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HUMAN RIGHTS COMMITTEE

Fourth session

SUMMARY RECORD OF THE 93rd MEETING

Held at Headquarters, New York,
on Monday, 24 July 1978, at 3 p.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 (continued)

Iran (CCPR/C/1/Add.16 and 26)

1. Mr. BOUSHEHRI (Iran) said that the high level of representation of his Government on the Committee testified to its concern for human rights. For the Government of Iran, human rights were not mere legal technicalities which it had to incorporate into its legal system because of its international commitments, but a means of alleviating social tensions and enhancing human dignity. His Government believed that the Committee and Governments should work together for the attainment of the common objective.

2. It was not possible to reply in the limited time available to all the many questions put to the Government of Iran and he would concentrate on some of the main points raised; further information would be submitted in writing at a later stage.

3. Inaccurate or even incorrect translation of legal terms from Farsi into English had given rise to some misunderstandings. Article 2 of the Constitution, reproduced on the first page of the supplementary report (CCPR/C/1/Add.26), should read: "The National Consultative Assembly represents the whole of the people of Iran who participate in the political and economic life of the country." The term "common law" should be replaced by "statutory law" throughout the report. The last line on page 3 of the supplementary report should read "... the precedence of the Constitution over the statutory laws is inferred from the oath of office ...". In the light of over 70 years of constitutional practice, and the text of the Constitution, in particular article 39 of the Supplementary Fundamental Laws, there was no doubt as to the precedence taken by the Constitution over all other laws in Iran.

4. With regard to the status of international treaties in Iran, article 9 of the Civil Code of 1928 stated that "Treaty stipulations which have in accordance with the Constitution been concluded between the Government of Iran and other Governments shall have the force of law." In compliance with the provisions of article 2, paragraph 2, of the Covenant, the Government of Iran had established the Commission for Review of Iranian Laws in Relation to the Covenant, referred to on page 11 of the supplementary report. Part III of the supplementary report described the difficulties affecting the implementation of the Covenant which were being considered by the Commission, and had been prepared in accordance with article 40, paragraph 2, of the Covenant and the general guidelines.

5. With regard to the Iranian legislature, he said that the term "consultative" in the title of the lower house referred to the consultations and deliberations conducted by the members of that body before reaching a decision and in no way implied that the enactments of the house were of a consultative nature. The 268 representatives in the lower house were elected by secret ballot, in a general election, for a term of four years, and the qualifications of the electors and of

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the candidates were laid down by law. Men and women were on an equal footing with respect to the election laws. The Senate consisted of 60 members: 30 elected in a general election and the remaining 30 appointed by the Shah under article 45 of the Constitution. To become law, all proposals had to be approved by both houses, except for financial matters, which were the prerogative of the National Consultative Assembly.

6. As to the question of the control of the executive by the legislature, the affairs of the State, including the duties discharged by the cabinet ministers, the various ministries and all other government organizations, were subject to scrutiny by the National Consultative Assembly and by the Senate. The powers of those two bodies were laid down in the Constitution and amendments thereto. Under article 33 of the Supplementary Fundamental Laws of Iran, each of the two houses had the right to inquire into, study and examine any matter pertaining to any affair of the State. Under article 27 of the Constitution, whenever the National Consultative Assembly observed a violation of the law or negligence in the implementation of it, it must bring it to the attention of the minister concerned, and he must provide the Consultative Assembly with the necessary explanation. Under article 60 of the Supplementary Fundamental Laws, ministers were accountable to both the National Consultative Assembly and the Senate, and whenever they were asked to appear before one of the houses they were obliged to do so. Under article 65 of the Supplementary Fundamental Laws the National Consultative Assembly or the Senate could hold ministers to account and impeach them. Under article 61, cabinet ministers, besides being individually responsible for the affairs of their respective ministries, were collectively responsible for the matters before each house as a whole and were collectively accountable for each other's actions. Under article 64, ministers could not absolve themselves from their constitutional responsibilities by invoking orders of the Shah or royal decrees in justification of their actions. Under article 67, when the National Consultative Assembly or the Senate, by a vote of an absolute majority of members, declared its dissatisfaction with the cabinet or a minister, the cabinet or minister was considered dismissed. Under article 25 of the Constitution, no special authorization was necessary for the prosecution of State officials guilty of wrongdoing, except in cases of the prosecution of ministers, which was governed by special laws. Under article 69 of the Supplementary Fundamental Laws, charges against ministers must be brought by the National Consultative Assembly or the Senate before the Supreme Court, and trials in the Supreme Court must be conducted in the presence of all its members.

