the Optional Protocol, constitute an examination of the same matter. As ret forth in the Committee's prior decisions, the concept of the "same matter" within the meaning of article 5, paragraph 2 (a), of the Optional Protocol mustbe understood as including "the same claim concerning the same individual, submitted by him or someone else who hau the standing to act on his behalf before the other international body". b/ The reservation of the State party in respect of matter8 already examined under another procedure of international investigation or settlement, therefore, did not apply.

7.3 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee was unable to conclude, on the basis of the information before it, that there were available remedies in the circumstances of the case which could or should have been pursued. The Committee noted in that connection that the State party did not contort the author's claim that domestic remedies had been exhaueted.

7.4 With regard to the State party's submission that the "lack of merit" in the author'6 arguments rhould render the communication "inadmissible under article 3 of the Optional Protocol*', the Committee noted that article 3 of the Optional Protocol provided that communications should be declared inadmissible if they were (a) anonymous, (b) constituted an abuse of the right of submission or (c) were incompatible with the provisions of the Covenant. The Committee observed that the author had made a reasonable effort to substantiate his allegations and that he had invoked specific provisions of the Covenant. Therefore, the Committee decided that the issues before it, in particular the scope of article 26 of tho International Covenant on Civil and Political Rights, rhould be examined with the merits of the case.

7.5 The Human Rights Committee noted that it could only consider a conununication in 80 far as it concerned an alleged breach of the provisions of the International Covenant on Civil and Political Rights.

7.6 The Committee observed that both the author and the State party had already made extensive submissions with regard to the merits of the case. However, the Committee deemed it appropriate at that juncture to limit itself to the procedural requirement of deciding on the admissibility of the communication. It noted that, if the State party ehould wieh to add to its earlier submission within six months of the transmittal to it of the decision on admissibility, the author of the communication would be given the opportunity to comment thereon. If no further submissions were received from the State party under article 4, paragraph 2, of the Optional Protocol, the Committee would proceed to adopt its final views in the light of the written information already submitted by the parties.

8. On 9 April 1987, the Committee therefore decided that the communication was admissible in sc f&r as it related to alleged violations of the International Covenant on Civil and Political Rights and requested the State party, should it not intend to make a further submission in the case under article 4, paragraph 2, of the Optional Protocol, so to inform the Committee, so as to permit an early decision on the merits,

9. The State party, on 23 October 1987, and the author, on 19 January 1988, informed the Committee that they were prepared to let the Committee consider the case on the merit6 as it then stood.

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

10.2 The main issue before the Committee is whether the author of the communication is a victim of a violation of article 26 of the Covenant because of the alleged incompatibility of the Swedish regulation6 on education allowances with that provision. In deciding whether or not the State party violated article 26 by refusing to grant the author, BE a pupil of a private school, an education allowance for the school year 1981/82, whereas pupils of public schools were entitled to education allowance6 for that period, the Committee bases its findings on the following observations.

10.3 The State party'6 educational system provide6 for both private and public education. The State party cannot be deemed to act in a discriminatory fashion if it does not provide the same ievel ot subsidy for the two type6 of establishments, when the private system is not subject to State supervision. As to the author '6 claim that the failure of the State party to grant an education allowance for the school year 1981/82 constituted discriminatory treatment, because the State party did not apply retroactively its decision of 17 June 1982 to place grades 10 and above under State supervision, the Committee notes that the granting of an allowance depended on actual exercise of State supervision since State supervision could not be exercised pricr to 1 July 1982 (see para. 2.2 above), the Committee finds that consequently it could not be expected that the State party would grant an allowance for any prior period and that the question of discrimination does not arise. On the other hand, the question doer arise whether the processing of the application of the Rudolf Steiner School to be placed under State supervision was unduly prolonged and whether this violated any of the author'6 rights under the Covenant. En this connection, the Committee notes that the evaluation of a school's curricula necessarily entail6 a certain period of time, a6 a result of a host of factor6 and imponderablea, including the necessity of seeking advice from various governmental agencies. In the instant case the school's application was made in October 1981 and the decision was rendered eight months later, in June 1982. This lapse of time cannot be deemed to be discriminatory, as such. Nor has the author claimed that this lapse of time was attributable to discrimination.

11. The Human Right6 Committee, acting under article 5, paragraph 4, of the Ogtional Protocol to the International Covenant on Civil and Political Rights, is of the view that the fact6 as submitted do not sustain the author's claim that he is a victim of a violation of article 26 of the International Covenant on Civil and Political Rights. In the light of the above, the Committee does not have to make a finding in respect of the author's claim of a violation of article 2, paragraph 3, of the Covenant.

F. Communication No. 194/1985, Miango v. Zaire (Views adopted on 27 October 1987 at the thirty-first session)

Submitted by: Lilo Miango

Alleged victim: Jean Miango Muiyo (author's brother)

State party concerned: Zaire

Date of communication: 5 August 1985

Date of decision on admissibility: 2 April 1986

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

Meeting on 27 October 1987,

Having concluded its consideration of communication No. 194/1985 submitted to the Committee by Lilu Miango under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and noting with serious concern that no information whatever has been received from the State party concerned,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication (initial letter dated 5 August 1985) is Lilo Miango, a Zairian national residing in France, writing on behalf of his brother, Jean Miango Muiyo, who died in dubious circumstances on 23 June 1985 at the age of 44 years at the Mama Yemo Hospital at Kinehasa, Zaire.

2.1 The author states that, according to the information that his family has been able to obtain, his brother was kidnapped and taken to the military camp at Kokolo, Kinshasa, on 20 or 21 June 1985 and that, inside the camp, he was kept in the residence of Lieutenant Kalonga. The author believes that his brother was subjected to torture in the camp by members of the armed forces (forces armées zaïroises (FAZ)), since he was seen later, in terrible condition, by a friend of the family at the Mama Yemo Hospital. The friend informed the author's family and they went twice to the hospital. On the first occasion, they were unable to find his brother since his name had not been entered in the hospital register and, on the second occasion, they were taken directly to the morgue to identify his body.

2.2 In the report of the traffic police (Second Detachment), the alleged victim is said to have entered the hospital on 18 June 1985 as a result of a road traffic accident, which was not, however, recorded by the police. The author states that, according to neighbours, his brother was at home on 18 and 19 June 1985 and that the allegation of a road accident is questionable, because his family knew that he

had been taken to the camp at Kokolo and, moreover, they had also learned that he had been brought to the hoepital by a military ambulance, driven by Sergeant Radjabo from the camp at Kokolo.

2.3 The author enclosed a copy of a report dated 11 July 1985 by the forensic physician, Doctor Nsuei Ntula, stating that the alleged victim died as a result of traumatic wounds probably caused by a blunt instrument and that his death eeemed to have been the result of the uee of violence and not a road accident ae stated in the report of the traffic policu.

2.4 The author states that his family in Zaire requested the Office of the Prosecutor to carry out an inquiry regarding the death of Jean Miango Muiyo. In particular, the family requeeted that Sergeant Radjabo be summoned to the prosecutor's office for questioning. With the consent of his superlore, he allegedly refused to be questioned and left for his home province. In this connection, the author states that cases involving members of the armed forcer in Zaire can only be dealt with by a military tribunal (auditorat militaire). He alleges that ordinary tribunals are not permitted to try members of the armed forces unleee they have been diecharged from their military functions. A case is allegedly dealt with by a military tribunal only when the authorities (pouvoir établi) decide to do so.

2.5 The author alleges that his entire family in Zaire has been subjected to discrimination and harassment because of its relationship with Danie 1 Monguya Mbenge, the leader of an oppoeition party, the Mouvement d'action pour la résurrection du Congo (MARC). c/ The author mentions that several members of his family have been subjected to arbitrary arrest, threats and other forms of harassment. He fears that, in the circumstances, there is no hope that the case of his brother's death will be properly investigated. He therefore request6 the Human Rights Committee to prevail upon the State party to fulfil its obligations under the Covenant,

2.6 The author claims that article 2, paragraph 3, articles 5, 6, paragraph 1. articles 7, 14 and 16 of the International Covenant on Civil and Political Rights have been violated in the case of Jean Miango Muiyo. He indicates that his brother'6 case has not been eubmitted to another procedure cf international investigation or settlement.

3. Having concluded that the author of the communication wae justified in acting on behalf of the alleged victim, the Working Group of the Human Rights Committee decided on 15 October 1985 to transmit the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the queetion of admissibility of the communication.

4. The deadline for the State party's submission under rule 91 of the Committee's provisional rules of procedure expired on 14 January 1986. No rule 91 submission wae received from the State party.

5.1 With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee noted that the author's statement that his brother's case was not being examined under another procedure of international investigation or settlement, was uncontested.

5.2 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee was unable to conclude, on the basis of the information before it, that there were available remedies in the circumstances of the case which could or should have been pursued.

5.3 Accordingly, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (a) or (b), of the Optional Protocol.

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

7. The time-limit for the State party's submission under article 4, paragraph 2, of the Optional Protocol expired on 1 November 1986. No submission has been received from the State party, despite a reminder sent on 19 June 1987.

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

8.2 Mr. Jean Miango Muiyo, a Zairian citizen, was kidnapped and taken to the military camp at Kokolo, Rinshasa, on 20 or 21 June 1985. There, he was subjected to torture my members of the armed forces (forces armies zaïroises ((FAZ)). Later, he was seen in a precarious physical condition by a friend of the family at Mama Yemo Hospital in Kinshasa. The author's relatives were unable to locate the victim alive; they were, however, taken to the hospital morgue to identify the victim's body. Contrary to the report of the traffic police, the victim did not succumb to the consequences of a road accident he allegedly suffered on 18 June 1985, but died as the result of traumatic wounds probably caused by a blunt instrument. This conclusion is buttressed by a report from a forensic physician dated 11 July 1985, which states that the victim's death seems to have been the result of the use of violence and not of a road accident. The author's family has requested the Office of the Public Prosecutor to conduct an inquiry into the death of Mr. Miango Muiyo, in particular asking that the military officer who delivered the victim to the hospital be summoned for questioning. This officer, however, with the consent of his superiors, has refused to be questioned.

9. In formulating its views, the Human Rights Committee also takes into account the failure of the State party to furnish any information and clarifications. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. The Committee notes with concern that, despite its repeated requests and reminders and despite the State party's obligation under article 4, paragraph 2, of the Optional Protocol, no explanations or statements clarifying the matter have been received from the State party in the present case. In the circumstances, due weight must be given to the author's allegations.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is

of the view that these facts disclose a violation of articles 6 and 7, paragraph 1, of the Covenant. Bearing in mind the gravity of these violations the Committee does not find it necessary to consider whether other provisions of the Covenant have been violated.

11. The Commit-tee therefore urges the State party to take effective steps (a) to investigate the circumstances of the death of Jean Miango Muiyo, (b) to bring to justice any person found to be responsible for his death, and (c) to pay compensation to his family.

G. Communication No. 197/1985. Kitok v. Sweden (Views adopted on 27 July 1988 at the thirty-third session)

Submitted by: Ivan Kitok

Alleged victim: author

State party concerned: Sweden

Date of communication: 2 December 1985 (date of initial letter)

Date of decision on admissibility: 25 March 1987

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

Meeting on 27 July 1988,

Having concluded its consideration of communication No. 19711985, submitted to the Committee by Ivan Kitok under the Optional Protocol to the International Covenant on Civil and Political Rights,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication (initial letter dated 2 December 1985 and subsequent letters dated 5 and 12 November 1986) is Ivan Kitok, a Swedish citizen of Sami ethnic origin, born in 1926. He is represented by counsel. He claims to be the victim of violations by the Government of Sweden of articles 1 and 27 of the Covenant.

2.1 It is stated that Ivan Kitok belongs to a Sami family which has been active in reindeer breeding for over 100 years. On this basis, the author claims that he has inherited the "civil right" to reindeer breeding from his forefathers as well as the rights to land and water in Sörkaitum Sami Village. It appears that the author has been denied the exercise of these rights because he is said to have lost his membership in the Sami village ("sameby", formerly "lappby"), which under a 1971 Swedish statute is like a trade union with a "closed shop" rule. A non-member cannot exercise Sami rights to land and water.

X.2 In an attempt to reduce the number of reindeer breeders, the Swedish Crown and the Lap bailiff have insisted that, if a Sami engages in any other profession for a period of three years, he loses his status and his name is removed from the rolls of the lappby, which he cannot re-enter except with special permission. Thus it is claimed that the Crown arbitrarily denies the immemorial rights of the Sami minority and that Ivan Kitok is the victim of such denial of rights.

2.3 With respect to the exhaustion of domestic remedies, the author states that he has sought redress through all instances in Sweden, and that the Regeringsrätten (Highest Administrative Court of Sweden) decided against him on 6 June 1985, although two dissenting judges found for him and would have made him a member of the sameby.

2.4 The author states that the same matte:' has not been submitted for examination under any other procedure of international investigation or settlement.

3. By its decision of 19 March 1986, 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 the admissibility of the communication. The Working Group also requested the State party to provide the Committes with the text of the relevant administrative an% judicial decisions pertaining to the case, including (a) the decision of 23 January 1981 of the Länsstyrelsen, Norrbottens län (the relevant administrative authority), (b) the judgeneat of 17 May 1983 of the Kammarrätten (Administrative Court of Appeal) and (c) the judgement of 6 June 1985 of the Regeringsrätten (Highest Administrative Court of Sweden) with dissenting opinions.

4.1 By its submission, dated 12 September 1986, the State party provided all the requested administrative and judicial decisions and observed as follows:

> "Ivan Kitok has alleged breaches of articles 1 and 27 of the International Covenant on Civil and Political Rights. The Government has understood Ivan Kitok's complaint under article 27 thus: that he - through Swedish legislation an% as a result of Swedish court decisions - has been prevented from exercising his 'reindeer breeding rights' and consequently denied the right to enjoy the culture of the Sami.
>
> "With respect to the author's complaint under article 1 of the Covenant, the State party observes #at it is uot certain whether Ivan Kitok claims that the Sami as a people should have the right to self-determination an set forth in article 1, paragraph 1, or whether the complaint should be considered to be limited to paragraph 2 of that article, an allegation that the Sami as a people have been denied the right freely to dispose of their natural wealth rind resources. However, as can be seen already from the material presented by Ivan Kitok himself, the issue concerning the rights of the Sami to land and water and questions connected hereto, is a matter of immense complexity. The matter has been the object of discussions, consideration and decisions ever since the Swedish Administration started to take interest in the areas in northern Sweden, where the Sami live, As a matter of fact, some of the issues with respect to the Sami population are currently under consideration by the Samerättsutredningen (Swedish Commission on Sami Issues) appointed by the Government in 1983. For the time being, the Government refrains from further comments on tbis aspect of the application. Suffice it to say that, in the

Government's opinion, the Sami do not constitute a 'people' within the meaning given to the word in article 1 of the Covenant . . . Thus, the Government maintains that article 1 is not applicable to the case. Ivan Kitok's complaints therefore rhould be declared inadmissible under article 3 of the Optional Protocol to the International Covenant on Civil and Political Rights as being incompatible with provisions of the Covenant."

4.2 With respect to au alleged violation of article 27, the State party

"admits that the Sami form an ethnic minority in Sweden and that persons belonging to this minority are entitled to protection under article 27 of the Covenant. indeed, the Swedish Constitution goes somewhat further. Chapter 1, article 2, fourth paragraph, prescribes: 'The possibilities for ethnic, linguistic or religious minorities to preserve and develop a cultural and social life of their own should be promoted.' Chapter 2, article 15, proscribes: 'No law or other decree may imply discrimination against any citizen on the ground of his belonging to a minority on account of his race, skin colour or ethnic origin.'

"The matter to be considered with regard to article 27 is whether Swedish leyielation and Swedish court decisions have resulted in Ivan Kitok being deprived of his right to carry out reindeer husbandry and, if this is the case, whether this implies that article 27 has been violated. The Government would, in this context, like to stress that Ivan Kitok himself has observed before the legal instancea in Sweden that the only question at issue in his case is the exietsnce of such special reasons as enable the authorities to grant him admission as a member of the Sörkaitum Sami community despite the Sami community's refusal . . .

"The reindeer grazing legislation had the effect of dividing the Sami population of Sweden into reindeer-herding and non-reindeer-herding Sami, a distinction which is still very important. Reindeer herding is reserved for Sami who are members of a Sami village (sameby), which is a legal entity under Swedish law. (The expression 'Sami community' is also used as an English translation of 'sameby'.) These Sami, today numbering about 2,500, also have certain other rights, for example, as regards hunting and fishing. Other Sami, however - the great majority, since the Sami population in Sweden today numbers some 15,000 to 20,000 -- have no special rights under the present law. These other Semi have found it more difficult to maintain their Sami identity and many of them are today assimilated in Swedish society. Indeed, the majority of this group does not even live within the area where reindeer-herding Sami live.

