

**REPORT
OF THE
HUMAN RIGHTS COMMITTEE**

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-FOURTH SESSION

SUPPLEMENT No. 40 (A/44/40)



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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

[29 September 1989]

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Covenant

1. As at 28 July 1989, the closing date of the thirty-sixth session of the Human Rights Committee, there were 87 States parties to the International Covenant on Civil and Political Rights and 45 States parties to the Optional Protocol to the Covenant, both of which were adopted by the General Assembly in resolution 2200 A (XXI) of 16 December 1966 and opened for signature and ratification in New York on 19 December 1966. Both instruments entered into force on 23 March 1976 in accordance with the provisions of their articles 49 and 9 respectively. Also as at 28 July 1989, 24 States had made the declaration envisaged under article 41, paragraph 1, of the Covenant, which came into force on 28 March 1979.
2. A list of States parties to the Covenant and to the Optional Protocol, with an indication of those which have made the declaration under article 41, paragraph 1, of the Covenant is contained in annex I to the present report.
3. Reservations and other declarations have been made by a number of States parties in respect of the Covenant and/or the Optional Protocol. These reservations and other declarations are set out verbatim in document CCPR/C/2/Rev.2.

B. Sessions and agendas

4. The Human Rights Committee has held three sessions since the adoption of its last annual report. The thirty-fourth session (841st to 867th meetings) was held at the United Nations Office at Geneva from 24 October to 11 November 1988, the thirty-fifth session (868th to 894th meetings) was held at United Nations Headquarters, New York, from 20 March to 7 April 1989 and the thirty-sixth session (895th to 922nd meetings) was held at the United Nations Office at Geneva from 10 to 28 July 1989. The agendas of the sessions are shown in annex III to the present report.

C. Membership and attendance

5. At the 10th meeting of States parties, held at United Nations Headquarters, New York, on 16 September 1988, nine members of the Committee were elected, in accordance with articles 28 to 32 of the Covenant, to replace those whose terms of office were to expire on 31 December 1988. The following members were elected for the first time: Messrs Francisco José Aguilar Urbina, János Fodor and Rein A. Myullerson. Mrs. Rosalyn Higgins, and Messrs. Rajsoomer Lallah, Andreas V. Mavrommatis, Fausto Pocar, Alejandro Serrano Caldera and S. Amos Wako, whose terms of office were to expire on 31 December 1988, were re-elected. A list of the members of the Committee in 1989 is given in annex II.
6. All the members, except Mrs. Higgins and Mr. Serrano Caldera, attended the thirty-fourth session of the Committee. All the members attended the thirty-fifth session; Mr. Mavrommatis attended only part of that session. The thirty-sixth session was attended by all the members of the Committee except Mr. Mommersteeg; Mr. Aguilar Urbina, Miss Chanet and Messrs. Cooray, Mavrommatis and Wako attended only part of that session.

D. Solemn declaration

7. At the 868th, 872nd and 876th meetings (thirty-fifth session), members of the Committee who had been elected or re-elected at the 10th meeting of States parties to the Covenant made a solemn declaration, in accordance with article 38 of the Covenant, before assuming their functions.

E. Election of officers

8. At its 868th and 869th meetings, held on 20 March 1989, the Committee elected the following officers for a term of two years in accordance with article 39, paragraph 1, of the Covenant:

Chairman: Mr. Rajsoomer Lallah

Vice-Chairmen: Mr. Joseph A. L. Cooray
Mr. Vojin Dimitrijevic
Mr. Alejandro Serrano Caldera

Rapporteur: Mr. Fausto Pocar.

9. The Committee expressed its deep appreciation to Mr. Julio Prado Vallejo, the outgoing Chairman, for his leadership and outstanding contribution to the success of the Committee's work.

F. Working groups

10. In accordance with rules 62 and 89 of its rules of procedure, the Committee established working groups to meet before its thirty-fourth, thirty-fifth and thirty-sixth sessions.

11. The working group established under rule 89 was entrusted with the task of making recommendations to the Committee regarding communications under the Optional Protocol. Additionally, the working group that met before the thirty-fifth and thirty-sixth sessions was mandated to review possible options for accelerating and facilitating the examination of communications. At the thirty-fourth session, the working group was composed of Messrs. Pocar, Prado Vallejo, Wako and Zielinski. It met at the United Nations Office at Geneva from 17 to 21 October 1988 and elected Mr. Wako as its Chairman/Rapporteur. At the thirty-fifth session, the working group was composed of Mr. Cooray and Mr. Dimitrijevic, Mrs. Higgins and Mr. Prado Vallejo. It met at United Nations Headquarters, New York, from 13 to 17 March 1989 and elected Mrs. Higgins as Chairman/Rapporteur. At the thirty-sixth session, the working group was composed of Mr. Dimitrijevic, Mr. Pocar and Mr. Prado Vallejo. It met at the United Nations Office at Geneva from 3 to 7 July 1989 and elected Mr. Dimitrijevic as its Chairman/Rapporteur.

12. The working group established under rule 62 was mandated to prepare concise lists of issues concerning second periodic reports scheduled for consideration at the Committee's thirty-fourth, thirty-fifth and thirty-sixth sessions, and to consider any draft general comments that might be put before it. Additionally, the working group that met before the thirty-fourth and thirty-fifth sessions was mandated to formulate recommendations relating to the Committee's future

methodology in considering third periodic reports. The group that met before the thirty-sixth session was requested to consider, pursuant to the recommendation of the chairmen of the human rights treaty bodies, the possibility of elaborating a consolidated text of the first part of the guidelines relating to the form and content of initial and periodic reports. At the thirty-fourth session, the working group was composed of Messrs. Ando, Mommersteeg, Movchan and Ndiaye. It met at the United Nations Office at Geneva from 17 to 21 October 1988 and elected Mr. Ndiaye as its Chairman/Rapporteur. At the thirty-fifth session, the working group was composed of Messrs. El Shafei, Lallah, Pocar and Serrano Caldera. It met at United Nations Headquarters from 13 to 17 March 1989 and elected Mr. El Shafei as its Chairman/Rapporteur. At the thirty-sixth session, the working group was composed of Messrs. Ando, Myullerson and Ndiaye. It met at the United Nations Office at Geneva from 3 to 7 July 1989 and elected Mr. Ndiaye as its Chairman/Rapporteur.

G. Other matters

Thirty-fourth session

13. The Under-Secretary-General for Human Rights informed the Committee of the report of the Secretary-General on the work of the Organization submitted to the General Assembly at its forty-third session ^{1/} and drew attention, in particular, to his statement reaffirming the great importance he attached to a strong human rights programme which could "make our task in other areas significantly easier". He also noted that, in his report to the General Assembly, the Secretary-General had once again stressed the need to strengthen continually the existing human rights machinery, particularly in the light of frequent and often large scale violations of fundamental human rights, which continued in various countries and regions of the world.

14. In connection with the commemoration of the fortieth anniversary of the adoption of the Universal Declaration of Human Rights during 1988, the Under-Secretary-General for Human Rights noted that the anniversary had not only provided an opportunity for taking stock of past accomplishments but had also added impetus to disseminating the human rights message. He paid special tribute in that regard to the many excellent commemorative activities undertaken by non-governmental organizations as well as by private groups, including representatives of the world of art and entertainment. The Under-Secretary-General for Human Rights also informed the Committee of several official commemorative observances that had been or were to be held during 1988, including a seminar held in April 1988 at Lomé, organized by the Centre for Human Rights in co-operation with the Government of Togo; the European Workshop on the Universal Declaration of Human Rights held at Milan in September 1988, organized jointly by the Centre and the University of Milan; and a training course on the administration of justice and human rights held in Moscow for Eastern European countries and organized by the Centre in co-operation with the United Nations Association of the Union of Soviet Socialist Republics.

15. The Under-Secretary-General for Human Rights informed the Committee of the outcome of the Global Consultation against Racism and Racial Discrimination, which, pursuant to General Assembly resolution 42/47 of 30 November 1987, had been held at Geneva at the beginning of October 1988 and attended by a broadly representative group drawn from all sectors of the international community and non-governmental

organizations, as well as by many human rights activists and experts, including Madame Danielle Mitterrand.

16. The Under-Secretary-General for Human Rights also informed the Committee of other significant developments of relevance to its work that had occurred since the Committee's thirty-third session, notably the actions taken by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its fortieth session. These included updating the report listing States that had proclaimed, extended or terminated a state of emergency since January 1985; forwarding to the Commission on Human Rights of the draft second optional protocol aimed at the abolition of the death penalty, together with a comparative analysis of the various views in favour of or against the idea of elaborating such a protocol; adoption of a draft body of principles and guarantees for the protection of mentally ill persons; and adoption of Sub-Commission resolution 1988/11 of 1 September 1988 relating to compensation for victims of gross violations of human rights. Additionally, the Committee was informed of the outcome of the thirty-sixth session of the Committee on the Elimination of Racial Discrimination, held in August 1988, as well as of the results of the meeting of persons chairing the various human rights treaty bodies, held at Geneva from 10 to 14 October 1988.

17. Regarding the recent relevant activities of the Centre for Human Rights, the Under-Secretary-General for Human Rights referred, in particular, to the issuance of a number of publications under the Centre's new publication programme and to seminars and training courses undertaken or planned during 1988 by the Centre's advisory services at Tunis, Guatemala City, San Remo, Italy, Manila and Geneva.

18. As part of the fortieth anniversary observances, the Committee decided to hold a round table during its 866th meeting and to invite members of diplomatic missions, representatives of non-governmental organizations, the media and local university staff and students to participate. Members of the Committee expressed satisfaction over the outcome of the round table, which had enabled the participants to become more familiar with the Committee's purposes and activities, and suggested that the experience should be repeated.

19. The Chairman expressed the Committee's appreciation to three members who had not stood for re-election - one of whom was an original member - for the dedication and competence with which they had discharged their functions and for the great contribution they had made to the success of the Committee's work. For their part, the departing members stated that it had been a pleasure and an honour to serve as members of the Committee, which was held in such high regard by the international community and by the public at large, and noted that the principle of avoiding political or ideological considerations had made it possible to secure the co-operation of many Governments with widely differing political, economic and social systems. They wished the Committee continuing success in its work.

Thirty-fifth session

20. The representative of the Secretary-General informed the Committee of the adoption by the General Assembly of resolution 43/115 of 8 December 1988, in which the Assembly had requested the Commission on Human Rights to consider at its forty-fifth session the conclusions and recommendations of the meeting of persons chairing the human rights treaty bodies, in particular those identified as matters requiring urgent action. At that session, the Commission had taken decisions on several of those recommendations, including those relating to the preparation of

studies on possible long-term approaches to the supervision of existing and prospective bodies established under international human rights instruments, as well as on the possible computerization of the work of such supervisory bodies. The representative of the Secretary-General noted further that the General Assembly was to revert to the various questions addressed in the chairmen's report at its forty-fourth session, when it would consider a report submitted by the Secretary-General containing, inter alia, the views and comments of the various treaty bodies on the recommendations.

21. Reviewing other recent activities undertaken by the United Nations in the field of human rights, the representative of the Secretary-General informed the Committee of the General Assembly's far-reaching decision at its forty-third session (resolution 43/128 of 8 December 1988) to launch a World Public Information Campaign for Human Rights; the adoption by the Committee on Economic, Social and Cultural Rights at its third session of its rules of procedure as well as of its first general comment; the completion by the Commission on Human Rights, at its forty-fifth session, of its work on the draft convention on the rights of the child; as well as the adoption of a decision by the Commission to extend to four years the periodicity of reports submitted under the International Convention on the Suppression and Punishment of the Crime of Apartheid.

22. Regarding the Centre's activities and plans under its programme of advisory services and technical assistance, the representative of the Secretary-General informed the Committee of the Centre's intention to co-operate with several Governments in initiating projects designed, inter alia, to strengthen law faculties and to help States set up legal libraries, draw up legal instruments on human rights, publish official legal reviews and gather relevant data and reference materials. He noted that the Centre also planned to organize workshops and training courses during 1989 in Argentina, Colombia, Ecuador, the Gambia, Guinea and the Asia and Pacific region. The publications programme in the various official languages of the United Nations had also made progress and the compilation of international instruments on human rights was now available in Arabic, Chinese, English, French and Spanish.

Thirty-sixth session

23. At its 918th meeting, the Committee decided to amend rules 87 to 94 of its provisional rules of procedure relating to communications under the Optional Protocol to the Covenant (see annex IX to the present report). At the same meeting the Committee also decided to make its rules of procedure definitive, eliminating the term "provisional" from the title of those rules.

24. The Committee heard a proposal that it should from time to time devote one or more meetings to discussion of operational issues of concern to Committee members. It was suggested that it would be of great benefit if, for example, Committee members had the opportunity to exchange ideas on the Committee's role between periodic reports in respect of states of emergency; and on matters relating to the follow-up of views given in communications.

H. Publicity for the work of the Committee

25. The Chairman and members of the Bureau held press briefings during each of the Committee's sessions. The Committee noted with particular satisfaction that the press conference held at the thirty-fifth session, at Headquarters, was well attended by representatives of the major news organizations based in New York and provided a valuable opportunity for conveying information about the Committee's role and activities to the general public.

I. Future meetings of the Committee

26. At its thirty-fifth session, the Committee confirmed its calendar of meetings for 1990-1991, as follows: thirty-eighth session to be held at United Nations Headquarters from 19 March to 6 April 1990; thirty-ninth session at the United Nations Office at Geneva from 9 to 27 July 1990; fortieth session also at the United Nations Office at Geneva from 22 October to 9 November 1990; forty-first session at United Nations Headquarters from 25 March to 12 April 1991; forty-second session at the United Nations Office at Geneva from 8 to 26 July 1991 and forty-third session also at the United Nations Office at Geneva from 21 October to 8 November 1991. In each case, the Committee's working groups would meet during the week preceding the opening of the session.

27. In confirming its calendar of future meetings and the venues of those meetings, the Committee stressed the necessity of holding at least one of its sessions each year at the United Nations Headquarters. A number of considerations relating to the effective discharge of the Committee's mandate dictated that course, including, in particular, the possibility for the Committee to meet the representatives of the many States parties that have no permanent missions at Geneva in connection with the fulfilment of their reporting and other obligations under the Covenant; the necessity for contact at least once a year between the Committee and the members of permanent missions who are involved in the consideration by the General Assembly of the Committee's annual report; and the need to make the work of the Committee known to a wider audience. The Committee bore in mind the need for economy and, to this end, has revised its methods of work, both in the consideration of States reports and of communications under the Optional Protocol (see CCPR/C/SR.880).

J. Adoption of the report

28. At its 920th and 922nd meetings, held on 27 and 28 July 1989, the Committee considered the draft of its thirteenth annual report covering its activities at the thirty-fourth, thirty-fifth and thirty-sixth sessions, held in 1988 and 1989. The report, as amended in the course of the discussion, was unanimously adopted by the Committee.

II. ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-THIRD SESSION

29. At its 880th and 892nd meetings, held on 29 March and 6 April 1988, the Committee considered the agenda item in the light of the relevant summary records of the Third Committee and of General Assembly resolutions 43/114 and 43/115 of 8 December 1988.

30. The Committee discussed the relevant resolutions adopted by the Assembly at its forty-third session and noted with satisfaction the Assembly's favourable comments on its work and the emphasis placed by resolution 43/114 on the need to make the Committee's activity known. Members of the Committee also noted that the Assembly at its forty-third session had considered a number of topics of special interest to the Committee, including the rights of the child and the function of the family as the basis of society, and that the Third Committee had proposed the proclamation of an international year of the family. The Committee agreed that it would itself consider the formulation of a general comment on article 23 of the Covenant, relating to the rights of the family to protection by society and the State.

31. With regard to resolution 43/115, relating to reporting obligations of States parties to international instruments on human rights, the Committee noted that the General Assembly had once again underlined the importance of compliance by States parties with their reporting obligations as well as the importance of the work of the supervisory bodies established under the International Covenants on Human Rights. The Committee further noted with satisfaction that in the same resolution the General Assembly had approved the recommendation of the meeting of persons chairing the human rights treaty bodies relating to the preparation of a study on possible long-term approaches to the supervision of existing and prospective human rights instruments and that the Secretary-General had already appointed an expert to prepare the study for submission to the General Assembly at its forty-fourth session.

32. After considering the other conclusions and recommendations of the chairmen in the light of the views expressed at the forty-third session of the General Assembly and the forty-fifth session of the Commission on Human Rights, the Committee endorsed the recommendations relating to the provision on a regular basis and in consultation with the treaty bodies of technical assistance and advisory services to assist States parties in fulfilling their reporting obligations, particularly regional and subregional training courses on the preparation and submission of reports; the provision of adequate financial resources to ensure the effective operation of each of the treaty bodies; the preparation on a priority basis of a detailed reporting manual; the scheduling on a regular basis of meetings of the persons chairing the human rights treaty bodies; and the establishment of a task force to prepare a study on computerizing the work of the treaty monitoring bodies in relation to reporting. In the latter connection, the Committee noted with appreciation that the task force had already been established, pursuant to Commission on Human Rights resolution 1989/46, and had held its first meeting, in which the Rapporteur of the Committee participated.

33. The Committee also endorsed the recommendation of the Chairpersons relating to the possible consolidation of the various guidelines covering the preparation of the initial part of each State party's report. In the latter connection, the Committee at its 901st meeting, held on 13 July 1989 adopted a proposal concerning

such consolidated guidelines (see annex VIII to the present report). At the same time, members reiterated that the harmonization of the guidelines should not invalidate the uniqueness of the objectives of each treaty body and that only the portion of the guidelines relating to matters of common interest to all of the treaty bodies should be harmonized.

34. With reference to the provision of technical assistance and advisory services, some members also suggested that the treaty bodies should formulate practical proposals to the Centre for Human Rights for facilitating the submission of reports by certain States. Concerning the question of financial and staff resources for the treaty bodies, some members noted that, despite the important role of human rights within the United Nations and the continuing emphasis placed by the General Assembly on the importance of new ratifications or accessions to the various international human rights instruments, less than 1 per cent of the regular budget of the United Nations was being allocated to the human rights sector.

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

A. Submission of reports

35. States parties have undertaken to submit reports in accordance with article 40, paragraph 1, of the International Covenant on Civil and Political Rights within one year of the entry into force of the Covenant for the States parties concerned and thereafter whenever the Committee so requests.

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

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

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

39. The action taken, information received and relevant issues placed before the Committee during the reporting period (thirty-fourth to thirty-sixth sessions) are summarized in paragraphs 40 to 47 below.

Thirty-fourth session

40. With regard to the reports submitted since the thirty-third session, the Committee was informed that initial reports had been sent by Bolivia, Cameroon, San Marino and Togo, and second periodic reports by Costa Rica, the Dominican Republic, Mauritius, Panama and Uruguay. The third periodic report of the Union of Soviet Socialist Republics, as well as additional information submitted subsequent to the examination of its initial report by Zaire, had also been received.

41. The Committee decided to send reminders to the Governments of Argentina, Democratic Yemen, Gabon, Niger, Saint Vincent and the Grenadines, the Sudan and Viet Nam, whose initial reports were overdue. In addition, the Committee decided to send reminders to the Governments of the following States parties whose second periodic reports were overdue: Austria, Bulgaria, Canada, Cyprus, the Democratic People's Republic of Korea, Egypt, Gambia, Guyana, Iceland, India, Iran (Islamic Republic of), Jamaica, Jordan, Kenya, Lebanon, Libyan Arab Jamahiriya, Madagascar, Mali, Morocco, Nicaragua, Peru, Saint Vincent and the Grenadines, Sri Lanka, Suriname, Syrian Arab Republic, United Republic of Tanzania and Venezuela; and to the Governments of the Byelorussian Soviet Socialist Republic, Czechoslovakia, the Federal Republic of Germany, Iran (Islamic Republic of), Lebanon, the Libyan Arab Jamahiriya, Madagascar, Tunisia and Yugoslavia, whose third periodic reports were overdue.

Thirty-fifth session

42. The Committee was informed that the initial report of Democratic Yemen, the second periodic reports of Nicaragua and Zaire, and the third periodic reports of Czechoslovakia and the Federal Republic of Germany had been received.

43. In view of the growing number of outstanding State party reports, the Committee agreed that the Chairman, accompanied by the member of the Bureau from the concerned region, should meet individually in New York with the permanent representatives of all States parties whose initial reports were overdue as well as the permanent representatives of those States parties to whom six or more reminders had been sent in connection with their overdue second periodic reports. Accordingly, contact was made with the permanent representatives of Argentina, Bulgaria, Cyprus, Equatorial Guinea, Gabon, The Gambia, India, Iran (Islamic Republic of), Lebanon, the Libyan Arab Jamahiriya, Madagascar, Niger, The Sudan, Suriname and Viet Nam, who agreed to convey the Committee's concerns to their Governments. Since it was not possible to establish contact with the permanent representatives of Kenya, Mali, Saint Vincent and the Grenadines, the Syrian Arab Republic, the United Republic of Tanzania and Venezuela, the Committee requested a member of its Bureau who is also the permanent representative of his country to the United Nations, to pursue the establishment of contacts with them subsequent to the conclusion of the Committee's session.

44. In addition, the Committee decided to send reminders to all States whose initial reports or second or third periodic reports should have been submitted before the end of the thirty-fifth session. Initial reports were overdue from Argentina, Equatorial Guinea, Gabon, Niger, Saint Vincent and the Grenadines, the Sudan and Viet Nam; second periodic reports were overdue from Austria, Bulgaria, Canada, Cyprus, the Democratic People's Republic of Korea, Egypt, El Salvador, the Gambia, Guyana, Iceland, India, Iran (Islamic Republic of), Jamaica, Jordan, Kenya, Lebanon, The Libyan Arab Jamahiriya, Madagascar, Mali, Morocco, Nicaragua, Peru, Saint Vincent and the Grenadines, Sri Lanka, Suriname, the Syrian Arab Republic, the United Republic of Tanzania, Venezuela and Viet Nam; and third periodic reports were overdue from the Byelorussian SSR, Iran (Islamic Republic of), Lebanon, the Libyan Arab Jamahiriya, Madagascar and Yugoslavia.

Thirty-sixth session

45. The Committee was informed that the initial reports of Argentina and Viet Nam, the second periodic reports of Canada and India, as well as the third periodic reports of Chile, Spain and Tunisia, had been received.

46. At its 901st meeting, following a review of its past endeavours to promote the submission of overdue reports, the Committee concluded that the current practice of sending reminders to States parties following its spring and autumn sessions should be continued and that its past contacts with New York-based permanent representatives had been most useful and should also be continued. In addition, the Committee requested the Secretary-General to inform States parties to the Covenant, on its behalf, of the Committee's continuing concerns about non-compliance by a significant number of States parties with their reporting obligations under article 40 of the Covenant and to encourage them to take appropriate action, collectively as well as individually, to ensure compliance with those obligations.

47. Also at its 901st meeting, after considering the relevant recommendation adopted by the second meeting of persons chairing human rights treaty bodies, the Committee proposed consolidated guidelines for the initial part of States parties' reports submitted under the various international human rights instruments (see annex VIII to the present report).

B. Consideration of reports

48. During its thirty-fourth, thirty-fifth and thirty-sixth sessions, the Committee considered the initial reports of Bolivia, Cameroon, the Philippines and Togo, as well as the second periodic reports of Italy, Mauritius, Mexico, the Netherlands, New Zealand, Norway, the United Kingdom of Great Britain and Northern Ireland (Dependent Territories) and Uruguay. The status of reports considered during the period under review and reports still pending consideration is indicated in annex V to the present report.

49. At its 800th meeting, held on 29 March 1989, the Committee adopted a methodology for considering third periodic reports (the first of which are to be considered in October/November 1989 at the Committee's thirty-seventh session). The Committee agreed that the method to be applied should be generally similar to that used for considering second periodic reports, 5/ the major objectives being to maintain and strengthen the dialogue between the Committee and the States parties and the promotion of effective implementation of human rights. The practice of preparing lists of issues in advance of the examination of such reports should be kept but such lists should be more concise and more precise (see annex VII to the present report).

50. The following sections relating to States parties are arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of reports at its thirty-fourth, thirty-fifth and thirty-sixth sessions. These sections are only summaries, based on the summary records of the meetings at which the reports were considered by the Committee. Fuller information is contained in the reports and additional information submitted by the States parties concerned 6/ and in the summary records referred to.

Norway

51. The Committee considered the second periodic report of Norway (CCPR/C/42/Add.5) at its 844th to 847th meetings, held from 26 to 27 October 1988 (CCPR/C/SR.844-847).

52. The report was introduced by the representative of the State party, who reaffirmed his Government's willingness to continue its fruitful dialogue with the Committee. He noted that a new practice of consulting the Government of Norway's Advisory Committee on Human Rights on the content of reports relating to human rights before their final submission to the various United Nations treaty bodies had been adopted. Referring to new developments that had occurred since the submission of the report, the representative drew special attention to the insertion in the Norwegian Constitution of a new article 110 (a) relating to the responsibility of the Norwegian authorities vis-à-vis the Sami people, and to the ratification of Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. He also pointed out that the Royal Decree of 18 December 1987, providing for the investigation by independent committees of

reported cases of police violence, and the Royal Decree of 28 June 1985, relating to the organization of the Public Prosecution Authority, had entered into force.

Constitutional and legal framework within which the Covenant is implemented

53. With reference to that issue, members of the Committee wished to receive information on the mechanisms employed in Norway to harmonize, in the event of conflict, the Covenant and domestic law; on the cases where the Covenant had been directly invoked before the courts; and on the role of the Covenant, if any, in the interpretation and application of Norwegian law. In this connection, they enquired about the meaning of the statement in paragraph 5 of the report that "the Covenant ... will indeed be a relevant source of law of considerable weight in the interpretation and application of Norwegian law". It was also asked whether it was necessary for the individual complainant to invoke the Covenant or whether the court itself was obliged to do so; whether the idea of a bill of rights to be included in the Constitution of Norway and by which the courts would be bound had ever been considered; and whether, in view of the growing number of international human rights instruments, the responsibilities of the courts in respect of the process of harmonizing domestic law with international treaties was not becoming too heavy a burden.

54. Additionally, members of the Committee requested information on factors and difficulties, if any, affecting the implementation of the Covenant and requested more details about the activities of the Norwegian Institute of Human Rights and of the Government of Norway's Advisory Committee on Human Rights. It was asked, in the latter regard, whether a draft of the report had been submitted to the Institute of Human Rights for comment; what the nature of the relationship was between the Institute and the Advisory Committee; what comments the Advisory Committee had made on Norwegian draft reports under international human rights instruments; and whether Norway's reservations to the Covenant had been considered by the Advisory Committee. It was also asked whether the Government intended to withdraw any of its reservations.

55. Referring to activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol, members wondered whether copies of decisions of the Human Rights Committee under the Optional Protocol were available to judges; whether it had been considered useful to hold seminars for judges on this matter and to provide information relating to human rights instruments to the police and other security personnel; whether the Norwegian Department of Education had taken steps to provide material for schools in connection with human rights education; and whether consideration of the Norwegian report by the Human Rights Committee would be reflected in the media.

56. Responding to the questions raised by members of the Committee, the representative of the State party explained that the machinery used to prevent conflicts between international instruments on human rights and Norwegian domestic law involved ascertaining that domestic law was consistent with a Convention before it was ratified. If, despite such precaution, a conflict arose, the necessary steps would be taken and, in particular, the courts would interpret domestic regulations in such a way as to correspond to the requirements of the international instrument. However, if a conflict arose between an international obligation and a domestic provision after that provision had been interpreted - although no such conflict had so far arisen in Norway - the domestic provision would prevail. International instruments on human rights could be invoked by a person before the

courts and had been mentioned in some 20 Supreme Court decisions. No violation of the Covenant had thus far been found by the courts. Regarding the reference in paragraph 5 of the report to the Covenant as a source of law, the representative noted that the Covenant was also used by the courts as a basis for legal arguments. While the Norwegian Constitution was old and had seldom been changed, it was supplemented by unwritten principles that the Supreme Court had set out in its decisions and in the interpretation of which the international instruments played a significant role.

57. Replying to other questions, the representative explained that the Norwegian Institute of Human Rights, which had been established on 1 January 1987, had the task of contributing to the realization of human rights through research, studies, documentation and information; through co-operation with international agencies, organizations and research centres; and by providing opportunities and support for foreign scholars. The Institute was undertaking four research projects relating to the United Nations system, the Council of Europe, East-West co-operation and human rights and development. Particular attention was being paid to the dissemination of information regarding human rights through the publication of basic materials and the organization of seminars and workshops. The Government of Norway's Advisory Committee on Human Rights, established in 1980, was chaired by an official of the Ministry of Foreign Affairs and included among its members representatives of non-governmental organizations and Members of Parliament. It was intended to reflect on general human rights issues and to provide a forum in which governmental and non-governmental organizations could exchange views on human rights issues.

58. Referring to the dissemination of information concerning human rights, the representative explained that the subject of human rights had been introduced in school curricula; that the text of the Covenants had been translated into Norwegian; and that there was growing awareness of the Covenant in the legal profession, including among judges who had easy access to the texts. Various initiatives had been undertaken to teach human rights to law enforcement officials, including the preparation of a textbook on the relationship between the police and human rights. Courses had also been held for lawyers.

Self-determination

59. With regard to that issue, members of the Committee wished to know what Norway's position was in relation to the right to self-determination of the Namibian and Palestinian peoples and what measures the Government had taken to prevent public and private support for the apartheid régime of South Africa.

60. In his reply, the representative of the State party said that his Government recognized the right to self-determination of the Palestinian people and had stated that position over the years at the United Nations and recently, with other Nordic foreign ministers, at a meeting held in August 1988. It had also recognized the right to self-determination of the Namibian people and had called for Security Council resolution 435 (1978) to be implemented. As to the prevention of public and private support for the apartheid régime in South Africa, the Norwegian Parliament had enacted a law, in March 1987, prohibiting economic relations with South Africa and Namibia.

Non-discrimination and equality of the sexes

61. In connection with that issue, members of the Committee wished to know in which respects the rights of aliens were restricted as compared with those of citizens; what the activities and functions of the Ombudsman for Equal Status between Men and Women were; and whether the procedure provided for under the Act of 12 June 1981 relating to the representation of both sexes in all public committees had led to increased representation of women in public committees. In addition, it was asked what rules governed the administration of a couple's communal assets and whether a married woman had the right to apply to the courts without her husband's consent.

62. In his reply, the representative of the State party said that, although it was not explicitly set forth in the Constitution, aliens were entitled to legal protection on the same footing as Norwegian citizens. However, aliens could not be appointed to higher-level government posts and there were some limitations on their rights to social security, the acquisition of real estate, establishing businesses and exploiting water resources. The new Aliens Act, which had not yet entered into force, contained a new general clause on equality, which stated that aliens had the same rights and duties as Norwegian citizens unless express provision had been made to the contrary. While certain special measures to assist aliens in enjoying their rights had already been taken, such as providing access to education, providing Norwegian language training and helping with housing problems, further steps of an economic and social nature were still necessary.

63. The Ombudsman for Equal Status between Men and Women had general responsibility for enhancing non-discrimination and equality of the sexes. Individuals or groups could complain to the Ombudsman in cases of sexual discrimination, and some 1,000 such cases were dealt with annually. Roughly 1 per cent of such cases were ultimately referred to the appeals board. The representation of women in some public committees had increased but the desired representation might not be achieved until some of the older committees renewed their membership.

64. Replying to other questions raised by members of the Committee, the representative stated that spouses could generally act independently before the courts and in all other areas of life and that they generally managed their own assets.

Right to life

65. With regard to that issue, members of the Committee wished to receive necessary additional information on article 6 of the Covenant in accordance with the Committee's general comments Nos. 6 (16) and 14 (23). They wondered what the regulations governing the use of firearms by the police were; whether firearms had been used recently and, if so, under what circumstances; whether any deaths had resulted from such use; and whether investigations had been made and, if so, what the findings had been. Inquiries were also made about the number of persons found guilty of wilful murder and about four cases of police violence. It was also asked whether Norway intended to take measures to regulate the transport and dumping of toxic waste.

66. In his reply, the representative emphasized the importance attached by his Government to the Committee's general comments Nos. 6 (16) and 14 (23). In

particular, Norway endeavoured to contribute to the adoption of measures aimed at reducing the existing gap between arms spending and resources for development and advocated the conclusion of a comprehensive-nuclear test-ban treaty. Police officers were generally not armed in the normal course of their duties and used firearms only in exceptional circumstances. In the extremely rare cases where persons had been wounded, an investigation had always been conducted. The four complaints of police violence were not connected with the improper use of firearms, but with rough treatment during arrests. The small amount of nuclear waste in Norway was stored in special storage bins on home territory.

Treatment of prisoners and other detainees

67. With reference to that issue, members of the Committee wished to receive clarification of the meaning of section 228 of the Penal Code relating to the omission of punishment for assault that had been provoked by a previous assault or an offence against honour. They also wished to know whether any independent committees had been established pursuant to section 67 of the Criminal Procedure Act of 22 May 1981 and, if so, what the results of their activities had been; why investigations into police misconduct were still in the hands of the police themselves; what the most common complaints against members of the police had been and whether they also related to acts of violence; and what had been the result of any investigations to which such complaints had given rise.

68. Members of the Committee also wished to know whether there were any time-limits governing resort by prison authorities to solitary confinement or the use of security cells; whether there were any safeguards against the abuse of such practices by prison authorities; and whether inmates had any recourse against the imposition of such measures. As regards detention in mental institutions, clarification was requested as to whether a compulsory committal decision was automatically reviewed by the Board of Inspection or only upon specific application for review.

69. In addition, further information was sought regarding time-limits for preventive detention; the circumstances under which the presentation of an arrested person before a judge might be delayed; the placing under special observation of persons suspected of having taken certain substances; the composition and functions of bodies responsible for monitoring prison establishments; the actual practice in respect of appeals against possible abuses by prison staff; measures taken in Norway to compel debtors to meet their obligations; the difference between "arrest" and "custody on remand"; and the legal remedies for members of the armed forces convicted of disciplinary offences.

70. In his reply, the representative of Norway explained that article 228 of the Penal Code was not automatic and only applied to cases where there had been an immediate reaction of an impulsive nature to provocation and where the damage caused was not more serious than that resulting from the original assault. A system of investigating committees had been established in December 1987 to supervise the persons conducting the investigation so that any possible abusive practices on the part of the police could be avoided. That approach had been preferred since investigations required a significant infrastructure and considerable resources and skills, which the police already possessed. Detention in security cells was aimed at preventing a detainee from committing acts of violence against others or causing material damage or serious disturbance in the prison establishment. Resort to that coercive measure could be ordered by the

director of the prison on the advice of the prison doctor. There was no time-limit for such detention but reports to the Ministry of Justice had to be made when they exceeded two weeks. All prison inspections were carried out by a prison committee. Prisoners could always file a complaint through administrative channels with the Ombudsman or before the courts. Security detention cells had been used 468 times in 1987.

71. Regarding preventive detention, the representative said that the possibility of setting a time-limit on remand in custody had been considered but was not retained since it was felt that too many exceptions would have had to be made. However, the Code of Penal Procedure had strengthened protection against the risk of prolonged remand in custody and, in any case, the period of detention could not exceed four weeks. An arrested person had to be handed over to the prosecutor's department within 24 hours following arrest and any delays had to be explained in writing. Compensation in criminal cases was set in accordance with the loss of earnings suffered and was often increased to take account of other harm deriving from detention. A new law relating to detention during military service had been enacted in the spring of 1988.

72. Responding to other questions, the representative stated that all prisons and police cells came under the authority of the Ministry of Justice and that the parliamentary Ombudsman and the courts also had the possibility of exercising supervision over prison conditions. Complaints from prisoners were submitted to a Prison Board and prison committees were able to visit prisons without prior announcement to observe living conditions. In cases of compulsory committal, an application for a review could be addressed to the Board of Inspection, which played an active role by verifying the validity of the decision. There had been a decrease in the number of persons in mental hospitals. The number of cases where compensation had been granted was low, owing to the fact that the Public Prosecutor's Office instituted proceedings only after due consideration. The representative also stated that an inmate was placed in a cell when he had taken drugs and refused to undergo a medical examination.

Right to a fair trial

73. With regard to that issue, members of the Committee wished to receive further information on any circumstances under which a court might decline to appoint the person chosen by the accused as the "official" defence counsel. In addition, they wished to know whether it was obligatory to have an officially appointed defence counsel; how a detainee could communicate with his lawyer; what the average lapse of time until judgement in criminal cases was; and whether steps were taken to ensure that the detainee was present at his trial. They also wished to receive information on the legal aid system in Norway.

74. In his reply, the representative of the State party explained that the lawyer chosen by the accused was retained as the "official" defence counsel, except in rare cases where it was considered that the choice of the accused might lead to long procedural delays; where the lawyer selected had previously supplied prohibited articles to a detainee client; or where, in cases involving State secrets, there were good reasons for believing that the lawyer in question was not trustworthy. Normally, the lawyer chosen by the prisoner was not challenged unless he was handling too many cases to enable him to plead the client's case within a reasonable period of time. Officially appointed counsels were chosen from a pre-established list, but a detainee could change lawyers if he so wished.

Lawyers were free to visit their clients in prison whenever they wished. The average lapse of time until judgement was two or three months and never more than one year. Concerning the detainee's presence at his trial, the representative noted that a detainee who had to leave the courtroom for any reason was entitled to be fully informed of subsequent deliberations and of all testimony.

75. Responding to questions relating to the provision of legal aid, the representative explained that the increase in the income requirement had been due in part to compensation for inflation; that there had not been a great increase in the number of persons receiving legal aid; and that in addition to free legal aid there were also insurance schemes guaranteeing payment of court fees, particularly home insurance policies, most of which provided cover for legal costs.

Freedom of movement and expulsion of aliens

76. With reference to that issue, members of the Committee wished to receive information on the current status of a bill relating to the admission and sojourn of foreigners and necessary additional information on the position of aliens in Norway, in the light of the Committee's general comment No. 15 (27). Members also inquired about the situation of the refugees in Norway and asked what their origins were and whether they could acquire Norwegian nationality.

77. In his reply, the representative explained that the Aliens Act had been adopted in 1988, but would not enter into force until certain regulatory provisions had been clarified. Immigration had been limited in Norway since 1975 and was only authorized in the case of family reunification or of refugees. The Constitution applied equally to aliens and Norwegian citizens. An increasing number of refugees and asylum seekers had arrived in the country over the past years; this had created problems and made it necessary to set up new structures. In this context, the representative gave details about the number and origin of aliens residing in Norway, and about the measures taken in favour of immigrants both in the economic and cultural fields.

Right to privacy

78. With reference to that issue, members of the Committee wished to know whether the Data Inspectorate had ever denied permission for the establishment of personal data registers; whether the list of categories of "sensitive information" that might be included in data banks was exhaustive; what the precise definition of "personal data" was; whether the new bill regarding illegally obtained access to data banks had been enacted; how many complaints had been made by individuals covering alleged violations of their right to privacy; and what types of private bodies were licensed to compile and maintain information in data banks. Members also asked whether telephone interception was authorized for any reason other than for investigation of violations of narcotics legislation and whether private homes could be searched in cases other than criminal cases, in particular in connection with public health. Necessary additional information on article 17 in accordance with the Committee's general comment No. 16 (32) was also requested.

79. In his reply, the representative of Norway stated that Norwegian legislation was fully in keeping with the provisions of article 17 of the Covenant; that any interference with privacy or correspondence had to be authorized by law; that persons who had to be searched or medically examined at the request of a public authority were searched or examined by members of the same sex; and that specific

articles of the Penal Code guaranteed the defence of the individual's honour and reputation. There had been a number of cases where the Data Inspectorate had refused applications for permission to establish personal data registers.

80. Responding to other questions, the representative of the State party explained that telephone conversations could also be intercepted on grounds of national security; that article 102 of the Constitution regarding inspection of premises had been interpreted as not applying to public health and fire inspections, which were covered by a number of other legal provisions; and that the bill amending section 145 of the Penal Code had actually entered into force.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

81. With regard to those issues, members of the Committee wished to know what procedures existed for legal recognition, authorization or tolerance of various religious denominations; whether Norway's system of state religion was compatible with the principle of non-discrimination on religious grounds; what measures had been taken to ensure that all shades of political opinion were reflected by the media, and whether the jurisdiction of the Complaints Committee extended to that matter; whether any consideration was being given by the Government to withdrawing its reservation to article 20, paragraph 1, of the Covenant; and whether the advocacy of national, racial or religious hatred had been prohibited by law, in accordance with article 20, paragraph 2, of the Covenant.

82. In addition, it was asked at what age a child could decide whether or not he wished to receive religious instruction; whether teachers were given guidelines for conveying Christian traditions; whether members of the Council of State who professed the official religion of the State could participate in deliberations concerning other religions while members who did not profess the official religion could not participate in discussions relating to the official Church; what the situation would be if the King happened to be a free-thinker, an atheist or a Catholic; and whether there was State funding of education and, if so, what measures were taken to ensure that no discrimination occurred.

83. Some members also wondered how access to government-held documents was ensured; whether there had been an increase in the number of cases where individuals were suing the media and whether there were any plans to amend the legislation in this field; what the composition of the Norwegian Broadcasting Corporation (NRK) was; whether any measures were in force to prevent the concentration of media power in the hands of a few persons; what the procedures and conditions for granting broadcasting and television licences were; and how complaints about radio and television were dealt with. In addition, it was asked whether conscientious objectors who did national or alternative service in accordance with Norwegian law received the same pay and had the same length of service as those doing military service.

84. In his reply, the representative of the State party explained that there were no procedures for legal recognition, authorization or tolerance of religious denominations and stressed that there was no contradiction between the existence of a state church system and the Covenant's provisions. The requirement of membership of the Evangelical Lutheran Church affected only a very limited subsector of the population and in no way restricted the freedom of religion of the general population. Everyone was free to adopt and profess the religion or belief of his

choice and financial support was given to religious communities. A number of measures relating to press freedom had been taken, including the issuance of certain new regulations by NRK; the liberalisation of the former state monopoly on local broadcasting; the provision of financial support to newspapers; and the establishment of a specialized institution for providing loans to newspapers. The Government of Norway did not envisage withdrawing its reservation to article 20, paragraph 1, of the Covenant. The advocacy of national, racial or religious hatred had been prohibited by law in accordance with article 20, paragraph 2, of the Covenant.

85. Responding to various other questions raised by members of the Committee, the representative explained that parents could withdraw their children from religious teaching at any age and the child himself could opt out of Christian teaching at school, if he was not a member of the state Church, at the age of 15. All members of the Government took part in decisions on budgetary questions relating to both the state Church and religious minorities and on questions concerning religious teaching in schools. All private schools received the same level of state support and religious societies received financial support from the State corresponding on a percentage basis to that received by the state Church.

86. In addition, the representative noted that conscientious objectors performing civilian national service duties received the same payment and related social benefits as those received by military servicemen; that an Act of 19 June 1970 provided for the right of access to all documents of a general nature possessed by state, country and municipal authorities subject to certain exceptions provided by law; and that politicians had to accept a substantial amount of criticism before they could reasonably argue that their honour or reputation had been violated. The various press organs were controlled by many different groups and there was a reasonable balance between the various shades of opinion. The Broadcasting Council's composition also reflected a wide variety of views.

Protection of family and children, including the right to marry

87. With reference to that issue, members of the Committee wished to receive additional information on the type of activities carried out by the Commissioner for Children in promoting the interests of children and wished to know whether there had been any cases of children being subjected to physical maltreatment and, if so, what measures had been taken to prevent such violations of the rights of children. In addition, it was asked whether the elimination of any distinction between marriage and cohabitation might not lead to a situation in which men and women would be encouraged to cohabit rather than marry; what procedure was followed to obtain permission for persons of unound mind to marry; what the consequences of raising the age of criminal liability from 14 to 15 had been; what procedure was followed for the rehabilitation of young offenders; and whether slaps and spanking were prohibited practices in Norway.

88. In his reply, the representative of the State party noted that everyone was able to address himself to the Commissioner for Children, who had handled a total of 4,066 complaints during the period 1981-1986. The Minister of Justice had taken several initiatives regarding the problem of children who had been victims of incestuous acts or sexual abuse by their parents or other relatives; at Norway's initiative, the Council of Europe had set up a committee of experts to look into the matter. When Parliament adopted the Act of 8 April 1981 aimed at the elimination of discrimination between children born in and out of wedlock, the

great majority of its members had in mind the best interests of the child. Authorisation to marry was given to persons of unsound mind in the name of the King by the Minister of Justice in order to ensure that the persons concerned were fully informed of the legal consequences of the marriage. Regarding the changing of the minimum age of criminal liability, the Act amending the Penal Code had not yet entered into force, for it remained to be seen what measures might be taken in the interest of young offenders to save them from having to serve prison terms. Slaps and spankings were prohibited in principle.

Right to participate in the conduct of public affairs

89. With regard to that issue, members of the Committee wished to know whether there were any restrictions on the right of certain categories of persons to accede to public office and what had been the experience in applying provisions relating to the right of foreign nationals to vote in local elections and to hold local office.

90. In his reply, the representative of the State party clarified the various requirements to be elected to the Norwegian Parliament and local Councils, to hold public office and to sit on a court. Sixty-one thousand foreign nationals had been entitled to take part in the local elections in 1987 and some of them had been nominated and elected on the lists of the major political parties.

Rights of minorities

91. With reference to that issue, members of the Committee wished to know what difficulties had been encountered by the Government in implementing in respect of the Sami the provisions of article 27 of the Covenant and what was the status of the draft Act "relating to the Sameting (Sami Assembly) and other Sami legal matters". If already established, what activities had the Sameting undertaken thus far? They also wondered what criteria had been applied in drawing up the electoral register and whether the Act contained provisions making it possible to distinguish between Samis and non-Samis.

92. In his reply, the representative of the State party highlighted various provisions of the Act relating to the Sameting of 12 June 1987 and explained that this Act provided for the Sami people of Norway themselves to elect an Assembly whose sphere of activity would comprise all matters affecting the Sami population. The first election would be held in September 1989 and registration in the separate electorate register would begin in January 1989. It had often been difficult in the past to determine the Sami's own priorities and it was hoped that the Sami Assembly would be able to resolve that problem.

General observations

93. Members of the Committee expressed appreciation to the delegation of Norway, placing particular emphasis on the detailed and complete answers given by the delegation to the Committee's questions. They also praised the high quality of the report, which had contributed to the usefulness of the dialogue with the Committee. Members expressed satisfaction with Norway's efforts to improve the protection of fundamental rights and freedoms and its readiness to pursue such efforts. However, some members regretted that no bill of human rights had been incorporated into Norway's legal system.

94. The representative of the State party stressed that his Government attached high importance to its dialogue with the Committee. Norway was aware that there was always room for improvement in the human rights situation - a fact that was well demonstrated by the second periodic report itself, which described a number of new measures aimed at promoting human rights that had been adopted since the submission of the initial report.

95. In concluding the consideration of the second periodic report of Norway, the Chairman also thanked the delegation for having participated in an extremely fruitful dialogue with the Committee.

Mexico

96. The Committee considered the second periodic report of Mexico (CCPR/C/46/Add.3) at its 849th to 853rd meetings, held from 31 October to 2 November 1988 (CCPR/C/SR.849-853).

97. The report was introduced by the representative of the State party who stated that the Covenant formed part of Mexican law and was implemented within the framework of the structural principles laid down in the Constitution, which included the establishment of a republican, democratic, representative and federal régime; the rule of law; and equality before the law. He noted that during the period covered by the second periodic report the Congress had adopted two relevant constitutional amendments and three federal laws, and that the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture had been ratified by Mexico.

Constitutional and legal framework within which the Covenant is implemented

98. In connection with that issue, members of the Committee wished to know whether there had been any judicial decisions where the Covenant had been directly invoked before the courts; what the relationship was between the Covenant and the Mexican Constitution and whether an Act had been promulgated to incorporate the Covenant into Mexican law; what opportunities existed for challenging a normative Act that was considered to be incompatible with the Constitution, the laws of Congress or international treaties; and what action was taken in cases where a legal contradiction was ascertained between the Covenant and a legislative act or a provision of the Constitution. In addition, some members wanted to know why Mexico had not acceded to the Optional Protocol.

99. Members also requested clarification as to the precise meaning of the term "direct amparo" and whether in practice the amparo procedure could be resorted to by a person held in arbitrary detention.

100. In addition, with regard to measures taken to disseminate information concerning the Covenant, members asked about the role of non-governmental organizations in that effort and about the status, role and current composition of the Mexican Academy of Human Rights; whether any efforts were being made to translate the Covenant into the various indigenous languages; and whether any consideration had been given to the dissemination of information on the rights provided for under the Covenant and in human rights instruments in general to the people as a whole, particularly to rural dwellers, minorities and schools, and to law enforcement officials, prisoners and detainees.

101. Replying to the questions raised by members of the Committee, the representative of the State party stated that there had been no judicial decisions where the Covenant had been directly invoked by the courts. Article 133 of the Constitution provided that the Congress could under no circumstances promulgate laws or ratify international instruments that conflicted with the Constitution. The Federal Constitution, the laws of Congress and treaties prevailed over the Constitutions and laws of the individual Mexican States. International instruments were examined in detail before they were ratified by the executive, thus avoiding any conflict between an international instrument like the Covenant and Mexican legislation. The term "direct amparo" signified an action for protection submitted directly to the Supreme Court or Collegiate Circuit Courts and was applicable in the case of appeals against final rulings in civil, criminal or administrative cases. Where there seemed to be a lack of awareness of the remedies available under the law, a judge could draw the attention of the defence to safeguards such as amparo. In cases involving violation of the rights of peasants, the peasants' associations or leagues could invoke the remedy of amparo before the courts. As to the ratification of the Optional Protocol, the representative said that he would inform his Government of the comments made in that connection.

102. During the period covered by the report, various institutions had organized seminars on human rights, which had received due attention from the media. These included seminars organized by the Legal Research Institute of the National Autonomous University of Mexico (UNAM), the Metropolitan Autonomous University, the Matías Romero Institute for Diplomatic Studies, the College of Mexico, the Consumer Protection Institute, the National Institute of Penal Sciences, the Mexican Human Rights Academy and universities of various States of the Republic. The Mexican Human Rights Academy was a civilian association whose main objective was to promote the study, teaching and dissemination of human rights in Mexico. In addition, UNAM had published studies on the international protection of human rights, the Government had issued a publication on human rights conventions and the National Indigenous Institute had prepared a set of 19 posters in indigenous languages on the individual guarantees enshrined in the Constitution and the Covenant.

Self-determination

103. With regard to that issue, members of the Committee wished to know what the position of Mexico was in relation to the right to self-determination of the Namibian and Palestinian peoples and what measures Mexico had taken to prevent public and private support for the apartheid régime of South Africa.

104. The representative of the State party explained that article 89 (X) of the Constitution, as amended, provided that the President of the Republic must observe the principle of self-determination in conducting foreign policy. Mexico was an active member of the United Nations Council for Namibia and supported the Namibian people's inalienable right to determine their own future. The principle of self-determination was also applicable to the Palestinian people and each people in the region had the right to peace and security. The Government of Mexico complied strictly with Security Council decisions relating to South Africa.

State of emergency

105. With reference to that issue, members of the Committee wished to receive clarification as to the compatibility of article 29 of the Constitution with article 4 (2) of the Covenant. In addition, further information was sought.

regarding the notification of other States parties in cases, if any, where the state of emergency had been proclaimed by Mexico.

106. In his reply, the representative of the State party stated that there was no incompatibility between article 29 of the Constitution and the Covenant. The purpose of the procedure for the suspension of guarantees outlined in the article was to deal with exceptional situations such as invasion or serious disturbances of the public peace or other events that might place society in grave danger, and only those guarantees which presented an obstacle in dealing with the emergency could be suspended. The last occasion on which guarantees had been suspended was at the outbreak of the Second World War.

Non-discrimination and equality of the sexes

107. With regard to that issue, members of the Committee wondered whether article 364 of the Criminal Code was applicable to cases of non-discrimination and, if so, requested that examples of the types of offences and the frequency of prosecutions under that provision be provided. They also wished to know in which respects the rights of aliens were restricted as compared with those of citizens, and asked about the ratio between men and women in secondary and higher education and in the Congress following the elections of July 1988. In addition, it was asked to what extent equality was achieved with regard to matrimonial property and whether it was possible for one of the spouses to go to court in cases of disagreement. Some members also wished to know what the difference was between the terms "Mexicans" and "Mexican citizens" as used in their report, and wondered in that connection about the meaning of the stipulation in the Constitution according to which a citizen of the Republic was a person who, *inter alia*, had an "honest means of livelihood". Furthermore, clarification was sought as to the apparent contradiction between article 33 of the Constitution, which granted the executive power the right to expel a foreigner without trial, and article 14 of the Covenant.

108. In his reply, the representative of Mexico pointed out that article 364 of the Criminal Code was applicable in cases of a breach of any of the individual guarantees enumerated in chapter I of the Constitution. The access of women to education had improved considerably in the previous 10 years and women now accounted for 13.9 per cent of the membership of parliament. Spouses could choose between the separation of property and community property systems. The principle of equality of rights between foreigners and Mexicans was embodied in the Constitution although rights and freedoms such as the right of petition, the right to participate in political affairs, freedom of assembly and association, freedom of movement, and the right to purchase real estate, were not granted, or only granted with restrictions, to foreigners. A reservation to article 13 of the Covenant had been made by Mexico in view of the slight contradiction between the provisions of the Covenant on aliens and article 33 of the Constitution. Only "citizens" had political rights, which were not conferred merely on the basis of nationality. The restriction in the Constitution concerning an "honest means of livelihood" related to those who infringed or had infringed the law. Although the President was empowered to order the immediate expulsion of a foreigner, any such decision had to be justified, which provided protection from arbitrary acts.

Right to life

109. With regard to that issue, members of the Committee wished to receive necessary additional information in accordance with the Committee's general

comments Nos. 6 (16) and 14 (23). Since the death penalty in Mexico had fallen into disuse, they wondered whether there were any plans for its formal abolition. They also wished to know what the rules and regulations governing the use of firearms by the police and security forces were; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; whether there had been any complaints during the reporting period concerning alleged disappearances and deaths caused by or with the co-operation or co-ordination of the police, the security forces or other authorities and, if so, whether such allegations had been investigated by the authorities and with what results; what the current rate of infant mortality in Mexico was; and how the infant mortality rate among the ethnic groups compared with that of the general population.

110. Noting that a large number of the deaths occurring in Mexico in recent years had been linked to conflicts over land, some members wished to know what policy was followed by the Government in order to settle such conflicts. Clarification was also sought of the high number of journalists who seemed to have died in mysterious circumstances. Members also requested further information on the percentage of murder cases that the police had failed to solve; on controls over the police; on the relations between the police and the judiciary; on offences that were considered "political"; and regarding provisions, if any, designed to ensure that complaints relating to cases of disappearances or murder were transmitted to the competent body. In addition, information was requested on legal provisions relating to the protection of unborn children and on new artificial fertilization techniques.

111. In his reply, the representative of the State party stressed that Mexico had played an active role in promoting disarmament, peace and security. Life expectancy in Mexico had now reached 69 years and the illiteracy rate had fallen to 7.5 per cent. The infant mortality rate was 23.3 per 1,000. While some of the provisions of article 22 of the Constitution relating to the death penalty were undoubtedly outdated, there had not been any efforts within the Congress of the Union to amend that article. Any police officer who made unlawful use of his weapons was liable to a penalty of six months' to six years' imprisonment and a fine.

112. Turning to questions relating to summary or arbitrary executions and involuntary disappearances, the representative noted that his Government collaborated with the Special Rapporteur of the Commission on Human Rights on summary or arbitrary executions and that certain cases had been cleared up, while others were still being investigated. Regarding the alleged assassination of 10 peasants by members of a group called the Armed Execution Front for Peasant Liberation, it had been established that those events had been caused by a conflict of interest between the members of two families and that the local authorities had not been involved. Five of the persons involved in those killings had been sentenced to 20-year prison terms. The Government of Mexico has also co-operated closely with the Working Group on Enforced or Involuntary Disappearances and had sent it all the information it had been able to obtain. Unfortunately, land disputes were still continuing in some areas.

1 cases of unresolved murders of journalists continued to be closely investigated. Only in one case had a journalist been killed in the exercise of his profession, but neither in that case nor in any other case had it been established that death was attributable to what the journalist had said or written.

Treatment of prisoners and other detainees

114. With regard to that issue, members of the Committee wished to know whether there had been any complaints during the reporting period about alleged torture or inhuman treatment and, if so, whether such allegations had been investigated by the authorities and with what results; whether there had been any prosecutions under the Federal Act for the Prevention and Punishment of Torture since that Act came into force in 1986; whether there had been any complaints about the arbitrary detention of peasants in the course of land disputes and, if so, whether such complaints had been investigated and with what results; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and whether the relevant regulations and directives were known and accessible to the detainees; what the maximum period was for which persons might be detained pending trial; how quickly after arrest a person's family was informed; and how soon after arrest a detainee could contact his lawyer. Members also sought further information concerning the use of corporal punishment under articles 24 and 56 of the Penal Code and on the compatibility of resort to that procedure with article 7 of the Covenant and requested information on detention in institutions other than prisons and for reasons other than crimes. In addition, members requested information regarding practices relating to pre-trial detention, release on bail, release on parole and conditional release, and to the suspension of the execution of a sentence.

115. Responding to the questions raised by members of the Committee, the representative of the State party said that seven members of the Federal District judicial police had been brought before a Federal District criminal court in May 1988 on charges of having committed acts of torture and their trial was still in progress. During the period under review the competent authorities had investigated a number of other complaints concerning acts of torture and ill-treatment, which, under the Federal Act on Torture, had been made a federal offence in June 1986. Complaints about the arbitrary detention of peasants in connection with land disputes had been considered by the competent authorities and bodies had been established in the States of Guerrero and Oaxaca for the defence of indigenous populations. "Corporal punishment", as referred to in paragraphs 231 and 293 of the report, only consisted of deprivation of liberty and detention of convicted persons and did not involve physical punishment or ill-treatment. Most of the United Nations Standard Minimum Rules for the Treatment of Prisoners were recognized by Mexico and incorporated in the relevant texts and prison regulations were made available to detainees.

116. Replying to questions relating to detention, the representative stated that no one could be detained for more than three days without a formal order of commitment. An accused person had to be tried within four months if the maximum sentence for the offence did not exceed two years' imprisonment and within one year if the maximum sentence was greater. Any time spent in pre-trial detention was deducted from the length of the sentence imposed and pre-trial detention could not exceed the maximum sentence for the offence. Where the maximum sentence did not exceed two years' imprisonment the accused could be released on bail. The time within which a person's family was informed of an arrest was the amount of time needed to contact the person with whom the detainee wished to communicate. Persons who were addicted to or needed narcotics or psychotropic substances could be detained or submitted to treatment. Mentally ill persons could only be detained in special institutions in accordance with the relevant ethical and social principles and the corresponding scientific and legal requirements.

Right to a fair trial

117. With regard to that issue, members of the Committee requested clarification of a reference, in paragraph 286 of the report, to "certain traditional principles and procedures concerning preventive action and access to and administration of justice" that had been rendered inoperative and ineffective. They also asked whether any major reforms had been adopted under the current five-year National Development Plan; what guarantees there were for the independence of the judiciary; how the Bar was organized; whether free legal assistance was available to criminal defendants without means; what remedies were available to persons who alleged that their rights or freedoms had been violated; and whether counsel for the defence was appointed in both criminal and civil cases.

118. Referring to several instances in which individuals belonging to peasant and Indian organizations had alleged that they had been arbitrarily detained by the federal police or the security forces, one member inquired whether measures had been taken to bring those cases to the attention of the federal authorities and to ensure that the individuals concerned had been brought to trial and asked whether peasants and Indians were provided with legal assistance to facilitate their contacts with the Federal Government. Members also sought clarification as to the compatibility with article 14 (2) of the Covenant of article 38 of the Constitution, which provided that the rights or prerogatives of citizens were suspended during a criminal prosecution for an offence punishable by imprisonment.

119. In his reply, the representative of the State party stated that a number of measures had been adopted to expedite the administration of justice, including increases in the number of delegations to circuit courts and federal prosecutor's offices; increases in the number of training courses in crime prevention and control; the introduction of competitive examinations for recruitment into the judicial branch; and carrying out basic training programmes for members of the police force in 24 States. Additionally, the Attorney-General's Office Organization Act was amended in 1987 through the addition of provisions covering organizational, procedural and operational matters and establishing arrangements to facilitate international co-operation.

120. Responding to other questions, the representative noted that the independence of the judiciary was guaranteed under articles 94 and 97 of the Constitution, which, inter alia, protected the salaries and tenure of judges. Counsel for the defence was appointed in both criminal and civil cases. A special prosecutor's office had been established in Oaxaca and other States with the specific mandate of prosecuting those who abused the rights of individuals lacking in cultural and economic resources. The Bar in Mexico was a private association in which membership was open to all but was not obligatory for the exercise of the legal profession.

Freedom of movement and expulsion of aliens

121. In connection with that issue, members of the Committee wished to know how the provisions of article 33 of the Constitution relating to the immediate expulsion of undesirable aliens was applied in practice and requested additional information on the position of aliens in Mexico, in the light of the Committee's general comment No. 15 (27). Members also wished to know what was the procedure for expulsion of an alien who was not in a major city or a frontier zone; whether Mexican legislation drew any distinctions between aliens who were in the country for

business purposes, asylum seekers or refugees; and whether an alien had the right to choose which country he was to be expelled to.

122. In his reply, the representative of the State party said that the Mexican Constitution provided for equality before the law of Mexicans and foreigners except for the limitations authorized under articles 2, 3 and 26 of the Covenant and that foreigners lawfully present in the country enjoyed the same rights as Mexican citizens in practice. Article 33 of the Constitution, which provided for the expulsion of aliens, had not been applied in an arbitrary manner. If the State decided to expel an undesirable alien, the authorities would either escort him to an airport or transport him to the nearest border post, assuming that he was a national of the neighbouring country. If the person to be expelled was in an inaccessible part of Mexico, he would be detained and transported to a place from which he could leave the country. Regarding asylum seekers, the representative emphasized Latin America's traditional respect of the right to asylum, noting that that right was guaranteed by three inter-American Conventions to which Mexico was a party. There were currently about 200,000 refugees in Mexico, chiefly of Central American origin, many of whom were registered with the Office of the United Nations High Commissioner for Refugees, with which the Government of Mexico collaborated closely.

Right to privacy

123. With reference to that issue, members of the Committee wished to receive necessary additional information on article 17 in accordance with the Committee's general comment No. 16 (32). They also asked whether Mexico had enacted any legislation relating to wire-tapping or bugging and requested further information regarding fiscal searches and unlawful attacks on honour or reputation.

124. In his reply, the representative of the State party noted that article 16 of the Constitution provided for the authorities at all levels to act only on the basis of the law and the Constitution so as to avoid arbitrariness. No one could be molested in his person, family, domicile, papers or possessions except by prior written authorization from the competent authorities, issued in accordance with procedures established by law. The procedures to be followed for house searches were laid down in the Code of Penal Procedure and the Federal Code of Civil Procedure.

Freedom of religion and expression

125. With regard to that issue, members of the Committee requested clarification of the meaning of the statement in the report that places of worship "shall at all times be under government supervision" and requested additional information on church-State relations and, in particular, on the reasons for material and other restrictions placed on ministers of religion and acts of worship.

126. Regarding freedom of expression, members wished to receive information about the legal régime relating to ownership and licensing of the press and the broadcast media; about restrictions on the exercise of the profession of journalism; and about the status and ethical standards of journalists. Observing that there was a trend in Mexico towards the concentration of ownership of newspapers, television and radio, members also asked how the Government ensured that all population groups had access to information and whether the Government was planning any countermeasures to ensure that a broad range of opinion was reflected in the

media. They also asked why there were differences in the restrictions applicable to the written and electronic media and what legal, administrative and other measures had been adopted to ensure the practical implementation of the guarantees laid down in articles 6 and 7 of the Constitution.

127. In his reply, the representative of the State party explained that freedom of religion, as guaranteed by article 24 of the Constitution, comprised an internal aspect that was part of the inner life of each individual and was therefore outside the scope of state intervention, and an external aspect that was reflected in the freedom to practise ceremonies, devotions or observances and was controlled by law and subject to supervision by the Constitution. Restrictions on the external aspect derived from general legal rules applicable without discrimination and were designed to safeguard public health, safety, morality and well-being.

128. Responding to questions raised by members of the Committee relating to freedom of expression, the representative noted that the ownership and licensing of the press and the broadcasting media were regulated by legislation, such as the Press Act, the Federal Radio and Television Act and the Regulations on Illustrated Publications and Reviews. The sole requirement for circulating printed matter was that the name and address of the printer and the name of the author had to be included in publications. Licences to operate radio and television stations could only be granted to Mexican citizens or companies subject to compliance with technical, administrative and legal requirements. Privately owned commercial stations required a government licence, which was renewable every five years. The Televisa television network had been created and operated in strict conformity with Mexican legislation. Respect for private life, morals and public order were the only permissible limitations on freedom of opinion and expression.

Freedom of assembly and association

129. In connection with that issue, members of the Committee wished to receive further information on the relevant laws and practices relating to the establishment of political parties. They also wished to know how trade unions were organized, what the size of their membership was and what percentage of the labour force belonged to them; whether associations established for helping disadvantaged persons, particularly in the legal sphere, enjoyed government support; whether public meetings were subject to prior authorization and, if so, under what conditions and by what powers the competent authorities granted authorizations; and whether restrictions on the freedom of association in Mexico and provisions prohibiting public sector workers from withdrawing from a trade union were compatible with article 22 of the Covenant. In the latter connection, one member requested clarification of the Mexican Government's position on the finding of the ILO Committee of Experts on the Application of Conventions and Recommendations that the Federal Act on Workers in the Service of the State was not in conformity with the provisions of ILO Convention No. 87.

130. In his reply, the representative of the State party explained that political parties were entities of public interest whose establishment was governed by the Federal Electoral Code. That Code stipulated, inter alia, that a party had to have a minimum of 65,000 members nation-wide and was obliged to hold assemblies in each State or electoral district as well as a national consultative assembly. There were a number of large national trade unions composed of workers in the petroleum industry and the railways, or in mining, electricity and telecommunications, teachers, etc. Within the individual Mexican States, there were company,

corporation and industrial trade unions, which were members of such trade confederations as the Confederation of Mexican Workers and the Revolutionary Confederation of Workers and Peasants. In all, more than 10 million workers were trade union members in Mexico. A complaint concerning the prohibition of the establishment of more than one trade union within a single department of the Federal Government, which had been submitted to the ILO Committee on Freedom of Associations in 1985, had been rejected by that Committee.

Protection of family and children

131. With reference to that issue, members of the Committee wished to receive information on any differences existing in the status and rights of children born in wedlock or out of wedlock; on law and practice relating to the employment of minors and on whether there were differences in that regard between urban and rural areas; and on any cases where children had been subjected to physical maltreatment and on the measures that had been taken to prevent such violations in the future. One member drew attention to the importance of registering a child immediately after birth and questioned whether the six-month time limit granted to parents or grandparents to declare the birth of a child was compatible with article 24 of the Covenant.

132. In his reply, the representative of the State party said that Mexican legislation made no distinction whatsoever between the status and rights of children born in or out of wedlock and that upon the death of the parents an inheritance was divided equally among the surviving children, without distinctions of any kind. Children below the age of 14 were strictly prohibited from working and several provisions of Mexican legislation were designed to ensure the protection of the rights and health of working minors. No distinction was made between the protection of minors in urban and rural areas. Article 4 of the Constitution stated that it was the parents' duty to protect the physical and mental health of their children and the relevant legislation provided for assistance to children in public institutions. There were organizations in Mexico with a specific mandate to protect children, such as the Mental Health Institute, which dealt specifically with child abuse, and the Government was taking a number of measures to combat violations of children's rights. The legal personality of the individual was recognized from birth.

Right to participate in the conduct of public affairs

133. With regard to that issue, members of the Committee asked whether there was any legislation governing access to the public service and, if so, how that legislation was applied in practice and whether it ensured equitable access to public service by members of minority groups. Members also wished to know how the articles of the Constitution relating to the obligation to vote in popular elections were applied in practice; whether members of parliament were representative of all social classes or only of an intellectual and social élite; and why ministers of religion were not covered by the rule of universal suffrage.

134. Replying to questions raised by members of the Committee, the representative of Mexico stated that all citizens were eligible for any elective office or for appointment to any other post or assignment if they possessed the required qualifications. A citizen was not required to exercise his right to vote and his failure to do so in no way provided grounds for suspending that right. However, in order to vote, all citizens were required to register. Peasants and people of

working class origin were duly represented in the two Chambers of Congress. The current status of ministers of religion could be explained by the painful historical experience of Mexico where, prior to independence, the Catholic Church had wielded absolute power in all areas - economic, political and cultural. The complete separation of Church and State had been an established fact since 1861. Cordial and respectful relations between the State and the various churches should nevertheless continue to exist in the future.

Rights of minorities

135. In connection with that issue, members of the Committee wished to know whether there were any special factors and difficulties in the effective enjoyment by minorities of their rights under the Covenant; whether concrete measures had been taken to provide to the various indigenous groups greater economic and political opportunities; and whether minorities were represented in Congress and on local governing bodies.

136. In his reply, the representative of the State party said that any Mexican, regardless of his origin, had access to the public service and that a Mexican's origin could under no circumstances prevent him from holding any post in the country, even the highest. However, indigenous groups needed special protection so that the members of minorities could be equitably represented at all levels of government. Accordingly, new social, economic and cultural measures had been adopted to deal with the problems of indigenous groups on the basis of the principles of mutual respect, freedom, equality, justice and dignity. Priority had also been given to the settlement of disputes relating to land ownership and to the vocational training of members of indigenous groups to enable them to benefit fully from their own natural resources. Cultural and ethnic minorities were viewed as forming an integral part of the Mexican nation and as being fully entitled to take part in the country's development process and in cultural and political life. The National Indigenous Institute was responsible for implementing relevant measures adopted for encouraging the participation of indigenous groups in national life.

