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Chair: Ms. Pazartzis

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant

Seventh periodic report of Germany (CCPR/C/DEU/7; CCPR/C/DEU/QPR/7)

1. *At the invitation of the Chair, the delegation of Germany joined the meeting.*
2. **Ms. Jacoby** (Germany), introducing the seventh periodic report of Germany (CCPR/C/DEU/7), said that a major development since the report's submission had been the advent of the coronavirus disease (COVID-19) pandemic and the restrictions on certain civil rights and liberties that her Government had had to impose in order to mitigate the pandemic's impact. Some of the measures taken by the Government had been challenged by citizens but most had been accepted by the courts. The fact that some, such as bans on certain types of assembly, had been struck down, showed that Germany had a functioning system of checks and balances, with a strong judicial component that was able to limit State actions in order to uphold the rights and liberties under the Covenant. The pandemic had also pushed the topic of digitalization to the top of the agenda. The transition to a digital environment was complex and necessarily had an impact on the exercise of fundamental rights, as well as on measures taken to address violations of those rights, such as hate speech.
3. Another major topic of current debate was climate change and its impact on human rights. In its ruling in a recent landmark case, the Federal Constitutional Court had held that the State's obligation to protect fundamental rights included protection against the consequences of climate change, and that that obligation extended to people outside the country. The federal Government had already adjusted some of its climate policies pursuant to that ruling.
4. In March 2020, the Government had created a special Cabinet committee to combat right-wing extremism and racism. Other projects had been launched in the area of asylum and migration policy, aimed at identifying vulnerable persons during asylum assessments, facilitating access for families to established national welfare systems and preventing violence in refugee accommodations.
5. In the area of gender equality, the regulations relating to quotas in leadership positions in business and administration had been adjusted and extended. Legislation on protection against violence and stalking had been extended to cover any kind of attack against sexual self-determination, even if non-violent, and the vicious practice of cyberstalking had been criminalized. Partly as a result of recommendations made by international monitoring bodies, steps had been taken to expand suspects' rights at the investigation stage of criminal proceedings. The changes related to the rules on questioning and on the right to counsel during questioning, among other things.
6. Guardianship law had been reformed to improve the provision of information to persons under guardianship and to enhance their right to participation and to self-determination. The guardian was now required to support the person's own decision-making as far as possible, making decisions on their behalf only as a measure of last resort where necessary for their protection.
7. **Mr. Santos Pais** said that he would like to know which department of the federal Government was responsible for following up on implementation of the Committee's concluding observations. The State party's report and its core document (HRI/CORE/DEU/2016) gave details of the departments that dealt with individual communications under the Optional Protocol and implementation of the Committee's Views on such communications. However, in the past 20 years, the Committee had received few communications concerning the State party, in spite of its considerable population. He wondered whether the reason might be that the Covenant was not widely known among judges, prosecutors and members of the legal profession. Similarly, the State party's report mentioned only five decisions in which higher domestic courts had referred to the Covenant, which made him wonder whether judges and prosecutors received specific training on international law and international human rights law. Was the Covenant widely accessible in German, for instance as part of the legal collections available on federal Government websites?

8. Recalling that, in April 2020, the Committee had issued a statement on derogations from the Covenant in connection with the COVID-19 pandemic (CCPR/C/128/2), he asked whether the State party had notified the other States parties to the Covenant, through the Secretary-General of the United Nations, of its derogations from the Covenant and the reasons for such derogations. He said that he would welcome the delegation's comments regarding the pandemic's impact on the general human rights situation in the country and on civil space and liberties. He wondered whether the courts had continued functioning in order to deal with claims by persons affected by restrictive measures. He would appreciate receiving examples in which the courts had upheld a person's rights by overturning restrictions.

9. He would be interested to hear about steps taken by the State party to address the growing problems posed by climate change.

10. The situation with regard to counter-terrorism and security measures was complicated by the fact that there was a certain overlap in the competence of the Länder and of the federal Government in police matters, prison law and the administration of justice. The Länder considered that recent amendments to police legislation did not undermine any of the State's international human rights obligations. Yet the Bavarian Police Powers Act had significantly extended police powers of intervention, apparently in order to enable Bavarian police to respond effectively to new types of threat, including those of a terrorist nature. He would like to know whether the Länder had, also under the pretext of terrorism, broadened the scope of police intervention in other domains. Which powers of the Bavarian police were subject to a judicial decision and which were not?