"The rules applicable on reindeer grazing are laid down in the 1971 Reindeer Husbandry Act [hereinafter the 'Act']. The ratio legis for this legislation is to improve the living condition6 for the Sami who have reindeer husbandry as their primary income, and to make the existence of reindeer husbandry safe for the future. There had been problems in achieving an income large enough to support a family living on reindeer husbandry. From the legislative history it appears that it was considered a matter of general importance that reindeer husbandry be made more profitable. Reindeer husbandry was considered necessary to protect and preserve the whole culture of the Sami . . .

"It should be stressed that a person who is a member of a Sami village also has a right to use land and water belonging to other people for the maintenance of himself and his reindeer. This is valid for State property as well as private land and also encompasses the right to hunt and fish within a large part of the area in question. It thus appears that the Sami in relation to other Swedes have considerable benefits. However, the area available for reindeer grazing limits the total number of reindeer to about 300,000. Not more than 2,500 Sami can support themselves on the basis of these reindeer and additional incomes.

"The new legislation led to a reorganisation of the old existing Sami villages into larger units. The Sami villages have their origin in the old siida, which originally formed the base of Sami society, consisting of a community of families which migrated seasonally from one hunting, fishing and trapping area to another, and which later on came to work with and follow a particular self-contained herd of reindeer from one seasonal grazing area to another.

"Prior to the present legislation, the Sami were organised in Sami communities (lappbyar). Decision to grant membership of these villages was made by the Ländsstyrelsen (County Administrative Board). Under the present legislation, membership in a Sami village is granted by the members of the Sami village themselves.

"A person who has been denied membership in a Sami village can appeal against such a decision to the County Administrative Board. Appeals against the Board's decision in the matter can be made to the Kammarrätten (Administrative Court of Appeal) and finally to the Regeringsrätten (Highest Administrative Court of Sweden).

"An appeal against a decision of a Sami community to refuse membership may, however, be granted only if there are special reasons for allowing such membership (see sect. 12, para. 2, of the 1971 Act). According to the legislative history of the Act, the County Administrative Board's right to grant an appeal against a decision made by the Sami community should be exercised very restrictively. It is thus required that the reindeer husbandry which the applicant intends to carry out within the community be in an essential way useful to the community and that it be of no inconvenience to its other members. An important factor in this context is that the pasture areas remain constant, while additional members means more reindeers.

"There seems to be only one previous judgement from the Regeringsrätten concerning section 12 of the Reindeer Husbandry Act. However, the circumstances are not quite the same as in Ivan Kitok's case...

The case that Ivan Kitok has brought to the courts is based on the content of section 12, paragraph 2, of the Reindeer Husbandry Act. The Ländsstyrelsen and the courts have thus had to make decisions only upon the question whether there were any special reasons within the meaning of the Act to allow Kitok membership in the Sami community. The Ländsstyrelsen found that there were no such reasons, nor did the Kammarrätten or the majority of the Regeringsrätten . . .

"When deciding upon the question whether article 27 of the Covenant has been violated, the following must be considered. It is true that Ivan Kitok has been denied membership in the Sami community of Sörkaitum. Normally, this would have meant that he also had been deprived of any possibility of carrying out reindeer husbandry. However, in this case the Board of the Sami community declared that Ivan Kitok, as an owner of domesticated reindeer, can be present when calves are marked, reindeer slaughtered and herds are rounded up and reassigned to owners, all this in order to safeguard his interests as a reindeer owner in Sami society, albeit not a6 a member of the Sami community. He is also allowed to hunt and fish free of charge in the community's pasture area. These facts were also decisive in enabling the Regeringsrätten to reach a conclusion when judging the matter.

"The Government contends that Ivan Kitok in practice can still continue his reindeer husbandry, although he cannot exercise this right under, the same safe conditions as the members of the Sami community. Thus, it cannot be said that he ha6 been prevented from 'enjoying his own culture'. For that reason the Government maintains that the complaint should be declared inadmissible as being incompatible with the Covenant."

4.3 Should the Committee arrive at another opinion, the State party submits that:

"As is evident from the legislation, the Reindeer Husbandry Act aims at protecting and preserving the Sami culture and reindeer husbandry as such. The conflict that has occurred in this case is not so much a conflict between Ivan Kitok as a Sami and the State, but rather between Kitok and other Sami. As in every society where conflicts occur, a choice has to be made between what is considered to be in the general interest on the one hand and the interests of the individual on the other. A special circumstance here is that reindeer husbandry is so closely connected to the Sami culture that it must be considered part of the Sami culture itself,

"In this case the legislation can be said to favour the Sami community in order to make reindeer husbandry economically viable now and in the future. The pasture areas for reindeer husbandry are limited, and it is simply not possible to let all Sami exercise reindeer husbandry without jeopardising this objective and running the risk of endangering the existence of reindeer husbandry as such.

"In this case it should be noted that it is for the Sami community to decide whether a person is to be allowed membership or not. It is only when the community denies membership that the matter can become a case for the courts.

"Article 27 guarantees the right of persons belonging to minority groups to enjoy their own culture. However, although not explicitly provided for in the text itself, such restrictions on the exercise of this right . . . must be considered justified to the extent that they are necessary in a democratic society in view of public interests of vital importance or for the protection of the rights and freedoms of others. In view of the interests underlying the reindeer husbandry legislation and its very limited impact on Ivan Kitok's possibility of 'enjoying his culture', the Government submits that under all the circumstances the present case does not indicate the existence of a violation of article 27.

"For these reasons the Government contends that, even if the Committee should come to the conclusion that the complaint falls within the scope of article 27, there has boon no breach of the Covenant. The complaint should in this case be declared inadmissible as manifestly ill-founded."

5.1 Commenting on the State party's submission under rule 91, the author, in submissions datmd 5 and 12 November 1986, contends that his allegations with respect to violations of articles 1 and 27 are well-founded.

5.2 With regard to article 1 of the Covenant, the author states:

"The old Lapp villages must be looked upon as small realms, not States, with their own borders and their government and with the right to neutrality in war. This was the Swedish position during the Vaea reign and is well expressed in the royal letters by Gustavus Vasa of 1526, 1543 and 1551. It was also confirmed by Gustavus Adolphus in 1615 and by a royal judgement thnt year for Suondavare Lapp village . . .

"In Sweden there is no theory, as there is in some other countries, that the King or the State was the first owner of all land within the State's borders. In addition to that, there was no State border between Sweden and Norway until 1751 in Lapp areas. In Sweden there is the notion of allodial land rights, meaning land rights existing before the State. These allodial land rights are acknowledged in the travaux préparatoires of the 1734 law-book for Sweden, including even Finnish territory.

"Sweden has difficulty in understanding Kitok's complaint under article 1. Kitok's position under article 1, paragraph 1, is that the Sami people has the right to eelf-determination . . . If the world Sami population is about 65,000, 40,000 live in Norway, 20,000 in Sweden, 4,000 to 5,000 in Finland and the reet in the Soviet Union, The number of Swedish Sami in the heartlands between the vegetation-line and the Norwegian border is not exactly known, because Sweden has denied the Sami the right to a census. If the number is tentatively put at 5,000, this population *in* Swedish Sami land rhould be entitled to the right to self-determination. The existence of Sami in other countries should not be allowed to diminish the right to rslf-determination of the Swedish Sami. The Swedieh Sami cannot have a lesser right because there are Sami in other countries . ..".

5.3 With respect to article 27 of the Covenant, the author states:

"The 1928 law was unconstitutional and not consistent with international law or with Swedieh civil law. The 1928 statute said that a non-my-member like Ivan Kitok had reindeer breeding, hunting and fishing rights but was not entitled to use those rights. This is a most extraordinary statute, forbidding a person to use civil rights in his possession. The idea was to make room for the Sami who had been displaced to the north, by reducing the number of Sami who could use their inherited land end water rights . . . .

"The result is that there are two categories of Sami in the Sami heartlands in the north of Swedon between the vegetation-line of 1673 and the *Norwegian* 1751 border. *One* category is the full Sami, i.e., the village Sami; the other is the half-Sami, i.e., the non-village Sami living in the Sami village area, having land and water rights, but prohibited by statute to use

those rights. As this prohibition for the half-Sami is contrary to international and domestic law, the 1928-1971 statute is invalid and cannot forbid the half-Sami from exercising his reindeer brooding, hunting and fishing rights. As a matter of fact, the half-Sami have exercised their hunting and fishing rights, especially fishing rights, without the permission required by statute. This has been common in the Swedish Sami heartlands and was valid until the Regeringsrätten rendered its decision on 6 June 1985 in the Ivan Kitok case . . . Kitok's position is that he is denied the right to enjoy the culture of the Sami as he is just a half-Sami, whereas the Sami village members are full Sami . . . The Swsdish Government has admitted that reindeer breeding is an essential element in the Sami culture. When Sweden now contends that the majority of the Swedish Sami have no special rights under tho existing law, this is not true. Sweden goes on to say 'these other Sami have found it more difficult to maintain their Sami identity and many of them are today assimilated in Swedish society. Indeed, the majority of this group does not even live within the area where reindeer-herding Sami live'. Ivan Kitok comments that he speaks for the estimated 5,000 Sami who live in the Swedish Sami heartlands and of whom only 2,000 are sameby members. The mechanism of the sameby ... diminishes the number of reindeer-farming Sami from year to year; there are now only 2,000 persons who are active sameby members living in Swedish Sami heartlands. When Sweden says that these other Sami are assimilated, it seems that Sweden confirms its own violation of article 27.

"The important thing for the Sami people is solidarity among the people (folksolidaritet) and not industrial solidarity (näringssolidaritet). This vas the great appeal of the Sami leaders, Qustaf Park, Israel Ruong and others. Sweden has tried hard, however, to promote industrial solidarity among the Swedish Sami and to divide them into full Sami and half-Sami . . . It is characteristic that the 1964 Royal Comnittee wanted to call the Lapp village 'reindeer village' (renby) and wanted to make the renby an entirely economic association with increasing voting power for the big reindeer owners. This has also been achieved in the present sameby, where members get a new vote for every extra 100 reindeer. It is because of this organisation of the voting power that Ivan Kitok was not admitted into his fatherland Sörkaitum Lappby.

"Among the approximately 3,000 non-sameby members who are entitled to carry out reindeer farming and live in Swedish Sami heartland there are only a few today who are interested in taking up reindeer farming. In order to maintain the Sami ethnic-linguistic minority, it is, however, very important that such Sami are encouraged to join the sameby."

5.4 In conclusion, it is stated that the author, as a half-Sami,

"cannot enjoy his own culture because his reindeer-farming, hunting and fishing rights can be removed by an undemocratic graduated vote and as a half-Sami he is forced to pay 4,000 to 5,000 Swedish krona annually as a fee to the Sörkaitum sameby association that the full Sami do not pay to that association. This is a stigma on half-Sami."

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 67 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee noted that the State party did not claim that the communication was inadmissible under article 5, paragraph 2, of the Optional Protocol. With regard to article 5, paragraph 2 (a), the Committee observed that the matters complained of by Ivan Kitok were not being examined and had not been examined under another procedure of international investigation or settlement. With regard to article 5, paragraph 2 (b), the Committee was unable to conclude, on the basis of the information before it, that there were effective remedies in the circumstances of the present case to which the author could still resort.

6.3 With regard to the State party's aubmiaaion that the communication ahould be declared inadmissible as incompatible with article 3 of the Optional Protocol or as "manifestly ill-founded", the Committee observed that the author, as an individual, could not claim to be the victim of a violation of the right of celf-determination enshrined in article 1 of the Covenant. Whereas the Optional Protocol provides a recourse procedure for individuals claiming that their rights have been violated, article 1 of the Covenant deals with rights conferred upon peoplee, as such. However, with regard to article 27 of the Covenant, the Committee obaerved that the author had made a rearonable effort to euhetantiate his allegations that he was the victim of a violation of his right to enjoy tho same rights enjoyed by other member.6 of the Sami community. Therefore, it decided that the issues before it, in particular the scope of article 27, should be examined with the merits of the case.

6.4 The Committee noted that both the author and the State party had already made extensive submissions with regard to the merits of the case. However, the Committee deemed it appropriate at that juncture to limit itself to the procedural requirement of deciding on the admissibility of the communication. It noted that, if the State party should wish to add to its earlier submission within six months of the tranamittal to it of the decision on admissibility, the author of the communication would be given on opportunity to comment thereon. If no further submissions were received from the State party under article 4, paragraph 2, of the Optional Protocol, the Committee would proceed to adopt its final views in the light of the written information already submitted by the parties.

6.5 On 25 March 1987, the Committee therefore decided that the communication was admissible in so far as it raised issues under article 27 of the Covenant, and requeeted the State party, should it not intend to make a further submission in the case under article 4, paragraph 2, of the Optional Protocol, to so inform the committee, so as to permit an early decision on the merits.

7. By a note dated 2 September 1987, the State party informed the Committee that it did not intend to make a further submission in the case. No further submission hae been received from the author.

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

9.1 The main question before the Committee is whether the author of the conxnunication is the victim of a violation of article 27 of the Covenant because, as he alleges, he is arbitrarily denied immemorial rights granted to the Sami community, in particular, the right to membership of the Sami community and the right to carry out reindeer husbandry. In deciding whether or not the author of the communication hae been denied the right to "enjoy [his] own culture", as

provided for in article 27 of the Covenant, and whether section 12, paragraph 2, of the 1971 Reindeer Husbandry Act, under which an appeal against a decision of a Sami community to refuse membership may only be granted if there are special reasons for allowing such membership, violate6 article 27 of the Covenant, the Committee bare6 its findings on the following considerations.

9.2 The regulation of an economic activity is normally a matter for the State alone. However, where that activity is an essential element in the culture of an ethnic community, its application to an individual may fall under article 27 of the covenant, which provides;

> "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to ouch minorities shall not be denied the right, in community with the other member6 of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

9.3 The Committee observes, in this context, that the right to enjoy one's own culture in community with the other member6 of the group cannot be determined in abstracto but ha6 to be placed in context. The Committee is thus called upon to consider statutory restrictions affecting the right of an ethnic Semi to membership of a Sami village.

9.4 With regard to the State party'6 argument that the conflict in the present case is not 60 much a conflict between the author a6 a Sami and the State party, but rather between the author and the Sami community (see para. 4.3 above), the Committee observes that the State party'6 responsibility ha6 been engaged, by virtue of the adoption of the Reindeer Husbandry Act of 1971, and that it is therefore State action that ha6 been challenged. A6 the State party itself point6 out, an appeal against a decision of the Sami community to refuse membership can only be granted if there are special reasons for allowing such membership; furthermore, the State party acknowl dges that the right of the Ländsstyrelsen to grant such an appeal should be exercised very restrictively.

9.5 According to the State party, the purpose6 of the Reindeer Husbandry Act are to restrict the number of reindeer breeder6 for economic and ecological reasons and to secure the preservation and well-being of the Sami minority. Both parties agree that effective measures are required to ensure the future of reindeer breeding and the livelihood of those for whom reindeer farming is the primary source of income. The method selected by the State party to secure these objective6 is the limitation of the right to engage in reindeer breeding to members of the Sami villagee. The Committee is of the opinion that all these objective6 and measure6 are reasonable and consistent with article 27 of the Covenant.

9.6 The Committee ha6 none the less had grave doubt6 a.8 to whether certain provision6 of the Reindeer Husbandry Act, and their application to the author, are compatible with article 27 of the Covenant. Section 11 of the Reindeer Husbandry Act provides that:

> "A member of a Sami community is:
>
> "1. A person entitled to engage in reindeer husbandry who participate6 in reindeer husbandry within the pasture area of the community.

"2. A person entitled to engage in reindeer hurbandry who has participated in reindeer husbandry within the pasture area of the village and who has had this a6 his permanent occupation and has not gone over to any other main economic activity.

"3. A petrtaon entitled to engage in reindeer husbandry who is the husband or child living at home of a member as qualified in subsection 1 or 2 or who is the surviving husband or minor child of a deceased member."

Section 12 of the Act provides that:

"A Sami community may accept as a member a person entitled to engage in reindeer husbandry other than as specified in section 11, if he intend6 to carry on reindeer husbandry with his own reindeer within the pasture area of the community.

"If the applicant should be refused membership, the Länsstyrelsen may grant him membership, if special reasons should exist."