General observations

137. Members of the Committee expressed appreciation to the representative of the State party for his co-operation and competence in responding to the Committee's questions and for facilitating the maintenance of a constructive dialogue between the Government of Mexico and the Committee. They also commended the Mexican authorities for their frankness in acknowledging certain events and difficulties and noted that particular progress appeared to have been made in connection with problems relating to torture and to the status of women. At the same time, members indicated that not all of their concerns had been fully allayed, referring in that connection to continuing problems relating to land disputes; the murder and unjustified detention of Indians and peasants; enforced and involuntary disappearances; the killings of journalists; the discipline of law enforcement officers; freedom of expression and the right of peaceful assembly and association and the treatment of aliens and ministers of religion.

138. The representative of the State party noted that the change of Government in Mexico on 1 December 1988 provided an opportunity for conveying the Committee's concerns at the beginning of a new administration. He thanked the Chairman and members of the Committee for their patience and good will in discussing Mexico's report and listening to his comments, and assured the Committee of his Government's

intention to pursue the dialogue through the submission of its third periodic report.

139. In concluding the consideration of the second periodic report of Mexico, the Chairman once again thanked the delegation for the frankness and good will with which it had responded to the Committee's numerous questions. The discussions that had taken place had given the Committee a better idea of Mexico's commitment to progress in guaranteeing human rights. The Chairman expressed the hope that the Committee's concerns would be conveyed to the Government and that the question of the ratification of the Optional Protocol would be given particular attention.

United Kingdom of Great Britain and Northern Ireland - Dependent Territories

140. The Committee considered the second periodic report of the United Kingdom of Great Britain and Northern Ireland - Dependent Territories (CCPR/C/32/Add.14 and 15) at its 855th to 857th meetings, held from 3 to 4 November 1988 (CCPR/C/SR.855-857).

141. The report was introduced by the representative of the State party who expressed regret over its late submission, which was explained by the necessity of having each of the 10 individual Territories compile its own report and then of having to combine all of them into one report. He noted that one of the Territories examined during the Committee's consideration of the initial report - Belize - had acquired independence in 1981 and was therefore not covered in the second periodic report.

142. In 1987, the Government of the United Kingdom had reviewed its policy towards its Caribbean dependent territories and Bermuda and had concluded that it should not seek to influence opinion in the Territories on the question of independence but remain ready to respond favourably when the people expressed their wish for such independence. That position, announced in Parliament on 16 December 1987, had been given widespread publicity in the Territories concerned. The Government remained determined to discharge its obligations under the Covenant in full, even when that meant the temporary suspension of ministerial government, as had been necessary in the Turks and Caicos Islands in 1986.

143. With reference to Hong Kong, which under the 1984 Sino-British Agreement was to revert to the People's Republic of China on 1 July 1997, the representative drew attention to three specific developments of special relevance to the human rights field. The first of these was the publication, in February 1988, of the Hong Kong Government's White Paper on the further development of representative government, which announced the introduction of directly elected members to the Legislative Council in the next round of elections in 1991. Secondly, the first draft text of the Basic Law of Hong Kong, which is to serve as the Territory's Constitution after 1997, was published in April 1988. The Chinese authorities had conducted thorough and open consultations to give the people of Hong Kong an opportunity to express their views on that text and the Government of the United Kingdom - which had the right under the Sino-British Joint Declaration of 1984 to satisfy itself that the Basic Law, including its human rights provisions, faithfully reflected the principles enshrined in the Joint Declaration - had played a full part in ensuring that the views of the people concerned were well understood by the Chinese authorities.

144. Lastly, the representative noted that after providing temporary refuge to more than 130,000 Vietnamese boat people since 1979, the Hong Kong authorities had been obliged to introduce, on 16 June 1988, a new screening procedure to determine whether new arrivals were genuine refugees or simply migrants in search of a better life overseas. Non-refugees would not qualify for resettlement and would remain in Hong Kong only until satisfactory arrangements had been made for their return to their country of origin. The United Kingdom was continuing its efforts to resettle the 16,000 boat people in Hong Kong who qualified as refugees and the Hong Kong authorities were considering measures to liberalize the conditions under which they were living, including the possibility of lifting restrictions on their freedom of movement to enable them to take advantage of education, employment or other opportunities.

Constitutional and legal framework within which the Covenant is implemented

145. With reference to that issue, members of the Committee wished to receive information on the mechanisms employed in the various dependent Territories to harmonize, in case of conflict, the Covenant and domestic law and on any cases where the Covenant had been invoked before the courts; on any recent constitutional developments concerning the relationship between the United Kingdom and the dependent Territories; and on activities that had been undertaken within the Territories to promote greater public awareness of the provisions of the Covenant. In the latter connection - and particularly in relation to Hong Kong - members wished to know whether the Government of the United Kingdom was endeavouring to foster awareness through such means as having the rights covered in the Covenant taught in schools and universities and making the text of the Covenant freely available in Chinese translation; whether any measures had been taken to inform the people of the fact that the Human Rights Committee was about to consider the second periodic report on Hong Kong; and whether any effort would be made to give publicity to the Committee's discussion of that report.

146. In view of the reversion of Hong Kong to China in 1997, pursuant to the 1984 Sino-British Joint Declaration, members of the Committee expressed special interest in knowing how the rights currently enjoyed under the Covenant by the people of Hong Kong were to be guaranteed in the future and devoted most of their questions to that topic. They wished to know, in particular, what specific measures would be taken to give effect to article 38 of the draft Basic Law, which stated that the provisions of the International Covenants on Human Rights, as applicable to Hong Kong, would remain in force; what action the Government of the United Kingdom proposed to take to secure or increase the applicability of the Covenant so as to ensure that the people of Hong Kong would enjoy a maximum of enforceable rights after the territory's reversion to China; and whether the initiative to incorporate the Covenant in Hong Kong's legal régime was still continuing.

147. Considering that China had not yet become a party to the Covenant and the Optional Protocol, that many important rights provided for in the Covenant such as the right to life and to a fair trial and the prohibition of torture, slavery and forced labour were not mentioned in the draft Basic Law, and that the applicability of the Covenant was restricted in several respects by virtue of the United Kingdom's reservations to certain articles, members wondered whether it would not be possible to enact legislation in Hong Kong or to amend the Letters Patent prior to 1997 to secure to the people of Hong Kong all the basic rights guaranteed under the Covenant, or to incorporate and entrench in the Basic Law of Hong Kong a complete chapter setting out the fundamental rights recognized in the Covenant and

to provide for the justifiability of those rights by an independent judiciary. It was suggested, in the latter connection, that questions relating to the appointment and tenure of judges should also be specifically addressed in the Basic Law. One member further suggested, in connection with article 159 of the draft Basic Law, that human rights should be included among the "appropriate fields" in respect of which the Hong Kong Special Administrative Region could maintain and develop relations and conclude and implement agreements with States, regions and relevant international organizations.

148. Additionally, members wished to know what role common law would have after 1997, if any; how the independence of the judiciary would be guaranteed in the light of article 169 of the draft Basic Law, which conferred the power to interpret the Basic Law on the Standing Committee of the National People's Congress; whether judges in Hong Kong were empowered to undertake a judicial review of administrative decisions and, if so, whether they would retain that power after 1997; whether any legislation had been enacted in Hong Kong to outlaw discrimination on grounds of race and whether administrative or legislative provisions made any distinctions along racial lines; and whether the provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been extended to any of the dependent Territories.

149. In his reply, the representative of the State party said that the Covenant was implemented in the Territories within the framework of local constitutions and any gaps with regard to the protection of some rights under common law were offset by the application of other legislative and other measures. His Government had entered certain reservations when ratifying the Covenant, but had otherwise satisfied itself that it was being implemented in all Territories. The Foreign and Commonwealth Office in London monitored the laws within the dependent Territories and, if necessary, could request that any law contrary to treaty obligations, be amended or repealed. There were no special methods for increasing public awareness of the Covenant's provisions. However, in the Falkland Islands, the provisions of chapter I of the Constitution, which were very similar to those of the Covenant, were frequently debated in the Legislative Council. In Gibraltar, the rights set forth in the Covenant were guaranteed by the Constitution and the population was fully aware of that fact. In Hong Kong, the wide-ranging debate on the drafting of the Basic Law had been widely commented on by the media and there was no doubt that the population was fully aware of the Covenant's provisions. In Montserrat, seminars and lectures were organized to comment on the provisions of the Covenant. In Pitcairn, the Administration was willing to make available free of charge the text of the Covenant to anyone wishing to study it. In the Turks and Caicos Islands, the new 1988 Constitution reflected the provisions of the Covenant relating to human rights and had been widely studied and commented on prior to its adoption. Extracts from the Covenant were often published in the Chinese press in Hong Kong and quoted during debates in the Legislative Council. The population in all Territories had been informed of the Committee's meetings and consulted during the drafting of reports. The summary records of the Committee's meetings were also sent to the Governments of the Territories.

150. Turning to questions relating to the future of human rights in Hong Kong after 1997, the representative recalled that the drafting of the Basic Law was the sole responsibility of the Government of the People's Republic of China. It was too early to know precisely what the provisions of the Basic Law would be. Chapter 2 of the Joint Declaration on Hong Kong stated that common law would continue to apply after 1997 and that the legislation previously in force would be retained.

Article 38 of the draft Basic Law provided that the provisions of the International Covenants on Human Rights would continue to be implemented but the question of how the Covenants would be incorporated into the legislation was complex and would need to be examined by the Sino-British Liaison Group. Under the Joint Declaration it had also been agreed that judicial review would continue to be available after 1997. The question of whether the reservations relating to Hong Kong would be maintained after 1997 was a matter for the Chinese Government.

151. Responding to other questions, the representative said that the objective of the Immigration Ordinance, which referred to persons "of Chinese race", was to define persons who were citizens of Hong Kong and thereby to remove the inequality of about 60 per cent of the persons earlier described as "Hong Kong nationals", who had only been entitled to live and work in Hong Kong but did not have the right of abode. The Government of the United Kingdom kept its reservations to the Covenant under review and intended to maintain them as long as they were needed. It also planned to ratify the Convention against Torture by the end of 1988 and had already begun consultations with the dependent Territories, on its application to them.

Self-determination

152. With regard to that issue, members of the Committee wished to know what mechanisms, if any, existed for ascertaining from time to time the wishes of the people in the dependent Territories in respect of self-determination; what measures had been taken by the dependent Territories to prevent public and private support for the apartheid régime of South Africa; what long-term solution was being planned to protect the rights of the inhabitants of the Falkland Islands to food and health; and whether the people of Gibraltar could claim the right to independence under article 1 of the Covenant notwithstanding the provisions of the Treaty of Utrecht. In the latter connection, one member pointed out that both the United Kingdom and Spain had an obligation, under article 1 of the Covenant, to promote the realization of the right to self-determination of the people of Gibraltar and that the latter could conceivably claim the right to independence. With regard to Hong Kong, specifically, members wished to know whether the authentic text of the Basic Law would be Chinese and, if so, whether that might not give rise to some problems since certain legal concepts might be difficult to express in that language; whether consideration was being given to the situation of some non-Chinese population groups who might have nowhere to go in 1997; who would be entitled to take part in the electoral process for choosing the President of the Executive Council and what measures would be taken to ensure that the choice of the electorate would prevail; how the consultation process leading to the Sino-British Joint Declaration had been carried out and whether the population had had the chance to show its approval of the decisions taken by means of a vote; whether the Declaration on the Granting of Independence to Colonial Territories and Peoples was applicable to Hong Kong; how long it was expected to take to establish a genuinely representative government in Hong Kong and whether it was intended that in elections to be held between 1991 and 1997 the majority of the members of the Legislative Council would be directly elected; and whether consideration was being given to incorporating the Joint Declaration into the Basic Law of Hong Kong.

153. In his reply, the representative of the State party said that democratic elections were held in the dependent Territories every four or five years and both the electorate and the candidates had the opportunity at such elections to express their views on constitutional change, including the constitutional link with the United Kingdom and the question of independence. In the past many territories that

had belonged to the United Kingdom had become independent after their populations had voted for parties calling for independence, but at present Bermuda was the only dependent Territory where a lively debate on independence was under way. There was at present no clear-cut majority in favour of independence in that Territory but any party could propose that option at the forthcoming elections or the Government of Bermuda itself could, if it wished to do so, organize a referendum on the question. In the case of Gibraltar, the referendum in 1967 on the Territory's future, which only provided the option of retaining the existing constitutional relationship with the United Kingdom or of passing under Spanish sovereignty, resulted in a 99 per cent majority for the retention of the existing relationship with the United Kingdom. After such a result, a third option - that of independence - was now mainly speculation. The Government of the United Kingdom was, however, certainly not standing in the way of the implementation of the Covenant in Gibraltar. As to the question of support for apartheid, the representative noted that foreign policy questions were the responsibility of the United Kingdom and not of the dependent Territories. The Government of the United Kingdom had repeatedly deplored the system of apartheid and had taken a number of measures, in co-operation with Commonwealth and European Community countries, to oppose the South African régime. The Falkland Islands were to a large extent self-sufficient in food and there were frequent air and sea links with the United Kingdom through which other needs could be met. A large, modern and well-equipped hospital had just been opened at Port Stanley. The Territory obviously needed links with the South American continent and it was not its fault that it had proved difficult to establish such links.

154. Responding to questions relating to Hong Kong, the representative explained that the draft agreement that had emerged from the Sino-British negotiations during 1983 and 1984 had been circulated in Hong Kong and the assessment office that had been set up to evaluate public opinion had found that the draft had been widely welcomed and was held to represent the best possible solution in the circumstances. The United Kingdom's signature of the Sino-British Joint Declaration in late 1984 had occurred in that context. In 1987, the population of Hong Kong had also been consulted, through the publication of a Green Paper, on the system of representative government in the Territory and the views then expressed had been fully taken into account in the Hong Kong Government's decision to introduce direct elections in 1991 for 10 members of the Legislative Council, which represented a major change from the previous system of an appointed legislature. Two further elections were to be held between 1991 and 1997. Continuing development of representative government would be necessary between 1991 and 1997 to ensure that the system evolved steadily to provide continuity and a smooth transition to 1997. The Basic Law, which was to be enacted in 1990, would provide an appropriate framework for that change. The authentic text of the Basic Law would probably be in English as well as in Chinese. Since the final form of the Basic Law was not yet known it was difficult to give an opinion as to the possible role of the Chinese authorities in the selection or appointment of the President of the Executive Council or of any members of the Legislative Council. As yet there were no definite proposals concerning non-Chinese minorities and suggestions by the Comm'ttee would be particularly welcome.

Non-discrimination and equality of the sexes

155. With regard to that issue, members of the Committee wished to receive additional information concerning equality of the sexes in the field of education, employment and public life in the various dependent Territories other than Bermuda.

156. In his reply, the representative of the State party said that the policy of the Governments of the dependent Territories was one of equality of opportunity in education, employment and participation in public life. The 1986 census in the Falkland Islands had shown that 393 women were employed in a wide range of sectors while 303 women remained at home. In Hong Kong, Employment Ordinance No. 2 guaranteed employees of both sexes equal rights and social benefits. Three of the six Permanent Secretaries in Montserrat and two of the five Permanent Secretaries in the British Virgin Islands were women. In the Turks and Caicos Islands, 60 per cent of civil servants, 51 per cent of pupils and 70 per cent of teachers were women.

State of emergency

157. With reference to that issue, members of the Committee wished to know what subsidiary legislation had been adopted in the dependent Territories regulating the exercise of the powers of the Governor-in-Council under the Emergency Regulations Ordinance; whether any consideration had been given in Hong Kong to including the provisions contained in article 4 of the Covenant in the Emergency Regulations Ordinance or in the draft law on the implementation of the Covenant that had been under preparation at one time; whether a state of emergency had been declared in the Falkland Islands in 1982; and whether any article of the Covenant had been derogated from by the United Kingdom authorities after regaining control of the Falkland Islands.

158. In his reply, the representative of the State party said that subsidiary legislation relating to the exercise of the powers of the Governor-in-Council had been adopted only in Hong Kong and Gibraltar and copies of the text of such regulations would be provided to the Committee. Regulations of that type were also being drafted for the Falkland Islands but there had been no need thus far for similar legislation in the other dependent Territories. The Emergency Regulation Ordinance for Hong Kong, which had been enacted in 1967, did not allow any derogations other than those permitted by the Covenant and had never been invoked. The idea of drafting human rights legislation to give effect to the provisions of the Covenant in Hong Kong had not been abandoned. There had been no derogations from any of the articles of the Covenant after the United Kingdom regained control of the situation in the Falkland Islands in 1982. The events in that year in the Falklands had occurred so suddenly that the British Governor had not had time either to proclaim a state of emergency or to notify the other States parties.

Right to life

159. With regard to that issue, members of the Committee wished to know whether any consideration was being given within any of the dependent Territories to the abolition of the death penalty and what the results had been of the inquiry into the incidents that had led to the death of three Irishmen in Gibraltar. Members also wondered whether the death penalty was governed by common law or by a legislative text and expressed concern that the Basic Law being drafted for Hong Kong did not contain any provisions on the right to life.

160. In his reply, the representative of the State party said that none of the dependent Territories were currently contemplating the abolition of the death penalty. The question was most recently considered in Bermuda and in the Falkland Islands, in 1981 and 1985 respectively, and in both instances it was ascertained that the majority of the inhabitants favoured the retention of the death penalty.

However, no person had been executed in any of the Territories for a very long time and the legislation of all the Territories provided for the commutation of death sentences. The crime of murder came either under common law or under a provision of the Penal Code determining the penalty, but even where the imposition of the death penalty was mandatory the Governor could commute it.

161. Although the draft Basic Law for Hong Kong did not include a specific provision on the right to life it did contain articles that were specifically intended to guarantee human rights. A provision of the draft Basic Law would enable the implementation of the Covenant through a legal text to be promulgated by the Hong Kong Government and, in that case, the right to life would be provided for. It was also worth recalling that a new revised draft text was still to be prepared before the Basic Law was finally enacted.

162. The circumstances of the death of three members of the Irish Republican Army (IRA), who had been preparing to plant a bomb in a public place in Gibraltar, had been thoroughly investigated and a jury, by majority verdict, had decided that those who had opened fire on the IRA members had acted lawfully. The Attorney-General of Gibraltar and the Director of Army Legal Services had also separately concluded, after hearing particularly detailed testimonies, that there were no grounds for prosecution.

Treatment of prisoners and other detainees

163. With reference to that issue, members of the Committee wished to know whether resort to corporal punishment, such as whipping, flogging and birching, in certain dependent Territories was compatible with article 7 of the Covenant; whether detainees, such as persons held under the Independent Commission Against Corruption Ordinance in Hong Kong, had the right to appeal an adverse judgement concerning their detention; and whether the various dependent Territories complied with the United Nations Minimum Rules for the Treatment of Prisoners. Members also wished to receive additional information concerning the role and degree of independence of the new Commissioner for Administrative Complaints who was expected to be appointed in Hong Kong and about the appropriateness of the provisions of the Crimes Ordinance of Hong Kong relating to loitering and to the stop-and-search powers of the police.

164. In his reply, the representative of the State party said that the use of corporal punishment had considerably diminished in recent years and that his Government was in consultation with the relevant authorities and was encouraging them to review the matter. All detainees in Hong Kong, including those held under the Independent Commission Against Corruption Ordinance, who had been refused bail, could apply to a high court judge seeking release on bail or a writ of habeas corpus if the lawfulness of continued detention was contested. Following conviction by a magistrate in Hong Kong a person could appeal to a superior court against both the conviction and the sentence. Similar rights of appeal were available to detainees in other dependent Territories. Every effort was made to put into effect wherever practicable, in the dependent Territories as well as in the United Kingdom, the United Nations Standard Minimum Rules. It was planned that the Commissioner for Administrative Complaints in Hong Kong would be independent from the executive and it had been proposed that the first incumbent of that new office should be a former judge of the high court. The Law Reform Commission had already reviewed or was about to review the provisions of the Crimes Ordinance of Hong Kong relating to loitering, "stop and search" and detention.

Right to a fair trial

165. Regarding that issue, members of the Committee wished to know how soon after arrest a person was informed of any criminal charges; how soon he was entitled to contact his lawyer and family; and whether there had been many cases in Hong Kong where persons held in preventive detention had not been presented to a court. Members also wished to receive information concerning an incident involving alleged ill-treatment that had occurred in a detention centre for Vietnamese asylum seekers in Hong Kong on 18 July 1988.

166. In his reply, the representative of the State party explained that a person was informed of the reason for his arrest at the time of arrest and if not released, or released on bail, had to be brought before a magistrate normally within 24 hours, at which time the charges against him would be read and explained. An arrested person was usually allowed to inform his family and lawyer immediately, except where that might unreasonably hamper the investigation or the administration of justice. However, such a restriction could only be temporary and a person could contact his family and lawyer, in practice, before being brought to court. Preventive detention, as such, did not exist in the dependent Territories but persons had, on occasion, been detained for questioning for longer than usual periods before charges were brought. The incident in Hong Kong on 18 July 1988 had been the object of an independent inquiry, which had recognized that the staff of the Correctional Services Department - who had been operating under great pressure - had used unnecessary force. The Hong Kong Government was currently examining operational procedures and considering whether disciplinary action should be taken against the staff concerned. As indicated in paragraph 144, the Hong Kong authorities were progressively liberalizing the conditions under which refugees were living in Hong Kong, including lifting restrictions on freedom of movement. Persons not recognized as refugees and living in detention centres were entitled to leave Hong Kong if they wished but the majority did not have the facilities to do so.

Freedom of movement and expulsion of aliens

167. With reference to that issue, members of the Committee wished to know whether an appeal against an expulsion order generally had a suspensive effect; whether a person due to be expelled was allowed sufficient time to prepare his defence and protect his rights, as provided for in article 13 of the Covenant; and what arrangements currently applied to travel among the dependent Territories and between them and the United Kingdom. Members also requested clarification of the current practice in Hong Kong relating to the expulsion of aliens and asked whether any consideration was being given to withdrawing the United Kingdom's reservation to article 13 of the Covenant.

168. In his reply, the representative of the State party explained that in all concerned Territories except Bermuda, the Cayman Islands, the Falkland Islands, Gibraltar and Pitcairn, the law required that an expulsion order be suspended pending an appeal. Where that was not the case, the courts had jurisdiction to order suspension and would usually be expected to do so. In Hong Kong, there were two different procedures relating to expulsions: one related to persons subject to an expulsion order issued by the Director of Immigration; the other, to persons subject to orders of the Governor-in-Council. In the former case, the full rights provided for in the Covenant were available and no one could be removed until the time-limit for an appeal had passed or the person concerned had declared in writing

that he did not intend to appeal. Persons subject to deportation by decision of the Governor-in-Council did not have a right to review nor any right to be present or represented at the meeting where such a decision was taken. It was in relation to the latter procedure that the United Kingdom entered a reservation to article 13 of the Covenant - a reservation whose withdrawal was not currently being considered.

169. Regarding the right of entry of persons into the various dependent Territories or to the United Kingdom, the representative explained that under the nationality provisions adopted in 1981, nationals of the United Kingdom had been divided into various categories, with British subjects who had connections with the United Kingdom metropolitan territory having the right to enter that territory whereas citizens of British dependent Territories did not necessarily have the right of entry to the United Kingdom merely on account of such citizenship.

Right to privacy

170. With reference to that issue, members of the Committee wished to receive necessary additional information on article 17 in accordance with the Committee's general comment No. 16 (32). They also wished to know what kind of personal data could be stored in computers; who was authorized to possess such information; what kinds of personal data were stored in police computers in Hong Kong; and whether there had been any complaints that the special investigative unit established under the Independent Commission Against Corruption Ordinance in Hong Kong had abused its powers.

171. In his reply, the representative of the State party explained that the legal systems of the dependent Territories were founded upon common law, under which an individual whose privacy, family, home or correspondence was subjected to arbitrary or unlawful interference from government agencies or private persons could bring a civil claim seeking compensation for any resulting damage or, in certain circumstances, an order restraining the agency or person from further interference. An individual subjected to unlawful attacks upon his honour or his reputation could also sue for defamation or injurious falsehood. There were also many specific legislative provisions that limited and controlled interference with the rights guaranteed by article 17 and which in some cases made it a criminal offence for a government agency or private person to interfere with rights under that article. Police powers to search persons and property were carefully circumscribed in legislative provisions. As a rule, a police officer could stop and search a person only when he had a reasonable suspicion that that person had committed an offence or was about to do so or was carrying a weapon. Police officers could enter private premises without the permission of the owner or occupant only if they had reason to believe that a person whose arrest was sought had entered such premises, or in execution of a warrant issued by a magistrate. The Law Reform Commission in Hong Kong had decided to look into the question of privacy and personal data storage. There were mechanisms in Hong Kong to deal with complaints of police misconduct or abuse of power and, if any such complaints were substantiated, it could be assumed that disciplinary action would be taken.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

172. With reference to those issues, members of the Committee wished to receive information in respect of laws and regulations pertaining to the recognition of religious sects by public authorities; and on articles 19 and 20 of the Covenant,

in accordance with the Committee's general comments Nos. 10 (19) and 11 (19). Members also wished to know what limitations there were in the dependent Territories, if any, on freedom of the press and the mass media and whether there were any regulations in the Territories providing for the publication of government documents of general interest.

173. As regards Hong Kong specifically, members wished to know whether there was any intention on the part of the Government of the United Kingdom to examine the controversial provision in the legislation of Hong Kong relating to the publication of "false news", particularly in so far as it placed on the accused the burden of proving that he had reasonable grounds at the time of publication for believing that the news item in question was true; whether the application in Hong Kong of the definition of blasphemy was consistent with article 19 of the Covenant, not only in respect of freedom of expression but also in respect of the freedom to seek, receive and impart information; whether it was planned to regulate the formation and registration of political parties by law; and whether political leaders would have access to the mass media.

174. In his reply, the representative of the State party said that there were no laws or regulations relating specifically to the recognition of religious sects by public authorities and there were no restrictions on freedom of religion in any of the Territories except as provided for in article 18, paragraph 3, of the Covenant. In some Territories, religious organizations had chosen to be incorporated by act or ordinance. There were no restrictions on the right to freedom of expression other than those provided by law in the various Territories and covering defamation, obscene publications, official secrets, blasphemy, sedition, contempt of court and certain public order offences such as incitement to commit a criminal offence, or offensive conduct conducive to a breach of the peace. When ratifying the Covenant, the United Kingdom had reserved its right, with respect to article 20 of the Covenant, not to introduce further legislation in the dependent Territories. Under existing legislation, propaganda for war or advocacy of national, racial or religious hatred might constitute an offence of sedition or other public order offences such as offensive conduct likely to lead to a breach of the peace or incitement to commit a criminal offence.

175. There were no limitations on freedom of the press and the mass media except in the areas provided for under article 19, paragraph 3, of the Covenant. As in the United Kingdom itself, there was no legislation in the dependent Territories requiring that government information be made public but there was freedom of access to such information subject to the provisions of the Official Secrets Act. Active consideration was being given in the United Kingdom to amending section 2 of the Official Secrets Act and any such amendments would apply to all the dependent Territories.

176. Turning to questions relating to Hong Kong, the representative said that the legislation relating to the question of publishing "false news" was intended to be included in the process of review that was currently under way and was expected to be completed by the end of 1988. The definition of blasphemy, which was admittedly more relevant to the United Kingdom than to Hong Kong, would certainly be reviewed before 1997. There had been no prosecutions for blasphemy in Hong Kong for many years. Although political parties did not exist in Hong Kong there was no prohibition on them. Whether such parties would eventually emerge was up to the people and the elected members of the legislature. Individual members campaigning for election had full access to the media and had made extensive use of that freedom.

Freedom of assembly and association

177. With reference to that issue, members of the Committee wished to receive additional information regarding restrictions on freedom of assembly and in respect of the regulation of trade unions. Several members wondered whether any consideration was being given to adopting measures designed to ensure that the broad discretionary powers of the Commissioner of Police of Hong Kong were exercised in conformity with article 21 of the Covenant. Members also wished to know whether any applications for registration by trade unions had been rejected and, if so, on what grounds and whether such adverse decisions could be appealed.

178. In his reply, the representative of the State party noted that freedom of assembly and association was expressly protected in the Constitutions of Bermuda, the Falkland Islands, Gibraltar and the Turks and Caicos Islands, and that in most Territories there were essentially no restrictions on those rights. In Hong Kong, however, which was probably the most crowded place in the world, the Public Order Ordinance provided for the control of public meetings so as to ensure that the right of freedom of expression through rallies, meetings and processions could be exercised safely and in conformity with public order. The Ordinance vested authority in the Commissioner of Police for authorizing public meetings of more than 30 persons or public processions of more than 20 persons on a public highway or in a public park and he could prohibit such gatherings or processions in certain limited circumstances. Any such decision could be appealed in writing to the Governor, who might confirm, reverse or modify it. There were no plans to review the powers given to the Commissioner of Police under the Public Order Ordinance.

179. The laws of the dependent Territories permitted the establishment of trade unions but required that they be registered. There were few restrictions on the activities of trade unions except for such areas as the prohibition of intimidation in Gibraltar, for example. In Hong Kong, provisions of the Trade Unions Ordinance regulated such aspects as the constitutions and rules of trade unions, the control of funds and the use of funds for political purposes. In that Territory, the registrar could refuse to grant registration in such cases as when the union failed to follow established procedures, if any of its purposes were unlawful, if its name was the same as that of another union or where the applicant's registration had previously been cancelled. Such refusals could be appealed to the Supreme Court.

Protection of family and children

180. With reference to that issue, members of the Committee wished to receive information regarding the equality of spouses in the dependent Territories as to marriage, during marriage and at its dissolution; on the extent to which significant differences in the right of illegitimate children as compared to those of legitimate children remained; and on family planning in the dependent Territories, particularly in Saint Helena. One member also requested clarification as to whether the Hong Kong immigration authorities had created obstacles to the reunification of families.

181. In his reply, the representative of the State party said that, except possibly in Saint Helena, there was no inequality in law of spouses as to marriage, during marriage and at its dissolution. The potentially discriminatory provisions regarding dissolution in Saint Helena were currently receiving attention during a review of legislation in that Territory. There were no longer any significant differences in the rights of illegitimate as compared to legitimate children in the

Falkland Islands, Pitcairn, Saint Helena and the Turks and Caicos Islands. In the other Territories, illegitimate children were still disadvantaged to a greater or lesser extent in such areas as inheritance, the acquisition of nationality and maintenance support. Advice on family planning was readily available in all the dependent Territories through family planning associations or general practitioners. In Saint Helena, a free and comprehensive family planning service was provided in co-operation with the International Planned Parenthood Federation. Spouses and minor children were generally allowed to join members of their families residing in Hong Kong, but because so many people desired to live there, there was a serious illegal immigration problem. In some cases children had been brought into the Territory illegally and their parents then made application to join them. In other instances, people arrived from China on a one-way permit. An agreement had been concluded between China and Hong Kong to facilitate the orderly movement of people to Hong Kong. It was the policy of Hong Kong authorities to be unsympathetic to requests for family reunification wherever blatant use had been made of illegal tactics involving the deliberate splitting of families.

Right to participate in the conduct of public affairs

182. With reference to that issue, members of the Committee requested clarification of the similarities and differences in the right to political participation of the peoples of the dependent Territories as compared with citizens of the United Kingdom. Regarding Hong Kong specifically, members wished to know what measures were being contemplated to enable the inhabitants of Hong Kong to exercise the rights mentioned in article 25, paragraphs (a) and (b), of the Covenant; what proportion of the members of the Legislative Council were directly elected; and whether the United Kingdom might consider withdrawing its reservation to article 25, paragraph (b).

183. In his reply, the representative of the State party stated that, except for Hong Kong, in respect of which the United Kingdom had entered a reservation to article 25, paragraph (b), and Pitcairn, which only had 57 inhabitants, there were no significant differences in the right to political participation of the peoples living in the dependent Territories as compared with citizens of the United Kingdom. As in the United Kingdom, genuine periodic elections were held for election to legislative bodies on the basis of a secret ballot and universal adult suffrage. The precise qualifications for voting and for standing for office varied but the peoples in the different Territories had free access to public service in the same way as British citizens in the United Kingdom. In Hong Kong, there was definite support for the development of a directly elected element in the legislature but there was deep division as to the timing for such a measure. In order to avoid changes that might prove disruptive and undermine confidence, the United Kingdom had taken a cautious approach to direct elections, but 10 members of the legislature, out of 57, were to be directly elected by 1991 and the number of candidates for direct election would be increased after 1991. If developments before 1997 would allow Hong Kong's legislature to be entirely composed of directly elected representation before 1997, the United Kingdom might consider the question of withdrawing its reservation to article 25, paragraph (b), of the Covenant. Currently, some 41 per cent of the Legislative Council were elected through indirect suffrage by the electoral college and by functional constituencies or interest groups comprised of lawyers, doctors, nurses, chambers of commerce or accountants.

Rights of minorities

184. With reference to that issue, members of the Committee wished to know whether the conditions in the dependent Territories were such as to permit the effective enjoyment of the rights contained in article 27 of the Covenant.

185. In his reply, the representative of the State party declared that conditions in the dependent Territories were, indeed, such as to permit the effective enjoyment by ethnic, religious and linguistic minorities of the rights enunciated in article 27 of the Covenant.

General observations

186. Members of the Committee expressed their appreciation to the United Kingdom's delegation for its clear, frank and informative responses to the Committee's questions. This had led to a constructive and fruitful discussion, which, it was hoped, would make a useful contribution to the observance of human rights in the dependent Territories and particularly to further reflection on the status of Hong Kong.

187. In the latter connection, some members felt that many questions still remained about the compatibility of certain regulations - including some provisions of the draft Basic Law and of the Public Order Ordinance, as far as it concerns discretionary powers of the Commissioner of Police - with the provisions of the Covenant and urged that consideration should be given to solving as many human rights problems as possible, or to enacting the Covenant into law, before 1997. Members also suggested that consideration should be given to disseminating the record of the Committee's discussion of the report to the legislature and public in Hong Kong and requested that the outstanding questions should be answered in a written reply or in the third periodic report.

188. The representative of the State party expressed his delegation's satisfaction with the discussion and thanked the members of the Committee for their courtesy and patience. He hoped that a number of points relating to Hong Kong had been clarified and recalled that any deficiencies in the draft Basic Law would need to be taken up with the Government of China.

189. The Chairman, in concluding the consideration of the second periodic report of the United Kingdom on its dependent Territories, also thanked the members of the delegation for their co-operation with the Committee and for responding to the questions so effectively. He was sure that the Committee's concern would be conveyed to the Government of the United Kingdom.

Netherlands

190. The Committee considered the second periodic report of the Netherlands (CCPR/C/42/Add.6) at its 861st to 864th meetings, held on 8 and 9 November 1988 (CCPR/C/SR.861-864).

191. The report was introduced by the representative of the State party who noted that the most important development that had occurred in the Netherlands during the period under review was the revision of the Constitution. While that revision entailed extensive changes, it did not affect the fundamental framework of the Netherlands, which was that of a parliamentary democracy with an independent

judiciary and a system of fundamental rights and freedoms, defined and guaranteed by the Constitution. On 1 January 1986, Aruba had acquired autonomous status within the Kingdom of the Netherlands and had since that date become, like the Netherlands Antilles, an autonomous but equal part of the Kingdom.

Constitutional and legal framework within which the Covenant is implemented

192. With regard to that issue, members of the Committee wished to receive information on cases where the Covenant had been directly invoked and where the validity of laws had been tested in the light of the provisions of the Covenant; on factors and difficulties, if any, affecting the implementation of the Covenant; on activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol, particularly in Aruba; and on any special developments in Aruba relating to the implementation of the Covenant since 1 January 1986. Members also wished to know whether the term "statutory regulations", in article 94 of the Constitution, applied to acts of Parliament; what the distinction was in Netherlands law between self-executing and non-self-executing articles of the Covenant; whether the presence of a large number of foreign workers in the Netherlands was creating difficulties; whether a certain tolerance towards the use of narcotics had created crime control problems in urban areas; whether, as a result of an adverse court decision involving the Covenant, the Government was planning to withdraw its ratification of the Optional Protocol; and whether publicity would be given to the Committee's consideration of the second periodic report.

193. Referring to Aruba, members asked how it was ensured that international obligations, including those set out in the Covenant, were fulfilled in Aruba; how human rights and fundamental freedoms were safeguarded; what the relationship was between the Co-operation Regulations and the Constitution of Aruba; how the judiciary was organized; whether the people of Aruba had been consulted when Aruba became a separate country within the Kingdom; and whether judges were recruited locally or brought from the Netherlands.

194. In his reply, the representative of the State party said that since many of the provisions of the Covenant containing substantive rights were self-executing and the courts were obliged, under article 94 of the Constitution, to review the validity of acts of Parliament and other statutory regulations in the light of such self-executing provisions, there had been many cases where the Covenant had been invoked. The nature, content and formulation of a provision of the Covenant had to be assessed individually to determine whether or not that provision was "self-executing". In 1986, 58 judgements by the courts had referred to provisions of the Covenant. Any legislative act contrary to a provision of the Covenant would become inapplicable and would have to be revised. The Covenant had clearly become part of the legal order and its provisions had been applied directly in a number of instances. The Government had no intention to denounce the Optional Protocol, in the creation of which it had played a prominent part.

195. The great influx of foreigners over the past 15 years had resulted in certain difficulties in implementing the Covenant, particularly in respect of non-discrimination, and had made it necessary to conduct certain studies and to adopt new laws. The Government of the Netherlands was also experiencing difficulties in the area of "conflicting fundamental rights" - such as the problem of having to restrict freedom of expression in order to prohibit racial discrimination - and would be interested in learning the Committee's views on that

question. Although the Government's policy of differentiating between hard and soft drugs had earlier been criticized as being lax and ineffective, experience indicated that the policy had been successful, at least to some extent.

196. Referring to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol, the representative noted that the texts of the Universal Declaration of Human Rights and the various conventions and declarations on human rights had been published in a book in Dutch and that a human rights handbook for teachers had also been issued. The Government of the Netherlands also subsidized non-governmental human rights organizations whose activities included publication of material on the implementation of the Covenant. At a conference held at The Hague a week prior to the session, the press had been informed of the provisions of the Covenant and of the procedures that had been followed in preparing and submitting the second periodic report as well as of the Committee's proceedings.

197. Regarding the status of Aruba, the representative noted that the achievement of human rights and fundamental freedoms, legal equality and proper administration were the responsibility of Aruba and that chapter I of the Aruban Constitution reflected all the rights recognized in the Covenant and provided for judicial review of Aruban legislation. The Supreme Court of the Netherlands served as Aruba's Court of Cassation. A Minister Plenipotentiary represented Aruba at The Hague and served as a member of the Council of Ministers of the Realm for Aruba. The people of Aruba had been informed of the scope and depth of the Covenant before the introduction of a separate status for Aruba, and were kept informed of developments in that area by the press and other media. A chair in Aruban law had been created in the law faculty in order to increase understanding of such fundamental matters.

Self determination

198. In connection with that issue, members of the Committee asked whether the Netherlands had taken any measures to prevent public and private support for the apartheid régime of South Africa. Members also wished to know whether the aspirations of the people of Aruba for self-determination had been met through the country's new status as an autonomous and co-equal part of the Kingdom of the Netherlands; whether a movement towards self-determination existed currently in Aruba; and whether Aruba's level of economic development prior to 1986 had been different from that of the Netherlands.

199. In his reply, the representative of the State party explained that his Government had taken a number of restrictive measures in respect of trade and commerce with South Africa, which went beyond those provided for in the relevant Security Council resolutions. The import or export of certain products to or from South Africa, as well as all new investments in that country had been forbidden; the Netherlands banks and Government had terminated all financial dealings with South Africa; the Netherlands had denounced its bilateral cultural agreements with South Africa; and, in 1983, entry visas had been made compulsory for South Africans. The Netherlands, at both the national and European levels, encouraged any activity that might facilitate a process of peaceful change in South Africa; at the forty-second session of the General Assembly, the Netherlands had proposed principles for peaceful settlement of the conflict in South Africa, namely, universal suffrage, the geographical unity of the country, the establishment of a democratic pluralist political system, respect for human rights, the protection of minorities and the rule of law.

200. Referring to questions regarding Aruba, the representative recalled that in 1977 the people of Aruba had shown that they wished the island to have a separate status. Since the adoption of its new status, Aruba had managed to acquire greater economic and financial freedom. At a round-table conference in March 1983, it had been decided that all parts of the Kingdom of the Netherlands would have the right to decide their political future and that early in the 1990s a conference would be held to consider whether or not current directions should be modified.

Non-discrimination and equality of the sexes

201. With regard to that issue, members of the Committee wished to know why the process of incorporating the principle of equal treatment in all national legislation would only be completed in 1990; what the obstacles to the immediate observance and implementation of that principle were; and what kind of discrimination based on distinctions between men and women still existed in the Netherlands. Members also wished to know about the current status of the General Equal Treatment Bill, the Bill Providing for Equal Treatment of Men and Women in Respect of Non-State Pensions and the Bill to Amend the Criminal Code; they also asked whether the Convention on the Elimination of All Forms of Discrimination against Women had been ratified. Further, they wished to receive information on limitations on the rights of government officials; on any special problems relating to non-discrimination in respect of women in Aruba; on measures being planned or already introduced to guarantee the complete equality of the latter with men; and on the rights of aliens as compared with those of citizens. It was also asked how many complaints concerning expulsion of and discrimination against aliens were before the courts in the Netherlands and the European Commission of Human Rights, and whether there was any conflict between the principle of non-discrimination and the exercise of certain civil and political rights. Referring to views adopted by the Committee in respect of certain cases involving non-discrimination in social benefits, one member asked whether the courts or the Central Appeals Board had handed down any decisions on cases relating to the social security system and whether consideration had been given to amending social security legislation in order to bring it into conformity with article 26 of the Covenant. Another member requested clarification of the term "any other grounds", used in article 1 of the Constitution, and asked for examples of presumed discrimination on grounds of sex falling under criminal law.

202. In his reply, the representative of the State party explained that a compilation of all provisions of parliamentary laws and ministerial decrees establishing distinctions between men and women and between married and unmarried couples had just been completed; the Government would thus be able to rectify unjustifiable distinctions. The General Equal Treatment Bill, which had been submitted to Parliament in March 1988, was currently under study by a special commission of the Lower House. The Bill on Equal Treatment for Men and Women in Employment was expected to be enacted by the beginning of 1989 and might eventually include, if adopted, a provision designed to ensure equal treatment in respect of pensions. The Bill to amend the Criminal Code had been transmitted to the Government for comments and the process of ratification of the Convention on the Elimination of All Forms of Discrimination against Women was expected to be completed in 1989.

203. Replying to other questions, the representative stated that the only restrictions imposed on the exercise of fundamental rights by civil servants was an obligation to refrain from exercising their rights to freedom of expression,

association and assembly, including their right to demonstrate, if that affected the proper performance of their duties or the efficient operation of public services. Foreign nationals who had been legally resident in the Netherlands for at least five years could vote in municipal elections and, with certain restrictions, could be appointed to civil service posts. Some complaints alleging unjustified expulsion had been filed with the European Commission on Human Rights. No statistics regarding nationality were maintained by the courts in respect of cases alleging discrimination. Conflicts between the principle of non-discrimination and the exercise of certain rights and certain freedoms would eventually need to be resolved by the courts on the basis of the General Equal Treatment Act, as adopted.

204. The legislature of the Netherlands had intended to give all persons, notwithstanding their identity and particular status, equal access to public life and had considered it necessary, for example, to prohibit discrimination on grounds of legitimate or illegitimate birth. With regard to the views expressed by the Committee in social security cases brought before it under the Optional Protocol, a memorandum had been submitted on this subject to Parliament on 29 August 1988; the memorandum did not necessarily reflect the final opinion of the Government on the subject since its members were divided on the question of the effect of decisions of the Human Rights Committee and of court decisions adopted pursuant thereto. The matter was a difficult one since it was not sufficient merely to decide to give effect to the provisions of the Covenant, but it was also necessary to ensure that any new legislation was in conformity with the regulations of the European Community.

Right to life

205. With reference to that issue, members of the Committee wished to receive additional information on article 6 to the extent made necessary by the Committee's general comments Nos. 6 (16) and 14 (23), and on the relative rates of infant mortality in the Netherlands and in Aruba. Referring to the subject of euthanasia, which was being broadly debated in the Netherlands, one member asked whether article 6 of the Covenant was being taken into account in the preparation of legislation on that question.

206. In his reply, the representative of the State party said that the death penalty had been abolished in the Netherlands. The level of health care in the Netherlands was high and the entire population had access to a highly developed system of social services. Infant mortality and perinatal mortality had declined steadily between 1970 and 1987 and currently stood at 7.5 per 1,000 and 9.2 per 1,000, respectively. In Aruba, the infant mortality rate was 16 per 1,000. In all cases where a member of the security forces had occasion to use his weapon, an inquiry was held and the person concerned was prosecuted or disciplined whenever warranted. Cases of euthanasia were still uncommon and had to be declared to the General Prosecutor, who could initiate prosecution proceedings if the strict rules relating to that practice had not been complied with.

Treatment of prisoners and other detainees

207. With regard to that issue, members of the Committee wished to know the current status of the Bill for the Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; whether the practice of bringing women from Asia and Latin America to the Netherlands for the purpose of

211. One of the reasons for the reported increase in crime was the drug problem. In view of the increasing need for prison capacity, it was not always possible to ensure the desired segregation and that was why the reservations to article 10, paragraphs 2 and 3, of the Covenant had to be maintained. The questions of how best to deal with convicted prisoners and how best to implement and adjust the Standard Minimum Rules for the Treatment of Prisoners were under constant review. The role of the Ombudsman was to act as a "watchdog" on behalf of the public to ensure that public administration was being carried out properly. A bureau for the registration and redress of complaints had been established in Aruba.

Right to a fair trial

212. With reference to that issue, members of the Committee wished to know what the concrete basis was for findings of unsuitability resulting in the removal from office of judges; what the average time period was for bringing a criminal case to trial; under what circumstances appeal courts had set aside convictions on grounds of undue delay; whether legal aid was provided in civil cases; and how the principle of presumption of innocence was applied in the Netherlands and in Aruba. Members also wished to receive necessary additional information on article 14 pursuant to the Committee's general comment No. 13 (21) and on the practice of out-of-court settlements in certain criminal cases as well as the impact of that practice on the work-load of the courts. In the latter connection, it was asked what criteria were used in deciding when to resort to out-of-court settlements and how such decisions were reconciled with the principle of equality before the law and with judicial guarantees provided for under article 14 of the Covenant.

213. In his reply, the representative of the State party stated that judges could be removed from office by the Supreme Court on grounds of permanent unfitness to perform their duties because of illness or infirmity or for other reasons, but that such removal was extremely rare. The average duration of cases dealt with by the courts up to the final judgement was 275 days in 1987. The Netherlands courts generally considered that a case had taken an unreasonable length of time if, within a period of two years, there had been no visible progress in advancing the prosecution. Legal aid was provided in civil cases. The principle of presumption of innocence was basic to Netherlands legal practice.

214. Replying to questions relating to the practice of out-of-court settlements, the representative explained that such settlements would only be offered in cases where the court was likely to impose a fine and, in cases involving bodily harm, only where no serious injury had been suffered. It was not possible to measure the impact of that practice on the work-load of the courts in terms of savings of time since there were a number of variables that could not be measured.

Freedom of movement and expulsion of aliens

215. With reference to that issue, members of the Committee sought necessary additional information on the position of aliens in the Netherlands as well as in Aruba in accordance with the Committee's general comment No. 15 (27). They also wished to know on what grounds the refusal of a passport could be justified, in which areas a general revision of the Aliens Act appeared to be needed, and when such a revision would be completed.

216. In his reply, the representative of the State party said that the grounds for refusal or withdrawal of travel documents were laid down in the Passports (Interim) Act of 11 February 1988 and were consistent with the provisions of article 12 of the Covenant. The main reasons for the general review of the Aliens Act were to have policy norms for admission established by Act of Parliament rather than by circular, to increase legal protection for aliens and to make the implementation of policy on aliens more uniform. Aliens admitted to Aruba enjoyed the same human rights and fundamental freedoms as Arubans in most respects.

Right to privacy

217. With reference to that issue, members of the Committee requested necessary additional information on article 17 pursuant to the Committee's general comment No. 16 (32). They also wished to know how a person's rights under article 17 were currently guaranteed; for what basic purposes personal data banks could be established and how abuses were prevented; and why the staff of the postal, telegraph and telephone service resorted to the practice of intercepting messages and conversations.

218. In his reply, the representative of the Netherlands explained that a Data Protection Act was expected to enter into force early in 1989, and that a Data Protection (Police Files) Bill had also been presented to Parliament. Pending the enactment of such privacy legislation, the semi-public sector and the private sector had made considerable progress towards self-regulation based on various privacy regulations that had been drawn up by Government bodies, the principal element of which was the right to examine and to correct personal data held in a data bank. The Data Protection Act will provide for the establishment of a separate government body, the Data Protection Registry, to supervise compliance with the law and to prevent abuses, and will also establish procedures for recourse to the courts. A bill on entry into the home was also currently before Parliament. An individual's personal honour and reputation were protected by articles 261-271 of the Criminal Code. The privacy of the telephone and the telegraph might be violated only in cases laid down by law and with the proper authorization. The staff of the postal, telegraph and telephone service were occasionally required to monitor conversations and to read telegraphic messages as part of their quality control and maintenance work.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

219. In connection with that issue, members of the Committee inquired whether the service performed by conscientious objectors conferred the same rights and benefits as regular military service; what the system of ownership of the media was; whether the new Media Act had come into force; whether any consideration was being given by the Netherlands to withdrawing its reservation to article 20, paragraph 1, of the Covenant, particularly in view of the Committee's general comment No. 11 (19); and why the advocacy of national, racial or religious hatred had apparently not been prohibited by law, as required under article 20, paragraph 2, of the Covenant. Members also wished to know what access the mass media had to decisions adopted by public authorities and to written material used in support of those decisions; and how commercial advertising was regulated. One member also wished to know whether discouragement of commercialism, as a principle underlying the Media Act, did not run counter to freedom of expression.

220. In his reply, the representative of the State party explained that the legal status of recognized conscientious objectors was regulated, as far as possible, in the same way as that of members of the armed forces on compulsory military service. The new Media Act had come into force on 1 January 1988. Newspapers were owned by private companies and the broadcasting system was funded partly by licence fees and partly by revenue from advertising. Regulations concerning radio and television commercials were based on the principle that the media reflected the life of the nation, including its moral and cultural life. Commercials were monitored by a special foundation, which also set the times when they could be broadcast. The reservation to article 20 of the Covenant reflected the fact that it was extremely difficult to formulate a statutory ban on war propaganda so that it did not constitute an undue restraint on freedom of expression. However, there were no practical difficulties in the Netherlands in that regard since the media did not disseminate war propaganda. Article 137 (d) of the Criminal Code made it a criminal offence to incite hatred of or discrimination against persons on grounds of their race, religion or other belief. Government documents were open and accessible to everyone, except where such access was precluded in the interests of the smooth functioning of the Government; the courts were empowered to resolve any conflicts between the authorities and individuals seeking information.

Freedom of assembly and association

221. With regard to that issue, members of the Committee wished to receive further information on the law and practice relating to the establishment and operation of political parties, particularly in respect of grounds on which political parties could be banned.

222. In his reply, the representative of the State party said that political parties were deemed to be legal persons and could be banned if their activities or aims were inconsistent with public order, for example, if they encroached on the liberty of others, violated human dignity or incited to hatred.

Protection of family and children

223. In that connection, members of the Committee wished to know whether there had been any actual cases of children being subjected to physical abuse and, if so, what measures had been taken to prevent such violations; what the remaining differences were between the rights of illegitimate and legitimate children; why it was planned to restrict the right of Netherlands fathers to recognize their children born abroad; what measures had been adopted to deal with the problem of child care in families with two working parents; why the marriageable age was the same for men and women; and what safeguards there were to protect children from pornography. Referring to communication No. 201/1985, which had been considered by the Committee on 27 July 1988, some members wished to know what had been the reaction of the Government and the public in the Netherlands to the opinions of Committee members holding that the discretionary powers given to the courts to decide on visiting rights upon dissolution of a marriage were too broad.

224. In his reply, the representative of the State party said that the Netherlands had a system of counsellors who were responsible for drawing up reports on cases of child abuse and for assisting and counselling abused children and their families. A bill submitted to Parliament in July 1988 was expected to eliminate virtually all differences between illegitimate and legitimate children. The Government attached great importance to child care and gave tax relief to parents and subsidized local

authorities that provided day-care facilities. A criminal case in 1987 involving false recognition of nationality for children from South-East Asia had given rise to public concern about child trafficking and had led to the possible amendment of the law relating to the recognition of paternity abroad. The marriageable age had been harmonized in order to maintain the principle of equality of the sexes, but it was possible to obtain permission to marry before the age of 18, particularly in the case of girls aged 16 to 18 who were pregnant. Pornography was punishable under the Criminal Code and the adoption of more severe provisions aimed at the protection of children was under consideration. There were no plans to restrict the discretionary authority of judges in divorce cases, who usually followed the wishes of both parents in respect of visiting rights.

Right to participate in the conduct of public affairs

225. With regard to that issue, members of the Committee wished to receive additional information on the practice in respect of the disqualification from public service positions of individuals on grounds of political opinion and behaviour, and on the experience, if any, in applying provisions relating to the right of foreign nationals to vote in local elections and to hold local office. Further information was also sought concerning restrictions on the right to vote. In addition, it was inquired whether the residents of the Netherlands Antilles and Aruba had the right to take part in elections to the Netherlands Parliament on the same basis as Netherlands residents.

226. In his reply, the representative of the State party stated that it was possible for persons to be refused appointments in the public service, in the case of confidential posts, only on grounds of doubt as to whether they would faithfully perform their duty as a public servant under all circumstances. In the 1986 municipal council elections, 260,000 foreign nationals had been entitled to participate and 50 foreign nationals had been elected to municipal councils. There had been no indications that giving aliens the right to vote had made any difference to the turnout and voting behaviour of Netherlands nationals. A large number of restrictions on the right to vote had been eliminated since the revision of the constitutional provisions in 1983. The inhabitants of the Netherlands Antilles and Aruba did not have the right to vote in elections to the Netherlands Parliament.

Rights of minorities

227. With regard to that issue, members of the Committee wished to receive information concerning the functions, activities and status of the national advisory and consultative body on minorities policy; the difficulties encountered in implementing the provisions of article 27 of the Covenant; and on possible problems relating to the ethnic minorities of Aruba. Members also wished to know what criteria were used to determine which groups were minorities and, in particular, whether migrant workers and gypsies were considered as such, and whether the Government of the Netherlands imposed restrictions on the freedom of movement of gypsies.

228. In his reply, the representative of the State party said that the function of the national advisory and consultative body on minorities policy was to advise the Government, and that the Minister for Home Affairs had held six meetings with the group during the most recent session of Parliament. The body was still experimental, but the Government intended shortly to submit a bill to Parliament aimed at granting it permanent status.

229. The situation of minorities in the Kingdom of the Netherlands still involved some practical problems, in particular concerning housing, education and health care. There was no majority in Aruba against which "minorities" needed to be protected since Aruba's population of 60,000 itself consisted of 40 minorities. Caravan dwellers were not considered as belonging to a minority, but the Government intended to give them certain advantages to help them enjoy equal rights within the society. The Government had also taken measures to ensure equal rights and opportunities to certain disadvantaged groups of migrant workers.

General observations

230. Members of the Committee considered that the second periodic report submitted by the Kingdom of the Netherlands was extremely well conceived and contained a wealth of information on the country's laws and legal institutions and administrative practices. They noted with special appreciation the frank and open attitude of the Government of the Netherlands toward the Covenant and commended the delegation for the sincerity and high quality of the replies to the Committee's questions and of the comments on some general issues such as the co-ordination between fundamental rights. Members also welcomed the specific measures adopted by the Government of the Netherlands to eliminate apartheid as well as its helpful attitude toward non-governmental organizations. They expressed support for the continuing efforts of the State party to improve human rights in the Netherlands, particularly in respect of the principles of equality and non-discrimination set forth in articles 14 and 26 of the Covenant, respectively, and hoped that all of the Committee's remaining concerns, especially those relating to the full implementation of the aforementioned principles, would be addressed in the third periodic report.

231. The representative of the State party said that his country attached importance to its discussions with the Committee and would make every effort to deal in its next report with all the questions that had remained unanswered. He assured the Committee that the relevant Ministries and the Parliament would be informed of its opinions and suggestions.

232. In concluding the consideration of the second periodic report of the Netherlands, the Chairman once again thanked the delegation for its co-operation and for the constructive spirit that had marked its dialogue with the Committee. The Kingdom of the Netherlands was exemplary in recognizing its shortcomings and attempting to remedy them through an ongoing process of legislative review.

Togo

233. The Committee considered the initial report of Togo (CCPR/C/36/Add.5) at its 870th, 871st, 874th and 875th meetings held on 21 and 23 March 1989 (CCPR/C/SR.870, 871, 874 and 875).

234. The report was introduced by the representative of the State party who, underscoring his country's determination to ensure respect for human rights, stated that Togo had ratified the majority of international human rights instruments, including the Optional Protocol to the Covenant. Furthermore, a National Human Rights Commission had been established, which was competent to hear petitions by any individuals whose rights had been violated within the national territory. In addition to its role as a mediator, the Commission also helped to enhance public awareness of human rights and fundamental freedoms - as illustrated by seminars at

Lomé in February and April 1988, in collaboration with the United Nations Centre for Human Rights.

235. Members of the Committee welcomed the report, which had been drafted in conformity with the Committee's general guidelines on the form and content of initial reports. They considered, nevertheless, that the report should have laid greater stress on the factors and difficulties affecting the implementation of the Covenant in Togo.

236. With regard to article 2 of the Covenant, members of the Committee wished to receive additional information on the legal status of the Covenant in Togolese internal law, particularly its place within the Togolese legal order and whether any difficulties had been met in incorporating its provisions into Togolese domestic law. They also wished to know what would happen if the provisions of Togolese legislation conflicted with those of the Covenant, whether there had been any cases in which the provisions of the Covenant had been invoked before, or applied by, the courts or administrative authorities; whether there had been any cases in which a court had found that the Covenant took precedence over national legislation; and whether the reference in article 43 of the Constitution to the principle of reciprocity also applied to multilateral treaties such as the Covenant. Further information was also sought as to the nature of the various remedies available to victims of human rights violations, particularly those committed by public servants acting in their official capacity, and what was the legal status of the French laws inherited from colonial times. Clarification was also requested of the prohibition of discrimination on the grounds of language and property and of the restrictions mentioned in paragraph 65 of the report according to which political and civil rights were only enjoyed by Togolese.

237. With particular reference to the National Human Rights Commission, detailed information was requested as to its powers, activities and membership; whether the Commission acted as a court of appeal in the context of examining an alleged miscarriage of justice; whether it was considered as a local remedy to which recourse had to be made in advance of filing a complaint with the Human Rights Committee; how its jurisdictional role related to its functions in safeguarding human rights; how many and what kind of cases had been submitted to it; whether it had actually decided certain cases and how such decisions were enforced; to what degree it could act independently of the executive authorities; what subsidies had been granted by the Government to the Commission to enable it to discharge its duties; and whether a copy of the Commission's first report could be made available to the Committee.

238. In addition, members of the Committee wished to know whether human rights instruction was included in school programmes; whether the Covenant was published in the country's various languages and distributed to all population groups, particularly the most disadvantaged among them, as well as to the military and police forces; and whether the Togolese public was aware that the report was being considered by the Committee.

239. Referring to article 3 of the Covenant, members of the Committee wished to receive statistical information on the proportion of women in elected bodies, in universities, among the executive staff of private businesses, in public service and the liberal professions, and in the active part of the population in general. It was inquired whether there were any exceptions to the principle of equal pay for equal work, whether prostitution constituted a problem and, if so, what the

Government had planned to do about it. Questions were also raised regarding the scope of the remaining problems concerning discrimination against women and the effects in this area, if any, of the various traditional practices in the country.

240. With regard to article 4 of the Covenant, members of the Committee wished to know the circumstances under which the President of the Republic was empowered to proclaim a state of emergency; whether the national assembly had the right to review emergency measures and whether the President could dissolve it under such circumstances; what the duration of such an emergency was; whether rights and freedoms under the Covenant, particularly those recognized as being inviolable in all circumstances, could be suspended; what remedies were available to persons whose rights had not been respected; what guarantees there were against the wrongful application of emergency measures; and why, in implementing the emergency measures taken following the attempted coup of 1986, the Government of Togo had not made the notification provided for in article 4 of the Covenant.

241. In connection with article 6 of the Covenant, members of the Committee wished to know when the death penalty could be applied; how many executions had been carried out in Togo over the past five years; and whether the death penalty could be imposed on individuals between 16 and 18 years of age. With regard to crimes carrying the death penalty, members asked for further clarification of the terms "offence against morality" and of "action threatening the external or domestic security of the State" and questioned whether such broad definition might not have left too much room for interpretation by the courts.

242. With regard to articles 7 and 10 of the Covenant, members of the Committee asked what remedies were available to persons claiming that they had been tortured; whether there were any laws or prison regulations specifically guaranteeing that such practices did not occur; whether there were any ways of speeding up judicial proceedings in the foregoing regard; whether confessions obtained under torture were considered admissible by the courts; whether the National Human Rights Commission was able to deal with allegations of torture against the security services, and if so, what procedures applied to such cases of torture; whether there was a system for the inspection of prisons allowing impartial investigations by independent persons of allegations of torture and the adoption of corrective measures; whether there had been any cases where members of the police or prison wardens had been accused or found guilty of violating human rights; and to what extent secret detention was resorted to. Members also requested additional information concerning Togo's social rehabilitation system.

243. With regard to article 9 of the Covenant, members of the Committee wished to receive further information on the 48-hour limit on custody of detainees mentioned in the report, asking in particular whether that time-limit was strictly respected and what remedies were available in case that period was exceeded. They also wished to know what remedies there were if the conditions of custody were not satisfactory, and what the maximum allowable period was before an individual had to be informed of the reasons for his arrest. Questions were also asked as to the abolition of administrative detention and concerning guarantees of rapid court actions in determining the legality and regularity of an arrest. With regard to the conditions of detention, members asked whether an arrested person could be kept in a secret location, whether he had an effective right to communicate with his family and lawyer and undergo medical examination, how problems of overcrowding in prisons, if any, were being solved, and whether there were any problems in ensuring food for prisoners. Additionally, it was asked why the International Red Cross did

not have access to military prisoners. Further information was also requested about article 113 of Togo's Code of Criminal Procedure, according to which an accused person could not be held in custody for more than 10 days, and about the compensation granted to individuals who had been illegally detained or arrested.

244. With regard to article 11, clarification was requested of the practice of detention for failure to meet financial obligations towards the State.

245. Members of the Committee wished to receive further information on the implementation by Togo of articles 12 and 13 of the Covenant and in particular regarding the circumstances under which resort was had to the penalty of local expulsion rather than imprisonment and concerning the remedies that were available to persons whose expulsion had been ordered.

246. With reference to article 14 of the Covenant, members of the Committee wished to receive fuller information on the independence of the judiciary, particularly regarding guarantees for ensuring the independence of judges, conditions under which judges were appointed and exercised their functions, rules regarding dismissals and remuneration, and procedures for training judges, lawyers and other judicial personnel. With respect to the organization of the judiciary, further information was sought concerning the State Security Court and other special courts, particularly as to their jurisdictions, composition, competence, procedures, the guarantees they accorded to defendants and possible rights of recourse and appeal. Moreover, it was asked why those special courts had been established and what the differences were between the State Security Court and the High Court of Justice. Members also requested detailed information regarding the legal aid system. Concern was also expressed over the apparent contradiction between article 14 (1) of the Covenant and the 1988 Decree relating to public proceedings.

247. In connection with article 17 of the Covenant, members requested further information on the prohibition of blackmail and wire-tapping.

248. With reference to article 19 of the Covenant, members of the Committee wished to receive further information on the extent to which freedom of expression and opinion was guaranteed by law. In that connection, they inquired as to the extent the press was controlled or censored; whether there were restrictions on the freedom to establish newspapers independent from the single party; what remedies were available if an authorization to establish an organ of the information media was denied; and whether any foreign newspapers had been prohibited in Togo in recent years. Additional information was also requested as to the nature of insults against the authorities that constituted a crime punishable by imprisonment; the number of people detained for such offences during the previous two years; the legal provisions, if any, prohibiting defamation and libel; and offences against the Republic committed through the press that were penalized by the Act of 29 July 1987. In the latter connection, members asked how Togolese restrictions on certain expressions of opinion, in particular concerning the ruling party, could be reconciled with article 19 (3) of the Covenant; whether the National Human Rights Commission had received any complaints concerning violations of the rights guaranteed under article 19 of the Covenant, and what remedies were available to a citizen who had criticized or attacked the authorities.

249. Regarding articles 21 and 22 of the Covenant, further information was requested on procedures regulating freedom of assembly or association and on instances where meetings had been suspended or associations dissolved by official intervention. Members also asked whether Togo was considering altering the law requiring advance notice of public meetings in order to bring it into line with the Covenant; whether the right to freedom of association embraced the right to establish political parties; which organ had the legal authority to decide that an association had been set up with the aim of harming the State; and whether it was possible to establish an independent trade union that was not affiliated with the National Workers' Confederation.

250. In relation to articles 23 and 24 of the Covenant, members asked how Togolese women could obtain a divorce, how many divorces had been applied for and granted, at what age a minor could be brought before the courts and whether a minor over 13 years of age could be prosecuted for a crime that he had committed before reaching that age.

251. With reference to article 25 of the Covenant, members of the Committee wished to receive detailed information on laws and regulations concerning the periodicity of elections and the age limits for voters, and concerning any relevant restrictions. Observing that article 10 of the Constitution provided for carrying out political activity exclusively within the framework of a single party, members asked whether a citizen who did not want to be a member of the Togolese People's Rally was deprived of the right to vote; whether a person could remain outside the party and still be considered as having the same rights and privileges as party members; whether the party was also a legislative body; what the party's relationship was with the General Assembly; what position the party's statute occupied in the hierarchy of legislative texts; whether it was possible in the case of violations of certain rights to bring complaints before party organs; and, lastly, how the Government of Togo could reconcile the existing system with the rights laid down in article 25 of the Covenant.

252. With reference to article 27 of the Covenant, members of the Committee wished to know the extent to which the numerous ethnic groups in the country could live in accordance with their own cultures and maintain their religious and linguistic identities.

253. In reply to questions concerning the status of the Covenant in Togolese law, the representative of the State party explained that the Constitution took precedence over international conventions while the latter took precedence over internal laws. Measures had been taken to incorporate the Covenant in Togolese internal law and to that end a commission on legislative and regulatory studies had been established. The Covenant could also be used to eliminate lacunae in national legislation and it was possible for a domestic provision incompatible with the Covenant to be declared inapplicable. The Covenant and the Universal Declaration of Human Rights had been invoked twice before the courts and in both cases the litigious acts were held to be illegal. The reservation in article 43 of the Constitution, according to which the validity of treaties depended on the principle of reciprocity, did not apply to a multilateral treaty such as the Covenant.

254. In reply to other questions raised in connection with article 2 of the Covenant, the representative explained that the laws of the colonial era occupied an important place in the current judicial system, although Togo also had a series of texts of its own formulation. With regard to the remedies available to those

whose rights had been violated by persons acting in an official capacity, he noted that, in cases of violations occurring during administrative detention, the perpetrator could be condemned for false imprisonment. Employees of a public establishment who had been wrongfully dismissed could file claims with the Labour Court. Aliens enjoyed the rights set forth in the various instruments governing life in the country, except for some restrictions relating to the requirement of Togolese nationality in the enjoyment of certain civil and political rights such as employment as judges or civil servants and eligibility to vote.

255. Replying to questions concerning the National Human Rights Commission, the representative noted that it had been established in 1987 by the National Assembly for an indefinite period and could only be dissolved by specific legislation. The Commission was currently presided over by the President of the Bar while its 13 members were elected by representatives of the various professional sectors and enjoyed legal immunity. The Commission was independent and received substantial State subsidies. While its function was to hear complaints and to end abuses, it was not a judicial mechanism for protecting freedoms and was not a judicial organ. Any party could appeal to it at no cost, and the Commission then immediately appointed a special rapporteur to investigate the alleged violation. The latter was legally empowered to intercede directly with the administrative authority concerned and had access to all police reports, registers and other relevant documents. At a later stage, the Commission could refer the matter to the court, Parliament and even to the Head of State. Placing any obstruction in the way of the discharge of the Commission's functions was subject to criminal sanctions.

256. The Commission had no power to enforce compliance by the administration and relied heavily on extrajudicial elements to secure a settlement. During its first year of operation, the Commission had received 208 applications and had found 149 of them admissible, of which 78 had been settled. Some 30 other cases were referred to administrative courts, which were the only ones which could handle damage suits against the Government. Once the Commission referred a case to these courts, it had the power to intervene if action was not taken within reasonable time; nevertheless, it could not challenge any decision taken by the courts. It was not considered to be a means of internal recourse for the purpose of determining the admissibility of complaints to the Human Rights Committee. The Commission also exercised a preventive function through its involvement in promoting the education and training of government officials and its authority to enter places of detention for the purpose of drawing the attention of the prison authorities to situations that might give rise to human rights violations. The Commission had also undertaken various information activities to publicize the Covenant, was planning to establish clubs in each prefecture for the purpose of informing and educating the public and was promoting the introduction of human rights courses in various educational establishments.

257. In reply to questions concerning article 3 of the Covenant, the representative explained that equality between men and women was complete in every respect. In the family, parental authority was exercised jointly by the father and the mother and the spouses had the same duties and the same responsibilities. Merit was the sole criterion for an employee's promotion and the principle of equal pay for equal work was fully applied.

258. Regarding questions raised in connection with article 4 of the Covenant, he stated that the special measures authorized by article 19 of the Constitution could be used by the President of the Republic only in case of a threat to the institutions of the Republic. The nature and duration of those measures depended on the nature and gravity of the circumstances. The provisions authorizing the suspension of fundamental rights had never been invoked - even in 1986 when the President had declared a curfew - and the Government of Togo had therefore not had any reason for issuing the notification envisaged in article 4 of the Covenant.