11. He would like to know whether any assessment had been made of the impact of the recently introduced powers to impose restrictions on persons who posed a security threat and to deprive them of their liberty. He wondered how widely those powers had been exercised and whether the delegation could provide examples of their use. He would welcome information on the extended time limits for police custody that had been introduced in several Länder and on the use of preventive detention after the serving of a criminal sentence, as applied to "extremist criminals". Noting that the Residence Act had been amended to make it easier to detain and deport foreigners deemed to pose a security threat, he asked how often the relevant provisions had been applied.

12. Turning to the issue of ill-treatment by the police, and recalling that the Committee had previously expressed concern about the way complaints were handled, he said that a careful reading of the statistics provided by the State party revealed that the situation had not changed. In cases relating to abuse in police custody, intentional homicide by police officers, use of violence and abandonment, coercion and misuse of public office, there had been only 23 incidents concerning the Federal Police between 2011 and 2018. In the Länder, most complaints had been dismissed as ill founded or, where criminal proceedings had been instituted, most prosecutions had been discontinued for lack of evidence. He would appreciate the delegation's comments on those figures. He wondered whether the fact that the public prosecution service, which supervised criminal investigations and was responsible for the decision to press charges or not, was dependent on the executive might play a role in that regard. Were there any plans to reinforce the independence of the public prosecution service, particularly in criminal proceedings?

13. As to police misconduct, he said that he would like to know how many Länder delegated responsibility for investigating complaints to a police service different from the one whose personnel were under suspicion and how many had set up a central investigation unit. What guarantees of independence and impartiality could those bodies offer complainants?

14. He asked how many Länder had created independent complaints bodies under the state parliament (Landtag) to deal with allegations of police misconduct from private citizens.

15. Lastly, with regard to police identification, it would be interesting to learn whether there were plans to increase the number of Länder with mandatory personal identification, including for members of closed police units, following recent court decisions on the admissibility and constitutionality of such an obligation.

16. **Mr. Furuya** said that he would appreciate an explanation as to why the State party considered it necessary to maintain its reservation to article 5 (2) (a) of the Optional Protocol. The reservation denied the competence of the Committee to consider an individual communication claiming a violation of article 26 of the Covenant that referred to rights other than those guaranteed under the Covenant, yet article 26 prohibited discrimination in law or in fact in any field regulated and protected by the public authorities. The application of the principle of non-discrimination contained in that article – a provision accepted by the State party – was therefore not limited to rights provided for in the Covenant. Moreover, the Basic Law of the State party provided that all people were equal before the law, “the law” in that case not being limited to the law on civil and political rights but encompassing all legal rules including those relating to economic and social rights. He would be interested to hear the delegation’s views on the compatibility of that reservation with the obligation under article 26 of the Covenant, which the State party had accepted without reservation or limitation.

17. He said that the Committee had noted with appreciation the new Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains. Claims had been made, however, that the scope of the Act was narrower than that of the United Nations Guiding Principles on Business and Human Rights and that the legal situation for victims of corporate human rights abuses remained unchanged. He would welcome the delegation’s response to those claims. In particular he would like to know what measures had been taken to improve access to effective remedy for victims of human rights abuses committed by companies along the whole length of their value and supply chains and whether such measures might be included in the second action plan on business and human rights expected to be adopted in 2022.

18. He would appreciate information on the tangible results of the training provided to police officers in how to use their power in a non-discriminatory manner and on the number of complaints of discrimination by police that the authorities had received in the past 10 years. Regarding the grounds for police checks, he wished to know why the State party believed that the existing suspicion standard was sufficiently objective and provided police officers with a clear instruction on stopping and questioning someone without racial bias and whether the police monitoring mechanism had assessed the effectiveness of the current standard.

19. **Ms. Sancin** said that she wished to know whether the State party intended to explicitly protect people, in law and in practice, from discrimination on grounds of language or nationality, effectively address multiple discrimination and eliminate discrimination on the part of public authorities. She also wished to know whether it intended to close the legal loopholes that allowed for discrimination in the housing market. Did the State party intend to improve access to effective protection against discrimination by extending the deadline for submitting complaints?