7. According to a law adopted in 1950, in exceptional circumstances a state of emergency could be declared with the prior approval of the National Consultative Assembly and the Senate. If urgent circumstances arose, the executive could declare the state of emergency and submit a report within one week explaining the reasons for the decision to each of the two houses. Upon receipt of that report, the two houses must call an extraordinary meeting to decide on the question, and if they overruled the decision of the executive, the state of emergency must be terminated.

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8. As to the question of custom and usage, under Iranian law custom was invoked exclusively in civil cases and had no application whatsoever in criminal offences. It was in controversies of a civil nature where no law at all existed, or the existing laws were contradictory or unclear, that the judge was allowed to invoke custom. Thus custom as a force of law had very limited application as compared with the statutory laws of Iran.

9. With regard to the competence of courts, in principle the adjudication of all controversies fell within the competence of the ordinary courts and the competence of other bodies was limited to cases expressly specified by law. For example, the jurisdiction of the houses of equity, the arbitration councils and the religious courts could not be extended to cases not specified in the law. The religious courts, which were very few in number, had extremely restricted competence and handled only cases concerning the validity of marriage or divorce between Iranians of the Moslem faith which might be referred to them by an ordinary court, at the discretion of the judge. According to the law, all other matrimonial differences were handled by ordinary courts, including controversies between non-Shi'i Iranians in which the judge was bound to apply the rules of their particular faith.

10. A special court had been established by a law adopted in 1959 to investigate crimes committed by persons under 18 years of age. Two advisers from among retired judges, educators and civil servants or prominent personalities from the community, who had knowledge of the social background and circumstances of young offenders, assisted the judge in the performance of his duties. They were chosen for a two-year term by the President of the Appellate Court from among five persons nominated by the judge of the court concerned. No spectators were allowed to attend the court proceedings.

11. As already explained in the supplementary report (CCPR/C/1/Add.26), the presumption of innocence was in theory as well as in practice a basic general rule in the Iranian legal system. The value of evidence in criminal cases, referred to on page 12, paragraph 4, of the supplementary report, was for the court to determine. The Commission for Review of Iranian Laws in Relation to the Covenant referred to on page 11 of the report had, however, found certain instances of conflict with that principle, and measures were being considered to remove the discrepancies.

12. The right of appeal was recognized by article 86 of the Supplementary Fundamental Laws and was further elaborated in most of the statutory laws. However, verdicts in respect of petty offences and fines imposed in some criminal and civil cases were not subject to appeal. Those and other cases had been scrutinized by the Commission, and a bill to extend the right of appeal was being prepared for presentation to the legislature.

13. Capital punishment was by law limited to specific crimes of an exceptionally serious nature and could be carried out only pursuant to a final judgement rendered by the competent tribunal. Over the past two years the number of death sentences handed down and applied had been decreasing continuously. In the previous year only

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one death sentence had been handed down by a military tribunal and carried out, involving a retired army general who had been convicted on a charge of espionage, and only six death sentences had been rendered by ordinary courts in cases which had all involved murder accompanied by kidnapping, rape or exceptional cruelty.

14. The increase in the volume of litigation in Iran was due to a number of factors. The development of law as an agent of change designed to hasten progress had widened the gap between the requirements of law and the socio-economic and cultural milieu and gave rise to a certain degree of tension and an increase in the amount of new litigation. Pronounced economic, social and demographic changes also played a role, as well as educational advances, which made people more aware of their legal rights.