259. Replying to questions raised in connection with article 6 of the Covenant, the representative stated that the offences sanctioned by the death penalty were very clearly defined by the Criminal Code and that the offence against morality for which the death penalty could be imposed was limited to sexual morality. The State Security Court had imposed 23 sentences of capital punishment between 1970 and 1986, but no executions had as yet been carried out. The special court responsible for punishing crimes involving bloodshed had now become nearly obsolete. While it had imposed a number of death sentences between 1978 and 1984, only four of them had actually been carried out. In the event that a minor was guilty of an act entailing the death penalty, the maximum sentence that could be incurred was 10 years' imprisonment.

260. Commenting on questions raised under articles 7 and 10 of the Covenant, the representative emphasized that, although torture was not expressly prohibited by law, certain articles of the Criminal Code were assumed to cover it and were sufficient. There had as yet been no proceedings instituted on such grounds against police or prison authorities and a complaint that had once been filed with the National Human Rights Commission was subsequently withdrawn.

261. Referring to questions raised by members concerning article 9 of the Covenant, the representative explained that an arrested person had to be brought before the Prosecutor's Office within 48 hours. Administrative detention not exceeding three years was one of the measures authorized by an Act of 1961 designed to penalize acts that endangered public order and State security. Lacking a sufficient legal foundation, the measure was to have disappeared in 1977 but that had not yet happened. However, the establishment of the National Human Rights Commission represented a significant forward step in that regard. A person who had been detained for an unduly long period of time could appeal to the Indictment Division, the Public Prosecutor or the Chief State Counsel. Togolese prisons were not overcrowded and efforts were being made to rehabilitate the detainees, although the lack of resources made this difficult. Detainees could be assigned to three categories of work, depending on their behaviour and their prospects for reform. If the Red Cross had not yet been allowed to see military detainees, that could only have been for lack of perseverance since the Government could not refuse to grant it such authorization.

262. With reference to article 11 of the Covenant, the representative explained that imprisonment for debt was applicable only to benefit special creditors such as the State, public entities and third parties instituting a civil action in a criminal case and it was not possible to imprison someone for a purely civil debt. In cases of misappropriation of public funds, the period of imprisonment could be extended beyond the normal duration. However, a detainee could be released if he provided guarantees of reimbursement.

263. In reply to questions relating to article 12 of the Covenant, the representative explained that expulsions ensuing from a judicial order or pursuant to extradition decrees adopted by the Council of Ministers could be appealed on the grounds of abuse of authority. An appeal before the Supreme Court for rescission of extradition measures was suspensive in effect.

264. Commenting on questions raised under article 14 of the Covenant, the representative of the State party recalled that Togo had a French legal tradition and that its judges were appointed and trained in the same manner as French judges. Judges were appointed by decree of the President of the Republic and enjoyed absolute independence. They could neither be removed nor promoted against their wishes. It was expected that the new legal texts relating to the High Judiciary Council and the Judiciary Statute that were currently in preparation would strengthen the autonomy of the judiciary even further. The State Security Court ruled on cases affecting the internal and external security of the Republic and had been established to take up cases that, if submitted to ordinary courts, could expose such courts to pressure. Other special courts had been established for punishing embezzlement of public funds and crimes involving bloodshed. The presiding official of a special court was in all cases a judge and such courts utilized the ordinary legal provisions appearing in the Criminal Code. The rights of the defence were fully guaranteed and convicted persons could appeal to the Supreme Court. Legal assistance had been provided for under the 1978 Ordinance concerning the organization of the judiciary and was obligatory in criminal cases and in judgements involving minors. All criminal proceedings were public except when they involved threats to public order or morality. However, even in the latter case, the decision was made public following the proceedings.

265. In reply to questions relating to article 19 of the Covenant, the representative explained that political opinions were expressed in the context of a single party; that militants were free to criticize or to propose political options at all levels, particularly on the occasion of the assembly held in preparation for the Party's national congress; and that once decisions had been taken by the majority they were no longer open to discussion and could only be criticized at the ensuing congress. With regard to political offences, he noted that some trials involving offences against the Head of State had actually occurred in Togo but that the offences in question related to acts that went far beyond mere criticism.

266. With reference to articles 23 and 24 of the Covenant, the representative explained that, in principle, only the death of the spouse could put an end to a marriage. However, in certain circumstances a decree of divorce could be issued by the courts. The age of majority in Togo was 21 years in respect of civil liability, 18 years in respect of criminal liability and political eligibility, and 17 years for women and 20 for men in respect of marriage. After the age of 13, a judge had to determine whether a minor who had committed a crime could be held to have acted knowingly.

267. In reply to a number of questions asked by members of the Committee in connection with article 25 of the Covenant, the representative explained that the pluralism which had been instituted at the time of independence had rapidly degenerated, giving rise to a plethora of parties based on ethnic units, each serving its own interests. This had engendered a civil war mentality. The Togolese People's Rally had proved to be the best means of achieving national unity and solidarity. The concept of "rally" implied respect for the individual and for diversity of opinions, the single Party being a forum where citizens could engage

in dialogue and freely express their points of view. The Party took precedence over the State and its statutes could indeed be regarded as a kind of super-constitution. According to article 5 of the statutes, admission to the Party was not automatic and no citizen was obliged to be a member of the Party. Those who preferred not to join the Party were not subjected to any discrimination and could vote or stand for election.

268. With respect to article 27 of the Covenant, the representative of the State party said that approximately 40 ethnic groups lived in Togo, in full respect of each other's customs. Customary courts had competence in dealing with cases involving minorities.

269. Members of the Committee thanked the representatives of the State party for their clear replies to the Committee's questions and commended the Government of Togo, in particular, for its efforts toward limiting the imposition of the death penalty and for having established the National Human Rights Commission. At the same time, members noted that certain aspects of the situation in Togo continued to give rise to concern, especially in respect of articles 4, 9, 14, 18, 19, 21 and 22 of the Covenant. Several members also referred to concerns associated with the single party system. The Committee expressed the hope that the Togolese authorities would take its concerns into account and looked forward to learning of further progress toward the enjoyment of human rights in Togo when reviewing the second periodic report.

270. The representative of the State party said that his delegation had taken due note of the Committee's comments and suggestions and would convey them to the Government. Those observations would help Togo in bringing its national legislation into closer conformity with the Covenant.

Uruguay

271. The Committee considered the second periodic report of Uruguay (CCPR/C/28/Add.10) at its 876th to 879th meetings, held from 27 to 28 March 1989 (CCPR/C/SR.876-879).

272. The report was introduced by the representative of the State party, who drew attention to the tradition of democratic government and institutions in his country, which had now been restored after a 12-year period of military dictatorship. Having overcome that national tragedy, democratic Uruguay expected to resume its active role in the international defence of human rights.

273. Referring to certain developments that had occurred since the submission of the report, the representative noted that a new law, regulating the remedy of amparo, had been promulgated on 18 December 1988. Additionally, a Human Rights Commission had recently been established by the Government to advise the executive authorities. The representative also recalled that a referendum was to be held on 16 April 1989, as envisaged under the Constitution, to determine whether to repeal or to confirm Act No. 15,848, which declared all punitive claims by the State relating to the period of de facto government as having lapsed.

Constitutional and legal framework within which the Covenant is implemented

274. With regard to that issue, members of the Committee wished to know whether there had been any court decisions in cases where the Covenant had been invoked; what Uruguay's legal situation had been since 1 March 1985, particularly in respect of the applicability of the Institutional Acts adopted during the de facto period; what measures had been adopted since 1 March 1985 to provide remedies for violations that had occurred during the de facto period and how effective the measures taken had been in respect of restoring the rights, entitlements or employment of public servants who had been dismissed during the de facto period for ideological or political reasons; what follow-up had been given to certain specific decisions or requests of the Committee in the foregoing regard; what special measures had been taken, if any, since 1 March 1985 to inform the Uruguayan population about their rights under the Covenant and the Optional Protocol and to promote human rights, particularly in the schools, among the least privileged population groups and among police officials who had served during the military government; what the functions, scope and influence of the advisory committee on human rights were; and how many complaints had been filed with the Inter-American Commission on Human Rights since Uruguay had become a party to the American Convention on Human Rights. Members also wished to receive additional information concerning the practice of the Supreme Court of Justice in granting pardons under article 20 of Amnesty Act No. 15,737 of 8 March 1985; the relationship between the Covenant and the American Convention on Human Rights; and concerning factors and difficulties, if any, affecting the implementation of the Covenant since 1 March 1985.

275. With specific reference to the Law of Expiry No. 15,848, members expressed concern that leaving unpunished those who had violated human rights during the de facto period would have a negative impact on the deterrence of future violations and would set an undesirable precedent both internally and externally. Accordingly, they wished to know, in particular, what measures had been taken in the context of that law to provide effective safeguards for the protection of human rights and how the right of victims of human rights violations to effective compensation was being ensured. In the latter connection, members asked what remedies could be invoked by such victims or by the family members of disappeared persons and whether, notwithstanding the expiry of public penal action for those responsible for violations during the de facto government, the current procedures for filing civil suits for obtaining compensation were adequate to ensure effective relief. Additionally, grave doubts were expressed as to whether the Law of Expiry was compatible with article 2, paragraph 3, and article 9, paragraph 5, of the Covenant. It was further asked whether that law also granted immunity for crimes that were not committed during the performance of duty by members of the armed forces or the police; how many cases of disappearances it covered; and whether the concept of expiration applied solely to the State or also to the possibilities open to individuals to address the courts.

276. In his reply to questions raised by members of the Committee, the representative of the State party explained that Uruguay admitted the direct application of international norms in its domestic law and therefore placed no legal impediment to the direct application of the Covenant in judicial or administrative proceedings. While there had thus far been no cases where the provisions of the Covenant had been invoked, in several instances the norms of the American Convention on Human Rights had been invoked and applied by the courts. The Institutional Acts adopted by the de facto government had all lapsed since

1 March 1985 and legislation that violated fundamental freedoms had been specifically repealed by Parliament. Other norms previously in force had been ratified or amended by Parliament, as appropriate. Up to 31 December 1987 a total of 14,836 civil servants had been dealt with under Act No. 15,783, of whom 10,321 had been reinstated in their posts and 4,515 had retired or had been granted improved retirement benefits. Virtually all those who had been dismissed for ideological reasons had now been reinstated, although some cases were still pending owing to the complexity of the legal problems involved. Many former members of the Tupamaros movement had also been reinstated and had recovered their assets. The institution of pardon, provided for by law, was an act of individual clemency whereby both the offence and the sentence were annulled. With the restoration of democracy, the right of pardon had been withdrawn from the President and restored to the competence of the Supreme Court of Justice. Any convicted person could seek a pardon from the Supreme Court of Justice during the annual review of prison and criminal cases.

277. The Commission to advise the Government on the application of the International Covenant on Civil and Political Rights was a special mark of the Government's respect for the dignity of the human person. The Commission comprised representatives of the Ministry of Foreign Affairs, the Ministry of Labour and Social Security, the Ministry of Education and Culture, the Ministry of the Interior and a representative of the Presidential Office. Seminars and workshops had been held to provide information on and details of human rights and to ensure the international protection of those rights. There was also an experimental scheme to teach human rights in elementary schools. Since the Committee's meetings were open to the public and attended by journalists and non-governmental organizations, there could be no doubt that the discussion would receive scrupulous coverage and be reported in Uruguay. The referendum would allow Uruguayans from all levels of society to determine whether the Law of Expiry was just. The media were giving extensive coverage to the referendum.

278. After the restoration of the constitutional State, the Covenant had been fully applied in Uruguay and there were no legal factors impeding its implementation. A few violations had occurred since 1 March 1985 and offenders had been brought to justice before the civil courts, which were the only courts operating in the country. Uruguay was aware of its obligations under both the Covenant and the American Convention on Human Rights. Its obligations under the latter were even greater than under the Covenant. A total of five complaints had been lodged with the American Commission on Human Rights since 1 March 1985, four of which involved events that had taken place during the period of de facto government.

279. Responding to questions relating to the Law of Expiry, the representative expressed understanding for the Committee's concerns about the possibility of incompatibility between that Act and the Covenant but stated that there had been no derogation from the provisions of the Covenant. The Law of Expiry was intended to bring stability and social tranquillity to a deeply divided nation, after many years of dictatorship and undeclared civil war, and in such situations there were no perfect solutions. Uruguay's experience had shown that the law had not had the effect, which some had feared, of encouraging others to violate human rights in the knowledge that they would go unpunished. With or without amnesty, there were always those who sought to undermine Governments and it was hard to see how an amnesty could foster dictatorship. The law did not extend to crimes other than those committed for political reasons nor to cases in which proceedings had already been initiated. While the Government would not be instituting further criminal

proceedings as a result of the adoption of the Law of Expiry, it had committed itself to provide compensation for the victims and to ensure that such crimes did not take place in the future. It would be up to the courts to decide whether victims could make claims. In many cases, claims for compensation were in process. Furthermore, the Law of Expiry did not put an end to investigations into the fate of disappeared persons and the Government was doing everything in its power to uncover the fate of disappeared persons. Out of a total of 164 persons who had disappeared, none of them were minors.

Self-determination

280. With reference to that issue, members of the Committee wished to know Uruguay's position in respect of the right to self-determination of the Namibian, Palestinian and South African people and what measures Uruguay had taken to prevent public and private support for the apartheid régime of South Africa.

281. In his reply, the representative of the State party said that his country repudiated racial discrimination and apartheid and was a party to the relevant international instruments. Uruguay's democratic Government had reduced its level of representation and had limited its relations with South Africa. In respect of the Middle East, Uruguay supported Security Council resolution 242 (1967) and the right of all peoples in the area of self-determination, while acknowledging Israel's right to exist.

State of emergency

282. With reference to that issue, members of the Committee wished to know whether the state of emergency, as notified under article 4 (3) of the Covenant on 30 July 1979, had been formally terminated; how the power of the courts to judge the substantive grounds for detention in the course of habeas corpus proceedings during a state of emergency, as specified under article 4 (1) and (2) of the Covenant, was ensured; and what rights were subject to derogation in an emergency.

283. In his reply, the representative of the State party said that there was no state of emergency in Uruguay. The Constitution provided for no general suspension of laws in an emergency but only for preventive and temporary prompt security measures. Judges could order a person's release from detention during habeas corpus proceedings only on formal grounds, such as illegal imprisonment or danger of physical mistreatment. The substantive decision as to who should be detained during an emergency came within the purview of the executive. The advisability and propriety of that decision could be judged only by the legislature. Under the Constitution, the executive was required to inform Parliament within 24 hours of any prompt security measures it had adopted and the latter had the power to reject such measures. While there was no exact correspondence between article 4 of the Covenant and article 168 of the Constitution, no derogations of rights incompatible with article 4, paragraph 2, of the Covenant were permitted under the Constitution and laws of Uruguay.

Non-discrimination and equality of the sexes

284. In connection with those issues, members of the Committee wished to receive information concerning the laws and practice giving effect to the provisions of article 2 (1) and 26 of the Covenant; the status of women, particularly their participation in the political and economic life of the country; the status of

blacks; and the measures that had been taken to improve the condition of the latter and to ensure their full enjoyment of the rights provided for under the Covenant. Members also wished to know the current status of the proposed amendment to article 140 of the Penal Code in relation to discrimination; in which respect the rights of aliens were restricted as compared with those of citizens; why article 267 of Act No. 15,855 conferred the legal administration of the assets of children only upon the father; and what measures had been taken to eliminate prejudice against women at work and to ensure the application of the principle of equal pay for equal work.

285. In his reply, the representative of the State party noted that the norms of the Covenant were reflected in the Constitution and laws of Uruguay and that articles 7 and 8 of the Constitution, which provided for certain basic guarantees without distinction as to nationality as well as for equality before the law. It was hoped that the proposed amendment to article 140 of the Penal Code, making incitement to racial hatred a criminal offence, would be approved by Parliament before the end of the year.

286. Racial discrimination was completely alien to Uruguay, which was a melting pot of races and peoples of different origins. There were no indigenous or national minorities. The population of African origin numbered only about 30,000 and enjoyed full access to education and to public employment. Although there were relatively few black professionals, that was due to economic circumstances and not to racial discrimination. The Constitution protected the rights of all the inhabitants of the country, including foreigners, and there were no legal restrictions on the latter except for ineligibility for the office of President and Vice-President of the Republic.

287. Under the Civil Code and the Civil Rights Act of 1946, women enjoyed the same rights as men in respect of children, property and matrimonial domicile. The reference in article 267 of the Civil Code to "father" (el padre), in relation to the administration of children's assets, should have read "parents" (los padres) and that mistake was being corrected. The Minister for Education and Culture in the current Government was a woman and there was also a woman member of the Supreme Court of Justice. Difficulties, based largely on sociological factors, were however still being encountered in ensuring the full equality of women in practice. To deal with certain social problems affecting women, such as physical ill-treatment or sexual abuse, the Government had recently established the Office of the Special Commissioner for Women, which was staffed exclusively by women and which also comprised a special police department.

Right to life and prohibition of torture

288. With regard to that issue, members of the Committee wished to receive information on article 6 in the light of the Committee's general comments Nos. 6 (16) and 14 (23) and on measures taken to ensure strict observance of article 7 of the Covenant and to punish violators. Members also wished to know what the infant mortality rate was; whether any deaths had occurred recently as a result of torture or other abuses by military or police officials; whether the norms regulating the use of force by such officials were consistent with the Code of Conduct for Law Enforcement Officials; what specific means were used to control the activities of the police and military forces and of correctional staff and what type of training was provided to such personnel; how the rights of the mentally ill were safeguarded; what the current state of investigation was into the 56 cases of

unresolved disappearances cited by the Commission on Human Rights in 1986; what measures had been taken to provide compensation to victims of torture under the de facto government; whether there were any circumstances under which abortion could be considered as legal; and whether, subsequent to the entry into force of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Penal Code had been appropriately amended to establish specific penalties for violators.

289. In his reply, the representative of the State party recalled that, under the Constitution, the death penalty had been abolished for all offences since 1907. There had been no cases of deaths as a result of torture or police abuse nor any cases of disappearances since 1 January 1985. There had only been six serious cases of mistreatment by the police since that time and all of them had been immediately investigated by independent judicial authorities. The two overcrowded prisons in Montevideo dating from the nineteenth century had been closed down and the inmates transferred to new prisons with more modern facilities and better opportunities for rehabilitation. The use of firearms by police was authorized only under very limited circumstances. There was a police school for officers but not for lower ranks. Although no school for prison guards existed as yet, it was intended to establish one as part of the police school. The infant mortality rate was 20 per 1,000 and life expectancy was 72 years.

290. Responding to other questions, the representative reiterated that while the Law of Expiry No. 15,848 eliminated any possibility of criminal proceedings, victims of ill-treatment were not left without remedy but could seek to enforce their rights before an impartial legal authority. Amnesty Act No. 15,737 of 8 March 1985 also provided for the payment of compensation to victims of mistreatment as well as for their reinstatement in their former posts and the back-payment of wages. The de-criminalization of abortion was currently the subject of much debate in Uruguay. Not all abortions were viewed in the same light and varying degrees of criminal responsibility were attached to them. The entry into force on 26 June 1987 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment had been of great importance since it brought into effect Act No. 15,798 of 27 December 1985, which defined, for the first time in national legislation, the offence of torture. There had been no serious complaints of ill-treatment since that date.

Liberty and security of the person

291. With reference to that issue, members of the Committee wished to know whether any investigations had actually been carried out under Act No. 15,848 of 22 December 1986 in respect of alleged disappearances of individuals and the kidnapping of minors; what follow-up had been given to the Committee's views in cases of disappearances submitted under the Optional Protocol, particularly with regard to the compensation of victims; what the maximum periods of detention were in custody and of pre-trial detention, respectively; how quickly after arrest a person's family or lawyer could be contacted; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and the relevant regulations made known to prisoners; and how effective the activities of the National Prisoners and Discharged Persons Aid Association had been in promoting the reintegration of former inmates into society and in preventing recidivism.

292. Members also wished to know what the differences were between standard and maximum security prisons; what improvements in the treatment of prisoners had

resulted from the activities of the Centre for Classification, Diagnosis and Progressive Treatment of Detainees; and whether earlier provisions relating to the payment of debts arising from prison expenses were still in force.

293. In his reply, the representative of the State party stated that while cases of disappearances and kidnappings of minors - all of which had occurred outside Uruguayan territory - had been investigated pursuant to article 4 of the Law of Expiry, many non-governmental organizations and individuals had declined to co-operate with the military prosecutor charged with the conduct of the investigation. The investigation had also proved difficult because of the complexity of the relevant international procedures. Nevertheless, some minors had been located in neighbouring countries and a number of them had been united with their families. In the case of Mariana Zeffarini, the Minister for Foreign Affairs had assumed personal responsibility for the investigation and was in direct contact with her father. Uruguay intended to carry out its obligations under the Covenant and planned to inform the Committee promptly on the procedures that had been followed in respect of each case submitted under the Optional Protocol on which the Committee had adopted final views. The results to date of the activities of the Centre for Classification, Diagnosis and Progressive Treatment of Detainees had been very encouraging but statistical data in that regard were not immediately available. Attempts had been made in Uruguay, notably at the Santiago Vazquez prison complex, to improve the conditions of the inmates and to bring their treatment into line with constitutional precepts and international norms but such reforms and improvements had unfortunately not yet been extended to all of the prisons in the country. The Constitutional Government had written off the debts that former prisoners had owed for their food bills in prison and had refunded such payments to those who had been obliged to make them under the dictatorship.

Right to a fair trial

294. With reference to that issue, members of the Committee wished to receive information on article 14 in the light of the Committee's general comment No. 13 (21) and on the availability of free legal aid. Members also requested clarification of the changes that had occurred in the role of the military courts since the restoration of democratic government and of the activities of various tribunals and the Supreme Court of Justice in respect of the annual reviews of prison visits and of criminal cases.

295. In his reply, the representative of the State party reaffirmed the independence of the judiciary in his country. He noted that the main problems were procedural and that the reliance on a system of written proceedings - which had medieval origins and had been inherited from Spain - had made the process of justice extremely slow. Military courts were only competent to hear cases involving military offences such as insubordination and desertion. Such courts could not try civilians, not even under a state of war, and military personnel were also prosecuted in civilian courts for ordinary offences. Free legal aid was available from the Faculty of Law. There was a large number of public defenders throughout the whole country and the latest national budget provided for significant further increases in their number. Preliminary hearings were held in the presence of defence lawyers and trials could not be held except where the defence had the opportunity to question and cross-examine witnesses.

Freedom of movement and expulsion of aliens

296. Regarding that issue, members of the Committee wished to receive additional information on the position of aliens in the light of the Committee's general comment No. 15 (27) and concerning the effectiveness of the efforts of the National Repatriation Commission in promoting the return of Uruguayan citizens and their reinstatement in society. Members also requested clarification of the procedures relating to the entry and expulsion of aliens and to the circumstances relating to the imprisonment of the leader of the National Party after his return from exile abroad.

297. In his reply, the representative of the State party said that it was a basic rule in Uruguay that there could be no distinction between aliens and citizens with respect to their rights except, of course, with regard to political rights, which were accorded only to citizens. Aliens could not be expelled for committing a crime and the country had never deported an alien whose life or freedom was at risk elsewhere. If the executive authorities decided to expel an alien, the latter was entitled to receive legal advice and to apply for appropriate remedies including, since 19 December 1988, the right to amparo. The National Repatriation Commission had contributed to the success of the repatriation, particularly in helping to distribute international assistance to the returnees. Most of those repatriated were still in the country although few had been able to return to their homes because of the difficult economic situation. The Commission had now concluded its work. The leader of the National Party, Mr. Wilson Ferreira, had been prevented from returning to the country by the de facto régime and not the Constitutional Government and had been active in promoting the Law of Expiry after his return.

Right to privacy

298. With reference to that issue, members of the Committee wished to know whether the practice of tapping telephone conversations, which had been current during the period of de facto government, had been discontinued; what bodies could authorize interference with privacy at present; whether personal information was stored in computers or data banks and, if so, what rights individuals enjoyed with respect to the content of such information; and whether article 7 of Decree Law No. 15,672, which provided for the "right of reply", might not inhibit the freedom of expression.

299. In his reply, the representative of the State party said that the right to privacy was guaranteed in Uruguay and telephone conversations were no longer being intercepted except in certain circumstances authorized under the law. Evidence obtained from interception or wire-tapping without a court order was not admissible in court. There were no data banks on individuals and census-related statistics were compiled without harming individuals. The "right of reply" could be invoked only when a person's honour or dignity had been affected by the publication of false information in the media and did not constitute a threat to freedom of the press unless that right was abused.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

300. With regard to those issues, members of the Committee wished to know whether religions were registered and received official recognition and, if so, on what basis; whether the country's archives were open to the press and public; whether

the press law against "malicious information" had been repealed; what legal régime governed the ownership and licensing of the press; and whether the various publications that had been closed down under the dictatorship were entitled to receive compensation for their losses.

301. In his reply, the representative of the State party said that the doctrine of separation of Church and State was firmly established in Uruguay and there was no official religion. There was no official control of religious groups and they were not required to register unless they sought legal status as corporate bodies. The Catholic Church had corporate status under the Constitution but other religions could also obtain such status if they wished. Freedom of information was considered to be one of the foundations of a democratic régime and there was full access to information under the current administration. There were many newspapers and radio stations in Uruguay and 90 per cent of them were against the Government. Even the Tupamaros had their own station. All government documents, files and archives were public, except for certain documents that had been classified secret under the law. Administrative or legal remedies were available to anyone who had wrongfully been denied access to official information. The former Press Law was still in force but some of its provisions were to be repealed by a bill that was currently under consideration. The courts had held that the burden of proof in demonstrating "malicious intent" rested with the State, which would make it difficult for the Government to use the law to stifle legitimate criticism. Under the law, publications that had been closed down by the dictatorship and believed that their economic interests had thereby been damaged could petition the courts for compensation, as a number of publications were currently doing, or seek an administrative settlement, as the Communist Party was doing.

Freedom of assembly and association

302. With reference to that issue, members of the Committee wished to receive information on laws and practice relating to public meetings; on the actual situation in respect of the functioning of trade unions; the current status of certain draft bills relating to trade-union rights; and relevant laws and practices relating to the establishment of political parties. Members also wished to know whether there was any mechanism - other than recourse to the courts, which involved a lengthy procedure - to safeguard job security for labour leaders, provide for collective bargaining and prevent the discriminatory dismissal of labour leaders; and whether the unrestricted exercise of the right to organize and to strike applied to all civil servants and public employees, including the police, and, if so, how essential supplies and services were protected.

303. In his reply, the representative of the State party said that public meetings were regulated under legislation enacted in 1897, which was still considered to be highly effective. Open-air public meetings during the daytime could be held without prior authorization, the latter being required only for night meetings. The police were present at such meetings only for the purpose of protecting the right of assembly. Refusals to issue an authorization could be contested in court. The right to freedom of association was total. There was no difficulty in forming unions, which enjoyed tax exempt status, and there were no legal impediments to the right to strike except in the case of the police and the armed forces, whose members were prohibited from striking. Workers in such essential service sectors as health, water, electricity, or post and transportation services could be enjoined from striking by the Ministry of Labour under a 1968 law, but the labour unions had refused to recognize the legitimacy of that law, holding that the

right to strike was of an unrestricted character. Draft legislation containing a bill of rights for trade unions was still under consideration in Parliament. Pending its enactment the International Labour Organisation's norms were in force. The only weapon currently available to a dismissed trade union member was to have his union call a strike, which happened frequently, but the labour courts - which acted much more swiftly than ordinary courts - were beginning to entertain the concept of "wrongful dismissal".

Protection of family and children

304. With regard to that issue, members of the Committee wished to know whether all discrimination between spouses and all differences in the status and rights of children born in or out of wedlock had been eliminated under Act No. 15,855 of 17 March 1987; what the law and practice were regarding the employment of minors; what the role and functions of the Children's Council were in caring for minors; and what regulations had been adopted by the Council in respect of the working conditions of minors.

305. In his reply, the representative of the State party explained that Act No. 15,855 had broadened the obligations of the natural parents to equal those of parents of legitimate children; had instituted the same system of surnames for all children, which reduced the incidence of social discrimination, and had granted equal status to all children under the inheritance laws. The regulations relating to the employment of minors were contained in the Code of the Child and were fully compatible with the provisions of the Covenant. Under the Code, children under 14 were prohibited from working in industrial enterprises and children between 12 and 14 were permitted to do farm work in rural areas only outside of regular school hours. Regrettably, the latter regulation was not always fully respected. Children between the ages of 14 and 13 were prohibited from working in environments detrimental to their health, morals or lives. Night work was prohibited for all children under the age of 16 and their working day was limited to six hours per day and 36 hours per week. Compliance with child labour laws was monitored by the Institute for the Protection of Minors and violators were subject to fines and other penalties. In 1988, the Children's Council had been renamed the Child Welfare Institute and had been granted greater autonomy and higher status.

Right to participate in the conduct of public affairs

306. With reference to that issue, members of the Committee wished to know how access to the public service was regulated and what kind of information in a person's record might bar such access.

307. In his reply, the representative of the State party noted that access to public service was regulated by the Constitution, which also contained specific provisions relating to the status of judges, magistrates, diplomats and elected officials. Except for the latter, political affiliation did not need to be declared since all other civil service positions were open to citizens regardless of their ideological or political commitments. The main qualifications for public office related to citizenship, age, literacy and the absence of any recent criminal record. Applicants also had to be of good moral character and were required to take an oath of loyalty to the national flag.

Rights of minorities

308. With reference to that issue, members of the Committee wished to receive information concerning ethnic, religious and linguistic minorities in Uruguay, if any, and regarding measures taken to guarantee their rights under article 27 of the Covenant. Some members also suggested that the provisions of article 27 were not intended to apply solely in cases where there were problems among different communities or races or where minorities were necessarily accorded inferior status, and should be given a broad reading.

309. In his reply, the representative of the State party explained that there were no linguistic, ethnic or religious minorities in Uruguay. The official language of the State was Spanish and the civil and penal codes provided for methods by which non-Spanish speakers could avail themselves of interpretation services when necessary. Blacks and non-Catholics, while constituting only a small portion of the population were not considered minorities but simply Uruguayans sharing the same language and tradition as everyone else. The Government of Uruguay did not have a restrictive view of article 27 and was firmly committed to the protection of rights such as those relating to the practice of one's own religion and to receive linguistic assistance as necessary.

General observations

310. Members of the Committee thanked the State party's delegation for co-operating with the Committee and for having engaged in a constructive dialogue. They expressed admiration for Uruguay's efforts to restore democracy and welcomed the impressive progress that had been achieved in restoring democratic institutions and respect for human rights. However, members voiced certain continuing concerns, especially with respect to the compatibility of the Law of Expiry with the Covenant, and about some aspects of the Press Law, as well as guarantees relating to derogations under article 4 of the Covenant. They hoped, in particular, that the Law of Expiry would not prevent victims of human rights violations under the de facto régime from availing themselves of civil remedies and receiving compensation. They also hoped that the Government would study and take appropriate action in respect of the cases submitted under the Optional Protocol on which the Committee had adopted final views and would inform the Committee thereon. They also requested the delegation to convey an account of the Committee's discussions to the competent authorities and to the people of Uruguay.

311. The representative of the State party assured the Committee that the views expressed by members would be made known to his Government.

Philippines

312. The Committee considered the initial report of the Philippines (CCPR/C/50/Add.1/Rev.1 and Corr.1) at its 884th to 886th meetings, held on 31 March and 3 April 1989 (CCPR/C/SR.884-886).

313. The report was introduced by the representative of the State party, who noted that within the short span of three years since the overthrow of the martial law régime of President Marcos the political structure for a democratic system had again been put into place in the Philippines. A new Constitution had been drafted and ratified by the people, congressional and local elections had been held and the judicial system, which had completely deteriorated during the martial law period,

had been reorganized. The Constitution declared the primacy of human rights as a policy of the State, contained an expanded Bill of Rights, and enjoined the Congress to give highest priority to the enactment of measures that protected the right of all people to human dignity. The Constitution also provided for the creation of a Philippine Commission on Human Rights.

314. Despite the present Government's firm commitment to the observance of and respect for human rights, certain factors, including communist insurgency, activities of separatist groups and repeated coup attempts staged by dissident members of the military, threatened the recently restored democracy in the country and affected the full enjoyment of human rights. Fortunately, all these attempts to destabilize the Government had been repulsed. Despite the magnitude of the problems it was facing, the Government of the Philippines was determined to work for a better future for its people.

315. Members of the Committee expressed satisfaction that the Government of the Philippines had ratified the Covenant immediately upon the restoration of democracy and welcomed its efforts to restore the full enjoyment of human rights in the country. They also expressed appreciation for the quality of the report, which, in the view of members, was in conformity with the Committee's guidelines and provided a faithful reflection of the situation in the Philippines.

316. With reference to article 2 of the Covenant, members wished to know whether the compatibility of constitutional or legislative provisions with the provisions of the Covenant could be tested in the courts and, if so, which of the norms would have precedence in case of conflict and on what legal basis; whether the provisions of the Covenant had been directly invoked and, if so, under what procedures and with what results; whether the regional structure in the Philippines made it difficult to implement the Covenant uniformly; what the reasons were for the 11-month gap between the ratification of the Covenant and its entry into force; and what the current status was of pending legislation that would hold members of the armed forces and the national police criminally liable for abuses against citizens. In the latter connection, several members wondered why Presidential Decree No. 1850, which provided for trial exclusively by court-martial of crimes and offences committed by members of the armed forces and the police, had not yet been amended or repealed along with other decrees that had been issued by former President Marcos and wished to know the details of cases in which the President had waived that requirement for court-martial.

317. In connection with the newly established Commission on Human Rights, members wished to know, in the light of the fact that the Commission did not currently have the power to bring cases before the courts nor to subpoena documents, what the actual effects of its recommendations were; what the relationship was between the Commission's jurisdiction and that of the military and, in particular, how the Commission would handle complaints involving alleged human rights violations by members of the military and the police; in how many cases the Commission had been able to take effective measures in favour of victims of human rights violations and whether it received the necessary support from the Government; how many members of the military or police forces had been charged with crimes as a result of the Commission's investigations; what measures for the promotion of human rights had been recommended by the Commission to the Congress and what action the latter had taken thereon; and whether, in investigating alleged violations of human rights, there was any overlapping in the competence among the Commission, the Human Rights Committee and the judicial authorities.

318. Concerning article 3 of the Covenant, clarification was requested of the steps taken by the Government to ensure women's rights, in the light of information given in the report showing the existence of difficulties in this regard.

319. Regarding article 4 of the Covenant, members requested clarification of constitutional and legal provisions relating to the suspension during a public emergency of rights covered under the Covenant asking, in particular, which specific rights, other than the right of habeas corpus, could be so suspended. They also wished to know what the procedures were under which the constitutionality of a proclamation of martial law could be challenged before the Supreme Court; what the latter's role was in ensuring compliance with article 2, paragraph 1, of the Covenant; and whether the right of habeas corpus or any other rights had been suspended since the entry into force of the Covenant.

320. With reference to article 6 of the Covenant, many members of the Committee expressed concern about the reported death or disappearance of persons resulting from illegal activities carried out by the armed forces, the police or vigilante groups. In that connection, members wished to know, in particular, what the relationship was between the Civilian Home Defence Forces, the Citizen Armed Forces and the so-called vigilante groups; how many cases of extrajudicial killings and abductions had been reported and what the current trends were in respect of such abuses; how many human rights activists had been among the victims; how many vigilante groups were still active in the Philippines; how many arrests and prosecutions had been undertaken for such violations and with what results; what the findings were of the Investigative Commission established to inquire into the Mendiola massacre and whether that Commission's recommendations had been followed up; whether it was a fact that a member of the Government had created an association that included several vigilante groups and, if so, whether such action was compatible with article 28 of the Constitution and article 6 of the Covenant; what authority could order the dissolution of such groups; and whether the Government was, in fact, reconsidering the usefulness of such groups with a view to their abolition.

321. Members also wished to know what the infant mortality rate was in the Philippines; what measures had been adopted by the Government with respect to public health and economic, social and agrarian reform; whether the death penalty for such crimes as subversion, insurrection or rebellion could be introduced by a simple legislative enactment despite the virtual abolition of that penalty by the Constitution; and whether the simple ban (destierro) imposed as punishment upon parents who killed their minor daughters or partners caught in sexual misconduct was not overly lenient and lacking in conformity with the provisions of article 6, paragraph 1, of the Covenant.

322. In connection with articles 7 and 10 of the Covenant, members wished to know what machinery had been established for the prevention of torture and the investigation of complaints; whether additional steps were being contemplated by the Government to make its efforts against torture or other inhuman or degrading treatment more effective; and whether recently reported cases of torture occurring during police and military interrogations had been appropriately investigated, the guilty punished and the victims compensated.

323. As regards article 9 of the Covenant, members wished to receive information concerning the practice of arbitrary detention in unauthorized places, particularly military establishments and so-called "safe houses"; the results of any

investigation into such abuses; the measures being taken to ensure the implementation of the guidelines relating to access to detainees; the protection from intimidation of witnesses; and the relationship between the Free Legal Assistance Group and the armed forces.

324. Concerning article 11 of the Covenant, members of the Committee requested clarification of the statement, in paragraph 102 of the report, that "a person may be imprisoned as a penalty for a crime arising from a contractual debt".

325. With reference to article 12 of the Covenant, members of the Committee wished to know what measures had been taken to control the problem of forced evacuations in the course of military operations and how such evacuees were assisted; what procedures were used in relation to the transfer of certain tribes to reservations; whether members of those tribes participated in the relevant decisions; and whether the resurgence of armed conflict had led to the adoption of any limitations, on grounds of national security, on the right to freedom of movement.

326. Regarding article 13 of the Covenant, members of the Committee requested clarification of the government machinery established for the expulsion or deportation of aliens, such as the procedures relating to the treatment of "boat people", and of the circumstances under which summary deportation could occur.

327. With reference to article 14 of the Covenant, members wished to know what the current structure of the judiciary was and whether its membership was the same as under the Marcos régime; how the independence and status of magistrates was assured; what the prospects were for the complete restoration of the competence of the civil courts.

328. As regards article 15 of the Covenant, clarification was requested of the scope of the *ex post facto* clause in Philippine law and of the compatibility of article 22 of the Revised Penal Code with article 15, paragraph 1, of the Covenant.

329. With reference to articles 18 and 19 of the Covenant, members of the Committee wished to receive additional information on the permissible forms of prior restraint on the freedom of speech and freedom of the press in the Philippines. In connection with the "spiritual guidelines" sessions provided to soldiers as part of their training, during which they were given "an understanding of the universal concept of God as the source of ultimate goodness and the true meaning of life", it was asked whether such training was compatible with article 18, paragraph 1, of the Covenant.

330. Referring to numerous disturbing reports of harassment, persecution and even killing of trade unionists, journalists and human rights activists who were seeking to work together, members of the Committee wished to know why those particular groups were having difficulties, what steps the Government had taken to deal with that situation; and how the laws protecting freedom of association could be made more effective. They also wished to know which bodies were competent to rule on the status of associations and whether such bodies had discretionary power or were subject to legislative guidelines.

331. With regard to article 23 of the Covenant, members asked whether divorce was authorized under Philippine law and requested clarification of the rules applicable to the dissolution of marriage.

332. With reference to article 24 of the Covenant, members of the Committee wished to know what age limit had been set for joining the anti-insurgency forces; what age group the measures being taken to prevent children from participating in armed conflict were intended to protect; what the draft age was for young men; whether women were also subject to the draft; and whether any provision had been made for conscientious objectors. Members also wished to know what the implications of child prostitution were in respect of article 107 of the Child and Youth Welfare Code; whether article 110 of that Code, referring to the employment of children as domestics, was compatible with article 24 of the Covenant; what the minimum age was for the employment of children; and whether Philippine legislation discriminated between legitimate children and children born out of wedlock, particularly in matters of inheritance.

333. Regarding article 25 of the Covenant, members wished to know whether any practical measures had been taken to implement article 2 (26) of the Constitution, which prohibits political dynasties.

334. In connection with article 26 of the Covenant, members asked whether there was any discrimination among citizens in the Philippines with respect to economic, social or cultural rights such as social security entitlements.

335. With reference to article 27 of the Covenant, members of the Committee wished to receive additional information concerning the situation of ethnic, religious and linguistic minorities and about pending legislation designed for their protection and wished to know what opportunities the members of tribal groups in the Philippines had to preserve their culture, to profess and practise their religion, to use their language and to maintain their ancestral lands.

336. In her reply to questions raised by members of the Committee concerning article 2 of the Covenant, the representative of the State party explained hypothetically - in the absence of any litigation involving the Covenant - that on the basis of article VIII, section 4, paragraph 2, and section 5, paragraph 2 (a), of the Constitution, it could be assumed that the Supreme Court would give the Constitution priority over a treaty. It was also clear, however, pursuant to the principle pacta sunt servanda to which the Philippines adhered, that the Covenant formed part of the law of the nation and could be invoked before the various courts or administrative authorities. This had not yet occurred, as domestic laws covered all the rights in it and the Covenant had itself only been in force in the Philippines for less than two years. The 11-month delay between the Covenant's ratification and entry into force was caused by certain serious problems encountered by the Government, which had made it impossible to deposit the instrument of ratification with the Secretary-General of the United Nations until eight months after the passage of relevant legislation. The ratification of the Optional Protocol by the Senate was expected soon.

337. Responding to questions concerning the Commission on Human Rights, the representative explained that the Commission was an independent constitutional body with fiscal autonomy and with powers to investigate all violations of civil and political rights as well as power to issue subpoenas. Any finding by the Commission on the basis of its own investigations and hearings of a prima facie human rights violation was referred for action to the city or provincial prosecutor in criminal cases or to the civil courts. Pursuant to an agreement reached in 1988 between the Commission and the Department of Justice, the prosecutors employed by the latter were prepared to bring legal actions on the basis of investigations

carried out by the Commission. Where government rather than court action was needed, the case was referred by the Commission to the relevant authorities. On some occasions, the Commission had been able to extend protection to witnesses, such as those testifying to the Lupao and Kalayaan massacres, and to relocate certain other witnesses before either the army could detain them or rebel elements attack them. The Commission on Human Rights also monitored the Government's compliance with its human rights obligations and had appointed rapporteurs, patterned on United Nations practices, to deal with such areas of concern as torture, indigenous groups and the rights of the child.

338. The Commission's activities in promoting human rights included the translation into the national language of important human rights documents; distributing the text of section 12 of the Bill of Rights, relating to the rights of the accused, to every police station and barangay assembly house in the country; holding human rights seminars for prosecutors, judges, military commanders and officials, members of the police force and non-governmental organizations; assisting the Department of Education and Culture in preparing a human rights curriculum for primary and secondary schools; and preparing a weekly series of nation-wide radio programmes on human rights. The Commission had also set aside a certain amount out of its annual budget to assist the victims or relatives of human rights violations.

339. Concerning the Commission's relations with the military courts, the representative noted that, to date, the Commission had filed 73 cases with the Judge Advocate General's Office and was following each case to verify the actions taken. Thus far, six officers and soldiers had been found guilty of human rights violations and had been either discharged from the service or reprimanded. Those discharged had not been exonerated and still had to face the complaint that had been filed against them.

340. While the Commission on Human Rights had recommended that President Aquino should repeal Presidential Decree No. 1850, as well as other decrees that were contrary to the Constitution, she had been dissuaded from taking such action by the Secretary of National Defence and the Chief of Staff of the Armed Forces on the ground that the time was not yet ripe for the outright repeal of such decrees. In fact, in the period between July 1986 and August 1987 there had been five attempted coups d'état, which had seriously threatened the Government's stability. The Human Rights Committee was established in December 1988 and was responsible for assessing and monitoring the human rights situation, advising the President on proper measures for the further promotion of human rights and helping relatives to locate persons believed to be illegally detained or who had disappeared. The Commission and the Committee complemented and co-operated with one another.

341. Responding to the questions raised by members concerning article 4 of the Covenant, the representative of the State party said that under the Constitution no rights, other than the privilege of the writ of habeas corpus, could be derogated from in cases of public emergency, and that derogation could only be for a maximum period of 60 days unless that period was extended by Congress for reasons of public safety. Thus, the Constitution provided even greater protection of human rights in situations of public emergency than the Covenant. The Supreme Court had ample powers to uphold the rights embodied in article 4 of the Covenant since it could both rule on the constitutionality and validity of the acts of government officials and review the sufficiency of the factual basis for proclaiming martial law or the suspension of habeas corpus.

342. With reference to questions raised by members of the Committee concerning article 6 of the Covenant, the representative of the State party said that the Government of the Philippines was committed to resolving the outstanding cases of disappeared persons and was in close contact with the Working Group on Enforced and Involuntary Disappearances, which it was planning to invite to visit the country. On 14 February 1989, the Commission on Human Rights had established a task force to look into the 414 outstanding allegations of disappearances in the country, most of which had arisen under the Marcos régime. It was a fact that at times the military were the authors of disappearances, such as in the case of a general who had been charged with the disappearance of four farmers in Agusan, but at other times rebel groups were responsible or persons reported missing had merely fled to the mountains to join rebel groups or had left the country. The protection of human rights activists, journalists and trade unionists had been given attention by the Commission on Human Rights, which had held a meeting with such groups. The Commission had been informed of the death of a number of journalists and radio announcers, most of whom were presumed to have been assassinated by New People's Army (NPA) units or killed covering battles between the armed forces and the rebels. It would be unfair to conclude from such incidents that there were widespread human rights violations involving journalists and activists.

343. The Mendiola Commission, which had been established by the President to investigate the confrontation that occurred in January 1987 between government riot control units and a group of peasants in the Kapisanang Magbubukid Ng Pilipinas (Association of Farmers of the Philippines), had recommended, *inter alia*, that all members of the police forces and the military and all demonstrators who had fired shots causing death or injury should be prosecuted; that the leader of the demonstrators should be prosecuted for holding an unauthorized political meeting and for instigating acts of sedition; and that administrative sanctions should be applied against certain members of the security forces failing to disperse the demonstrators with minimal use of force.

344. The origin of the Civilian Home Defence Forces, which consisted of private armies and other armed groups popularly known as "vigilantes", could be traced back to the Marcos era. At first, they were no more than neighbourhood patrols but eventually they had been transformed into actual armed groups that often fought the NPA rebels. The operations of such groups, although initially effective, later gave rise to multiple abuses and the Commission on Human Rights had recommended that they be dismantled. Article XVIII, section 24, of the Constitution also provided that such groups be abolished and dismantled. The Civilian Volunteer Organizations and the Citizen Armed Force Geographical Unit were very different organizations and met the criterion established in article XVI, section 4, of the Constitution specifying that the Armed Forces of the Philippines should be composed of a "citizen armed force". The Commission on Human Rights had been monitoring the recruitment of members of the Civilian Volunteer Organizations as well as the activities of the Citizen Armed Force Geographical Unit to ensure that the previous experiences with the Civilian Home Defence Force were not repeated. One hundred and seventy-three members of the Geographical Unit had been dropped from the rolls recently after being found guilty of various offences and five cases of alleged human rights violations by members of the Unit were currently under investigation.

345. Although the Constitution allowed for the reimposition of the death penalty for "heinous" crimes, the bills that had been introduced in Congress to that end had all met with strong resistance. The preface to the 1988 edition of the Revised Penal Code of the Philippines and Related Laws noted that "the 1987 Court abolished

the death penalty" and references to that penalty would be removed when the Code was revised. Despite the poverty of a large portion of the population, resulting from historic, social and structural factors, and its heavy burden of foreign debt, the Government of the Philippines was determined to work for a better future for its people and was waging a gigantic battle against poverty. The Constitution provided that highest budgetary priority must be accorded by the State to education and the Congress had passed legislation making education free up to the secondary level. The Constitution also enjoined the Congress to give highest priority to the enactment of measures that protected the right of all people to human dignity, reduced social, economic and political inequalities, and removed cultural inequities by equitably diffusing wealth and political power.

346. With reference to questions raised by members of the Committee concerning article 7 of the Covenant, the representative of the State party noted that the Bill of Rights prohibited the use of force, violence, threat or intimidation against detainees and outlawed solitary confinement, incommunicado or other similar forms of detention, as well as secret detention places. The Constitution also provided for compensation to victims of torture or similar practices and to their families. The Philippines had also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and had already submitted its initial report to the Committee against Torture. Although sporadic violations of human rights did take place, torture was not a widespread practice or policy, even among the military. The top leadership of the military and police establishments had declared on 6 May 1988, in a Joint Declaration of Undertaking, that they would observe and strictly implement the Bill of Rights and the guidelines of the Commission on Human Rights. The Commission and its regional offices regularly visited places of detention in order to prevent the practice of torture and to recommend medical measures for those prisoners whose health had been impaired by prolonged detention. Currently, the Commission had 190 cases of alleged torture under investigation, some of which had arisen under the Marcos régime.

347. Responding to questions raised by members of the Committee concerning article 9 of the Covenant, the representative stated that the Commission on Human Rights as well as a number of senators had conducted an investigation and determined that the military did not maintain any "safe houses". This fact was also confirmed to the Commission in writing by the Secretary of National Defence and the Chief of Staff of the Armed Forces. The principles of the Miranda doctrine, relating to legal assistance in cases of detention, were incorporated in the new Constitution under section 12 of article III. As noted in paragraph 336, the protection of witnesses was one of the important functions of the Commission on Human Rights, which was seeking to deal with the continuing problem of the intimidation of witnesses.

348. In replying to a question relating to liability to imprisonment for debt, the representative explained that the statement in the report concerning such liability was in error. A person was subject to imprisonment only where the sums of money involved in the crime had been obtained under circumstances defined in article 315 of the Revised Penal Code, such as by swindling or by passing bad cheques.

349. With reference to questions raised by members of the Committee concerning article 12 of the Covenant, the representative of the State party said that forced evacuations occurred routinely during military operations and incursions by rebel forces. One report described 24 cases of forced evacuation, which had affected

100 families. Other cases of evacuation were being monitored by the Commission on Human Rights and efforts were being made to obtain assistance for the affected persons from the Department of Health, the Department of Social Services and Development, and the local Red Cross.

350. With regard to questions raised in connection with article 13 of the Covenant, the representative noted that persons subjected to deportation orders could have recourse both to administrative and legal proceedings. Although the President could act summarily, through the Commission of Immigration in certain cases, expulsions were normally effected through legal orders. In all circumstances, the aliens concerned had the right at least to a summary hearing. The Philippines had a very good system for the protection of refugees and there had been no instance in which "boat people" requesting political asylum had been deported.

351. Turning to questions raised by members of the Committee concerning article 14 of the Covenant, the representative of the State party said that subsequent to the reorganization of the Supreme Court in 1986, only 6 of the Court's previous membership of 15 had been reappointed. President Aquino had appointed to the Supreme Court persons of known probity, integrity and independence in the hope that the people's confidence in the judiciary would be restored. Article VIII of the Constitution contained numerous guarantees of the independence of the judiciary, including security of tenure of Supreme Court and lower court judges until the age of 70; their irremovability except by Congress through the impeachment process; and the establishment by law of judicial salary levels, which were not subject to reduction. The original and appellate jurisdiction of the Supreme Court was established by the Constitution and could not be diminished by Congress or by the President. Victims of human rights violations could appeal to the courts, which, under the law, were obliged to render their decisions within a given period of time. Judicial reforms were also being introduced currently with a view to improving the administration of justice.

352. Regarding the scope of the ex post facto clause in the Constitution, the representative explained that that clause was fully compatible with article 15, paragraph 1, of the Covenant since it applied the benefit of any law imposing lighter penalties for a crime to persons who had previously received harsher sentences.

353. Turning to questions posed by members of the Committee concerning articles 18 and 19 of the Covenant, the representative of the State party said that, under the Constitution, freedom of religion was guaranteed and the principle of separation of Church and State was adhered to. The teaching of religious precepts to members of the armed forces and the police was not regarded as posing any problems since the preamble of the Constitution itself referred to "imploping the aid of Almighty God" and since 90 per cent of the country's population was Christian. Freedom of speech and of the press was guaranteed under the Constitution. "Immoral doctrines" that did not enjoy such protection were ideas contrary to universally accepted standards of morality such as the advocacy of assassination or wanton killings.

354. As regards questions raised under article 22 of the Covenant, the representative said that the issuance of guidelines relating to freedom of association fell within the competence of the government department within whose province a particular association fell. Thus, trade union matters, for example, came within the purview of the Ministry of Labour.

355. Turning to questions raised by members of the Committee concerning article 23 of the Covenant, the representative of the State party said that the fundamental equality between men and women was explicitly stipulated, for the first time, in the 1987 Constitution and a number of inequitable provisions of earlier laws were eliminated. Although the new Family Code did not provide for divorce, there were now expanded grounds for legal separation, defined as "separation of bed and board but no dissolution of marriage" and the Code eliminated inequality between men and women, with regard to the grounds for legal separation. Annulment was also allowed under certain circumstances and women who had obtained a foreign divorce now also enjoyed protection. The current challenge was to translate the various legal provisions into reality. While there had been great improvement as regards the proportion of women in high positions in the Philippines, notably within the judiciary, the overall progress that had been made in establishing equality between men and women was far from satisfactory.

356. With reference to questions raised by members of the Committee concerning article 24 of the Covenant, the representative of the State party said that the Government was taking steps to ensure that the civilian population, in particular children, were not involved directly or indirectly in armed conflicts. Such measures included the transfer of families to safe areas. Since there was no conscription in the Philippines, it followed that women were not liable for military service. Under the Constitution, conscription could be introduced in the future by law "to render personal, military or civilian service". This provided a possibility for alternative service for conscientious objectors.

357. The Labour Code established various parameters relating to employment, including the minimum age for children's employment, working hours and security, but there was a gap between reality and that law. In urban areas, owing to the economic situation resulting from poverty, children were often found begging, guarding parked cars and selling flowers, cigarettes and other articles. The only choice provided by that stark social reality was between ignoring the enforcement of the Labour Code or preventing children from earning a living. The sexual exploitation of children was also a painful reality that resulted directly from poverty. The Government was currently advocating the establishment of an inter-agency task force, under the direction of the Council for the Welfare of Children, to monitor and assess regularly the child abuse situation; to facilitate the task of social workers in preventing child trafficking; to propose stronger penalties for child violators; to ensure strict enforcement of the laws on street children; and to develop programmes to strengthen and enrich the values of family life and economic and social productivity. The Congress was also considering various bills to protect children against exploitation.

358. The new Family Code discriminated in favour of legitimate children only in respect of inheritance, providing that illegitimate children recognized by their father were entitled to inherit one half of the amount received by legitimate children.

359. With reference to questions raised by members of the Committee concerning article 27 of the Covenant, the representative of the State party noted that a registry of ethnic, religious and linguistic minorities in the Philippines included more than 100 groups, which were referred to in the Constitution as "ethnic and cultural minorities". All of the protections guaranteed by the Constitution were applicable to such groups and special offices and agencies had been established to implement their rights. In recognition of the rights of cultural minorities and

indigenous populations, two autonomous regions had been established in the Cordilleras and in Muslim Mindanao with powers to legislate on matters concerning sources of revenue, ancestral domain and natural resources, personal and family relations, urban and rural planning, economic and social development, tourism development, educational policies and the preservation of cultural heritage.

360. In conclusion, the representative of the State party noted that, considering the deeply rooted nature of the problems confronting the Philippines, the three-year period of transition that had passed was clearly too short for eliminating all the sources of human rights violations. Her country had nevertheless come before the Committee and had given it a full account of the measures it had taken and hoped to take in the future to that end. There could be no question but that her country's current political leadership was in full accord with the provisions of the Covenant and that the Philippines would continue to advance on the human rights front in the years ahead. The good advice and recommendations of the members of the Committee would be transmitted for consideration to the Government of the Philippines.

361. Members of the Committee thanked the Philippine delegation for providing useful and detailed answers to the questions that had been revised, and especially for its frank and honest attitude in recognizing the human rights problems that existed in the country. The Government had clearly made commendable efforts during the current difficult stage of transition from dictatorship to democracy to safeguard human rights. At the same time, members pointed to a number of areas of continuing concern, including the virtual omnipotence of the Philippine security forces and the inadequate jurisdiction of the ordinary courts, in particular owing to the non-repeal of Presidential Decree No. 1850, with respect to human rights violations by members of those forces; the continuing existence and activities of paramilitary groups; the rising number of torture victims; the threats to lawyers and other human rights advocates; discrimination against illegitimate children; and the situation of ethnic and linguistic groups whose land had been taken over by agricultural enterprises.

362. In concluding the consideration of the initial report of the Philippines, the Chairman thanked the Philippine delegation for participating in an extremely constructive dialogue and for its major contribution in that regard.

New Zealand

363. The Committee considered the second periodic report of New Zealand (CCPR/C/37/Add.8), including the reports of Niue and Tokelau (CCPR/C/37/Add.11 and 12) at its 888th to 891st meetings, held on 4 and 5 April 1989 (CCPR/C/SR.888-891).

364. The report was introduced by the representative of the State party, who referred to a number of important recent developments, including the termination by the Constitution Act of 1986 of the residual power of the United Kingdom Parliament to enact law for New Zealand; the extension of the jurisdiction of the Waitangi Tribunal by the Treaty of Waitangi Amendment Act 1987; and the declaration of Te Reo Maori, pursuant to the Maori Language Act, as an official language of New Zealand. The representative also noted that, since the submission of the report, a white paper containing a draft bill of rights had been published, but that a large majority of the submissions received during the extensive process of consultation had not favoured the proposal to entrench it into New Zealand law.

Accordingly, the Justice and Law Reform Committee to which the white paper had been referred had concluded that New Zealand was not yet ready for an entrenched bill of rights and had recommended its enactment in the form of an ordinary statute. Additionally, he stated that the Government had decided to accede to the Optional Protocol; that it had introduced legislation in 1988 to ensure full compliance with all the provisions of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment so as to be able to ratify it as soon as possible; that a separate human rights section had been established within the Ministry of External Relations and Trade; and that his Government was devoted to the needs and aspirations of the Maori people and had therefore restructured the Maori Affairs portfolio.

365. With regard to Niue and Tokelau, the representative explained that, while Niue was a self-governing country in free association with New Zealand, Tokelau remained New Zealand's last Non-Self-Governing Territory. He reaffirmed New Zealand's commitment to assisting Tokelau towards greater economic self-sufficiency and self-government, while respecting the wish of the islanders to retain their constitutional links with New Zealand.

Constitutional and legal framework within which the Covenant is implemented

366. With reference to that issue, members of the Committee wished to know whether the Covenant had been resorted to by the courts for interpretative purposes or otherwise, since the Covenant was not directly applicable as a law; what the current state of public debate was on the need for a bill of human rights and what the Government's public information activities were in that regard; how soon such a bill of rights might be enacted; whether there had been new developments since the submission of the report in respect of the enactment of the Imperial Laws Application Act and the removal of the right to appeal to the Privy Council; and whether the population in Niue spoke a language of their own and, if so, whether the Covenant had been translated into that language. They also wished to receive information on factors and difficulties, if any, affecting the implementation of the Covenant; on activities relating to the promotion of greater public awareness of the provisions of the Covenant, in particular with regard to the teaching of human rights to police officers, members of the armed forces, civil servants, doctors and social workers as well as to Maoris and Pacific Islanders; whether the people in Niue and Tokelau had been adequately made aware of their rights under the Covenant; and what kind of publicity the second periodic report and its consideration by the Committee would be given in New Zealand.

367. Commenting on the draft bill of rights, members wished to know whether it was planned to incorporate the provisions of the Covenant into the bill all at once or only gradually; the extent to which the Government's position had been influenced by the public debate; and why further public education on the issues was considered necessary. They also sought further information on how differences between the Committee's jurisprudence and that of New Zealand's judicial branch were dealt with; whether New Zealand intended to maintain its reservations to the Covenant; whether any reservations were contemplated in ratifying the Optional Protocol; and why the Privy Council link had been abolished. Additionally, they wished to know what the status of the Treaty of Waitangi was within the legal structure of New Zealand; what means were available to the Maori people for ensuring full compliance with the provisions of that Treaty; what the practical effect of merging the Human Rights Commission and the Race Relations Office would be; and what functions the Special Commissioner for Maori Affairs would have.

368. In connection with the International Terrorism (Emergency Powers) Act 1987, it was inquired what the criteria were for defining an act of international terrorism; whether any such state of emergency had as yet been declared under the Act; whether any of the rights provided for under the Covenant would be suspended in the event of a state of emergency; and how the provision relating to the punishment of acts committed outside New Zealand could be enforced. Members also sought clarification as to why the Act allowed for a declaration of emergency for less substantial reasons than those set out in article 4 of the Covenant.

369. Responding to questions raised by members of the Committee, the representative of the State party drew attention to the case of *Department of Labour v. Latailakepa* (1982), where the Covenant had been invoked as the basis for a broader application of domestic legislation. The Imperial Laws Application Act had been adopted on 28 July 1988 and had entered into force on 1 January 1989. A report on the restructuring of the New Zealand courts recommending the abolition of the Privy Council link had been issued by the Law Commission. The Commission had also recommended, *inter alia*, that the current Court of Appeal should be reconstituted as a Supreme Court that would constitute the final appeals body.

370. Replying to other questions, the representative pointed out that the Human Rights Commission sought to promote greater public awareness of the provisions of the Covenant through a variety of means, particularly through various publications. Details concerning activities directed specifically towards the Maoris and the Pacific Islanders, such as the Maori translation of the Covenant and its Optional Protocol, were included in the Commission's annual report. Human rights education was provided at schools and universities, including courses in human rights and ethics for doctors, and the Royal New Zealand Police College provided human rights training to police officers. The question of civil and political rights in Niue had been discussed during public meetings held recently by the Constitutional Review Committee in the villages and the Committee planned to propose the inclusion of specific provisions in the Constitution providing for the protection of such rights. The provisions of the Covenant were a regular topic of consideration by the traditional and governmental authorities in Tokelau; they had been translated into Tokelauan and distributed to those in positions of authority and to the public at large. The translation of the Covenant into Niuean could be recommended to the Government of Niue. As had been the case with respect to New Zealand's initial report, the Ministry of Foreign Affairs intended to publish, for wide distribution, a document containing both the second periodic report and the New Zealand delegation's replies to the questions raised.

371. In reply to questions raised in connection with the draft bill of rights, the representative recalled that, in the course of consultations on the white paper published in 1985, many had argued that the common law already contained human rights precepts and that the independence of the judiciary guaranteed the preservation and development of those precepts. The lack of consensus had been the decisive factor in taking the decision not to approve the bill of rights as initially proposed. Currently, there were some plans to adopt a bill of rights as a "supreme law" through a provision establishing that it could be repealed, amended or modified only by a law adopted in Parliament either by 75 per cent of its members or by a majority poll of those voting, but that idea had run into opposition both within and outside the legislature. The fact that there were no specific limitations to Parliament's authority to amend the bill of rights did not mean that Parliament could encroach on fundamental rights.

372. Responding to other questions, the representative stated that the idea of merging the Human Rights Commission with the Race Relations Office had arisen from a recommendation made by the Race Relations Conciliator, who had noted a certain degree of overlapping in the jurisdiction of the two offices. However, that plan did not imply that the separate functions would actually be merged. New Zealand had not yet had any experience of domestic terrorism and the broad scope of the International Terrorism Act had been determined by the desire to control international terrorism. No state of emergency had ever been declared since the enactment of that legislation. A large-scale public debate had preceded the enactment of the provisions of the Terrorism Act relating to the declaration of an emergency and the process had resulted in considerably narrowing the grounds constituting a sufficient basis for issuing such a declaration.

Self-determination

373. In connection with that issue, members of the Committee wished to know New Zealand's position with regard to the self-determination of the peoples of South Africa, Namibia and Palestine and inquired whether New Zealand had taken any measures to prevent public and private support for the apartheid régime of South Africa. They also asked whether there were any provisions for periodic consultations in respect of Tokelauan self-determination; whether the Government envisaged an association with Tokelau similar to that with Niue; and whether the various statements in the report relating to New Zealand also applied to Tokelau and Niue. Further information was also sought regarding the increase in the population of Tokelau; regarding Tokelau's share in the fishery treaty; and regarding the Devolution Programme that sought to restore autonomy to the Maori people.

374. In his reply, the representative of the State party said that New Zealand had consistently condemned apartheid, had supported the creation in South Africa of a multi-racial State based on equality, non-discrimination and mutual respect, and had to that end contributed regularly to the United Nations Trust Fund for South Africa. His Government had also given effect to all the measures against South Africa recommended by the Commonwealth as well as to the sanctions prescribed in various Security Council resolutions. The arms embargo was strictly enforced and since 1987 all existing export and import prohibitions relating to South Africa had also been applied to Namibia. Various economic and commercial measures to prevent support for the apartheid régime had been instituted and New Zealand was a participating member of the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa. New Zealand regarded the South African occupation of Namibia as illegal and supported Security Council resolution 435 (1978) as the only satisfactory basis for a settlement. It recognized the United Nations Council for Namibia as the only body legally entitled to administer Namibia until the Territory attained genuine independence. New Zealand had consistently taken the position that Security Council resolution 242 (1967) provided the basis for a just, durable and comprehensive settlement in the Middle East and considered that a key element in the negotiation of such a settlement had to be the realization of the rights and aspirations of the Palestinian people, in particular their right to self-determination.

375. Replying to questions raised in connection with Niue and Tokelau, the representative pointed out that periodic consultations on the question of Tokelauan self-determination took place within the framework of visits every five years by a United Nations Special Committee concerned with the implementation of the

Declaration on the Granting of Independence to Colonial Countries and Peoples. Under a formal consultation system, the leaders of Tokelau made regular visits every three years to Wellington for direct discussions with the Government. There were also periodic consultations through general meetings (Fono) of the people of Tokelau in their own Territory. The Tokelauans had made it clear that for the time being they wished to retain the links they currently had with New Zealand. Many young people from Niue who came to New Zealand for higher education did not return to their island, whereas most Tokelauans eventually went home. That explained why the population of Niue had suffered a serious decline, while that of Tokelau had not. The Tokelau 200-mile zone was not one of the better fishing grounds and therefore was less likely to be attractive to other countries. A substantial body of New Zealand law and practice related to Niue and Tokelau, but there were also marked differences.

Non-discrimination and equality of the sexes

376. With reference to that issue, members of the Committee wished to know whether there was any general statutory prohibition of discrimination on grounds of political or other opinion, language, property, sex and birth or other status; whether the Proceedings Commissioner of the Human Rights Commission had exclusive powers to bring cases before the Equal Opportunities Tribunal; whether the parties could appeal an adverse Commission decision; in what respects the rights of aliens were restricted as compared with those of citizens; and what the results had been of the positive programme of appointments of women to senior positions within the public service and to public boards and committees. Further information was sought regarding equality of the sexes in the fields of education, occupation and public life in Niue and Tokelau; regarding measures taken with respect to paid maternity leave; and regarding New Zealand's reservations to the Convention on the Elimination of All Forms of Discrimination against Women. It was also asked whether Maori women, as a minority, suffered broad discrimination; whether certain Maori and Tokelauan traditions discriminated against women; and whether schools continued to exist for the education of a single sex, race or religion.

377. In his response, the representative of the State party said that the general statutory prohibitions regarding discrimination were to be found in the Human Rights Commission Act 1977 and the Race Relations Act 1977. There was no specific statutory prohibition relating to political or other opinion, language, property or birth, but that did not mean that discrimination on such grounds either existed or was permissible. Legislation extending the jurisdiction of the Human Rights Commission to new grounds of discrimination would probably be introduced later in 1989. The Human Rights Commission did not have exclusive powers to initiate actions before the courts, since actions could also be initiated by the injured parties if the Commissioner or the Commission decided that their case was without merit. Aliens could not vote unless they were permanent residents. There were few legislative restrictions on the type of work aliens could seek. Social security benefits were determined on the basis of residence, not citizenship.

378. In reply to other questions, the representative explained that, through the Equality Management Programme, which featured training and various career advisory services, women had made inroads at the middle management level, although their representation at the senior management level remained low (8.4 per cent of the total). The State Sector Act 1988, instituting equal employment opportunity programmes in departments, was expected to increase the number of women in senior management posts and on departmentally controlled boards and committees. There

were no laws discriminating between the sexes in Niue and Tokelau. There were 140 female government employees compared with 235 male in Niue, and 70 of a total of 190 in Tokelau. Most villages in Niue had well-organized women's groups and a National Council of Women had been established in 1986 to make women aware of their potential and to provide them with business training. Representatives of women's organisations had also begun to participate in the General Fono. A special Maori Women's Secretariat had been set up to carry out programmes in areas where Maori women were at a disadvantage. While certain Maori or Tokelauan customs could be characterised as discriminatory, any measures taken to eliminate discriminatory traditions had to be balanced against the importance of rediscovering their culture and language. There were no schools open exclusively to the majority race, but some schools for certain minority races had been established. Notification had been sent to the Secretary-General of the withdrawal of the reservation to the Convention on the Elimination of All Forms of Discrimination against Women concerning the employment of women in underground mines.

Right to life

379. With regard to that issue, members of the Committee wished to receive additional information concerning article 6 of the Covenant in the light of the Committee's general comments Nos. 6 (16) and 14 (23) and regarding the comprehensive accident compensation scheme mentioned in the report. They also inquired whether the Government had reached any conclusions in respect of the abolition, under the Crimes Act, of the death penalty for treason. Additionally, it was asked why post-natal mortality was almost twice as high among the Maori people as among other groups.

380. In his reply, the representative of the State party referred to the New Zealand Nuclear-Free Zone and Disarmament and Arms Control Act of 1987, which banned nuclear weapons from New Zealand, and noted that his country was a staunch advocate of the Treaty of Rarotonga and had strongly supported arms reduction as well as resolutions on a comprehensive nuclear test-ban treaty. The Government intended to abolish the death penalty for treason in a new Crimes Bill to be introduced shortly and a bill on the total abolition of the death penalty had recently been referred to a Select Committee of Parliament. The higher post-natal mortality rate for Maori children was the result of their mothers' having been exposed to risk factors such as early procreation, lower socio-economic status, smoking and a reluctance to use health services. The Health Department was seeking to deal with the problem through the establishment of bicultural services. The common law system under which compensation for personal injury or death had been treated earlier had proved to be unfair, since it depended on proof of negligence. Under the new scheme, the need to prove negligence had been eliminated and small amounts of compensation were also provided to all dependants.