9.7 It can thus be seen that the Act provides certain criteria for participation in the life of an ethnic minority whereby a person who is ethnically a Sami can be held not to be a Sami for the purposes of the Act. The Committee has been concerned that the ignoring of objective ethnic criteria in determining membership of a minority, and the application to Mr. Kitok of the designated rules, may have been disproportionate to the legitimate ends sought by the legislation. It ha6 further noted that Mr. Kitok ha6 always retained some link6 with the Sami community, always living on Sami lands and seeking to return to full-time reindeer farming as soon a6 it became financially possible, in his particular circumstances, for him to do so.

9.8 In resolving this problem, in which there is an apparent conflict between the legislation, which seems to protect the right6 of the minority au a whole, and its application to a single member of that minority, the Committee has been guided by the ratio decidendi in the Lovelace case (No. 24/1977, Lovelace v. Canada), d/ namely, that a restriction upon the right of an individual member of a minority must be shown to have a reasonable and objective justification and co be necessary for the continued viability and welfare of the minority as a whole. After a careful review of all the elements involved in this case, the Committee is of the view that there is no violation of article 27 by the State party. In this context, the Committee notes that Mr. Kitok is permitted, albeit not as of right, to graze and farm hi6 reindeer, to hunt and to fish.

H. Communication No. 201/1985, Hendriks v. the Netherlands (Views adopted on 27 July 1988 at the thirty-third session)

Submitted by: Wim Hendriks, Sr.

Alleged victim: The author

State party concerned: The Netherlands

Date of communication: 30 December 1985 (date of initial letter)

Date of decision on admissibility: 25 March 1987

The Human Rights Committee, ● 6tabliahed under article 28 ofthe International Covenant on Civil and Political Rights,

Meeting on 27 July 1988,

Having concluded its consideration of communication No. 201/1985, submitted to the Committee by Wim Hendriks, Sr. 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 following1

Views under article 5, paragraph 4, of the Optional Protocol*.

1. The author of the communication (initial letter of 30 December 1985 and subsequent letter6 of 23 February, 3 September and 15 November 1986 and 23 January 1988) is Wim Hendrike, a Netherlands citizen born in 1936, at present residing in the Federal Republic of Qermany, where he work6 a6 an engineer. He submit6 the communication on his own behalf and on behalf of his son, Wim Hendriks, Jr., born in 1971 in the Federal Republic of Germany, et present residing in the Netherlands with his mother. The author invoke6 article 23, paragraph 4, of the Covenant, which provide6 thatr

> "State6 Parties . . . shall take appropriate steps to ensure equality of rights and responsibilities of spouses a6 to marriage . . . and at it6 dissolution. In the case of diesolution, provision shall be made for the necessary protection of any children."

He claims that this article ha6 been violated by the Courts of the Netherland which granted exclusive custody of Wim Hendrike, Jr. to the mother without ensuring the father's right of access to the child. The author claims that hi6 sons's right6 have been and are being violated by hi6 subjection to one-sided custody; moreover, the author maintains that his right6 a6 a father have been and are being violated and that he ha6 been deprived of his responsibilities vis-à-vis his son without any reason other than the unilateral opposition of the mother.

2.1 The author married in 1959 and moved with his wife to the Federal Republic of Qermany in 1962, where their 6on Wim was born in 1971. The marriage gradually broke up and in September 1973 the wife disappeared with the child and returned to the Netherlands. She instituted divorce proceeding6 and on 26 September 1974 the marriage was dissolved by decision of the Amsterdam District Court, without settling the questions of guardianship and visiting rights. Since the child was

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* The text of an individual opinion submitted by Messrs. Vojin Dimitrijevic and Omar El Shafei, Mrs. Rosalyn Higgins and Mr. Adam Zielinski is reproduced in appendia I to the present annex. The text of an individual opinion submitted by Mr. Amos Wako is reproduced in appendix II

already with the mother, the father asked the court, in December 1974 and again in March 1975, to make a provisional visiting arrangement. In May 1975, the Court awarded custody to the mother, without, however, making provision for the father's visiting rights; co-guardianship was awarded to the ex-wife's father on the ground that Mr. Hendriks was living abroad. Early in 1978, the author requested the Child Care and Protection Boar& to intercede in establish'ng contact between hi6 son and himself. Because of the mother's refusal to co-operate, the Board failed in it6 efforts and advised the author to apply to the Juvenile Judge of the Ameterdam District Court. On 16 June 1978, the author requested the Juvenile Judge to establish a first contact betuesn his son and himself and subsequently to make a visiting arrangement. On 20 December 1978, the Juvenile Judge, without finding any fault on the part of the father, dismissed the request on the grounds that the mother continued to oppoee any such contact. In this connection, the Juvenile Judge noted:

> "That in general the court is of the opinion that contact between a parent vrho does not have custody of a child or children and that child/those children must ba possible;
>
> "That, although the courc considers the father'6 requeet reasonable, the mother cannot in all conscience agree to an access order or even to a single meeting between the boy and his father on neutral ground, despite the fact that the Child Care and Protection Board would agree and would have offered guarantees;
>
> "That, partly in view of the mother '6 standpoint, it is to be expected that the interests of the boy would be harmed if the court were to impose an order."

2.2 On 9 May 1979, the author appealed to the Court of Appeal in Amsterdam, arguing that the mother's refusal to co-operate was not A valid ground for rejection of his request. *On* 7 June 1979, the Court of Appeal confirmed the lower Court'6 judgementr

> "Considering . . . as its main premise that in principle a child should have regular contact with both parents if it is to have a balanced upbringing and be able also to identify with the parent who does not have custody,
>
> "That cases may arise, however, where this principle cannot be adhered to,
>
> "That this may particularly be the case where, as in the present instance, a number of year6 have passed since the parent6 were divorced, both have remarried, but there is still serious coxxflict between the parents,
>
> "That, in such a case, it is likely that an access order will lead to tension in the family of the parent who has custody of the child and that the child can easily develop a conflict of loyalties,
>
> "That a situation such a6 that described above is not in the interests of the child, it being irrelevant which of the parent6 ha6 caused the tension, since the interests of the child - the right to grow up without being subjected to unnecessary tension - must prevail,
>
> "That, in addition, the father ha6 not seen the child since 1974 and the child now has a harmonious family life and ha6 come to regard the mother's present husband a6 his father.

2.3 On 19 July 1979, the author appealed on points of law to the Supreme Court, arguing that the grounds for a rejection could only lie in exceptional circumstances relating to the person of that parent "as certain to be a *danger* to the health and moral welfare of the child or to lead to a serious disturbance of hi6 mental balance, whereas in the prerent case it has not been stated or established that such exceptional circumstances exist or have existed". On 15 February 1980, the Supreme Court upheld the Court of Appeal's decision, noting that "the right of the parent who does not have or will not be awarded custod, of the child to have access to that child must never be loot sight of but - as the Court rightly judged in this case - the interests of the child must ultimately be paramount". The author therefore states that he hao exhausted domestic remedies.

2.4 The author contends that the Netherlands courts did not correctly apply article 161, section 5, of the Netherlands Civil Code, which stipulates that "on demand or on application of both parents or of one of them, the judge may lay down an arrangement regarding contact between the child and the parent not granted custody of the child. If such arrangement has not been laid down in the divorce judgement.... it may be laid down at a later date by the Juvenile Judge". In view of tho "inalienable" right of the child to have contact with both his parents, the author contends that the Netherlands courts must grant visiting rights to the non-custodial parent, unlees exceptional circumetancee exist. Since the Courts did not mako an arrangement for mutual access in his case and no exceptional circumstances exist, it is argue% that Netherlands legislation and practice do not effectively guarantee the equality of rights and responsibilities of spouses at the dissolution of marriage nor the protection of children, as required by article 23, paragraphs 1 an% 4, of the Covenant. In particular, the author notes that the law does not give the courts any guidance as to which exceptional circumstances might serve as a justification for the denial of this fundamental right of mutual access. For the psychological balance and harmonious development of a child, contact with the parent who wee not granted custody must be maintained, unless the parent in question constitutes a danger to the child. In the case of his son an% himself, the author contends that, although the Netherlandr courts ostensibly had the best interests of the child in mind, Wim junior has been denied the opportunity of seeing his father for 12 *years* on the insufficient ground that his mother oppose% such contacts and that court-enforce% visits could have caused psychological stress detrimental to the child. The author argues that every divorce entails psychological stress for all parties concerned an% that the courts erred in determining the interests of the child in a static manner by focusing only on his protection from tension, which, moreover, would not be caused by the father's misconduct but by the mother's categorical opposition. The author concludes that the courts should have interpreted the child's best interests in a dynamic manner by giving more weight to Wim junior's need to maintain contact with his father, even if the re-establishment of the father-son relationship might initially have given rise to certain difficulties.

2.5 Raving regard to article 5, paragraph 2 (a), of the Optional Protocol, the author states that on 14 September 1978 he submitted an application to the European Commission of Human Rights, and that consideration of the matter by that body wat complete% with the adoption of the Commission's report on 8 March 1982. On 3 May 1984, the author submitted a separate application to the European Commission on behalf of his son. On 7 October 1985, the Commission declared the case inadmissible, *ratione personae*.

2.6 The author therefore requested the Human Rights Committee to consider his communication since he had exhausted domestic remedies and the same matter was not pending before another procedure of international investigation or settlement.

3. By its decision of 26 March 1986, the Committee transmitted the communication, under rule 91 of its provisional rules of procedure, to the State party concerned, requesting information an% observations relevant to the question of the admissibility of the communication.

4.1 In its submission under rule 91, dated 9 July 1986, the State party contests the author's standing to submit an application on behalf of his son, adding that:

> "The family relationship between Hendriks, Sr. and Hendriks, Jr. does not in itself provide sufficient grounds to assume that the son wishes the application to be submitted . . . Even if Mr. Hendriks did have the right to submit an application on behalf of his son, it is doubtful whether Hendriks, Jr. could be regarded as a 'victim' within the meaning of rule 90, paragraph 1 (b), [of the Committee's provisional rules of procedure]. The Government of the Netherlands wishes to stress that the Netherlands authorities have never prevented Wim Hendriks, Jr. from contacting his father of his own accord if he wished to do so. The Government of the Netherlands would point out in this respect that Mr. Hendriks, Sr. met his son in 1985 and entertained him at his home in the Federal Republic of Germany."

4.2 With respect to the compatibility of the communication with the Covenant, the State party contends that article 23, paragraph 4, of the Covenant

> "does not seem to include a rule to the effect that a parent who has been divorced must have access to children from the marriage if those children are not normally resident with him/her. If the article does not lay down such a right, there is no need to explore the question of whether this right ... has actually been violated."

4.3 With respect to the exhaustion of domestic remedies, the State party observes that there is nothing to prevent the author from once again requesting the Netherlands courts to issue an access order, basing his request on "changed circumstances", since Wim Hendriks, Jr. is now over 12 years old, and, in accordance with the new article 902 (b) of the Code of Civil Procedure which came into force on 5 July 1982, Wim Hendriks.. Jr. would have to be heard by the Court in person before a judgement could be made.

5.1 In his comments dated 3 September 1986, the author states that the decision of the Supreme Court of the Netherlands of 24 February 1980 effectively prevents him from re-entering the domestic recourse system.

5.2 With regard to the question of his standing to represent his son before the Committee, the author submits a letter dated 15 November 1986, countersigned by his son, forwarding a copy of the initial letter of 30 December 1985 and of the comments of 3 September 1986, also countersigned by his son.

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant. The Committee decided on the admissibility of the Communication at its twenty-ninth session, as follows.

6.2 Article 5, paragraph 2 (a), of the Optional Protocol precludes the Committee from considering a connnunication if the same matter is being examined under another procedure of international investigation or oettlement. The Committee ascertained that the case was not under examination elsewhere. It also noted that prior consideration of the same matter under another procedure did not preclude the Committee's competence as the State party had made no reservation to that effect.

6.3 Article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication unless domestic remedies have been exhausted. In that connection, the Committee noted that, in its submission of 9 July 1986, the State party had informed the Committee that nothing would prevent Mr. Hendriks from once again requesting the Netherlands courts to issue an access order. The Committee observed, however, that Mr. Hendriks' claim, initiated before the Netherlands courts 12 years earlier, had been adjudicated by the Supreme Court in 1980. Taking into account the provision of article 5, paragraph 2 (b), in fine of the Optional Protocol regarding unreasonably prolonged remedies, the author could not be expected to continue to request the same courts to issue an access order on the basis of "changed circumstances", notwithstanding the procedural change in domestic law (enacted in 1982) which would now require Hendriks, Jr. to be heard. The Committee observed that, although in family law disputes, such as custody cases of that nature, changed circumstances might often justify new proceedings, it was satisfied that the requirement of exhaustion of domestic remedies had been met in the case before it.

6.4 With regard to the State party's reference to the scope of article 23, paragraph 4, of the Covenant (para. 4.2 above), i.e. whether the provision in question laid down a right of access for a divorced parent or not, the Committee decided to examine the issue with the merits of the case.

7. On 25 March 1987, the Committee therefore decided that the communication was admissible. In accordance with article 4, paragraph 2, of the Optional Protocol, the State party was requested to submit to the Committee, within six months of the date of transmittal to it of the decision on admissibility, written explanations or statements clarifying the matter and the measures, if any, that might have been taken by it.

0.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 19 October 1987, the State party contendr that article 23, paragraph 4, of the Covenant does not provide for a right of access to his/her child for a parent who has been divorced and whose children are not normally resident with him/her. Neither the travaux préparatoires nor the wording of the said article would seem to imply this. The State party further affirms that it has met the requirements of article 23 paragraph 4, since the equality of rights and responsibilities of spouses whose marriage has been dissolved through divorce is assured under Netherlands law, which also provides for the necessary protection of any children. After the divorce, custody csn be awarded to either the mother or the father. The State party submits that:

> "In general, it can be assumed that a divorce occasions such tensions that it is essential to the child's interest that only one of the parents be awarded custody. In oases of this kind, article 161, paragraph 1, of book 1 of the Civil Code provides that, after the dissolution of a marriage by divorce, one of the parents shall be appointed guardian. This parent will then have sole custody of the child. The courts decide which parent is to be

awarded custody after a divorce. This is done on the basis of the interests of the child. One nay therefore conclude that, by these provisions, Netherlands law effectively guarantees the equality of rights and responsibilities of parent8 after the diaaolution of marriago, bearing in mind the necessary protection of the child."

The State party adds that it is customary for parents to agree, at the time of the divorce, on an access arrangement between the child and the parent who was not awarded custody. The latter, in accordance with article 161, paragraph 5, of the Civil Code, can request the Court to decide on an access arrangement.

8.2 The State party further explains that, if the Committee should interpret article 23, paragraph 4, of the Covenant as granting a right of access to his/her child to the parent who waa not awarded custody, it would wish to observe that such a right has, in practice, developed in the Netherlands legal system:

> "Although not laid down explicitly in (the Netherlands) legislation, it is aaaumed that the parent not awarded custody has a right of access. This right derives from article 8, paragraph 1, of the European Convention on Human Rights, which lays dov the right to respect for family life. The Nethe lands is a party to thia Convention, which thua forma part of the Netherlands legal sya tern. Article 8 . . . moreover is directly applicable in the Netherlands, thua allowing individual citiaena to institute proceedings before the Netherlands courts if they are deprived of the above right."

8.3 With regard to the possible curtailment of access to the child in cases where this is deemed crucial to the child's interests, the State party refers to a judgement of the Supreme Court of the Netherlands of 2 May 1980, the relevant passage of which reads:

> "The right to respect for family life, as laid down in article 8 of the European Convention on Human Rights, does not imply that the parent who is not awarded custody of his or her minor children is entitled to contact with them where such contact is clearly not in the children's interest because it would cause considerable disturbance and tension in the family in which they are living. To recognise such an entitlement on the part of the parent not awarded custody would conflict with the children's rights under article 8 of the Convent ion. "

This, it is stated, is a case where the "necessary protection of any children". within the meaning of article 23, paragraph 4, of the Covenant, was the overriding interest at stake. The State party adds that the Lower House of parliament is debating a bill concerning the arrangement of access in the case of divorce. The bill proposer that the parent whc is not awarded custody after divorce be granted a statutory right of access and puts forward four grounds on the basis of which access could be denied in the interests of the child, to wit, if:

> "(a) Access would have a seriously detrimental effect on the child's mental or physical well-being;
>
> "(b) The parent is regarded as clearly unfit or clearly incapable of access;
>
> "(c) Access otherwise conflicts with the overriding interest of the child;

"(d) The child, being 12 years of age or older, has been heard and has indicated that he, has serious objectiona to contact with his parent."