15. As to the Houses of Equity and Arbitration Councils, a House of Equity consisted of five members, two of whom were alternate members, elected by the inhabitants of a village. They handled petty offences and minor civil litigation, and a court writ issued by a judge was needed for the implementation of their verdicts. Arbitration Councils were established in towns and had similar jurisdiction, but their verdicts had to be approved by a legal consultant assigned to the Council by the appropriate court. The reason for the exercise of such control over the Houses of Equity and Arbitration Councils was the need to avoid inconsistency in the delivery of verdicts. The institutions in question had been established for a number of reasons: to enable people to participate in their own affairs; to meet the need for a formal body to deal with disputes in areas where there was no access to an ordinary court; to avoid the accumulation of minor cases in ordinary courts; and to deal with minor litigation which did not warrant the direct involvement of a professional judge. In practice the majority of cases brought before those institutions were settled by compromise.

16. On the question of the Council of State, one of its functions was to have been to consider complaints brought by civil servants of violation of their employment rights. When the new Civil Service Act had been enacted in 1966, an administrative and civil service commission had been established and made responsible for adjudicating such controversies. If the judgement of the commission was in favour of the employee, it had binding effect on the Government, and, if not, the employee had the right to appeal to the Supreme Court. The Council of State also adjudicated complaints brought by individuals against government agencies, and that function was also exercised by the ordinary courts. As a result of the establishment of the commission and of the Imperial Inspectorate in 1968, the 1960 law relating to the Council of State had fallen into disuse.

17. The Imperial Inspectorate was part of the executive branch of the Government and had been established in accordance with the law. It had no judicial

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prerogative. Individuals could submit complaints against government agencies to the Inspectorate, which had access to all government records. The elimination of corruption constituted one of the functions of that organization. If its investigation revealed a crime, a report was submitted to the legal authorities concerned for prosecution. In case of dereliction of duty, fault or negligence, the minister or head of the organization concerned must be notified before action could be taken.

18. With reference to the subject of military tribunals, he said that the establishment of such tribunals was provided for under article 87 of the Supplementary Fundamental Laws and that the legislation giving effect to the implementation of that article had been adopted in 1939. The military tribunals of first instance were composed of three judges, the appellate tribunals of five. The judges of military tribunals were appointed from among individuals trained in the law.

19. When a crime was found to have been committed, the relevant records were submitted to the office of the military prosecutor. An investigator was assigned to review the records and ascertain whether the case fell within the jurisdiction of the military tribunal. If he found that the crime fell within the jurisdiction of the judiciary courts, the records were sent to the civilian public prosecutor. In cases of a difference of opinion between the investigator and the public prosecutor as to jurisdiction, the matter was decided by the Supreme Court.

20. The law guaranteed to those accused in cases brought before the military tribunals various individual rights of defence, such as the right to be informed promptly and in detail of the nature and cause of the charges against them, the right to have adequate time and facilities for the preparation of their defence, the right to communicate with defence counsel of their own choosing, the right to obtain the attendance and examination of witnesses on their behalf and the right of access to records which might contain information in their favour. He noted that the number of cases brought before the military tribunals had been decreasing in recent years owing to a restrictive interpretation of crimes against the State. In that regard he wished to draw the attention of the Committee to the fact that all the amendments referred to on page 8 of the initial report in document CCPR/C/1/Add.16 had been adopted and were now in force.

21. On the subject of the security organization, he said that it had been established by a law adopted in 1957. It reported to the Prime Minister and was responsible for detecting crimes against the State, terrorist activities and espionage. The trial of those accused of such crimes fell within the jurisdiction of the military tribunals. The security organization lacked any judicial power; it had the power to arrest but a writ was required for the continuation of detention beyond 24 hours.

22. With regard to the treatment of prisoners, he drew attention to the relevant law of 1975, which was in full conformity with the Standard Minimum Rules for the Treatment of Prisoners, as approved in Economic and Social Council resolution 663 C (XXIV). He noted, furthermore, that in addition to the normal control measures

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carried out by responsible national authorities to ensure the proper application of the law, his Government had extended an invitation to a well-known impartial international organization to study prison conditions and the treatment of prisoners in Iran and report to the Government. The total number of persons imprisoned for committing acts of terrorism, espionage or acts against the security of the State did not exceed 2,100. Recent studies on the implementation of prison regulations failed to show a single case of torture or cruel, inhumane or degrading treatment.