Treatment of prisoners and other detainees

381. With reference to that issue, members of the Committee wished to know whether the police complaints authority had investigated any complaints of misconduct since its establishment and, if so, with what results; whether there were any concrete plans for abolishing corporal punishment in schools through the amendment of section 59 of the Crimes Act 1961; whether complaints had been made or disciplinary action taken against teachers who used corporal punishment; what the actual experience, if any, had been in respect of allowing greater contact between prison inmates of different sexes and permitting female inmates to be under the charge of

male prison officers; whether there was any difference in the treatment of prisoners on the basis of their ethnic or racial background; what the average period of pre-trial detention was; how quickly after an arrest a person's family was informed; how soon after arrest a person could contact a lawyer; what the actual experience had been with the application of sentences involving community care; and what percentage of criminal offenders was Maori. Members also wished to know the extent to which regulation 147 of the Penal Institution Regulations was consistent with article 10, paragraph 2, of the Covenant and, in particular, what specific criteria were used by the Secretary of State to determine that it would be in the best interests of prisoners under 20 years of age to mix with prisoners over that age; whether the parents of the juvenile prisoners involved were so informed; and whether the decisions of the Secretary of State in that regard could be reviewed by the courts.

382. Further information was also requested concerning the minimum age for criminal responsibility; the practice relating to the remand in custody of persons between 17 and 20 years of age; the reasons for extension of the 7-year requirement for eligibility for parole to 10 years; and the current status of the Mental Health Bill.

383. In his reply, the representative of the State party stated that the police complaints authority had come into existence on 1 April 1989. The justification for the use of force by teachers, contained in the Crimes Act of 1961, would be eliminated by the proposed new crime bill. No complaints regarding corporal punishment by teachers had been received by the Human Rights Commission, the Ombudsman or the Department of Education. Regarding contact between prison inmates of different sexes, the representative explained that the different needs of female inmates and the gender imbalance in the overall prison population made such a mixing unfeasible for the time being. However, the employment of officers of the opposite sex was considered valuable in redressing the social balance in prisons. New Zealand had reserved the right not to apply article 10, paragraph 2 (b), of the Covenant in circumstances where the shortage of suitable facilities made the mixing of juvenile and adults unavoidable. Where only minimum security was required, older and younger inmates were mixed, since it was felt that the former had a stabilizing and beneficial influence on the latter. Although there was no statutory limit on pre-trial detention under the Crimes Act of 1961, the detainee had to be brought before a court as soon as possible. The average period spent in custody after arrest was less than two weeks. Immediately after arrest, a lawyer or family member could usually be contacted and a person in custody had the right to communicate with his solicitor as soon as practicable after being brought to a police station. Community care sentences - under which the offender had to spend periods of up to 12 months in programmes that included placement with appropriate religious or ethnic groups or individuals - remained infrequent because they required funding from community sponsors. It had been resorted to in only 1.2 per cent of the 50,000 cases handled between October 1985 and March 1986.

384. Responding to other questions, the representative stated that the Mental Health Bill was currently before the Social Services Committee in Parliament. Persons between 17 and 20 years of age could be released on bail under some arrangement that seemed appropriate, but they could also be detained in prison or remanded in the custody of the Director General for Social Welfare if there were no other desirable alternatives. The introduction of tougher legislation regarding eligibility for parole had been deemed necessary in view of the rapid increase in violent crimes of all sorts, especially sexual offences. The proportion of Maoris

in the prison population was 18.8 per cent. Much thought was being given to ways to reduce that number and to finding solutions other than imprisonment to the crime problem involving Maoris, since prison often led to recidivism.

Right to a fair trial

385. With regard to that issue, members of the Committee wished to receive additional information on article 14 in the light of the Committee's general comment No. 13 (21) and inquired as to the current status of the Legal Services Bill. It was also asked whether the constitutional provisions concerning the security of tenure of Supreme Court judges applied to other judges.

386. Responding to questions raised by members of the Committee, the representative of the State party said that equal access to the courts was fundamental to the New Zealand system. High Court judges, who were appointed by the Governor General, could serve until the age of 72 and had their salaries paid by permanent appropriation. Similar provisions existed for district courts. Both constitutional and parliamentary practice protected the impartiality of justice and, under the Crimes Act, a judicial officer acting or failing to act on the basis of a bribe was liable to 14 years' imprisonment. An interpreter was always available when needed. The rights of detainees were set out in writing in police stations in eight languages. Accused persons who could not afford a legal defence were eligible for legal aid. A preliminary draft of the Legal Services Act was due to be introduced in Parliament in 1989.

Freedom of movement and expulsion of aliens

387. With reference to that issue, members of the Committee wished to receive information on the position of aliens, pursuant to the Committee's general comment No. 15 (27). Members also inquired whether all appeals against removal or deportation orders had suspensive effect; whether any persons had been deported from New Zealand pursuant to orders issued under section 72 of the Immigration Act 1987; and whether there was any jurisprudence regarding appeals on humanitarian grounds.

388. Responding to the questions raised in connection with the position of aliens, the representative of the State party explained that under New Zealand law no distinction was made between citizens and non-citizens as regarded access to the courts. One of the safeguards contained in the Immigration Act 1987 against arbitrary or abusive action in immigration decisions affecting aliens was the provision that any arrested alien had to be brought before a judge within 48 hours to determine whether his detention was lawful and necessary. All appeals against removal or deportation had suspensive effect under the Immigration Act and no person thus far had been deported pursuant to an order under section 72 of that Act. An advisory panel on humanitarian appeals had been set up within the Ministry of Immigration. New Zealand was a party to the Convention on the Status of Refugees, which provided that persons who did not fall precisely within the definition of a refugee could nevertheless be permitted to remain in the country.

Right to privacy

389. In connection with that issue, members of the Committee wished to receive information on article 17 of the Covenant, in the light of the Committee's general comment No. 16 (32). They also wished to know the implications for the protection

of privacy of the revocation of the provisions of the Food Act 1981 and the Medicines Act 1981, which had made it an offence for officers to divulge information obtained in the course of their duties; what the current situation was in respect of the enactment of legislative reforms in the area of data privacy; and how a person's rights under article 17 in that regard were guaranteed pending the enactment of new legislation. Regarding data privacy, it was further asked whether there had been any reports from private citizens of abuses relating to personal data stored in private data banks; whether there had been any requests from persons interested in gaining access to data bases or correcting data and, if so, how such requests had been handled; whether any reference had been made in the pending legislation on privacy to the obligation of correcting erroneous data; what function was to be played by the Wanganui Computer Centre; and under what circumstances access to personal information in cases of public interest would be authorized under the planned legislation. Members also requested further information concerning the interception of private communications and about legal provisions relating to homosexuality.

390. Responding to questions raised by members, the representative of the State party said that the Government proposed to introduce a Data Privacy Bill in 1989 that envisaged the appointment of a commissioner whose functions would include monitoring and auditing personal data bases for compliance with data principles; dealing with disputes by mediation or determination; enforcing rights of access to and correction of data; making recommendations; developing specific codes for particular industries, such as credit reference agencies; studying the impact of future technology; examining proposed legislation; and encouraging self-regulation and co-operation. The Minister of Justice had endorsed the suggestion that the commissioner should be a part of the Human Rights Commission. Although New Zealand did not yet have specific data protection legislation, there were provisions in various instruments, such as the Social Security Act of 1964, for example, which protected personal information. There were also civil remedies such as those relating to defamation and negligence. In addition, the Department of Justice was currently considering, with a view to future action, the 1988 final report of the Search and Warrants Committee. Both the Human Rights Commission and the Ombudsman could monitor the protection of the right to privacy in their respective jurisdictions. The Office of the Commissioner of Security Appeals, established under the New Zealand Security Intelligence Act of 1969, could inquire into complaints against the Service and, with rare exceptions, individuals were entitled to request authorization to copy personal information stored at the Government Information Centre. In proposing to expand some clauses of the Official Information Act of 1982, the Information Authority had recommended that it should be stipulated that, subject to the consideration of relevant factors, the public interest in the disclosure of information could outweigh the interests of privacy. The revocation of the Food Act and the Medicines Act had not given rise to any problems, since complaints of alleged improper disclosure of information could be directed to the Ombudsman or the Department concerned. The earlier law relating to homosexuality had not expressly condemned homosexual conduct between women. The Homosexual Law Reform Act had eliminated the discrimination in that respect against men.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

391. With regard to those issues, members of the Committee wished to receive information on the role and function of the Information Authority established under the Official Information Act of 1982, in particular whether the Official Information Amendment Act of 1987 had extended the life of the Authority beyond June 1988 and, if not, whether any other arrangements had been made for the continued discharge of the relevant functions. Additionally, it was asked how many complaints had been received in connection with the implementation of the Act since its promulgation, and whether it provided adequate protection against undue public exposure of working documents and information. Additional information was also requested on the implementation of article 20 of the Covenant. Members also wished to know whether there had been any monopolistic tendencies in respect of the print and electronic media; whether the Prime Minister could prevent the mass media from publishing any information that in his opinion might be connected with terrorism; whether blasphemy was defined as a criminal offence in the Crimes Act 1961; whether natural and legal persons received the same treatment under the defamation laws; and what authority was responsible for censoring television programmes.

392. In his reply to questions raised in connection with the Official Information Act, the representative of the State party explained that the Act did not provide for the right of access to information as such but only for a gradual increase in the availability of information. Thus, a person who had been denied access to information could not request the courts to order such access. The Official Information Act was widely used and government departments were inundated with requests for information. Following the entry into force of the Official Information Amendment Act of 1987, the Government had decided to transfer the functions of the Information Authority to the Department of Justice. In response to criticisms that the earlier Act had allowed some departments to delay responding to requests for information and had given individual Ministers the power to veto an Ombudsman's decision to release information, the Amendment Act of 1987 had established time-limits for responding to requests for information and provided that the approval of the entire Cabinet was required to override an Ombudsman's recommendation. The Act also established certain grounds for withholding information and contained provisions for protecting the political neutrality and freedom of expression of Ministers, officials and employees, and for protecting them from undue pressures.

393. Responding to other questions, the representative stated that there was indeed a trend in New Zealand towards concentration of ownership of the press and other information media and that that had led to wide public debate. The International Terrorism Act conferred broad powers on the Prime Minister to prevent the publication of information in emergency situations, but he had subsequently to provide information regarding the exercise of such powers. As a result of the comments made by members of the Committee at the time of the presentation of New Zealand's initial report (CCPR/C/10/Add.6), the crime of blasphemous libel would be eliminated under the new Crimes Act. Natural persons were able, in practice, to seek remedies under the Blasphemy Law when they deemed themselves to have been injured. Under the Race Relations Act, incitement to social discord was defined as a crime, and the Race Relations Conciliator received a large number of complaints each year, most of them filed by white New Zealanders. Regarding New Zealand's reservation on article 20 of the Covenant, the representative explained that freedom of expression had always been one of the rights most assiduously protected

by New Zealanders and the Government had determined that, unless there was an obvious need to adopt a law restricting that freedom, it would refrain from doing so. Additionally, the need for a legal prohibition of propaganda for war had never been clear.

Freedom of assembly and association

394. With reference to that issue, members of the Committee wished to know whether any persons had been tried and convicted of the offence of "riot" as reformulated by the Crimes Amendment Act of 1987. In addition, members raised a series of detailed questions relating to the Labour Relations Act and the relationship of that Act to article 22 of the Covenant, on which New Zealand had made a reservation. They wished to know, in particular, whether membership was obligatory in some unions; whether there were alternative unions to which workers could belong; whether workers belonging to unrecognized unions could nevertheless invoke the labour laws or accede to other remedies to improve their working conditions; why trade unions had to have a minimum of 1,000 members in order to be registered; and what was being done to protect specialized workers who were not numerous enough to qualify for union status. Members also sought further information as to the meaning of the term "public order" used in connection with restrictions on freedom of association under the Labour Relations Act.

395. In his reply, the representative said that there had been 41 prosecutions during 1988 under the new section 87 of the Crimes Act. Referring to the other questions raised by members of the Committee, he stated that, owing to the complexity of New Zealand's Labour Relations Act, it would be necessary to provide written answers at a later date.

Protection of family and children

396. With regard to that issue, members of the Committee wished to receive information regarding the equality of spouses in Niue as to marriage, during marriage and at its dissolution; the law and practice relating to the employment of children; differences, if any, existing under the laws and practice of Niue and Tokelau in the status and rights of children born in and out of wedlock. Members also wished to know whether there was any intention to amend section 59 of the Crimes Act to provide children with additional protection from corporal punishment by their parents.

397. Replying to questions raised by members of the Committee, the representative of the State party noted that either husband or wife could file proceedings for divorce on any of the grounds specified by law. A husband was bound to provide maintenance of an indigent wife even if he could prove that he lacked sufficient means, whereas a wife was not bound to maintain an indigent husband if she could show reasonable cause for not doing so. In Niue, there were no specific provisions regarding the rights of divorced couples over real property, but it was assumed that the courts would always seek an equitable solution. The parties to a dissolved marriage had equal rights to the custody of the children, although the interests of the child were always taken into account. The employment of children under a certain age was restricted under the law and various kinds of establishments were inspected to verify their compliance with the Factories and Commercial Premises Act. Under the Niue Act of 1966, all persons were born legitimate. In practice, children born out of wedlock formed part of the communal network in the same way as children born in wedlock. While there were no current

plans to amend the Crimes Act, the question of child abuse in general had recently received considerable attention in New Zealand.

Right to participate in the conduct of public affairs

398. With regard to that issue, members of the Committee wished to receive further information on current trends regarding the participation of Maoris in public affairs and on the actual enjoyment by Maoris and other minorities of equal rights and opportunities for access to the New Zealand public service, as well as concerning actual or planned measures, if any, to improve such access.

399. In his reply, the representative of the State party explained that the Government's policy proposals, published in 1988, were designed to highlight the partnership between the Maori people and the Crown under the Treaty of Waitangi. The new Ministry of Maori Affairs would have a similar status to that of the Treasury and the State Services Commission and would be responsible for ensuring that all government agencies were aware that policy proposals should be consistent with the Treaty of Waitangi. Under the State Sector Act of 1988, all appointments to the public service were made on the basis of merit. The Act also required that the equal opportunity programmes of the government departments should concentrate on Maori people and on other ethnic or minority groups. There were also various practical programmes to recruit Maoris and Pacific Islanders to the public service, although the aim of improving the representation of those groups at senior levels of responsibility had not yet been achieved. In 1988, a Pacific Island Management Development Package had been launched by the Ministry of Pacific Islands Affairs and the State Services Commission for the purpose of promoting the appointment of Pacific Islanders to management positions and offering them education and training. The package also provided 10 scholarships annually for university studies.

Rights of minorities

400. With reference to that issue, members of the Committee wished to receive information on the main difficulties being encountered in implementing, in respect of the Maoris, the provisions of article 27 of the Covenant, in particular as regards the return of sizeable pieces of land in the context of the enjoyment of Maori culture. It was also asked whether the Treaty of Waitangi Tribunal had jurisdiction over the return of State and private lands and whether the representatives of ethnic minorities had participated in the drafting of New Zealand's report and would have access to the opinions expressed by members of the Committee.

401. In his reply, the representative of the State party said that there were no barriers to the expression of Maori culture and no difficulties regarding the implementation in New Zealand of article 27 of the Covenant with respect to culture and religion. With regard to language, the establishment of a Maori Language Commission in 1987 had been viewed as a positive move towards extending the use of the Maori language. The programme of "language nests" had attempted to fill the gaps at secondary and higher institutions and had been very successful in encouraging more widespread use of the Maori language. The Treaty of Waitangi had not been incorporated into domestic law, but in recent years a more positive attitude had emerged towards the Treaty, as exemplified by the establishment of the Treaty of Waitangi Tribunal, which had prevented the Crown from acting inconsistently with the principles of the Treaty. A recent case handled by the

Tribunal concerning Maori fishing rights had led to the submission to Parliament of a Maori Fisheries Bill and provided a good demonstration of the willingness of the Government to be reasonable in settling such disputes. The resolution of Maori land grievances would clearly have a significant bearing on the successful implementation of the concept of partnership under the Treaty of Waitangi, and the Tribunal had in fact heard a substantial number of land-related claims. The Tribunal had sought in every case, before making its recommendations to the Government, to find a basis of conciliation or compromise, enabling the situation to be rectified with a maximum of goodwill and a minimum of economic or other dislocation. The Maoris had been consulted in the preparation of the sections of the report relating to them and the Committee's reactions would be publicized among them.

General observations

402. Members of the Committee expressed their appreciation and satisfaction to the State party for submitting a thorough and most informative report, and commended the delegation for its co-operation and high competence in replying to the Committee's questions. Members noted with particular satisfaction that certain legislative changes had been made following the consideration by the Committee of New Zealand's initial report and that other positive changes, such as the enactment of new criminal laws and of a bill of rights, were being planned. They also welcomed the State party's intention to ratify the Optional Protocol and the Convention against Torture. Appreciation was also expressed for the Government's attitude toward criminality among the Maoris and for its search for ways of dealing with it other than merely by imprisonment. It was noted, however, that some of the concerns expressed by members of the Committee had not been fully alleviated, particularly in respect of the scope of the International Terrorism (Emergency Powers) Act of 1987 and certain problems relating to labour legislation and to the Maoris.

403. The representative of the State party said that the experience of preparing and presenting the report and participating in the dialogue had been both challenging and rewarding for his delegation, which had taken careful note of the areas in which questions had been raised or criticisms made.

404. In concluding the consideration of the second periodic report of New Zealand, the Chairman said that the Committee had greatly valued the efforts of the New Zealand delegation, which had made possible a fruitful dialogue.

Bolivia

405. The Committee considered the initial report of Bolivia (CCPR/C/26/Add.2) at its 896th, 897th and 900th meetings on 11 and 13 July 1989 (CCPR/C/SR.896, 897 and 900).

406. The report was introduced by the representative of the State party, who referred to the historical development of his country's institutions and legal system, and to the fundamental human rights principles that had been embodied in the first Bolivian Constitution of 1825 and had been maintained in all succeeding constitutions up to the one that had entered into force in 1967. He emphasized that Bolivia's acceptance of the instruments that made up the International Bill of Human Rights constituted further testimony of his country's political will to promote political co-existence and respect for the individual.

invoked; what provision would be applied in the event of a contradiction between the Covenant and the Bolivian Constitution or other laws; and whether it was possible for the legislature to denounce a treaty to which Bolivia was a party, at least with regard to its application in domestic law. Clarification was also requested on emergency courts, the competence of the military courts and the obligatory character or otherwise of Supreme Court decisions regarding, notably, the constitutionality of a decision by the supreme military court. It was also asked what measures had been adopted by the Bolivian authorities to give effect to the observations made by the Committee on 2 November 1987 on communication No. 176/1984 (Peñarrieta).

412. In connection with article 3 of the Covenant, questions were asked about the equality of the spouses in the choice of the conjugal home and in the custody of children in the event of dissolution of the marriage. It was asked whether, in general, there still existed in Bolivia legal provisions that were not completely consistent with the principle of equality of rights as between men and women, in what way equality was achieved in practice and what difficulties were encountered in the process of achieving such equality. It was also noted that, according to information received by the International Labour Organisation, the Bolivian General Labour Act provided that the proportion of women in an enterprise which could not exceed 45 per cent, except in enterprises that by their nature required a higher proportion, and it was observed that such a provision appeared to be incompatible with articles 3 and 26 of the Covenant.

413. As to article 4 of the Covenant, members of the Committee noted that, on several occasions, Bolivia had exercised the right of derogation provided for in paragraph 1 of that article. In that connection they requested clarification of the provisions governing the state of siege in Bolivia and those governing its suspension. They asked, in particular, which authority was empowered to order the arrest of persons suspected of conspiracy against law and order; what guarantees were available during a state of siege to a person whose rights had been infringed; what authority could determine the civil or international nature of a conflict; and what was the nature of the incidents that had provoked the proclamation of a state of siege on numerous occasions in Bolivia in recent years. Noting that, in the notification received by the Secretary-General concerning the state of siege proclaimed in 1986, the Bolivian authorities had given as grounds for that proclamation serious political and social disturbances, some members observed that a protest movement or general strike did not fulfil the conditions for proclamation of a state of siege as set forth in article 4, paragraph 1, of the Covenant.

414. In connection with article 6 of the Covenant, clarification was requested concerning the existence in Bolivia of capital punishment, which, according to a note to article 17 of the Constitution, still appeared to be in force. Clarification was also requested concerning the expression "homicide committed ... for motives of honour", which was contained in the report, the definition of "political offences", the authorities that were empowered to amnesty political offences and the possibilities of recourse in the event of refusal by the competent authorities to enforce a presidential decree of amnesty. Similarly, information was requested about cases of enforced disappearance in Bolivia and about the role of the Comisión Nacional de Investigaciones de Desaparecidos (National Commission for Investigations of Disappearances). Details were further requested about legislative measures concerning abortion, which seemed to be quite widespread in Bolivia.

415. In connection with article 7 of the Covenant, members of the Committee wished to know why the penalty imposed on any person engaging in torture that led to the death of the victim was only 10 years of hard labour in Bolivia, whether investigations were envisaged in connection with cases of torture of detainees, such cases having been recently reported in Bolivia, whether there were any statistics about the approximate number of violations committed by law enforcement officials and what the result was of any investigations into those violations. It was also asked what measures had been taken by the Bolivian authorities to ensure that a confession obtained through torture could not be used in the trial, to provide redress and compensation for the victims of acts of torture, and to comply in general with the general comments made by the Committee about the implementation of article 7 of the Covenant.

416. In connection with article 8 of the Covenant, members of the Committee asked what penalty was imposed on persons who refused to serve as scrutineers, such service being compulsory in Bolivia, and on persons who refused to perform military service. They also requested clarification of the provisions of the Bolivian Penal Code, which laid down penalties consisting of the performance of labour for certain offences; those penalties seemed to be incompatible with article 8, paragraph 3, of the Covenant. In addition, information was requested about the regulations governing relations between employers and employees, and in particular about criminal provisions in Bolivia to prevent the exploitation of an employee who was financially indebted to his employer.

417. With regard to article 9 of the Covenant, it was asked whether persons arrested by the police for "vagrancy" were able to invoke habeas corpus and amparo, whether they had the right to assistance by a lawyer and what was the maximum length of pre-trial detention in Bolivia. It was remarked that the power of the police to classify a person as a "vagrant" and to detain him without trial for long periods did not appear to be in conformity with the provisions of articles 7, 9 and 14 of the Covenant or with those of article 16 of the Bolivian Constitution. Detailed information was requested on the Bolivian legislative provisions that contained a definition of "vagrancy", on the Police Act of 1986, the organizational law of 1985, the functions of the jueces policiales and the availability of remedies against their decisions.

418. Concerning article 10 of the Covenant, members of the Committee requested details concerning the Bolivian prison system, in particular the treatment of pregnant women detainees, the criteria used for setting remuneration for work by prisoners, the distribution of prisoners awaiting trial and convicted prisoners according to the "stage of the investigation" and the functioning in practice of the prison system for minors. In particular, it was asked whether the treatment of prisoners awaiting trial was in keeping with the Standard Minimum Rules for the Treatment of Prisoners, especially with regard to medical supervision, and whether other United Nations instruments concerning treatment in detention were implemented in Bolivia.

419. Regarding article 12 of the Covenant, members wished to know what criteria were used for granting refugee status to foreigners in Bolivia, especially when they had no international document attesting to their refugee status, and what overall policy the Government of Bolivia followed regarding the granting of refugee status.

420. In connection with article 13 of the Covenant, it was asked whether a foreigner could appeal only against a decision concerning him by a judicial body or also against a decision by the executive, and whether a court or administrative body was empowered to reconsider an expulsion order.

421. With regard to article 14 of the Covenant, members of the Committee requested details concerning the application in Bolivia of the principle of the presumption of innocence and concerning delays in the conduct of trials. Details were also requested on the procedures used by emergency courts, such as the military courts, and on their conformity with the provisions of the Covenant and with the Committee's general comment No. 13 (21). It was also asked whether the provisions of article 117 of the Bolivian Constitution concerning the independence of judges also applied to emergency court judges and in what way the independence of military court judges was guaranteed in legislation and in practice.

422. With regard to article 17 of the Covenant, members of the Committee wished to know the exact meaning of article 20 of the Bolivian Constitution, which concerned the inviolability of correspondence and private papers. With reference to what was stated in the report, it was asked whether in Bolivia telephone-tapping or bugging by electronic devices was prohibited in all circumstances or whether the security police would be permitted to use such methods in certain cases, whether houses could be entered by public officials in cases where State security was endangered and what type of protection was guaranteed for journalists' sources of information.

423. Referring to article 18 of the Covenant, members of the Committee requested clarification of support by the Bolivian State for the Catholic religion and of the position of other religious denominations in Bolivia. Statistics on religious groups in Bolivian society were also requested.

424. Regarding article 19 of the Covenant, members of the Committee asked whether the provisions set forth in that article had been invoked in the Bolivian courts in cases concerning charges of defamation against the President of the Republic by members of the political opposition and what the outcome of such cases had been. Clarification was also requested concerning Bolivian legislative provisions relating to freedom of expression and cases of derogation involving the press or other media. Information was also requested about ownership of the media, the measures being considered to avoid the formation of a monopoly by the media and journalists' access to the public authorities' information sources.

425. Concerning article 20 of the Covenant, members of the Committee asked how international provisions prohibiting propaganda for war were reflected in Bolivian national legislation.

426. With regard to articles 21 and 22 of the Covenant, explanations were sought concerning the types of punishment that would be imposed on associations having illegal aims or acting with criminal intent. It was also asked what restrictions were imposed by law on the right of assembly, how a meeting or association was determined to be lawful, under which law such a determination could be made and which body was empowered to make it, what conditions trade unions were required to fulfil in order to be officially registered and whether it was true that there could be no more than one trade union in a single company, whether trade union activity was respected in practice in conformity with the provisions of article 22 of the Covenant and what the Bolivian authorities' attitude was towards strikes.

427. With reference to article 23 of the Covenant, members of the Committee asked what the difference was in Bolivia, from a legal standpoint, between free or de facto unions and marriage, whether the country had an information policy on methods of contraception or whether such information was prohibited. They also asked for details concerning the criminal responsibility of a mother in the event of failure by her to fulfil her duty of assistance to her minor child.

428. Concerning article 24 of the Covenant, it was asked what the working age for children was under Bolivian labour legislation. It was also asked to what extent the National Board for the Protection of Minors was concerned with minors in detention, what was being done for abandoned children and street children and, with regard to the right of children to acquire a nationality, what the legal position of a child born in Bolivia would be if neither of the child's parents was of Bolivian nationality.

429. With regard to article 25 of the Covenant, members of the Committee noted that in Bolivia only citizens who could read and write could be elected to public office. In that connection, they asked how that basic requirement was verified, what percentage of the Bolivian population was literate and, among the illiterate population, what was the percentage of indigenous inhabitants, persons of mixed race and whites. They also asked under what conditions foreigners could participate in municipal elections, whether the obligation of every citizen to vote, as set forth in article 219 of the Bolivian Constitution, was of a legal or merely moral nature, what the consequences were of a refusal to exercise the right to vote, what conditions of eligibility were set forth by the laws in addition to those set forth in the Constitution, which authority was empowered to verify them and what conditions must be fulfilled in Bolivia in order to form a new political party. In this connection, more information was requested on the criteria for granting civic groups juridical personality in order to form fronts or coalitions for purposes of political activity.

430. In connection with article 27 of the Covenant, members of the Committee wished to know the reasons why the indigenous Aymara and Quechua peoples in Bolivia were not regarded as ethnic minorities, which indigenous languages were taught in school and whether it was possible to use languages other than Spanish in relations with the authorities. Statistics were requested to determine the percentage of indigenous inhabitants in relation to the total population of Bolivia, their economic situation, especially in the light of the national agrarian reform, the proportion of such inhabitants among persons pursuing advanced studies and their participation in national political activities.

431. In reply to questions asked by members of the Committee, the representative of Bolivia referred generally to the main difficulties his country was encountering in its development process, such as a very low life expectancy, high infant mortality, a high illiteracy rate and a high rate of inflation.

432. Replying to the question asked in connection with article 1 of the Covenant, he explained that there was no difference of interpretation concerning that article's provisions: the State was in fact the outcome of the people's exercise of its right of self-determination.

433. Referring to the questions on article 2 of the Covenant, he said that the Covenant, as a treaty incorporated into Bolivian legislation, had the same authority as the other laws, but a treaty law could not take precedence over the

Constitution. The law incorporating a treaty could not be modified unless there had been a prior denunciation of the treaty. The constitutionality of the laws was guaranteed in Bolivia by the principle of the primacy of the Constitution, which required judges and authorities to apply the Constitution in preference to the other laws and the law in preference to other decisions and resolutions; it was also guaranteed by the action of unconstitutionality, which could be pursued before the Supreme Court of Justice. He gave details on the structure of the judicial bodies and on the types of remedies available in Bolivia to guarantee the exercise of human rights; they consisted principally of habeas corpus, amparo, ordinary remedies, by way of appeal, and extraordinary remedies, such as application for annulment or review, or automatic review. He also explained the order of precedence as between internal laws and decree laws issued by the President of the Republic and the Government. In that connection, the Bolivian Congress had begun a review of national legislation with a view to standardizing it.

434. With regard to article 3 of the Covenant, he said that, in the legal sphere, there was complete equality between the spouses in Bolivia and the conjugal home was chosen by both spouses; in cases of disagreement, they could ask a judge to decide. He referred to divorce procedure in his country and explained that, when a marriage was dissolved, custody of the children was determined by mutual agreement of the parents, with the judge's approval; in the absence of agreement, the judge would take a decision in conformity with the law. Bolivian women were not subordinate to their husbands, but in practice, because of ancestral customs, Bolivian society believed in the supremacy of the family and of the father as head of the family. However, a growing number of women had jobs and were participating in public life.

435. Regarding the state of siege in Bolivia, he explained that it was a limited emergency régime, as it did not apply throughout the country and only certain rights were limited or suspended and only in the case of certain persons. The proclamation of the state of siege was within the competence of the executive and was effected by decree with the agreement of the Council of Ministers; it was then submitted for approval to Congress, which either authorized it to be maintained or decided to suspend it. The executive was also required to ask Congress's consent to the extension of the state of siege beyond 90 days. During the state of siege, persons suspected of participating in activities liable to jeopardize public order who were the subject of a summons or arrest warrant had to be brought before a judge within 48 hours at the most. Such persons could be the subject of a restricted residence order. He stressed that the state of siege decreed in 1985, and again in 1986, was necessary because of the country's total economic collapse.

436. Concerning article 6 of the Covenant, he explained that capital punishment, which was not provided for in the Bolivian Constitution, had in fact been re-established by the Penal Code. In that conflict of laws, the Constitution took precedence over the law, and if a death sentence was handed down by a court, it was commuted to a sentence of 30 years' imprisonment by the higher court. The Bolivian Constitution contained no definition or criminal characterization of political offences: such offences were classified subjectively, in the light of the motives underlying them. However, there were no longer any political detainees in Bolivia and there had been no amnesty for political offences in five years. There had been no problem of enforced disappearances in his country since its return to a democratic régime. The Ad Hoc Committee of Inquiry into Pending Cases of Disappearance, which had been established by the Government of Bolivia, had ceased to function, but procedures for finding disappeared persons remained open. Abortion was prohibited in Bolivia, apart from exceptional cases authorized by law.

437. With regard to article 7, he said that the Bolivian Ministry of the Interior was organizing training and information courses for its personnel, including police personnel, on the Covenant and on domestic legal provisions concerning the rights of individuals.

438. In reply to the questions relating to article 8 of the Covenant, he said that persons who refused to serve as scrutineers were not liable to serious penalties.

439. As far as administrative procedures concerning vagrants was concerned, he pointed out that they only applied to habitual offenders and to criminals of no fixed abode and without employment, the so-called *vagos*, who should not be confused with ordinary unemployed persons. The persons concerned were entitled to be assisted by a lawyer, but were not provided with free legal assistance.

440. In connection with article 10 of the Covenant, he said that there were practical problems in Bolivian prisons, and that the provisions concerning the separation of juvenile offenders from adults and the provision of medical supervision and welfare were not always observed. However, a number of improvements had been made, in particular with regard to visiting rights and the possibility of parole in exceptional circumstances.

441. Referring to article 12 of the Covenant, he said that the international document attesting to refugee status was not a sine qua non for Bolivia to receive a foreigner as a refugee.

442. Turning to article 14 of the Covenant, he observed, in respect of the presumption of innocence, that Bolivian law and jurisprudence clearly illustrated that the burden of proof was not on the accused.

443. In connection with article 17 of the Covenant, he pointed out that under Bolivian law, private papers could be seized only when necessary for criminal cases and only with prior authorization. The tapping of telephone conversations was unlawful in all cases.

444. In respect of article 18 of the Covenant, he explained that State recognition of, and support for, the Catholic religion was more dogmatic than practical. In fact, the Catholic Church received its material support from believers. The State was also involved in certain plans of other religious denominations and there were 519 religious sects in Bolivia.

445. Regarding freedom of information, he said that the need was felt in Bolivia to adjust existing legislation to modern information techniques and to regulate, in particular, the conflict between the 1925 Act and the Decree Law of 1951. There was no monopolistic trend in ownership of the media in Bolivia: morning daily papers belonged to the private sector, there was no State-owned newspaper and there were at present 40 television channels in the country.

446. In connection with articles 21 and 22 of the Covenant, he said that in Bolivia trade unions were required to possess legal personality, in accordance with the provisions of the General Labour Act. However, under a more recent act, prior authorization was no longer required in order to set up a trade union. As to other conditions required by the General Labour Act in order to set up a trade union, the Bolivian Trade Union Federation considered that any amendment to the current provisions would be contrary to the interests of workers and would create dissent.

There were many unions in Bolivia and the right to strike was recognized, subject to observance of the relevant procedure, which provided for prior direct negotiations between the parties to the conflict.

447. With reference to article 23 of the Covenant, he said that in Bolivia free or de facto unions were subject to the same laws as marriage, including those relating to inheritance and succession, albeit with slight variations. There was no official Bolivian government policy in respect of contraception, although there was no prohibition on the dissemination of information on birth control.

448. With regard to article 24 of the Covenant, he pointed out that the Bolivian Labour Code set the minimum age for employment at 14. However, it was difficult to ensure that the provisions concerning work by minors were observed in a poor country such as Bolivia. A number of private organizations were actively combating the phenomenon of juvenile vagrancy, which had seriously worsened, on account of cocaine trafficking. As far as the nationality of children was concerned, Bolivia applied the jus sanguinis rule.

449. Concerning article 25 of the Covenant, he said that in Bolivia voting was considered to be a civic duty, but the consequences of failure to vote were negligible. The requirements regarding the ability to read and write in order to stand for office in certain elections concerned only political office and did not apply to persons wishing to enter the civil service. Candidates' abilities were checked when they submitted their candidature. There was no law in Bolivia specifically governing the operation of political parties, although there were a number of general provisions setting out, for example, the minimum number of members required for a political party to present candidates.

450. With regard to article 27 of the Covenant, he explained that the indigenous nations living on Bolivian territory were not, unless otherwise specified, considered as minorities because they represented, in numerical terms, a majority and were not subject to any separate régime. Since 1952, it had been easier for the indigenous populations, most of whom lived in rural areas, to acquire real estate thanks to an extremely progressive agrarian reform and the introduction of universal suffrage, under which they had gained the right to vote. They were currently fully involved in national life while preserving their cultural identity and traditions. Furthermore, the authorities were striving to facilitate the access of all sectors of the population to education.

451. He said that the remarks made by members of the Committee concerning the implementation of the Covenant in his country would be transmitted to the Bolivian authorities and that the answers to certain questions asked by the Committee, which it had not been possible to provide immediately, would be given in the next report by Bolivia or in subsequent submissions by his Government.

452. Members of the Committee thanked the representative of Bolivia for the frank and co-operative manner in which he had answered many of their questions. They nevertheless observed that, even though the current Bolivian Government had made considerable progress in respect of the observance of human rights, there were still certain causes for concern regarding the effective implementation of the Covenant in Bolivia and a number of questions remained unanswered. In that connection, they expressed the hope that the Bolivian legal system inherited from the past would be amended and updated. They also expressed the hope that the Bolivian authorities would be able to make improvements, bearing in mind the

relevant provisions of the Covenant, in major areas of national life such as declaration of the state of siege, the treatment of detainees, prison conditions, the administration of justice, the regulations governing freedom of information, the right to freedom of assembly and association, the jurisdiction of military courts, police powers in respect of the detention of suspects and the exercise of political rights.

453. On completion of the consideration of the initial report of Bolivia, the Chairman also thanked the representative of the State party for his co-operation and expressed the hope that the Bolivian authorities would be able to answer a number of questions raised by the Committee in the near future, either in the form of supplementary information, or in the second periodic report of Bolivia.

Cameroon

454. The Committee considered the initial report of Cameroon (CCPR/C/36/Add.4) at its 898th, 899th and 903rd meetings, held on 12 and 14 July 1989 (CCPR/C/SR.898, 899 and 903).

455. The report was introduced by the representative of the State party who, while emphasizing the efforts made by his Government to implement the provisions of the Covenant, nevertheless indicated that additional efforts needed to be envisaged. The dialogue with the members of the Committee was a method of identifying the possible shortcomings in the Cameroonian legal framework as well as the improvements that should be made to it. He specified, however, that the study of the human rights situation in Cameroon should be placed in the social and historical context of an evolving young nation.

456. Members of the Committee welcomed the report of Cameroon. Nevertheless, they expressed regret that it had been submitted late, that it did not provide sufficient detail on the measures taken to assure the practical implementation of the Covenant and that it did not contain any statistical data.

457. With reference to article 2 of the Covenant, members of the Committee expressed the wish to have more information on the legal status of the international human rights instruments, and more especially the Covenant, in Cameroonian domestic law. They regretted in particular that the Constitution of 2 June 1972, unlike that of 4 March 1960, made no reference to the primacy of rules of international law over Cameroonian domestic law. However, noting that the Criminal Code provided that ratified and promulgated treaties should take precedence over Cameroonian criminal law, they wished to know what was the status of the many provisions of the Covenant that did not deal with criminal issues. Moreover, it was noted that provisions that did deal with criminal issues usually did not apply automatically but involved an obligation for the State party to provide penalties in its own legislation for the crimes or offences they defined. Consequently, it was asked whether such provisions had been adopted by the Cameroonian authorities. It was also asked whether the provisions of the Covenant could be invoked directly before the courts or the administration, whether the latter could apply them directly and, if so, whether examples could be given. Finally, it was asked whether any court could hear cases concerning human rights violations regardless of the nature of the infringement and the special competence of the court.

458. Members of the Committee also inquired whether the Covenant had been published, whether it had been translated into the various languages spoken in Cameroon and whether it had been distributed extensively, particularly within the legal or administrative departments responsible for applying it. Additionally, they wondered whether it was intended to establish a national human rights commission in Cameroon, and whether there were any non-governmental organizations dealing with human rights issues in the country and, if so, what kind of working relationship they had with the Government.

459. Members of the Committee requested more detailed information on the current political régime in Cameroon. They noted in particular that notwithstanding the constitutional provisions envisaging the institution of a multi-party system, the country had decided upon a single-party system, the Democratic Assembly Party of the Cameroonian People, while awaiting a change in people's attitudes to a multi-party system. They asked why the Government continued to think the country was not ripe for a multi-party system; whether the existence of a single party was compatible with the provisions of the Constitution; and how the opinions of other political tendencies were taken into account under the current single-party régime. Several members were also at pains to stress that an effective defence of human rights went hand in hand with a multi-party system. With regard to the organization of elections in Cameroon, additional information was requested on the requirements that had to be met by a political party in order to have a legal existence; on whether movements had in effect expressed a desire to form political parties; on the need for a candidate for the post of President of the Republic to secure the support of "high-ranking traditional chiefs"; on the possibility for a single party to present several candidates at the same election; and on the outcome of the 1987 and 1988 elections. Lastly, clarification was sought about the meaning of the term "indirect universal suffrage" used in article 2 of the Constitution.

460. With regard to article 3 of the Covenant, members of the Committee asked which were the practical difficulties encountered by Cameroon on the subject of equality of men and women. They highlighted the cases in which a widow was required to observe a period of widowhood before she could remarry and in which a married woman was required to produce her husband's authorization to be able to leave the national territory and they inquired whether there were other instances of inequality of men and women. They also inquired whether there was not a certain degree of resistance to the right stemming from the population, particularly that of the Muslim religion, to equality of men and women in matters of succession; what was the proportion of women in comparison with men in Parliament; and whether Cameroonian courts were required to follow the judicial precedent of the Supreme Court upholding the civil equality of men and women.

461. With regard to article 4 of the Covenant, members of the Committee expressed their concern about the conditions in which a state of emergency might be proclaimed in Cameroon. Noting that, in the past, the President of the Republic had himself issued the decree proclaiming a state of emergency, they inquired to what extent both the proclamation of the state of emergency and the enforcement measures taken could be subjected to legislative or judicial control or supervision. Further, they inquired which rights set forth in the Covenant could be suspended during the state of emergency and whether there was any machinery to guarantee that the stipulations of article 4 paragraph 2, of the Covenant were respected. In connection with the extension of the state of emergency, they asked whether the President's option of extending the state of emergency for periods of six months was not likely to keep the country indefinitely in this exceptional

detailed information was requested about the annual meetings of public prosecutors to assess the progress made in the sphere of the protection of individual liberties and in relation to the functions of the special operations brigade. Concern was also expressed about the conditions of custody and in particular its extension beyond the legal period of 96 hours. Clarification was sought as to whether prisoners were held in administrative detention beyond the expiry of their sentences because they had not repented and were believed to represent a continuing threat. Further, explanations were requested about the detention of persons sentenced for political reasons, the right of anyone held in custody to be visited by a lawyer and by members of his family, and conditions of detention for abandoned children or persons suffering from mental problems. It was also inquired whether habeas corpus existed in Cameroon and, if so, how it was implemented.

467. With regard to articles 12 and 13 of the Covenant, members asked for explanations on the restrictions to the right to leave Cameroonian territory, particularly those relating to the reasons that justified leaving the country and the obligation imposed on a Cameroonian national desiring to leave the territory to prove that he was to provide himself with accommodation and to meet his own needs and the obligation for a married woman to produce her husband's authorization. Members commented that these conditions seemed to them to be incompatible with article 12 of the Covenant. Furthermore, it was asked whether the passport of a Cameroonian national who was present in the country remained in his possession or was required to be deposited, whether it was necessary for nationals to obtain an exit visa to leave the country and how the right to freedom of movement within the country was applied in practice. Additionally, it was inquired whether, in case of expulsion, aliens had a right of recourse before an impartial body and whether such recourse had a suspensive effect on the deportation order. Finally, in the case of aliens whose departure was opposed by government departments, State-owned establishments and partly State-owned companies, it was asked what particular remedies were available to them against such decisions.

468. In relation to article 14 of the Covenant, specific information was requested on the way in which the independence of the judiciary was guaranteed and on the conditions for the recruitment, appointment and promotion of judges. In particular, in view of the possibility for the President of the Republic to designate persons to the Supreme Court when it ruled on constitutional affairs, it was asked how the independence and impartiality of the Supreme Court could be truly guaranteed. Members wished to have additional information on the spheres of competence of military courts and their relationship with ordinary courts. Noting that these military courts could in certain cases try civilians, that their proceedings were held in camera and that their decisions did not appear to be appealable, several members inquired about the compatibility of these practices with the provisions of article 14 of the Covenant. It was also asked what was meant by descendants in the report according to which the accused could reject any member of the judiciary whose impartiality he had serious cause to doubt. With regard to the organization of the judiciary, additional information was requested on the courts of traditional (or customary) law and their relationship with the courts of modern law; on legal aid, particularly for minors; and on the organization of the defence and the period of time the accused person was allowed for the preparation of his defence. Further information was also sought on the penalties applicable to minors aged 14 and over. Information was also sought on the possibility for the Ministry of Justice to order new hearings on all proceedings relating to threats to state security and on the difficulties that might arise.

469. With regard to article 17 of the Covenant, members of the Committee sought more information about unlawful entry and search of premises ordered by the Ministry of the Armed Forces. Furthermore, it was asked whether there was any monitoring of the correspondence of banned political parties and, if so, under what authority. It was also asked whether there were any secret societies in Cameroon and, if so, on the methods adopted to combat this phenomenon in view of the need to protect privacy.

470. In relation to article 18 of the Covenant, members inquired about the legal bases for the restrictions imposed on the exercise of freedom of religion, particularly with respect to the prohibition of certain sects, such as the Jehovah's Witnesses, and their compatibility with the requirements of the article and the limitations it authorized.

471. With reference to the freedom of expression, members of the Committee wished to receive further information on prior censorship, which the law of 21 December 1966 made provision for, and on its compatibility with the requirements of article 19 of the Covenant. It was further asked whether spreading false news was an offence under Cameroonian law and, if so, whether the burden of proof lay with the accused or with the public prosecutor. Additional information was also sought on the issue of the state monopoly of the audio-visual media, particularly with regard to the special provisions made for private bodies. Referring to the dangers for the freedom of expression created by a monopoly of this kind, members sought information on the regulation of the use of information organs by citizens. Finally, clarifications were also sought on the right of reply provided when an individual had incurred charges prejudicial to his honour.

472. In respect of articles 21 and 22 of the Covenant, members inquired as to how the rights of association and of peaceful assembly and the right to strike were regulated, how many trade unions there were in Cameroon and how the conciliation and arbitration procedures prior to the exercise of the right to strike functioned. Additionally, it was inquired whether the right to peaceful assembly was accorded to aliens as well as to citizens and, if so, what legislation governed the holding of meetings by aliens.

473. Concerning articles 23 and 24 of the Covenant, members asked whether there were instances of resistance to modern law in respect of the consent of spouses to marriage, according to what criteria dispensations from the minimum age for marriage could be granted and whether there was a difference in status between legitimate children and illegitimate children, particularly in questions of succession. Information was also sought on the practical application of the provisions relating to the limitations on the parents' choice of name and first name for their child.

474. Pointing out that the provisions of article 25 of the Covenant were not confined to the exercise of the right to vote and could not be equated with the right to self-determination, members sought additional information on the application of this provision in Cameroon. In particular, they requested more detailed information on the subject of admission to the Civil Service and the equal participation of Cameroonians, particularly those coming from the north of the country or from provinces formerly under British trusteeship, in the affairs of the country.

475. In connection with article 27 of the Covenant, members wished to obtain more information on the day-to-day situation prevailing in the country in respect of the rights of minorities and on the ethnic composition of the population. In particular, it was asked what measures were taken to preserve the cultures, languages and religions peculiar to certain regions and to better integrate certain ethnic groups such as the "bamilékés" into the political life of the country.

476. In reply to questions concerning the status of the Covenant in Cameroonian law, the representative of the State party explained that the provisions of the Covenant had been incorporated in the legal system of Cameroon. He added that once an international instrument had been ratified by the President acting with the authority of the legislative, the provisions of that treaty automatically became an integral part of domestic legislation. Freedom and equality had always to be seen against the political background and the existing legal system, whose archaic structures had been criticized by the President himself. However, a new dynamic policy was being pursued with the aim of establishing a genuine democracy in which all citizens would be free to act as they wished under the law and a charter of basic freedoms was to be promulgated shortly. Although a single-party political system was in force at present, pluralistic democracy was the ultimate aim.

477. Commenting on questions raised under article 3 of the Covenant, the representative drew attention to the fact that several key posts in the Government were held by women, including that of Ambassador to the European Commission at Brussels, and that there was no discrimination between men and women candidates for posts in the public service. The requirement that a woman must obtain her husband's permission before applying for a visa was not in any way contrary to the provisions of the Covenant and was intended solely to preserve and strengthen the stability of family life.

478. Referring to a number of questions raised and observations made in connection with articles 7 and 10 of the Covenant, the representative recalled that his country had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and had submitted an initial report to the Committee against Torture.

479. With reference to article 9 of the Covenant, the representative stated that he was unaware of the existence of any special police brigade.

480. In reply to questions raised in connection with articles 12 and 13 of the Covenant, the representative of the State party said that visa charges were fully justifiable in view of the expenses that might be incurred in connection with repatriation and that therefore the procedure could not be regarded as discriminatory.

481. In reply to questions raised by members of the Committee concerning article 14 of the Covenant, the representative said that although appointed by the executive the judiciary was, in fact, highly independent. The crucial question was not so much the system of appointment of members of the judiciary but the quality of justice dispensed. No disciplinary action had ever been taken against any judge in Cameroon in respect of any judgement rendered. With regard to the nomination and promotion of judges, a strict seniority roll of serving judges was maintained by the Ministry of Justice and promotions were approved by the President on the advice of a Higher Council composed of senior judges and magistrates, the possibility of political bias thus being excluded. Steps had been taken to ensure that trained

and licensed lawyers were available throughout the country to provide legal advice and assistance to those requiring it. Referring to concerns expressed about military tribunals, the representative explained that provisions had been made, save in case of violations of arms regulations, for persons convicted by the military tribunals to appeal to a higher instance.

482. Regarding questions raised under article 19 of the Covenant, the representative emphasized that it was only natural that the State should retain the right to exercise a sufficient measure of supervision. Moreover, the press in Cameroon was regarded not only as a means of disseminating information but also as an educational institution, providing the framework within which citizens could learn how to live in freedom, stimulating a form of social dynamism for the achievement of national unity and encouraging creative participation in public affairs. A proof of the success of the press in performing that role was afforded by the fact that Cameroon was ahead of many countries in respect of the degree of popular participation in public affairs and access to the public service.

483. Lastly, with respect to article 27 of the Covenant, the representative said that many "bamilékés" occupied leading positions in the economic sector.

484. Members of the Committee thanked the representative of the State party for his co-operation. They observed, however, that, while he had endeavoured to reply to some questions, many important ones had remained unanswered. The concerns of members in respect of issues such as those relating to the detention system, the military courts, freedom of association, rights of minorities, equality of the sexes and the single-party system, in particular, had not been allayed. Some of the information relating to censorship and to the internal structure and evolution of the country also gave grounds for special concern. Members of the Committee expressed the hope that the Committee's observations would be brought to the attention of the Government and would be taken into account in preparing Cameroon's second periodic report.

485. The representative of the State party assured the Committee that its recommendations would be conveyed to the Government and that the second periodic report of his country would contain answers to the questions that had remained unanswered.

486. In concluding the consideration of the initial report of Cameroon, the Chairman welcomed the State party's clear intention to engage in a dialogue with the Committee. He thanked the representative for his efforts to reply to the Committee's questions but nevertheless regretted that, owing to the absence of experts from the capital, it had not been possible to have a more comprehensive and successful dialogue. It was all the more important, therefore, that the second periodic report of Cameroon should be submitted in good time and that the government representatives sent to present it should be sufficiently well informed to answer the Committee's legitimate questions.

Mauritius

487. The Committee considered the second periodic report of Mauritius (CCPR/C/28/Add.12) at its 904th to 906th meetings, held on 17 and 18 July 1989 (CCPR/SR.904-906).

488. The report was introduced by the representative of the State party, who apologized to the Committee on behalf of the Government of Mauritius for the extremely late submission of the second report. The delay had been due to various factors beyond the Government's control, in particular, an internal re-organization that had given rise to three general elections in a very short period. He assured the Committee that the Government of Mauritius would make every effort to ensure the early submission of the third periodic report, which would contain any information it had not been possible to provide at the current session of the Committee.

Constitutional and legal framework within which the Covenant is implemented

489. Members of the Committee asked for an explanation of the reference in paragraph 8 of the report to judgements of the Supreme Court in which the Court had referred to provisions of the Covenant and for examples if possible. They also asked for further information on the efforts made in Mauritius to inform the population at large of the provisions of the Covenant and on any special activities undertaken by the Government of Mauritius to inform the population of the right of every person who believed he had been the victim of a violation of any of the rights guaranteed in the Covenant to address a communication to the Human Rights Committee under the Optional Protocol. Members of the Committee asked whether there were factors or difficulties that might possibly be hindering the implementation of the Covenant.

490. Members of the Committee also asked whether the revision of legislation and of certain parts of the Constitution to bring Mauritian legislation more into line with the Covenant was continuing and what areas were currently being dealt with; what was the legal force of the Covenant in the Mauritian Constitution and legislation; which laws gave effect to the provisions of the Covenant; which guarantees might be suspended in a state of emergency and, in particular, whether article 16 of the Mauritian Constitution could be suspended. They wished to have more information on the exact competence of the Supreme Court, for the report did not indicate clearly whether that body had powers equivalent to those of a constitutional court: was it the Supreme Court that decided whether a law was constitutional, and if so, what was the procedure followed to invalidate a law?

491. Referring to paragraph 7 of the report, members of the Committee asked for clarifications of the terms "two-fold" and "democratic society". Noting that the report was extremely brief, they said they would have liked more information on events in the country during the 10 years that had elapsed since the Mauritian Government's submission of its initial report.

492. Replying to questions raised by members of the Committee, the representative of the State party cited two cases where reference had been made to provisions of the Covenant, including a case where a defendant's conviction had been reversed because of the failure of the authorities to inform him of the charges he faced in a language he could understand, as provided in paragraph 3 (f) of article 14 of the Covenant. He explained that the provisions of the Covenant were mentioned in trials only occasionally, for reference was usually made to the Constitution. Concerning action by the Government to inform the population of the provisions of the Covenant, he said that only representatives of certain professions - such as judges, lawyers and journalists - were familiar with the Covenant in detail; the rest of the population took little interest in international human rights instruments. However, the Covenant was regularly quoted in newspapers, the

National Assembly and the courts when a case involving a possible human rights violation arose; various human rights' defence groups and associations were also familiar with the provisions of the Covenant. Regarding difficulties, he said it was not easy to single out any specific ones but he was certain that they existed in Mauritius, as in all countries.

493. In Mauritius, it was not necessary to adopt a law to give effect to a particular provision of the Constitution. Neither was it necessary to repeal a law that the Supreme Court had declared to be contrary to the Constitution: such a law would automatically become null and void. In Mauritius, the Supreme Court had the power to declare a law unconstitutional; no appeal was therefore possible, except to the Privy Council in London, a procedure that had never been used. The Covenant did not have the force of law as such, but was applied in practice, since all its provisions were reflected in the Constitution. Furthermore, with time, laws were being adopted or abolished continually to bring legislation more into line to the Covenant. In Mauritius there could be no derogation from the Constitution with regard to essential rights such as the right to life, habeas corpus, protection against torture or slavery. Other derogations should not be contrary to the Covenant.

Self-determination

494. Regarding this question, members of the Committee asked what Mauritius's position was concerning the right to self-determination of the South African, Namibian and Palestinian peoples; whether Mauritius had taken measures to prevent public or private support for the apartheid régime of South Africa; what the current status of the Chagos Archipelago was under international law; and whether the population of the Archipelago had been asked its opinion about self-determination, including the possibility of being united with Mauritius.

495. Members of the Committee also wished to know the results of the diplomatic efforts undertaken to recover that territory, as well as future prospects or possible difficulties. They asked for more information concerning the inhabitants of the Chagos Archipelago who had been displaced in 1965, in particular their current social and political status and whether they still wished to return to the Archipelago.

496. In his reply, the representative of the State party said that his country, as a member of the Organization of African Unity and the United Nations, had supported all United Nations resolutions concerning the right to self-determination of the South African, Namibian and Palestinian peoples. That stand had been reaffirmed by the Prime Minister of Mauritius in his statement before the General Assembly on 12 October 1988, in which he had pronounced himself in favour of the restoration of all of the Palestinians' rights. Regarding measures taken to prevent any public or private support for the apartheid régime of South Africa, he stated that his delegation was happy to have the opportunity to clarify the situation in view of the concerted campaign regarding Mauritius' relations with South Africa. While it was true that certain private enterprises continued to have ties with South Africa, the existence of such ties had to be seen in the context of the strong administrative and economic links that had existed between South Africa and Mauritius during the British colonial era, the fact that South Africa was geographically the nearest country to Mauritius on the continent, and the continued existence of family connections between some of the inhabitants of the two countries. However, the Government had sought to reduce such relations with

South Africa, which were already limited, even further over the past several years and there had been reductions during that period in the level of imports, exports, investment and tourism.

497. The Chagos Archipelago, which had been separated from Mauritius in 1965, that is, before independence, had been combined with other territories to form a new colony, the British Indian Ocean Territories. At that time, all Mauritians in the Archipelago had been brought back to Mauritius, and in 1968, at the time of independence, the Mauritian citizenship of persons from the Chagos Archipelago had been retained under article 20.4 of the Constitution. Those who had been living in the Archipelago before separation were Mauritians and had always been considered as such.

498. Mauritius had never given up the idea of obtaining the restitution of the Chagos Archipelago and was making every effort to mobilize international public opinion to that end. The entire Mauritian community was working to obtain the return of the Chagos Archipelago to Mauritian territory and the former inhabitants of the islands were prepared to return there.

State of emergency

499. Members of the Committee asked for indications of the legal provisions in Mauritius with regard to the imposition of a state of emergency and for clarifications on their conformity with article 4, paragraph 2, of the Covenant. They also asked for clarifications on the provisions of article 18 of the Constitution, which in their opinion were less strict than the corresponding provisions of the Covenant, and for information as to who actually took the decision to proclaim a state of emergency in Mauritius.

500. The representative of the State party replied that article 18 of the Mauritian Constitution set forth the derogations from fundamental rights and freedoms that were authorized under the state of emergency. He explained that the state of emergency was proclaimed by the Governor-General (representative of Her Majesty the Queen) and that the proclamation was preceded by consultations between the Head of State, the Prime Minister, the Cabinet and the Governor-General. The proclamation had to be confirmed by a two thirds majority vote of the members elected to the Legislative Assembly (Parliament).

501. Regarding the use of terms in article 18 of the Constitution that differed from those of the Covenant, he said that in his opinion the only possible interpretation of that article was that of public emergency in the meaning of the Covenant, i.e. circumstances threatening society itself and the nation. The difference between the terms used could not be interpreted as authorizing the proclamation of a state of emergency under circumstances other than those set forth in the Covenant. The provisions of the Constitution relating to the state of emergency had to be considered in the light of his country's special situation and understood in terms of the nature of its institutions.

Non-discrimination and equality between the sexes

502. Members of the Committee asked whether significant inequalities still existed between spouses with regard to marriage, during the marriage and at its dissolution, even after the recent revision of the Civil Code. They asked for further information on the duties and functions of the Ministry of Women's Rights

and Family Welfare and on the activities of the National Women's Council and the effectiveness of its work. With regard to the treatment of foreigners, they wished to know in what respects, apart from political rights, the rights of foreigners were more limited than those of nationals. Members of the Committee also asked to be supplied with further information in accordance with the Committee's general comment No. 15 (27).

503. Noting that article 16, paragraph 3, of the Constitution did not mention either language or sex as grounds for discrimination, members of the Committee said that those two elements should be mentioned if the text of the Constitution was to be fully in conformity with that of the Covenant. They wished to know the meaning of the sentence "tradition and cultural patterns still cause some differences in the lives of men and women" and whether the application of the three matrimonial régimes had raised problems, given the religious and cultural difficulties. Clarifications were requested concerning the contractual régime entered into by the spouses at the time of marriage. They also asked whether foreign women who married Mauritians could keep their original nationality or whether they automatically acquired their spouse's nationality. Members also asked what percentages the various communities represented within the Mauritian population and to what extent each of those communities participated in public affairs.

504. Replying to the questions raised, the representative of the State party said that in Mauritius, not counting minorities, the population was divided, from an electoral point of view, into four major categories according to origin: the Chinese; what was generally termed the "general population"; the Hindus; and the Muslims. Members of all of these groups having the necessary qualifications could seek public office or election to the Assembly without any legal or practical obstacles. Under the Constitution, eight seats in the Legislative Assembly were reserved to ensure a certain equilibrium in the representation of the various electoral groups. With regard to the prohibition of discrimination based on language, he said that nothing in the Mauritian Constitution provided for either advantages or disadvantages linked to language. In practice, for several years all the communities had been able to promote the use of their own language and to study in their language in the public schools.

505. Referring to questions on the matrimonial régimes, he said that in Mauritius there were no significant inequalities between spouses under the law, but it was more difficult to state that there were no significant inequalities between spouses in practice, given the multi-racial nature of the Mauritian nation where each ethnic group had its own traditions. The Mauritian authorities made every effort to amend or eliminate legal provisions that did not guarantee equal treatment between men and women, for example, with regard to employment, and they had revised the Civil Code provisions on marriage. The National Women's Council had also been active in making women better aware of their rights regarding such matters as marriage and divorce and in respect of their children, and special consultative groups had also been established to assist women in dealing with their problems. A certain amount of progress in improving the condition of women had already been achieved, as illustrated by the increased participation of women in public life and in sports.

506. He said that, in practice, the matrimonial régimes had not raised any problems so far. The contractual régime entered into by the spouses at the time of marriage was not a very widely used procedure; contracts of that type had never given rise to any inequalities and had never been contested in the courts. He stressed that, if a marriage contract freely entered into by the spouses proved to be at odds with

the principles of the law and human rights, the Supreme Court would not recognize the validity of the contract. Women who married foreigners retained their Mauritian citizenship unless they made a formal act of renunciation.

Right to life

507. With reference to that issue, members of the Committee wished to know how often and for what crimes the death penalty had been imposed and executed since the consideration of Mauritius' initial report; whether there had been any further developments since the submission of the report concerning the appeals of the persons sentenced to death for drug trafficking; what were the rules and regulations governing the use of firearms by the police and security forces; and whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence. With regard to the problem of drug consumption and drug peddling, the representative was asked to comment on the recommendations or findings of the Parliamentary Select Committee and the Commission of Inquiry, as well as on the effectiveness of the campaign against drug abuse and addiction. Members of the Committee also wished to have additional information on article 6 of the Covenant, in accordance with the Committee's general comments No. 6 (16) and 14 (23).

508. Some members expressed their concern about the reintroduction and application of the death penalty for drug traffickers in Mauritius after a 23-year moratorium and said that to extend the death penalty to all cases of drug trafficking, including those involving the sale and consumption of unprocessed coca leaves, was an excessive measure. In the same connection, they wished to know what minimum quantity of drug possession constituted trafficking, whether the possession of that quantity was enough to shift the burden of proof on to the accused person and which dangerous drugs were subject to government authorization. Members also wished to know what discretion a judge would have in pronouncing sentence and why trial by jury had been abandoned; why drug trafficking was considered serious enough to warrant the establishment of a system that did not exist in other countries; what had prompted the enactment of so far-reaching a law; and whether any additional steps had been taken or were contemplated to bring about a reduction in drug trafficking.

509. Members also wished to know whether citizens had a right to the possession and use of firearms in self-defence, whether special licences were required for such weapons and whether the police were permitted to carry machine-guns and other sophisticated firearms.

510. In his reply, the representative of the State party explained that the offences for which capital punishment could be imposed were treason, murder and the recently enacted offence of importing dangerous drugs. The death penalty had not been imposed for treason since the submission of the initial report. Two executions for murder had taken place in 1984 and 1987. The new law imposing the death penalty for the import of drugs had been passed in 1986. There had been two convictions in 1987. Since the submission of the report, there had been a further conviction for the import of drugs in which an appeal to the Privy Council was under consideration. The death sentence was likely to be imposed only on persons having in their possession a sufficiently substantial quantity of drugs to justify the conclusion that they were drug traffickers. In addition to the introduction of the death penalty for drug trafficking, an amendment to the Dangerous Drugs Act had also increased the penalties for a number of other drug offences, with the result that drug trafficking was largely under control.

511. The types of drug trafficking that involved the death penalty were listed in the Drug Act. As regards coca leaves, the Government's concern had been not so much with consumption as with importation of and traffic in coca leaves. Psychotropic substances were not included in the list of dangerous drugs but prison sentences and/or fines were imposed on persons found to be in possession of such substances. It was up to the court to decide in each individual instance whether an accused person was or was not a drug trafficker. Trial by jury had been abandoned in such cases to prevent tampering with jurors. Judges were empowered to impose the death penalty for drug trafficking just as in cases of murder.

512. Regarding the presumption of innocence, the representative said that it was quite clear under the system of law obtaining in Mauritius that the burden of proof rested on the prosecution and that the accused enjoyed the right of silence. If drugs were found in a person's luggage and the court was satisfied that he had no knowledge of their presence, he could not be convicted under any circumstances. The mere possession of dangerous drugs without any proof of guilty intent was insufficient to obtain a conviction. Mauritius was co-operating with several States to eliminate the threat of widespread traffic in drugs but this did not affect the imposition of the death penalty for drug offences. Indeed the imposition of such penalties on convicted drug traffickers was also likely to benefit other countries.

513. The law governing the use of firearms by the police and security forces was no different from that applying to any member of the public. The police did not carry machine-guns, only hand-guns. There had been no cases in recent years of injuries caused by firearms. Firearms could only be carried by members of the public if they were in possession of a licence issued by the Commissioner of Police. A Firearms Act and Firearms Regulations were in force and the situation was well under control.

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

514. With reference to that issue, members of the Committee wished to know what proportion of persons charged with criminal offences were denied release with or without bail pending trial; what was the average length of detention for persons who remained in custody pending trial; how quickly after arrest a person's family was informed and how soon after arrest a person could contact his lawyer; what was the current status of the Reform Institutions Bill, which, *inter alia*, would formally outlaw caning in prisons; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and whether the relevant regulations and directives were known and accessible to prisoners; whether prison authorities still resorted to the application of a bread and water diet for a period of seven days to one month as a means of punishment and, if so, how common was that practice; and what was the minimum age at which a person could be held criminally responsible.

515. Members also wished to know why the time-limit for bringing an arrested person under judicial control was not legally defined; why in Mauritius persons could be imprisoned for failure to pay a debt; whether the offence for which a debtor could be imprisoned was failure to pay a debt or contempt of court; and whether bail was automatically disallowed for certain categories of offences. They also sought additional information on the enforceable right to compensation for anyone who had been a victim of unlawful detention; on the Act enabling the competent minister to

refer labour disputes to compulsory arbitration, which might result in the imposition of forced labour; and on the regulation relating to the liability to imprisonment of persons without visible means of support. It was also asked what the minimum age was at which a person could be imprisoned or held criminally responsible.

516. Replying to the questions raised by members of the Committee, the representative of the State party stated that the number of cases in which bail was denied was very small. The Bail Act No. 13/1989 had considerably relaxed the conditions for bail. Persons arrested on charges of murder or the importation of drugs were systematically refused bail, but bail was always considered for other categories of offences, including manslaughter. A person charged with murder might be held under arrest during preliminary investigation for a period of up to 8 or even 12 months, in other cases much less (1 to 3 months). The families of arrested persons were normally informed immediately. The Reform Institutions Bill was now on the statute-book as the Reform Institutions Act No. 35/1988. In consequence, caning and bread and water diets in prison were no longer legal. The minimum age at which a person could be held criminally responsible had not been specifically laid down by the Parliament, but sections 44 and 45 of the Criminal Code gave an age of 14, below which offenders were not deemed to be criminally responsible. Mauritian law also contained special provisions ensuring that young people were tried separately in juvenile courts and that the punishment applicable to them was modified as compared with that reserved for adult offenders. In the case of unlawful detention by a police officer, the State was responsible for payment of damages.

517. There was no record of trade union officials being imprisoned on account of lawful trade union activities; nor was there any case of workers in either the public or private sector being imprisoned for taking part in strikes, even where such strikes were unlawful. Cases of forced labour, except in connection with lawful prison sentences, were inhuman and there was no provision for such practice in law. Imprisonment was not ordered automatically for simple refusal to pay a debt but only if and when the court was satisfied that the person had the means to pay but was still wilfully refusing to do so. While such a person could be incarcerated, he would be immediately released upon paying the debt.

Right to a fair trial

518. With regard to that issue, members of the Committee wished to receive necessary additional information on article 14 of the Covenant, pursuant to the Committee's general comment No. 13 (21). They also asked whether any steps were contemplated to enact legislation providing for compensation to persons wrongfully convicted or imprisoned, in accordance with the requirement in article 14 (6) of the Covenant.

519. In connection with section 4 of the Official Secrets Act, a member pointed out that the provisions contained therein appeared to lay the burden of proof on the accused and therefore seemed to be contrary to article 14 (2) of the Covenant concerning the presumption of innocence.

520. Replying to the questions raised, the representative of the State party stated that the Committee's general comment No. 13 (21) was very helpful to the legal profession and to the members of the judiciary, but the Constitution of Mauritius contained its own detailed rules concerning due process in section 10. The right

to claim damages had always existed under Mauritian law and the country's Civil Code made satisfactory provision for remedy in such circumstances. The Official Secrets Act, which had been enacted to protect cabinet documents, sought not to upset the established rule concerning the burden of proof but merely to provide that, if a document had been published with lawful authorization, that fact should be established by the publisher. Requiring the publisher to furnish proof of authorization was a requirement that did not contravene the presumption of innocence or the Covenant's provisions.

Freedom of movement and expulsion of aliens

521. With reference to that issue, members of the Committee wished to know whether any restrictions on the freedom of movement or residence of aliens had been adopted pursuant to section 15 (3) (d) of the Constitution; whether appeals against deportation orders had suspensive effect; and whether the permissible restrictions under Mauritian law, "complying with norms that were reasonably justifiable in a democratic society" were the same as those permitted under the Covenant.

522. In his reply, the representative of the State party declared that there were no restrictions on the freedom of movement or residence of aliens in Mauritius. Appeals against deportation orders did not have suspensive effect but, in practice, the person against whom the order had been made was usually allowed to stay in the country pending a decision. If the authorities decided to enforce the order, the person could request a court injunction to prevent the expulsion from being carried out before the hearing had been concluded. The phrase in paragraph 27 of the report and the one in article 12 of the Covenant carried the same implications.

Right to privacy

523. With reference to that issue, members of the Committee requested additional information on article 17, in accordance with the Committee's general comment No. 16 (32); and concerning the law and practice relating to permissible interference with the right to privacy and to the collection and safeguarding of personal data.