20. Noting the positive steps taken by the State party to expand protection against violence for women and girls, she said that she wished to know whether the recent legislative changes addressed the significant gap between law and practice, particularly in terms of preventing intimate partner violence, ensuring effective access to justice and punishing all forms of sexual harassment, and how judges and prosecutors were trained to effectively address violence against women. It would be useful to learn whether the State party intended to adopt a comprehensive national anti-trafficking action plan that was results-oriented, evidence-led, gender-responsive, rights-based and victim-centred to address issues around compensation and residence permits for victims, the identification of vulnerable groups, protection in migrant reception centres and the provision of information in victims’ own languages. In particular, the delegation’s views would be appreciated regarding the fact that the insecure residence status of victims of trafficking potentially affected their suitability as witnesses in criminal proceedings and their willingness to testify. She would appreciate a progress report on the plans to build, extend and refit women’s shelters and counselling centres, as well as information on measures to ensure sufficient funding for and effective access to support and shelters for all victims irrespective of their immigration status.

21. While noting some positive developments in the treatment of intersex children, she would nevertheless like to know how the State party intended to better protect intersex children, in law and in practice, from non-emergency, invasive and irreversible surgical or

other medical treatment without their free, prior and fully informed consent. Some ways of achieving that were to include a representative for the child's interests and a qualified intersex person in the board that dealt with exceptional cases where surgery was legal, provide access to patient records, justice and redress and ban the practice of bougienage. It would be helpful to know what guidelines medical professionals were given regarding the treatment of intersex children, specifically whether the guidance took children's rights into consideration.

22. Referring to drone strikes by the United States of America that had been facilitated by the Ramstein airbase, she asked how the State party planned to ensure that activities being carried out in whole or in part in its territory and having a direct, significant and foreseeable impact on the right to life of individuals outside its territory were in line with the Covenant and that it was not complicit in any occurrences of arbitrary deprivation of life.

23. **Ms. Kpatcha Tchamdja** said that she would appreciate information on the number and outcome of the discrimination complaints brought under the General Equal Treatment Act and what remedies and legal aid had been available to the complainants. She would like to understand why the Federal Anti-Discrimination Agency did not have the authority to investigate discrimination cases or initiate court proceedings in such cases and why groups were prevented from filing discrimination cases before the courts. Might the State party reconsider its position on those matters?

24. **Mr. El Haiba** said that he would appreciate information on how the State party was responding to hate speech in non-digital media and in political discourse, persistent negative stereotypes about persons of African descent, institutional racism against Muslims, the rise in offences against refugees, asylum seekers and their shelters, racist attacks on persons of Asian background and antisemitic acts. He would also like information on the steps taken to effectively investigate and prosecute hate crimes and on the number and outcomes of investigations and prosecutions in such cases.

25. Regarding voluntary termination of pregnancy, he wished to know why pregnant women were required to demonstrate that they had had counselling at least three days prior to undergoing an abortion; how the court rulings that prohibited religious fundamentalists from harassing women outside places offering abortion services were enforced; what other measures were taken to protect women seeking safe and legal abortions from harassment; whether women over the age of 22 who received State assistance, such as unemployment benefits, could be reimbursed for prescribed contraceptives; and what measures were in place to ensure equal access to affordable contraceptives for women living in poverty.

The meeting was suspended at 4.15 p.m. and resumed at 4.35 p.m.

26. **Ms. Jacoby** (Germany) said she wished to note that, in the light of the recent elections, any answers regarding future measures were given with the proviso that the new Government might adopt different policies.

27. **Mr. Behrens** (Germany) said that part of the reason so few individual complaints were submitted against Germany was that the Constitutional Court dealt with many of the cases involving rights under the Covenant. Moreover, complainants also had the option of applying to the European Court of Human Rights, whose decisions, unlike those of the Committee, were binding and therefore perhaps more appealing to some individuals. There was a decent level of awareness of the Covenant, including with regard to the communications procedure, thanks to information available on government websites and through human rights institutions. Again, however, it was only one of several relevant instruments. The German Judicial Academy offered seminars on international and European law, including on matters of hate crimes. While the pandemic had caused some delays in the judicial system, the courts had continued to function, especially in cases where interim measures were required, for instance by moving proceedings online for the first time. Some decisions by municipalities to ban demonstrations over public health concerns had been overturned after the courts had ruled that it was possible to safeguard public health while also upholding the freedom of assembly.