23. There were three categories of crime in Iran, differentiated by the composition of the court which heard the case and the severity of the punishment which could be imposed. Cases involving felonies were heard by a panel of five judges if the maximum sentence included life imprisonment or the death penalty, and by a panel of three judges if lesser maximum punishments were involved. Cases involving misdemeanours were heard by a single judge, as were those involving petty offences.

24. With regard to the rights of women, he said that equal political rights of women had been the subject of one of the basic principles of the Revolution of the Shah and the People. Since 1963 women in Iran had had the right to vote and were eligible to hold public office and compete freely for any post in the Government. Under the Family Protection Law men and women had the same right to refer family disputes to a court of law, to sue for divorce and to be granted the custody of children. As a result of the Royal Decree on free and compulsory education for all children, over 40 per cent of the student body at the primary level, 33 per cent at the secondary level and nearly 30 per cent at the college and university level was female. It should be borne in mind that 20 years earlier only 8 per cent of women in Iran had been literate, as opposed to the present figure of 33 per cent over-all and 49 per cent in urban areas. Women had made great advances in entering various professions, including teaching, the civil service, medicine, engineering, the law and the different branches of the Government at all levels.

25. With regard to the political party system and participation in the decision-making process, he said that the National Resurgence (Rastakiz) Party had been established in 1974 to promote mass participation and the expression of views and preferences. He stressed that political parties were a means to achieve political democracy and not an end in themselves. No party system or structure could of itself provide a sufficient guarantee or indicator of political democracy. The only criterion for judging a system must, therefore, be the degree to which that system invited, encouraged and brought about mass participation and the expression of views and preferences. Iran was now in the fifth year of the second decade of the Revolution of the Shah and the People. During the first decade the socio-economic infrastructure had been drastically changed in favour of farmers, workers and women with the aim of moving toward a progressive society based on the principles of social justice, equality, freedom and co-operation. The emphasis in the second decade was on popular participation, which was made necessary by the logic of the revolutionary process and the effort to maintain social integration. In that connexion, two distinct but interrelated and complementary paths were being followed. The first involved the process of political mobilization of the entire society and the second dealt with strengthening the democratically established representative

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organs at the various levels of the government hierarchies, i.e. councils at the village, city, district and provincial levels and the legislature at the national level. Numerous other elective bodies had been established to deal with problems ranging from education to welfare and justice. The Government's firm commitment to decentralization, and the granting to the lower organs of increasing decision-making powers with respect to the allocation and administration of development resources, made the elective councils viable institutions through which meaningful popular participation was made possible.

26. On the subject of labour organization, he said that workers having the same occupation were allowed to form their own labour organizations, which normally engaged in collective bargaining. Workers were protected, furthermore, by measures which enabled them to share the profits of the enterprise for which they worked and prevented enterprises from dismissing workers without just cause.

27. In response to several questions on the judicial system in Iran, he said that appellate courts were allowed to consider matters of fact as well as matters of law but the Supreme Court did not deal with matters of fact, except in rare cases specified by law, such as the trial of ministers. On the matter of habeas corpus he noted that there was no exact equivalent of that common-law concept in other non-common-law systems. Detained persons were allowed by law to petition courts concerning details of their case, and officers in charge of investigations were required by law to submit the relevant charges to the appropriate court. With regard to the privileges of prisoners, he said that prisoners were entitled normally to two visits per week and that prisons provided facilities for conversation with prisoners. Suspects had access to legal assistance in the pre-trial stage in the sense that once the suspect had been summoned by an interrogator he had the right to have a lawyer present, who could express his opinion at the end of the interrogation and whose statement could be made part of the interrogation record. Iranian court procedure did not allow for cross-examination in the Anglo-American sense of the word; the court relied mainly on statements by the defendant.