524. Responding to questions raised by members of the Committee, the representative of the State party pointed out that interference with privacy by the State was permissible in criminal investigations provided that a court order had been obtained on the basis of information given under oath. Interference by private persons was governed by the Civil Code. There had so far been no need for legislation concerning personal data in Mauritius since no private or public institution systematically collected such data except in the field of taxation, electoral law and pension rights.

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

525. In this connection, members of the Committee asked for further information concerning the limitations on freedom of the press and the media permitted by law. They wondered whether propaganda for war was prohibited by law, in conformity with article 20, paragraph 1, of the Covenant.

526. They also asked why the drafters of the new 1985 law had found it necessary to add the offence of contempt of the Government to the current Criminal Code, when the offence of slander was already provided for, whether legal proceedings had been instituted in application of that law and why it had been felt necessary to add the offence of publication of "false reports" to the Criminal Code. In the opinion of members of the Committee, there was a problem of compatibility with article 19 of the Covenant and, in that connection clarifications were requested on the 1970 Act, in particular the rights and remedies available to the accused and who decided whether certain news was seditious. Members also noted that article 12 of the Mauritian Constitution did not provide for freedom to "seek, receive and impart information and ideas" as stated in article 19, paragraph 2, of the Covenant. They asked whether there were legislative provisions in that area and, in particular, to what extent journalists were able to obtain information from the authorities or have access to official files, whether radio stations in Mauritius broadcast programmes in several languages and how air time was divided among the various language groups. Some members of the Committee asked for clarifications of the expression "except with his own consent" in article 12 of the Mauritian Constitution and on the compatibility of article 296 of the Criminal Code with the corresponding provisions of the Covenant. Some members of the Committee also asked whether the State provided subsidies to the various religious denominations or associations for their schools.

527. The representative of the State party, replying to the questions raised by members of the Committee, stated that freedom of the press was guaranteed in his country and that the Committee need not be concerned by certain legislative provisions that had been adopted in that area. Concerning the publication of "false reports", he explained that the false nature of published reports did not in itself lead to a conviction if there had been no criminal intent. He said that the 1985 law and article 296 of the Criminal Code, which certain members of the Committee had found unduly repressive, had never been used as a basis for legal prosecutions. In the opinion of the Government of Mauritius, freedom of the press did not mean freedom to publish false or distorted information. However, it did include the right to criticize the Government, its policy or positions, and that right was in no way suppressed. The omission of the words "to seek" information from article 12 of the Constitution by no means meant that freedom of expression and information was limited in Mauritius. In his opinion, the freedom to "receive and impart" information set forth in article 12 of the Constitution included the freedom to seek information and, on that basis, the inability to exercise that right could be considered by the courts as a violation of the provisions of the Constitution.

528. Concerning subsidies to educational establishments, he said that there was no discrimination and that all establishments were subsidized sufficiently to pay their staff and to ensure their proper operation. Concerning the reference to air time, he pointed out that it was quite difficult to divide it equally among all the language groups, since Mauritius had only one radio station for a trilingual population. However, efforts were made to distribute the programmes among the different languages equitably. The problem of propaganda for war had never arisen and the law made no provision in that regard. However, the implementation of other legal provisions prohibiting the advocacy of insurrection or violence could have the same result as a specific law. Concerning the implementation of the articles of the Public Order Act, which provided for the closure of printing houses, he said that his Government would provide the Committee with detailed information in a written note.

Freedom of assembly and association

529. Members of the Committee requested information on the number and composition of trade unions in Mauritius; on legislation and practice with regard to the right of peaceful assembly; and on the conditions restricting the right to strike contained in the Industrial Relations Act of 1973.

530. Replying to the questions raised by members of the Committee, the representative of the State party said that the establishment and operation of trade unions were governed by the Industrial Relations Act. As at 31 December 1987, Mauritius had 313 trade unions, of which 10 were federations; that number had now risen to 331. The conditions for joining a union were also governed by that Act, which provided for complete freedom in that area. Concerning the right of peaceful assembly, he informed the Committee that the competent authorities were the courts, in the first instance, followed by the permanent arbitration court. The Commissioner of Police had to be informed before a public meeting was held; if he refused authorization, it was possible to apply to a court. The purpose of the restrictions as far as strikes were concerned was to provide for a cooling off period. If those procedures failed, a strike notice had to be submitted to the Minister for Labour. The only recent example of a strike had been a major strike of the entire civil service at the beginning of June 1989.

Protection of the family and of children

531. Members of the Committee asked for further information on the activities of the Ministry of Women's Rights and Family Welfare and on the activities of the National Adoption Council since its establishment in 1987, in particular, whether the Council had been able to eliminate abuses in the adoption of Mauritian children by foreigners. They asked whether a mother of Mauritian nationality could transmit the nationality to her child born outside Mauritian territory, as provided by article 23 of the Constitution in the case of the father.

532. Members of the Committee also asked whether the lack of distinction between legitimate and natural children also extended to children born of adultery and, if so, what possibility the parents had of legitimizing them, and whether natural children and children born of adultery had the same rights as legitimate children with regard to inheritance. With reference to the serious problem of children taken out of a country illegally, they asked whether the National Adoption Council was also empowered to inquire into that type of illegal practice, whether cases of that nature had been brought before the courts in Mauritius and, if so, what sentences had been handed down against nationals and foreigners. Was corporal punishment practised in the schools and, if so, in what form?

533. Replying to the questions asked by members of the Committee, the representative of the State party said that the Ministry of Women's Rights and Family Welfare, in particular, made available to the public the services of lawyers, doctors, psychologists and nutritionists. An amendment to the Civil Code that entered into force in 1982 had abolished the distinction between legitimate and natural children, but that did not apply to children born of adultery. The National Adoption Council had begun its functions in 1988. In that year, there had been 69 adoption requests, of which 62 had been approved. The Council was empowered to inquire into the activities of certain organizations that obtained children for foreigners. In a number of cases, facts had been brought to the attention of the police. He explained that, under articles 23 and 27 of the

Constitution, a mother of Mauritian nationality could not transmit the nationality to her child born outside Mauritian territory. Corporal punishment was not authorized in Mauritian schools.

Right to take part in the conduct of public affairs

534. Members of the Committee asked to be supplied with statistical data concerning the proportion of women and minorities elected to office and in public service.

535. The representative of the State party replied that there were more women than men in his country's public service. There were currently three women in Parliament, one of whom, a Hindu, was also the Minister for Labour; there were no statistics regarding minorities. Mauritius might be described as a nation of minorities, since there were about 30 or so of them, and it could not be said that any one dominated the others. For electoral purposes, for reasons of convenience, they were divided into four major categories: persons of Indian, African and Chinese descent and Muslims. No problems arose concerning participation of members of minorities in public service.

Rights of minorities

536. In this connection, members of the Committee wished to know whether there were particular difficulties and factors that might affect the enjoyment by minorities of their rights under the Covenant and, if so, what measures had been taken to remedy them. Noting with satisfaction that minorities' rights appeared to be well protected in Mauritius, some members asked whether that was simply so in practice or whether there were special legal provisions to that effect.

537. The representative of the State party replied that, in his country, no law conferred a particular right on any special community. The law simply permitted all individuals to enjoy their rights in any way they pleased. All communities genuinely enjoyed the rights granted to them. That situation was reinforced by the existence of the French, African and Chinese Cultural Centres and the Mahatma Gandhi Cultural Centre. There was no law prohibiting any particular community from enjoying all its cultural rights and expressing itself, in music, in song, or in prayer. If the Government of Mauritius had more means at its disposal, it would provide for even greater enjoyment of those rights.

General observations

538. Members of the Committee expressed their satisfaction and thanked the representative of Mauritius, noting that his replies to the Committee's questions had been frank and full and that the dialogue between the Committee and the Mauritian delegation had been fruitful. While regarding the human rights situation in Mauritius as satisfactory, they expressed concern with respect to some provisions in current Mauritian legislation, especially regarding the death penalty and the fairness of proceedings in that area; freedom of expression and freedom of the press; non-discrimination in connection with article 16 of the Mauritian Constitution; the presumption of innocence in the context of the Official Secrets Act; trade-union freedoms; and the treatment of children born of adultery.

539. The representative of the State party assured the Committee that the Government of Mauritius was resolved to respect both the spirit of the Covenant and the Constitution of the country.

540. Concluding the consideration of the second periodic report of Mauritius, the Chairman again thanked the Mauritian delegation for the constructive manner in which it had conducted its dialogue with the Committee. He believed that the delegation had been able to form a clear idea of what the members of the Committee thought of the human rights situation in Mauritius and to consider their arguments, and that it would now be able to transmit the Committee's observations to the Government of Mauritius.

Italy

541. The Committee considered the second periodic report of Italy (CCPR/C/37/Add.9) at its 908th to 912th meetings on 19, 20 and 21 July 1989 (CCPR/C/SR.908-912).

542. The report was introduced by the representative of the State party, who emphasized the importance that the Government of Italy attached to the protection of human rights and reminded the Committee that his country had ratified all the main international human rights instruments. He added that such an undertaking placed an increasing burden on the Interministerial Committee on Human Rights. That burden, indeed, had caused a delay in the submission of the report and made it necessary to improve arrangements for the implementation of obligations under those international instruments.

543. Referring to developments since the preparation of the report, he stressed the considerable efforts that had been made to improve the legislation relating to civil and penal procedures. The major development in the field of penal procedure was the forthcoming entry into force, in October 1989, of the new Code of Penal Procedure. The Code was designed in particular to ensure complete equality of treatment between defence and prosecution, to guarantee persons suspected of criminal offences direct and immediate access to the judge, and to reduce the length of the penal procedure by introducing the principle of cross-examination. To supplement the efforts made to reduce the length of judicial procedures, a bill aimed at establishing the institution of a justice of the peace to deal with minor civil cases had been submitted to Parliament on 17 January 1989.

544. Regarding freedom of religion, the Constitutional Court in a recent ruling had confirmed that religious instruction in secondary schools was purely optional. Furthermore, a bill considered by Parliament was aimed at recognizing the total and unconditional right of conscientious objectors to perform civilian service instead of military service, and at making them subject to the civil rather than military courts.

545. Lastly, with reference to article 19 of the Covenant, he stated that an act of February 1987 sought to ensure transparency in the transfer of ownership of newspapers, to monitor any activities that might result in the concentration of information, and to sanction, by annulment, any transaction that was liable to give certain groups or companies a dominant position. In addition, since the field of radio and television was not governed by any general law the Government had submitted a bill to Parliament with a view to creating a legal framework for the fair allocation of radio and television broadcasting channels.

Constitutional and legal framework within which the Covenant is implemented

546. In this regard, members of the Committee expressed a desire for more information concerning the status of the Covenant in Italian law and concerning

arrangements to resolve any conflict between the Covenant and the provisions of domestic law. On that subject, they asked whether there had been further developments in case law since 1980 strengthening the de facto primacy of treaty provisions, in particular those of the Covenant, over the provisions of domestic law; whether the Covenant was frequently invoked before the courts and often referred to in judgements; whether its provisions were directly applicable; and what was its status in relation to the Italian Constitution and domestic law.

547. In addition, they asked whether the Interministerial Committee on Human Rights had made any specific recommendations or proposals for legislation or executive action designed to fulfil Italy's obligations under the Covenant or other relevant international human rights treaties; and whether any factors or difficulties were being encountered in the implementation of the Covenant, notably in the context of efforts to combat terrorism, because of economic problems or problems in the field of immigration. They also requested additional information on activities to promote greater public awareness, and particularly awareness among magistrates and members of the police and armed forces, of the provisions of the Covenant and the Optional Protocol.

548. Referring to the institution of citizens' advocate, they asked what was the current status of the bill concerning that institution; in what manner the competence of nationally appointed citizens' advocates differed from that of those appointed by regional authorities; and whether the former were empowered to deal with problems involving the regional authorities where there were no regional citizens' advocates. It was also asked what the reasons were for establishing the institution of citizens' advocates; whether positive results had already been obtained at the regional level; whether, contrary to the intended purpose, that institution might not have contributed to further prolonging procedures; what the field of competence of citizens' advocates was; what powers they were given to protect the rights of individuals, in particular when no remedy was available for administrative acts prejudicial to the citizen; and whether they were able to institute proceedings before the courts on behalf of private individuals. Lastly, concerning the numerous reservations made by Italy upon ratification of the Covenant, it was asked whether the Government intended to maintain them or whether it felt that some of them could be reconsidered, in particular the reservation concerning restrictions on the right of entry and sojourn in Italy of some members of the Savoy family and the reservation concerning article 19 of the Covenant.

549. In reply to the questions asked concerning the status of the Covenant in Italian domestic law, the representative of the State party reminded the Committee that the very structure of the Italian constitutional system was designed to guarantee the application of international instruments such as the Covenant in internal law, bearing in mind also article 11 of the Constitution, which provided the possibility of limiting State sovereignty in the interests of the maintenance of peace. The Constitutional Court had stated in 1983, in a case concerning the relationship between European Community legislation and the Italian Constitution, that the latter contained two types of provisions: essentially procedural provisions, from which derogations could be made in favour of a supranational rule, and provisions concerning the protection of human rights and fundamental freedoms, which were not subject to derogation. Thus the provisions of the Covenant, although incorporated in the Italian legal system by an ordinary law, were particularly well protected since they were linked to the clauses of the Constitution, whose primacy was upheld even in relation to international treaties. Concerning possible conflicts between the Covenant and a subsequent law, he drew

attention to two recent rulings handed down by the Court of Cassation stipulating that, in the event of conflict, the judge must not recognize the supremacy of the subsequent law unless the legislative provisions demonstrated a clear and obvious intention on the part of the legislature to abrogate the international rule. The pacta sunt servanda principle recognized in international law was thus strengthened. The provisions of the Covenant, particularly those of article 14, were frequently invoked before the courts. Thus, for example, the Court of Cassation had recently refused to extradite a person because the safeguards provided by the legislation of the requesting State for young persons below the age of majority in terms of penal law were not as extensive as those of article 14, paragraph 4. Nevertheless, if the provisions of the European Convention on Human Rights were more frequently cited by the courts, that was because of the publicity given to legislative reforms that were based largely on that Convention.

550. Replying to other questions, he drew attention to the fact that his Government had established the Interministerial Committee on Human Rights with a view to co-ordinating the preparation of all reports to be presented under the various international instruments relating to human rights. Although, under its mandate, the Committee was not required to make specific recommendations or proposals for legislation, it had recently taken the initiative of studying the system of presentation of reports under those instruments in order to make its contribution to rationalization of the system. The implementation of the Covenant had not posed any particular problems in Italy because most of the fundamental principles in the Covenant were already written into the Constitution. Nevertheless, a number of difficulties might well arise, mainly in the sphere of penal procedure.

551. Turning to questions concerning activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol, he stressed that very many activities had been undertaken, and mentioned in particular the recent publication of a compilation of all the international instruments and the Italian legislative provisions on women's rights. Special efforts were being made to make law enforcement officials more familiar with the text of the Covenant and its consequent implications for their daily work. A similar effort was being made in police training colleges, where instruction was given in human rights.

552. Referring to the many questions on the institution of citizens' advocate, he explained that thus far it had been introduced only at the regional level. Several legislative initiatives had been taken to regulate the institution at the national level in terms of greater dynamism and enhanced efficiency but, owing to the premature ending of the parliamentary term, they had lapsed automatically. However, during the current term Parliament had before it a large number of proposals that restated the earlier initiatives. The proposed competence of the citizens' advocate was restricted to the machinery of the State and of the institutions coming directly within its competence, consequently, it was not anticipated that he might intervene in those regions where there was no regional citizens' advocate. The citizens' advocate, viewed as a means of bringing the public and the authorities closer, was a centralizing organ to which all citizens could apply in order to report an actual or alleged abuse committed by the public authorities. He also played a very important role in accelerating administrative procedures and, intervening before an administrative act was adopted, he was complementary to the courts, which, for their part, could be seized only after a certain act had been performed. However, as the regional citizens' advocate had only limited competence vis-à-vis the national authorities and public services, his

effectiveness was impeded, as most complaints by citizens concerned alleged abuses committed by the latter.

553. In reply to other questions, he explained that the Italian authorities considered at regular intervals the necessity for maintaining the reservations made upon ratification of international human rights instruments. With respect to the reservation on article 12, paragraph 4, he pointed out that the constitutional provision that had given rise to it was still in force and that, consequently, in order to enable the male descendants of the King of Italy to be admitted to Italian territory, it would be necessary to amend the Constitution, which neither the Council of State nor the Constitutional Court had deemed appropriate. However, the prohibition of the entry into and sojourn in the territory of other members of the House of Savoy had been relaxed by judicial precedent. He assured the Committee that the reservation made in article 19, paragraph 3, concerning radio and television broadcasting had not prevented Italy from discharging the obligations stemming from it and said that the reservation was likely to be withdrawn.

State of emergency

554. Members of the Committee sought clarification concerning the constitutional or legal provisions guaranteeing article 4, paragraph 2, of the Covenant.

555. In his reply, the representative of the State party stressed that his country had never had recourse, since the founding of the Republic, to emergency measures. For instance, the problems stemming from the intensive terrorist activities in the 1970s and early 1980s had been solved by ordinary procedures and methods. The Constitution contained only provisions relating to the state of war, which had never been implemented. In the final analysis, the best guarantee of implementation of article 4, paragraph 2, of the Covenant lay in the hierarchy of the sources of law.

Non-discrimination and equality of the sexes

556. Members of the Committee asked whether the conditions for the acquisition of Italian nationality described in article 1 of Act No. 123 of 21 April 1983 also applied to a foreign or stateless woman; whether the European Economic Community Council directives of 10 February 1975 and 9 February 1976 had been included in Act No. 903 of 9 December 1979; and whether the directive of 11 December 1986 had the force of law in Italy. With regard to the equality of men and women, members requested relevant national and regional statistical data on the proportion of women to men in leading political and governmental positions, in public employment and in managerial posts. With regard to aliens, members inquired in what respects their rights were restricted as compared with those of nationals and, in that regard, they wished to have more detailed information in the light of the Committee's general comment No. 15 (27).

557. In addition, further information was sought concerning Act No. 123 of 21 April 1983, in particular, how a woman who had under the old system lost her nationality through marriage could recover it. With reference to the transmission of nationality through birth, it was asked what the grounds were for the Constitutional Court's judgement of 9 February 1983, and whether the current national law on the nationality of children was based on ius sanguinis or on ius domicili. It was also asked whether an alien under age adopted by an Italian family acquired the latter's nationality; what facilities the natural mother had

with respect to entering Italy and contacting the child; whether men and women were on an equal footing as far as service in the police was concerned; and what the precise functions were of the National Commission for Equality between Men and Women. Lastly, with regard to the need for positive action in the field of non-discrimination, one member wondered whether the alleged current resurgence of neo-fascism in Italy was a problem of any considerable extent.

558. The representative of the State party emphasized that Act No. 123 of 21 April 1983 provided for total equality in matters of nationality. Any person, male or female, who married an Italian national was free to choose whether or not to acquire the spouse's nationality. A special provision had been made to enable women married under the old system to renounce Italian nationality if they so wished. He added that the relevant European Economic Community Council directives had been incorporated into the appropriate Italian legislation. Article 5 of Act No. 123 provided that adopted minors could maintain dual nationality until attaining majority, at which time they would have to opt for one of the two nationalities. Referring to the specific problem of a natural mother who had given her child up for adoption in Italy, he stated that while she retained the same rights as any foreigners with respect to entering Italy, emphasis had to be placed on the protection of the child's interests. It was therefore left to the judge to decide whether or not a meeting with the natural mother would be advantageous for the child.

559. Replying to other questions on the equality of men and women, he stated that women accounted for 6.5 per cent of senators and 16.2 per cent of those elected to the Chamber of Deputies, and that they had two portfolios in the outgoing Cabinet. Further, the proportion of women in public employment was increasing steadily following a decision by the Constitutional Court that abolished the restrictions on access by women to certain sectors previously reserved for men. By way of example, he said that there were 2.3 per cent of women in the police, 4 per cent in training establishments for engineers, 79 per cent in the Higher Teachers' Training College and that 14 per cent of members of the professions or company directors were women. He also confirmed that men and women were on an equal footing as far as the police were concerned and stated that the only reason there were relatively few women police chiefs was that women had only recently been accepted into the police force. He added that normal military service was not yet open to women. With regard to the question raised in connection with the National Commission for Equality between Men and Women, he noted that its role was primarily consultative. The Commission advised the Prime Minister on questions relating to the status of women in Italy and had taken a number of useful initiatives, such as publishing a compilation of relevant legal instruments.

560. With regard to the treatment of aliens, he explained that the same fundamental rights and liberties enjoyed by Italian citizens had been extended to all aliens. There was nevertheless some doubt in respect of the right of association in that aliens were entitled to participate in associations but not to initiate them. There were also de facto differences between nationals and aliens, and gradations in the enjoyment of certain rights relating to the status civitatis in respect of public service. The Government was, however, systematically eliminating all such inequalities in the social and economic sectors. As regards political rights, he added that aliens were not totally excluded from their enjoyment since nationals of European Community countries were eligible to stand as candidates for election to the European Parliament. Moreover, a bill was under consideration that would enable all nationals of Community countries who had been resident in Italy for a

certain period of time to vote in national elections. Regarding the treatment of workers from outside the Community, he explained that an advisory committee had been set up to overcome practical obstacles encountered by immigrant workers; that, in addition to educational access, which they already enjoyed, such workers were also being given improved access to housing and certain other social services; and that the regulation whereby foreign students who failed to pass their examination lost their right of residence had been relaxed.

561. Responding to other questions, he stated that the resurgence of extreme-right tendencies presented little threat to the democratic way of life in Italy since democratic values were deeply rooted in the conscience of the Italian people. While the possibility of the emergence of a major racial problem could not be excluded in any country, the situation in Italy, which harboured no racial minorities, was far from conducive to such an outcome. There had been sporadic episodes of racially motivated ill-treatment, but such behaviour had been strongly condemned by the public and the press, and the police forces as well as the judiciary had many ways of intervening in such cases.

Right to life

562. With regard to that issue, members of the Committee wished to receive further information on article 6 of the Covenant in the light of the Committee's general comments Nos. 6 (16) and 14 (23). Additionally, it was inquired what the rules and regulations were governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so, what action had been taken against security officers who were found to have used excessive force; whether Act No. 152 of 22 May 1975 complied with the United Nations Code of Conduct for Law Enforcement Officials; and whether there had been any deaths in Italian prisons and, if so, whether investigation had been carried out to determine the causes of death and the persons responsible. Further information was sought on the status in law and in fact of abortion. It was asked in that regard whether the foetus was considered as a human being with an inherent right to life; and if so, at what age in the pregnancy it acquired that status; and up to what stage of development of the foetus an abortion could be performed on the ground that there was a danger that the infant might suffer from abnormality or malformation. Lastly, clarification was requested of the measures that had been taken to prevent the dumping of toxic wastes.

563. In his reply, the representative of the State party explained that Italy had signed and ratified a number of non-proliferation treaties, had no stockpile of nuclear weapons, had no nuclear bases and that those countries which had weapons on Italian soil could not use them without the permission of the Government of Italy. With regard to the dumping of toxic wastes he stated that the problem had arisen because of the reprehensible behaviour of individuals or private companies, both in falsifying documents and paying or receiving bribes. Italy would however steadfastly oppose any efforts to attribute to the Italian State any criminal responsibility of the dumping of waste. He added that a number of measures, including the adoption of a law, had been taken and that prison sentences had been imposed on any known offenders on Italian territory.

564. Responding to other questions raised by members of the Committee, he stated that whenever there was an abuse of firearms by the police there was a public protest, attention was drawn to the incident in the mass media, a thorough investigation was carried out and the relevant military and penal measures were

applied. While there had been one or two deaths in prison in recent years allegedly resulting from mistreatment, none had occurred through the use of weapons. With regard to alleged acts of violence by police officers against arrested persons, the representative of the State party, referring to certain specific cases, explained that the police had generally shown great respect for democratic principles and the rights of the individual, and had behaved correctly towards Italian nationals and foreigners when making arrests or taking other police action. Allegations of mistreatment of foreigners were thoroughly investigated and if the investigation produced evidence of wrong-doing, the police officers concerned were subject to criminal prosecution or disciplinary action.

565. Regarding abortion, he said that a pregnant woman had the right freely to decide to have an abortion during the first 90 days of pregnancy, although she was required to consult a physician and to inform him of the reason for her decision. Abortion after the first 90 days could only be performed if the life of the pregnant woman was seriously endangered or if an examination of the factors showed that there were serious pathological abnormalities. Since a considerable section of the population was opposed to abortion, it had been decided that any physician who did not wish to do so could refuse to give assistance for the purpose. Lastly, with regard to the moment at which a foetus became a human being, he stated that the law took no stand on that moral and religious problem. He noted that the status of an embryo resulting from fertilization *in vitro* did not arise in Italy since the use and preservation of embryos were prohibited by law.

Treatment of prisoners and other detainees

566. With reference to that issue, members of the Committee wished to receive clarification of the circumstances under which persons who had served their sentences could nevertheless be obliged to serve in a farm colony or a labour establishment, and inquired how many establishments of that kind existed in Italy and how many persons were being detained in them. They also requested further information concerning the application in practice of article 19 of Act No. 56 of 28 February 1987 and the new special surveillance régime mentioned in paragraph 108 of the report. In the latter connection, they inquired whether solitary confinement could be imposed under the special régime and, if so, for what maximum period.

567. Additionally, it was asked what measures had been taken to prevent violence against accused persons. In particular, with reference to the scourge of terrorism that Italy had been obliged to face up to, questions were asked with regard to alleged ill-treatment of prisoners held in police stations and to the establishment of a Parliamentary Commission of Inquiry into police brutality against detainees in prisons. Further information was also sought on the suspension of some forms of disciplinary measures as a means of counteracting overcrowding in prisons, and on labour in penitentiary institutions. As regards the special surveillance régime, it was inquired whether it included sensory isolation or the deprivation of all social contact; and whether the restrictions imposed thereunder were in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners. It was also inquired to what extent prisons were overcrowded in Italy; whether periods spent in a labour establishment or a farm colony formed part of a sentence imposed by a court; and how the obligation to work in a farm colony or a labour establishment could be reconciled with the requirements of article 8 and of paragraphs 1 and 3 of article 9; which categories of detainees were eligible for periods of leave for the purpose of satisfying their emotional, cultural and

professional requirements; whether prisoners serving sentences at home were obliged to wear electronic tags to facilitate their location; and what inducements were offered to prisoners to join in their own reintegration into society as provided for under Act No. 663 of 10 October 1986. Lastly, with reference to organ transplants from dead bodies, which were only permissible with the prior consent of the donor or his relatives, it was asked whether the regulation covered the shipment of organs outside Italy; why transplants of brain tissue and genital organs had been excluded; and whether legal provision had been made to ensure that such organs were donated and not sold.

568. Responding to questions raised by members of the Committee, the representative of the State party explained that farm colonies and labour establishments had been set up as an essential administrative security measure and were only used for dangerous prisoners whom it was deemed necessary to isolate from society. According to the most recent statistics, 117 habitual offenders and recidivists were serving sentences in six labour establishments and three farm colonies. Inmates of those establishments who behave well could enjoy a measure of freedom, working outside and returning to the establishment at night. Act No. 56 of 28 February 1987 provided for all detainees in those establishments to be placed on the unemployment roll, thus enabling them to obtain outside work and preparing the way for their reintegration into society after release. With regard to compulsory work by prisoners, he pointed out that only convicted persons were required to work. They were in fact keen to work as the pay was rather good.

569. Referring to the new special surveillance régime mentioned in paragraph 108 of the report, he stated that it was intended to apply to prisoners considered to be a danger to society and liable to have a disruptive influence in prison or achieve an undesirable dominance over their fellow-prisoners. Although no such specific provision on the subject was contained in the Act, solitary confinement could be imposed where necessary. The more common practice, however, was to keep the prisoners under close observation. An order placing a person under special surveillance could only be made by a judge at the time of conviction of a person found by the court to be socially dangerous and not simply presumed to be such. Sensory deprivation was not practised in Italy.

570. In reply to other questions, he said that a bill for the establishment of a parliamentary commission to investigate conditions of imprisonment had been laid before Parliament. He added in that connection that deputies were able to visit prisons at any time and could talk to prisoners. If they found any irregularities, they could call for a debate in Parliament and bring the problem to the attention of the authorities and public opinion. With regard to violence against prisoners and accused persons, he drew attention to a case in which police officers guilty of brutality against members of the Red Brigades had been convicted and later suspended from their duties. He also pointed out that an Act of 1986 substantially restricted the powers of the Ministry of Justice to order the complete or partial suspension of the application of the disciplinary rules, which could now only be suspended in the case of mutiny. With regard to prison overcrowding, he said that overcrowding was a problem in major cities such as Naples and Palermo. Nevertheless, the authorities were trying to remedy overcrowding by opening new detention centres and limiting the number of precautionary detentions, with the result that the number of prisoners had fallen from 42,738 in 1985 to 31,077 in December 1988. In addition, steps had been taken to ensure that the public were better informed of the facts about prison administration. With regard to measures to assist the return of prisoners to ordinary life, he explained that provision was

made for prisoners serving a sentence of under three years' duration to be placed in the care of a social service, subject to a favourable recommendation by the disciplinary council. In consequence, a prisoner could benefit from a régime of semi-freedom and in some circumstances be returned to his home. In the latter case, the prisoner was not subject to electronic supervision, but the police made regular checks.

571. With regard to medical experiments on human beings, he indicated that the removal of brain tissue and genital glands had been prohibited to prevent genetic manipulation. While the use of organ transplants for therapeutic purposes was permitted, commercial traffic in organs was not. In any case Italian law prohibited the sale of organs.

Liberty and security of the person

572. In this connection, members of the Committee asked whether there had been any further developments since the submission of the report relating to the application of recent legislation, particularly Act No. 398/84 and No. 743/86; whether the maximum period of house arrest or detention in places other than prisons was the same as the maximum period of detention awaiting trial; and whether the Government of Italy had taken steps to reduce the allowable period of precautionary detention. They asked for further information on the role, functions, organization and independence of the Freedom Court established by Act No. 532 of 12 August 1982; how soon after arrest an arrested person could contact his lawyer or family; and detention in institutions other than prisons and for reasons other than crimes.

573. Members also expressed concern regarding the allowable period of detention awaiting trial. They noted that, not only did pre-trial detention seem too long, but judicial procedures also appeared to be too slow. In that connection, members questioned whether the duration of precautionary detention, notwithstanding the positive steps taken by the Italian authorities in the matter, was consistent with the provisions of the Covenant. With regard to the conditions of precautionary detention, they asked what the actual maximum allowable period was for such detention, whether persons detained on improper grounds were released and whether such detention was an exceptional measure or a regular practice. Explanations were requested regarding the conditions in which the time-limits could be suspended if defence counsel was not available. It was also asked whether the same principle was applied if the plaintiff were not present. It was further asked whether, if the accused was found not guilty, compensation was provided for. In that connection, it was asked what was the purpose of the reservation made by Italy with regard to article 9, paragraph 5, of the Covenant. Noting that the maximum allowable period of precautionary detention varied with the gravity of the penalty to which the offender was liable, members asked whether such provisions were not contrary to the principle of the presumption of innocence, as defined in article 14 of the Covenant and reaffirmed in the Committee's general comment No. 13 (21).

574. Members also asked for supplementary information concerning conditions governing the detention of persons in psychiatric institutions, notably with regard to the scrutiny of medical decisions by the authorities.

575. In his reply, the representative of the State party explained that the maximum allowable period of precautionary detention depended not only on the gravity of the offence, but also on the stage which the trial had reached. In fact, the maximum period of six years covered the entire proceedings, including appeal to a higher

court or the court of cassation. If any phase of the proceedings exceeded the allowable time, the accused must be released. There were, however, reasons for the suspension of periods of precautionary detention during the trial phase, such as the unjustified absence of the defence lawyer or a request for adjournment by the defendant. He stressed that it was, of course, in the defendant's interest, and not that of the prosecutor, to prolong the period of pre-trial detention and that the new Act had endeavoured to close that loophole. Changes in the conditions in which precautionary detention could be ordered had been made by an Act of 25 August 1988, under which the examining magistrate, even in the case of very serious offences, was not required to order arrest but simply obliged to give reasons in writing for his decision not to do so. In addition, the grounds for precautionary detention had been made more restrictive. There must be *prima facie* evidence of guilt, the need to protect society must be specifically established and the risk of escape, as well as the need to protect evidence from destruction, must be specifically established. Finally, the prosecutors had lost the power to order an arrest. In addition, new legislative provisions provided for the replacement of precautionary detention by house arrest or confinement in a hospital, and in practice had led to a substantial reduction in the number of persons detained since August 1988. He added that the new Code of Penal Procedure provided for a maximum period of precautionary detention of four years and that the maximum period of house arrest was the same as that for precautionary detention.

576. Referring to a number of concerns expressed concerning the lengthy duration of Italian judicial procedures, the representative recalled that the figures that had been given were maximum and not average. A further factor affecting the duration of legal procedures was the growing complexity of offences. Drug trafficking trials might have international as well as national ramifications and involve time-consuming investigations outside the country. Nevertheless, where a court decision was found to be flawed, compensation might be paid to the injured party and the new Code of Penal Procedure made specific reference to equitable compensation. Furthermore, it was also possible that a judge might be held personally liable.

577. With reference to the Freedom Court, he said that the court had been established to enable a person arrested on the order of the examining magistrate to apply to a chamber of the higher court in the nearest provincial centre to review the validity of the arrest warrant. In addition, the Freedom Court was a court of appeal. The prosecutor could appeal to the court against orders by a judge releasing an accused person. When an arrest warrant was re-examined, the defending lawyer could participate in the proceedings and the court's order had to be given within three days, failing which the accused was automatically released. The members of the Freedom Court were not the judges who would try the case.

578. In reply to other questions, the representative of the State party explained that the family of an arrested person had to be notified without delay and that the defence lawyer could be present from the beginning of the proceedings when the prisoner was interrogated. The new Code of Penal Procedure added in that connection that the police should inform the arrested person of his right to appoint a defence lawyer and immediately get in touch with the latter.

579. In the case of detention in establishments other than prisons, he drew attention to the provisions of Act No. 180 of 13 May 1978 regarding the treatment of mentally ill persons. In particular, the Act provided that a mentally ill patient could not be required to undergo treatment against his will, except on the proposal of a medical practitioner, followed by an order by the municipal

authorities, which had been communicated to the judge and against which the patient could appeal. The Act also provided for the abolition of psychiatric hospitals. In addition, many patients were released in order to apply the principle of respect for their civil and political rights, as provided for in article 1 of the Act - a step that has given rise to some problems.

Right to a fair trial

580. With regard to that issue, members of the Committee wished to receive necessary additional information on article 14 in the light of the Committee's general comment No. 13 (21) and, in particular, on the current status of the work on the New Code of Penal Procedure. They also wished to know whether the New Code of Civil Procedure had entered into effect and, if so, to what extent the principles described in paragraphs 126 to 136 of the report were reflected in the code as finally adopted.

581. Additionally, clarification was sought of the principle that trials should have a "substantially accusatorial structure"; of the reference in the report to "para-jurisdictional activities"; and of the Italian Government's declaration in respect of paragraph 3 of article 14 of the Covenant. Lastly, further information was sought with regard to the implementation in practice of article 15 of the Covenant.

582. Replying to questions raised by members of the Committee, the representative of the State party explained that the independence of judges was ensured by their competitive recruitment as public servants and by the existence of a supervisory body, the Higher Judicial Council, which had sole competence for the appointment, promotion and posting of judges. All court hearings were public, except for those relating to sexual crimes, and all decisions had to be rendered in public. A new act, promulgated on 23 January 1989, gave minorities the right to express themselves and present documents to the court in their own language. The act of 16 January 1989 provided that charges against members of the Government were to be heard in the normal courts.

583. The New Code of Civil Procedure involved a wide range of civil procedures heard by judges of different divisions and its wide scope had delayed the Code's promulgation. A new Bill, which sought to bring into force certain urgent provisions of the Code, had been presented in the new legislative term with a view to reorganizing the structure of civil courts of first instance and accelerating the disposal of civil cases. Another Bill had also been presented to Parliament, providing for the appointment of Justices of the Peace who would be more qualified and hold wider powers than the existing "conciliators".

584. Referring to the New Code of Penal Procedure, the representatives of the State party noted that the Code would enter into force on 24 October 1989 and that transitional provisions had already been placed before Parliament for approval. He added that the New Code would institute the practice of cross-examination of witnesses by defence counsel and the public prosecutor.

585. The term "para-jurisdictional activities" referred to the public prosecutor's former power over the personal liberty of the accused and other wide powers relating to the interrogation and the collection of evidence. Regarding the declaration made by his Government on article 14, the representative explained that when Italy had ratified the Covenant there had been some discrepancy between

Italian practice and article 14. After the hearing of a case before the European Court of Human Rights, the system had been changed and was now clearly compatible with the Covenant.

Freedom of movement and expulsion of aliens

586. With reference to that issue, members of the Committee wished to receive further information on the legal provisions governing the expulsion of aliens and inquired whether an appeal against an expulsion order had suspensive effect. They also wished to know how effective the procedures established under Act No. 943 of 30 December 1986 had been in overcoming obstacles to the effective exercise of the rights of workers from outside the European Community residing in Italy. In addition, it was inquired what measures were being taken to discourage illegal immigration.

587. In his reply, the representative emphasized that there were two types of expulsions, judicial and administrative. An alien might be expelled as a security measure, following a trial in which he had been found guilty of certain specific offences or had been given a term of imprisonment exceeding 10 years. The Ministry of the Interior or the Prefect could also issue, under some circumstances, an expulsion order on security grounds. While some of the reasons invoked by the authorities automatically involved expulsion, in other cases expulsion was left to their discretion in accordance with their evaluation of the situation. Aliens could appeal against an expulsion order either to higher authorities or before the administrative courts. Although an appeal did not necessarily have a suspensive effect, a stay of execution could always be granted by a judge if serious reasons could be adduced. As regards illegal immigration, he stated that the Government intended to reinforce the frontier police and to introduce visas for nationals of countries from which illegal entry was most likely.

Right to privacy

588. In that connection, members of the Committee wished to receive additional information on article 17 in accordance with the Committee's general comment No. 16 (32) and on the legal régime governing lawful interference with correspondence, telephone and telegraphic communications. They also wished to know whether the draft bill regulating the establishment and activities of data-processing services had been resubmitted to Parliament and, if so, what its current prospects of being enacted were. In addition, it was also asked whether provisions similar to those prohibiting audio-visual surveillance of workers existed in other areas and whether the use of hidden microphones was authorized.

589. In his reply, the representative of the State party explained that the freedom and inviolability of all forms of communications could only be restricted by virtue of a judicial order. Moreover, the individual had been provided with improved guarantees by new provisions introduced into the Penal Code according to which confiscation of correspondence, telephone-tapping and interception of telegraphic communications could only be authorized by a judge in exceptional situations related to drug trafficking, contraband or threats proffered by telephone.

590. Referring to questions raised in connection with data processing, he explained that a bill relating to the establishment and functioning of data banks and data processing had been submitted to the ninth legislature and was to be resubmitted to Parliament after an examination by an ad hoc working group under the Ministry of

Justice. The bill was based on the guidelines of the Council of Europe's Convention of January 1981 and endeavoured to reconcile the need to retain freedom of expression and encourage economic initiative with the need to protect the privacy of the individual. Among the main features of the Bill was the setting up of a supervisory body with which all organizers or holders of data banks were obliged to register. It was the duty of the supervisory body to verify the particulars given on the registration form, to check that the data bank was being used in conformity with the law, to receive complaints and, if necessary, to order the bank to cease operations. The bill also granted the person concerned the right of access to data banks containing information pertaining to himself.

591. Responding to other questions, the representative stated that the violation of individual privacy through the use of microphones or audio-visual equipment in homes was prohibited under penal law. Although the question of such surveillance in department stores and other public places was not covered by law, in practice a warning was generally posted, when relevant, to alert the public to the existence of remote monitoring.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

592. With reference to that issue, members of the Committee wished to know whether the agreements with religious groups mentioned in paragraph 162 of the report had given rise to any implementation difficulties; whether non-Catholics were also liable to the payment of taxes to finance the Catholic Church; what the size of the nomad population in Italy was; and whether any measures had been taken to resolve the problem of nomads (gypsies) since the establishment of the interministerial commission mentioned in paragraph 175 of the report. They also wished to receive necessary additional information on articles 19 and 20, in accordance with the Committee's general comments Nos. 10 (19) and 11 (19).

593. Additionally, further information was sought concerning the amendment of the 1929 Lateran Treaty and the bill on the new matrimonial régime. It was also inquired what differences there were in the status of denominations that had concluded an agreement with the State as compared with those which had not done so; what the status of gypsies was under Italian law and whether they were considered to be an ethnic minority; and under what circumstances publications could be seized.

594. Responding to questions raised by members of the Committee, the representative of the State party said that the agreements that the Government had recently signed with the churches and religious communities in Italy had not given rise to any implementation difficulties. Financing of the Catholic Church was provided for mainly through the income tax payments of both Catholics and non-Catholics. Those funds were allocated to the Catholic Church in compensation for State confiscation of its property. The Catholic Church was also financed through individual voluntary contributions and a similar system existed with respect to other denominations. The opportunity to enter into agreements with the State was open to all churches and religious denominations. The only benefits of such agreements related to the teaching of the doctrine of the denomination concerned and to fiscal or financial aspects. On the question of the recognition of marriages celebrated under canon law and decisions nullifying such marriages, he said that the situation in that respect had developed in the light of the changes in relations between the Catholic Church and the Italian State. Under article 8 of the agreement for the reform of the Concordat, the civil effects of a marriage entered into in accordance

with canon law continued to be recognized provided that the marriage was recorded in the State registrar's office and that the conditions in which it had been entered into were in conformity with the conditions provided for by civil law. Similarly, canonical decisions nullifying a marriage continued to be recognized by the law only if they were consistent with the conditions laid down by law.

595. Referring to questions raised in connection with the nomad population in Italy, he stated that it amounted to approximately 70,000 to 80,000 people. Since the establishment of the interministerial commission, initiatives regarding the authorization of communal loans to finance the setting up of areas specifically equipped for nomadic populations had been taken. Moreover, a bill aimed at the preservation of the language and culture of those populations was under discussion by the Chamber of Deputies and a census was under way in various provinces. He added that nomads were not considered to be a minority; they were made up of different groups speaking different languages. Because of their lack of a fixed abode, special arrangements had been made to facilitate school attendance by their children.

596. Referring to article 19 of the Covenant, he explained that while legislation already existed with regard to the press, efforts were being made to draft a bill to guarantee freedom of expression with respect to radio and television and, in particular, to ensure a fair distribution of radio and television broadcasting channels. As regards article 20 of the Covenant, he drew attention to the 1982 attack on a synagogue in Rome, regarding which a judge had handed down a decision condemning the perpetrators by virtue of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

597. Replying to a question on the seizure of publications, he said that any form of prior censorship and any seizure were forbidden, except in cases of pornography, which constituted an offence *per se*, and cases of publications in which there were grounds for believing that they constituted an offence provided for by law. By way of example, he referred to a publication reproducing communiqués by the Red Brigades, which had been seized on the grounds that it constituted the offences of vindication of crime and of incitement to crime.

Freedom of assembly and association

598. With regard to that issue, members of the Committee wished to know whether legislation governing the registration of trade unions and the right to strike had been enacted and, if so, whether information concerning its main provisions could be provided. In addition, it was asked whether an act had been passed to give effect to the constitutional guarantees of the freedom of association and what legal regulations governed the right to strike.

599. In his reply, the representative of the State party stated that 40 trade unions had been set up since the birth of the Republic. Trade unions were highly active in negotiating collective agreements in a tripartite framework and operated according to established practical criteria with regard to structure, personnel and methods. However, the right to strike - which article 40 of the Constitution guaranteed without establishing limits and which was widely exercised - needed to be enshrined in legislation. The question, however, had considerable political implications and in view of the political differences of opinion on the scope of the legislation needed, it had hitherto proved impossible to agree on the terms of a bill for submission to Parliament. The Government was nevertheless eager to

establish legislation covering essential services and a bill relating to the content of both the tripartite negotiations and to certain forms of self-discipline already adopted by trade unions in order to regulate strike conditions had been submitted to Parliament.

Protection of family and children

600. With regard to that issue, members of the Committee wished to receive necessary additional information on article 24, in accordance with the Committee's general comment No. 17 (35) and concerning the activities of the Permanent National Council on the Problems of Minors and of the Committee on the Labour of Minors. They also wished to know how extensive the problem of the illegal employment of minors was; under what circumstances work permits could be issued by the Labour Inspectorate to minors in such illegal situations; whether legislation to reform the secondary school system and to raise the mandatory school age to 16 had been enacted; and what differences, if any, existed in the status and rights of children born within and out of wedlock. In addition, one member asked whether any special conditions were laid down by law for the adoption of foreign children; whether there existed in Italy a body responsible for examining applications for the adoption of foreign children; what action was taken to ensure that prospective adoptive parents met the requisite moral and material criteria; and for what reason the age limit for adoptable children had been raised from 8 to 18 years.

601. In his response, the representative of the State party, underscoring the importance attached to the protection of the child in Italian legislation, explained that the Permanent National Council on the Problems of Minors, which had started its work in 1986, had been given a number of responsibilities including study and research activities. Its activities were centred on research aimed at developing a general policy to encourage the harmonious development of minors as an essential stage in the development of society as a whole. Specific studies had been carried out and had served to provide methodological guidelines for projects on adolescents. In June 1988, the Chamber of Deputies had considered the establishment of a parliamentary commission of inquiry on the status of minors with the aim of investigating the causes of social and cultural problems affecting them and of proposing to Parliament the most appropriate action to ensure their protection. Although the employment of minors was a major concern of the Government, he admitted that the legislative framework was not perfect. Minors were not allowed to be employed before the age of 16, but they could be engaged for seasonal and holiday work, light work and work authorized by the Special Labour Commission. The issue of the exploitation of minors, however, remained a sensitive one. A bill submitted to Parliament some years earlier with a view to raising the minimum school-leaving age to 16 had recently been brought before it again, but there was no indication that it would be approved in the near future. Lastly, he emphasized that children born out of wedlock enjoyed substantially the same rights as those born in wedlock.

602. Referring to the questions asked about adoption in Italy, he said that the material and moral conditions to be fulfilled by the prospective parents were ascertained by the juvenile court, which exercised general competence, regardless of whether the adoptive child was Italian or foreign. Particular attention had recently been devoted to international adoption because of the abuses to which it might give rise; in that connection, mention should be made of a juvenile court decision annulling the adoption of a Philippine child effected without a full investigation of the circumstances of the adoptive parents. Although the age limit

for an adoptive child had been raised from 8 to 18 years, the law also established a compulsory minimum difference in age between the adoptive parent and the adopted child.

Right to participate in the conduct of public affairs

603. With regard to that issue, members of the Committee wished to know how equitable access of members of ethnic, religious or linguistic minorities to public service was ensured. It was also asked what the grounds were for limitation of the right to vote covered by transitional provisions XII and XIII of the Constitution, and whether the withdrawal of the right to vote that they entailed was permanent or revocable.

604. In reply, the representative of the State party said that the minority groups resident in Italy were not represented as such at the national, provincial, regional or municipal levels, but special arrangements had been made to encourage representatives of various language groups to stand for office in the recent elections to the European Parliament. Furthermore, representatives of such groups were eligible for priority consideration for certain public-service posts. On the question of limitations on the right to vote, he said that they concerned (a) male descendants of the House of Savoy who, not being authorized to enter Italian territory, obviously did not have the right to vote, and (b) persons who had committed particularly serious crimes. However, a judicial order forbidding a person to vote was never permanent.

Rights of minorities

605. In this connection, members of the Committee asked whether there were any particular obstacles preventing minorities from fully exercising their rights as recognized by the Covenant, and expressed a desire for details of languages and cultures other than those of the linguistic minorities living in the Val d'Aosta, Trentino-Alto Adige and Friuli-Venezia Giulia.

606. Replying to questions asked by members, the representative of the State party observed that the minorities enjoyed all the rights granted to Italian citizens and were not encountering any particular difficulties. In the case of minorities other than those living in the above-mentioned regions, a bill had been submitted to Parliament aimed at granting a minimum number of guarantees to all minorities. A distinction should, however, be drawn between linguistic minorities that already had a special status and other groups that wished to preserve their linguistic and cultural traditions. In that connection, in the regions where those cultural groups lived, the wording on road signs was already in both Italian and the local language.

General observations

607. Members of the Committee welcomed the constructive dialogue that had taken place between the Italian delegation, whose size and quality had been impressive, and the Committee. Members nevertheless considered that their concerns had not been fully allayed, especially with regard to the duration of precautionary detention and the slowness of the administration of justice, which were likely to affect presumption of innocence. Reference had also been made in that connection to work done in the farm colonies or labour establishments, which raised problems vis-à-vis articles 8 and 10 of the Covenant; the supervision exercised over police

and prison personnel; child labour; the adoption of foreign children, and the status of women in certain parts of the country. Apart from those concerns, members had expressed satisfaction at the increasingly dynamic support for human rights that was becoming apparent in Italy, and which had, in particular, led to the forthcoming entry into force of the new Code of Penal Procedure and to the development of legislation relating to family law. They noted further that Italy's democratic tradition had enabled it not only to confront the serious problems created by terrorism and organized crime, but also further to strengthen the protection of human rights.

608. The representative of the State party thanked the members of the Committee for their keen interest and assured them that the Committee's comments would be transmitted to the competent authorities.

609. Concluding consideration of the second period report of Italy, the Chairman thanked the delegation for its spirit of co-operation. He expressed his satisfaction at the fact that the report had been prepared by an interministerial Committee and that such a large and competent delegation had been sent to appear before the Committee.

IV. GENERAL COMMENTS OF THE COMMITTEE

Work on general comments

610. The Committee began discussion of a general comment on article 24 of the Covenant at its thirty-fourth session on the basis of an initial draft prepared by its working group. It considered that general comment at its 860th, 867th, 880th and 891st meetings, during its thirty-fourth and thirty-fifth sessions, on the basis of successive drafts revised by its working group in the light of the comments and proposals advanced by members. The Committee adopted its general comment on article 24 at the 891st meeting, held on 5 April 1989 (see annex VI of the present report). Pursuant to the request of the Economic and Social Council, the Committee transmitted the general comment to the Council at its first regular session in 1989.

611. At its thirty-sixth session the Committee gave extensive consideration to a draft general comment on non-discrimination submitted by its pre-sessional working group and decided to refer it to the working group that would meet prior to its thirty-seventh session for revision in the light of comments and proposals advanced by members. At its 894th meeting the Committee also decided to start preparatory work on a general comment on article 23 of the Covenant as well as to update its general comments on articles 7, 9 and 10.

V. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

612. Under the Optional Protocol to the International Covenant on Civil and Political Rights, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit written communications to the Human Rights Committee for consideration. Of the 87 States that have acceded to or ratified the Covenant, 45 have accepted the competence of the Committee to deal with individual complaints by ratifying or acceding to the Optional Protocol (see annex I to the present report, sect. B). Since the Committee's last report to the General Assembly, three States have ratified or acceded to the Optional Protocol: Hungary, the Libyan Arab Jamahiriya and New Zealand. No communication can be received by the Committee if it concerns a State party to the Covenant that is not also a party to the Optional Protocol.

A. Progress of work

613. Since the Committee started its work under the Optional Protocol at its second session in 1977, 371 communications concerning 28 States parties have been placed before it for consideration (316 of these were placed before the Committee from its second to its thirty-third sessions; 55 further communications have been placed before the Committee since then, that is, at its thirty-fourth, thirty-fifth and thirty-sixth sessions, covered by the present report). A volume containing selected decisions under the Optional Protocol from the second to the sixteenth session (July 1982) was published in English in 1985. The French and Spanish version of the publication came out in 1988. A volume containing selected decisions from the seventeenth to the thirty-second sessions is to be published in 1989.

614. The status of the 391 communications so far placed before the Human Rights Committee for consideration is as follows:

- (a) Concluded by views under article 5, paragraph 4, of the Optional Protocol: 96;
- (b) Declared inadmissible: 85;
- (c) Discontinued or withdrawn: 59;
- (d) Declared admissible, but not yet concluded: 33;
- (e) Pending at the pre-admissibility stage: 98.

615. During the thirty-fourth to thirty-sixth sessions, the Committee examined a large number of communications submitted under the Optional Protocol. It concluded consideration of 11 cases by adopting its views thereon. These are cases Nos. 162/1983 (Berterretche Acosta v. Uruguay), 196/1985 (Gueye v. France), 202/1986 (Ato del Avellanal v. Peru), 203/1986 (Muñoz v. Peru), 207/1986 (Morael v. France) 210/1986 and 225/1987 (Pratt and Morgan v. Jamaica), 218/1986 (Vos v. The Netherlands), 223/1987 (Robinson v. Jamaica), 238/1987 (Bolaños v. Ecuador), 265/1987 (Vuolanne v. Finland).

616. The Committee also concluded consideration of 14 cases by declaring them inadmissible. These are cases Nos. 164/1984 (Croes v. The Netherlands), setting

aside, pursuant to rule 93, paragraph 4, of the Committee's rules of procedure, an earlier decision declaring the communication admissible, and 213/1986 (H.C.M.A. v. The Netherlands), 231/1987 (A.S. v. Jamaica), 262/1987 (R.T. v. France), 266/1987 (A.M. v. Italy), 273/1988 (B.d.B. v. The Netherlands), 296/1988 (J.R.C. v. Costa Rica), 300/1988 (J.H. v. Finland), 301/1988 (R.M. v. Finland), 324/1988 and 325/1988 (J.B. and H.K. v. France), 342/1988 (R.L. v. Canada), 360/1989 (A Newspaper Publishing Company v. Trinidad and Tobago), 361/1989 (A Publication and a Printing Company v. Trinidad and Tobago).

617. The texts of the views adopted on the 11 cases, as well as of the decisions on the 14 cases declared inadmissible, are reproduced in annexes X and XI to the present report. Consideration of six cases was discontinued. Procedural decisions were adopted in a large number of pending cases (under rules 86 and 91 of the Committee's rules of procedure or under article 4 of the Optional Protocol). Secretariat action was requested on other pending cases.

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

618. Since the Committee's 1988 report to the General Assembly, three more States have ratified or acceded to the Optional Protocol, thus raising the number of States parties to 45 out of the 87 States parties to the International Covenant on Civil and Political Rights. The Committee welcomes this increased participation in the procedure governed by the Optional Protocol and expresses the wish that the procedure will, in the coming years, become truly universal. Increased public awareness of the Committee's work under the Optional Protocol has also led to an exponential growth in the number of communications submitted to it. At the opening of the Committee's thirty-sixth session, there were 134 cases pending before the Committee. That number would continue to grow, unless new methods for accelerating the processing of communications are developed. The Committee emphasizes that the burden imposed on the Secretariat has increased considerably and that it will not be possible to continue examining communications at the same rhythm and to maintain the same level of quality unless the staff is reinforced; failing that, it is to be feared that the number of pending cases will continue accumulating and that many communications will not be acted upon timely, owing to lack of secretariat services. The Human Rights Committee urgently requests the Secretary-General to take the necessary steps to ensure a substantial increase in the staff assigned to service the Committee.

C. New approaches to examine communications under the Optional Protocol

619. In view of the growing case-load, the Committee discussed at its thirty-fourth, thirty-fifth and thirty-sixth sessions the need to devise new working methods to enable it to deal more expeditiously with communications under the Optional Protocol. It took a number of decisions to that end and amended its rules of procedure accordingly (see annex IX).

(a) Special Rapporteur on new communications

620. At its thirty-fifth session, the Committee decided to designate a Special Rapporteur to process new communications under rule 91 of the Committee's rules of procedure as they are received, i.e. between sessions of the Committee.

Mrs. Rosalyn Higgins was so designated for a period of one year. Between the thirty-fifth and thirty-sixth sessions, she transmitted a number of new communications to the States parties concerned, under rule 91 of the Committee's rules of procedure, requesting information or observations relevant to the question of the admissibility of the communications.

(b) Competence of the Working Group on Communications

621. At its thirty-sixth session, the Committee decided to authorize the Working Group on Communications, consisting of five members, to adopt decisions to declare communications admissible when all the members so agree. Failing an agreement among the five members, the Working Group refers the matter to the Committee. It may also do so whenever it deems it appropriate that the Committee itself should decide on the question of admissibility. The Working Group is not competent to adopt decisions declaring communications inadmissible.

D. Joinder of communications

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

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

623. The Committee's decisions on the merits are referred to as "views" in article 5, paragraph 4, of the Optional Protocol. After the Committee has made a finding of a violation of a provision of the Covenant, it always proceeds to ask the State party to take appropriate steps to remedy the violation. For instance, in the period covered by the present report, the Committee found that a State party had violated article 14, paragraph 3 (d), of the Covenant, because the victim had been criminally prosecuted without defence counsel. In its views the Committee urged the State party "to take effective measures to remedy the violations suffered by the author, through his release, and to ensure that similar violations do not occur in the future" (case No. 223/1987, Robinson v. Jamaica; see annex X, sect. H, para. 12). In another case concerning the dismissal of a police sergeant, the Committee found that the State party had violated article 14, paragraph 1, of the Covenant, because the author had been denied a fair hearing. In its views the Committee held that the State party was "under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations suffered by Rubén Toribio Muñoz Hermoza, including payment of adequate compensation for the loss suffered. In this connection the Committee welcomes the State party's commitment, expressed in articles 39 and 40 of Law No. 23,506, to co-operate with the Human Rights Committee, and to implement its recommendations" (case No. 203/1986, Muñoz v. Peru; see annex X, sect. D, paras. 13.1 and 13.2).

624. Violations of the provisions of the Covenant have been found by the Committee in 82 of the 96 communications concluded with the adoptions of views.

F. Individual opinions

625. In its work under the Optional Protocol, the Committee strives to reach its decisions by consensus, without resorting to voting. However, pursuant to rule 92, paragraph 3, and rule 94, paragraph 3, of the Committee's rules of procedure, members can append their individual opinions to the Committee's decisions of a final nature.

626. During the sessions covered by the present report, individual opinions were appended to the Committee's views in cases Nos. 203/1986 (Muñoz v. Peru) and 218/1986 (Vos v. The Netherlands)

G. Issues considered by the Committee

627. For a review of the Committee's work under the Optional Protocol from its second session in 1977 to its thirty-third session in 1988, the reader is referred to the Committee's annual reports for 1984, 1985, 1986, 1987 and 1988 which, inter alia, contain a summary of the procedural and substantive issues considered by the Committee and of the decisions taken. The full texts of the views adopted by the Committee and of its decisions declaring communications inadmissible under the Optional Protocol have been reproduced regularly in annexes to the Committee's annual reports.

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

1. Procedural issues

(a) Standing before the Committee (Optional Protocol, articles 1 and 2)

629. Pursuant to article 1 of the Optional Protocol, the Committee is competent to examine communications from individuals subject to the jurisdiction of a State party who claim to be victims of a violation by that State party of any of the rights set forth in the Covenant. In two recent communications Nos. 360/1989 and 361/1989, newspaper and printing companies submitted communications to the Committee, claiming to be victims of violations of articles 2, 14 and 19 of the Covenant. In declaring the communications inadmissible, the Committee explained that companies, as such, have no standing under the Optional Protocol. With regard to communication No. 360/1989 the Committee observed: "The present communication is submitted on behalf of a company incorporated under the laws of Trinidad and Tobago. While counsel has indicated that Mr. D.C., the company's managing director, has been duly authorized to make the complaint on behalf of the company, it is not indicated whether and to what extent his individual rights under the Covenant have been violated by the events referred to in the communication. Under article 1 of the Optional Protocol, only individuals may submit a communication to the Human Rights Committee. A company incorporated under the laws of a State party to the Optional Protocol, as such, has no standing under article 1, regardless of whether its allegations appear to raise issues under the Covenant" (see annex XI, sect. L, para. 3.2).

(b) The requirement of exhaustion of domestic remedies (Optional Protocol, article 5, paragraph 2 (b))

630. Pursuant to article 5, paragraph 2 (b), of the Optional Protocol, the Committee shall not consider any communication unless it has ascertained that the author has exhausted all available domestic remedies. However, the Committee has already established that the rule of exhaustion applies only to the extent that these remedies are effective and available and the State party is required to give "details of the remedies which it submitted had been available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective" (Case No. 4/1977, Torres Ramírez v. Uruguay). The rule also provides that the Committee is not precluded from examining a communication if it is established that the application of the remedies in question is unreasonably prolonged.

631. In case No. 262/1987 (R.T. v. France) the author did not bring his case before any judicial instance in France. The Committee interpreted his assertion that he did not want to become engaged in "a vicious and empty legislative and judicial circle" as an indication of his belief that the pursuit of such remedies would be futile. The author, however, had sought extra-judicial redress by way of petition for review of his situation to the educational authorities. In declaring the communication inadmissible, the Committee observed:

"that article 5, paragraph 2 (b), of the Optional Protocol, by referring to 'all available domestic remedies', clearly refers in the first place to judicial remedies. Even if the author's contention were accepted that an administrative tribunal could not have ordered the educational authorities to grant him tenure as a teacher of the Breton language, the fact remains that the decision challenged by the author might have been annulled. The author has not shown that he could not have resorted to the judicial procedures that the State party has plausibly submitted were available to him, or that their pursuit could be deemed to be, a priori, futile. The Committee notes that he himself mentions that he does not rule out submitting his case to an administrative tribunal. It finds that, in the circumstances disclosed by the communication, the author's doubts about the effectiveness of domestic remedies did not absolve him from exhausting them, and concludes that the requirements of article 5, paragraph 2 (b), have not been met" (see annex XI, sect. D, para. 7.4).

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

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

633. Although at the stage of admissibility an author need not prove the alleged violation, he must submit sufficient evidence⁷ in substantiation of his allegation to constitute a prima facie case. A "claim" is therefore not just any allegation, but an allegation supported by a certain amount of substantiating evidence. Thus, in cases where the Committee finds that the author has failed to make at least a prima facie case before the Committee, justifying further examination on the merits, the Committee has held the communication inadmissible, declaring that the author "has no claim under article 2 of the Optional Protocol". At its

thirty-sixth session, the Committee formalized this stand by adding to rule 90 (b) of its rules of procedure words to the effect that a claim has to be "sufficiently substantiated" (see annex IX, rule 90 (b)).

(d) Interim measures under rule 86

634. The authors of a number of cases currently before the Committee are convicted persons who have been sentenced to death and are awaiting execution. These authors claim to be innocent of the crimes of which they were convicted and further allege that they were denied a fair hearing. In view of the urgency of the communications, the Committee has requested the two States parties concerned, under rule 86 of the Committee's rules of procedure, not to carry out the death sentences. Stays of execution have been granted in this connection.

2. Substantive issues

(a) State responsibility

635. In its comments on the admissibility of a communication a State party contended that a State could not be held liable under the Covenant for actions by an industrial insurance board. It argued as follows

"that an industrial insurance board such as the BVG is not a State organ: such boards are merely associations of employers and employees established for the specific purpose of implementing social security legislation, and the management of such a board consists exclusively of representatives of the employers' and employees' organizations. Industrial insurance boards operate independently and there is no way in which the State party's authorities could influence concrete decisions such as that complained of by the authors". (Case No. 273/1988 B.d.B. et al. v. The Netherlands; see annex XI, sect. F, para. 4.7).

The Committee observed, however, "that a State party is not relieved of its obligations under the Covenant when some of its functions are delegated to other autonomous organs" (annex XI, sect. F, para. 6.5).

(b) Cruel, inhuman or degrading treatment (Covenant, article 7)

636. The Committee is currently examining a number of communications concerning inmates at penitentiaries, who are awaiting execution. In some cases death warrants have been issued and stays of execution granted. With regard to a delay in the notification of a stay of execution, the Committee held in its views in communications Nos. 210/1986 and 225/1987 (Pratt and Morgan v. Jamaica):

"The issue of a warrant for execution necessarily causes intense anguish to the individual concerned. In the author's case, death warrants were issued twice by the Governor General, first on 13 February 1987 and again on 23 February 1988. It is uncontested that the decision to grant a first stay of execution, taken at noon on 23 February 1987, was not notified to the authors until 45 minutes before the scheduled time of the execution on 24 February 1987. The Committee considers that a delay of close to 20 hours from the time the stay of execution was granted to the time the authors were removed from their death cell constitutes cruel and inhuman treatment within the meaning of article 7" (annex X, sect. F, para. 13.7).

(c) Arbitrary arrest or detention (Covenant, article 9, paragraph 1)

637. The Committee has already declared inadmissible a communication from an alien who had entered the territory of a State party illegally and who claimed to be a victim of a violation of article 9 because of his detention pending deportation (V.M.R.B. v. Canada). At its thirty-fifth session the Committee was again confronted with a similar factual situation. In declaring communication No. 296/1988 (J.R.C. v. Costa Rica) inadmissible, it observed:

"With regard to a possible breach of article 9 of the Covenant, the Committee notes that this article prohibits arbitrary arrest and detention. The author was lawfully arrested and detained in connection with his unauthorized entry into Costa Rica. The Committee observes that the author is being detained pending deportation and that the State party is endeavouring to find a host country willing to accept him. In this connection, the Committee notes that the State party has pleaded reasons of national security in connection with the proceedings to deport him. It is not for the Committee to test a sovereign State's evaluation of an alien's security rating" (annex XI, sect. G, para. 8.4).

(d) Pre-trial detention (Covenant, article 9, paragraph 3)

638. Communication No. 238/1987 concerned a person suspected of involvement in a murder, who was kept and, at the time of the adoption of the Committee's views, was still being kept under detention without bail. The Committee observed that the State party had not explained why it was deemed necessary to keep him under detention for five years prior to his indictment in December 1987. In adopting its views, the Committee stressed that it was not making any finding on the guilt or innocence of Mr. Bolaños but solely on the question whether any of his rights under the Covenant had been violated. It referred to article 9, paragraph 3, of the Covenant, which provides that anyone arrested on a criminal charge "shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial ...". The Committee made a finding that the facts of the case disclosed a violation of article 9, paragraphs 1 and 3, of the Covenant, "because Mr. Bolaños was deprived of liberty contrary to the laws of Ecuador and not tried within a reasonable time" (annex X, sect. I, paras. 8.3 and 9).

(e) Review of the lawfulness of detention (Covenant, article 9, paragraph 4)

639. In case No. 265/1987 (Vuolanne v. Finland), the author had been kept in quasi solitary confinement for 10 days and nights by way of military disciplinary sanction. In finding a violation of the Covenant, the Committee expressed in its views that "such penalty of measure may fall within the scope of article 9, paragraph 4, if it takes the form of restrictions that are imposed over and above the exigencies of normal military service and deviate from the normal conditions of life within the armed forces of the State party concerned". The Committee found that the author should have been able to challenge his detention before a court (annex X, sect. J, para. 9.4; see also para. 657 below and annex XII).

(f) Right to a fair hearing (Covenant, article 14, paragraph 1)

640. In communication No. 213/1986 (H.C.M.A. v. The Netherlands), the author claimed that article 14 of the Covenant had been violated because a police officer he accused of having maltreated him had not been criminally prosecuted. In declaring the communication inadmissible pursuant to article 3 of the Optional Protocol, the Committee observed "that the Covenant does not provide for the right to see another person criminally prosecuted" (annex XI, sect. B, para. 11.6).

641. In case No. 273/1988 (B.d.B. et al. v. The Netherlands), the Committee explained that article 14, paragraph 1, of the Covenant could not be understood as guaranteeing equality of results in judicial proceedings. It noted:

"that while the authors have complained about the outcome of the judicial proceedings, they acknowledge that procedural guarantees were observed in their conduct. The Committee observes that article 14 of the Covenant guarantees procedural equality but cannot be interpreted as guaranteeing equality of results or absence of error on the part of the competent tribunal. Thus, this aspect of the author's communication falls outside the scope of application of article 14 and is, therefore, inadmissible under article 3 of the Optional Protocol" (annex XI, sect. F, para. 6.4).

642. In case No. 203/1986 (Muñoz v. Peru), the Committee had opportunity to reaffirm the principle that "justice delayed is justice denied". The author, who had been dismissed from his post as police sergeant, sought relief through administrative and judicial proceedings. After more than 10 years of litigation at various levels, and in spite of favourable decisions by the Tribunal of Constitutional Guarantees and the Cuzco Civil Chamber, he had not been reinstated in his post nor had he received any compensation. In its views adopted at the thirty-fourth session, the Committee found that article 14 of the Covenant had been violated, and "with respect to the requirement of a fair hearing as stipulated in article 14, paragraph 1, of the Covenant, the Committee [noted] that the concept of a fair hearing necessarily entails that justice be rendered without undue delay" (annex X, sect. D, para. 11.3).

643. In communication No. 207/1986 (Morael v. France), the author was the former managing director of a company that had been placed under judicial administration. During the civil proceedings held to determine the coverage for the company's liabilities, the court of first instance found that the author had failed to exercise "due diligence" in the meaning of article 99 of the (old) French bankruptcy law of 1967 and ordered him to pay a substantial sum in solidarity with the other managers. The Court of Appeal ordered him to pay a higher sum but without solidarity. The Court of Cassation upheld this decision. The author alleged a violation of article 14, paragraph 1, because the Court of Appeal had failed to observe the principle of adversary proceedings and because it had applied ex officio reformatio in peius in his respect by ordering him to pay a substantially increased sum, which had not been requested by the judicial administrator.

644. In determining whether the author had received a fair hearing within the meaning of article 14, paragraph 1, the Committee noted that "although article 14 does not explain what is meant by a 'fair hearing' in a suit at law (unlike paragraph 3 of the same article dealing with the determination of criminal charges), the concept of a fair hearing in the context of article 14 (1) of the

Covenant should be interpreted as requiring a number of conditions, such as equality of arms, respect for the principle of adversary proceedings, preclusion of ex officio reformatio in peius, and expeditious procedure". Testing the facts of the case against these criteria, the Committee, holding that it could not "pass judgement on the validity of the evidence of diligence produced by the author or ... question the court's discretionary power to decide whether such evidence was sufficient to absolve him of any liability", expressed its view that the principles of adversary proceedings and preclusion of ex officio reformatio in peius had not been ignored (see annex X, sect. E, paras. 9.3 and 9.4).