8.4 Inasmuch as the scope of a parent's right of acceaa to his, er child is concerned, the State party indicates that ouch a right is aot an absolute one and may always be curtailed if this is in the overriding interests of the child. curtailment can take the form of denying the right of acceaa to the parent not awarded custody or restricting access arrangementa, for example by limiting the amount of contact. The interests of the parent not awarded custody will only be overruled and access denied if that is considered to be in the child's interests. However, if the parent who wan awarded custody reacts to access arrangement6 in such a way as to cause considerable disturbance in the family in which the child is living, the parent rho was not awarded custody may be denied acceaa. Applications for access can thus be turned down, or access rights revoked, if this is deemed to be in the overriding interests of the child,

8.5 The State party further recalls that the above considerations were all applied in deciding whether the author ahould have access to his son. This led to the denial of access by every court involved.

8.6 The State party conclude6 that article 23, paragraph 4, of the Covenant has not been violated and contends that the obligation to enaure the equality of rights and responsibilities of epouaee at the dissolution of marriage, referred to in that provision, does not include an obligation to enaure the right of access in the form of an access arrangement. Alternatively, if the Committee ahould interpret the above provision as encompassing that right, it states that the Netherlands legal system already provides for the right in question. In the author's case, the right wax assumed to exist, yet its exercise was denied in the intereats of the child. The necessary protection of the child upon dissolution of the marriage made it impossible for the complainant to exercise his right of access.

9. In his comments dated 23 January 1988, the author claims that article 161, paragraph 5, of the Netherlands Civil Code should have been interpreted as requiring the judge in all but exceptional cases to ensure continued contact between the child and the non-custodial parent. He concluder that, in the absence of a clear legal norm under Netherlands law affirming that a parent-child relationship and parental reaponaibility continue, the Netherlanda courts, in the exercise of uncontrolled discretion, violated his and his non's rights under the Covenant by denying his applications for visiting rights.

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

10.2 The main question before the Committee is whether the author of the communication is the victim of a violation of article 23, paragraphs 1 and 4, of the Covenant because, as a divorced parent, he has been denied access to his son. Article 23, paragraph 1, of the Covenant provides for the protection of the family by society and the State:

"The family is the natural and fundamental group unit of society and is entitled to protection by society and the State".

Under paragraph 4 of the same article:

"States parties to the present Covenant ehall take appropriate steps to ensure equality of riqhtr and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."

10.3 In examining the communication, the Committee considers it important to stress that article 23, paragraphs 1 and 4, of the Covenant sets out three ruler of equal importance, namely, that the family ahould be protected, that steps should be taken to ensure equality of riqhtr of spouses upon the dissolution of the marriage and that provision rhould be made for the necessary protection of any children. The words "the family" in article 23, paragraph 1, do not refer solely to the family home as it exists during the marriage. The idea of the family must nscesaarily embrace the relations between parents and child. Although divorce legally ends a marriage, it cannot dissolve the bond uniting father - or mother - and child; this bond does not depend on the continuation of the parents' marriage. It would seem that the priority given to the child's interests is compatible with this rule.

10.4 The courts of the States parties are generally competent to evaluate the circumstances of individual cases. However, the Committee deems it necessary that the law rhould establish certain criteria so as to enable the courts to apply to the full the provisions of article 23 of the Covonant. It seems essential, barring exceptional circumstances, that there criteria should include the maintenance of personal relations and direct and regular contact between the child and both parents. The unilateral opposition of ons of the parents, cannot, in the opinion of the Committee, be conridered an exceptional circumstance.

10.5 In the case under consideration, the Committee notes that the Netherlands courts, as the Supreme Court had previously done, rscognissd the child's right to permanent contact with each of his parents as well as the right of access of the non-curtodial parent, but considered that these rights could not be exercised in the current case because of the child's interests. This was the court's appreciation in the light of all the circumstances, even though there was no finding of inappropriate behaviour on the part of the author.

11. As a result, the Committee cannot conclude that the State party has violated article 23, but drawr its attention to ths need to supplement the legislation, as stated in paragraph 10.4.

Notes

a/ See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex X and ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), annex IX, respectively.

b/ Ibid., Thirty-eighth Session, Supplement No. 40 (A/38/40), annex XIII, para. 7.2.

c/ Mr. Mbenge, first cousin of the author, co--signed the author's submissions to the Committee. Mr. Mbenge's own case (No. 16/1977) was concluded with views adopted on 25 March 1983 (eighteenth session) (see Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40), annex X).

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

Appendix I

Individual opinion: submitted by Messrs. Vojin Dimitrijevic and Omar El Shafei, Mrs. Rosalyn Higgins and Mr. Adam Zielinski, pursuant to rule 94, paragraph 3, of the Committee's provisional rules of procedure, concerning the views of the Committee on communication No. 201/1985, Hendriks v. the Netherlands

1. The great difficulty that we see in this case is that the undoubted right and duty of a domestic court to decide "in the beet interests of the child" can, when applied in a certain way, deprive a non-custodial parent of his rights under article 23.

2. It is sometimes the case in domestic law that the very fact of a family rift will lead a non-custodial parent to lose access to the child, though he/she hao not engaged in any conduct that would per se render contact with the child undesirable. However, article 23 of the Covenant speaks not only of the protection of the child, but also of the right to a family life. We agree with the Committee that this right to protection of the child and to a family life continues, in the parent-child relationship, beyond the termination of a marriage.

3. In this case, the Amsterdam District Court rejected the father's petition for access, although it had found the request reasonable and one that should in general be allowed. It would seem, from all the documentation at our disposal, thnt its denial of Mr. Hendrike' petition was based on the tensions likely to be generated by the mother's refusal to agree to such a contact - "even to a single meeting between the boy and his father on neutral ground, despite the fact that the Child Care end Protection Board would agree and would have offered guarantees" (decision of 20 December 1978). Given that it was not found that Mr, Hendrike' character or behaviour was such as to make the contact with his eon undesirable, it seems to us that the only "exceptional circumstance" was the reaction of Wim Hendriko junior's mother to the possibility of parental access and that this determined the perception of what was in the best interests of the child.

4. It is not for us to insist that the courts were wrong, in their aesesement of the beet interests of the child, in giving priority to the current difficulties and tensions rather than to the long-term importance for the child of contact with both its parentr. However, we cannot but point out that this approach does not euatain the family rights to which Mr. Hendriks and his son were entitled under article 23 of the Covenant.

Vojin Dimitrijevic
Omar El Shafei

Rosalyn Higgins
Adam Zielinski

Appendix II

Individual opinion: submitted by Mr. Amos Wako, pursuant to rule 94, paragraph 3 of the Committee's provisional rules of procedure, concerning the views of the Committee on communication No. 201/1985, Hendriks v. the Netherlands

1. The Committee's decision finding no violation of article 23 of the Covenant in this case is predicated on it6 reluctance to review the evaluation of facts or the exercise of discretion by a local court of a State party.

2. Although I fully appreciate and understand the Committee's opinion in this matter and, in fact, agreed to go along with the consensus, I wish to put on record my concerns, which are twofold.

3. My first concern is that, though the Committee's practice of not reviewing the decisions of local courts is prudent and appropriate, it. is not dictated by the Optional Protocol. In case6 where the fact6 are clear and the texts of all relevant orders and decisions have been made available by the parties, the Committee should be prepared to examine them as to their compatibility with the specific provisions of the Covenant invoked by the author. Thus, the Committee would not be acting as a "fourth instance" in determininq whether a decision of a State party'6 court was correct according to that State's legislation, but would only examine whether the provisions of the Covenant invoked by the alleged victim have been violated.

4. In the present case, the Committee declared tha communication of Mr. Handriks admissible, thus indicating that it was prepared to examine the case on the merits. In its views, however, the Committee has essentially decided that it is unable to examine whether the decisions of the Netherlands courts not to grant the author visiting rights to his son were compatible with the requirements of protection of the family and protection of children laid down in articles 23 and 24 of the Covenant. Paragraph 10.3 of the decision reflects the Committee's understanding of the scope of article 23, paragraphs 1 and 4, and of the concept of "family". In paragraph 10.4, the Committee underlines the importance of maintaining permanent personal contact between the child and both his parents, barring exceptional circumstances; it further states that the unilateral opposition by one of the parents - as apparently happened in this case - cannot be considered such an exceptional circumstance. The Committee should therefore have applied these criteria to the facts of the Hendriks case, so as to determine whether a violation of the articles of the Covenant had occurred. The Committee, however, makes a finding of no violation on the ground that the discretion of the local courts should not be questioned.

5. My second concern is whether the Netherlands legislation, a6 applied to the Hendriks family is compatible with the Covenant. Section 161, ynragraph 5, of the Netherlands Civil Code does not provide for a statutory right of access to a child by the non-custodial parent, but leaves the question of visiting rights entirely to the discretion of the judge. The Netherlands legislation doe6 not contain specific criteria for withholding of access. Thus the question arises whether the said yaneral legislation can be deemed sufficient to guarantee the protection of children, in particular the right of children to have access to both parents, and to ensure equality of rights and responsibilities of spouses at the dissolution of

a marriage, as envisaqsd in articles 23 and 24 of the Covenant. The continued contact between a child and a non-custodial parent is, in my opinion, too important a matter to be left solely to the judge to decide upon without any legislative guidance or clear criteria, hence the emerging international norms, notably international conventions against the abduction of children by parents. bilateral agreements providing for visiting rights and, moot importantly, the draft convention on the rights of the child, draft article 6, paragraph 3, of which provides : "a child who is rapsrated from one or both parents hae the right to maintain personal relations and direct contacts with both parents on a regular basis, save in exceptional circumstances". Draft article 6 bis, paragraph 2, provides similarly: "a child whore parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumetancer, personal relations and direct contacts with both parents . ..".

6. The facts of this case, as presented to the Committee, do not reveal the existence of any exceptional circumstances that might have justified the denial of personal contacts between Wim Hendriks junior and Wim Handrike senior. The Netherlande courts themselves agreed that the father's application for access was reasonable, but denied the application primarily on the grounds of the mother's opposition, Although the Netherlands courts may have applied Netherlands law to the facts of this case correctly, it remains my concern that that law does not include a statutory right of access nor any identifiable criteria under which the fundamental right of mutual contact between a non-custodial parent and his or her child could be denied. I am pleased that the Netherlands Government is currently contemplating the adoption of new legislation which would provide for a statutory right of access and give the courts some guidance for the denial of access based on exceptional circumstances. This legislation, if enacted, would batter rsilect the spirit of the Covenant.

Amos Wako

ANNEX VIII

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

A. Communication No. 204/1986, A. P. v. Italy (Decision adopted on 2 November 1987 at the thirty-first session)*

Submitted by: A. P. [name deleted]

Alleged victim: Author

State party concerned: Italy

Date of communication: 16 January 1986 (date of initial letter)

The Human Rights Committee, established under Article 28 of the International Covenant on Civil And Political Rights,

Meeting on 2 November 1987,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 16 January 19316 And a further letter of 7 September 1987) is A. P., an Italian citizen born on 12 March 1940 in Tunisia, at present residing in France. He claims to be the Victim Of A violation Of Article 14, paragraph 7, of the Covenant by the Italian Government. He is represented by counsel.

2.1 The author states that he was convicted on 27 September 1979 by the Criminal Court of Lugano, Switzerland, for complicity in the crime of conspiring to exchange currency notes Amounting to the sum of 297,650,000 lire, which was the ransom paid for the release of A person who had been kidnapped in Italy in 1978. He was eentenced to two years' imprisonment, which he duly served. He was eubeequently expelled from Switzerland.

2.2 It is claimed that the Italian Government, in violation of the principle of non bis in idem, is now seeking to punish the author for the same offence as that for which he had already been convincted in Switzerland. He was thue indicted by an Italian Court in 1981 (After which he apparently left Italy for France) And on 7 March 1983 the Milan Court of Appeal convicted him in absentia. On 11 January 1985, the Second Division of the Court of Caseation in Rome upheld the conviction And eentenced him to four years' imprisonment and A fine of 2 million lire.

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* Pursuant to rule 85 of the provisional rules of procedure, Committee member Fausto Pocar did not take part in the Adoption of the decision.

2.3 The author invokes article 14, paragraph 7, of the Covenant, which provider:

> "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.*'

He further rejects the Italian Government'6 interpretation of this provision as being applicable only with regard to judicial decisions of the same State and not with regard to decisions of different Staten

2.4 The Author further indicates that in 1984 the Italian Government addressed An extradition request to the Government of France, but that the Paris Court of Appeal, by judgement of 13 November 1985, denied extradition because it would violate French ordre public to make the Author suffer two terms of imprisonment based on the same facts.

3. The Committee has ascertained that the same matter ha6 not been submitted to another procedure of international investigation or settlement.

4. By its decision of 19 March 1986, 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 the admissibility of the communication, in particular details of the effective remedies available to the author in the particular circumstances of his case. It also requested the State party to provide the Committee with the text of Any court orders or decisions of relevance to the case, including the 1981 indictment of the author, the judgemsnt of 7 March 1983 of the Milan Court of Appeal And the judgement of 11 January 1985 of the Court of Cassation in Rome.

5.1 In it6 submission under rule 91, dated 24 June 1987, the State party provide6 copies of the court order6 and decisions in the author'6 case And objects to the admissibility of the communication, which it considers unfounded (sans fondement). In particular, the State party Argues that Mr. P. was tried for two different offences in Switzerland and in Italy.

5.2 The State party first provides An outline of the factual situation:

> "A few month6 After the kidnapping of M. G. M., in Milan on 25 May 1978, And the payment by her family of 1,350 million lire, attempts were made to 'launder' sums deriving from the crime. In particular, on 4 September 1978, A person later identified as J. M. F. attempted to convert into a bank cheque the sum of 4,735,000 lire at the Milan branch of the Banca Nazionale de1 Lavoro; on 6 September 1978, the same individual negotiated the sum of 120 million lire at several bank6 in Lugano (Switzerland); on 12 September 1978, again at different banks in Lugano, J. M. F., this time accompanied by the author changed 100 million lire into Swiss francs. On that occasion, the Swiss police intervened and J. M. F. absconded, while A. P. was Arrested. Some time 1 ater, a further sum of 57,650,000 lire was found hidden in A rented car that had bsen used by J. M. F. And A. P. to travel to Switzerland."

5.3 The State party then rejects the author's contention that article 14, paragraph 7, of the Covenant protects the principle of "international non bis in idem". In the opinion of the State party, article 14, paragraph 7, must be understood as referring exclusively to the relationuhipe between judicial decisions of a single State and not between those of different States.

6. In his comments, dated 7 September 1987, the author contends that his allegations with respect to a violation of article 14, paragraph 7, are well founded and arguer that article 14, paragraph 7, of the Covenant should be interpreted broadly, so as to apply to judicial decisions of different States.

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

7.2 The Committee notes that the State party does not claim that the communication is inadmissible under article 5. paragraph 2, of the Optional Protocol. With regard to article 5, paragraph 2 (a), the Committee observes that the matter complained of by A. P. has not been submitted to another procedure of international investigation or settlement. With regard to article 5, paragraph 2 (b), the State party has not claimed that there are domestic remedies which the author could still pursue in his case.

7.3 With regard to the admissibility of the communication under article 3 of the Optional Protocol, the Committee has examined the State party's objection that the communication is incompatible with the provisions of the Covenant, since article 14, paragraph 7, of the Covenant, which the author invokes, does not guarantee non bis in idem with regard to the national jurisdictions of two or more States. The Committee observes that thie provision prohibit8 double jeopardy only with regard to an offence adjudicated in a given State.

6. In the light of the above, the Human Rights Committee concludes that the communication is incompatible with the provisions of the Covenant and thue inadmissible ratione materiae under article 3 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the State party an% the author of the communication.

B. Communication No. 212/1986, P. P. C. v. the Netherlands (Decision adopted on 24 March 1988 at the thirty-second session)

Submitted by: P. P. C. [name deleted]

Alleged victim: The author

State party concerned: The Netherlands

Date of communication: 27 October 1966

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

Meeting on 24 March 1988,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 27 October 1986, is P. P. C., a citizen of the Netherlands, residing in that country. He alleger that he is the victim of a violation of article 26 of the International Covenant on Civil and Political Rights by the Government of the Netherlands. He ix represented by counsel.