28. With regard to the operation of Iranian law before and after marriage, he said that relations between men and women before marriage were not a matter of concern to the law and that legal obligations and responsibilities began only after marriage. In cases of divorce or dissolution of marriage, the court handed down a decision on the respective obligations of each spouse.

29. In conclusion, he wished to inform the Committee that, on the basis of preliminary examination by the Commission for Review of Iranian Laws in Relation to the Covenant, four bills had recently been prepared for adoption by the Parliament dealing with the right of peaceful assembly, freedom of association and conditions for its manifestation, and the protection of the rights and freedoms of others; freedom of expression of opinion, including freedom to seek, receive and impart information through various means; the prohibition of propaganda for war; and prohibition against subjecting an individual to medical or scientific experimentation without his free consent.

30. Mr. Boushehri (Iran) withdrew.

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Federal Republic of Germany (CCPR/C/1/Add.18) (continued)

31. Mr. TARNOPOLSKY welcomed the frank and thorough report submitted by the Government of the Federal Republic of Germany and the declaration made by that Government under article 41 of the Covenant that it recognized the competence of the Committee to receive and consider communications to the effect that a State party claimed that another State party was not fulfilling its obligations under the Covenant. He hoped the Government of the Federal Republic of Germany would also soon give favourable consideration to ratification of the Optional Protocol.

32. He asked why the report made very little reference to the actions of the Länder, which had, as he understood it, jurisdiction, inter alia, over matters dealing with education and the police. The role of the police was of great importance in a number of areas of concern to the Committee, in particular the pursuit and prosecution of criminal offenders and the administration of criminal justice.

33. He asked what was the constitutional status of the provisions of the Basic Law, especially with regard to the rights protected by the Covenant. Furthermore, on the subject of amendments to the Basic Law, page 3 of the report suggested that articles 1 and 20 of the Basic Law were of cardinal importance in determining the admissibility of amendments but it seemed that those articles could themselves be and had been amended; how did that affect the strength of the criterion on the admissibility of amendments with regard to the protection of basic human rights?

34. Article 20, paragraph 4, of the Basic Law stated that all Germans had the right to resist any person or persons seeking to abolish the constitutional order, should no other remedy be possible. He would like to know what kinds of powers that provision gave to people generally and whether the attempt to abolish the constitutional order would have to be by violent means rather than parliamentary means.

35. With respect to article 3 of the Covenant, he asked what consideration had been given to provisions aimed at ensuring equal wages for work of equal value and what positive steps had been taken to combat sex discrimination.

36. Page 8 of the report referred to three basic rights which, in the case of defence, might be restricted beyond the extent admissible in normal times. He was concerned to know whether those were the only three and whether the other rights referred to in the Covenant were sufficiently guaranteed. He commended the abolition of capital punishment, also referred to on page 8 of the report.

37. Turning to articles 7 and 10 of the Covenant, he asked whether solitary confinement could be imposed; if so, under what conditions, for what periods of time and with what possibilities of renewal? He also wished to know whether there could be total deprivation of contact with the outside world and with counsel.

38. Article 12, paragraph 1, of the Covenant guaranteed everyone lawfully within the territory of a State the right to liberty of movement and

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freedom to choose his residence. He noted, however, that page 14 of the report stated that freedom of movement was guaranteed in the Federal Republic of Germany to all Germans. He asked whether that meant that there were only such restrictions on the movements of non-citizens as might be required for reasons of national security, public order, public health or morals, what precise restrictions there were and how they were justified under article 12, paragraph 3. He commended the fact that the freedom to emigrate was constitutionally protected as a basic right by the Basic Law.

39. On page 15 of the report it was stated that where the prerequisites for asylum were not met, an alien might be expelled from the Federal Republic of Germany for reasons provided for by law, in particular if he had committed a criminal offence in that country. Taking into account the provisions of article 13 of the Covenant, he would like to know whether a person who had been resident in the country for many years could be expelled for committing any criminal offence, however slight.