(g) Right to have legal assistance assigned (Covenant, article 14, paragraph 3 (d))

645. Communication No. 223/1987 (Robinson v. Jamaica) concerned a Jamaican citizen who had been sentenced to death for murder in 1981 and whose sentence had subsequently been commuted to life imprisonment. The author claimed that his trial had been postponed on numerous occasions since 1979 and that his counsel had withdrawn from the case when the trial finally began in March 1981. When counsel refused a legal aid assignment, the judge ordered the trial to proceed. The author was thus left unrepresented and had to assume his own defence. The main issue before the Committee was whether States parties are under an obligation to provide for effective representation by counsel in capital cases. The Committee affirmed it was "axiomatic that legal assistance be available in capital cases. This is so even if the unavailability of private counsel is to some degree attributable to the author himself, and even if the provision of legal assistance would entail an adjournment of proceedings. This requirement is not rendered unnecessary by efforts that might otherwise be made by the trial judge to assist the author in handling his defence in the absence of counsel. In the view of the Committee, the absence of counsel constituted unfair trial" (annex X, sect. H, para. 10.3).

(h) Right to privacy (Covenant, article 17)

646. In case No. 301/1988 (R.M. v. Finland), the author, a convicted drug dealer, alleged, inter alia, that press coverage of his case entailed a violation of his right to privacy under article 17 of the Covenant. The State party argued that serious offences - and in particular offences in which several people, drugs and large sums of money are involved - frequently are closely followed by the press and that press coverage in itself cannot be held to be a violation of the defendant's rights. In declaring the case inadmissible, the Committee noted that the author had not exhausted domestic remedies against those claimed to be responsible for the violation of his privacy, honour and reputation (annex XI, sect. I, para. 6.5).

(i) Equality before the law, principle of non-discrimination (Covenant, article 26)

647. Following the adoption of the Committee's views at its twenty-ninth session, in 1987, in cases Nos. 172/1984 (Broeks v. The Netherlands) and 182/1984 (Zwaan-de Vries v. The Netherlands) recognizing that the scope of article 26 extends to rights not otherwise guaranteed by the Covenant, the Committee has received an increasing number of communications concerning alleged discrimination in contravention of article 26 of the Covenant.

648. As the Committee, however, observed in the Broeks and Zwaan-de Vries cases:

"The right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26."

649. A number of the communications subsequently received have been declared inadmissible, since the authors failed to make at least a prima facie case of discrimination within the meaning of article 26.

650. In case No. 212/1986 (P.P.C. v. The Netherlands), the author had alleged discrimination because the application of a law providing for additional assistance to persons with a minimum income was linked to the person's income in the month of September. Since the author had been employed in September, the annual calculation showed a figure higher than his real income for the year in question and he did not qualify for the desired additional assistance. In declaring the communication inadmissible, the Committee stated:

"The 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".

651. In case No. 273/1988 (B.d.B. et al. v. The Netherlands), the authors, joint owners of a physiotherapy practice in the Netherlands, claimed to have been victims of unequal treatment under article 26, because allegedly other physiotherapy practices were not required to start paying social security contributions from the same date as they. In declaring the case inadmissible, the Committee observed:

"The authors complain about the application to them of legal rules of a compulsory nature, which for unexplained reasons were allegedly not applied uniformly to some other physiotherapy practices; regardless of whether the apparent non-application of the compulsory rules on insurance contributions in other cases may have been right or wrong, it has not been alleged that these rules were incorrectly applied to the authors following the Central Appeals Board's ruling of 19 April 1983 that part-time physiotherapists were to be deemed employees and that their employers were liable for social security contributions; furthermore, the Committee is not competent to examine errors allegedly committed in the application of laws concerning persons other than the authors of a communication" (annex XI, sect. F, para. 6.6).

652. In the same case, the Committee also recalled that article 26, second sentence, provides that the law of States parties should "guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The Committee notes that the authors have not claimed that their different treatment was attributable to their belonging to any identifiably distinct category which could have exposed them to discrimination on account of any of the grounds enumerated or "other status" referred to in article 26 of the Covenant. The Committee, therefore, finds this

aspect of the author's communication to be inadmissible under article 3 of the Optional Protocol" (annex XI, sect. F, para. 6.7).

653. In case No. 218/1986 (Vos v. The Netherlands), the author claimed to be a victim of a violation of article 26 because of the application of the General Widows and Orphans Act to her, which, as a consequence, resulted in the loss of her entitlement under the General Disablement Benefits Act. She argued that whereas a disabled man whose (former) wife dies retains the right to a disability allowance, article 32 of the General Disablement Benefits Act provided that a disabled woman whose (former) husband dies does not retain the right to a disability allowance, but qualifies her instead as beneficiary under the General Widows and Orphans Act. The State party explained that the General Widows and Orphans Act had been enacted to give widows an additional protection, which widowers do not at present enjoy. In a sense, widowers could claim unequal treatment under Dutch law, but not widows. What the author complained of was that as a result of the application of a rule of concurrence to avoid duplication of benefits she received a slightly reduced benefit. In its views, the Committee found no violation of article 26 and observed: "In the light of the explanations given by the State party with respect to the legislative history, the purpose and application of the General Disablement Benefits Act and the General Widows and Orphans Act, the Committee is of the view that the unfavourable result complained of by Mrs. Vos follows from the application of a uniform rule to avoid overlapping in the allocation of social security benefits. This rule is based on objective and reasonable criteria, especially bearing in mind that both statutes under which Mrs. Vos qualified for benefits aim at ensuring to all persons falling thereunder subsistence level income. Thus the Committee cannot conclude that Mrs. Vos has been a victim of discrimination within the meaning of article 26 of the Covenant" (annex X, sect. G, para. 12).

654. The Committee's interpretation of the scope of article 26 in the period covered by this report has not been restrictive in all respects. In case No. 273/1988 (B.d.B. et al. v. The Netherlands) the authors had claimed a violation of article 26 in connection with social security contributions which they had to make. The State party objected, and referred to the Committee's prior jurisprudence, which had applied article 26 only to the allocation of social security benefits but not to contributions that employers and employees were required to make. The Committee observed that article 26 "should be interpreted to cover not only entitlements which individuals entertain vis-à-vis the State but also obligations assumed by them pursuant to law" (annex XI, sect. F, para. 6.5).

655. A violation of article 26 was found in case No. 196/1985 (Gueye et al. v. France), in which the authors, retired Senegalese members of the French Army, complained that they did not receive pensions equal to those given to retired members of the French Army having French nationality:

"In determining whether the treatment of the authors is based on reasonable and objective criteria, the Committee notes that it was not the question of nationality which determined the granting of pensions to the authors but the services rendered by them in the past. They had served in the French Armed Forces under the same conditions as French citizens; for 14 years subsequent to the independence of Senegal they were treated in the same way as their French counterparts for the purpose of pension rights, although their nationality was not French but Senegalese. A subsequent change in nationality cannot by itself be considered as a sufficient justification for different treatment, since the basis for the grant of the pension was the same service

which both they and the soldiers who remained French had provided. Nor can differences in the economic, financial and social conditions as between France and Senegal be invoked as a legitimate justification. If one compared the case of retired soldiers of Senegalese nationality living in Senegal with that of retired soldiers of French nationality in Senegal, it would appear that they enjoy the same economic and social conditions. Yet, their treatment for the purpose of pension entitlements would differ. Finally, the fact that the State party claims that it can no longer carry out checks of identity and family situation, so as to prevent abuses in the administration of pension schemes cannot justify a difference in treatment. In the Committee's opinion, mere administrative inconvenience or the possibility of some abuse of pension rights cannot be invoked to justify unequal treatment. The Committee concludes that the difference in treatment of the authors is not based on reasonable and objective criteria and constitutes discrimination prohibited by the Covenant" (annex X, sect. E, para. 9.5).

656. The Committee also found a violation of article 26 in case No. 202/1986 (Ato del Avellanal v. Peru), where the author had been denied the right to sue in Peruvian courts, because, according to article 168 of the Peruvian Civil Code, when a woman is married only the husband is entitled to represent matrimonial property before the courts. In its views, the Committee observed that

"Under article 3 of the Covenant States parties undertake 'to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant' and that article 26 provides that all persons are equal before the law and are entitled to the equal protection of the law. The Committee finds that the facts before it reveal that the application of article 168 of the Peruvian Civil Code to the author resulted in denying her equality before the courts and constituted discrimination on the ground of sex" (annex X, sect. C, para. 10.2).

H. Information received from States parties following the adoption of final views

657. During its thirty-fifth session, the Committee adopted its views on communication No. 265/1987 (A. Vuolanne v. Finland). The Committee found a violation of article 9, paragraph 4, of the Covenant (see para. 639 above). During its thirty-sixth session, the Government of Finland informed the Committee of legislative measures in progress to remedy the situation. The Committee welcomes the co-operation of the State party and its positive response to the views adopted by the Committee (annex XII).

Notes

1/ Official Records of the General Assembly, Forty-third Session, Supplement No. 1 (A/43/1).

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

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

Notes (continued)

4/ Ibid., annex VI.

5/ See Official Records of the General Assembly, Forty-second Session, Supplement No. 40 (A/42/40), para. 53.

6/ The reports and additional information of States parties are documents for general distribution and are listed in the annexes to the annual reports of the Committee; these documents, as well as the summary records of the Committee's meetings, are published in the bound volumes that are being issued, beginning with the years 1977 and 1978.

ANNEX I

States parties to the International Covenant on Civil and Political Rights and to the Optional Protocol and States which have made the declaration under article 41 of the Covenant as at 28 July 1989

<u>State party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
<u>A. States parties to the International Covenant on Civil and Political Rights (87)</u>		
Afghanistan	24 January 1983 (a)	24 April 1983
Argentina	8 August 1986	8 November 1986
Australia	13 August 1980	13 November 1980
Austria	10 September 1978	10 December 1978
Barbados	5 January 1973 (a)	23 March 1976
Belgium	21 April 1983	21 July 1983
Bolivia	12 August 1982 (a)	12 November 1982
Bulgaria	21 September 1970	23 March 1976
Byelorussian Soviet Socialist Republic	12 November 1973	23 March 1976
Cameroon	27 June 1984 (a)	27 September 1984
Canada	19 May 1976 (a)	19 August 1976
Central African Republic	8 May 1981 (a)	8 August 1981
Chile	10 February 1972	23 March 1976
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983 (a)	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Cyprus	2 April 1969	23 March 1976
Czechoslovakia	23 December 1975	23 March 1976
Democratic People's Republic of Korea	14 September 1981 (a)	14 December 1981
Democratic Yemen	9 February 1987 (a)	9 May 1987
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 (a)	4 April 1978
Ecuador	6 March 1969	23 March 1976
Egypt	14 January 1982	14 April 1982
El Salvador	30 November 1979	29 February 1980
Equatorial Guinea	25 September 1987 (a)	25 December 1987

<u>State party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Finland	19 August 1975	23 March 1976
France	4 November 1980 (a)	4 February 1981
Gabon	21 January 1983 (a)	21 April 1983
Gambia	22 March 1979 (a)	22 June 1979
German Democratic Republic	8 November 1973	23 March 1976
Germany, Federal Republic of	17 December 1973	23 March 1976
Guinea	24 January 1978	24 April 1978
Guyana	15 February 1977	15 May 1977
Hungary	17 January 1974	23 March 1976
Iceland	22 August 1979	22 November 1979
India	10 April 1979 (a)	10 July 1979
Iran (Islamic Republic of)	24 June 1975	23 March 1976
Iraq	25 January 1971	23 March 1976
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Japan	21 June 1979	21 September 1979
Jordan	28 May 1975	23 March 1976
Kenya	1 May 1972 (a)	23 March 1976
Lebanon	3 November 1972 (a)	23 March 1976
Libyan Arab Jamahiriya	15 May 1970 (.)	23 March 1976
Luxembourg	18 August 1983	18 November 1983
Madagascar	21 June 1971	23 March 1976
Mali	16 July 1974 (a)	23 March 1976
Mauritius	12 December 1973 (a)	23 March 1976
Mexico	23 March 1981 (a)	23 June 1981
Mongolia	18 November 1974	23 March 1976
Morocco	3 May 1979	3 August 1979
Netherlands	11 December 1978	11 March 1979
New Zealand	28 December 1978	28 March 1979
Nicaragua	12 March 1980 (a)	12 June 1980
Niger	7 March 1986 (a)	7 June 1986
Norway	13 September 1972	23 March 1976

<u>State party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Panama	8 March 1977	8 June 1977
Peru	28 April 1978	28 July 1978
Philippines	23 October 1986	23 January 1987
Poland	18 March 1977	18 June 1977
Portugal	15 June 1978	15 September 1978
Romania	9 December 1974	23 March 1976
Rwanda	16 April 1975 (a)	23 March 1976
Saint Vincent and the Grenadines	9 November 1981 (a)	9 February 1982
San Marino	18 October 1985 (a)	18 January 1986
Senegal	13 February 1978	13 May 1978
Spain	27 April 1977	27 July 1977
Sri Lanka	11 June 1980 (a)	11 September 1980
Sudan	18 March 1986 (a)	18 June 1986
Suriname	28 December 1976 (a)	28 March 1977
Sweden	6 December 1971	23 March 1976
Syrian Arab Republic	21 April 1969 (a)	23 March 1976
Togo	24 May 1984 (a)	24 August 1984
Trinidad and Tobago	21 December 1978 (a)	21 March 1979
Tunisia	18 March 1969	23 March 1976
Ukrainian Soviet Socialist Republic	12 November 1973	23 March 1976
Union of Soviet Socialist Republics	16 October 1973	23 March 1976
United Kingdom of Great Britain and Northern Ireland	20 May 1976	20 August 1976
United Republic of Tanzania	11 June 1976 (a)	11 September 1976
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Viet Nam	24 September 1982 (a)	24 December 1982
Yugoslavia	2 June 1971	23 March 1976
Zaire	1 November 1976 (a)	1 February 1977
Zambia	10 April 1984 (a)	10 July 1984

<u>State party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
B. <u>States parties to the Optional Protocol (45)</u>		
Argentina	8 August 1986 (a)	8 November 1986
Austria	10 December 1987	10 March 1988
Barbados	5 January 1973 (a)	23 March 1976
Bolivia	12 August 1982 (a)	12 November 1982
Cameroon	27 June 1984 (a)	27 September 1984
Canada	19 May 1976 (a)	19 August 1976
Central African Republic	8 May 1981 (a)	8 August 1981
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983 (a)	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 (a)	4 April 1978
Ecuador	6 March 1969	23 March 1976
Equatorial Guinea	25 September 1987 (a)	25 December 1987
Finland	19 August 1975	23 March 1976
France	17 February 1984 (a)	17 May 1984
Gambia	9 June 1988 (a)	9 September 1988
Hungary	7 September 1986 (a)	7 December 1988
Iceland	22 August 1979 (a)	22 November 1979
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Libyan Arab Jamahiriya	16 May 1989 (a)	16 August 1989
Luxembourg	18 August 1983 (a)	18 November 1983
Madagascar	21 June 1971	23 March 1976
Mauritius	12 December 1973 (a)	23 March 1976
Netherlands	11 December 1978	11 March 1979
New Zealand	26 May 1989 (a)	26 August 1989
Nicaragua	17 March 1980 (a)	12 June 1980
Niger	7 March 1986 (a)	7 June 1986
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	3 October 1980	3 January 1981

<u>State party</u>	<u>Date of receipt of the instrument of ratification or accession (a)</u>	<u>Date of entry into force</u>
Portugal	3 May 1983	3 August 1983
Saint Vincent and the Grenadines	9 November 1981 (a)	9 February 1982
San Marino	18 October 1985 (a)	18 January 1986
Senegal	13 February 1978	13 May 1978
Spain	25 January 1985 (a)	25 April 1985
Suriname	28 December 1976 (a)	28 March 1977
Sweden	6 December 1971	23 March 1976
Togo	30 March 1988 (a)	30 June 1988
Trinidad and Tobago	14 November 1980 (a)	14 February 1981
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Zaire	1 November 1976 (a)	1 February 1977
Zambia	10 April 1984 (a)	10 July 1984

C. States which have made the declaration under article 41 of the Covenant (24)

<u>State party</u>	<u>Valid from</u>	<u>Valid until</u>
Argentina	8 August 1986	Indefinitely
Austria	10 September 1978	Indefinitely
Belgium	5 March 1987	Indefinitely
Canada	29 October 1979	Indefinitely
Congo	7 July 1989	Indefinitely
Denmark	23 March 1976	Indefinitely
Ecuador	24 August 1984	Indefinitely
Finland	19 August 1975	Indefinitely
Gambia	9 June 1988	Indefinitely
Germany, Federal Republic of	28 March 1979	27 March 1991
Hungary	7 September 1988	Indefinitely
Iceland	22 August 1979	Indefinitely
Italy	15 September 1978	Indefinitely
Luxembourg	18 August 1983	Indefinitely
Netherlands	11 December 1978	Indefinitely

<u>State party</u>	<u>Valid from</u>	<u>Valid until</u>
New Zealand	28 December 1978	Indefinitely
Norway	23 March 1976	Indefinitely
Peru	9 April 1984	Indefinitely
Philippines	23 October 1986	Indefinitely
Senegal	5 January 1981	Indefinitely
Spain	25 January 1985	25 January 1993
Sri Lanka	11 June 1980	Indefinitely
Sweden	23 March 1976	Indefinitely
United Kingdom of Great Britain and Northern Ireland	20 May 1976	Indefinitely

ANNEX II

Membership and officers of the Human Rights Committee 1989-1990 a/

A. Membership

<u>Name of member</u>	<u>Country of nationality</u>
Mr. Francisco José AGUILAR URBINA**	Costa Rica
Mr. Nisuke ANDO*	Japan
Miss Christine CHANET*	France
Mr. Joseph A. L. COORAY*	Sri Lanka
Mr. Vojin DIMITRIJEVIC*	Yugoslavia
Mr. Omran EL SHAFEI*	Egypt
Mr. János FODOR**	Hungary
Mrs. Rosalyn HIGGINS**	United Kingdom of Great Britain and Northern Ireland
Mr. Rajsoomer LALLAH**	Mauritius
Mr. Andreas V. MAVROMMATIS**	Cyprus
Mr. Joseph A. MOMMERSTEEG*	Netherlands
Mr. Rein A. MYULLERSON**	Union of Soviet Socialist Republics
Mr. Birame NDIAYE*	Senegal
Mr. Fausto POCAR**	Italy
Mr. Julio PRADO VALLEJO*	Ecuador
Mr. Alejandro SERRANO CALDERA**	Nicaragua
Mr. S. Amos WAKO**	Kenya
Mr. Bertil WENNERGREN*	Sweden

* Term expires on 31 December 1990.

** Term expires on 31 December 1992.

B. Officers

The officers of the Committee, elected for two-year terms at the 868th and 869th meetings, held on 20 March 1989, are as follows:

Chairman: Mr. Rajsoomer Lallah

Vice-Chairmen: Mr. Joseph A. L. Cooray
Mr. Vojin Dimitrijevic
Mr. Alejandro Serrano Caldera

Rapporteur: Mr. Fausto Pocar.

Notes

a/ For the membership and officers of the Human Rights Committee until 31 December 1988, see Official Records of the General Assembly, Forty-third Session, Supplement No. 40 (A/43/40), annex II.

ANNEX III

Agendas of the thirty-fourth, thirty-fifth and thirty-sixth sessions
of the Human Rights Committee

Thirty-fourth session

At its 841st meeting, on 24 October 1988, the Committee adopted the following provisional agenda (see CCPR/C/56), submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its thirty-fourth session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 40 of the Covenant.
4. Consideration of reports submitted by States parties under article 40 of the Covenant.
5. Consideration of communications under the Optional Protocol to the Covenant.

Thirty-fifth session

At its 868th meeting, on 20 March 1989, the Committee adopted the following provisional agenda (see CCPR/C/59), submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its thirty-fifth session:

1. Opening of the session by the representative of the Secretary-General.
2. Solemn declaration by the newly elected members of the Committee in accordance with article 38 of the Covenant.
3. Election of the Chairman and other officers of the Committee.
4. Adoption of the agenda.
5. Organizational and other matters.
6. Action by the General Assembly at its forty-third session:
 - (a) Annual report submitted by the Human Rights Committee under article 45 of the Covenant;
 - (b) Reporting obligations of States parties to United Nations instruments on human rights.
7. Submission of reports by States parties under article 40 of the Covenant.
8. Consideration of reports submitted by States parties under article 40 of the Covenant.

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

Thirty-sixth session

At its 895th meeting, on 10 July 1989, the Committee adopted the following provisional agenda (see CCPR/C/60), submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its thirty-sixth session:

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

ANNEX IV

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

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of written reminder(s) sent to States whose reports have not yet been submitted</u>
<u>A. Initial reports of States parties due in 1983 b/</u>			
Saint Vincent and the Grenadines	8 February 1983	Not yet received	(1) 10 May 1984 (2) 15 May 1985 (3) 13 August 1985 (4) 15 November 1985 (5) 6 May 1986 (6) 8 August 1986 (7) 7 April 1987 (8) 1 December 1987 (9) 6 June 1988 (10) 21 November 1988 (11) 10 May 1989
Viet Nam	23 December 1983	7 July 1989	
<u>B. Initial reports of States parties due in 1984</u>			
Gabon	20 April 1984	Not yet received	(1) 15 May 1985 (2) 5 August 1985 (3) 15 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 7 April 1987 (7) 1 December 1987 (8) 6 June 1988 (9) 21 November 1988 (10) 10 May 1989
<u>C. Initial reports of States parties due in 1987</u>			
San Marino	17 January 1987	14 September 1988	-
Niger	9 June 1987	Not yet received	(1) 1 December 1987 (2) 6 June 1988 (3) 21 November 1988 (4) 10 May 1989

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of written reminder(s) sent to States whose reports have not yet been submitted</u>
Sudan	17 June 1987	Not yet received	(1) 1 December 1987 (2) 6 June 1988 (3) 21 November 1988 (4) 10 May 1989
Argentina	7 November 1987	11 April 1989	-

D. Initial reports of States parties due in 1988

Democratic Yemen	8 May 1988	18 January 1989	-
Equatorial Guinea	24 December 1988	Not yet received	(1) 10 May 1989

E. Second periodic reports of States parties due in 1983

Libyan Arab Jamahiriya	4 February 1983	Not yet received	(1) 10 May 1984 (2) 15 May 1985 (3) 13 August 1985 (4) 18 November 1985 (5) 6 May 1986 (6) 8 August 1986 (7) 1 May 1987 (8) 24 July 1987 (9) 1 December 1987 (10) 6 June 1988 (11) 21 November 1988 (12) 10 May 1989
Iran (Islamic Republic of)	21 March 1983	Not yet received	(1) 10 May 1984 (2) 15 May 1985 (3) 13 August 1985 (4) 18 November 1985 (5) 6 May 1986 (6) 8 August 1986 (7) 1 May 1987 (8) 24 July 1987 (9) 1 December 1987 (10) 6 June 1988 (11) 21 November 1988 (12) 10 May 1989

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of written reminder(s) sent to States whose reports have not yet been submitted</u>
Madagascar	3 August 1983	Not yet received	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 1 May 1987 (7) 24 July 1987 (8) 1 December 1987 (9) 6 June 1988 (10) 21 November 1988 (11) 10 May 1989

F. Second periodic reports of States parties due in 1984

Bulgaria	28 April 1984	Not yet received	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 1 May 1987 (7) 1 August 1987 (8) 1 December 1987 (9) 6 June 1988 (10) 21 November 1988 (11) 10 May 1989
Cyprus	18 August 1984	Not yet received	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 1 May 1987 (7) 7 August 1987 (8) 1 December 1987 (9) 6 June 1988 (10) 21 November 1988 (11) 10 May 1989
Syrian Arab Republic	18 August 1984	Not yet received	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 1 May 1987 (7) 7 August 1987 (8) 1 December 1987 (9) 6 June 1988 (10) 21 November 1988 (11) 10 May 1989

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of written reminder(s) sent to States whose reports have not yet been submitted</u>
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G. Second periodic reports of States parties due in 1985

Gambia	21 June 1985	Not yet received	(1) 9 August 1985 (2) 18 November 1985 (3) 6 May 1986 (4) 8 August 1986 (5) 1 May 1987 (6) 1 December 1987 (7) 6 June 1988 (8) 21 November 1988 (9) 10 May 1989
India	9 July 1985	12 July 1989	-
Costa Rica	2 August 1985	11 November 1988	-
Suriname	2 August 1985	Not yet received	(1) 18 November 1985 (2) 6 May 1986 (3) 8 August 1986 (4) 1 May 1987 (5) 1 December 1987 (6) 6 June 1988 (7) 21 November 1988 (8) 10 May 1989
Venezuela	1 November 1985	Not yet received	(1) 20 November 1985 (2) 6 May 1986 (3) 8 August 1986 (4) 1 May 1987 (5) 1 December 1987 (6) 6 June 1988 (7) 21 November 1988 (8) 10 May 1989

H. Second periodic reports of States parties due in 1986

Lebanon	21 March 1986	Not yet received	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987 (4) 13 August 1987 (5) 1 December 1987 (6) 6 June 1988 (7) 21 November 1988 (8) 10 May 1989
Dominican Republic	29 March 1986	1 September 1988	-

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of written reminder(s) sent to States whose reports have not yet been submitted</u>
Kenya	11 April 1986	Not yet received	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987 (4) 1 December 1987 (5) 6 June 1988 (6) 21 November 1988 (7) 10 May 1989
Mali	11 April 1986	Not yet received	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987 (4) 1 December 1987 (5) 6 June 1988 (6) 21 November 1988 (7) 10 May 1989
United Republic of Tanzania	11 April 1986	Not yet received	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987 (4) 1 December 1987 (5) 6 June 1988 (6) 21 November 1988 (7) 10 May 1989
Nicaragua	11 June 1986	29 November 1988	-
Jamaica	1 August 1986	Not yet received	(1) 1 May 1987 (2) 1 December 1987 (3) 6 June 1988 (4) 21 November 1988 (5) 10 May 1989
Sri Lanka	10 September 1986	Not yet received	(1) 1 May 1987 (2) 1 December 1987 (3) 6 June 1988 (4) 21 November 1988 (5) 10 May 1989
Morocco	31 October 1986	Not yet received	(1) 1 May 1987 (2) 1 December 1987 (3) 6 June 1988 (4) 21 November 1988 (5) 10 May 1989
Panama	31 December 1986 b/ 4 August 1988		-

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of written reminder(s) sent to States whose reports have not yet been submitted</u>
I. <u>Second periodic reports of States parties due in 1987</u>			
Jordan	22 January 1987	Not yet received	(1) 1 May 1987 (2) 1 December 1987 (3) 6 June 1988 (4) 21 November 1988 (5) 10 May 1989
Guyana	10 April 1987	Not yet received	(1) 1 May 1987 (2) 1 December 1987 (3) 6 June 1988 (4) 21 November 1988 (5) 10 May 1989
Iceland	30 October 1987	Not yet received	(1) 1 December 1987 (2) 6 June 1988 (3) 21 November 1988 (4) 10 May 1989
Democratic People's Republic of Korea	13 October 1987	Not yet received	(1) 23 June 1988 (2) 21 November 1988 (3) 10 May 1989

J. Second periodic reports of States parties due in 1988

Saint Vincent and the Grenadines g/	8 February 1988	Not yet received	(1) 6 June 1988 (2) 21 November 1988 (3) 10 May 1989
Canada d/	8 April 1988	28 July 1989	-
Austria	9 April 1988	Not yet received	(1) 21 November 1988 (2) 10 May 1989
Peru	9 April 1988	Not yet received	(1) 21 November 1988 (2) 10 May 1989
Egypt	13 April 1988	Not yet received	(1) 21 November 1988 (2) 10 May 1989
Bolivia	11 November 1988	e/	-
Viet Nam	23 December 1988	Not yet received	-
El Salvador f/	31 December 1988	Not yet received	(1) 10 May 1989

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of written reminder(s) sent to States whose reports have not yet been submitted</u>
K. <u>Second periodic reports of States parties due in 1989</u> (within the period under review) g/			
Zaire h/	1 February 1989	20 February 1989	-
Central African Republic i/	9 April 1989	Not yet received	-
Gabon g/	20 April 1989	Not yet received	-
Afghanistan	23 April 1989	Not yet received	-
Belgium	20 July 1989	Not yet received	-
L. <u>Third periodic reports of States parties due in 1988</u>			
Czechoslovakia	4 February 1988	17 January 1989	-
Libyan Arab Jamahiriya j/	4 February 1988	Not yet received	(1) 6 June 1988 (2) 21 November 1989 (3) 10 May 1989
Tunisia	4 February 1988	17 April 1989	-
Iran (Islamic Republic of) j/	21 March 1988	Not yet received	(1) 6 June 1988 (2) 21 November 1988 (3) 10 May 1989
Lebanon j/	21 March 1988	Not yet received	(1) 6 June 1988 (2) 21 November 1988 (3) 10 May 1989
Panama	6 June 1988	Not yet received	-
Germany, Federal Republic of	3 August 1988	1 December 1988	-
Madagascar j/	3 August 1988	Not yet received	(1) 21 November 1988 (2) 10 May 1989
Yugoslavia	3 August 1988	Not yet received	(1) 21 November 1988 (2) 10 May 1989

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Date of written reminder(s) sent to States whose reports have not yet been submitted</u>
Byelorussian SSR	4 November 1988	Not yet received	(1) 21 November 1988 (2) 10 May 1989
Ecuador	4 November 1988	k/	-
Mauritius	4 November 1988	l/	-
Union of Soviet Socialist Republics	4 November 1988	26 August 1988	-

M. Third periodic reports of States parties due in 1989
(within the period under review) m/

Uruguay	21 March 1989	n/	-
Dominican Republic	3 April 1989	Not yet received	-
Bulgaria j/	28 April 1989	Not yet received	-
Chile	28 April 1989	3 May 1989	-
Romania	28 April 1989	Not yet received	-
Spain	28 April 1989	28 April 1989 1 June 1989	-

Notes

a/ From 29 July 1988 to 28 July 1989 (end of the thirty-third session to end of the thirty-sixth session).

b/ At its twenty-fifth session (601st meeting), the Committee decided to extend the deadline for the submission of Panama's second periodic report from 6 June 1983 to 31 December 1986.

c/ The State party's initial report has not yet been received.

d/ See Official Records of the General Assembly, Fortieth Session, Supplement No. 40 (A/40/40), para. 40.

e/ Pursuant to the Committee's decision taken at its 914th meeting, the new date for the submission of Bolivia's second periodic report is 13 July 1990.

f/ At the Committee's twenty-ninth session, the deadline for the submission of El Salvador's second periodic report was set for 31 December 1988.

Notes (continued)

g/ For a complete list of States parties whose second periodic reports are due in 1989, see CCPR/C/57.

h/ At its thirtieth session (739th meeting), the Committee decided to extend the deadline for the submission of Zaire's second periodic report from 30 January 1983 to 1 February 1989.

i/ At the Committee's thirty-second session (794th meeting), the deadline for the submission of the second periodic report of the Central African Republic was set for 9 April 1989.

j/ The State party's second periodic report has not yet been received.

k/ Pursuant to the Committee's decision taken at its 833rd meeting, the new date for the submission of Ecuador's third periodic report is 4 November 1989.

l/ Pursuant to the Committee's decision taken at its 914th meeting, the new date for the submission of Mauritius' third periodic report is 18 July 1990.

m/ For a complete list of States parties whose third periodic reports are due in 1989, see CCPR/C/58.

n/ Pursuant to the Committee's decision taken at its 891st meeting, the new date for submission of Uruguay's third periodic report is 21 March 1990.

ANNEX V

Status of reports considered during the period under review
and of reports still pending before the Committee

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Meetings at which considered</u>
A. <u>Initial reports</u>			
Bolivia	11 November 1983	26 October 1988	896th-897th, 900th (thirty-sixth session)
Viet Nam	23 December 1983	7 July 1989	Not yet considered
Togo	23 August 1985	22 September 1988	870th-871st, 874th- 875th (thirty-fifth session)
Cameroon	26 September 1985	11 August 1988	898th-899th, 903rd (thirty-sixth session)
San Marino	17 January 1987	14 September 1988	Not yet considered
Argentina	7 November 1987	11 April 1989	Not yet considered
Philippines	22 January 1988	22 March 1988	884th-886th (thirty-fifth session)
Democratic Yemen	8 May 1988	18 January 1989	Not yet considered
B. <u>Second periodic reports</u>			
Uruguay	21 March 1983	28 July 1988	876th-879th (thirty-fifth session)
Mauritius	4 November 1983	24 October 1988	904th-906th (thirty-sixth session)
United Kingdom of Great Britain and Northern Ireland - dependent Territories	18 August 1984	25 May 1988	855th-857th (thirty-fourth session)
New Zealand	27 March 1985	22 June 1988	888th-891st (thirty-fifth session)
India	9 July 1985	12 July 1989	Not yet considered
Costa Rica	2 August 1985	11 November 1988	Not yet considered

<u>States parties</u>	<u>Date due</u>	<u>Date of submission</u>	<u>Meetings at which considered</u>
Italy	1 November 1985	25 July 1988	908th-912th (thirty-sixth session)
Dominican Republic	29 March 1986	1 September 1988	Not yet considered
Nicaragua	11 June 1986	29 November 1988	Not yet considered
Portugal	1 August 1986	1 May 1987 30 June 1988 a/	Not yet considered
Norway	1 August 1986	4 January 1988	844th-847th (thirty-fourth session)
Netherlands	31 October 1986	21 June 1988	861st-864th (thirty-fourth session)
Panama	31 December 1986	4 August 1988	Not yet considered
Mexico	22 June 1987	23 March 1988	849th-853rd (thirty-fourth session)
Canada	8 April 1988	28 July 1989	Not yet considered
Zaire	1 February 1989	20 February 1989	Not yet considered

C. Third periodic reports

Czechoslovakia	4 February 1988	17 January 1989	Not yet considered
German Democratic Republic	4 February 1988	8 July 1988	Not yet considered
Tunisia	4 February 1988	17 April 1989	Not yet considered
Germany, Federal Republic of	3 August 1988	1 December 1988	Not yet considered
Union of Soviet Socialist Republics	4 November 1988	26 August 1988	Not yet considered
Chile	28 April 1989	3 May 1989	Not yet considered
Spain	28 April 1989	28 April 1989 1 June 1989	Not yet considered

States parties Date of submission Meetings at which considered

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

Kenya ^{b/}	4 May 1982	Not yet considered
Gambia ^{b/}	5 June 1984	Not yet considered
Panama ^{b/}	30 July 1984	Not yet considered
Zaire ^{b/}	23 September 1988	Not yet considered

E. Additional information submitted subsequent to examination of second periodic reports by the Committee

Finland	4 June 1986	Not yet considered
Sweden	1 July 1986	Not yet considered

Notes

^{a/} Date of re-submission.

^{b/} At its twenty-fifth session (601st meeting), the Committee decided to consider the report together with the State party's second periodic report.

ANNEX VI

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

General comment 17 (35) b/ c/ (article 24)

1. Article 24 of the International Covenant on Civil and Political Rights recognizes the right of every child, without any discrimination, to receive from his family, society and the State the protection required by his status as a minor. Consequently, the implementation of this provision entails the adoption of special measures to protect children in addition to the measures that States are required to take under article 2 to ensure that everyone enjoys the rights provided for in the Covenant. The reports submitted by States parties often seem to underestimate this obligation and they supply inadequate information on the way in which children are afforded enjoyment of their right to special protection.

2. In this connection, the Committee points out that the rights provided for in article 24 are not the only ones that the Covenant recognizes for children and that, as individuals, children benefit from all of the civil rights enunciated in the Covenant. In enunciating a right, some provisions of the Covenant expressly indicate to States measures to be adopted with a view to affording minors greater protection than adults. Thus, as far as the right to life is concerned, the death penalty cannot be imposed for crimes committed by persons under 18 years of age. Similarly, if lawfully deprived of their liberty, accused juvenile persons shall be separated from adults and are entitled to be brought as speedily as possible for adjudication; in turn, convicted juvenile offenders shall be subject to a penitentiary system that involves segregation from adults and is appropriate to their age and legal status, the aim being to foster reformation and social rehabilitation. In other instances, children are protected by the possibility of the restriction - provided that such restriction is warranted - of a right recognized by the Covenant, such as the right to publicize a judgement in a suit at law or a criminal case, from which an exception may be made when the interest of the minor so requires.

3. In most cases, however, the measures to be adopted are not specified in the Covenant and it is for each State to determine them in the light of the protection needs of children in its territory and within its jurisdiction. The Committee notes in this regard that such measures, although intended primarily to ensure that children fully enjoy the other rights enunciated in the Covenant, may also be economic, social and cultural. For example, every possible economic and social measure should be taken to reduce infant mortality and to eradicate malnutrition among children and to prevent them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labour or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means. In the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant, particularly the right to freedom of opinion and expression. Moreover, the Committee wishes to draw the attention of States parties to the need to include in their reports information on measures adopted to ensure that children do not take a direct part in armed conflicts.

4. The right to special measures of protection belongs to every child because of his status as a minor. Nevertheless, the Covenant does not indicate the age at which he attains his majority. This is to be determined by each State party in the light of the relevant social and cultural conditions. In this respect, States should indicate in their reports the age at which the child attains his majority in civil matters and assumes criminal responsibility. States should also indicate the age at which a child is legally entitled to work and the age at which he is treated as an adult under labour law. States should further indicate the age at which a child is considered adult for the purposes of article 10, paragraphs 2 and 3. However, the Committee notes that the age for the above purposes should not be set unreasonably low and that in any case a State party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law.

5. The Covenant requires that children should be protected against discrimination on any grounds such as race, colour, sex, language, religion, national or social origin, property or birth. In this connection, the Committee notes that, whereas non-discrimination in the enjoyment of the rights provided for in the Covenant also stems, in the case of children, from article 2 and their equality before the law from article 26, the non-discrimination clause contained in article 24 relates specifically to the measures of protection referred to in that provision. Reports by States parties should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every field, including inheritance, particularly as between children who are nationals and children who are aliens or as between legitimate children and children born out of wedlock.

6. Responsibility for guaranteeing children the necessary protection lies with the family, society and the State. Although the Covenant does not indicate how such responsibility is to be apportioned, it is primarily incumbent on the family, which is interpreted broadly to include all persons composing it in the society of the State party concerned, and particularly on the parents, to create conditions to promote the harmonious development of the child's personality and his enjoyment of the rights recognized in the Covenant. However, since it is quite common for the father and mother to be gainfully employed outside the home, reports by States parties should indicate how society, social institutions and the State are discharging their responsibility to assist the family in ensuring the protection of the child. Moreover, in cases where the parents and the family seriously fail in their duties, ill-treat or neglect the child, the State should intervene to restrict parental authority and the child may be separated from his family when circumstances so require. If the marriage is dissolved, steps should be taken, keeping in view the paramount interest of the children, to give them necessary protection and, so far as is possible, to guarantee personal relations with both parents. The Committee considers it useful that reports by States parties should provide information on the special measures of protection adopted to protect children who are abandoned or deprived of their family environment in order to enable them to develop in conditions that most closely resemble those characterizing the family environment.

7. Under article 24, paragraph 2, every child has the right to be registered immediately after birth and to have a name. In the Committee's opinion, this provision should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child's legal personality. Providing for the right to have a

name is of special importance in the case of children born out of wedlock. The main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant. Reports by States parties should indicate in detail the measures that ensure the immediate registration of children born in their territory.

8. Special attention should also be paid, in the context of the protection to be granted to children, to the right of every child to acquire a nationality, as provided for in article 24, paragraph 3. While the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in co-operation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents. The measures adopted to ensure that children have a nationality should always be referred to in reports by States parties.

Notes

a/ For the nature and purpose of the general comments, see Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII, introduction. For a description of the history of the method of work, the elaboration of general comments and their use, see ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), paras. 541-557. For the text of the general comments already adopted by the Committee, see ibid., Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII; ibid., Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V; ibid., Thirty-eighth Session, Supplement No. 40 (A/38/40), annex VI; ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), annex VI; ibid., Fortieth Session, Supplement No. 40 (A/40/40), annex VI; ibid., Forty-first Session, Supplement No. 40 (A/41/40), annex VI and ibid., Forty-third Session, Supplement No. 40 (A/43/40), annex VI. Also issued in document CCPR/C/21/Rev.1.

b/ Adopted by the Committee at its 891st meeting (thirty-fifth session), held on 5 April 1989.

c/ The number in parenthesis indicates the session at which the general comment was adopted.

ANNEX VII

Methodology for considering third periodic reports a/

1. The method to be applied by the Committee in considering third periodic reports, or subsequent periodic reports, should be generally similar to that used for considering second periodic reports, the main objective being to maintain and strengthen the dialogue between the Committee and the States parties and to promote the effective implementation of human rights.
2. A revision of the existing guidelines b/ should only be made on the basis of the Committee's experience in the consideration of periodic reports.
3. The lists of issues prepared in advance of the examination of third periodic reports for transmission to States parties should be more concise and more precise than is presently the case in respect of second periodic reports. In principle, these lists should concentrate on developments after the submission of the second periodic report and not include issues extensively dealt with during the consideration of previous reports except for those identified as giving rise to concern.
4. Henceforth, States parties should be informed in writing, by an explanatory note attached to the list of issues, of factors relating to the consideration of reports by the Committee such as the need for brevity in introducing reports, the fact that the lists of issues are only indicative and are usually supplemented by oral questions from members and that members customarily make general observations at the conclusion of the dialogue. c/
5. The analytical study of the consideration of State party reports prepared by the Secretariat should clearly reflect the salient questions raised and responses provided during the consideration of each prior report as well as the relevant information supplied in the report that is to be considered by the Committee.
6. Unless the Committee decides otherwise, the consideration of third periodic reports will be completed in no more than three meetings.

Notes

a/ Adopted by the Committee at its 880th meeting, held on 29 March 1989.

b/ See document CCPR/C/20.

c/ Such explanatory notes should also be attached to lists of issues prepared in advance of the consideration of second periodic reports.

ANNEX VIII

Draft consolidated guidelines for the initial part
of States parties' reports a/

1. Pursuant to the recommendation adopted by second meeting of persons chairing human rights treaty bodies, contained in paragraph 79 of document A/44/98, the Human Rights Committee considered the possibility of elaborating a consolidated text of the first part of the guidelines relating to the form and contents of State party reports.

2. The Committee was of the view that the harmonization and consolidation of guidelines would not be incompatible with the autonomy of each treaty body and would help to avoid both duplication of effort and delays in the submission of reports, but stressed the need to limit such consolidation to matters of common interest to all the treaty bodies.

3. In the light of the foregoing and on the basis of the Secretariat proposal, contained in paragraph 21 of document A/40/600, the Committee proposed the following consolidated guidelines for the preparation of the initial part of State party reports submitted under the various international human rights instruments:

(a) Land and people. This section should contain information about the main ethnic and demographic characteristics of the country and its population as well as such socio-economic and cultural indicators as per capita income, gross national product, rate of inflation, external debt, rate of unemployment, literacy rate and religion. It should also include information on the population by mother tongue, life expectancy and infant mortality.

(b) General political structure. This section should briefly describe the political history and framework, the type of government and the organization of the executive, legislative and judicial organs.

(c) General legal framework within which human rights are protected. This section should contain information on:

- (i) Which judicial, administrative or other competent authorities have jurisdiction affecting human rights;
- (ii) What remedies are available to an individual who claims that any of his rights have been violated; and what systems of compensation exist for victims;
- (iii) Whether any of the rights referred to in the various human rights instruments are protected either in the Constitution or by a separate "bill of rights" and, if so, what provisions are made in the Constitution or bill of rights for derogations and in what circumstances;
- (iv) Whether the provisions of the various human rights instruments can be invoked before, or directly enforced by, the courts, other tribunals or administrative authorities or whether they must be transformed into internal laws or administrative regulations in order to be enforced by the authorities concerned.

(d) Information and publicity. This section should indicate whether any special efforts have been made to promote awareness among the public and the relevant authorities of the rights contained in the various human rights instruments. The topics to be addressed should include: the manner and extent to which the texts of the various human rights instruments have been disseminated; whether such texts have been translated into the local language or languages; what government agencies have responsibility for preparing reports and whether they normally receive information or other inputs from external sources; and whether the contents of the reports are the subject of public debate.

Notes

a/ Adopted by the Committee at its 901st meeting, held on 13 July 1989.

ANNEX IX

Amended rules of procedure

At its thirty-sixth session, the Human Rights Committee adopted a number of changes in the rules set out in chapter XVII of its rules of procedure, relating to the consideration of communications under the Optional Protocol to the International Covenant on Civil and Political Rights. The text of the rules as amended appears below:

XVII. PROCEDURE FOR THE CONSIDERATION OF COMMUNICATIONS
RECEIVED UNDER THE OPTIONAL PROTOCOL

C. Procedure to determine admissibility

Rule 87

1. The Committee shall decide as soon as possible and in accordance with the following rules whether the communication is admissible or is inadmissible under the Protocol.
2. A Working Group established under rule 89, paragraph 1, may also declare a communication admissible when it is composed of five members and all the members so decide.

Rule 88

1. Communications shall be dealt with in the order in which they are received by the Secretariat, unless the Committee or a Working Group established under rule 89, paragraph 1, decides otherwise.
2. Two or more communications may be dealt with jointly if deemed appropriate by the Committee or a Working Group established under rule 89, paragraph 1.

Rule 89

1. The Committee may establish one or more Working Groups of no more than five of its members to make recommendations to the Committee regarding the fulfilment of the conditions of admissibility laid down in articles 1, 2, 3 and 5 (2) of the Protocol.
2. The rules of procedure of the Committee shall apply as far as possible to the meetings of the Working Group.
3. The Committee may designate Special Rapporteurs from among its members to assist in the handling of communications.

Rule 90 a/

With a view to reaching a decision on the admissibility of a communication, the Committee, or a Working Group established under rule 89, paragraph 1, shall ascertain:

(a) That the communication is not anonymous and that it emanates from an individual, or individuals, subject to the jurisdiction of a State party to the Protocol;

(b) That the individual claims, in a manner sufficiently substantiated, to be a victim of a violation by that State party of any of the rights set forth in the Covenant. Normally, the communication should be submitted by the individual himself or by his representative; a communication submitted on behalf of an alleged victim may, however, be accepted when it appears that he is unable to submit the communication himself;

(c) That the communication is not an abuse of the right to submit a communication under the Protocol;

(d) That the communication is not incompatible with the provisions of the Covenant;

(e) That the same matter is not being examined under another procedure of international investigation or settlement;

(f) That the individual has exhausted all available domestic remedies.

Rule 91

1. The Committee or a Working Group established under rule 89, paragraph 1, or a Special Rapporteur designated under rule 89, paragraph 3, may request the State party concerned or the author of the communication to submit additional written information or observations relevant to the question of the admissibility of the communication. To avoid undue delays, a time-limit for the submission of such information or observations shall be indicated.

2. A communication may not be declared admissible unless the State party concerned has received the text of the communication and has been given an opportunity to furnish information or observations as provided in paragraph 1 of this rule.

3. A request addressed to a State party under paragraph 1 of this rule shall include a statement of the fact that such a request does not imply that any decision has been reached on the question of admissibility.

4. Within fixed time-limits, each party may be afforded an opportunity to comment on submissions made by the other party pursuant to this rule.

Rule 92

1. Where the Committee decides that a communication is inadmissible under the Protocol it shall as soon as possible communicate its decision, through the Secretary-General, to the author of the communication and, where the communication has been transmitted to a State party concerned, to that State party.
2. If the Committee has declared a communication inadmissible under article 5, paragraph 2, of the Protocol, this decision may be reviewed at a later date by the Committee upon a written request by or on behalf of the individual concerned containing information to the effect that the reasons for inadmissibility referred to in article 5, paragraph 2, no longer apply.
3. Any member of the Committee may request that a summary of his individual opinion shall be appended to the Committee's decision declaring a communication inadmissible under the Optional Protocol.

D. Procedure for the consideration of communications on the merits

Rule 93

1. As soon as possible after the Committee or a Working Group acting under rule 87, paragraph 2, has taken a decision that a communication is admissible under the Protocol, that decision and the text of the relevant documents shall be submitted, through the Secretary-General, to the State party concerned. The author of the communication shall also be informed, through the Secretary-General, of the decision.
2. Within six months, the State party concerned shall submit to the Committee written explanation or statements clarifying the matter under consideration and the remedy, if any, that may have been taken by that State.
3. Any explanations or statements submitted by a State party pursuant to this rule shall be communicated, through the Secretary-General, to the author of the communication who may submit any additional written information or observations within fixed time-limits.
4. Upon consideration of the merits, the Committee may review a decision that a communication is admissible in the light of any explanation or statements submitted by the State party pursuant to this rule.

Rule 94

1. If the communication is admissible, the Committee shall consider it in the light of all written information made available to it by the individuals and by the State party concerned and shall formulate its reviews thereon. For this purpose the Committee may refer the communication to a Working Group of not more than five of its members or to a Special Rapporteur to make recommendations to the Committee.

2. The views of the Committee shall be communicated to the individual and to the State party concerned.

3. Any member of the Committee may request that a summary of his individual opinion shall be appended to the views of the Committee.

Notes

a/ Rule 90, paragraph 2, has been deleted.

ANNEX X

Views of the Human Rights Committee under article 5, paragraph 4,
of the Optional Protocol to the International Covenant on Civil
and Political Rights

A. Communication No. 162/1983, Omar Berterretche Acosta v. Uruguay
(Views adopted on 25 October 1988 at the thirty-fourth session)

Submitted by: Vicenta Acosta (alleged victim's mother) -
later joined by Omar Berterretche Acosta as
co-author

Alleged victim: Omar Berterretche Acosta

State party concerned: Uruguay

Date of communication: 20 December 1983 (date of initial letter)

Date of decision on admissibility: 11 July 1985

The Human Rights Committee, established under article 28 of the International
Covenant on Civil and Political Rights,

Meeting on 25 October 1988,

Having concluded its consideration of communication No. 162/1983, submitted to
the Committee by Vicenta Acosta and Omar Berterretche Acosta under the Optional
Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the
author of the communication and by the State party concerned,

Adopts the following:

Views under article 5, paragraph (4) of the Optional Protocol

1. The original author of the communication (letter dated 20 December 1983) is
Vicenta Acosta, a Uruguayan national residing in Uruguay. She submitted the
communication on behalf of her son, Omar Berterretche Acosta, a Uruguayan national
born on 23 February 1927, who was detained in Uruguay from September 1977 until
1 March 1985. He joined as co-author of the communication by letter received on
3 July 1985.

2.1 It is stated that Omar Berterretche is an architect and meteorologist and that
prior to his detention he was employed as sub-director of weather forecasting in
Uruguay's Department of Meteorology and as professor of dynamics, aerodynamics,
mathematics and physics at various institutions. He was detained for the first
time in January 1976 and allegedly subjected to torture; he was released on
25 February 1976 without being charged. He was arrested for the second time on
7 September 1977 at police headquarters in Montevideo, where he had gone to pick up
his passport to go abroad. One day later his family learned of his detention, but

he was kept incommunicado for 40 more days. He was taken to the Central Prison in Montevideo, where he stayed until February 1978, when he was transferred to the Punta Carreta Prison in Montevideo. From July 1979 until 1 March 1985 he was detained at Libertad Prison.

2.2 The military judge of first instance imposed on him a term of imprisonment of 24 months, on charges of assisting subversion. The Government prosecutor charged him further with providing military intelligence to the Communist Party and asked for a six-year sentence. The Supreme Military Tribunal sentenced him to 14 years' imprisonment.

3. By its decision of 22 March 1984, the Working Group of the Human Rights Committee, having decided that Vicenta Acosta was justified in acting on behalf of the alleged victim, transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. The Working Group also requested the State party to provide the Committee with copies of any court orders or decisions relevant to the case and to inform the Committee of the state of health of Omar Berterretche.

4.1 In a submission dated 28 August 1984 the State party informed the Committee that on 5 June 1980 Mr. Omar W. Berterretche was sentenced in second instance to 14 years' imprisonment for committing the offences of "subversive associations", "assault on the material strength of the army, navy and air force by espionage", "espionage" and "attack against the Constitution in the degree of conspiracy, followed by preparatory acts" all covered by the Military Penal Code. Concerning his state of health, the State party declares the following: "patient suffering from gastro-enteritis which is treated and controlled. At present, stabilized."

4.2 The present Uruguayan Government came to power on 1 March 1985. Pursuant to an amnesty law enacted by that Government on 8 March 1985, all political prisoners were released and all forms of political banishment were lifted.

5. In an undated letter received on 3 July 1985, Mr. Berterretche joined his mother as co-author of the communication, indicating that he had been released from imprisonment in March 1985 and requesting the Committee to continue consideration of the communication. He confirmed that the facts as described by his mother were correct and made the following comments on the State party's submission of 24 August 1984:

"It is stated that I am suffering from gastro-enteritis but that this is now stabilized. This is only a half truth since I was only half-treated medically, i.e. in an inadequate manner. The fact is obviously concealed that I am suffering from nervous hypertension, which is of a serious nature because of its extreme variability and which is also inadequately controlled. Also concealed is the cardiac problem which has developed since I was tortured. No reference is made to the fact that, from the time I was first captured and during the interrogations leading to my indictment I was subjected to physical abuse such as beatings, stringing up, asphyxiation, electric shocks and long periods of forced standing in the cold without anything to drink or eat. None of this is mentioned. No reference is made either to the fact that, in the absence of firm evidence to convict me I was declared a 'spy'. On this ground, the procedure was drawn out indefinitely, as I was progressively sentenced to 12 months, then 8 1/2 years and finally 14 years of imprisonment, without any aggravating factor having intervened in the interim.

"The military court did not find any active participation in politics on my part and, acting solely on the basis of my ideology, it imposed on me the heaviest sentence possible, on grounds which were false ...

"Libertad prison, in which I was held, was a place of genuinely repugnant and constant repression, carried out by specialized personnel who were rotated in order that they should not suffer the fatigue which this type of duty inevitably produces.

"The following provides evidence of the pleasure that was taken in carrying out torture at Libertad prison. It was a case of torture of the nerves, practised on me and my family, as on many others. On 7 September 1981, the day on which I had served exactly four years of detention, I was informed that I was to report to the warden's office. Also ordered to report were some of my companions who were informed of several decisions, some of them being told that they were to be released. As for me, I was informed that I had been granted freedom. I was informed of this by a military court established there and I was asked to give my address. This is a normal procedure when release is approved. I informed my family, which, when they sought confirmation of my release, were informed that there had been a mistake.

"In view of the foregoing, I have to make the following statement:

(a) I wish my case to remain open because, in view of the treatment to which I was subjected, it is necessary to measure not only the moral damage caused to me and my family and the damage inflicted on the State by the de facto Government, but also the damage constituted by the fact that despite all the efforts I have made, I am still without work. In other words, I have so far not been reinstated in the School of Meteorology or in the Department of Meteorology and, at the age of 58, it is very difficult for me to obtain a position.

(b) I wish my case to remain open in case it is possible to conduct further inquiries and because I shall continue to fight for the genuine welfare of mankind, for its rights and for the possibility for it to live in peace and freedom, as I believe this to be one of the aims man has always pursued."

6. Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant. The Committee did not find that any of the procedural obstacles laid down in articles 2, 3 or 5 of the Optional Protocol existed in the present case.

7. On 11 July 1985 the Committee therefore decided: that the communication was admissible in so far as the facts submitted relate to events which allegedly took place after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay. The State party was requested, in accordance with article 4, paragraph 2 of the Optional Protocol, to submit written explanations or statements clarifying the matter and the measures, if any, that might have been taken by it and, again, to furnish the Committee with copies of all court orders and decisions relevant to the case. The Committee's decision was transmitted to the parties on 1 August 1985, together with an indication that the authors would be

afforded an opportunity to comment on any submission received from the State party, as provided in rule 93, paragraph 3, of the Committee's provisional rules of procedure.

8. By note of 3 January 1986 the State party confirmed its intention to co-operate with the Committee and stated that it would forward copies of the relevant court orders and decisions. On 12 December 1986 the State party transmitted copies of the judgement of the Supreme Military Tribunal, dated 5 June 1980, as well as transcripts of the hearings and decisions of the lower courts.

9. The text of the State party's submissions of 3 January and 12 December 1986 was dispatched to the authors on 18 December 1986 by registered mail. The dispatch was returned by the postal authorities on 1 April 1987 with an indication that the authors had moved, without leaving a forwarding address. Delivery was therefore unsuccessful. By letter of 16 November 1987, Mr. Berterretche Acosta re-established contact with the Committee and indicated that it was his intention to furnish further information in respect of his case. The submissions of the State party of 3 January and 12 December 1986 were thereupon retransmitted to him. Again, he was afforded an opportunity to comment on the State party's submissions. No further information or comments have been received from him, to date.

10.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties as provided in article 5, paragraph 1, of the Optional Protocol. The Committee observes in this connection that the information provided by the authors in substantiation of the allegations is somewhat limited. In the circumstances, and in the absence of any comments from the authors on the extensive court records submitted by the State party, the Committee will limit itself to pronouncing on the allegations of ill-treatment and torture, which have not been contradicted by the State party.

10.2 The authors' allegations concerning ill-treatment and torture, and the consequences thereof, are basically the following:

(a) Mr. Berterretche Acosta's mother alleges in the initial letter that her son was subjected to torture at the time he was detained for the first time, from January to February 1976. She also states that her son was held incommunicado for 40 days from the time he was arrested for the second time, on 7 September 1977 (para. 2.1 above);

(b) In his comments on the State party's submission of 28 August 1984, Mr. Berterretche Acosta observes that no reference is made in the State party's submission "to the fact that from the time I was first captured and during the interrogations leading to my indictment, I was subjected to physical abuse such as beatings, stringing up, asphyxiation, electric shocks and long periods of forced standing in the cold without anything to drink or eat" (para. 5 above);

(c) As to alleged psychological torture carried out at Libertad prison, Mr. Berterretche Acosta refers to the events on 7 September 1981, at which time he was told that he had been granted freedom, and the subsequent explanation given to his family "that there had been a mistake" (para. 5 above);

(d) As to the consequences of his treatment while in detention, Mr. Berterretche further observes in his comments on the State party's submission

of 28 August 1984: "The fact is obviously concealed that I am suffering from nervous hypertension, which is of a serious nature because of its extreme variability and which is also inadequately controlled. Also concealed is the cardiac problem which has developed since I was tortured" (para. 5 above);

(e) Onar Berterretche further states that as a result of his detention he has lost his employment and has not been reinstated, is without work and that it has been difficult for him to find new employment.

10.3 The Committee observes in this connection, firstly, that the allegations concerning the treatment of Mr. Berterretche Acosta in January and February 1976 fall outside its competence, as they relate to a period of time prior to the entry into force of the Covenant on 23 March 1976. Secondly, the Committee observes that Mr. Berterretche Acosta's allegations of physical abuse, contained in the comments received from him in July 1985, are to some extent unclear. As to when the alleged torture took place he employs the language "from the time I was first captured and during the interrogations leading to my indictment". Read in context, however, and noting that Mr. Berterretche Acosta was not charged at the time he was held in captivity in January and February 1976, it can be assumed that the allegations refer to the period of time from his second arrest, on 7 September 1977, until he was indicted. Mr. Berterretche Acosta does not explain when he was indicted, but from the court records subsequently provided by the State party (see para. 8 above) it transpires that he was indicted on 17 October 1977. This corresponds to the period of 40 days, during which Mr. Berterretche Acosta was allegedly held incommunicado (see para. 2.1 above).

10.4 In formulating its views, the Human Rights Committee notes that the State party has not offered any explanations or statements concerning the treatment of Mr. Berterretche Acosta from 7 September to 17 October 1977 and the circumstances of his detention during that time. Although his description of what allegedly happened is very brief, it is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has a duty to investigate such allegations in good faith and to inform the Committee of the results. The Committee further notes that the State party has offered no comments in respect of the alleged conditions of detention at Libertad prison and the consequences thereof (para. 10 (2)). In the circumstances, due weight must be given to the authors' allegations.

10.5 The Committee has taken account of the change of Government in Uruguay on 1 March 1985 and the enactment of special legislation aimed at the restoration of rights of victims of the previous military régime. The Committee is also fully aware of the other relevant aspects of the legal situation prevailing now in Uruguay, but it remains convinced that there is no basis to exonerate the State party from its obligation under article 2 of the Covenant to ensure that any person whose rights or freedoms have been violated shall have an effective remedy, and to ensure that the competent authorities shall enforce such remedies.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the events of this case in so far as they occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay), disclose violations of the International Covenant on Civil and Political Rights, particularly of:

Article 7, because Omar Berterretche Acosta was subjected to torture and to cruel, inhuman and degrading treatment and punishment, and

Article 10, paragraph 1, because he was not treated with humanity and with respect for the inherent dignity of the human person during his detention at Libertad prison until he was released on 1 March 1985.

12. The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy the violations which Omar Berterretche has suffered, and to provide him with adequate compensation.

B. Communication No. 196/1985, Ibrahima Gueye et al. v. France
(Views adopted on 3 April 1989 at the thirty-fifth session)

Submitted by: Ibrahima Gueye et al.
Alleged victims: The authors
State party concerned: France
Date of communication: 12 October 1985 (date of initial letter)
Date of decision on admissibility: 5 November 1987

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights:

Meeting on 3 April 1989,

Having concluded its consideration of communication No. 196/1985, submitted to the Committee by Ibrahima Gueye and 742 other retired Senegalese members of the French Army under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol*

1.1 The authors of the communication (initial letter of 12 October 1985 and subsequent letters of 22 December 1986, 6 June 1987 and 21 July 1988) are Ibrahima Gueye and 742 other retired Senegalese members of the French Army, residing in Senegal. They are represented by counsel.

1.2 The authors claim to be victims of a violation of article 26 of the Covenant by France because of alleged racial discrimination in French legislation, which provides for different treatment in the determination of pensions of retired soldiers of Senegalese nationality who served in the French Army prior to the independence of Senegal in 1960 and who receive pensions that are inferior to those enjoyed by retired French soldiers of French nationality.

1.3 It is stated that, pursuant to Law No. 51-561 of 18 May 1951 and Decree No. 51-590 of 23 May 1951, retired members of the French Army, whether French or Senegalese, were treated equally. The acquired rights of Senegalese retired

* Pursuant to rule 84, paragraph 1 (b), of the Committee's provisional rules of procedure, Ms. Christine Chanut did not participate in the adoption of the views of the Committee. Mr. Birame Ndiaye did not participate in the adoption of the views pursuant to rule 85.

soldiers were respected after independence in 1960 until the Finance Act No. 74.1129 of December 1974 provided for different treatment of the Senegalese. Article 63 of this Law stipulates that the pensions of Senegalese soldiers would no longer be subject to the general provisions of the Code of Military Pensions of 1951. Subsequent French legislation froze the level of pensions for the Senegalese as at 1 January 1975.

1.4 The authors state that the laws in question have been challenged before the Administrative Tribunal of Poitiers, France, which rendered a decision on 22 December 1980 in favour of Dia Abdourahmane, a retired Senegalese soldier, ordering the case to be sent to the French Minister of Finance for purposes of full indemnification since 2 January 1975. The authors enclose a similar decision of the Conseil d'Etat of 22 June 1982 in the case of another Senegalese soldier. However, these decisions, it is alleged, were not implemented, in view of a new French Finance Law No. 81.1179 of 31 December 1981, applied with retroactive effect to 1 January 1975, which is said to frustrate any further recourse before the French judicial or administrative tribunals.

1.5 As to the merits of the case, the authors reject the arguments of the French authorities that allegedly justify the different treatment of retired African (not only Senegalese) soldiers on the grounds of: (a) their loss of French nationality upon independence; (b) the difficulties for French authorities to establish the identity and the family situation of retired soldiers in African countries; and (c) the differences in the economic, financial and social conditions prevailing in France and in its former colonies.

1.6 The authors state that they have not submitted the same matter to any other procedure of international investigation or settlement.

2. By its decision of 26 March 1986, the Human Rights Committee transmitted the communication under rule 91 of the Committee's provisional rules of procedure to the State party requesting information and observations relevant to the question of the admissibility of the communication.

3.1 In its initial submission under rule 91, dated 5 November 1986, the State party describes the factual situation in detail and argues that the communication is "inadmissible as being incompatible with the provisions of the Covenant (art. 3 of the Optional Protocol), additionally, unfounded", because it basically deals with rights that fall outside the scope of the Covenant (i.e. pension rights) and, at any rate, because the contested legislation does not contain any discriminatory provisions within the meaning of article 26 of the Covenant.

3.2 In a further submission under rule 91, dated 8 April 1987, the State party invokes the declaration made by the French Government upon ratification of the Optional Protocol on 17 February 1984 and contends that the communication is inadmissible ratione temporis:

"France interprets article 1 [of the Optional Protocol] as giving the Committee the competence to receive communications alleging a violation of a right set forth in the Covenant 'which results either from acts, omissions, developments or events occurring after the date on which the Protocol entered into force for the Republic, or from a decision relating to acts, omissions, developments or events after that date'.

"It is clear from this interpretative declaration that communications directed against France are admissible only if they are based on alleged violations which derive from acts or events occurring after 17 May 1984, the date on which the Protocol entered into force with respect to France under article 9, paragraph 2, of the said Protocol.

"However, the statement of the facts contained both in the communication itself and in the initial observations by the French Government indicates that the violation alleged by the authors of the communication derives from Law No. 79.1102 of 21 December 1979, which extended to the nationals of four States formerly belonging to the French Union, including Senegal, the régime referred to as 'crystallization' of military pensions that had already applied since 1 January 1961 to the nationals of the other States concerned.

"Since this act occurred before ratification by France of the Optional Protocol, it cannot therefore provide grounds for a communication based on its alleged incompatibility with the Covenant unless such communication ignores the effect ratione temporis which France conferred on its recognition of the right of individual communication."

4.1 In their comments of 22 December 1986, the authors argue that the communication should not be declared inadmissible pursuant to article 3 of the Optional Protocol as incompatible with the provisions of the Covenant, since a broad interpretation of article 26 of the Covenant would permit the Committee to review questions of pension rights if there is discrimination, as claimed in this case.

4.2 In their further comments of 6 June 1987, the authors mention that although the relevant French legislation pre-dates the entry into force of the Optional Protocol for France, the authors had continued negotiations subsequent to 17 May 1984 and that the final word was spoken by the Minister for Economics, Finance and Budget in a letter addressed to the authors on 12 November 1984.

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 With regard to the State party's contention that the communication was inadmissible under article 3 of the Optional Protocol as incompatible with the Covenant, the Committee recalled that it had already decided with respect to prior communications (Nos. 172/1984, 180/1984 and 182/1984) that the scope of article 26 of the Covenant permitted the examination of allegations of discrimination even with respect to pension rights.

5.3 The Committee took note of the State party's argument that, as the alleged violations derived from a law enacted in 1979, the communication should be declared inadmissible on the grounds that the interpretative declaration made by France upon ratification of the Optional Protocol precluded the Committee from considering alleged violations that derived from acts or events occurring prior to 17 May 1984, the date on which the Optional Protocol entered into force with respect to France. The Committee observed in this connection that in a number of earlier cases (Nos. 6/1977 and 24/1977), it had declared that it could not consider an alleged violation of human rights said to have taken place prior to the entry into force of the Covenant for a State party, unless it is a violation that continues after that

date or has effects which themselves constitute a violation of the Covenant after that date. The interpretative declaration of France further purported to limit the Committee's competence ratione temporis to violations of a right set forth in the Covenant, which result from "acts, omissions, developments or events occurring after the date on which the Protocol entered into force" with respect to France. The Committee took the view that it had no competence to examine the question whether the authors were victims of discrimination at any time prior to 17 May 1984; however, it remained to be determined whether there had been violations of the Covenant subsequent to the said date, as a consequence of acts or omissions related to the continued application of laws and decisions concerning the rights of the applicants.

6. On 5 November 1987, the Human Rights Committee therefore decided that the communication was admissible.

7.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 4 June 1988, the State party recalls its submission under rule 91; a/ it adds that Senegalese nationals who acquired French nationality and kept it following Senegal's independence are entitled to the same pension scheme as all other French former members of the armed forces. Articles 97, paragraph 2, to 97, paragraph 6, of the Nationality Code offer any foreigner who at one point in time possessed French nationality the possibility of recovering it. The State party argues that this possibility is not merely theoretical, since, in the past, approximately 2,000 individuals have recovered French nationality each year.

7.2 The State party further explains that a Senegalese former member of the armed forces who lost his French nationality following Senegal's independence and then recovered his French nationality would ipso facto recover the rights to which French nationals are entitled under the Pension Code, article L 58 of which provides that "the right to obtain and enjoy the pension and life disability annuity is suspended: (...) by circumstances which cause a person to lose the status of French national for as long as that loss of nationality shall last". This implies that once nationality is recovered, the right to a pension is re-established. The State party concludes that nationality remains the sole criterion on which the difference in treatment referred to by the authors is based.

8.1 In their comments on the State party's submission, the authors, in a letter dated 21 July 1988, submit that the State party has exceeded the deadline for submission of its submission under article 4, paragraph 2, of the Optional Protocol by 12 days, and that for this reason it should be ruled inadmissible. b/ In this connection, they suspect that "(b) by stalling and making full use, even beyond the deadlines set under the Committee's rules of procedure, of procedural tactics so as to delay a final decision, the State party hopes that the authors will die off one by one and that the amounts it will have to pay will drop considerably". Alternatively, the authors argue that the Committee should not further examine the State party's observations as they repeat arguments discussed at length in earlier submissions and thus should be considered to be of a dilatory nature.

7.2 With respect to the merits of their case, the authors maintain that the State party's argument concerning the question of nationality is a fallacious one. They argue that the State party is only using the nationality argument as a pretext, so as to deprive the Senegalese of their acquired rights. They further refer to article 71 of the 1951 Code of Military Pensions, which stipulates:

"Serving or former military personnel of foreign nationality possess the same rights as serving or former military personnel of French nationality, except in the case where they have taken part in a hostile act against France."