2.1 The author states that he has been unemployed since November 1982 *and* that he received unemployment benefits until July 1984 and since then benefits equal to the amount of the legal minimum wage. From 14 August to 14 October he was briefly employed, his income for that period being 200 guilders *a* month higher than the minimum wage. From 14 October onwards he again drew unemployment benefits. Beyond that, he requests% the local authorities of Maastricht to grant him benefits under II law providing additional assistance to persons with a minimum income for lore of purchasing power over a certain year, Assessment of entitlement to benefits under that law is based on a person's income during the month of September multiplied by 12. But because P. P. C. had worked during the month of September, the annual calculation showed a figure much higher than his real income in 1984 and, consequently, he did not qualify for benefits under the "compensations law" of 1984. The author took his case to the highest administrative organ in the Netherlands, Administratieve Rechtspraak Overheidebeschikkinqen (AROB), which maintained that the calculation was base% on norms applied equally to all and that therefore there ha% been no discrimination in his case. The author claims to have exhausted domestic remedies.

2.2 The author maintains that a broad interpretation of article 26 of the Covenant would be in line with that prevailing in the parliamentary debates in the Netherlando at the time when the Covenant was ratified.

3. By its decision of 9 April 1907, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the 'ate Party concerned, requesting information and observations relevant to the ,'stion of admissibility of the communication.

4. In its submission dated 25 June 1987, the State party reserved the right to submit observations on the merits of the communication which might turn out to have an effect on the question of admissibility. For that reason the State party euggeeted that the Committee might decide to join the question of the admissibility to the examination of the merits of the communication.

5. The author's deadline for comments on the State party's submission expired on 26 September 1987. No comments have been receive% from the author.

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

6.2 Pursuant to article 2 of the Optional Protocol, the Committee may only consider communications from individuals who claim that any of their rights enumerated in the Covenant have been violated. The Committee has already had an opportunity to observe that the scope of article 26 can also cover cases of discrimination with regard to social security benefits (communications Nos. 172/1984, 180/1984 and 18211984). a/ It considers, however, that the scope of article 26 does not extend to differences of results in the application of common rules in the allocation of benefits. In the case at issue, the author merely states that the determination of compensation benefits on the basis of a person's income in the month of September led to an unfavourable result in his case. Such determination is, however, uniform for all persons with a minimum income in the Netherlands. Thus, the Committee finds that the law in question is not prima facie discriminatory, and that the author does not, therefore, have a claim under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the State party and to the author.

C. Communication No. 224/1987, A. and S. N. v. Norway (Decision adopted on 11 July 1988 at the thirty-third session)

Submitted: A. and S. N. [names deleted]

Alleged victims: The authors and their daughter S.

State party concerned: Norway

Date of communication: 9 March 1987 (date of initial letter)

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

Meeting on 11 July 1988,

Adopts the following:

on admissibility

1. The authors of the communication (initial letter of 9 March 1987 and further letters of 10 September 1987 and 6 April 1988) are A. and S. N., Norwegian citizens residing in Alesund, writing on their own behalf and on behalf of their daughter S. born in 1981. They claim to be victims of a violation by Norway of article 18, paragraphs 1, 2 and 4, and article 26 of the International Covenant on Civil and Political Rights. They are represented by counsel.

2.1 Tbe authors state that the Norwegian Day Nurseries Act of 1975 as amended in 1983 contains a clause providing that "the day nursery shall help to give the children an upbringing in harmony with basic Christian values". The authors are

non-believers and active member8 of Norway's Humanist and Ethical Union. They object to the fact that their daughter, who attended the Vestbyen Day Nurrory in Alesund from the autumn of 1986 to August 1987, has been exposed to Christian influence8 againrt their will. The Christian object clause does not apply to privately-owned nurseries, but the author8 state that of the 10 nurseries in Alesund, nine are owned and run by the Municipal Council, and many parents have no alternative but to rend their children to these nurseries. The authorr quote from the 1984 Regulations issued by virtue of the Day Nurseries Act and from the "Guidelines for implementing the object clause of the Day Nurseries Act", which road in part: "the Christian fertivalr are widely celebrated in our culture. Therefore, it is natural that day nurseries rhould explain the meaning of there festivals to the children ... Christian faith and teachings rhould play only a minor role in everyday life at the day nursery." The Rumanict and Ethical Union, an organisation of non-believers, ha8 raised strong objections against the Day Nurseries Act and it8 implementing regulations.

2.2 In the present case, S.'s parent8 object that when she first attended the day nursery, grace was rung at all meals. On taking the matter up with the day nursery staff, they were told that their daughter did not have to sing with the other children, but the parents argue that it would have been difficult for a sir-year-old child not to do the same things as all the other children.

2.3 The parents claim that the Day Nurseries Act, in conjunction with its Regulations and Guidelines, and the ensuing practice are inconeirtent with article 18, paragraph 4, of the Covenant, which requires States parties to respect the liberty of parent8 to give their children a religious and moral upbringing in accordance with their own convictions. Moreover, they refer to article 26 of the Covenant, which provides that legislation shall prohibit all forms of discrimination and shall secure for everyone equal and effective protection againrt discrimination on grounds of, among other things, religion.

2.4 With respect to ths requirement of the exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol, the authors rely on their understanding that this requirement "shall not be enforced in cases where employing such remedies would take an unreasonably long time". They state that they have not. submitted their complaint to any Norwegian court and claim that there are no effective remedies available, mince S. would only attend day nursery until August 1987. Moreover, they doubt whether "the United Nations Covenant would be applied to this national issue by a Norwegian court of law. Therefore it would be a waste of time and money, and also an extra strain on complainants, if the issue wore first to be tried before Norwegian courts".

2.5 The Human Rights Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

3. By a decision of 8 April 1987, the Human Rights Committee transmitted the cormnunication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of the admissibility of the communication. On 23 October 1987, the Committee's Working Group adopted a second decision under rule 91, requesting the State party to provide more specific information concerning the remedies available to the authors.

4.1 In its initial submission under rule 91, dated 14 July 1987, the State party objects to the admissibility of the communication on the grounds that the authors

have completely by-passed domestic administrative and judicial remedies and that the exception provided for in article 5, paragraph 2 (b), of the Optional Protocol does not apply in the present case.

4.2 The State party points out that the requirement of article 5, paragraph 2 (b), is based on both practicality and the principle of State sovereignty. The authors of the communication, however, have not submitted their case to any Norwegian court. It is open to them to challenge the application of the Day Nurseries Act and Regulations in the District and City Court in the first instance, the High Court (Appeals Division) in the second instance and finally the Supreme Court in the third instance. Subject to permission being granted by the Supreme Court's Appeals Selection Committee, the case could be appealed directly from the District and City Court to the Supreme Court, Such permission may be granted if the issue is considered to be of general importance or if particular reasons suggest that a quick decision is desirable.

4.3 As to the authors' specific complaint, the State party notes that such a case would take approximately four months from the writ of summons to the main hearing by the Alesund District and City Court. To bring a suit through all court instances would normally take three to four years, although this period would be shortened considerably if the Supreme Court should grant a direct appeal. Accordingly, the State party submits that the exhaustion of domestic remedies in Norway would not be unreasonably prolonged and that the authors could at the very least have brought the matter before the court of first instance. Moreover, the State party observes that the authors' objection that their daughter would be out of the day nursery by the time of the final judgement and that therefore it would be futile to go to the courts equally applies to an eventual decision by the Human Rights Committee and its possible incorporation into Norwegian law and practice. Thus, the State party concludes that there is no urgency that could justify by-passing domestic remedies and appealing directly to the Human Rights Committee.

4.4 In its further submission under rule 91, dated 24 February 1989, the State party explains that "everyone having a 'legal interest' may bring his/her case before the ordinary courts in order to test the legality of any act, i.e. also the Day Nurseries Act. This opportunity was also open to the complainants when they decided in the spring of 1987 to submit the matter directly to the Human Rights Committee."

4.5 The State party further reiterates that the Norwegian courts have given considerable weight to international treaties and conventions in the interpretation of domestic rules, even if these instruments have not been formally incorporated into domestic law. It points to several Supreme Court decisions concerning the relationship between international human rights instruments and domestic law and concerning possible conflicts between the International Covenant on Civil and Political Rights and domestic statutes. Although the Supreme Court has, in these cases, ruled that there was no conflict between domestic law and the relevant international instrument, it has expressed clearly that international rules are to be taken into consideration in the interpretation of domestic law. In this context, the State party reiterates that "the possibility of setting aside a national statute altogether on the grounds of conflict with the Covenant cannot be disregarded" and emphasizes that, in every case in which international human rights instruments have become relevant, the Supreme Court has taken a decision on the issue of conflict between a domestic statute and the international instrument and not refused to test it. In a recent case, for example,

"the question was whether a private school for educating social workers owned by a Christian foundation was allowed to ask job applicants (future teachers) about their religious beliefs. In that case, the court expressed a clear opinion on the legal relevance of the international rules when interpreting domestic law. The first voting judge, who was supported by a unanimous court, stated: 'I do not find it questionable that the convention (ILO Convention No. 111) must be given weight in the interpretation of section 55 A of the Working Environment Act of 1977'. The further vote also shows that the convention is given considerable attention and weight." (Norsk Rettstidende 1986, pp. 1,250 ff.)

4.6 In the light of the above observations, the State party argues that the authors would have stood a good chance of testing the compatibility of the Day Nurseries Act with the Covenant before the Norwegian courts. Thus, they could have invoked the Covenant and asked the courts to interpret the Act in the light of it and to declare the Christian object clause invalid as incompatible with it. Moreover, they could have argued that the Act was in conflict with article 2 (1) of the Norwegian Constitution, under which "all inhabitants of the Kingdom shall have the right to free exercise of their religion". In the interpretation of this provision, international human rights instruments would be important elements to be considered by the judge,

5.1 On 10 September 1987 and 5 April 1988, the authors forwarded their comments in reply to the State party's observations on the admissibility of the communication.

5.2 The authors contest the State party's argument that the communication is inadmissible on the grounds of non-exhaustion of domestic remedies. They state that, while the Norwegian Government contends that they should have submitted their case to the domestic courts, their main argument is that the domestic courts would be an inappropriate forum to decide the issue at stake. They stress that they have not argued that the practice followed by Norwegian day nurseries is in conflict with the Day Nurseries Act and its by-laws, but with international human rights instruments.

5.3 The authors maintain that it would be possible to have their case dealt with by the Human Rights Committee without testing it first in the Norwegian courts. They claim that the Supreme Court decisions referred to by the State party in its submission of 24 February 1988 are irrelevant.

5.4 The authors conclude that no practical measures have been implemented by the Norwegian authorities to ensure that children from non-Christian families are not exposed to Christian influences since, despite strong efforts on their part, they did not succeed in preventing such influences in their daughter's case.

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

6.2 The Committee observes, in this respect, that the authors have not pursued the domestic remedies which the State party ha6 submitted were available to them. It notes the authors' doubts whether the International Covenant on Civil and Political Rights would be taken into account by Norwegian courts, and their belief that the matter could not be satisfactorily settled by a Norwegian court. The State party, however, has submitted that the Covenant would be a source of law of considerable

weight in interpreting the scope of the Christian object clause and that the authors would have stood a reasonable chance of challenging the Christian object clause of the Day Nurseries Act and the prevailing practice as to their compatibility with the Covenant had they submitted the case to the Norwegian courts; the Committee notes further that there was a possibility for an expeditious handling of the authors' case before the local courts. The Committee finds, accordingly, that the pursuit of the authors' case before Norwegian courts could not be deemed a priori futile and that the authors' doubts about the effectiveness of domestic remedies did not absolve them from exhausting them. Thus, the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

7. The Human Rights Cozznittee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the authors of the communication and to the State party.

D. Communication No. 227/1987, O. W. v. Jamaica (Decision adopted on 26 July 1988 at the thirty-third session)

Submitted by: 0. W. [name deleted)

Alleged victim: The author

State party concerned: c a

Date of communication: 2 March 1987 (date of initial letter)

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

Meeting on 26 July 1988,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 2 March 1987 and a subsequent letter dated 1 May 1987) is 0. W., a Jamaican citizen, awaiting execution at St. Catherine District Prison in Jamaica. He claims to be innocent of the crimes imputed to him and alleges irregularities in the various judicial proceedings leading to his death sentence.

2.1 0. W. states that in June 1974 he was questioned by the police in connection with a robbery, in the course of which two suspects had allegedly killed a female employee of an unnamed institution. Although the author explained to the police officers that he did not know the men in question or anything about the incident under investigation, he was taken to the scene of the crime, where two witnesses allegedly stated that he was not one of the men they had seen. Nevertheless 0. W.

was detained and taken to the police station for *further* investigation. When he was told to ● tand in line for purposes of identification, he requested the presence of a lawyer *or* of a member of his family, as allegedly provided in Jamaican law, but his request was not granted. On 14 August 1974, he was allegedly tried, found guilty and sentenced to "indefinite detention" for possession of a firearm. The author claims that no firearm was found in his possession and none was produced in court.

2.2 On 25 November 1975, a second trial took place before the Home Circuit Court. 0. W. does not specify the charger against him in the ● □♍□■♎ trial, but, from the overall context of his letter, they appear to have been murder charger stemming from the robbery in June 1974 during which a woman war killed. Am the jury could not arrive at a unanimous verdict, the judge ordered a new trial which took place on 13 July 1978. After being convicted and ● entenced to death, the author appealed to the Court of Appeal, which, on 17 April 1977, ordered a new trial on the grounde of "unfair identification" . The *now* trial took place in July 1978 and 0. W. was again convicted and ● entoncod to death. His second appral to the Court of Appeal was dismissed in December 1980. He maintains his innoce ce and claims that the sole witness against him was instructed by the police to identify him as one of the suspects and that defence exhibits from previous proceedings, which were to be used to impeach the witness and which wore supposed to be in the possess on of the court, could nat be found for his trial in 1978. 0. W. did not mention in his initial letter whether he had filed a petition for leave to appeal to the Judicial Committee of the Privy Council.

3. By decision of 8 April 1987, the Human Rights Committee requested 0. W., under rule 91 of the Committee's provisional ruler *of* procedure, to furnish clarifications on a number of issues relating to his communication and transmitted the communication for information to the State party, requesting it, under rule 86 of the provisional rules of procedure, not to carry out the death sentence against the author before the Committee had had an opportunity to consider further the question of the admissibility of the communication. By letter dated 1 May 1907, the author provided a numbe. of clarifications and stated that the Jamaica Council for Human Rights had filed a petition on his behalf for leave to appeal to the Judicial Committee of the Privy Council, indicating that this appeal, to the bert of his knowledge, was still pending.

4. By a telegram dated 23 July 1987 addressed to the Deputy Prime Minister and Minister for Foreign Affairs, the Chairman of the Human Rights Committee informed the State party that the consideration of the question of admissibility of the conununication would be further delayed and reiterated the Committee's raquert that the death sentence against 0. W. should not be carried out before the Committee had had an opportunity to consider further the question of the admissibility of the conununication. By a letter dated 11 October 1987, the author's counsel informed the Committee that the Judicial Conwnittee of the Privy Council had granted the author's petition for special. leave to appeal on 8 October 1987 and would conduct a hearing on the merits of the case at a date to be determined. He requested the Committee to postpone consideration of the case pending the outcome of the author's appeal to the Judicial Committee of the Privy Council.

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

5.2 The Committee has ascertained as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the • amo matter is not being examined under mother procedure of international investigation or settlement.

5.3 With respect to the requirement ot exhaustion of domestic remedies under article 5, paragraph 2 (b), of tho Optional Protocol, the Committee has noted the letter from tha author's counsel, dated 11 October 1987, indicating that the Judicial Committee of the Privy Council granted the author's petition for special leave to appeal and would conduct a hearing on the merits of the case at a date to be determined. It thus concludes that one available remedy has not been exhausted by thr author. Article 5, paragraph 2 (b), however, precludes the Committee from considering a communication prior to the exhaustion of all available domestic remedies.

6. The Human Rights Committee therefore decider!

(a) That the communication ix inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's provisional ruler of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the State party ehall bo requested, taking into account the spirit and purpose of rule 86 of the Committee's provisional rules of procedure, not to carry out the death sentence against the author before he hae had a reaxonable time, after completing the effective domsetic remedies available to him, to request the Committee to review the present decision;

(c) That this decision shall be transmitted to the State party and to the author,

E. Communication No. 228/1987, C. L. D. v. France (Decision adopted on 18 July 1988 at the thirty-third session)

Submitted by: C. L. D. [name deleted]

Alleged victim: The author

State party concerned: France

Date of communication: 16 May 1987 (date of initial letter)

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

Meeting on 18 July 1988,

Adopts the following:

Decision on admissibility*

1. The author of the communication (initial letter dated 16 May 1987 and further letters dated 23 June, 21 July, 2 and 23 August, 30 October and 2 December 1987, 18 January, 10 February, 8 end 18 April, 4 and 10 May, 6, 8, 27 and 30 June 1988) is C. L. D., a French citizen born in 1956 at Lannejen, France. He claims to be the victim of violations by the Government of France of article 2, paragraphs l-3, article 19, paragraph 2, articles 26 and 27 of the Internstional Covenant on Civil and Political Rights.