40. Page 17 of the report referred to the question of written or oral communication between the accused and his counsel. He asked whether there were circumstances in which only written communication with counsel was permitted. Page 18 of the report stated that there were occasional criminal proceedings which extended over several years, in cases where investigations proved to be particularly difficult or the accused "exhausted his means of defence excessively". He doubted whether it was possible for an accused person to exhaust his means of defence excessively; the accused should be able to resort to any defence available. The report further stated, on page 18, that a trial could be conducted against the accused in his absence "if he intentionally and culpably caused his unfitness to stand trial and thereby knowingly prevented the trial from being conducted in his presence, or if the accused, on the ground of misconduct, was removed from the courtroom or into custody". He wished to know how such decisions were made, whether they were made at the discretion of the judge alone and whether there was any possibility of challenging the decision. It was not clear to him that article 14, paragraph 3 (d), of the Covenant contemplated cases where the accused might be removed, and he would like to know on what basis a State could justify the exclusion of the accused from his own trial.

41. Referring to article 17 of the Covenant, dealt with on pages 22 and 23 of the report, he inquired whether the list of exceptions to the restriction on interference with privacy was exhaustive and whether there were provisions, other than those mentioned, to deal with wiretaps and interference with correspondence. Article 10, paragraph 2, of the Basic Law said that the right of privacy of posts and telecommunications might be restricted only pursuant to law and that such law might lay down that the person affected should not be informed of any such restriction if it served to protect the free democratic basic order or the existence or security of the Federation. That seemed to imply that in some circumstances the person involved might subsequently be informed of such interference. He would like to know the precise terms of the laws permitting such interference.

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42. With regard to article 19 of the Covenant, he noted that article 5, paragraph 2, of the Basic Law stated that the rights to freedom of expression were limited by the provisions of the general laws. He wanted to know what were those general laws and whether they represented an attempt to balance one freedom against another. He asked whether the Federal Republic of Germany had restrictions on freedom of expression such as a law prohibiting defamation of the State. If so, he would like to know how such a law came within the scope of the exceptions set out in article 19 of the Covenant. In his view, mere words, not accompanied by violence, would not be a threat to national security. He also wished to know what laws restricted the freedom of assembly and how they fell within the scope of the exceptions recognized in articles 19, 21 and 22 of the Covenant.

43. Page 4 of the report stated that the civil servant was required to take an active part in the defence of the free democratic order, in particular by respecting and acting in accordance with the existing constitutional and legal provisions, and to perform his functions in the spirit of those provisions. He wished to know what kind of political act could cause a person to be denied access to the civil service, whether such acts committed in the past could justify such a denial, whether mere membership in a group could be a decisive factor, whether the person would have to be a member of a group engaged in an attempt to overthrow the Constitution and the Government or whether anyone expressing the view that a different social and political order might be preferable could be denied access to the civil service.

44. Since he interpreted article 26 of the Covenant as requiring the laws of States to prohibit discrimination even in private relationships, he wished to know whether the Federal Republic of Germany had any such laws.

45. Sir Vincent EVANS commended, as an example to be emulated, the publication and dissemination of the report within the Federal Republic of Germany. Such a procedure helped to bring the Covenant and the obligations accepted by States to the notice of the public in the reporting States and encouraged comment and criticism from the press and other interested commentators.

46. He did not think that paragraph 1 (a) on page 1 of the report made the legal framework within which human rights were protected in the Federal Republic of Germany entirely clear. He was interested to know what was the status of the Covenant, in particular parts I and II, in relation to the Basic Law and other categories of legislation of the Federation and of the länder, prior or subsequent to ratification of the Covenant. Article 21, paragraph 2, of the Basic Law regulated the constitutionality of political parties. In the event of a dispute as to whether that provision of the Basic Law, or any federal law implementing that provision, was consistent with article 25 of the Covenant, it was not clear whether the dispute could be adjudicated by courts in the Federal Republic of Germany and in particular by the federal constitutional courts. In his view, however, the record of the Federal Republic of Germany in respect of human rights cases amply demonstrated that in general human rights were well protected in that country.