In their view, they enjoy "inalienable and irreducible pension rights" under this legislation. Since none of them has ever been accused of having participated in a hostile act against France, they submit that the issue of nationality must be "completely and definitely" ruled out.

8.3 The authors argue that they have been the victims of racial discrimination based on the colour of their skin, on the purported grounds that:

(a) In Senegal, registry office records are not well kept and fraud is rife;

(b) As those to whom pensions are owed, i.e. the authors, are blacks who live in an underdeveloped country, they do not need as much money as pensioners who live in a developed country such as France.

The authors express consternation at the fact that the State party is capable of arguing that, since the creditor is not rich and lives in a poor country, the debtor may reduce his debt in proportion to the degree of need and poverty of his creditor, an argument they consider to be contrary not only to fundamental principles of law but also to moral standards and to equity.

9.1 The Human Rights Committee, having considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol, bases its views on the following facts, which appear uncontested.

9.2 The authors are retired soldiers of Senegalese nationality who served in the French Army prior to the independence of Senegal in 1960. Pursuant to the Code of Military Pensions of 1951, retired members of the French Army, whether French or Senegalese, were treated equally. Pension rights of Senegalese soldiers were the same as those of French soldiers until a new law, enacted in December 1974, provided for different treatment of the Senegalese. Law No. 79/1102 of 21 December 1979 further extended to the nationals of four States formerly belonging to the French Union, including Senegal, the régime referred to as "crystallization" of military pensions that had already applied since 1 January 1961 to the nationals of other States concerned. Other retired Senegalese soldiers have sought to challenge the laws in question, but French Finance Law No. 81.1179 of 31 December 1981, applied with retroactive effect to 1 January 1975, has rendered further recourse before French tribunals futile.

9.3 The main question before the Committee is whether the authors are victims of discrimination within the meaning of article 26 of the Covenant or whether the differences in pension treatment of former members of the French Army, based on whether they are French nationals or not, should be deemed compatible with the Covenant. In determining this question, the Committee has taken into account the following considerations.

9.4 The Committee has noted the authors' claim that they have been discriminated against on racial grounds, that is, one of the grounds specifically enumerated in article 26. It finds that there is no evidence to support the allegation that the State party has engaged in racially discriminatory practices vis-à-vis the

authors. It remains, however, to be determined whether the situation encountered by the authors falls within the purview of article 26. The Committee recalls that the authors are not generally subject to French jurisdiction, except that they rely on French legislation in relation to the amount of their pension rights. It notes that nationality as such does not figure among the prohibited grounds of discrimination listed in article 26, and that the Covenant does not protect the right to a pension, as such. Under article 26, discrimination in the equal protection of the law is prohibited on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. There has been a differentiation by reference to nationality acquired upon independence. In the Committee's opinion, this falls within the reference to "other status" in the second sentence of article 26. The Committee takes into account, as it did in communication No. 182/1984, that "the right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26".

9.5 In determining whether the treatment of the authors is based on reasonable and objective criteria, the Committee notes that it was not the question of nationality which determined the granting of pensions to the authors but the services rendered by them in the past. They had served in the French Armed Forces under the same conditions as French citizens; for 14 years subsequent to the independence of Senegal they were treated in the same way as their French counterparts for the purpose of pension rights, although their nationality was not French but Senegalese. A subsequent change in nationality cannot by itself be considered as a sufficient justification for different treatment, since the basis for the grant of the pension was the same service which both they and the soldiers who remained French had provided. Nor can differences in the economic, financial and social conditions as between France and Senegal be invoked as a legitimate justification. If one compared the case of retired soldiers of Senegal of the nationality living in Senegal with that of retired soldiers of French nationality in Senegal, it would appear that they enjoy the same economic and social conditions. Yet, their treatment for the purpose of pension entitlements would differ. Finally, the fact that the State party claims that it can no longer carry out checks of identity and family situation, so as to prevent abuses in the administration of pension schemes cannot justify a difference in treatment. In the Committee's opinion, mere administrative inconvenience or the possibility of some abuse of pension rights cannot be invoked to justify unequal treatment. The Committee concludes that the difference in treatment of the authors is not based on reasonable and objective criteria and constitutes discrimination prohibited by the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the events in this case, in so far as they produced effects after 17 May 1984 (the date of entry into force of the Optional Protocol for France), disclose a violation of article 26 of the Covenant.

11. The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations suffered by the victims.

Notes

a/ Submission dated 5 November 1986, paragraph 3.1 above.

b/ The deadline for the State party's submission under article 4, paragraph 2, expired on 4 June 1988. Although the submission is dated 4 June 1988, it was transmitted under cover of a note dated 16 June 1988.

C. Communication No. 202/1986, G. Ato del Avellanal v. Peru
(Views adopted on 28 October 1988 at the thirty-fourth
session)

Submitted by: Graciela Ato del Avellanal
Alleged victim: The author
State party concerned: Peru
Date of communication: 13 January 1986 (date of initial letter)
Date of decision on admissibility: 9 July 1987

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 28 October 1988,

Having concluded its consideration of communication No. 202/1986, submitted to the Committee by Graciela Ato del Avellanal under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party concerned,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication (initial letter dated 13 January 1986 and a subsequent letter dated 11 February 1987) is Graciela Ato del Avellanal, a Peruvian citizen born in 1934, employed as professor of music and married to Guillermo Burneo, currently residing in Peru. She is represented by counsel. It is claimed that the Government of Peru has violated articles 2, paragraphs 1 and 3, 16, 23, paragraphs 4 and 26, of the Covenant, because the author has been allegedly discriminated against only because she is a woman.

2.1 The author is the owner of two apartment buildings in Lima, which she acquired in 1974. It appears that a number of tenants took advantage of the change in ownership to cease paying rent for their apartments. After unsuccessful attempts to collect the overdue rent, the author sued the tenants on 13 September 1978. The court of first instance found in her favour and ordered the tenants to pay her the rent due since 1974. The Superior Court reversed the judgement on 21 November 1980 on the procedural ground that the author was not entitled to sue, because, according to article 168 of the Peruvian Civil Code, when a woman is married only the husband is entitled to represent matrimonial property before the Courts ("El marido es el representante de la sociedad conyugal"). On 10 December 1980 the author appealed to the Peruvian Supreme Court, submitting, inter alia, that the Peruvian Constitution now in force abolished discrimination against women and that article 2 (2) of the Peruvian Magna Carta provides that "the law grants rights to women which are not less than those granted to men". However, on 15 February 1984 the Supreme Court upheld the decision of the Superior Court. Thereupon, the author

interposed the recourse of amparo on 6 May 1984, claiming that in her case article 2 (2) of the Constitution had been violated by denying her the right to litigate before the courts only because she is a woman. The Supreme Court rejected the recourse of amparo on 10 April 1985.

2.2 Having thus exhausted domestic remedies in Peru, and pursuant to article 39 of the Peruvian Law No. 23506, which specifically provides that a Peruvian citizen who considers that his or her constitutional rights have been violated may appeal to the Human Rights Committee of the United Nations, the author seeks United Nations assistance in vindicating her right to equality before the Peruvian courts.

3. By its decision of 19 March 1986, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of the admissibility of the communication in so far as it may raise issues under articles 14, paragraph 1, 16 and 26 in conjunction with article 2 and 3 of the Covenant. The Working Group also requested the State party to provide the Committee with (a) the text of the decision of the Supreme Court of 10 April 1985, (b) any other relevant court orders or decisions not already provided by the author, and (c) the text of the relevant provisions of the domestic law, including those of the Peruvian Civil Code and Constitution.

4.1 By its submission dated 20 November 1986 the State party noted that "in the action brought by Mrs. Graciela Ato del Avellanal and one other, the decision of the Supreme Court dated 10 April 1985 was deemed accepted, since no appeal was made against it under article 42 of Act No. 23385".

4.2 The annexed decision of the Supreme Court, dated 10 April 1985, "declares valid the ruling set out on 12 sheets, dated 24 July 1984, declaring inadmissible the application for amparo submitted on 2 sheets by Mrs. Graciela Ato del Avellanal de Burneo and one other against the First Civil Section of the Supreme Court; [and] orders that the present decision, whether accepted or enforceable, be published in the Diario Oficial, El Peruano within the time-limit laid down in article 41 of Law No. 23156".

5.1 Commenting on the State party's submission under rule 91, the author, in a submission dated 11 February 1987 contends that:

"1. It is untrue that the ruling of 10 April 1985, of which I was notified on 5 August 1985, was accepted. As shown by the attached copy of the original application, my attorneys appealed against the decision in the petition of 6 August 1985, which was stamped as received by the Second Civil Section of the Supreme Court on 7 August 1985.

"2. The Supreme Court has never notified my attorneys of the decision which it had handed down on the appeal of 6 August 1985".

5.2 The author also encloses a copy of a further application, stamped as received by the Second Civil Section of the Supreme Court on 3 October 1985 and reiterating the request that the appeal lodged should be upheld. She adds that "once again, the Supreme Court failed to notify my attorneys of the decision which it had handed down on this further petition".

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 With regard to article 5, paragraph 2 (a) of the Optional Protocol, the Committee observed that the matter complained of by the author was not being examined and had not been examined under another procedure of international investigation or settlement.

6.3 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee noted the State party's contention that the author has failed to appeal the decision of the Peruvian Supreme Court of 10 April 1985. However, in the light of the author's submission of 11 February 1987 the Committee found that the communication satisfied the requirements of article 5, paragraph 2 (b) of the Optional Protocol. The Committee further observed that this issue could be reviewed in the light of any further explanations or statements received from the State party under article 4, paragraph 2, of the Optional Protocol.

7. On 9 July 1987 the Human Rights Committee therefore decided that the communication was admissible, in so far as it raised issues under articles 14, paragraph 1, and 16 in conjunction with articles 2, 3 and 26 of the Covenant.

8. The time-limit for the State party's submission under article 4, paragraph 2, of the Optional Protocol expired on 6 February 1988. No submission has been received from the State party, despite a reminder sent to the State party on 17 May 1988.

9.1 The Human Rights Committee, having considered the present communication in the light of all the information made available to it, as provided in article 5, paragraph 1, of the Optional Protocol, notes that the facts of the case, as submitted by the author, have not been contested by the State party.

9.2 In formulating its views, the Committee takes into account the failure of the State party to furnish certain information and clarifications, in particular with regard to the allegations of discrimination of which the author has complained. It is not sufficient to forward the text of the relevant laws and decisions, without specifically addressing the issues raised in the communication. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee all relevant information. In the circumstances, due weight must be given to the author's allegations.

10.1 With respect to the requirement set forth in article 14, paragraph 1, of the Covenant that "all persons shall be equal before the courts and tribunals", the Committee notes that the court of first instance decided in favour of the author, but the Superior Court reversed that decision on the sole ground that according to article 168 of the Peruvian Civil Code only the husband is entitled to represent matrimonial property, i.e. that the wife was not equal to her husband for purposes of suing in Court.

10.2 With regard to discrimination on the ground of sex the Committee notes further that under article 3 of the Covenant State parties undertake "to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth

in the present Covenant" and that article 26 provides that all persons are equal before the law and are entitled to the equal protection of the law. The Committee finds that the facts before it reveal that the application of article 168 of the Peruvian Civil Code to the author resulted in denying her equality before the courts and constituted discrimination on the ground of sex.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the events of this case, in so far as they continued or occurred after 3 January 1981 (the date of entry into force of the Optional Protocol for Peru), disclose violations of articles 3, 14, paragraph 1 and 26 of the Covenant.

12. The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations suffered by the victim. In this connection the Committee welcomes the State party's commitment, expressed in articles 39 and 40 of Law No. 23506, to co-operate with the Human Rights Committee, and to implement its recommendations.

D. Communication No. 203/1986, R. T. Muñoz Hermoza v. Peru (Views adopted on 4 November 1988 at the thirty-fourth session)

Submitted by: Rubén Toribio Muñoz Hermoza
Alleged victim: The author
State party concerned: Peru
Date of communication: 13 January 1986 (date of initial letter)
Date of decision on admissibility: 10 July 1987

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 4 November 1988,

Having concluded its consideration of communication No. 203/1986, submitted to the Committee by Rubén Toribio Muñoz Hermoza under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party concerned,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication (initial letter dated 31 January 1986 and subsequent letters dated 29 November 1986, 10 February 1987, 11 May and 5 October 1988) is Rubén Toribio Muñoz Hermoza, a Peruvian citizen and ex-sargeant of the Guardia Civil (police), currently residing in Cuzco, Peru. He claims to be a victim of violations of his human rights, in particular of discrimination and of denial of justice by Peruvian authorities. He invokes Peruvian Law No. 23,506, article 39 of which provides that a Peruvian citizen who considers that his or her constitutional rights have been violated may appeal to the United Nations Human Rights Committee. Article 40 of the same law provides that the Peruvian Supreme Court will receive the resolutions of the Committee and order their implementation.

2.1 The author alleges that he was "temporarily suspended" (cesación temporal o disponibilidad) from the Guardia Civil on 25 September 1978 by virtue of Directorial Resolution No. 2437-78-GC/DP on false accusations of having insulted a superior. Nevertheless, when he was brought before a judge on 28 September 1978 on the said charge, he was immediately released for lack of evidence. The author cites a number of relevant Peruvian decrees and laws providing, *inter alia*, that a member of the Guardia Civil "cannot be dismissed except upon a conviction" and that such dismissal can only be imposed by the Supreme Council of Military Justice. By administrative decision No. 0165-84-60, dated 30 January 1984, he was definitively discharged from service under the provisions of article 27 of Decree-Law No. 18081. The author claims that after having served in the Guardia Civil for over 20 years he has been arbitrarily deprived of his livelihood and of his acquired rights, including accrued retirement rights, thus leaving him in a state

of destitution, particularly considering that he has eight children to feed and clothe.

2.2 The author has spent 10 years going through the various domestic administrative and judicial instances; copies of the relevant decisions are enclosed. His request for reinstatement in the Guardia Civil, dated 5 October 1978 and addressed to the Ministry of the Interior, was at first not processed and finally turned down, nearly six years later, on 29 February 1984. His appeal against this administrative decision was dismissed by the Ministry of the Interior on 31 December 1985 on the grounds that he was also pursuing a judicial remedy. This ended the administrative review without any decision on the merits, over seven years after his initial petition for reinstatement. The author explains that he had turned to the courts, basing himself on article 28 of the law on amparo which provides that "the exhaustion of previous procedures shall not be required if such exhaustion could render injury irreparable", and in view of the delay and apparent inaction in processing the administrative review. On 18 March 1985 the Court of First Instance in Cuzco held that the author's action of amparo was well founded and declared his dismissal null and void, ordering that he be reinstated. On appeal, however, the Superior Court of Cuzco rejected the author's action of amparo, stating that the period for lodging such action had expired in March 1983. The case was then examined by the Supreme Court of Peru, which held on 29 October 1985, that the author could not start an action of amparo before the previous administrative review had been completed. Thus, the author claims that, as evidenced by these inconsistent decisions, he has been a victim of denial of justice. As far as the completion of the administrative review, he points out that it is not his fault that said review was kept pending for seven years, and that, in any case, for as long as the review was pending, the period of limitations for an action of amparo could not start running, let alone expire.

3. By its decision of 26 March 1986, 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 in so far as it may raise issues under articles 14 (1), 25 and 26 of the International Covenant on Civil and Political Rights. The Committee also requested the State party to explain the reasons for the dismissal of Mr. Muñoz and the reasons for the delays in the administrative proceedings concerning his request for reinstatement, and further to indicate when the administrative proceedings were expected to be concluded and whether the recourse of amparo would still be available to Mr. Muñoz at that time.

4. In a further submission, dated 29 November 1986, the author informed the Committee that the Tribunal of Constitutional Guarantees of Peru, by judgement of 20 May 1986, had held that his action of amparo was admissible (procedente) and that it had quashed the judgement of the Supreme Court of Peru of 29 October 1985. However, no action has yet been taken to enforce the judgement of the Civil Court of First Instance of Cuzco of 18 March 1985. The author claims that this delay is indicative of abuse of authority and failure to comply with Peruvian law in matters of human rights (article 36 taken together with article 34 of Law No. 23,506).

5. In its submission under rule 91, dated 20 November 1986, the State party transmitted the complete file forwarded by the Supreme Court of Justice of the Republic concerning Mr. Muñoz Hermoza, stating, inter alia, that "under the law in force, the internal judicial remedies were exhausted when the Tribunal of Constitutional Guarantees handed down its decision". The State party did not provide the other clarifications requested by the Committee.

6. In his comments, dated 10 February 1987, the author refers to the judgement of the Tribunal of Constitutional Guarantees of Peru in his favour and notes that "despite the time that has elapsed, the enforcement of the judgement has not been ordered by the Civil Chamber of the Supreme Court of the Republic of Peru, in disregard of the terms of article 36 of Law No. 23,506".

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee observed that the matter complained of by the author was not being examined and had not been examined under another procedure of international investigation or settlement. With regard to article 5, paragraph 2 (b), of the Optional Protocol, the State party has confirmed that the author has exhausted domestic remedies.

8. On 10 July 1987, the Human Rights Committee therefore decided that the communication was admissible, in so far as it raised issues under articles 14, paragraph 1, 25 (c) and 26, in conjunction with article 2, paragraph 3, of the Covenant.

9.1 In a submission dated 11 May 1988 the author describes the further development of the case and reiterates that the decision of the Court of First Instance of Cuzco of 18 March 1985, holding that his action of amparo was well founded and declaring his dismissal null and void, had not been enforced, in spite of the fact that on 24 September 1987 the Cuzco Civil Chamber handed down a similar decision on the merits ordering his reinstatement in his post with all benefits. The author complains that the Civil Chamber subsequently extended the statutory time-limit of three days for appeal (provided for in article 33 of Law No. 23,506), and, instead of ordering the enforcement of its decision, granted ex officio a special appeal for annulment on 24 November 1987 (i.e. 60 days after the decision, purportedly in contravention of article 10 of Law No. 23,506). "Defence of the State" was allegedly adduced as grounds for the decision to grant a special appeal, with reference being made to article 22 of Decree-Law No. 17,537. This decree-law, the author contends, was abrogated by Law No. 23,506, article 45 of which repeals "all provisions which prevent or hinder proceedings for habeas corpus and amparo".

9.2 The Second Civil Chamber of the Supreme Court of the Republic again received the case on 22 December 1987. A hearing took place on 15 April 1988, allegedly without prior notification to the author, who claims not to have received the text of any judgement or order. In this connection he observes that "the only way to avoid restoring my constitutional rights ... is to be bogged down in further proceedings".

9.3 In particular, the author questions the legality of the Government appeal, since all procedural and substantive issues have already been adjudicated, and the Prosecutor General himself, in a written opinion dated 7 March 1988, declared that the decision of the Cuzco Civil Chamber of 24 September 1987 was valid and the author's action of amparo well founded. The author further comments: "the only correct solution would have been to reject the appeal and refer the case back to the Civil Chamber of the Cuzco Court for it to comply with the order to [reinstate him] ...". Moreover, a lower court was venturing to decide in a manner which conflicted with the procedure indicated by the Tribunal of Constitutional

Guarantees, and Decree-Law No. 17,537 is not applicable because it refers to types of ordinary litigation in which the State is a party and not to actions relating to constitutional guarantees, in which the State is under a duty to guarantee full observance of human rights (articles 80 et seq. of the Peruvian Constitution). He further observes:

"The case has thus been virtually 'shelved' indefinitely by the Second Civil Chamber of the Supreme Court in Lima, without any access allowed for the appellant, and without counsel appointed. I was thus obliged to retain a lawyer, but he was not allowed to see the papers in the case and the outcome of the hearing of 15 April 1988 'because it has not yet been signed by the non-presiding members of the Court'.

"In these circumstances, an application was submitted requesting a certified copy of the decision of 15 April 1988, but it has not been entertained on the pretext that a lawyer's signature was missing and that the fees had not been paid. This is a breach of article 13 of Act No. 23,506, on amparo, which contains tacit dispensation from these formalities, pursuant to article 295 of the Peruvian Constitution."

9.4 The author also indicates that he has spared no effort to try to arrive at a settlement of his case. On 21 February 1988, he wrote to the President of Peru describing the various stages of his 10-year struggle to be reinstated in his post, and adducing procedural irregularities and instances of alleged abuse of authority. The author's petition was passed on to the Deputy Minister of the Interior, who, in turn, communicated it to the Director of the Guardia Civil. Subsequently the Guardia Civil's Legal Adviser "rendered a legal opinion advising that I should be reinstated. But the Subaltern Ranks Investigating Council and the Director of Personnel rejected my petition. There is, however, nothing in writing and the decision was purely verbal".

9.5 In view of the foregoing, the author requests the Committee to endorse the judgements of the Court of the First Instance of Cuzco, dated 18 March 1985, and of the Civil Chamber of the Court of Cuzco, dated 24 September 1987, and to recommend his reinstatement in the Guardia Civil, his promotion to the rank he would have attained had he not been unjustly dismissed, and the granting of ancillary benefits. He further asks the Committee to take into account article 11 of Law No. 23,506 which provides, inter alia, for indemnification.

9.6 By letter of 5 October 1988 the author informs the Committee that the Second Civil Chamber of the Supreme Court rule on 15 April 1988 that his action of amparo was inadmissible because the period for lodging the action had lapsed on 18 March 1983, whereas he had lodged the action on 30 October 1984. The author points out that this issue had already been definitively decided by the Tribunal of Constitutional Guarantees on 20 May 1986, which held that his action of amparo had been timely lodged (see para. 4 above). On 27 May 1988, the author again turned to the Tribunal of Constitutional Guarantees requesting that the Supreme Court's Decision of 15 April 1988 be quashed. The author's newest action is still pending.

10.1 The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 6 February 1988. No submission has been received from the State party, despite a reminder sent on 17 May 1988. The author's further submission of 11 May 1988 was transmitted to the State party on 20 May 1988. The author's subsequent letter of 5 October 1988 was transmitted to the State party on 21 October 1988. No comments from the State party have been received.

10.2 The Committee has taken due note that the author's new appeal before the Tribunal of Constitutional Guarantees is still pending. This fact, however, does not affect the Committee's decision on the admissibility of the communication, because judicial proceedings in this case have been unreasonably prolonged. In this context the Committee also refers to the State party's submission of 20 November 1986 in which it stated that domestic remedies had been exhausted.

11.1 The Human Rights Committee, having considered the present communication in the light of all the information made available to it, as provided in article 5, paragraph 1, of the Optional Protocol, notes that the facts of the case, as submitted by the author, have not been contested by the State party.

11.2 In formulating its views, the Committee takes into account the failure of the State party to furnish certain information and clarifications, in particular with regard to the reasons for Mr. Muñoz' dismissal and for the delays in the proceedings, as requested by the Committee in its rule 91 decision, and with regard to the allegations of unequal treatment of which the author has complained. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee all relevant information. In the circumstances, due weight must be given to the author's allegations.

11.3 With respect to the requirement of a fair hearing as stipulated in article 14, paragraph 1, of the Covenant, the Committee notes that the concept of a fair hearing necessarily entails that justice be rendered without undue delay. In this connection the Committee observes that the administrative review in the Muñoz case was kept pending for seven years and that it ended with a decision against the author based on the ground that he had started judicial proceedings. A delay of seven years constitutes an unreasonable delay. Furthermore, with respect to the judicial review, the Committee notes that the Tribunal of Constitutional Guarantees decided in favour of the author in 1986 and that the State party has informed the Committee that judicial remedies were exhausted with that decision (para. 5 above). However, the delays in implementation have continued and two and a half years after the judgement of the Tribunal of Constitutional Guarantees, the author has still not been reinstated in his post. This delay, which the State party has not explained, constitutes a further aggravation of the violation of the principle of a fair hearing. The Committee further notes that on 24 September 1987 the Cuzco Civil Chamber, in pursuance of the decision of the Tribunal of Constitutional Guarantees, ordered that the author be reinstated; subsequently, in a written opinion dated 7 March 1988, the Public Prosecutor declared that the decision of the Cuzco Civil Chamber was valid and that the author's action of amparo was well founded. But even after these clear decisions, the Government of Peru has failed to reinstate the author. Instead, yet another special appeal, this time granted ex officio in "Defence of the State" (para. 9.1), has been allowed, which resulted in a contradictory decision by the Supreme Court of Peru on 15 April 1988, declaring that the author's action of amparo had not been lodged timely and was therefore inadmissible. This procedural issue, however, had already been adjudicated by the Tribunal of Constitutional Guarantees in 1986, before which the author's action is again pending. Such seemingly endless sequence of instances and the repeated failure to implement decisions are compatible with the principle of a fair hearing.

12. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the events of this case, in so far as they continued or occurred after 3 January 1981 (the date of entry into force of the Optional Protocol for Peru) disclose a violation of article 14, paragraph 1, of the International Covenant on Civil and Political Rights.

13.1 The Committee accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations suffered by Rubén Toribio Muñoz Hermoza, including payment of adequate compensation for the loss suffered.

13.2 In this connection the Committee welcomes the State party's commitment, expressed in articles 39 and 40 of Law No. 23,506, to co-operate with the Human Rights Committee, and to implement its recommendations.

APPENDIX I

Individual opinion: submitted by Messrs. Joseph A. Cooray, Vojin Dimitrijevic and Rajsoomer Lallah pursuant to rule 94, paragraph 3, of the Committee's provisional rules of procedure, concerning the views of the Committee on communication No. 203/1986, Muñoz v. Peru

1. We agree with the conclusion reached by the Committee but also for other reasons.

2. In the absence of any response from the State party under article 4, paragraph 2, of the Optional Protocol, the allegations of the author remain uncontested; and they are, in substance, that:

(a) He had for 20 years been a member of the Guardia Civil of Peru, a post in the public service of his country, access to which is guaranteed under article 25 (c) of the Covenant;

(b) He was, at an initial stage, temporarily suspended from his post and was investigated on a charge of having insulted a superior officer; the case against him was not sustained;

(c) Nevertheless, some five years later he was permanently discharged from the service. There is no indication that he was given a hearing before the administrative decision was taken to suspend him, nor is there any indication that disciplinary proceedings were brought against him after the criminal investigation had been closed. What is certain is that the Ministry of the Interior declined to consider an appeal against the 1978 decision to discharge him. He appears to have all the time been treated as guilty while officially being temporarily suspended. This amounted to a continued violation of his right to be presumed innocent (art. 14, para. 2) and to be treated accordingly until proceedings or, failing that, disciplinary proceedings were concluded against him. These proceedings were apparently not initiated;

(d) Having failed to obtain administrative redress, he continued to seek redress from the courts;

(e) A conflict, which the State party has regrettably not sought to elucidate, appears to have emerged between the decisions of the Tribunal of Constitutional Guarantees, which had ruled in his favour, and of the Civil Chamber of the Supreme Court. Following the decision of the Tribunal of Constitutional Guarantees, the Superior Court of Cuzco decided the merits of the case in the author's favour, ordering his reinstatement, but the Civil Chamber of the Supreme Court reversed this decision on a special appeal, granted *ex officio* and out of time, and based on a procedural point, which the Tribunal of Constitutional Guarantees had already examined and decided in a different manner;

(f) Quite apart from the baffling conflict between the decisions of the Supreme Court and the Tribunal of Constitutional Guarantees, there remains also the significant failure of the Supreme Court to grant the author a hearing before reviewing the decision of the Superior Court of Cuzco.

3. The principles of a fair hearing, known in some systems as the rules of natural justice, and guaranteed under article 14, paragraph 1 of the Covenant, include the concept of audi alteram partem. Those principles were violated because it would appear that the author was deprived of a hearing both by the administrative authorities, which were responsible for the decisions to suspend him and, later, to discharge him, and by the Supreme Court, when it reversed the earlier decision which had been favourable to him. Furthermore, as observed in paragraph 2 (c) above, the apparent absence of criminal or disciplinary proceedings establishing his guilt ran counter to the presumption of innocence embodied in article 14, paragraph 2, of the Covenant and was equally at variance with the administrative consequences that normally follow from that presumption.

4. It is also clear that, with regard to such a simple matter as that concerning the reinstatement of a public official who had been unjustifiably dismissed, the obligations undertaken by the State party under article 2, paragraph 3 (a) and (c), of the Covenant, were unaccountably violated because neither the administrative nor the judicial authorities of the State party found it possible, over a period spanning a decade, to provide the author with an appropriate remedy and to enforce that remedy.

Joseph A. COORAY
Vojin DIMITRIJEVIC
Rajsoomer LALLAH

APPENDIX II

Individual opinion: submitted by Mr. Bertil Wennergren pursuant to rule 94, paragraph 3, of the Committee's provisional rules of procedure, concerning the views of the Committee on communication No. 203/1986, Muñoz v. Peru

1. I concur in the views expressed by the majority of the Committee with regard to the violation of article 14 of the Covenant but want to add the following considerations with regard to article 25 (c) of the Covenant.
2. From the judgement of 20 May 1986 of the Tribunal of Constitutional Guarantees it appears that Mr. Muñoz, by administrative decision No. 2437-78-GC/DP of 25 September 1978, was suspended from service on disciplinary grounds (for the alleged offence of insulting a superior) and placed at the disposal of the Fourth Judicial Zone of the Police. By administrative decision No. 3020-78-GC/DP of 25 November 1978, the Administration of the Peruvian Guardia Civil refused to cancel the suspension order. By decision No. 0165-84-GD of 30 January 1984, Mr. Muñoz was definitively discharged from service under the provisions of article 27 of Decree Law No. 18081.
3. The Court of First Instance of Cuzco, in its decision of 18 March 1985, declared all the aforementioned decisions null and void. In its findings it stated, *inter alia*, that the investigation ordered by the Supreme Council of Military Justice against Mr. Muñoz on the charge of having insulted a superior did not establish that he had committed any punishable offence. The Court considered in this connection Supreme Decree No. 1056-68-GP, which stipulates that a member of the Guardia Civil "shall be discharged only following a conviction" and noted that Mr. Muñoz had no previous record, neither criminal nor judicial, and that he had shown irreproachable conduct and had obtained sufficient merits, demonstrating discipline and capacity. By decision of 24 September 1987, the Superior Court of Cuzco confirmed the judgement of the Court of First Instance and ordered that Mr. Muñoz should be reinstated in his post with all benefits. None of these Court decisions have become final, but the Supreme Court has not considered them on the merits but reversed them by rejecting Mr. Muñoz's actions of *amparo* on procedural grounds. There is, however, no reason to believe that the Supreme Court could have arrived at a different conclusion on the merits than that arrived at by the lower courts. On the contrary, it is reasonable to assume that it could not have decided otherwise, particularly considering that the State party has not contested the merits of the decisions, and the Prosecutor General, in a written opinion dated 7 March 1988, has stated that the decision of 24 September 1987 is valid.
4. Thus, in my view, it is evident that the suspension and discharge of Mr. Muñoz from the Peruvian Guardia Civil were not founded upon objective and justifiable grounds. Whatever the ground may have been, whether, for instance, political or merely subjective, it was arbitrary. To suspend and discharge someone arbitrarily from public service and to refuse him reinstatement, just as arbitrarily, constitutes, in my opinion, a violation of his right, under article 25 (c) of the Covenant, to have access on general terms of equality to public service. In this context reference should be made to the Committee's views in case No. 198/1985, where it observed "that Uruguayan public officials dismissed on ideological, political or trade union grounds were victims of violations of article 25 of the Covenant".

5. I am therefore of the view that the events in this case disclose a violation not only of article 14, but also of article 25 (c) of the Covenant.

Bertil WENNERGREN

E. Communication No. 207/1986, Yves Moraël v. France
(Views adopted on 28 July 1989 at the thirty-sixth
session)

Submitted by: Yves Moraël (represented by Alain Lestourneaud)
Alleged victim: The author
State party concerned: France
Date of communication: 5 June 1986 (date of initial letter)
Date of decision on admissibility: 10 July 1987

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 28 July 1989,

Having concluded its consideration of communication No. 207/1986, submitted to the Committee by Yves Moraël under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication (letters dated 5 June 1986 and 13 February 1987) is Yves Moraël, a French citizen born in France in 1944, at present residing in Paris. He claims to be a victim of violations by France of article 14 (1) and (2) and articles 26 and 17 (1) of the International Covenant on Civil and Political Rights. He is represented by counsel.

1.2 The author states that he is a businessman, and a former member of the board and, later, managing director of the joint stock company "Société anonyme des cartonneries mécaniques du Nord" (SCMN), which was a producer of paper and cardboard, that had employed almost 700 persons in 1974. As a consequence of the oil crisis in 1973 and because of increased competition in the sector, the company suffered serious financial losses and, by decision of 24 May 1974 of the Tribunal of Commerce of Dunkirk, it was placed under judicial supervision (règlement judiciaire). On 25 June 1975, the same Tribunal ordered the sale of assets (liquidation des biens sociaux), an order upheld by the Court of Appeal of Douai on 12 July 1975. On 11 July 1977, the Court of Cassation quashed the order, but on 3 July 1978 the Court of Appeal of Amiens, in its turn, ordered the sale to proceed. In the meantime, the company had resumed its activities.

1.3 The author further states that, as a shareholder (owning 3.16 per cent of the company's shares) and as a member of the board of directors of the company since 1978, he repeatedly criticized the policies of the then Managing Director and

informed the other shareholders of his written protests in order to bring the serious situation to their attention. On 28 February 1979, the author resigned from his position as a member of the board. On 30 June 1979, the then Managing Director resigned and the author was named his successor by the general meeting of shareholders, effective 1 July 1979. Immediately thereafter, he took a number of measures designed to save the company, including closing the Paris office, reducing his salary as Managing Director by 33 per cent and increasing the sales price of the company's products. These measures enabled the author to obtain a court order for temporary suspension of proceedings (suspension provisoire de poursuites) on 30 November 1979. However, when the author sought to reduce the number of employees by approximately 10 per cent (54 posts), the Inspectorate of Employment refused permission in most cases and a series of strikes ensued, further increasing the company's losses. The author ceased to act as Managing Director on 7 December 1979, and a temporary judicial administrator was appointed. On 24 January 1980, the Tribunal of Commerce of Dunkirk appointed another judicial administrator, Mr. Deladrière, who had previously been on the board of SCMN, and who, according to the author, had rendered the company's long-term prospects of survival very precarious by failing to reinvest or modernize during his appointment. More importantly, the author claims that it was during Mr. Deladrière's appointment (1980-1983), that the company's liabilities surpassed its assets, that Mr. Deladrière sold certain company assets at a price significantly below their market value, and that he failed to disengage the company from the obligation of paying FF 16,038,847 to ASSEDIC (employment insurance) after the cessation of production in January 1980. The author states that Mr. Deladrière brought both civil and criminal proceedings against him and claims that the allegations in the criminal proceedings were false and defamatory; he adds that he was duly acquitted by the Tribunal correctionnel of Dunkirk on 5 March 1982. He also states that similar allegations of misuse of company funds, which were subsequently dismissed in the criminal proceedings, had been improperly introduced in the civil proceedings by the Public Prosecutor (Ministère public) in the hope of rebutting his claim that he had exercised due diligence in the management of the company, and that the Tribunal of Commerce had thus been misled. Moreover, the author claims that the Tribunal of Commerce erred in taking a decision against him without waiting for the judgement of the criminal court on the facts since a civil action must be stayed while a criminal action is being prosecuted (le criminel tient le civil en l'état).

1.4 By judgement of 7 July 1981, the Tribunal of Commerce of Dunkirk found that the author had failed to prove due diligence and ordered him to pay 5 per cent of the company's debts, which according to the accounts presented to the Tribunal by the court-appointed administrator amounted in 1981 to FF 957,040, since the company's debts, including the ASSEDIC payments, were set at FF 19,140,814.

1.5 The author alleges that the former French bankruptcy law, which was applied to him, unjustly placed a presumption of fault on the defendant (article 99 of Act No. 67-563) and observes that the French Parliament amended it on 25 July 1985 (effective 1 January 1986) eliminating that presumption of fault. However, he did not benefit from the application of the revised law.

1.6 The author appealed the judgement of the Tribunal of Commerce of Dunkirk, claiming that a number of procedural errors had been committed by the lower court and requesting a finding that he had exercised all due diligence during his five months as Managing Director, and that he was not liable for any part of the company's debts. In particular, he cited the misuse of influence by the Public

Prosecutor, who was allowed, in the civil proceedings, to allude to accusations brought against him in the Tribunal correctionnel and to introduce evidence stemming from the criminal proceedings, in violation of article 11 of the French Code of Criminal Procedure. In its order of 13 July 1983, the Court of Appeal of Douai, after finding that the author had taken several measures in an effort to save the company but had not succeeded, held him liable for the company's debts, in application of the presumption of fault incorporated in article 99 of the old bankruptcy law. Furthermore, the Court of Appeal did not limit itself to confirming the lower court's judgement that the author should pay 5 per cent of the company's debts in 1981, or FF 957,040, and amended that judgement ex officio by ordering him to pay FF 3 million. The author notes that he had appealed in order to extinguish his liability and that the court-appointed administrator had asked the Court of Appeal merely to confirm the lower court's judgement. Notwithstanding, the Court of Appeal amended the judgement in two ways, first, by basing itself on a financial statement dated 15 February 1983, showing considerably higher net indebtedness (FF 30 million instead of the FF 19,140,814 francs in 1981) and, secondly, by increasing his share of liability from 5 per cent (FF 1.5 million) to 10 per cent (FF 3 million). The author then appealed to the Court of Cassation, contending that the Court of Appeal, while acknowledging his efforts, had erred in finding that he had not exercised due diligence. The author argued that an officer of a company can be required only to take measures but not to guarantee the result. Moreover, the author claimed that he could only be held responsible, if at all, for debts arising during his term as Managing Director, whereas neither the lower court nor the Court of Appeal had ever established what had been the company's debts on 1 July 1979, when he became Managing Director, and on 7 December 1979, when he resigned. There was thus no proof that the company's debts had increased under his management and hence no legal basis for his condemnation. The author further claimed that the Court of Appeal had infringed article 16 of the new Code of Civil Procedure in basing itself on liabilities significantly higher than those established by the lower court, without subjecting the new elements to adversary proceedings. That article reads:

"The court must, in all circumstances, ensure the observance of, and itself observe, the principle of adversary proceedings.

"In its decision, it may not admit grounds, explanations and documents relied upon or produced by the parties unless they have been available to the parties for contradictory debate.

"It may not base its decision on grounds it has raised ex officio without having invited the parties to present their observations."

The author notes that at no time in the appeal proceedings were the parties given an opportunity to present their observations on the higher indebtedness figures or on his own share of liability. On 2 May 1985, the Court of Cassation rejected the author's appeal.

2.1 With respect to article 14 (1) of the Covenant, the author calls into question the French legal system, which, as it was applied to him, did not guarantee a fair hearing, in particular because there was no "equality of arms" in the procedure whereby companies are placed under judicial supervision and because article 99 of Act No. 67-563 placed an unfair presumption of fault on company officers without requiring proof of their actual misconduct. In this connection, the author contends that the Court of Cassation wrongly interpreted the concept of due

diligence by concluding that any fault committed by the author necessarily excluded diligence, even if he had not shown negligence in the exercise of his duties. The author claims that this excessively severe interpretation of "due diligence" is discriminatory against company officials, for whom an error of judgement regarding economic developments is punished as if constituting negligence. Placing an obligation on him to achieve a desired result, the author argues, was tantamount to denying him any possibility of establishing that he had in fact exercised due diligence. The author claims that it is grossly unfair to hold him responsible for the company's financial condition, which was already disastrous at the time he was appointed Managing Director and which he sought to remedy by diligent efforts that were finally frustrated by factors beyond his control, such as the refusal by the Inspectorate of Employment of staff retrenchment measures and the ensuing strikes.

2.2 Another alleged violation of article 14 (1), the author claims, consisted in the court's consideration of a new and higher amount for the company's liabilities without giving him an opportunity to challenge it. He further contends that the case was not heard within a reasonable time, considering that the Tribunal of Commerce of Lille appointed its administrator in January 1980 and the final decree of the Court of Cassation was not handed down until May 1985. The author claims that had the procedure been more expeditious, the level of the company's debts would have been lower, especially as employees had been paid FF 16,038,847 even after the company had ceased operations in January 1980.

2.3 With respect to article 14 (2), the author contends that article 99 of Act No. 67-563 had not only a civil but also a penal character, and he refers in this connection to the fact that the Public Prosecutor (Ministère public) was heard during the proceedings before the Tribunal of Commerce of Dunkirk. He further contends that the decision by the Court of Appeal ordering him to pay FF 3 million francs amounts to a penal sanction. He therefore claims that he should have enjoyed the presumption of innocence.

2.4 The author states that to the extent that he was a victim of violations of article 14 by not having been given a fair hearing, he was also denied the equal protection of the law, as provided by article 26 of the Covenant. This, he claims, also constitutes a violation of article 17 (1), in that there was an attack on his honour and reputation, in particular that the proceedings against him tarnished his reputation as a company officer and that he is now prohibited by the bankruptcy law from exercising many managerial functions.

2.5 Lastly, the author emphasizes the fact that he was a victim of violations of the Covenant subsequent to the entry into force of the Optional Protocol for France (17 May 1984).

3. By its decision of 1 July 1986, the Working Group of the Human Rights Committee, acting under rule 91 of its provisional rules of procedure, transmitted the communication of Yves Moraël to the State party, requesting any information and observations relevant to the question of the admissibility of the communication.

4.1 In a communication dated 1 December 1986 the State party concedes that the author has "exhausted all domestic remedies within the meaning of article 5, paragraph 2 (L), of the Optional Protocol". With regard to the argumentation of the author and the merits of his claims, the State party contends that the author's communication should be rejected as "manifestly ill-founded".

4.2 The State party rejects the author's contention that the French courts did not decide the case within a reasonable time, pointing out that the Tribunal of Commerce delivered its judgement on 7 July 1981 and the Court of Appeal announced its decision on 13 July 1983, upheld by the Court of Cassation on 2 May 1985.

"Given the complexity of the case and the fact that Mr. Morael used all the remedies permitted by French law for such proceedings without displaying particular eagerness, the courts, which were called upon to reach a decision on three occasions in this case within a total period of less than four years, have acted with all due dispatch."

4.3 With regard to the author's assertion that he was not given a fair hearing owing to the presumption of fault established by article 99 of the then applicable Act of 13 July 1967, the State party quotes the text of the Act:

"When judicial supervision of the affairs of a body corporate or the sale of its property reveals that its assets are insufficient, the court may decide, on the petition of the court-appointed administrator, or even ex officio, that the company's debts shall be borne, in whole or in part and jointly or severally, by all or some of the managers of the company, whether de jure or de facto, visible or undisclosed, remunerated or not. To be absolved of their liability, such persons must show that they devoted all due energy and diligence to the management of the company's affairs."

And the state party adds that "this procedure, commonly known as an action for coverage of liabilities, thus introduces in respect of a company's managers or some of them, a presumption of liability, there being a shortfall in assets resulting from the failure of their management".

4.4 "In the view of the French Government, this presumption of liability attached to a company's managers is not in conflict with the principle of a fair hearing, contrary to the contention of the author. Admittedly, the liability of the persons concerned may be invoked in this type of procedure without presentation of proof of fault on the part of the managers. But that is the case in any system of liability for risk or 'objective' liability. Furthermore, the existence of such a presumption instituted by the Act is not, in itself, in any way contrary to the rule of a fair hearing inasmuch as the proceedings take place in conditions that ensure the full enjoyment of his rights by the person concerned. What is more, in the case in question, this presumption is not irrefragable, for the managers in question can in fact absolve themselves of liability by proving by whatever means that they devoted all due energy and diligence to the management of the company's affairs. The tribunal, itself supervised by the Court of Appeal, is free to evaluate such proof in the light of all the elements which had an influence on the behaviour of the managers involved."

4.5 "It is for [the tribunal] to decide, on the petition of the receiver (syndic) or ex officio, to make all or some of the company's managers, jointly or severally, assume all or part of the company's liabilities. The tribunal is under no compulsion whatsoever to find against the persons involved. If it does so it is free to determine the amount of the obligation assessed to the managers at fault, on the sole condition that in its decision it does not exceed the amount of the shortfall in assets. It is also free to decide on the advisability of making the managers jointly liable. In short, an action for coverage of liabilities in no way constitutes an automatic sanction, but must rather be regarded as a

vicarious-liability action based on a presumption which can always be contested by evidence to the contrary."

4.6 "In the present instance, the trial judges of the case considered that Mr. Moraël 'had been instrumental in prolonging the life of the company while at the same time worsening its indebtedness' and found that the various measures taken by this manager 'with the aim of saving at all costs a loss-making enterprise proved inadequate ...', that it follows that Yves Moraël cannot be deemed diligent within the meaning of article 99 of the Act of 13 July 1967'. It thus emerges that in the course of the proceedings the elements of proof furnished by Mr. Moraël were examined so as to ensure a fair hearing, which enabled the judges to evaluate the justification for the action for coverage of liabilities brought by the official receiver. In addition, the Government sees nothing to support the view that the case of the author was not properly considered, or that the trial judges or the appeal judges did not conduct the proceedings properly and fairly. We would note in this connection that the rights of the defence were respected, the person concerned attended the hearings, and that the procedure took place before courts having all the guarantees of independence and impartiality required by article 14 (1) of the Covenant."

4.7 With regard to the author's claim that the Court of Appeal of Douai violated the principle of adversary proceedings by convicting him on the basis of elements that became known after submission of the court-appointed administrator's findings, the State party notes that the author does not identify the elements in the file that were allegedly not the subject of adversary proceedings. Furthermore, the Court of Cassation, in its decree of 2 May 1985, explicitly dismissed this argument when it stated that "the Court of Appeal, in determining that, at the time it handed down its decision, the liabilities of SCMN exceeded its assets, relied upon the elements contained in the findings submitted by the court-appointed administrator, in which the figures are identical, to within a few francs, with those of the statement of outstanding claims as ascertained on 15 February 1983, which was not the subject of any objection ... the Court of Appeal thus ... did not ignore the principle of adversary proceedings ...".

4.8 With respect to the alleged violation of article 14 (2), the State party observes that "the presumption of fault enunciated in article 99 of the Act of 13 July 1967 is in no way contrary to article 14, paragraph 2, of the Covenant". In an action for coverage of liabilities, "the verdict, regardless of the amount involved, remains commensurate with the loss suffered by the creditors and never has the character of a financial penalty". Under no circumstances does an action for coverage of liabilities "have a penal character, and acts constituting serious errors of management do not as such constitute criminal offences. What is more, the Public Prosecutor is not empowered to act in such a matter. Unless the court takes up the question ex officio - which was not done in this case - only the receiver may bring a petition for coverage of liabilities. But, the presumption of innocence laid down in article 14, paragraph 2, applies exclusively to criminal offences".

4.9 With respect to the alleged violation of article 14 (1) in conjunction with articles 26 and 17 of the Covenant, the State party observes that the author has failed to substantiate his allegations.

5.1 In a letter dated 13 February 1987 containing - in accordance with rule 91 of the provisional rules of procedure - the author's comments on the observations of the State party, the author notes that the State party "does not contest the admissibility of the communication" having regard to the exhaustion of domestic remedies.

5.2 With regard to the substantiation of his grievances, the author takes issue with most of the State party's arguments concerning the merits. Above all, he draws the Committee's attention to the fact that "article 99 of the Act of 13 July 1967 was the subject of a parliamentary debate in 1984 which led to the adoption of the amended bankruptcy law of 25 January 1985". This new Act, which was not applied to him, restores ordinary law in respect of the burden of proof, by eliminating the presumption of fault on the part of company managers. That has two consequences in his case: first, the Court of Cassation, in its ruling of 2 May 1985, did not apply the more lenient system emerging from the new law of 25 January 1985. He was thus sentenced to bear part of the company's liabilities on the basis of a statute abandoned by the legislature less than four months earlier; secondly, the debates both in the National Assembly and the Senate indicate that article 99 of Act No. 67-563 was deemed to violate the principles of "fair hearing" and "presumption of innocence", and that eminent French professors of law and legal experts called upon to testify at proceedings under that article considered it to be distinctly penal in character.

5.3 The author quotes extensively from the debates in the French National Assembly and requests the Committee to take into account the criticisms voiced on that occasion before determining the scope of the concepts of "fair hearing" and "presumption of innocence" guaranteed by the Covenant.

The following are excerpts from the debates in the National Assembly:

Mr. Robert Badinter, Minister of Justice at the time of the parliamentary examination of article 99 and currently President of the Constitutional Council, stated:

"Existing law is still burdened by the highly repressive influence of old bankruptcy law. The present Act still regards [management] with suspicion. It threatens company managers with numerous criminal penalties ... It exposes them to liability for covering a company's indebtedness by subjecting them to a presumption of fault contrary to the fundamental principle of presumption of innocence ..." (National Assembly, meeting of 5 April 1984, Compte rendu, p. 1180)

The author then quotes article 180 of the new bankruptcy law of 25 January 1985:

"When judicial reorganization or liquidation of a body corporate reveals that its assets are deficient, the court may - where a fault of management has contributed to such deficiency in assets - decide that the debts of the body corporate shall be borne, in whole or in part, jointly or severally, by all or some of the managers, whether de jure or de facto and whether or not they are remunerated ..."

The author adds that the law was voted without any deputy objecting to the adoption of that text.

5.4 With respect to the penal aspect of article 99 of the former bankruptcy law, the author further observes:

"The action for coverage of liabilities is a complex action which is not only intended to repair the loss suffered by creditors. It has a penal aspect because of the seriousness of the financial consequences (in this instance, 3 million francs for having been head of the company for a few months), and its accessory disqualifications."

The author then quotes from a law report by Professor Bouloc of the University of Paris:

"... Since a conviction ordering coverage of liabilities exposes the manager to personal bankruptcy, to prohibition of performance of managerial functions, to a procedure of judicial supervision or liquidation of personal property, and even to criminal proceedings (article 132 of the Act of 1967), it cannot be said that coverage of liabilities is purely and simply a civil institution without any connection with the criminal law ..."

5.5 The author also cites the debates of the 20th Congress of the National Association of Judicial Auditors (Compagnie nationale des experts judiciaires en comptabilité) in 1981, which dealt with the practical application of article 99 of the then applicable bankruptcy law and which arrived at the following conclusion, inter alia:

"... article 99 can be seen to institute a penalty having no connection ... with the desire to alleviate the loss suffered by the creditors: you mismanaged the company placed under your direction, since you have filed for bankruptcy. You will be punished, and the punishment will serve as an example".

He thus concludes that the proceedings against him had a dual character, of which the criminal law aspects should be taken into consideration in relation to the terms and principles of the Covenant, which have a scope of their own independent of national laws and other definitions.

6.1 Before considering the 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 found that the parties agreed that all domestic remedies had been exhausted. It also ascertained that the same matter was not being examined under another procedure of international investigation or settlement. The communication therefore meets the requirements of article 5 (2) of the Optional Protocol.

6.3 With respect to the State party's conclusion that the communication should be rejected as "manifestly ill-founded", the Committee noted that article 3 of the Optional Protocol provides that a communication shall be considered inadmissible if it is (a) anonymous, (b) constitutes an abuse of the right of submission, or (c) is incompatible with the provisions of the Covenant. The Committee found that the author had made a reasonable effort to substantiate his complaints and that he invoked specific provisions of the Covenant. Therefore, the Committee had to examine the issues raised, when deciding on the merits of the case.

6.4 The Committee noted that both the author and the State party had already presented numerous observations on the merits of the case. However, the Committee deemed it appropriate at that juncture to limit itself, as the rules of procedure required, to ruling on the admissibility of the communication. It also noted that, if the State party should wish to add to its earlier submission within six months following notification of the decision on admissibility, the author of the communication would be given the opportunity to comment thereon. If no further submissions were received from the State party under article 4 (2) of the Optional Protocol, the Committee would proceed to adopt its final views in the light of the written information already submitted by the parties.

7. Accordingly, on 10 July 1987, the Human Rights Committee decided that the communication was admissible and requested the State party, should it not intend to submit further explanations or statements under article 4 (2), paragraph 2, of the Optional Protocol, to so inform it, so as to enable it to arrive at an early decision on the merits.

8. The deadline for the State party's submission of explanations or statements under article 4 (2) of the Optional Protocol expired on 6 February 1988. On 29 April 1988, the secretariat sent a reminder to the State party concerned. No further explanation or statement has been received from the State party. The Committee therefore concludes, on the basis of paragraph 2 of its decision on admissibility, that the State party does not intend to submit any further explanations or statements.

9.1 The Human Rights Committee, having examined the merits of the communication in the light of all the information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol, decides to base its views on the following facts, which are uncontested.

9.2 The author of the communication is a businessman and former member of the board, and later Managing Director, of the joint-stock company "Société anonyme des cartonneries mécaniques du Nord". In 1973, the company began to experience serious financial difficulties and a judicial administrator was appointed. After a sale of some company assets to satisfy creditors in 1978, the company resumed operations under a different management. Since it continued to lose money, the general meeting of shareholders appointed the author as Managing Director on 1 July 1979. He served in that capacity until 7 December 1979, when another judicial administrator was appointed. During those five months he ordered several economy measures designed to save the company, such as closing the Paris office and reducing the salary of the Managing Director by 33 per cent; he also attempted to reduce personnel, but this was unsuccessful owing to the partial refusal of the Inspectorate of Employment and to strikes. During civil proceedings held on the petition of the court-appointed administrator for an order for coverage of liabilities, the Tribunal of Commerce of Dunkirk heard the Public Prosecutor (who made reference to criminal proceedings then pending against the author, subsequently acquitted of all charges by decision of the Tribunal correctionnel of Dunkirk on 4 May 1982) and, on 7 July 1981, finding that the author had not proven that he had been diligent in the sense of article 99 of the Bankruptcy Act, ordered him to bear part of the company's indebtedness, as established by operations of the procedure, in the proportion of 5 per cent, together with other members of management, who were jointly ordered to pay 35 per cent of the indebtedness. The author appealed, petitioning the Court of Appeal to find that he had exercised all due diligence during his five months as Managing Director. In its order of

13 July 1983, the Court of Appeal of Douai, while acknowledging that the author had taken a number of measures, held that those measures, designed to save a loss-making enterprise at any cost, had turned out to be inadequate and that the author had helped, as Managing Director, to prolong the life of the company while worsening its finances. Consequently, the Court, considering that he had not demonstrated that he had exercised due diligence, confirmed the lower court's judgement that the company's indebtedness would partly be borne by its managers, while amending it as concerns its fixing of the amount in percentages. Deciding to take as the appropriate point for evaluating the shortfall in the company's assets the date of 15 February 1983, when it had been definitively verified, without challenge, at about FF 30 million, the Court set the sum to be charged the author at FF 3 million, independently of the other managers. The author then appealed to the Court of Cassation, arguing that the Court of Appeal had erred in finding that he had not proven due diligence and that it had based the determination of the shortfall on elements which had not been part of the proceedings. On 2 May 1985, the Court of Cassation rejected the author's appeal, finding that the Court of Appeal had established the facts correctly and had based its decision on the verification of the statement of liabilities, about which there had been no challenge, by the parties, and that consequently it had not disregarded the principle of adversary proceedings. Subsequently, article 180 of the new Bankruptcy Act, dated 25 January 1985 (and effective as from 1 January 1986), abolished the presumption of fault, restoring the principle of proof of fault to determine the responsibilities of company managers in case of losses.

9.3 The first question before the Committee is whether the author is victim of a violation of article 14 (1) of the Covenant because, as he alleges, his case did not receive a fair hearing within the meaning of that paragraph. The Committee notes in this connection that the paragraph in question applies not only to criminal matters but also to litigation concerning rights and obligations of a civil nature. Although article 14 does not explain what is meant by a "fair hearing" in a suit at law (unlike paragraph 3 of the same article dealing with the determination of criminal charges), the concept of a fair hearing in the context of article 14 (1) of the Covenant should be interpreted as requiring a number of conditions, such as equality of arms, respect for the principle of adversary proceedings, preclusion of ex officio reformatio in pejus,* and expeditious procedure. The facts of the case should accordingly be tested against those criteria.

9.4 At issue is the application of the third paragraph of the article of the Bankruptcy Law of 13 July 1967 that established a presumption of fault on the part of managers of companies placed under judicial supervision, by requiring them to prove that they had devoted all due energy and diligence to the management of the company's affairs, failing which they could be held liable for the company's losses. The author claims in this regard that the Court of Cassation had given too severe an interpretation of due diligence, one that amounted to denying him any possibility of demonstrating that he had exercised it. It is not for the Committee, however, to pass judgement on the validity of the evidence of diligence produced by the author or to question the court's discretionary power to decide whether such evidence was sufficient to absolve him of any liability. As regards respect for the principle of adversary proceedings, the Committee notes that to its

* Ex officio correction worsening an earlier verdict.

knowledge there is nothing in the facts concerning the proceedings to show that the author did not have the possibility of presenting evidence at his disposal or that the court based its decision on evidence admitted without being open to challenge by the parties. As to the author's complaint that the principle of adversary proceedings had been ignored in that the Court of Appeal had increased the amount to be paid by the author, although the change had not been requested by the court-appointed administrator and had not been submitted to the parties for argument, the Committee notes that the Court of Appeal fixed the amounts to be paid by the author on the basis of the liabilities resulting from the operations of the procedure, as the court of first instance had decided; that such verification of the statement of liabilities had not been contested by the parties; and that the definitive amount, while equal to approximately 10 per cent of the company's indebtedness, had been charged to the author individually, whereas the court of first instance had ordered payment jointly with other managers, which might have required the author to pay 40 per cent of the company's indebtedness in case it proved impossible to recover the shares due from his co-debtors. In view of the above, it is to be doubted that there was an increase in the amount charged to the author or that the principle of adversary proceedings and preclusion of ex officio reformatio in pejus were ignored. With respect to the author's assertion that his case was not heard within a reasonable time, the Committee is of the opinion that, in the circumstances and given the complexity of a bankruptcy case, the time taken by the domestic courts to deal with it cannot be considered excessive.

9.5 As to the complaint that the action for coverage of liabilities brought against the author violated the principle of presumption of innocence laid down in article 14 (2) of the Covenant, the Committee points out that that provision is applicable only to persons charged with a criminal offence. Article 99 of the former bankruptcy law entailed a presumption of responsibility on the part of company managers in the absence of proof of their diligence. But that presumption did not relate to any charge of a criminal offence. On the contrary, it was a presumption relating to a system of liability for risk resulting from a person's activities - one that is well known in private law, even in the form of absolute or objective liability ruling out all evidence to the contrary. In the situation under consideration, liability was established in favour of the creditors and the amounts charged to the managers corresponded to the damages they had suffered and were to be paid in order to cover the company's liabilities. The object of article 99 of the Bankruptcy Act was to compensate creditors but it also entailed other penalties which, however, were civil-law and not criminal-law penalties. The provision concerning the presumption of innocence in article 14 (2) cannot therefore be applied in the case under consideration. That conclusion cannot be affected by the allegation that the provision of article 99 of the Bankruptcy Act was subsequently modified by elimination of the presumption of fault, considered unjust from the point of view of the material settlement of liability, for this circumstance does not of itself imply that the earlier provision contravened the above-mentioned provisions of the Convention.

9.6 With respect to the complaints of violation of articles 26 and 17 (1) of the Covenant, the Committee considers that the author has not demonstrated that he was a victim of a violation of article 26, regarding equality before the law or that the procedure followed by the French courts improperly attacked his honour and reputation, protected by article 17.

9.7 The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts which have been put before it do not disclose any violation of paragraphs 1 and 2 of article 14 of the Covenant.

F. Communications Nos. 210/1986 and 225/1987, Earl Pratt and Ivan Morgan v. Jamaica (Views adopted on 6 April 1989 at the thirty-fifth session)

Submitted by: Earl Pratt and Ivan Morgan
Alleged victims: The authors
State party concerned: Jamaica
Date of communications: 28 January 1986 and 12 March 1987
Date of decision on admissibility: 24 March 1988

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights:

Meeting on 6 April 1989,

Having concluded its consideration of communications Nos. 210/1986 and 225/1987, submitted to the Committee by Earl Pratt and Ivan Morgan for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communications and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communications dated 28 January 1986 and 12 March 1987 are Earl Pratt and Ivan Morgan, two Jamaican citizens awaiting execution at St. Catherine District Prison, Jamaica. They are represented by counsel. They claim to be victims of violations by the Government of Jamaica of articles 6, 7 and 14 of the International Covenant on Civil and Political Rights.

2.1 On 6 October 1977, Junior Anthony Missick was shot to death. Three men were reportedly involved in the shooting, including the authors, both of whom were tried in the Home Circuit Court at Kingston from 10 to 15 January 1979. It is alleged that an important defence witness, Mr. Clarence Smith, who would have provided an alibi for Mr. Pratt, was available to give testimony when the court hearing was convened on Friday, 12 January 1979. He had, however, temporarily left the premises, and when he returned, the Court had adjourned until Monday, 15 January. On that day Mr. Smith was not present and the judge closed the case without hearing his testimony. The jury found the authors guilty of murder and they were sentenced to death.

2.2 The Jamaican Court of Appeal considered the authors' appeal in September, November and December 1980. The defence argued that the trial judge "wrongly exercised his discretion not to discharge the jury upon the disclosure of prejudicial evidence, upon extraneous and irrelevant grounds, and upon a

misinterpretation of the evidence". The "prejudicial evidence" challenged in the appeal was the allegedly fortuitous statement by the chief witness for the prosecution that Mr. Pratt and Mr. Morgan had been friends of the deceased for about three years, and that Mr. Pratt and the deceased had previously shot another friend of theirs. This statement did not specify who had been shot or what the consequences of the shooting had been, but left an impression with the jury that the accused were capable of killing their own friends. It is argued that the jury should have been discharged and a new trial ordered, as requested by the defence. In rejecting the appeal, the Court of Appeal found that the directions of the trial judge had not operated to the detriment of the appellants. In the particular case of Mr. Morgan, the trial record shows that the only evidence against him was the statement of one witness that he had been with Mr. Pratt at the time of the shooting and that he too had had a gun. The witness had not seen him actually shoot, nor was there any evidence produced to show that the killing had been in pursuance to a prior agreement. In his defence, Mr. Morgan himself had stated, by way of alibi, that he had been with his wife and children at the time of the killing.

2.3 The Court of Appeal did not state its reasons for rejecting the appeal until nearly four years later, on 24 September 1984. A petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 17 July 1986. The Judicial Committee nevertheless expressed the view that it was disgraceful that some nine years had elapsed since the alleged offence and seven years since conviction before the matter came before it. In particular, the Judicial Committee thought that the delay by the Court of Appeal of Jamaica in issuing a written judgement, almost four years from the date of the hearing, was inexcusable and must never occur again, especially not in a capital penalty case. The Judicial Committee of the Privy Council expressed grave misgivings about this delay and pointed out that this could be the source of grave injustice and possibly constitute inhuman and degrading treatment. It is claimed on behalf of the authors that such "inexcusable delay" constituted cruel and inhuman treatment in that, between 1980 and 1984, they could not pursue their petition for special leave to appeal to the Privy Council because such a procedure was not possible without the written judgement of the Jamaican Court of Appeal. Moreover, during all this period they were detained in that part of the prison reserved for convicted persons awaiting execution.

2.4 On 13 February 1987, a warrant was issued for the execution of Mr. Pratt and Mr. Morgan to take place on 24 February 1987. A stay of execution was granted for both men on 23 February 1987. They were notified of the stay only 45 minutes before the executions were to take place.

3. In the case of Mr. Pratt, the Human Rights Committee had, by interim decision dated 21 July 1986, inter alia, requested the State party, under rules 86 and 91 of the Committee's rules of procedure, not to carry out the death sentence against the author before the Committee had had an opportunity to consider further the question of the admissibility of the communication and to provide the Committee with several clarifications concerning the judicial remedies available to the author. By submission dated 18 November 1986, the State party provided the clarifications sought by the Committee.

4. Under cover of a letter dated 20 March 1987, the authors' representative submitted further information. In particular, he argues: (a) that the delays in the judicial proceedings against the authors constitute a violation of the right to

be heard within a reasonable time; (b) that the authors have been subjected to cruel, inhuman and degrading treatment by reason of such delay and also by reason of having been confined to death row since their conviction and sentence in January 1979; (c) that service of a warrant for their execution would amount to an arbitrary deprivation of life; and (d) that the Court of Appeal's failure to provide a written judgement within a reasonable time constitutes a breach of section 20 of the Constitution of Jamaica and is contrary to the Court of Appeal's duty to give reasons for an important decision and, accordingly, contrary to principles of natural justice.

5. By decision dated 24 March 1987 concerning the communication of Mr. Morgan, the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the provisional rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication and, under rule 86 of the rules of procedure, not to carry out the death sentence against Mr. Morgan before the Committee had had the opportunity to render a final decision in the case. By further decision under rule 91 dated 8 April 1987, concerning the communication of Mr. Pratt, the Committee decided to transmit the additional information to the State party and to request it to clarify: (a) how long it would normally take the Court of Appeal to produce a written judgement in appeals against convictions for a capital offence; and (b) why the Court of Appeal did not provide a written judgement until three years and nine months after rejecting the author's appeal. As in the case of Mr. Morgan, it requested the State party, under rule 86 of the provisional rules of procedure, not to carry out the death sentence against the author until it had had an opportunity to render a final decision in the case.

6.1 In two submissions under rule 91 dated 4 and 10 June 1987, jointly relating to communications 210/1986 and 225/1987, the State party replied to the questions posed by the Committee in its decision of 8 April 1987, referred to in paragraph 5 above, and objected to the admissibility of the communications on a number of grounds.

6.2 With regard to the first question posed by the Committee, it explained that:

"It is established practice of the Court of Appeal to endeavour to hand down judgements in criminal cases in the term in which the appeal is heard, or at the very latest, during the next term. This means that judgements or reasons for judgements are normally available within three months of the hearing of the appeal."

With regard to the second question, it stated that:

"[O]n November 12, 1980, the application for leave to appeal by Earl Pratt and Ivan Morgan came up for hearing before the Court of Appeal. The application was refused and the Court promised to give written reasons at a later date. Regrettably, owing to an oversight, the papers in the case were co-mingled with completed case files. It was not until the summer of 1984 that it was brought to the attention of the judge who was to prepare the written judgement that the reasons for judgement were outstanding, and he then attended to the matter."

6.3 The State party rejects to the authors' contention that the delays in the judicial proceedings in their cases constitute a violation of the right to be heard within a reasonable time. It argues that, during the three years and nine months between the Court of Appeal's judgement and the delivery of its written decision, it would have been open to the authors or to their counsel to apply to the Court of Appeal for the written judgement; had they done so, the Court would have been obliged to provide it. According to the State party, the responsibility of the accused for asserting his rights is an important factor in considering an allegation of breach of the right to trial within a reasonable time. Since the authors are said not to have asserted their rights, the State party contends that article 14, paragraph 3 (d), of the Covenant, which it sees as being coterminous with section 20, paragraph 1, of the Jamaican Constitution, has not been violated. The State party further denies that delays in the judicial proceedings concerning the authors constitute cruel, inhuman or degrading punishment in violation of article 7 of the Covenant, or that service of a warrant for the execution of the authors would amount to an arbitrary deprivation of life.

6.4 The State party further contends that the authors' communications are inadmissible because they have failed to exhaust domestic remedies, as required by article 5, paragraph 2 (b), of the Optional Protocol. It points out that in respect of the authors' complaints - breach of the right to trial without undue delay and breach of the right to protection against subjection to torture or cruel, inhuman or degrading treatment - it would have been open to the authors to apply to the Supreme Court for redress alleging breaches of these fundamental rights protected by sections 17 and 20, paragraph 1, of the Jamaican Constitution.

7.1 In their comments dated 29 October 1987, the authors contend that their allegations are well-founded, and that they have indeed exhausted all available legal remedies. They refer to the decision of the Judicial Committee of the Privy Council in Noel Riley et al. v. the Attorney-General (1981), where it was decided by a majority (3/2) that whatever the reasons for, or length of, delay in executing a sentence of death lawfully imposed, the delay can afford no ground for holding the execution to be in contravention of section 17 of the Jamaican Constitution. Accordingly there are no grounds upon which an application by way of constitutional motion to the Supreme Court of Jamaica could successfully be brought. Any such motion must inevitably fail and be decided against the applicants: in consequence, this is not a domestic remedy available to the applicants. On 17 July 1986, the Judicial Committee of the Privy Council refused the applicants' petition for special leave to appeal.

7.2 In a further submission under rule 91 dated 17 February 1988, the authors provide additional information concerning the alleged violation of article 14 of the Covenant to the effect that they were not given a fair trial and were denied the opportunity to establish their innocence. They claim that during the trial the principal prosecution witness was questioned by the judge, to whom he answered that Mr. Pratt had shot a person other than the victim; thereafter the judge not only asked the shorthand writer to repeat this prejudicial evidence but proceeded to hear the submissions of the lawyer on this evidence in the presence of the jury. Thus it was impossible for the jury to ignore the above-mentioned prejudicial evidence against Mr. Pratt and, by association, Mr. Morgan. Furthermore, since the lawyer made his submissions in the presence of the jury immediately after the questioning of the witness by the judge, this highlighted the prejudicial nature of this piece of evidence in the eyes of the jury. It is argued that the extent of the prejudice was such that the judge could not redress the balance in his summing

up; in any event, he declined to do so. The authors consider this to be bias on the part of the judge against them. According to the authors, another example of the judge's bias was his refusal to confirm to the jury that they were of previous good character. They submit that this evidence should have been accepted. Finally they argue that they were poorly defended. In particular, they claim that it was wrong for Mr. Pratt's counsel, while waiting for the arrival of a vital alibi witness who would testify that Mr. Pratt was elsewhere at the time of the murder, to decide to close the case at this point and to so inform the Court. This is said to be buttressed by a statement of the Court of Appeal which, in refusing an application to call new alibi evidence, criticized Mr. Pratt's counsel as follows: "... it is clear that this was not a case of the witness not being available ... Indeed, we formed the view that counsel at the trial had chosen to close his case and to take a calculated chance".

7.3 For the above reasons, the authors claim that they were effectively denied the opportunity to have their innocence established. They refer in this context to resolution 1984/50 on "Safeguards guaranteeing protection of the rights of those facing the death penalty", adopted by the Economic and Social Council on 25 May 1984, and in particular safeguard No. 5:

"Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings."