28. **Ms. Jacoby** (Germany) said that the measures that had been repealed by the courts included bans on demonstrations and some individual lockdown measures such as closure of

restaurants and clubs. The cases had been dealt with in accordance with the regulations in the individual Länder.

29. **Mr. Merz** (Germany), referring to the question of counter-terrorism and the balance to be struck between prevention and rights, said that Germany attached great importance to the principle of proportionality, which was a fundamental component of the police legislation in every Land and in the Federal Police Act. With regard to judicial oversight of the deprivation of liberty, he said that police custody lasted only until the end of the day following the day on which the person was detained. After that, detention was subject to judicial review. The matter of preventive detention for a person considered to be a threat to public safety had been the subject of a ruling by the Constitutional Court of Bavaria, which had reduced the maximum duration to two months. Anyone subject to such a measure was entitled to legal counsel. The Residence Act had been amended, in part to ensure that the detention measures could be ordered only where necessary and, in the case of electronic tags, only in order to prevent imminent danger to others. Legal remedies were available to appeal the measures.

30. **Ms. Jacoby** (Germany) said that there were a few other countries in Europe where prosecutors' offices reported to the executive branch. In Germany, although prosecutors' offices were not independent, they had the same democratic legitimacy as the executive. The subject was nevertheless under discussion, but the intense debate that had erupted in the wake of criticism by the European Court of Justice had been interrupted by the elections. The Ministry of Justice had looked into the question of whether prosecutors in Germany ever received instructions on the course of action to follow and had concluded that that was not the case. In addition, the principle of mandatory prosecution applied if there was evidence that a crime had been committed; failure to prosecute in such cases was itself a criminal offence and any termination of proceedings must be ordered by a court. It was to be hoped that the new parliament would continue discussions on the issue.

31. **Ms. Röhl** (Germany), referring to the reservation of Germany to article 5 (2) (a) of the Optional Protocol, said that the federal Government had taken note of the Committee's Views on communication No. 3232/2018 and would continue to consider the possible consequences. In the interests of avoiding discrimination it might be possible to withdraw the reservation.

32. **Ms. Jacoby** (Germany) said that, following an evaluation of the National Action Plan on Business and Human Rights, which had revealed unsatisfactory levels of compliance, the Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains had been passed in order to monitor and improve the legal framework in that area. The Act would enter into force on 1 January 2023, which would give businesses time to establish the necessary procedures and mechanisms. It would apply first to companies with over 3,000 employees and then, from 2024, to companies with over 1,000 employees; it would eventually apply to 4,800 businesses. There had been criticism of the Act, and lively discussions with non-governmental organizations (NGOs) had taken place. Ultimately, businesses must understand that there would be consequences for human rights violations and that a government authority would assess compliance and receive complaints from persons claiming rights violations. Foreign complainants would have access to German courts and would be eligible for legal aid if they did not have sufficient means to take action. NGOs and trade unions could also bring proceedings. The Act was considered to provide adequate legal protection. It did not itself give rise to liability under civil law. Liability depended on international civil procedure law and the law of the country in whose jurisdiction the violation had taken place. The question of expanding protection under the Act in the second national action plan on business and human rights would be discussed further in the European context, when the European Commission put forward its own legislative proposal on supply chains.

33. As to the right of groups to file discrimination cases under the General Equal Treatment Act, she said that the concept of class action did not exist in Germany.

34. **Mr. Merz** (Germany) said that training for police officers was constantly being developed and improved. Civil society organizations were also invited to contribute to training courses. The indicator of successful training was a low number of complaints and

court proceedings arising out of police activities such as identity checks or questioning, and very few complaints in fact arose. The courts had made it clear that a higher burden of evidence applied to the federal police in conducting checks, which were usually based on situational intelligence. The police must be able to justify their suspicions if they wished to carry out checks, as had also been clarified in case law. It had likewise been made clear that racial profiling was illegal in Germany. Therefore, his Government currently saw no need to amend section 22 of the Federal Police Act.