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47. He understood that in certain circumstances solitary confinement was imposed in the Federal Republic of Germany, and he wished to know to what extent the relevant régime affected contacts between the prisoner and his lawyer and how that régime could be reconciled with the right of the accused to communicate with his legal adviser and have proper facilities for the preparation of his defence.

48. The report stated on page 18 that criminal proceedings occasionally extended over several years. That could not easily be reconciled with the provisions of article 9, paragraph 3, and article 14, paragraph 3 (c), of the Covenant.

49. With respect to article 17 of the Covenant, he noted that one of the major threats to the privacy of the individual in modern industrialized States was the computer. Members of the public were apprehensive about the use of computers to compile information the accuracy of which they were unable to check or challenge. He understood that some legislation had already been enacted in that field in the Federal Republic of Germany and requested further information on how the problem was being dealt with.

50. According to page 30 of the report, about 42.5 per cent of all married women up to the age of 65 in the Federal Republic of Germany were gainfully employed. Articles 23 and 24 required States to take measures for the protection of the family and children. With more and more mothers gainfully employed outside the home, there was a danger to the welfare of children unless special measures were taken. He would like to know what measures had been taken in the Federal Republic of Germany to make it economically possible for mothers to stay at home when their children were young or to provide child care while the mother was at work.

51. Referring to the regulations concerning the recruitment of civil servants referred to on pages 4 and 34 of the report, he warned that they posed considerable dangers not only to the rights referred to in article 25 of the Covenant but also to the rights of freedom of expression and association. It was questionable whether the policies and practices mentioned on pages 4 and 34 could be justified as permissible restrictions on those rights.

52. Mr. HANGA said that he was indebted to the Federal Republic of Germany for the wealth of information in its report, the competence with which the report had been prepared, and the additional information provided orally at the preceding meeting.

53. In connexion with the general comments at the beginning of the report, he asked whether a person whose rights were violated under a law which was in conflict with the Covenant would be entitled to raise procedural objections to that law or whether the law must first be declared unconstitutional by a federal court. He wondered, too, what machinery existed in the Federal Republic of Germany to ensure the equal enjoyment of civil and political rights by those who owned property and those who did not, in view of the fact that property enjoyed protection under articles 14 and 15 of the Basic Law. Moreover, since the idea of a pluralistic liberal society was implicit throughout the report, it would be logical to expect that a political party obtaining less than 5 per cent of the votes would be represented in parliament.

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54. With respect to article 6, paragraph 1, of the Covenant, he asked whether the Federal Republic of Germany had adopted legislation concerning the use of narcotic drugs and whether it was implementing educational measures to prevent the abusive use of such drugs.

55. In connexion with article 9, paragraph 5, he felt that the victim of unlawful arrest or detention should have a right to moral, as well as financial, compensation, particularly in the light of the "general right to personality" referred to in the report in connexion with article 17, paragraph 2, of the Covenant.

56. With regard to article 10, paragraph 2, of the Covenant, the report stated that prisoners on remand might procure conveniences at their own cost and occupy their time to the extent compatible with the purpose of the imprisonment; he wondered whether such treatment was desirable from the moral standpoint.

57. With reference to article 14, paragraph 1, of the Covenant, he asked whether labour contracts in the Federal Republic of Germany were governed by a labour code or by provisions of the Civil Code and whether the labour contract had its own particular form. He wondered, too, whether the independence of judges was provided for in ordinary law, as well as in the Constitution, and what was the jurisdiction of the courts presided over by lay judges. With respect to article 14, paragraph 2, he commended the provision whereby the expenses necessary for the defence of a person charged with a criminal offence were met from public funds.

58. In connexion with article 15 of the Covenant, he asked whether the Constitution made express provision for the principle of non-retroactivity, which was not quite the same thing as "nulla poena sine lege", and whether that principle was guaranteed in the basic laws, for example the Penal Code, or only in the procedural laws.

59. He would welcome further clarification concerning the legislative measures adopted to implement article 16 of the Covenant. As he understood it, under German law the concept of the legal capacity of a human being began before birth, as soon as a child was conceived. Such a concept could have legal consequences in, for example, the law of succession.

