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 182/1984). 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 by: A. and S. N. [names deleted]

Alleged victim: 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:

Decision on admissibility

1. The authors of the communication (initial letter of 9 March 1987 and further letters of 10 September 1987 and 5 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 The 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 members of Norway's Humanist and Ethical Union. They object to the fact that their daughter, who attended the Vestbyen Day Nursery in Alesund from the autumn of 1986 to August 1987, has been exposed to Christian influences against their will. The Christian object clause does not apply to privately-owned nurseries, but the authors 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 send their children to these nurseries. The authors 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 read in part: "the Christian festivals are widely celebrated in our culture. Therefore, it is natural that day nurseries should explain the meaning of these festivals to the children ... Christian faith and teachings should play only a minor role in everyday life at the day nursery." The Humanist and Ethical Union, an organisation of non-believers, has raised strong objections against the Day Nurseries Act and its implementing regulations.

2.2 In the present case, S.'s parents object that when she first attended the day nursery, grace was sung 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 six-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 inconsistent with article 18, paragraph 4, of the Covenant, which requires States parties to respect the liberty of parents 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 against discrimination on grounds of, among other things, religion.

2.4 With respect to the 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, since 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 were 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 communication 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 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.

7. The Human Rights Committee 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: O. W. [name deleted]

Alleged victim: The author

State party concerned: Jamaica

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 O. 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 O. 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 O. W.