2.1 In his initial submission, the author states that the French Postal Administration (PTT) has refused to issue him postal cheques printed in the Brston language, which he asserts is his mother tongue. Many persons in his district of residence are said to be proficient in Breton and numerous employees of the local postal administration process letters addressed in Breton. HO observes in this connection that other countries have adjusted to multiple language correspondence. In a subsequent letter of 21 July 1987, the author claims that the refusal by the French fiscal authorities to acknowledge the text of his address written in Breton also violates the above-mentioned articles of the Covenant. He further alleges that the fact that the fiscal authorities have refused to take into consideration information provided by him in Breton has resulted in his being asked to pay taxes which do not take into account tax-deductible professional expenses.

2.2 With respect to the requirement of exhaustion of domestic remedies, the author states that he has sought the annulment of a decision of the Regional Chief of the Postal Administration in Rennes, dated 27 August 1985, rejecting his requeat to have his postal cheques printed in Breton, The author states that on 28 October 1985 he filed an action against the PTT with the Administrative Tribune1 of Renner with a view to having the above decision reversed. With respect to the second complaint, directed against the Ministry of the Economy and Finance, he states that he filed a complaint with the Administrative Tribunal of Rennee on 21 July 1986, requesting the annulment of what he refers to as the "implicit rejection of his complaint by the fiscal authorities". A further complaint submitted to the same tribunal asking for annulment of a requeat by tho Regional Head Office of Fiscal Services (Finistère) to submit an account of his professional expenses for 1984 in French rather than in Breton was rejected by judgment of 13 May 1987.

3. By a decision dated 1 July 1387, addreeeed to the author only, the Working Group of the Human Rights Committee requested further clarification of the steps taken by the author to exhaust domestic remedies after his petition of 28 October 1985 to the Administrative Tribunal.

4.1 By a letter dated 30 October 1987, the author replied to the questions posed by the Working Group. He states that he has taken no steps to exhaust domestic remedies after petitioning the Administrative Tribunal on 28 October 1985. With

* The text of an individual opinion submitted by Mr. Vojin Dimitrijevic, Mrs. Rosalyn Higgins and Messrs. Andreas Mavrommatis, Fausto Pocar and Bertil Wennergren is reproduced in appendix I to section E of the present annex. The text of an individual opinion submitted by Mr. Birame Ndiaye is reproduced in appendix I I.

respect to his action against the Ministry of the Economy and Finance (address in Breton and statements of professional expenditures), the author claims that there have boon no now developments since his earlier submissions to the Committee.

4.2 Under cover of a letter dated 6 June 1988, the author forwards the texts of two judgements rendered by the Administrative Tribunal on 26 May 1988, dismissing his actions against the PTT and against the Ministry of the Economy and Finance, The Tribunal endorsed the conclusions of the representatives of the PTT snd of the Ministry of the Economy and Finance, copier of which the author forwarded under cover of a letter dated 27 June 1988. The author argues that he does not intend to appeal aginst these judgements to the Conseil d'Etat, since this would cause "considerable delays" and because he is convinced that the rsault would, in any case, not be favourable to him.

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

5.2 The Committee har ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or eettlemant.

5.3 With respect to the requirement of exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol, the Committee notes that the author doer not intend to appeal against the judgements of the Administrative Tribunal of Rennes of 26 May 1988 to the Conseil d'Etat, given the delays that an appeal would entail and because he believes that such an appeal would be dismissed. Ths Committee finds, however, that, in the particular circumstances disclosed by the communication, the author's contentions did not absolve him from the obligation to pursue remedies available to him. It concludes that tho further purruit of the author'8 case could not be deemed a priori futile and observes that mere doubtr about the success of a remedy do not render it ineffective and cannot be admitted am a justification for non-compliance. Unable to find that the application of domestic remedies in this case hab been unreasonably prolonged, the Committee concludes that the requirement of article 5, paragraph 2 (b), of the Optional Protocol has not been met.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author and, for information, to the State party.

Appendix I

Individual opinion: submitted by Mr. Dimitrijevic, Mrs. Higgins and Messrs. Mavrommatis, Pocar and Wennergren concerning the admissibility of communication No. 228/1987, C. L. D. v. France

1. We agree with tho decision of the Committee that the communication is inadmissible.

2. However, in our opinion, the finding of inadmissibility ahould be based on article 3 of the Optional Protocol, rather than article 5, paragraph 2 (b), thereof. There is an order of priority in thoae articlea, in the sense that the initial task of the Committee must necessarily be to ascertain whether a communication apportaina to a claim which, if proved as to its alleged facts, could entail a violation of the Covenant. If it could not entail a violation, because *rationa materiae* it is not within the Covenant, the communication will be inadmissible under article 3 of the Optional Protocol.

3. Even if all the domestic remedies had been exhauated in respect of such a claim, it would still be beyond the competence of the Committee *rationa materiae* to proceed. Thus, although in this preliminary phaea of its work the Committee is not, of course, examining matters relating to the merits, it has to examine the claim to see whsthsr it is "incompatible with the Covenant" that is, whether or not it potentially relates to a right within the scope of the Covenant.

4. In the present case the claims of the author reveal no facts which, even if proved, could occasion a violation of the Covenant. None of the articles cited by the author, including article 27, even potentially provide the entitlement to receive portal chequer or to havo acknowledgement of one's address in one's mother tongue. In our view, this communication is inadmissible under article 3 of the Optional Protocol.

5. We therefore find it inappropriate to proceed to an examination of the local remedies. Nor is it necessary to examine whether the declaration of the government of France made upon accession to the Covenant is to be interpreted as a rsaervation or as a declaration *simpliciter*. (The relevant clause states that "in the light of article 2 of the Constitution of the French Republic, the French Government declarer that article 27 is not applicable so far as the Republic is concerned".) Declarationa do not have the same legal conosquences as reservations. In any case where jurisdiction turned on the effect of a declaration, it would be necessary to see whether the statement of the country concerned was in Pact, regardless of its nomenclature a reservation as to the Committee'8 jurisdiction or a declaration of interpretation by the State party. This is not such a case and no vie is offered here as to the legal effect of the French declaration regarding article 27.

Vojin Dimitrijevic
Roealyn Higgins
Andreas Mavrommatis
Fausto Pocar
Bertil Wennergren

Appendix II

Individual opinion, submitted by Mr. Birame Ndiaye concerning the admissibility of communication No. 228/198 C. L. D. v. France

1. A decision on the admissibility of a communication submitted to the Committee under the Optional Protocol to the International Covenant on Civil and Political Rights preauppoeea a prime facie examination of its content, the competence of the Committee being limited exclusively to the rights specified in the Covenant. If the Committee ventured to consider a complaint baaed on the alleged violation of a right not guaranteed by the Covenant, it would be acting ultra vires. Given that the competence of the Committee is limited ratione materiae, the order to be followed in examining the criteria for admiaaibility is not left purely to its diacretionr it must correspond to the progrearion established by articles 1, 2 and 3 and reflected in the Committee's rules of procedure (rule 90). The Committee should not examine the queation of the exhaustion of domestic remedies without first considering the questions of the existence of a right guaranteed by the Covenant and a treaty obligation of the State which is the object of the complaint. In the preaent case, however, the Committee proceeded differently; it did not begin by asking whether the communication concerned a right guaranteed by the Covenant before going on to see whether or not France has an obligation to respect the provision invoked. Wrongly, the Committee baaed itself forthwith on the non-exhaustion of domestic remedies.

2. By proceeding in that manner, the Committee was unable to see that the only right which seemed to be involved was that provided for in article 27. However, article 27 has a precise content. It stipulates that persons belonging to "ethnic, religious or linguistic minorities . . . shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". Thia article certainly does not demand of States parties that they require their postal administrations to issue portal cheques in a language other than the official language, nor does it stipulate that the authoritiea should accept information provided in another language. The Covenant is indfffersnt to the centralised or decentralised character of Stateo, to the existence or non-existence of an official language. By apparently overlooking that point, the Comnittee arrived at a decision which is all the more open to criticism in that the queetion of national languages has enormous political significance for third world States, particularly in Africa. But whatever its legitimacy, the problem of such language8 cannot be solved by acts of the Committee and in any case not beyond the content of article 27.

3. The Committee's decision in the C. L. D. v. France case is also or more especially to be regretted in that it hae in no way settled the question of whether or not France is a party to article 27. The separability of consent to be bound by an international convention is the rule in internat onal law and its only limits are the rules stipulated in article 19 of the 1969 Vienna Convention on the Law of Treaties :

> "A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:
>
> "(a) The reservation la prohibited by the treaty;

"(b) The treaty provider that only specified reservations, which do not include the reservation in question, may be made; or

"(c) In cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpooe of the treaty."

4. Upon accession to the International Covenant on Civil and Political Rights, the Government of the French Republic declared that: "in the light of article 2 of the Constitution of the *French* Republic ... article 27 is not applicable so far as the Republic is concerned". Clearly France, in basing itself on a rule of its internal law of fundamental importance (Vienna Convention, 1969, art. 46), has excluded article 27 from its acceptance. For France, the Covenant has 26 articles and no State party har challenged that by objecting to the reservation. Accordingly, it is incomprehensible that the Committee, which of course has no power to object to the reservations of States parties, should have acted as though France was a party to article 2'1. For me, the communication of C. L. D. is inadmissible in the first instance because France is not a party to article 27 and subsoquantly because the content of the article is not what the author claims. It was inappropriate to examine the criterion of exhaustion of domestic remedies, the Committee being incompetent ratione materiae.

5. Unfounded in terms of the Covenant and the Protocol thereto, this decision is an inducement to internal and external proceedings which is particularly unjustifiable in that they will achieve nothiny in the Committee.

Birame Ndiaye

F. Communication No. 236/1987, V. M R. B. v. Canada (Decision adopted on 18 July 1988 at the thirty-third session)

Submitted by: V. M. R. B. [name deleted]

Allege · tim: The author

State party concerned: Canada

Date Of communication: 25 June 1987 (date of initial letter)

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

Meeting on 18 July 1988,

Adopts the following2

Decision on admissibility

1. The author of the communication (initial letter dated 25 June 1987, and further letter dated 20 April 1988). is V. M. R. B, a journalist and citizen of El Salvador, born in 1948, at present residing in Montreal, Canada. He claims to be the victim of a violation by the Government of Canada of articles 2, 6, 9, 14, 18, 19 and 26 of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 On 5 January 1982, the author entered Canada at Blackpool, on the United States border, without having any visa to enter or stay in the country. He was detained upon entry, but he applied for admission as a refugee under the Canadian Immigration Act of 1976. On 7 January 1982, he was heard for the first time before an Immigration Adjudicator, pursuant to article 23 (3) (c) of the Act. The latter decided to uphold the author's detention under article 104 (3) (b) of the Act, on the ground that he represented a "danger to the public** and was likely to stay in Canada and not appear for his deportation hearings. This decision was based on a security certificate dated 14 November 1980 and signed by both the Solicitor-General and the Minister for Employment and Immigration of Canada, according to which the author is a person "who there are reasonable grounds to believe will engage in or instigate the subversion by force of any Government". Under article 19 (1) (f) of the Act, such persons are to be denied entry into Canadian territory.

2.2 The detention order was extended in a succession of weekly hearings before the Adjudicator (from 14 January to 11 February 1982). On 17 February 1982, the Adjudicator ordered the author deported, purportedly on the sole ground that the Minister's certificate of 14 November 1980 was "uncontestable". Testimony on behalf of the author by witnesses produced by his lawyer was deemed unconvincing. After another hearing on 10 March 1982, during which the government representative stated that the author could no longer be regarded as a danger to the public, the Adjudicator ordered the author's release on 11 March 1982. The deportation order, however, was upheld.

2.3 The author claim6 that the Government of Canada har violated article 9, paragraph 1, of the Covenant by detaining him arbitrarily from 5 January to 11 March 1902, a6 the detention hearing6 never ● 6tahli6hed that ho represented a danger to the public. He alleges a violation of article 6 because the Canadian Government has refused to assure him formally that he would not be deported to El Salvador, where, the author claims, he would have reasons to fear attempt6 on hi6 life. It is further claimed that article 19 (1) (f) of the Immigration Act violate6 the freedom6 of political opinion, thought and expression guaranteed by the Covenant. Finally, the author states that the review6 of his detention did not proceed in a fair and impartial manner and that therefore he was the victim of a violation of article 14, paragraph 1, of the Covenant.

2.4 With regard to the requirement of the exhaustion of domertic remedies, the author states that he ha6 taken his case through all court instances, and that him appeal6 were dismissed by the Immigration Appeal Board, the Federal Court of Canada (first instance), the Federal Court of Appeal and the Supreme Court of Canada. Ho claim6 that domertic remedies have been exhausted with the decision by the Supreme Court of Canada of 29 January 1987 not to grant him leave to appeal.

3. By a decision of 19 October 1987, the Working Group of the Human Right6 Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relavant to the question of the admissibility of the communication.

4.1 In it6 submission under rule 91, dated 12 February 1988, the State party object6 to the admissibility of the communication under article 3 of the Optional Protocol, rationa materiae, a6 incompatible with the provisions of the Covenant, and as an abuse of the right of submission.

4.2 With regard to the facts, the State party points out that the author had already entered Canada in February 1980 and applied for refugee status. Before a decision could be rendered in hi6 case, he left Canada in October 1980. Investigations showed that "while in Canada, he was tasked and funded by a foreign political party to carry out certain activities which are prohibited under Canadian law. As a cover for his entry to Canada and for hi6 activities while in Canada, Mr. R. was accredited as a journalist with the . . . news agency . . . which is known to be directed by a foreign intelligence service". As a result of information made available by the Security Service of the Royal Canadian Mounted Police, it waft determined that Mr. R. was a person described under article 19 (1) (f) of the Immigration Act of 1976, which denier admission to Canada to person6 for whom there are reasonable ground6 to believe that they will engage in or instigate the subversion by force of any Government. Therefore, on 1.4 November 1980, after the author ' s departure from Canada, a certificate pursuant to article 39 of tho Immigration Act was issued, excluding him from re-entry into Canada, and requiring that he be deported if he entered Canada again. Thus, when on 5 January 1982 he again entered Canada, he was ordered detained pursuant to article 104 of the Immigration Act. The State party emphasises that

> "upon seeking to re-enter Canada ... the author was entitled to a hearing of his refugee claim; however, he was never legally admitted to Canada, purauant to the rule6 for admission set out in the Immigration Act, 1976. From 1982 to date, the author has never been lawfully within the territory of Canada, although he has remained in Canada during this time pending the outcome of immigration proceedings".

4.3 With respect to an alleged violation of article 6 of the Covenant, the State party indicates that what the author is complaining of is that Canada might deport him to El Salvador or to another country that would, in turn, return him to El Salvador, where allegedly his life could be in danger. Thus, what the author is in effect claiming is that unless he is given permission to stay in Canada, article 6 of the Covenant will be contravened. In this connection the State party observes that there is no right of asylum in the Covenant, and that a violation of article 6 of the Covenant cannot result from the denial of asylum. Thus, this aspect of the communication should be declared inadmissible ratione materiae. Furthermore, the State party adds that the author's fears are unfounded, since the Government of Canada has publicly stated on several occasions that it would not return him to El Salvador and has given him the option of selecting a safe third country.

4.4 With respect to an alleged violation of article 9, paragraph 1, of the Covenant, the State party indicates that Mr. R's detention from 5 January 1982 to 11 March 1982 was based on the certificate issued jointly by the Canadian Solicitor-General and by the Minister of Employment and Immigration pursuant to article 39 of the Immigration Act, stating that, "based on security and criminal intelligence reports received and considered by us, which cannot be revealed in order to protect information sources, [the author] is a person described in article 19 (1) (f) of the Immigration Act, 1976, his presence in Canada being detrimental to the national interest". Thus, the State party submits that the lawful detention of an alien against whom there exists an exclusion order cannot be deemed to constitute arbitrary detention. Furthermore, the State party explains that in the case of a person seeking asylum, a reasonable amount of time must be allotted to the authorities to collect information, investigate and carefully determine the sensitive question whether an individual poses a danger to national security. In this context the State party refers to article 5, paragraph 1 (f), of the European Convention on Human Rights, which specifically provides that:

> "No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> "(f) The lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition".

While article 9, paragraph 1, of the Covenant is not as specific as the parallel provision in the European Convention, the State party submits that the scope of article 9, paragraph 1, does not cover detention for the purposes of immigration control and that this aspect of the communication should be declared inadmissible ratione materiae.