60. The comments made in the report concerning the implementation of article 17, paragraph 1, of the Covenant raised an extremely important sociological and philosophical question, namely the difficulty of determining where one person's freedom ended and another's began. In such cases, it was difficult to safeguard rights and freedoms by law. It was thus essential that a court, bearing in mind the interests of the community, should weigh the advantages and disadvantages and endeavour to arrive at the best solution possible. With reference to article 17, paragraph 2, he asked who was empowered to authorize the tape-recording of private conversations and to make them available to third persons.

61. He noted that the Federal Republic of Germany had gone further than was necessary under article 20, paragraph 2, of the Covenant by making demagogy a punishable offence.

(Mr. Hanga)

62. In connexion with article 22 of the Covenant, he asked for additional information on the political and economic role played by trade unions in the Federal Republic of Germany and, in particular, whether trade unions had an opportunity to safeguard and improve the economic and working conditions of workers, whether they encouraged technological advance, and what part they played in labour contracts.

63. With respect to article 23 of the Covenant, he wondered whether a marriage vitiated by lack of consent was declared absolutely or relatively null and void and whether impediments to marriage were provided for by law or were imposed as a result of court proceedings. He also wondered what were the legal procedures for legitimizing natural children and whether the courts could require natural fathers to contribute to the maintenance of their children.

64. With regard to article 25 of the Covenant, he asked whether a person could be barred from public service on grounds other than the fact that he was an active member of an organization hostile to the Constitution.

65. He would welcome more information concerning the implementation of article 3 of the Basic Law of the Federal Republic of Germany in view of the statement, in connexion with article 26 of the Covenant, that that article was considered to be violated if "a reasonable cause resulting from the nature of the matter or an otherwise plausible reason for the differentiation or inequality of treatment exercised by that legislator in the light of justice" could not be found.

66. Mr. LALLAH said he wondered whether the measures adopted to protect the liberal and democratic system of the Federal Republic of Germany were in themselves liberal and democratic. Since the Covenant in its entirety had not been translated into law, he doubted whether the Federal Constitutional Court had had occasion to decide, in many of the important cases cited in the report, whether the Federal Republic of Germany was complying with the provisions of the Covenant. Article 2, paragraph 1, of the Covenant required the State, as well as individual persons and groups of persons, to safeguard the rights and freedoms provided for in the Covenant by not engaging in any activities that would impair them. Although it was apparent from the statement made by the representative of the Federal Republic of Germany at the preceding meeting that the philosophy guiding the Government was prompted by events in the recent and not so recent past - namely, the need to react against certain terrorist groups and against the possibility of a Nazi régime - he had the impression that the Government's reaction to extremism was in itself somewhat extreme and was barely justifiable under article 2, paragraph 1, of the Covenant. Such a philosophy might encourage the Executive to engage in insidious interference in the intellectual life of the country and to ban ideas aimed at reforming the Constitution or making the system more democratic. In that connexion, it would be interesting to know whether the agency responsible for the protection of the Constitution had a duty to protect individuals from interference by the State.

67. It would be of interest to the Committee to receive copies of the judicial decisions referred to in the report in connexion with article 19 of the Covenant,

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and also any decisions germane to the implementation of article 25 (c) of the Covenant. He wondered what was meant by the words "hostile to the Constitution" as used in the part of the report dealing with article 25 (c) of the Covenant. He asked whether it was possible that persons who envisaged changes in the Constitution by non-violent means might be regarded as hostile to the Constitution and whether the members of a particular political party could be penalized even though the party was recognized as legal. Comparing the Federal Republic of Germany with the United Kingdom, he said that the latter accorded more generous protection to people of all shades of opinion who advocated change by non-violent means. He would appreciate some clarification as to whether people seeking employment might be adversely affected by a surveillance over which they had no control.

68. In conclusion, he expressed appreciation for a remarkably comprehensive and frank report.

The meeting rose at 6.35 p.m.