35. **Ms. Jacoby** (Germany), on the question of training for judges and public prosecutors in the area of violence against women, said that there was no obligation for the Government to provide training for judges, since the judiciary was independent. Public prosecutors, on the other hand, as public servants, could be required to attend training. Special expertise was needed to properly deal with victims from vulnerable groups, many of whom were highly traumatized. Accordingly, many public prosecution offices had set up special departments with prosecutors trained to deal with victims in a minimally invasive manner.

36. **Ms. Sasse** (Germany), in response to the Committee's query regarding potential links between the insecure residence status of victims of human trafficking and their suitability as witnesses in criminal proceedings, said that victims had a minimum of three months to decide whether they wished to make a statement or become involved in proceedings with a view to assisting in the prosecution of the case.

37. **Ms. Jacoby** (Germany) said that language and nationality as grounds for discrimination were covered by the General Equal Treatment Act.

38. **Ms. Florath** (Germany) said that the recommendations of the Cabinet committee to combat racism and discrimination had included extending the deadline for bringing complaints of discrimination under the General Equal Treatment Act from two months to six months. That recommendation had already been implemented. The annual report of the Federal Anti-Discrimination Agency, which was responsible for implementing the General Equal Treatment Act, indicated the number of complaints received. The number had increased greatly during the pandemic, to some 6,900, around 1,000 of which had related to the wearing of face coverings and masks. The report was being translated into English to make it more widely accessible.

39. **Ms. Jacoby** (Germany) said that there were a number of centres that did valuable work with victims of trafficking in persons in areas such as forced prostitution, forced labour and work in inhumane conditions. Information was provided in several languages.

40. **Ms. Florath** (Germany) said that around €30 million were spent on women's shelters every year. Provision was made for digital equipment to obviate the need for in-person visits, notably during the pandemic. Another €21 million were made available for innovation projects and to identify gaps in the servicing of victims' needs.

41. **Ms. Radziwill** (Germany) said that, under the Residence Act, women victims of violence could, under certain circumstances, obtain residence status in their own right. If a marriage was dissolved as a result of violence against a woman, she could obtain residence status and, as a result, could be admitted to a shelter, regardless of how long she had been married. If a victim needed to remain in Germany in order to cooperate in proceedings, she could also apply for residence status. Women who had been taken abroad for the purposes of forced marriage, and who had thus lost their residence status, could regain their right of residence. Victims of certain offences who were willing to cooperate in proceedings and make a statement were also eligible for residence status. The purpose was not to sanction women but to protect them.

42. **Ms. Florath** (Germany) said that her Government considered the adoption of the Act on the Protection of Children with Variants of Sex Development to be the successful culmination of a lengthy consultation and revision process in which both the medical profession and victims had participated. Judicial review was required under section 1631 of the Civil Code for a surgical procedure to be carried out on a minor who was unable to give consent. Expert opinion could be sought in order to determine the best interests of the child in such cases. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth had made an explanatory film available online, which gave information about victim support

groups and counselling centres. As to the lack of a central register, she said that since, according to the Civil Code, the individuals themselves had to give consent for the surgical intervention, or the family court had to give its approval, such interventions were now fully documented.

43. **Mr. Behrens** (Germany) said that the Federal Anti-Discrimination Agency did not have the power to bring legal proceedings before the courts because it had not been designed to perform that function. In the legal framework of Germany, victims of discrimination sought remedies through the judicial system. The Agency's role – which was unlikely to change in the foreseeable future – was to support victims in using that system.

44. **Ms. Jacoby** (Germany) said that racism and antisemitism were not exclusive to Germany. The Government had invested significant resources in combating them, but much remained to be done to eliminate prejudice and achieve social harmony.