4.5 Although the author does not invoke article 13 of the Covenant, the State party addresses the issue of the expulsion of aliens as provided for in the Covenant and refers to the Committee's decision in case No. 58/1979 Maroufidou v. Sweden, b/ where the Committee held that her deportation from Sweden did not constitute a violation of the Covenant because she had been expelled in accordance with the procedure laid down by the State's domestic law and that there had been no evidence of bad faith or abuse of power. In this context, the Government of Canada asserts that the deportation proceedings against Mr. R. are in compliance with the requirements of article 13 of the Covenant.

4.6 With respect to an alleged violation of article 14, paragraph 1, of the Covenant, the State party submits that a procedure for the expulsion of an alien which is specifically envisaged in article 13 of the Covenant cannot be said to be in violation of article 14, More particularly, the State party observes that the protection6 contained in article 14 of the Covenant apply to the determination of any "criminal charge" or of any "rights and obligations in a suit at law". It submit6 that deportation proceedings do not fall into either of these categories: rather, they fall into the domain of public law. Since asylum or deportation proceeding6 are not covered by the terms of article 14, this aspect of the communication should be declared inadmissible ratione materiae.

4.7 With respect to an alleged violation of articles 18 and 19 of the Covenant, the State party objects that the author he6 not Submitted evidence to substantiate a prima facie case of any violation of his rights to freedom of thought, opinion and expression. Finally, with respect to an alleged violation of article6 2 and 26 of the Covenant, the State party submits that the author has submitted insufficient evidence to disclose a prima facie violation of these provisions, that his allegation6 are manifestly ill-founded, and that these aspects of the communication should be declared inadmissible a6 an abuse of the right of submission pursuant to article 3 of the Optional Protocol.

5.1 Commenting on the State party's submission under rule 91, the author, on 20 April 1988, reiterate6 that the order for hi6 expulsion represent6 an objective danger to his life and refers to the judicial precedents of the European Commission of Human Rights in this respect. He further argue6 that his communication does not invoke a right of asylum, and that a distinction must be made between the request for a right of asylum, and asylum resulting from the establishment of certain mechanisms to remedy violation6 of the Covenant alleged by individuals. It was not the deportation order which he denounced, but the breach of specific right6 guaranteed by the Covenant.

5.2 With respect to the alleged violation of article 14, paragraph 1, the author advocate6 a broad interpretation of what constitutes "rights and obligations in a suit at law". He refer6 to the Conxnittee's general comment on article 14, which states that "the provisions of article 14 apply to all court6 and tribunal6 within the scope of that article, whether ordinary or specialized", c/ and suggests that public law disputes also fall under the scope of application of article 14. Furthermore, he recall6 thst the English version of the Covenant protects right6 and obligations "in a suit at law" rather then rights and obligations "de car-civil", as stated in the French version of the Covenant, which therefore is said to be more restrictive.

5.3 With respect to article 9, the author maintain6 that this provision should be applied to all situations where an individual has been deprived of his liberty, including for reasons of immigration control.

5.4 The author concludes that with respect to his other allegations, concerning violations of article6 18 and 19, he ha6 at least presented prima facie evidence to the effect that Canada ha6 violated the Covenant. He surmises that the reason why Canadian authorities want to deport him is because of his political opinions:

> "National security ground6 cannot be invoked unless there is justification for this infringement of a right guaranteed by the Covenant, in this case to be protected against all discrimination. . . . The State invoke6 national security

grounds against opinions expressed by an individual as penalizing that individual for having exercised his right to freedom of expression."

The author suggests that the Committee would be ill-advised to have recourse to restrictive interpretation6 of the Covenant as that would be contrary to its object and purpose.

5.5 With regard to his allegation that he ha6 been subjected to discrimination in violation of articles 2 and 26 of the Covenant, the author contends:

> "that the Canadian Government'6 manoeuvre6 constitute discrimination against foreign citizens. An alien may not express his opinions, thought or convictions, for in exercising these rights he will not receive the same treatment as a Canadian citizen. The mechanism provided by article 19 (1) (f) of the Canadian Immigration Act is discriminatory in that the accuracy of information concerning an alien as regards idea6 or opinions allegedly expressed by him is not verified. The alien cannot enjoy the same protection for his opinion6 a6 a citizen expressing the same views."

6.1 Before considering any claims contained in a communication, the Human Right6 Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee observes that the State party ha6 not contested the author'6 claim that domestic remedies have been exhausted. It further notes that the same matter is not being examined under another procedure of international investigation or settlement. On the basis of the information before it, the Committee therefore find6 that the communication meets the requirements of article 5, paragraph 2, of the Optional Protocol.

6.3 The Committee ha6 also examined whether the condition6 of articles 2 and 3 of the Optional Protocol have been met. It observes that a right of asylum is not protected by the Covenant. With regard to the author's allegation that his right to life under article 6 of the Covenant and that his right to liberty under article 9 have been violated, the Committee finds that he ha6 not Substantiated either allegation. With regard to article 6 of the Covenant, the author ha6 merely expressed fear for his life in the hypothetical case that he should be deported to El Salvador. The Committee cannot examine hypothetical violations of Covenant right6 which might occur in the future; furthermore, the Government of Canada ha6 publicly Stated on several occasions that it would not extradite the author to El Salvador and has given him the opportunity to select a safe third country. With regard to article 9, the Committee points out that this article prohibits unlawful arrest and detention, whereas the author was lawfully arrested in connection with his unauthorized entry into Canada, and the decision to detain him was not made arbitrarily, especially in view of his insistence not to leave the territory of Canada. The Committee also found it necessary to determine whether a claim could be substantiated under article 13, although the author has not invoked it. It observes that one of the conditions for the application of this article is that the alien be lawfully in the territory of the State party, whereas Mr. R. has not been lawfuliy in the territory of Canada. Furthermore, the State party has pleaded reasons of national security in connection with the proceedings to deport him. It is not for the Committee to test a sovereign State's evaluation of an alien'6 security rating: moreover, on the basis of the information before the Committee, the procedures to deport Mr. R. have respected the safeguards provided for in

article 13. With respect to article 14, the Committee notes that even if immigration hearings and deportation proceedings were to be deemed to constitute "suits at law" within the meaning of artiolr 14, paragraph 1, of the Covenant, as the author contends, a thorough examination of the communication ho8 not revealed any facts in substantiation of the author's claim that ho is the victim of a violation of this article. In particular, it • morg.8 from the author'8 own submissions that ho was given ample opportunity, in formal proceedings, including oral hearings with witness testimony, both before the Adjudicator and before the Canadian Courts, to present hi8 case for sojourn in Canada. With respect to articlor 18 and 19 of the Covenant, the Committee notes that the author has not submitted any • vidonco to • ubatantiato how his exercise of freedom of conscience or expression ha8 born restricted in Canada. His apparent contention that the deportation proceedings resulted from the State party'8 disapproval of hi8 political opinion8 is refuted by the State party'8 uncontested statement that, a8 early a8 Novombor 1980, ho had been excluded from re-entering Canada on clear national security ground8 (pars. 4.2 above). Deportation of an alien on security ground8 doe8 not constitute an interference with the right8 guaranteed by articlor 18 and 19 of the Covenant. With respect to articlor 2 and 26 of the Covenant, the author ha8 failed to establish how the deportation of an alien on national security grounds constitutes discrimination.

7. The Human Right8 Committee therefore decides:

(a) That th8 communication is inadmissible under articlor 2 and 3 of the Optional Protocol because the author'8 claim8 are either unsubstantiated or incompatible with the provisions of the Covenant)

(b) That this decision shall be communicated to the author of the communication and to the State party.

G. Communication No. 243/1987, S. R. v. France (Decision adopted on 5 November 1987 at the thirty-first session)*

Submitted by: S. R. [name deleted]

Alleged victim: The author

State party concerned: France

Date of communication: 26 August 1987

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

Meeting on 5 Novombor 1987,

Adopts the following:

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* Pursuant to rule 85 of the provisional rule8 of procedure, Committee member Christine Chanet did not take pnrt in the adoption of the decision.

Decision on admissibility

1. The author of the communication (initial letter dated 26 August 1987: further letters dated 1, 7 and 26 October 1987) is S. R., a French citizen born on 14 Qctobet 1956, at present living in Paris, He claims to be a victim of a violation by the French Government of article 2, paragraphs 1 to 3, articles 24, 26 and 27 of the International Covenant on Civil and Political Rights.

2.1 The author is a teacher of French literature and of the Breton language at two high schools in the Greater Paris area. He states that upon the recommendation of the French Ministry of Education, he obtained authorization to teach French literature, which also permitted him to teach Breton, on a part-time basis. For four years, he was able to teach Breton on this basis, although, as he claims, the director of the competent office within the Ministry of Education (Mission de l'action culturelle et des cultures et langues régionales) had promised the creation of a full-time post for the teaching of Breton. That post was not, however, established, although its creation was possible, in the author's opinion, given the anticipated increase in the number of students learning the Breton language at the high school of Enghien and the scheduled creation of a Breton course at the Academy of Versailles.

2.2 In the spring of 1987 (no exact date is given, although the most likely date appears to be early May 1987), the Ministry of Education decided to transfer the author from the Academy of Versailles to the Academy of Lille, where he was to be expected to teach only French with effect from the school year 1987/88, but the Rector of the Academy of Versailles, by telex of 17 June 1987 to the Ministry of Education, asked that the author be kept at his present post and requested the creation of a full-time teaching post for Breton. By a decision of 15 September 1987, the author was reinstated in the Academy of Versailles to teach French literature 11 hours per week and Breton six hours per week for the school year 1987/88. He claims that nine hours per week for the teaching of Breton would have been available, but that the Rectorate of the Academy refused to let him teach Breton at the High School of Nanterre and instead ordered him to teach French. The Rectorate has also decided to evaluate his performance as a teacher Of French and not, as he had requested, as a teacher of Breton. By decision of 6 October 1987, the Ministry of Education formalized the decision of the Academy. It is now threatening to dismiss him.

2.3 The author states that there was a growing demand for the teaching of Breton among high school students, illustrated by the fact that the nuber of high school students who took final school exams (épreuves de Baccalauréat) in Breton in the Paris area rose from 50 in 1985 to 133 in June 1987.

2.4 With regard to the exhaustion of domestic remedies, the author does not state whether he has submitted his case to an administrative tribunal, nor does he state what kind of judicial remedies would be open to him. He attaches copies of an extensive correspondence with the competent authorities in the Ministry of Education as well as copies of numerous - unsuccessful - interventions on his behalf by Deputies of the National Assembly, Mayors and Senators. Although he acknowledges that he has not exhausted domestic remedies, he points to the urgent character of his communication, as he seeks to defend the "civil rights" of students to follow courses in Breton from the beginning of the school year 1987/88.

2.5 The author states that he has not submitted his case to another procmdurm of international investigation or rmttlmmmnt.

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

3.2 The Committee observes in this connection and on thm basis of the information before it that the author has not submitted his case to any French administrative tribunal. It has noted thm author's contention, in his letter of 26 August 1987, that his communication presents a character of urgency because of an alleged civil right of students to take courses in the Breton language ("droits civil des élèves d'obtenir un enseignement de breton"). It notes, howmvsr, that, in the particular circumstances disclosed by the communication, the author's contention does not abeolvs him from pursuing his case before the Frmnctr courts and from ● zhaurtfng whatever remedies are available to him. The Committee has not enough information to find that the application of ouch remedies would be unreasonably prolongmd and concludes that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

4. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author and, for information to the State party.

H. Communication No. 245/1987, R. T. Z. v. the Netherlands (Decision adopted on 5 November 1987 at the thirty-first session)*

Submitted by: R. T. Z. [name deleted)

Alleged victim: The author

State party concerned: The Netherlands

Date of communication: 1 October 1967

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

Meeting on 5 November 1987,

Adopts the following:

* Pursuant. to r-ule 85 of the provisional rules of Procedure, Committee member Joseph Mommersteeg did not take part in the adoption of the decision.

Decision on admissibility

1. The author of the communication dated 1 October 1987 (2-page letter and 22 pages □x' • nalorutmx, all in Dutah) is a citizen of the Netherlands, born in 1960, residing in Haarlem, the Netherlands. He claims to be the victim of a violation by the Government of the Netherlands of article 26 of the International Covenant on Civil and Politiaal Rights. He is represented by counsel.

2.1 The author states that he wax *rummsned* to appear before a military court because of his refural to obey orders in the course of his military rerviae. In the Netherlands, itis possible for citizens to object to a summons. If they do so, the judge is required to decide on the objection before the court proceedinqr begin. A person who is subject to military jurisdiction during tho period of compulsory military service does not have this right, because military penal procedures do not envisage the possibility of an appeal against a summons. Thus, the author is unabie to appeal aqainrt the summons before the military court.

2.2 Thr author claims that this constitutes a violation of articie 26 of the Covenantsince ho is being treated differently from civilians who are given the possibility to appeal aqainrt a • WNI'IOZM before the start of court proceedinqd.

2.3 With respect to the requirement of exhaustion of domestic remedies, the author states that he took his case to the highest administrative organ in the Netherlandr, thm Administratieve Rechtspraak Overheidsbeschikkingen (AROB), which declared hio appeal inadmissible.

2.4 The Committee has ascertained that the author's case has not been submitted to another procedure of international investigation or settlement.

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

3.2 The Committee observes that, in the case at issue, the author has not claimed to be the victim of discrimination on *any grounds* prohibited under article 26 of the Covenant. He merely alleges that he is beinc subjected to different treatment during thm period of his military service because he cannot appeal against a summons like a civilian. Tbe Committee observes that the Covenant doer not preclude the institution of compulsory military service by Stateo parties, even though thir means that the rights of individuals may be restricted during military service, within the exigencies of ouch service. The Committee notes, in this connection, that the author has not claimed that the Nathsrlande military penal procedures are not being applied equally to all Netherlands citizens serving in the Nstherlandr armed forces. It therefore concludes that the author hae no claim under article 2 of the Optional Protocol.

4. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author and, *for* information, to the State party.

I. Communication No. 252/1987, C. J. v. Jamaica (Decision adopted on 26 July 1988 at the thirtv-third session)

Submitted by: C. J. [name deleted]

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 9 September 1987 (date of initial letter)

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

Meeting on 26 July 1988,

Adopts the following:

Decision on admissibilitv

1. The author of the communication (initial letter dated 9 September 1987; further letters dated 28 December 1987 and 25 May 1988) is C. J., a Jamaican citizen awaiting execution at St. Catherine District Prison, Jamaica.

2.1 The author states that he was arrested on 5 April 1984, while travelling to work. Local police questioned him about various crimes, including the murder he was later accused of, and although he forcefully claimed his non-involvement in any of the crimes, he was kept in detention. After being identified by a person unknown to him, the author requested an explanation of the charges against him. This allegedly prompted the police officers to maltreat him.

2.2 The author affirms that he did not realize that he would be charged with murder until 7 May 1984, when he was told that he would stand trial. He was convicted and sentenced to death on 26 September 1985 and lost his appeal on 18 May 1987.

2.3 The author claims to be innocent and seeks assistance "before the Privy Council here robs me of my basic human and legal rights"; this appears to be a reference to the Jamaica Privy Council. He offers to provide further information, should it be requested of him.

3. By a decision of 12 November 1987, the Human Rights Committee requested C. J., under rule 91 of the Committee's provisional rules of procedure, to furnish clarifications on a number of issues pertaining to his communication and transmitted the communication for information to the State party, requesting it, under rule 86 of the provisional rules of procedure, not to carry out the death sentence against the author before the Committee had had an opportunity to consider further the question of the admissibility of his communication. By a letter dated 28 December 1987, the author requested an extension of the time-limit for submission of the clarifications sought by the Committee. On 26 February 1988, a London-based law firm informed the Committee that it was willing to assist C. J. in preparing a petition for leave to appeal to the Judicial Committee of the Privy Council.

4. By a decision of 22 March 1988, the Working Group of the Human Rights Committee requested the author to provide the information sought by the Committee in its decision of 12 November 1987 not later than 31 May 1988. 3% further requested the State party, under rule 91 of the provisional rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication and to provide details of the effective remedies available ta the author if domestic remedies had not been exhausted. By a note dated 4 Way 1988, the State party objected to the admissibility of the communication on the grounds that the author had not oxhausted all available domestic remedies as required by article 5, paragraph 2 (b), of the Optional Protocol, without specifying which remedies had not been exhausted. On 25 May 1988, however, C. J. confirmed that his legal representatives in London were in the process of preparing a petition for leave to appeal to the Judicial Committee of the Privy Council on his behalf.

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

5.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 With respect to the requirement of exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol, the Committee has noted both the State party's submission, dated 4 May 1988, holding the communication to be inadmissible because of non-exhaustion of domestic remedies (unspecified), and the author's letter dated 25 May 1988, indicating that his legal representatives are preparing a petition for leave to appeal to the Judicial Committee of the Privy Council on his behalf. The Committee assumes that the State party and the author are referring to the same remedy and concludes that one available remedy has not been exhausted. Article 5, paragraph 2 (b), however, precludes the Committee from considering a communication prior to the exhaustion of all available domestic remedies.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That, since this decision may be reviewed mder rule 92, paragraph 2, of the Committee's provisional rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the State party shall be requested, taking into account the spirit and purpose of rule 86 of the Committee's provisional rules of procedure, not to carry out the death sentence against the author before he has had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;

(c) That this decision shall be transmitted to the State party and to the author.

J. Communication No. 257/1987, L. C. et al. v. Jamaica (Decision adopted on 26 July 1988 at the thirty-third session)

Submitted by: L. C. et al. [names deleted1

Alleged victims: The authors

State party concerned: Jamaica

Date of communication: 14 October 1987 (date of initial letter)

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

Meeting on 26 July 1988,

Adopts the following:

Decision on admissibility

1. The authors of the communication (initial letter dated 14 October 1987; further letter dated 24 May 1988) are L. C. et al., Jamaican citizens currently awaiting execution at St. Catherine District Prison, Jamaica.

2.1 The autbors state that they were convicted on a murder charge and sentenced to death in the Kingston Home Circuit Court on 8 March 1979. They state that their appeal was rejected by the Jamaica Court of Appeal on 10 June 1981. Allegedly, it then took almost six years for the judgement of the Court of Appeal to be put into writing. The delay in the rendering of a written judgement is termed an **anomaly of the judicature'* in Jamaica; reference is made to chapter III (3) of the Jamaican Constitution, which purports to protect "the individual against abuse of power by act of State, whether the act be legislative, judicial or executive". The authors further affirm that, because of the non-availability of the written judgement of the Court of Appeal, they were unable to comply with the requirements for filing a petition for leave to appeal to the Judicial Committee of the Privy Council.

2.2 The authors claim that the delay in the production of a written Court of Appeal judgement caused them severe mental distress that amounted to cruel, inhuman and degrading treatment in violation of their rights under section 17 (1) of the Jamaican Constitution. They acknowledge that the responsibility of the accused for asserting his rights is an important factor in considering allegations of breach of the right to be tried within a reasonable time. They claim, however, to have contacted the judicial authorities with a view to obtaining the written judgement of the Court of Appeal long before it was actually produced. They were told that it was not yet available.

3. On 1 December 1987, the Special Rapporteur of the Human Rights Committee, Mr. A. Mavrommatis, acting under a mandate conferred on him by the Committee on 12 November 1987, requested the authors, under rule 91 of the Committee's provisional rules of procedure, to furnish clarifications on a number of issues relating to their communication and transmitted the communication for information to the State party, requesting it, under rule 86 of the provisional rules of

procedure, not to carry out the death sentences against the authors before the Committee had had an opportunity to consider further the question of the admissibility of their communication.

4. By a submission dated 18 March 1988, the State party objected to the admissibility of the communication. In particular, it stated that:

> "the communication from Messrs. L. C. et al. is inadmissible because of their failure to exhaust all available domestic remedies as required by article 5, paragrapb 2, of the Optional Protocol to the International Covenant on Civil and Political Rights. Section 25 of the Jamaican Constitution grants to any person a right to apply to the Supreme Caurt for redress in respect of an alleged breach of the fundamental rights set out in chapter III of the Constitution. These rights include protection from torture, inhuman or dagrading punishment and the right to a fair hearing within a reasonable time."

5. By a decision dated 22 March 1988, the Working Group of the Human Rights Committee requested the State party, under rule 91 of the provisional rules of procedure, to provide further information and observations relevant to the question of the admissibility of the communication, in particular as to whether the authors still had the possibility of filing petitions for leave to appeal to the Judicial Committee of the Privy Council and whether legal aid would be made available to them in that respect. On 23 June 1988, the State party replied that the "authors may still appeal to the Judicial Committee of the Privy Council by way of petition for special leave to appeal in forma pauperis", and that legal aid would be available to them pursuant to the Poor Prisoners Defence Act. The authors had previously confirmed, by a letter dated 24 May 1988, that a London-based law firm had agreed to represent them before the Judicial Committee of the Privy Council: by a letter dated 14 June 1988, the authors' counsel requested the Committee to defer consideration of the communication pending the outcome of the authors* petition for special leave to appeal to the Judicial Committee of the Privy Council.

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

6.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 With respect to the requirement of exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol, the Committee has noted the letters from the authors and their counsel, dated 24 May and 14 June 1988, respectively, which indicate that a petition for special leave to appeal will be placed before the Judicial Committee of the Privy Council. It thus concludes that one available remedy has not been exhausted by the authors. Article 5, paragraph 2 (b), however, precludes the Committee from considering a communication prior to the exhaustion of all available domestic remedies.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's provisional rules of procedure upon receipt of a written request by or on behalf of the authors containing information to the effect that the reasons for inadmissibility no longer apply, the State party shall be requested, taking into account the spirit and purpose of rule 86 of the Committee's provisional rules of procedure, not to carry out the death sentence against the authors before they have had a reasonable time, after completing the effective domestic remedies available to them, to request the Committee to review the present decision;

(c) That this decision shall be transmitted to the State party and to the authors.

K. Communication No, 267/1987, M. J. G. v. the Nether- (Decision adopted on 24 March 1988 at the thirty-second session)

Submitted by: M. J. G. [name deleted1

Alleged 'ctim: The author

State party concerned: The Netherlands

Date of communication: 19 November 1987

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

Meeting on 24 March 1988,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 19 November 1987) is M. J. G., a citizen of the Netterlands, born on 29 December 1963, residing in Bilthoven, the Netherlands. He claims to be the victim of a violation by the Government of the Netherlands of article 26 of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author states that he is a conscientious objector. He was summoned to appea- before a military court because of his refusal to obey orders in the course of his military service. In the Netherlands, it is possible for private citizens to object to a summons. If they do so, the judge is required to decide on the objection before the court proceedings begin. During the period of compulsory military service, a soldier, who comes under military jurisdiction, does not have this right, because military penal procedures do not envisage the possibility of an appeal against a summons. Thus, the author was unable to appeal against the summons before a military court.

2.2 The author claims that this constitutes a violation of article 26 of the Covenant, since he is not being treated as a civilian who can avail himself of the possibility to appeal against a summons before the start of court proceedings.

2.3 With respect to the requirement of exhaurtion of domestic remedies, the author states that he appealed, on 12 November 1986, to the Administratieve Rechtspraak Overheidsbeschikkingen (AROB), the highest administrative organ in the Netherlands, arguing, inter alia, that the summons was in violation of article 6 of the European Convention on Human Rights and that he was entitled, under sections 285 and 289 of the Penal Code and under international treaties, to object to military service against his will. By decision of 31 December 1986, the President of the Afdeling Rechtspraak Raad van State (ARRS), the AROB Legal Chamber, declared the appeal inadmissible on the grounds that the law governing the procedure before AROB did not provide for an appeal against orders or judgements based on the Penal Code or the Code of Penal Procedure. By letter of 16 January 1987, the author introduced another recourse with the same Legal Chamber of AROB (which is possible under Netherlands law), claiming that he could not be considered an "accused" person within the meaning of the Penal Code, but a defendant within the meaning of the Civil Code. That would make an appeal possible. On 11 June 1987, the Legal Chamber of AROB dismissed the appeal.

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

3.2 The Committee notes that the author claims that he is a victim of discrimination on the grounds of "other status" (Covenant, art. 26 in fine) because, being a soldier during the period of his military service, he could not appeal against a summons like a civilian. The Committee considers, however, that the scope of application of article 26 cannot be extended to cover situations such as the one encountered by the author. The Committee observes, as it did with respect to communication No. 245/1987 (R. T. Z. v. the Netherlands), that the Covenant does not preclude the institution of compulsory military service by States parties, even though this means that some rights of individuals may be restricted during military service, within the exigencies of such service. The Committee notes, in this connection, that the author has not claimed that the Netherlands military penal procedures are not being applied equally to all Netherlands citizens serving in the Netherlands armed forces. It therefore concludes that the author has no claim under article 2 of the Optional Protocol.

4. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author and, for information, to the State party.

L. Communication No. 285/1988, L. G. v. Jamaica (Decision adopted on 26 July 1988 at the thirty-third session)

Submitted by: L. G. [name deleted]

Alleged victim: author

State party concerned: Jamaica

Date of communication: 20 January 1988 (date of initial letter)

The Human Rights Committee, ● 8tabli8hed under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 26 July 1988,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 20 January 1988; further letter dated 3 June 1988) is L. G., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica.

2.1 L. G. states that he was interroqatsd by the police at hi8 home on the evening of 7 October 1985 in connection with the murder of Mr. T. M. The latter had been killed with a machete in the course of a robbery that occurred in the parish of Hanover on 2 October 1985, over 150 miles away from the author's home. The author explained that, while he knew the victim from the period when he lived in Hanover, he had not visited that town for a considerable time and knew nothing about the crime. He was, however, arrested in connection with the incident. On 25 October 1985, the author was put on an identification parade, where he was identified by Ms. E. M., whom he also knew. He was subsequently charged with the murder of Mr. M., together with hi8 brother, V. G., who was then living in Hanover.

2.2 The author and hie brother were convicted and sentenced to death in the Hanover District Court on 7 November 1986. The Court of Appeal dismissed the author's appeal but acquitted the brother on 5 October 1987. An appeal to the Judicial Commmittee of the Privy Council has yet to be made.

2.3 Throughout the trial and the appeal, the author was represented by legal aid attorneys; Me. P. S. represented him before the District Court, Mr. D. C. before the Court of Appeal. The author states that two London-based attorneys have agreed to assist him with the preparation of a petition for leave to appeal to the Judicial Committee of the Privy Council.

2.4 The author raises a number of questions pertaining to hi8 identification by Me. M. and by another man, on the basis of which he wan convicted. The other man allegedly testified that he had seen the author in a banana field - the scene of the crime. Yet, because the author was masked, according to the witness, he could only recognize and identify the author's build and other physical features, not his face. In the author's view, that was insufficient to allow propor identification.

3. Upon registering the communication on 21 March 1388, the Working Group of the Human Rights Committee instructed the Secretariat to seek further information from the author about a number of issues pertaining to his conununication, in particular about the question of exhaustion of domestic remedies.

4. By a letter dated 3 June 1988, the author, in response, informed the Committee that his legal representatives in London had informed him that there wore good grounds for him to appeal to the Judicial Committee of the Privy Council and that they were in the process of preparing a petition for leave to appeal on his behalf.

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

5.2 The Committee has aecertafnsd, as it is required to dc under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 With respect Lo the requirement of exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol, the Committee has noted the author's letter, dated 3 June 1988, which indicates that his legal representatives are currently preparing a petition for leave to appeal to the Judicial Committee of the Privy Council on his behalf. It thus concludes that one available reme har not been exhausted by the author. Article 5, paragraph 2 (b), however, precludes the Committee from considering a communication prior to the exhaustion of all availsble domestic remedies.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That, since this decision may be reviewed under rule 9', paragraph 2, of the Committee's provisional rules of procedure upon receipt of . written requeat by or on behalf of the author containing information to the effec. that the reasons for inadmissibility no longer apply, the State party shall be requested, taking into account the spirit and purpose of rule 86 of the Committee's proviaional rules of procedure, not to carry out the death sentence against the author before he hae had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;

(c) That this decision shall be transmitted to the State party and to the author.

M. Communication No. 286/1988, L. S. v. Jamaica (Decision adopted on 26 July 1988 at the thirty-third session)

Submitted by: L. S. [name deleted]

Alleged Tvilctim: a u t h o r

State party concerned: Jamaica

Date of communication: 8 February 1988 (date of initial letter)

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

Meeting on 26 July 1988,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 8 Pebruary 1988; further letter dated 1 June 1988) is L. S., a 24-year-old Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica.

2.1 The author does not state when he was convicted and sentenced to death. He states that the Jamaica Court of Appeal has reserved itr judgement, and that his case is being rent to the Judicial Committee of the Privy Council.

2.2. L. S. affirms that he is accused of having murdered a man whose body was never recovered and whom he claims he did not know. According to him, the police testified in court that there was proof that a fight had taken place between the author and the victim; the sole witness against him was the missing man'6 uncle, who allegedly had had serious but unspecified differracer with the author.

2.3 According to the author, the jury at first returned a verdict of not guilty. The Crown'6 counsel, however, told it to return to the verdict room and consider a guilty verdict. The judge, in turn told the jury thtt, if it believed the author'6 account, it would have to acquit him. The jury, after reconsideration, returned a verdict of guilty.

3. Upon registering the communication on 21 March 1988, the Working Group of the Human Rights Committee Instructed the Secretariat to seek further information from the author about a number of issues pertaining to his communication, in particular about the question of exhaustion of domestic remedies.

4. By a letter dated 1 June 1988, the author, in response, informed the Committee that he was still waiting for the judgement of the Jamaica Court of Appeal. Meanwhile, he stated that the Jamaica Council for Human Right6 was preparing a petition for leave to appeal to the Judicial Committee of the Privy Council on his behalf, and a London-based lawyer had informed him that he would be willing to assist him for that purpose.

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

5.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 With respect to the requirement of exhaustion of domestic remedies under article 5. paragraph 2 (b), of the Optional Protocol, the Committee has noted the author'6 letter, dated 1 June 1988, indicating that he is still awaiting the judgsment of the Jamaica Court of Appeal and that a petition for leave to appeal to the Judicial Committee of the Privy Council is being prepared on his behalf. It thus concludes that available remedies have not been exhausted by the author. Article 5, paragraph 2 (b), however, preclude6 the Committee from considering a communication prior to the exhaustion of all available domestic remedies.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's provisional ruler of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility longer apply, the State party shall be requested, taking into account the spirit and purpose of rule 86 of the Committee's provisional rule6 of procedure, not to carry out the death sentence against the author before he hae had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;

(c) That this decision ● h611 be transmitted to the State party and to the author.

Notes

a/ Official Records of the General Assembly, Forty-second Session, Supplement No. 40 (A/42/40), annex VIII, sect. B to D.

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

c/ Ibid., Thirty-ninth Session, Supplement No. 44 (A/39/40 and Corr.1 and 2), annex VI, general comment 13 (21), para. 4.

ANNEX IX

List of Committee documents issued during the reporting period

A. Thirty-first session

CCPR/C/42/Add.2	Second periodic report of France
CCPR/C/46/Add.2	Second periodic report of Australia
CCPR/C/49	Provisional agenda and annotations - thirty-first session
CCPR/C/SR.758-SR.786 and corrigendum	Summary records of the thirty-first session

B. Thirty-second session

CCPR/C/6/Add.11	Initial report of Guinea (new report)
CCPR/C/21/Add.6	General comment adopted by the Human Rights Committee relating to article 17
CCPR/C/22/Add.6	Initial report of the Central African Republic
CCPR/C/28/Add.9	Second periodic report of Ecuador (additional information)
CCPR/C/31/Add.3	Initial report of Belgium
CCPR/C/37/Add.6/Rev.1	Second periodic report of Colombia
CCPR/C/42/Add.3	Second periodic report of Barbados
CCPR/C/42/Add.4 and Corr.1 and 2	Second periodic report of Japan
CCPR/C/42/Add.5	Sacond periodic report of Norway
CCPR/C/50	Consideration of reports Submitted by States parties under article 40 of the Covenant - initial reports of States parties due in 1988, note by the Secretary-General
CCPR/C/51	Consideration of report6 submitted by States parties under article 40 of the Covenant - second periodic reports of States parties due in 1988; note by the Secretary-General

CCPR/C/52	Consideration of reports submitted by States parties under article 40 of the Covenant - third periodic reports of States parties due in 1888: note by the Secretary-General
CCPR/C/53	Provisional agenda and annotations - thirty-second session
CCPR/C/54	Reporting obligations of States parties to United Nations conventions on human rights: note by the Secretary-General
CCPR/C/SR.787-SR.812 and corrigendum	Summary records of the thirty-second session

C. Thirty-third session

CCPR/C/32/Add.14	Second periodic report of the United Kingdom of Great Britain and Northern Ireland - dependent territories
CCPR/C/46/Add.3	Second periodic report of Mexico
CCPR/C/55	Provisional agenda and annotations - thirty-third session
CCPR/C/SR.813-SR.840 and corrigendum	Summary records of the thirty-third session

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