45. **Mr. Merz** (Germany) said that the Cabinet committee to combat right-wing extremism and racism had been established at the initiative of the Federal Chancellor, in the wake of a series of appalling events including the 2019 attack on a synagogue in Halle, the murder of the politician Walter Lübcke and the attack in Hanau. On 25 November 2020, the Cabinet committee had presented a package of 89 measures and, in May 2021, had published its final report on the implementation of those measures, which made clear that all government departments were jointly responsible for the fight against racism and antisemitism. The Government had approved a budget of €1 billion to implement the package during the period 2021–2024. The committee had identified four key goals. The first was to generate a greater awareness of racism as a problem that affected society as a whole and to step up cooperation between law enforcement authorities, the judiciary and relevant State and non-governmental actors. One area in which such cooperation was proving successful was the prosecution of perpetrators of online hate speech. The second goal was to prevent right-wing extremism and racism, antisemitism and Islamophobia across all social structures, including schools, through political education and initiatives to promote democracy. Such efforts coincided with the remit of the Federal Agency for Civic Education, whose main task was to motivate people to support democratic society. The third goal was to extend support for victims of racial discrimination and foster an environment in which victims could voice their concerns. The fourth was to recognize and value diversity and strengthen the inclusion of people with a migration background.

46. Other relevant measures included the establishment of an independent expert council on Islamophobia with a two-year mandate to analyse Islamophobia in Germany and produce a report with recommendations on how to tackle it. The Federal Government Commissioner for Jewish Life in Germany and the Fight against Antisemitism, attached to the Federal Ministry of the Interior, conducted social media campaigns and worked with NGOs such as the Anne Frank Zentrum and the Amadeu Antonio Stiftung, as well as contributing to the public discourse on antisemitism. In its 2020 budget, the federal Government had allocated €22 million to support the Länder in protecting Jewish institutions.

47. **Ms. Florath** (Germany) said that the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth had established the Demokratie leben! (Live Democracy) programme with the aims of promoting democracy and diversity and preventing extremism. Under that programme, which had a budget of €600 million for the period 2020–2024, support was provided for national and local NGOs to carry out grass-roots projects.

48. **Mr. Muhumuza** said that he would welcome the delegation's comments on the status and visibility of black people in Germany. Noting that they had enjoyed remarkable sporting success, he asked to what extent that success was mirrored in other areas of society, such as employment in government positions and participation in public life. Lastly, in the light of reports that COVID-19 vaccination was unavailable for undocumented persons, he asked what was being done to ensure that health services, including COVID-19 vaccination, were provided to all, regardless of migration status.

49. **Ms. Sancin** said that she would appreciate insight into whether, during the adoption of the Act on the Protection of Children with Variants of Sex Development, the Bundestag had discussed abolishing the statutes of limitations for filing claims, which prevented adults

who had been subjected to surgical procedures as children from bringing proceedings and obtaining redress for violations of their rights under the Covenant.

50. **Ms. Kpatcha Tchamdja** said that she would like more detailed information on access to justice for victims of discrimination and the right of groups to file class actions under the General Equal Treatment Act.

51. **Mr. Santos Pais** said he hoped that the Committee's concluding observations would be a useful reference document for the incoming coalition Government. The Committee was uncertain as to how it should interpret the statistics that the State party had provided on complaints of police misconduct. Only a handful of the thousands of complaints that had been filed had reached the courts, seemingly because the public prosecution office did not press charges in most cases. Given that a failure to properly address complaints might lead to public mistrust in the police and the judicial system, he said it would be useful to know why so many cases had been dropped. Lastly, the Committee would appreciate an explanation of how security measures adopted for counter-terrorism purposes, such as preventive detention and restrictions on liberty, were applied in practice. Details might include the procedures followed and the extent to which such measures were ordered by the courts.

52. **Mr. Furuya** said that the small number of complaints of racial profiling submitted to the Federal Police did not necessarily mean that few violations had occurred. In that regard, detailed statistics on the number of complaints received would allow the Committee to determine whether the trend had shifted since the introduction of police training on racial profiling.

53. **Mr. El Haiba** said that he would like to know more about the contribution of the German Institute for Human Rights to efforts to combat hatred and antisemitism. In that regard, he stressed that national human rights institutions played a particularly important role at a time when other public authorities were awaiting the formation of a new Government. He would be interested to know what strategic planning had been done and whether Germany had a specific national action plan to combat antisemitism.

54. He had been surprised to note that Germany imposed restrictions on access to safe and legal abortion, such as requiring women to prove that they had attended counselling. He would therefore invite the delegation to address the question of voluntary termination of pregnancy and, in particular, to explain how the State party ensured that women of limited means had equal, safe and legal access to abortion.

The meeting rose at 6.05 p.m.