8. On 23 February 1988, a second warrant was issued for the execution of the authors on 8 March 1988. By telegram dated 24 February 1988 addressed to the Jamaican Deputy Prime Minister and Minister for Foreign Affairs, the Chairman of the Human Rights Committee reiterated the Committee's request for a stay of execution in conformity with its decisions of 24 March and 8 April 1987. A second stay of execution was granted for both men on 1 March 1988.

9.1 Before considering any claims 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.

9.2 Having considered that communications No. 210/1986 and No. 225/1987 refer to the same events said to have taken place in Jamaica since October 1977 and can thus appropriately be dealt with together, the Committee decided on 24 March 1988 to deal jointly with these communications, pursuant to rule 88, paragraph 2, of its provisional rules of procedure.

9.3 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that, although the authors' cases were considered by the Inter-American Commission on Human Rights, they are no longer being examined under another procedure of international investigation or settlement.

9.4 With regard to the State party's contention that the authors had failed to exhaust domestic remedies because they would still be able to submit their case to the Supreme Court of Jamaica, the Committee noted that the allegations relating to violations of articles 14 and 7 of the Covenant were inextricably mixed and that,

in so far as article 14 was concerned, available remedies had been exhausted. Accordingly, the Committee was unable to find that the authors had failed to comply with the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

10. On 24 March 1988, the Human Rights Committee therefore decided that the communications were admissible.

11.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 19 August 1988, the State party notes that inasmuch as the authors' allegation concerning a violation of article 6 is concerned, the Committee's decision on admissibility suggests that this claim is no longer under consideration by it. With respect to the alleged violations of articles 7 and 14, it reiterates its arguments outlined in paragraph 6.4 above and comments on the authors' contentions in paragraph 7.1 above. Concerning the argument that any constitutional motion in their case would inevitably fail because of the precedent set by the Privy Council's decision in Riley v. the Attorney-General, it points out that the requirement of exhaustion of domestic remedies was adopted by consensus by the States parties to the Optional Protocol, and that in the circumstances of the case, the requirement cannot be deemed to have been met or waived for the reasons advanced by the authors. The only qualification, in article 5, paragraph 2 (b), in fine, that the general rule shall not apply "where the application of the remedies is unreasonably prolonged", is said to be inapplicable to the case.

11.2 The State party rejects the argument that "an application to the Supreme Court, in respect of section 17 of the Jamaican Constitution, must inevitably fail by reason of the Privy Council's decision in Riley's case". It contends that while it is true that the doctrine of precedent is generally applicable, it is equally true that this doctrine may be set aside on the grounds that a previous decision had been arrived at per incuriam (through inadvertence). Thus, it would be open to the authors to argue that the decision in Riley v. the Attorney-General was the result of inadvertence, especially in the light of the dissenting opinion given by Lord Scarman and Lord Brightman. For this reason, the State party contends that there are no grounds for disregarding its contention that the communications are inadmissible in so far as they relate to article 7.

11.3 With respect to the alleged violation of article 14, the State party refers to "curious aspects" in the way in which the Committee's decision on admissibility addresses this issue and its earlier submission that the communications are inadmissible because of non-exhaustion of domestic remedies because the authors did not avail themselves of the remedies provided for in section 20 of the Jamaican Constitution. It submits that since the authors had not complained about the non-availability of remedies in this respect, one should have expected the Committee to declare the communication inadmissible for non-exhaustion of domestic remedies. It describes the Committee's argumentation as "unreasoned" and affirms that the Committee's conclusion that domestic remedies had been exhausted in relation to article 14 rests on the simple assertion that "the allegations relating to violations of articles 14 and 7 of the Covenant are inextricably mixed and that, in so far as article 14 is concerned, available remedies have been exhausted".

11.4 According to the State party, the latter argument is:

"unreasonable and unreasoned because, firstly, the [Committee's] decision does not identify the basis for the supposed principle that if the allegations relating to articles 14 and 7 are inextricably mixed, local remedies have for

that reason been exhausted; secondly, assuming the validity of any such principle (which the State party does not believe to exist), the decision proceeds by way of assertion rather than reason in that it does not offer any reason for, or illustration of, the 'inextricable mixture'; in short, it does not show how the different allegations relating to these separate articles are 'inextricably mixed'."

11.5 The State party thus concludes that the Committee's decision on admissibility is "unwarranted and without foundation" and reiterates that it considers the allegations relating to a violation of article 14 to be inadmissible for non-exhaustion of domestic remedies.

12.1 The Human Rights Committee has considered the present communications in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

12.2 The Committee has taken note of the State party's contention that with respect to the alleged violations of articles 7 and 14, domestic remedies have not been exhausted by the authors. It takes the opportunity to expand upon its admissibility findings.

12.3 The State party has contended that the Committee has no discretion in the application of the local remedies rule (save that the remedy is unacceptably prolonged), in the sense that where local remedies are not exhausted it must declare a communication inadmissible. This is correct in principle, but the Committee necessarily has to determine whether there are effective local remedies left for an author to exhaust. That the local remedies rule does not require resort to appeals that objectively have no prospect of success, is a well established principle of international law and of the Committee's jurisprudence.

12.4 The Committee has taken due notice of the State party's argument that a constitutional motion filed on behalf of the authors in the Supreme Court of Jamaica is not bound to fail simply because of the precedent set by the judgement of the Judicial Committee of the Privy Council in the case of Riley v. the Attorney-General, and that the authors could have argued that the said judgement had been arrived at per incuriam.

12.5 A thorough consideration of the judgement of the Privy Council in the case of Riley does not lend itself to the conclusion that it was arrived at per incuriam. This judgement explicitly endorses the conclusion of the Privy Council in another case concerning chapter three of the Jamaican Constitution, a/ where it had been argued that this chapter proceeded on the assumption that "the fundamental rights which it covers are already secured to the people of Jamaica by existing law", and that "the laws in force are not to be subjected to scrutiny in order to see whether or not they conform to the precise terms" of the provisions in chapter three. And while it is true that Lord Scarman and Lord Brightman dissented from the majority opinion, they did acknowledge that the constitutional remedy was only available where there was no other adequate redress. In these circumstances, authors' counsel was objectively entitled to take the view that, on the basis of the doctrine of precedent, a constitutional motion in the cases of Mr. Pratt and Mr. Morgan would be bound to fail and that there thus was no effective local remedy still to exhaust.

12.6 Section 20, paragraph 1, of the Jamaican Constitution guarantees the right to a fair trial, and section 25 provides for the implementation of the provisions guaranteeing the rights of the individual. Section 25, paragraph 2, stipulates that the Supreme Court has jurisdiction to "hear and determine applications" but adds, in fine, the following qualifications:

"Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law."

In the view of the Committee the authors had means of redress available for the alleged breach of their right to a fair trial by appealing to the Jamaican Court of Appeal and by petitioning the Judicial Committee of the Privy Council for special leave to appeal. Their case thus falls within the scope of application of the qualification in section 25, paragraph 2, further confirming that no further local remedy would have been available by way of constitutional motion.

12.7 For the reasons indicated above, the Committee is not satisfied that a constitutional motion would constitute an effective remedy for the authors within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. It therefore concludes that there is no reason to revise its decision on admissibility of 24 March 1988.

13.1 With respect to the alleged violation of article 14, there are two questions before the Committee: first, whether consideration of issues relating to legal representation and the availability of witnesses amounted to a violation of the guarantees for a fair trial; and second, whether there was undue delay in the appeal process. The Committee has considered the information before it in connection with the trial in the Home Circuit Court of Kingston and the subsequent appeals.

13.2 As to the first issue under article 14, the Committee notes that legal representation was available to the authors. Although persons availing themselves of legal representation provided by the State may often feel they would have been better represented by a counsel of their own choosing, this is not a matter that constitutes a violation of article 14, paragraph 3 (d), by the State party. Nor is the Committee in a position to ascertain whether the failure of Mr. Pratt's lawyer to insist upon calling the alibi witness before the case was closed was a matter of professional judgement or of negligence. That the Court of Appeal did not itself insist upon the calling of this witness is not in the view of the Committee a violation of article 14, paragraph 3 (e), of the Covenant.

13.3 As to the second issue under article 14, the Committee has noted that the delays in the judicial proceedings in the authors' cases constitute a violation of their rights to be heard within a reasonable time. The Committee first notes that article 14, paragraph 3 (c), and article 14, paragraph 5, are to be read together, so that the right to review of conviction and sentence must be made available without undue delay. In this context the Committee recalls its general comment on article 14, which stipulates, inter alia, that "all stages [of judicial proceedings] should take place without undue delay, and that in order to make this right effective, a procedure must be available to ensure that the trial will proceed without undue delay, both in first instance and on appeal".

13.4 The State party has contended that the time span of three years and nine months between the dismissal of the authors' appeal and the delivery of the Court of Appeal's written judgement was attributable to an oversight and that the authors should have asserted their right to receive earlier the written judgement. The Committee considers that the responsibility for the delay of 45 months lies with the judicial authorities of Jamaica. This responsibility is neither dependent on a request for production by the accused in a trial nor is non-fulfilment of this responsibility excused by the absence of a request from the accused. The Committee further observes that the Privy Council itself described the delay as inexcusable (see para. 2.3 above).

13.5 In the absence of a written judgement of the Court of Appeal, the authors were not able to proceed to appeal before the Privy Council, thus entailing a violation of article 14, paragraph 3 (c), and article 14, paragraph 5. In reaching this conclusion it matters not that in the event the Privy Council affirmed the conviction of the authors. The Committee notes that in all cases, and especially in capital cases, accused persons are entitled to trial and appeal without undue delay, whatever the outcome of those judicial proceedings turns out to be.

13.6 There are two issues concerning article 7 before the Committee: the first is whether the excessive delays in judicial proceedings constituted not only a violation of article 14, but "cruel, inhuman and degrading treatment". The possibility that such a delay as occurred in this case could constitute cruel and inhuman treatment was referred to by the Privy Council. In principle prolonged judicial proceedings do not per se constitute cruel, inhuman or degrading treatment even if they can be a source of mental strain for the convicted prisoners. However, the situation could be otherwise in cases involving capital punishment and an assessment of the circumstances of each case would be necessary. In the present cases the Committee does not find that the authors have sufficiently substantiated their claim that delay in judicial proceedings constituted for them cruel, inhuman and degrading treatment under article 7.

13.7 The second issue under article 7 concerns the issue of warrants for execution and the notification of the stay of execution. The issue of a warrant for execution necessarily causes intense anguish to the individual concerned. In the authors' case, death warrants were issued twice by the Governor General, first on 13 February 1987 and again on 23 February 1988. It is uncontested that the decision to grant a first stay of execution, taken at noon on 23 February 1987, was not notified to the authors until 45 minutes before the scheduled time of the execution on 24 February 1987. The Committee considers that a delay of close to 20 hours from the time the stay of execution was granted to the time the authors were removed from their death cell constitutes cruel and inhuman treatment within the meaning of article 7.

14. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee disclose violations of the Covenant with respect to:

(a) Article 7, because Mr. Pratt and Mr. Morgan were not notified of a stay of execution granted them on 23 February 1987 until 45 minutes before their scheduled execution on 24 February 1987;

(b) Article 14, paragraph 3 (c) in conjunction with paragraph 5, because the authors were not tried without undue delay.

15. It is the view of the Committee that, in capital punishment cases, States parties have an imperative duty to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant. Although in this case article 6 is not directly at issue, in that capital punishment is not per se unlawful under the Covenant, it should not be imposed in circumstances where there have been violations by the State party of any of its obligations under the Covenant. The Committee is of the view that the victims of the violations of articles 14, paragraph 3 (c), and 7 are entitled to a remedy; the necessary prerequisite in the particular circumstances is the commutation of the sentence.

Notes

a/ Director of Public Prosecution v. Nasralla (1967) 2 All ER 161.
Chapter III of the Jamaican Constitution concerns the rights of the individual.

G. Communication No. 218/1986, Hendrika S. Vos v. The Netherlands
(Views adopted on 29 March 1989 at the thirty-fifth session)

Submitted by: Hendrika S. Vos (represented by
M. E. Diepstrateu)

Alleged victim: The author

State party concerned: The Netherlands

Date of communication: 23 December 1986 (date of initial letter)

Date of decision on admissibility: 24 March 1988

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 29 March 1989,

Having concluded its consideration of communication No. 218/1986, submitted to the Committee by Hendrika S. Vos under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol*

1. The author of the communication (initial letter dated 23 December 1986 and subsequent letters dated 5 and 26 March 1987 and 3 January 1989) is Hendrika S. Vos, a citizen of the Netherlands, residing in that country. She claims to be a victim of a violation of article 26 of the International Covenant on Civil and Political Rights by the Government of the Netherlands. She is represented by counsel.

2.1 The author states that since 1 October 1976 she had received an allowance from the New General Trade Association under the General Disablement Benefits Act (AAW), but that in May 1979, following the death of her ex-husband (from whom she had been divorced in 1957), payment of the disability allowance was discontinued, in accordance with article 32, subsection 1 (b), of AAW, because she then became entitled to a payment under the General Widows and Orphans Act (AWW). Under the latter, she receives some 90 guilders per month less than she had been receiving under AAW.

* The text of an individual option submitted by Messrs. Francisco Aguilar Urbina and Bertil Wennergren is appended.

2.2 The author states that she first challenged the decision of the New General Trade Association before the Arnhem Appeals Court, but her claim of being a victim of discrimination was rejected on 10 March 1980. Thereupon, she lodged an objection with the same Appeals Court, which rejected it as unfounded by decision of 23 June 1981. A further appeal was taken to the Central Appeals Court in which the author invoked the direct application of article 26 of the Covenant. The court decided against her claim on 1 November 1983. Thus domestic remedies are said to be exhausted.

2.3 The author had argued before the Netherlands Courts that, whereas a disabled man whose (former) wife dies retains the right to a disability allowance, article 32 of AAW makes an improper distinction according to sex, in that a disabled woman whose (former) husband dies does not retain the right to a disability allowance. Subsection 1 (b) of this article provides:

"1. The employment disability benefit will be withdrawn when:

"...

"(b) a woman, to whom this benefit has been granted, becomes entitled to a widow's pension or a temporary widow's benefit in compliance with the General Widows and Orphans Law."

In her specific case she claimed that the application of the law was particularly unjust because she had been divorced from her husband for 22 years and had been providing for her own support when she became disabled. Thus she claims that she should be treated primarily as a disabled person and not as a widow.

2.4 In rejecting the author's claim that she is a victim of discrimination under article 26 of the Covenant, the Central Appeals Court, in its decision of 1 November 1983, stated:

"From the wording of these two articles (articles 26 and 2 (1) of the Covenant), taken conjointly, it is apparent that article 26 is not solely applicable to the civil and political rights that are recognized by the Covenant. In answer to the question whether this article is also of significance in connection with a social security right, as in dispute here, the Court expresses the following consideration:

"In addition to the Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights was concluded at the same time and place. The Court is of the opinion that the text and the import of the two Covenants under consideration here, and the intentions of the States involved therein, must be taken conjointly, because from the history of the conclusion of these Covenants it is apparent that the initial plan to conclude a single covenant was abandoned on the grounds that economic, social and cultural rights - in contrast to civil and political rights - can generally speaking only gradually be realized by means of legislation and other executive measures. That the States involved in those Covenants proceed from this distinction is also apparent from the fact that the Covenant on Economic, Social and Cultural Rights merely provides for a so-called reporting system with respect to the fulfilment of the rights recognized therein whereas the Covenant on Civil and Political Rights also includes an inter-State complaints system (regulated in article 41 et seq. of the Covenant) and an

individual complaints system (regulated in the Optional Protocol to the Covenant). Distinguishing criteria connected with existing social structures which appear also in social security regulations and which are possibly to be regarded as discriminatory, such as man/woman and married/single, can only gradually be done away with by means of legislation ... On the basis of the foregoing, the significance of article 26 of the International Covenant on Civil and Political Rights in connection with a social security right as in dispute here must be denied."

2.5 The author claims that the Central Appeals Court incorrectly interpreted the scope of article 26 of the International Covenant on Civil and Political Rights and asks the Committee to find that the cessation of the payment to her of an AAW allowance was a form of discrimination based on sex and marital status in contravention of article 26 of the Covenant.

3. By its decision of 18 March 1987, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of the admissibility of the communication.

4. In its submission dated 25 June 1987, the State party reserved the right to submit observations on the merits of the communication which might turn out to have an effect on the question of admissibility. For this reason the State party suggested that the Committee might decide to join the question of the admissibility to the examination of the merits of the communication.

5. The author's deadline for comments on the State party's submission expired on 4 September 1987. No comments were received from the author.

6.1 Before considering any claims in a communication the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 Article 5, paragraph 2 (a), of the Optional Protocol precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement. In this connection the Committee ascertained that the same matter was not being examined under another procedure of international investigation or settlement.

6.3 Article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication unless domestic remedies have been exhausted. In this connection the Committee noted that the author's statement that domestic remedies had been exhausted remained uncontested.

7. On 24 March 1988, the Human Rights Committee therefore decided that the communication was admissible. In accordance with article 4 (2) of the Optional Protocol, the State party was requested to submit to the Committee, within six months of the date of transmittal to it of the decision on admissibility, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it.

8.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 28 October 1988, the State party, before discussing the merits of the case, points out that it has taken note of the views of the Committee in communications

CCPR/C/29/D/172/1984, CCPR/C/29/D/180/1984 and CCPR/C/29/D/182/1984 with respect to the applicability of article 26 of the Covenant in the field of social security rights and that it reserves its position, notwithstanding the fact that this aspect is not addressed in its submission.

8.2 In discussing the merits of the case, the State party elucidates first the relevant Netherlands legislation as follows:

8.3 "Netherlands social security legislation consists of employee insurance schemes and national insurance schemes; as employee insurance schemes are not of relevance to the present case, they will be disregarded. The aim of national insurance schemes is to insure all residents of the Netherlands against the financial consequences of certain contingencies. The national insurance schemes concerning survivors, old age and long-term disability guarantee payment of a benefit related to the statutory minimum wage. The entitlements concerned are gross benefits. They are set at such a level that, after tax and social insurance premiums have been deducted from them, net benefits are sufficient to enable the beneficiary to subsist."

8.4 "The AAW of 11 December 1975 created a national insurance scheme concerning long-term disability; under the terms of the Act, anybody who has been disabled for longer than one year is entitled to a basic benefit. If the beneficiary was employed full-time before becoming unfit for work, full benefit is paid (equivalent to the subsistence minimum). If the beneficiary is only partially disabled, the benefit is reduced proportionately; the amount of benefit payable is also based on the number of hours per week worked before the beneficiary became disabled. If the amount of AAW benefit payable is less than the subsistence minimum, as will often be the case if the claimant is only partially disabled or was working part-time before becoming disabled, supplementary benefit can be paid under the National Assistance Act (ABW) or Supplements Act (TW)."

8.5 "The AWW of 9 April 1956 created a national insurance scheme which entitles widows and orphans to receive benefit related to the statutory minimum wage if their husband or father dies. The rationale underlying the Act is that after a married man dies his widow may well have insufficient means of subsistence. At the time when the Act was passed, it was felt that, if there were good reasons why the widow should not be expected to earn her own living (for example, because she still had children to look after or because she was too old), it was desirable to pay her benefit. In some cases, women are eligible for the AWW benefit even if they have been divorced from the deceased."

8.6 "At the time when the General Widows and Orphans Act was passed, it was customary for husbands to act as bread-winners for their families, and it was therefore desirable to make financial provision for dependants in the event of the bread-winner's premature death. In recent years more married women have been going out to work and households consisting of unmarried people have increasingly been granted the same status as traditional families. This being so, the Government has been studying since the early 1980s ways of amending the AWW; one of the questions being examined is whether the privileged position enjoyed by women under the Act is still justified nowadays."

8.7 "It is too early to say what provisions the future Surviving Dependents Act will contain. As the Netherlands is a member of the European Community, it will in all events comply with the obligations arising from a European Community directive

which is currently in preparation concerning sexual equality with regard to provision for survivors; it is expected to be many years before the directive enters into force. However, it is possible that the Netherlands Government may make proposals for new legislation on survivors before the European Community directive is finalized."

8.8 "In a social security system, it is necessary to ensure that individuals do not qualify for more than one benefit simultaneously under different social insurance acts, when each such benefit is intended to provide a full income at subsistence level. The various relevant acts therefore contain provisions governing entitlements for the eventuality of overlapping entitlements. The clause of which Mrs. Vos complains - article 32, subsection 1 (b), of the AAW - falls into this category. The legislature had to decide whether claimants who were entitled to benefits under both the AAW and the AWW should receive benefits under the one or the other, and it was decided that in such cases the AWW benefit should be paid. The decision to opt for a rule on concurrence as laid down in article 32, subsection 1 (b), of the AAW is based, *inter alia*, on practical considerations with a view to the implementation of the legislation. It is necessary, for example, to avoid the necessity of entering the person concerned in the records of two different bodies responsible for paying benefits and to avoid having to levy income tax in arrears on income from two separate sources."

8.9 "From the point of view of widows, it is, generally speaking, more advantageous to receive AWW than AAW; if the legislature had decided that the AAW benefit should have precedence over the AWW benefit, many widows would have been worse off, because in most cases the AWW benefit exceeds the AAW benefit payable to married women. This is because most married women have worked part-time and therefore receive only a partial AAW benefit in the event of long-term disability. This is not to say that the rule on concurrence which gives precedence to the AWW is always advantageous to all widows: it merely benefits the majority of them. Cases are conceivable in which the award of the AWW benefit instead of the AAW benefit leads to a slight fall in income. This is evidently so in the case of Mrs. Vos."

8.10 "However, the fact that, in a particular case, the application of article 32, subsection 1 (b), of AAW leads to a disadvantageous result for a particular individual is irrelevant for purposes of assessing whether a form of discrimination has occurred which is prohibited by article 26 of the International Covenant on Civil and Political Rights. In this connection, reference may be made to the Committee's decision in case No. 212/1986 (*P.P.C. v. The Netherlands*), in which it was found, *inter alia*, that the scope of article 26 does not extend to differences of results in the application of common rules in the allocation of benefits." a/

8.11 Lastly, the Netherlands Government observes that in the course of the review of the AWW (paras. 8.6 and 8.7), explicit consideration was given to the problem of overlapping entitlements under AAW and AWW.

9.1 With regard to the author's specific complaint in relation to article 26 of the Covenant, the State party contests the contention of Mrs. Vos "that article 32, subsection 1 (b), of AAW discriminates unjustifiably between the sexes, because a disabled man whose wife (divorced or otherwise) dies retains his right to disablement benefit whereas a disabled woman whose husband (divorced or otherwise) dies forfeits hers. The difference in position between a disabled widow and a

disabled widower can be explained as follows. The provision which is made for survivors is not available to men, and the problem of overlapping of benefits therefore does not arise. Precisely on account of the fact that a disabled man cannot be eligible for AWW benefit and that the death of his wife therefore does not affect his AAW benefit, it is impossible to compare the rules of concurrence."

9.2 "By way of illustration of the relative discrimination in favour of women, which is inherent in the AWW rules, the Netherlands Government would observe that the favourable treatment which women receive in the Netherlands under AWW has led some people to suggest that the Act discriminates against men. This is one of the reasons why a review of AWW is under consideration. Be that as it may, this is not the point of Mrs. Vos's complaint. In any case, it should be concluded that the cases to which the applicant refers are not cases which require equal treatment on the basis of article 26 of the Covenant."

10.1 In her comments, dated 3 January 1989, the author reiterates her view that the application of article 32, subsection 1 (b), of the General Disablement Act (AAW) violates article 26 of the Covenant. She also argues that, provided article 26 is found relevant, then it must be accepted that it has direct effect from the moment the International Covenant on Civil and Political Rights came into force. Although she acknowledges that not every inequality constitutes unlawful discrimination, she contends that since 1979 any existing inequality in the field of social security can be examined on the basis of article 26 of the Covenant.

10.2 Contesting the interpretation of article 26 of the Covenant by the Central Appeals Court, the author argues that it would be incompatible with article 26 to grant the Government additional time to eliminate unlawful discrimination, and that what is at issue in the communication under consideration is whether the distinction is acceptable or unacceptable, it being irrelevant whether the Government after 1979 needed some time to eliminate the alleged distinction.

11.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

11.2 The Committee notes that the State party in its submission under article 4, paragraph 2, of the Optional Protocol has reserved its position with respect to the applicability of article 26 of the Covenant in the field of social security rights (para. 8.1 above). In this connection, the Committee has already expressed the view in its case law h/ that the International Covenant on Civil and Political Rights would still apply even if a particular subject-matter is referred to or covered in other international instruments, e.g. the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women or, as in the present case, the International Covenant on Economic, Social and Cultural Rights. Notwithstanding the interrelated drafting history of the two covenants, it remains necessary for the Committee to apply fully the terms of the International Covenant on Civil and Political Rights. The Committee observes in this connection that the provisions of article 2 of the International Covenant on Economic, Social and Cultural Rights do not detract from the full application of article 26 of the International Covenant on Civil and Political Rights.

11.3 The Committee further observes that what is at issue is not whether the State party is required to enact legislation such as the General Disablement Benefits Act

or the General Widows and Orphans Act, but whether this legislation violates the author's rights contained in article 26 of the International Covenant on Civil and Political Rights. The right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26. Further, differences in result of the uniform application of laws do not per se constitute prohibited discrimination.

12. It remains for the Committee to determine whether the disadvantageous treatment complained of by the author resulted from the application of a discriminatory statute and thus violated her rights under article 26 of the Covenant. In the light of the explanations given by the State party with respect to the legislative history, the purpose and application of the General Disablement Benefits Act and the General Widows and Orphans Act (paras. 8.3-8.10 above), the Committee is of the view that the unfavourable result complained of by Mrs. Vos follows from the application of a uniform rule to avoid overlapping in the allocation of social security benefits. This rule is based on objective and reasonable criteria, especially bearing in mind that both statutes under which Mrs. Vos qualified for benefits aim at ensuring to all persons falling thereunder subsistence level income. Thus the Committee cannot conclude that Mrs. Vos has been a victim of discrimination within the meaning of article 26 of the Covenant.

13. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as submitted do not disclose a violation of any article of the International Covenant on Civil and Political Rights.

Notes

a/ CCPR/C/32/D/212/1986, para. 6.2.

b/ CCPR/C/29/D/172/1984, CCPR/C/29/D/180/1984 and CCPR/C/29/D/182/1984.

APPENDIX

Individual opinion: submitted by Messrs. Francisco Aguilar Urbina and Bertil Wennergren pursuant to rule 94, paragraph 3, of the Committee's provisional rules of procedure, concerning the views of the Committee on communication No. 218/1986, Vos v. the Netherlands

1. Article 26 of the Covenant has been interpreted as providing protection against discrimination whenever laws differentiating among groups or categories of individuals do not correspond to objective criteria. It has also been interpreted in the sense that whenever a difference in treatment does not affect a group of people but only separate individuals, a provision cannot be deemed discriminatory as such; negative effects on one individual cannot then be considered to be discrimination within the scope of article 26.
2. It is self-evident that, as the State party has stressed, in any social security system it is necessary to ensure that individuals do not qualify for more than one benefit simultaneously under different social insurance laws. The State party has admitted that the rule on concurrence which gives precedence to the General Widows and Orphans Act (AWW) is not always advantageous to all widows. It might merely benefit a majority of them. Cases are conceivable in which the award of AWW benefits leads to a decrease in income after cessation of payments under the General Disablement Benefits Act (AAW); this is evidently what happened in the case of Mrs. Vos. The State party has also mentioned that, in most cases AWW benefits exceed AAW benefits payable to married women, and that this is attributable to the fact that most married women have worked only part-time and therefore receive only partial AAW benefit in the event of long-term disability. It follows that disabled women with full AAW benefits enjoy higher benefits than women, disabled or not, who receive full AWW benefits because of their status as widows.
3. In cases where women receive full pensions under the AAW (being disabled and having worked full-time previously), if the husband dies, they will be given the AWW pension instead. This may reduce the level of pension which their physical needs as disabled persons require and which the General Disablement Benefits Act had recognized.
4. Article 32 of AAW provides in its subsection 1 (b) that the employment disability benefit will be withdrawn when a woman to whom this benefit has been granted becomes entitled to a widow's pension or a temporary widow's benefit pursuant to the AWW. The State party contends that the legislature had to decide whether claimants who were entitled to benefits under both the AAW and the AWW should receive benefits under the one or the other. This is conceivable, but it is not justifiable that this necessarily should be solved by the introduction of a clause which does not allow for a modicum of flexibility in its implementation. An exception should, in our opinion, be made with regard to women who enjoy full AAW benefits, if such benefits exceed full AWW benefits. By failing to make such an exception the legislature has created a situation in which disabled women with full AAW benefits who become widows can no longer be treated on a par with other disabled women who enjoy full AAW benefits. The case cannot be considered as affecting only Mrs. Vos, but rather an indeterminate group of persons who fall in the category of disabled women entitled to full disability pensions. Moreover, the intention of the legislator to grant maximum protection to those in need would be violated every time the law is applied in the strict formal sense as it has been

applied in Mrs. Vos's case. The increasing number of cases such as this one can be inferred from the assertion made by the State party that it has seen the need to change the legislation since the early 1980s.

5. A differentiation with regard to full AAW benefits among disabled women on the sole ground of marital status as a widow cannot be said to be based on reasonable and objective criteria. It therefore constitutes prohibited discrimination within the meaning of article 26. We note that a review of AAW is under consideration and hope that the discriminatory elements will be eliminated and compensation given to those who have been the victims of unequal treatment.

H. Communication No. 223/1987, Frank Robinson v. Jamaica
(Views adopted on 30 March 1989 at the thirty-fifth
session)

Submitted by: Frank Robinson
Alleged victim: The author
State party concerned: Jamaica
Date of communication: 5 February 1987 (date of initial letter)
Date of decision on admissibility: 2 November 1987

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights:

Meeting on 30 March 1989,

Having concluded its consideration of communication No. 223/1987, submitted to the Committee by Frank Robinson under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication (initial letter dated 5 February 1987; further letter dated 15 July 1987) is Frank Robinson, a Jamaican citizen serving a life sentence in Jamaica. He claims to be a victim of a violation of article 14 of the Covenant by the Government of Jamaica. He is represented by counsel.

2.1 On 31 August 1978, Frank Robinson was arrested and charged, jointly with another man, of having committed murder. The trial was initially fixed for 18 April 1979 but had to be postponed on six occasions because the prosecution had not been able to locate its chief witness. After the witness was found, the trial was fixed for 30 March 1981, but on that date counsel for Mr. Robinson were not present, allegedly because they had not been given full instructions. The trial judge understood this to mean that counsel had not received the funds necessary to finance Mr. Robinson's defence. After Mr. Robinson was arraigned, he was told of his right to challenge jurors, but he did not exercise this right and merely asked to see his counsel. The jury was sworn in and a two-hour adjournment was granted to attempt to contact Mr. Robinson's counsel. At the resumption of the trial, the judge was informed that junior counsel for Mr. Robinson would appear in court the next day. The trial, however, was allowed to proceed. On the following day junior counsel appeared and requested the judge's permission, on behalf of senior counsel and himself, to withdraw from the case. The judge refused this request but invited counsel to appear on legal aid. Counsel refused this offer, left the court and never returned. The judge refused any further adjournment and the trial continued

with Mr. Robinson unrepresented. During the trial, Mr. Robinson called his mother as a witness to support his alibi defence. He called no other witnesses, although it is alleged that there were others in court who could have been called. He did not cross-examine any of the witnesses called for the prosecution and only made a final speech lasting three minutes. On 2 April 1981 (after three days of proceedings), he was convicted of murder and sentenced to death.

2.2 With regard to the issue of the exhaustion of domestic remedies, Mr. Robinson appealed to the Court of Appeal of Jamaica, which dismissed the appeal on 18 March 1983. The Court did not give any reasons. He further appealed to the Judicial Committee of the Privy Council, contending that the trial judge, by refusing an adjournment to enable him to make arrangements for his defence by other counsel, had infringed on his right under section 20, paragraph 6 (c), of the Constitution of Jamaica to "be permitted to defend himself ... by a legal representative of his own choice" and that therefore his conviction should be quashed. In a decision by a three to two majority, the Privy Council dismissed the appeal on the grounds: (a) that he did not enjoy an absolute right to legal representation, but was merely permitted to exercise the right to be legally represented, provided that he himself arranged for his representation; (b) that the judge was not required to grant repeated adjournments, especially considering the present and future availability of witnesses; (c) that he should have applied in advance for legal aid; and (d) that no miscarriage of justice had occurred as a result of the absence of legal counsel, because the judge had put the case very fully and fairly to the jury and, once the veracity of the chief prosecution witnesses had been established under cross-examination by counsel for the co-accused and the alibi defence of the mother had been rejected, the case against the author was overwhelming.

2.3 As a result of representations made to the Governor-General of Jamaica, Mr. Robinson's sentence of death was commuted in mid-1985 and changed to life imprisonment. It is claimed that Mr. Robinson is a victim of a violation of article 14, paragraph 3 (d), of the Covenant, because he was tried without the benefit of legal representation, not only as a result of the withdrawal of his counsel, but because of the judge's refusal to grant an adjournment to allow him to make alternative arrangements for his legal representation. It is also claimed that he is a victim of a violation of article 14, paragraph 3 (e), because, not being properly represented, he was unable effectively to cross-examine witnesses against him or to obtain the attendance of witnesses on his own behalf. In this connection, it is claimed that Mr. Robinson was denied a fair hearing, in violation of article 14, paragraph 1, of the Covenant.

3. By its decision of 19 March 1987, the Working Group of 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.

4.1 In its submission under rule 91, dated 4 June 1987, the State party argues that none of the rights enumerated in article 14 which have been invoked by the author have been violated in his case.

4.2 The State party observes that the Judicial Committee of the Privy Council, when examining the author's appeal in 1985, found that there had been no breach of section 20, paragraph 6 (c), of the Jamaican Constitution, which stipulates that "every person who is charged with a criminal offence shall be permitted to defend himself in person or by a legal representative of his own choice" and which the

State party seen as being coterminous with an individual's right, laid down in article 14, paragraph 3 (d), of the Covenant, "to defend himself in person or through legal assistance of his own choosing". It further recalls that the Privy Council held that the aforementioned constitutional provision did not grant an absolute right to legal representation in the sense that it obliged a judge, "whatever the circumstances, always to grant an adjournment so as to ensure that no one who wishes legal representation is without such representation". Concerning the author's case, the State party reiterates that while it is true that the case was adjourned 19 times, 6 of which were trial dates, these adjournments were largely due to the difficulties of the prosecution in finding its chief witness, who allegedly had been subjected to threats against his life. The trial judge unsuccessfully tried to persuade the two attorneys who had appeared on behalf of the author on all previous occasions to continue to represent the author. The attorneys, however, stated that they had not been "fully instructed", which according to the State party can only be construed as a euphemism to indicate that they had not received their full fees. The one attorney present in court refused an assignment of legal aid from the judge to appear for the author.

4.3 Concerning the author's allegation of a breach of his right, under article 14, paragraph 3 (e), of the Covenant, "to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him", the State party argues that since there was no denial of the right to be represented by counsel, this allegation cannot be upheld. It notes that the author "was given every opportunity to examine and cross-examine witnesses, and was in fact significantly assisted by the judge in the examination of his principal witnesses".

4.4 Finally, the State party rejects the author's contention that he was denied a fair hearing in violation of article 14, paragraph 1:

"... [I]n any event it is clear from the facts, as well as the above-mentioned judgement of the Judicial Committee of the Privy Council, that there was no breach of the right to a fair hearing either under the Jamaican Constitution or the Covenant. In particular, it is to be noted that the Privy Council ... found that the judge had put the applicant's defence to the jury very fairly and fully, and that there was no miscarriage of justice."

5.1 Commenting on the State party's submission under rule 91, the author, in a submission dated 15 July 1987, contends that his allegations with respect to a violation of article 14, paragraphs 1 and 3, are well founded.

5.2 He submits that all the issues raised by the State party were comprehensively dealt with in his initial communication, and that the State party's reference to the numerous adjournments granted in the case merely confirm that the latter were meant to accommodate the prosecution. The facts, therefore, confirm his contention that he was denied equality of arms guaranteed by article 14, paragraph 3 (e). The author submitted a copy of a recent judgment of the English Court of Appeal which is said to support his contention, and in which the Court of Appeal held that if it was clear that it would be impossible for a litigant to obtain justice, an adjournment order should be made, even if it was highly inconvenient to do so.

5.3 The author also rejects the State party's contention that the trial judge put the author's defence to the jury "very fairly and fully": while the judge could give some guidance and assistance to the author, he was not in a position, as an

impartial and independent arbiter, to represent the author in the same way as a defence counsel could have done. Finally, the author contends that the commutation of his death sentence into one of life imprisonment does not constitute an appropriate remedy in the circumstances of his case, as the State party has asserted.

6.1 Before considering any claims 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 noted that the State party did not claim that the communication was inadmissible under article 5, paragraph 2, of the Optional Protocol. With regard to article 5, paragraph 2 (a), the Committee observed that the matter complained of by Mr. Robinson had not been submitted to another procedure of international investigation or settlement. With regard to article 5, paragraph 2 (b), the State party did not contest the author's claim that there were no effective remedies which he could still pursue.

6.3 With regard to the parties' submissions concerning alleged violations of article 14, paragraphs 1, 3 (d) and 3 (e), the Committee decided to examine these issues with the merits of the case.

7. On 2 November 1987, the Human Rights Committee therefore decided that the communication was admissible.

8. In its submission under article 4, paragraph 2, of the Optional Protocol, dated 17 November 1988, the State party reiterates, as it had done in its submission of 4 June 1987, that it does not consider any of the rights invoked by the author to have been violated by the Jamaican courts. It further draws attention to the fact that the Governor-General exercised his prerogative of mercy in Mr. Robinson's case and commuted the death sentence to one of life imprisonment.

9. The Committee has ascertained that the judgement of the Judicial Committee of the Privy Council made no finding with regard to a breach of the Covenant by the Jamaican Government, confining itself to findings concerning the Jamaican Constitution.

10.1 The Human Rights Committee, having considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts, which appear uncontested.

10.2 Frank Robinson was arrested on 31 August 1978 and charged with murder. His trial, initially scheduled to start on 18 April 1979, had to be postponed on this and on six subsequent occasions; this was attributable to the fact that the prosecution had not been able to establish the place of residence and to subpoena its chief witness, allegedly because the latter had been subjected to threats against his life. When this witness was finally located and the trial began, neither of the author's two lawyers was present in court. The judge, however, allowed the trial to proceed. On the following day, one of the defence lawyers made a brief appearance only to request the judge's permission, on behalf of senior counsel and himself, to withdraw from the case. The judge refused this request and invited counsel to appear on legal aid. Counsel, however, refused this offer, and the judge ordered the trial to proceed with the author unrepresented. Mr. Robinson

was left to defend himself, and on 2 April 1981 was convicted and sentenced to death. On 18 March 1983, the Jamaican Court of Appeal rejected his appeal without a written judgement, and in 1985 the Judicial Committee of the Privy Council dismissed his further appeal by a 3 to 2 majority decision. In June 1985, the Governor-General of Jamaica exercised his prerogative of mercy and commuted the author's death sentence to life imprisonment.

10.3 The main question before the Committee is whether a State party is under an obligation itself to make provision for effective representation by counsel in a case concerning a capital offence, should the counsel selected by the author for whatever reason decline to appear. The Committee, noting that article 14, paragraph 3 (d) stipulates that everyone shall have "legal assistance assigned to him, in any case where the interests of justice so require", believes that it is axiomatic that legal assistance be available in capital cases. This is so even if the unavailability of private counsel is to some degree attributable to the author himself, and even if the provision of legal assistance would entail an adjournment of proceedings. This requirement is not rendered unnecessary by efforts that might otherwise be made by the trial judge to assist the author in handling his defence in the absence of counsel. In the view of the Committee, the absence of counsel constituted unfair trial.

10.4 The refusal of the trial judge to order an adjournment to allow the author to have legal representation, when several adjournments had already been ordered when the prosecution's witnesses were unavailable or unready, raises issues of fairness and equality before the courts. The Committee is of the view that there has been a violation of article 14, paragraph 1, due to inequality of arms between the parties.

10.5 The Committee, basing itself on the information provided by the parties concerning the author's entitlement to examine witnesses, finds that there has been no violation of article 14, paragraph 3 (e).

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as submitted reveal a violation of article 14, paragraphs 1 and 3 (d), of the Covenant.

12. The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy the violations suffered by the author, through his release, and to ensure that similar violations do not occur in the future.

I. Communication No. 238/1987, Floresmilo Bolaños v. Ecuador
(Views adopted on 26 July 1989 at the thirty-sixth session)

Submitted by: Floresmilo Bolaños
Alleged victim: The author
State party concerned: Ecuador
Date of communication: 13 July 1987
Date of decision on admissibility: 7 April 1988

The Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 26 July 1989,

Having concluded its consideration of communication No. 238/1987, submitted to the Committee by Mr. Floresmilo Bolaños under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol*

1. The author of the communication (initial letter dated 13 July 1987 and further letters of 2 February, 14 March and 22 September 1988) is Floresmilo Bolaños, an Ecuadorian citizen who claims to be a victim of violations of articles 3, 9 and 14 of the International Covenant on Civil and Political Rights by Ecuador.

2.1 He states that he has been detained since November 1982 without bail at the Centro de Detención Provisional in Quito in connection with the investigation of the murder of Mr. Iván Egas, whose body was found on 11 September 1982 in the lions' cage at the zoological garden of the Military Academy where the author had been employed. He claims to be innocent of the crime and that he was arrested without any evidence against him. It is suggested that Iván Egas had been the lover of a colonel's wife, that the colonel had him killed and that the body was subsequently taken by other persons into the lions' cage. He further alleges that his right to be tried within a reasonable time has been violated, in particular, that while Ecuadorian law provides that detention before indictment should not exceed 60 days, he was detained for over five years prior to being indicted in December 1987. The delay in the proceedings is allegedly attributable to the

* Pursuant to rule 85 of the rules of procedure Mr. Julio Prado Vallejo did not participate in the consideration of this communication or in the adoption of the views of the Committee under article 5, paragraph 4, of the Optional Protocol.

involvement of military personnel, who are using the author as a scapegoat to cover the colonel's crime. The author furthermore complains that whereas he has been continuously kept under detention, the other persons accused have been at liberty pending trial.

2.2 With respect of the exhaustion of domestic remedies, the author states that the pre-trial investigation was completed only in December 1987, when the President of the High Court of Justice in Quito indicted him and six other persons. The author appealed without success against the decision of the High Court to indict him as an accomplice.

3. By its decision of 19 October 1987, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the Committee's rules of procedure to the State party, requesting information and observations relevant to the question of the admissibility of the communication.

4.1 The Committee took note of the observations of the State party, dated 2 February 1988, that proceedings against the author were under way in the High Court of Justice in Quito, and of the author's comments thereon, dated 14 March 1988, that, because of the alleged involvement of military figures in the case, proceedings before the High Court had been unreasonably prolonged and that he had already been detained for five years and six months.

4.2 The Committee ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement. With regard to article 5, paragraph 2 (b), of the Optional Protocol, concerning the exhaustion of domestic remedies, the Committee noted that the judicial proceedings against Mr. Bolaños had been unreasonably prolonged and that the State party had not indicated that there were effective remedies against such prolongation. In the circumstances, the Committee found that it was not precluded from considering the communication.

5. On 7 April 1988, the Human Rights Committee decided that the communication was admissible.

6.1 By note of 29 July 1988, the State party indicates that on 24 June 1988 a hearing was held at the Superior Court in Quito concerning the murder of Iván Egas. The State party does not provide any explanations or statements concerning the specific violations of the Covenant alleged to have occurred.

6.2 In a letter dated 22 September 1988 the author reiterates his innocence, observing that he has been arbitrarily detained for six years and that no judgement has yet been issued, or is expected in the near future, in his case.

7. The Human Rights Committee has considered the present communication in the light of all written information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. In adopting its views, the Committee stresses that it is not making any finding on the guilt or innocence of Mr. Bolaños but solely on the question whether any of his rights under the Covenant have been violated.

8.1 The author of the communication claims that there have been breaches of articles 3, 9 and 14 of the Covenant. In formulating its views the Committee takes

into account the failure of the State party to furnish certain information and clarifications, in particular with regard to the reasons for Mr. Bolaños' detention without bail and for the delays in the proceedings, and with regard to the allegations of unequal treatment of which the author has complained. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its authorities, and to furnish to the Committee all relevant information. In the circumstances, due weight must be given to the author's allegations.

8.2 With respect to the author's allegations concerning a violation of article 3 of the Covenant, it is not clear in what particular respect that article has been invoked and the Committee is unable to make a finding in this regard.

8.3 With respect to the prohibition of arbitrary arrest or detention contained in article 9 of the Covenant, the Committee observes that although the State party has indicated that the author was suspected of involvement in the murder of Iván Egas, it has not explained why it was deemed necessary to keep him under detention for five years prior to his indictment in December 1987. In this connection the Committee notes that article 9, paragraph 3, of the Covenant provides that anyone arrested on a criminal charge "shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial ...". The Committee further observes that article 9, paragraph 5, of the Covenant provides that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".

8.4 With respect to the requirement of a fair hearing within the meaning of article 14, paragraph 1, of the Covenant, the Committee notes that the concept of a fair hearing necessarily entails that justice be rendered without undue delay, and refers in this connection to its prior case law (Muñoz v. Peru, communication No. 203/1986, views adopted on 4 November 1988, para. 11.2). Furthermore, the Committee notes that article 14, paragraph 3 (c), guarantees the right to be tried without undue delay, and concludes that, on the basis of the information before it, the delays encountered by the author in the determination of the charges against him are incompatible with the aforementioned provision.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts of this case disclose violations of article 9, paragraphs 1 and 3, because Mr. Floresmilo Bolaños was deprived of liberty contrary to the laws of Ecuador and not tried within a reasonable time, and of article 14, paragraphs 1 and 3 (c), of the Covenant, because he was denied a fair hearing without undue delay.

10. The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations suffered by Mr. Floresmilo Bolaños, to release him pending the outcome of the criminal proceedings against him, and to grant him compensation pursuant to article 9, paragraph 5, of the Covenant.

J. Communication No. 265/1987, Antti Vuolanne v. Finland
(Views adopted on 7 April 1989 at the thirty-fifth
session)

Submitted by: Antti Vuolanne (represented by counsel)
Alleged victim: The author
State party concerned: Finland
Date of communication: 31 October 1987
Date of decision on admissibility: 8 July 1988

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 7 April 1989,

Having concluded its consideration of communication No. 265/1987, submitted to the Committee by Mr. Antti Vuolanne under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication (initial letter dated 31 October 1987; further submission dated 25 February 1989) is Antti Vuolanne, a Finnish citizen, 21 years of age, resident in of Pori, Finland. He claims to be the victim of a violation by the Government of Finland of articles 2, paragraphs 1 to 3, 7 and 9, paragraph 4, of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author states that he started his military service on 9 June 1987. Service duty allegeuly caused him severe mental stress and, upon his return from a military hospital early in July 1987, he realized that he could not continue with his service as an infantryman. Unable to discuss the situation with the head of his unit, he decided, on 3 July, to leave his garrison without permission. He alleges to have been greatly preoccupied by the fate of his brother who, about a year earlier, had committed suicide in a similar situation. The author's weekend off duty would have begun on 4 July at noon, ending on 5 July at midnight. On 5 July, he returned to the military hospital and asked to speak with a doctor, but was advised to return to his company. where he registered and left again without permission. Upon advice of an army chaplain he returned to his unit on 7 July, where he spoke to a doctor and was taken to the military hospital. Later on, he sought and obtained a transfer to unarmed service inside the military.

2.2 On 14 July, in a disciplinary procedure, he was sanctioned with 10 days of close arrest, i.e. confinement in the guardhouse without service duties. He claims

that he was not heard at all, and that the punishment was immediately enforced. At this stage he was not told that he could have availed himself of a remedy. In the guardhouse, he learned that the Law on Military Disciplinary Procedure provided for the possibility to have the punishment reviewed by a higher military officer through a so-called "request for review". This request was filed on the same day (although the author states that it was documented to have been made a day later, on 15 July) and based on the argument that the punishment was unreasonably severe, taking into account that the author was punished for departing without permission for more than four days, despite the fact that 36 hours overlapped with his weekend off duty, that his brief return to the garrison was considered as an aggravating circumstance and that the motive for his decision to depart was not taken into consideration.

2.3 The author states that after his written request to the supervising military officer the punishment was upheld by decision of 17 July 1987 without a hearing. According to the author, Finnish law provides no other domestic remedies, because section 34 of the Law on Military Disciplinary Procedure specifically prohibits an appeal against the decision of the supervising military officer.

2.4 The author furnishes a detailed account of the military disciplinary procedure under Finnish law, which is governed by chapter 45 of the Criminal Code of 1983. Punishment for absence without leave is either of a disciplinary nature or may entail imprisonment of up to six months. Military confinement (close arrest) is the most severe type of disciplinary punishment. The maximum length of arrest imposable in a disciplinary procedure is 15 days and nights. Only the head of a unit or a higher officer has the authority to impose the punishment of close arrest, and only a commander of a body of troops can impose arrest for more than 10 days and nights.

2.5 If an arrest is imposed by disciplinary procedure, there is no possibility of appeal outside the military. The prohibition of appeal in section 34, paragraph 1, of the above-mentioned law covers both civil courts (the Supreme Court in the last instance) and administrative courts (the Supreme Administrative Court in the last instance). Thus, the lawfulness of the punishment cannot be reviewed by a court or any other judicial body. The only remedy available is the request for review made to a superior military officer. It is claimed that complaints either to a still higher military authority or to the Parliamentary Ombudsman do not constitute effective remedies in the case at issue, because the Ombudsman has no power to order the release of a person whose arrest is being enforced, even if a complaint reached him in time and if he considered the detention to be unlawful.

2.6 Concerning his military confinement, the author considers it "evident that Finnish military confinement in the form of close arrest imposed in a disciplinary procedure is a deprivation of liberty covered by the concepts 'arrest or detention' in article 9, paragraph 4, of the Covenant". He states that his punishment was enforced in two parts, during which he was locked in a cell of 2 x 3 metres with a tiny window, furnished only with a camp bed, a small table, a chair and a dim electric light. He was only allowed out of his cell for purposes of eating, going to the toilet and to take fresh air for half an hour daily. He was prohibited from talking to other detained persons and from making any noise in his cell. He claims that the isolation was almost total. He also states that in order to lessen his distress, he wrote personal notes about his relations with persons close to him, and that these notes were taken away from him one night by the guards, who read them to each other. Only after he asked for a meeting with various officials were his papers returned to him.

2.7 Finally, the author considers that the 10 days of close confinement constituted an unreasonably severe punishment in relation to the offence. In particular, he objects to the fact that no relevance was attached to the motives of his temporary absence, although, as he claims, the Finnish Criminal Code provides for the consideration of special circumstances. In his opinion, the availability of an appeal to a court or other independent body would have had a real effect, since there would have been a possibility to have the punishment reduced.

3. By its decision of 15 March 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the provisional rules of procedure, to provide information and observations relevant to the question of admissibility.

4. In its submission under rule 91, dated 28 June 1988, the State party did not raise any objections to the admissibility of the communication and stated, in particular, that the author had exhausted all domestic remedies available to him by filing his request for review (*tarkastuspyyntö*) pursuant to the Act on Military Discipline. Under section 34, paragraph 1, of the Act, decisions made pursuant to such a request are not appealable.

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant. In this connection the Committee noted that the State party did not object to the admissibility of the communication.

5.2 On 18 July 1988, the Committee decided that the communication was admissible. In accordance with article 4, paragraph 2, of the Optional Protocol the State party was requested to submit to the Committee, within six months of the date of transmittal to it of the decision on admissibility, written explanations or statements clarifying the matter and the measures that may have been taken by it.

6.1 In its submission under article 4, paragraph 2, of the Optional Protocol, the State party first elucidates the relevant legislation as follows:

"Provisions on the military disciplinary procedure followed in the Finnish Defence Forces are contained in the Law on Military Disciplinary Procedure (331/83), adopted on 25 March 1983, and in the relevant ordinance (969/83), adopted on 16 December 1983, both in force as of 1 January 1984. The above laws contain detailed provisions on disciplinary sanctions in military disciplinary procedure, on disciplinary competence, on the processing of a disciplinary matter, and on the appellate procedure.

"The most severe sanction in a military disciplinary procedure is close arrest, to be put into effect in the guardhouse or other place of solitary confinement, usually without service duty. Close arrest may be imposed by a head of unit for a maximum of 5 days and nights, by a commander of unit for a maximum of 10 days and nights, and by a commander of a body of troops for a maximum of 15 days and nights. Prior to imposing a disciplinary punishment, the superior military officer responsible must submit his decision to the military legal adviser for a statement.

"The victim may submit, within three days, a 'request for review' concerning the decision on the disciplinary sanction. A request which

concerns the decision of a head of a unit or commander of a unit may be submitted to a commander of a body of troops, and one that concerns the decision made by a commander of a body of troops may be appealed upon to the commander of the military county or a superior disciplinary officer. If the request for review is processed by a disciplinary officer superior to a commander, the matter must be presented by a legal adviser.

"Close confinement can be put into effect only after the period for submitting an appeal has expired, or after the request submitted has been considered, unless the person concerned has agreed to immediate enforcement in a written declaration or in case the commander of a body of troops has ordered the close arrest to be enforced immediately because he finds it absolutely necessary in order to maintain discipline, order and security amongst the troops."

6.2 With regard to the factual background of the case, the State party submits that:

"Mr. Vuolanne was heard in preliminary investigations on 8 July 1987 concerning his absence from his unit from 3 to 7 July 1987. The military legal adviser of the military county of south-western Finland submitted his written statement to the superior disciplinary officer on 10 July 1987. The decision of the commander of the unit was made on 13 July 1987, stating that Mr. Vuolanne had been found guilty of continued absence without leave (Criminal Code 45:4.1 and 7:2) and sanctioning him with 10 days and nights of close confinement.

"Mr. Vuolanne was informed of the decision on 14 July 1987. When signing the acknowledgement of receipt, he had in the same connection indicated in writing that he agreed to an immediate enforcement of the punishment. Consequently, the close arrest was put into effect on the very same day, 14 July 1987. As Mr. Vuolanne was informed of the decision, he also received a copy of it, carrying clear and unambiguous instructions on how the decision could be appealed against by submitting a request for review. The request submitted by Mr. Vuolanne on 15 July 1987 was considered by the commander of the body of troops without delay, and he decided that there was no need to change the disciplinary sanction imposed.

"In their basic training all conscripts receive information on legal remedies relating to the disciplinary procedure, including the request for review. Relevant information is also contained in a book distributed to all conscripts at the end of the basic training period."

6.3 With regard to the applicability of article 9, paragraph 4, of the Covenant to the facts of this case, the State party submits:

"It is not open for somebody detained on the basis of military disciplinary procedure, as outlined above, to take proceedings in a court. The only relief is granted by the system of request for review. In other words, it has been the view of Finnish authorities that article 9, paragraph 4, of the Covenant on Civil and Political Rights does not apply to detention in military procedure ...

"In its General Comment 8 (16) of 27 July 1982, regarding article 9, the Committee had occasion to single out what types of detention were covered by article 9, paragraph 4. It listed detentions on grounds such as 'mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.'. Significantly, the Committee omitted deprivation of liberty in military disciplinary procedure from this list. What is common to the forms of detention listed by the Committee is that they involve the possibility of prolonged, unlimited detention. Also in most cases these forms of detention are not strictly regulated but the manner of detention is made dependent on its purpose (cure of illness, for example) and engages a wide degree of discretion on the part of the detaining authority. However, this is in striking contrast with the process of detention in military disciplinary procedure, where the grounds for detention, the length of detention and the manner of conducting the detention are clearly laid down in military law. In the event that the military authorities overstep the boundaries set by the law, the normal ways of judicial appeal are open. In other words, it might be that the Committee did not include military disciplinary process in its list of different kinds of 'detention' because it realized the material difference between it and those other forms of detention from the point of view of an individual's need of protection.

"It is clearly the case that an official - a commander - is acting in a judicial or at least quasi-judicial capacity as he, under military disciplinary procedure, orders detention. Likewise, the consideration of a request for review is comparable to judicial scrutiny of an appeal. As explained, the conditions and manner of carrying out military disciplinary detention are clearly set down by law. The discretion they imply is significantly less than discretion in some of the cases listed by the Committee. In this respect, too, the need for judicial control, if not strictly superfluous, is significantly less in military disciplinary procedure than in detention on, say, grounds of mental illness."

Notwithstanding these considerations concerning the non-applicability of article 9, paragraph 4, to Mr. Vuolanne's case, the State party notes that preparations are under way for amending the Law on Military Disciplinary procedure so as to allow recourse to a court for detention in such procedure.

6.4 With regard to the author's allegations concerning a violation of article 7 of the Covenant, the State party notes:

"Mr. Vuolanne claims that his treatment was degrading because it was 'unreasonably severe in relation to the offence'. He contends that the commanding officer did not take adequately into account Finnish laws concerning mitigating circumstances and the measurement of sentences. However, this is not a matter on which the Committee is competent to pronounce, as it has itself acknowledged, namely that it is not a 'fourth instance' entitled to review the conformity of the acts or decisions by national authorities with national law. The State party further observes that 10 days' arrest in close confinement does not per se constitute the sort of punishment prohibited by article 7; it does not amount to 'cruel, inhuman or degrading treatment or punishment'.

"It is generally held that the terms 'torture', 'inhuman treatment' and 'degrading treatment' in article 7 imply a sliding scale from the most serious

violations ('torture') to the least serious - but nevertheless serious - ones ('degrading treatment'). What constitutes 'degrading treatment' (or 'degrading punishment') is nowhere clearly defined. In practice, cases which have been deemed to constitute 'degrading treatment' have usually involved some sort of corporal punishment. Mr. Vuolanne does not claim that he was subjected to such punishment ... The question still remains whether Mr. Vuolanne's confinement can be interpreted as the kind of incommunicado detention which, as implied in General Comment 7 (16) by the Committee, amounts to a violation of article 7. The matter, as the Committee saw it, was to be determined on the basis of contextual appraisal. In the present case, the relevant contextual criteria go clearly against holding the detention of Mr. Vuolanne as 'degrading treatment or punishment'. In the first place, the detention of Mr. Vuolanne lasted only a relatively short period (10 days and nights) and even that was divided into a period of 8 and a further separate period of 2 days. Secondly, his confinement was not total. He was taken out for meals and for a short exercise daily - though he was not allowed to communicate with other detainees. Thirdly, there was no official hindrance to his correspondence; the fact that the guards on duty may have violated their duties by reading his letters does not involve a violation by the Government of Finland. Of course, it would have been open to Mr. Vuolanne to complain of his treatment by his guards. He appears to have made no formal complaint. In short, the context of Mr. Vuolanne's detention cannot be regarded as amounting to 'degrading treatment' (or 'degrading punishment') within the meaning of article 7 of the Covenant."

7.1 In his comments, dated 25 February 1989, author's counsel submits, *inter alia*, that if the Committee considers the evidence presented by Mr. Vuolanne insufficient for finding a violation under article 7, article 10 might become relevant. He further contends that the State party is incorrect in implying that the behaviour of Mr. Vuolanne's guards would not come within its responsibility. He points out that the guards were "persons acting in an official capacity" within the meaning of article 2, paragraph 3 (a), of the Covenant. He further argues:

"It is true that Mr. Vuolanne could have instituted a civil charge against the guards in question. In the communication their behaviour is not, however, presented as a separate violation of the Covenant, but only as part of the evidence showing the enforcement of military arrest to be humiliating or degrading. Also the State party seems to have accepted this line of argument: had the Government regarded the behaviour of Mr. Vuolanne's guards as something exceptional, it would surely have presented in its submission information on some kind of an inquiry into the concrete facts of the case. However, no measures concerning the behaviour of Mr. Vuolanne's guards have been taken."

7.2 With respect to article 9, paragraph 4, the author comments on the State party's reference to the Committee's General Comment No. 8 (16) on article 9, and notes that the State party does not mention that, according to the General Comment, article 9, paragraph 4, "applies to all persons deprived of their liberty by arrest or detention". He further submits:

"Military confinement is a punishment that can be ordered either by a court or in military disciplinary procedure. The duration of the punishment is comparable to the shortest prison sentences under normal criminal law (14 days is the Finnish minimum) and exceeds the length of pre-trial detention

acceptable in the light of the Covenant. This shows that there is no substantial difference between these forms of detention from the point of view of an individual's need of protection. It is true that the last sentence of paragraph 1 of the Committee's General Comment in question is somewhat ambiguous. This might be the basis for the State party's opinion that military confinement is not covered by article 9, paragraph 4. However, article 2, paragraph 3, would remain applicable even in this case."

The author then offers the following comments in order to show that the Finnish military disciplinary procedure does not correspond to the requirements of article 2, paragraph 3, either:

"(a) According to the State party, 'the normal ways of judicial appeal are open in case the military authorities overstep the boundaries set by the law'. This statement is misleading. There is no way a person punished with military confinement can bring the legality of the punishment before a court. What can in principle be challenged is the behaviour of the military authorities in question. This would mean instituting a civil charge in court, not any kind of an 'appeal'. This kind of a procedure is in no way 'normal' and even if the procedure were instituted, the court could not order the release of the victim;

"(b) Also some other statements are misleading. An official ordering detention and another officer considering the request for review are not acting in a 'judicial or at least quasi-judicial capacity'. The officers have no legal education. The procedure lacks even the most elementary requirements of a judicial process: the applicant is not heard and the final decision is made by a person who is not independent, but has been consulted already before ordering the punishment. It is also stated that Mr. Vuolanne, when informed of the decision to punish him with close confinement, indicated in writing that he agreed to an immediate enforcement of the punishment. This statement is somewhat misleading, because Mr. Vuolanne only signed the acknowledgement of receipt on a blank form. It is true that on this blank form there is a part printed with small letters, where one accepts the immediate enforcement by signing the acknowledgement itself."

7.3 With respect to the proposed amendment to the law (see para. 6.3 above), Mr. Vuolanne notes that a proposed model would possibly remedy the situation in relation to article 9, paragraph 4, but not in relation to article 7. He submits that the only proposal acceptable in this respect would be to amend the Law on Military Disciplinary Procedure so that only a part of the punishment would be enforced as close confinement and the rest as light arrest (e.g. with service duties).

8. The Human Rights Committee has considered the present communication in the light of all written information made available to it by the parties as provided in article 5, paragraph 1, of the Optional Protocol. The facts of the case are not in dispute.

9.1 The author of the communication claims that there have been breaches of article 2, paragraphs 1 and 3, article 7, article 9, paragraph 4, and article 10 of the Covenant.

9.2 The Committee recalls that article 7 prohibits torture and cruel or other inhuman or degrading treatment. It observes that the assessment of what constitutes inhuman or degrading treatment falling within the meaning of article 7 depends on all the circumstances of the case, such as the duration and manner of the treatment, its physical or mental effects as well as the sex, age and state of health of the victim. A thorough examination of the present communication has not disclosed any facts in support of the author's allegations that he is a victim of a violation of his rights set forth in article 7. In no case was severe pain or suffering, whether physical or mental, inflicted upon Antti Vuolanne by or at the instigation of a public official; nor does it appear that the solitary confinement to which the author was subjected, having regard to its strictness, duration and the end pursued, produced any adverse physical or mental effects on him. Furthermore, it has not been established that Mr. Vuolanne suffered any humiliation or that his dignity was interfered with apart from the embarrassment inherent in the disciplinary measure to which he was subjected. In this connection, the Committee expresses the view that for punishment to be degrading, the humiliation or debasement involved must exceed a particular level and must, in any event, entail other elements beyond the mere fact of deprivation of liberty. Furthermore, the Committee finds that the facts before it do not substantiate the allegation that during his detention Mr. Vuolanne was treated without humanity or without respect for the inherent dignity of the person, as required under article 10, paragraph 1, of the Covenant.

9.3 The Committee has noted the contention of the State party that the case of Mr. Vuolanne does not fall within the ambit of article 9, paragraph 4, of the Covenant. The Committee considers that this question must be answered by reference to the express terms of the Covenant as well as its purpose. It observes that as a general proposition, the Covenant does not contain any provision exempting from its application certain categories of persons. According to article 2, paragraph 1, "each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The all-encompassing character of the terms of this article leaves no room for distinguishing between different categories of persons, such as civilians and members of the military, to the extent of holding the Covenant to be applicable in one case but not in the other. Furthermore, the travaux préparatoires as well as the Committee's general comments indicate that the purpose of the Covenant was to proclaim and define certain human rights for all and to guarantee their enjoyment. It is, therefore, clear that the Covenant is not, and should not be conceived of in terms of whose rights shall be protected but in terms of what rights shall be guaranteed and to what extent. As a consequence the application of article 9, paragraph 4, cannot be excluded in the present case.

9.4 The Committee acknowledges that it is normal for individuals performing military service to be subjected to restrictions in their freedom of movement. It is self-evident that this does not fall within the purview of article 9, paragraph 4. Furthermore, the Committee agrees that a disciplinary penalty or measure which would be deemed a deprivation of liberty by detention, were it to be applied to a civilian, may not be termed such when imposed upon a serviceman. Nevertheless, such penalty or measure may fall within the scope of application of article 9, paragraph 4, if it takes the form of restrictions that are imposed over and above the exigencies of normal military service and deviate from the normal

conditions of life within the armed forces of the State party concerned. In order to establish whether this is so, account should be taken of a whole range of factors such as the nature, duration, effects and manner of the execution of the penalty or measure in question.

9.5 In the implementation of the disciplinary measure imposed on him, Mr. Vuolanne was excluded from performing his normal duties and had to spend day and night for a period of 10 days in a cell measuring 2 x 3 metres. He was allowed out of his cell solely for purposes of eating, going to the toilet and taking air for half an hour every day. He was prohibited from talking to other detainees and from making any noise in his cell. His correspondence and personal notes were interfered with. He served a sentence in the same way as a prisoner would. The sentence imposed on the author is of a significant length, approaching that of the shortest prison sentence that may be imposed under Finnish criminal law. In the light of the circumstances, the Committee is of the view that this sort of solitary confinement in a cell for 10 days and nights is in itself outside the usual service and exceeds the normal restrictions that military life entails. The specific disciplinary punishment led to a degree of social isolation normally associated with arrest and detention within the meaning of article 9, paragraph 4. It must, therefore, be considered a deprivation of liberty by detention in the sense of article 9, paragraph 4. In this connection, the Committee recalls its General Comment No. 8 (16) according to which most of the provisions of article 9 apply to all deprivations of liberty, whether in criminal cases or in other cases of detention as, for example, for mental illness, vagrancy, drug addiction, educational purposes and immigration control. The Committee cannot accept the State party's contention that because military disciplinary detention is firmly regulated by law, it does not necessitate the legal and procedural safeguards stipulated in article 9, paragraph 4.

9.6 The Committee further notes that whenever a decision depriving a person of his liberty is taken by an administrative body or authority, there is no doubt that article 9, paragraph 4, obliges the State party concerned to make available to the person detained the right of recourse to a court of law. In this particular case it matters not whether the court would be civilian or military. The Committee does not accept the contention of the State party that the request for review before a superior military officer according to the Law on Military Disciplinary Procedure currently in effect in Finland is comparable to judicial scrutiny of an appeal and that the officials ordering detention act in a judicial or quasi-judicial manner. The procedure followed in the case of Mr. Vuolanne did not have a judicial character, and the supervisory military officer who upheld the decision of 17 July 1987 against Mr. Vuolanne cannot be deemed to be a "court" within the meaning of article 9, paragraph 4; therefore, the obligations laid down therein have not been complied with by the authorities of the State party.

9.7 The Committee observes that article 2, paragraph 1, represents a general undertaking by States parties in relation to which a specific finding concerning the author of this communication has been made in respect to the obligation in article 9, paragraph 4. Accordingly, no separate determination is required under article 2, paragraph 1.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the communication discloses a violation of article 9, paragraph 4, of the Covenant, because Mr. Vuolanne was unable to challenge his detention before a court.

11. The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy, in accordance with article 2, paragraph 3 (a), the violation suffered by Mr. Vuolanne and to take steps to ensure that similar violations do not occur in the future.

ANNEX XI

Decisions of the Human Rights Committee declaring communications inadmissible under the Optional Protocol to the International Covenant on Civil and Political Rights

A. Communication No. 164/1984, G. F. Croes v. The Netherlands (Decision of 7 November 1988, adopted at the thirty-fourth session)

Submitted by: Gilberto François Croes, deceased, and his heirs

Alleged victim: G. F. Croes

State party concerned: The Netherlands

Date of communication: 11 January 1984 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights:

Meeting on 7 November 1988,

Setting aside, pursuant to rule 93, paragraph 4, of its provisional rules of procedure, an earlier decision on admissibility, dated 25 October 1985,

Adopts the following:

Revised decision on admissibility

1. The author of the communication (initial letter dated 11 January 1984 and further letters dated 18 May, 8 June and 27 September 1984) is the late Gilberto François Croes, a native of the island of Aruba. Mr. Croes was the leader of the People's Electoral Movement (Movemento Electoral di Pueblo, MEP) of Aruba. When Aruba achieved the status of a self-governing country within the Kingdom of the Netherlands, on 1 January 1986, the author was elected a member of the Parliament of Aruba. On 26 November 1986, as a result of an automobile accident, the author passed away. By letter of 29 June 1988 his heirs requested the Committee to continue examination of the case. They are represented by counsel.

2.1 It is stated that the author founded the MEP in 1971 and that the party has been proposing Aruba's independence since 1972. Because of his political activity he was allegedly subjected to harassment, accusations of being radical and revolutionary as well as to physical threats and attacks by various political opponents; he deposited complaints with the prosecuting authorities for slander and other offences, but it is claimed that he was denied reasonable satisfaction and that the authorities have condoned these violations.

2.2 In connection with the preparation for the elections of the Island Parliament in April 1983, the MEP, which reportedly had been the majority party through six elections (in the November 1985 elections, the MEP lost its majority), was denied permission to hold a parade, apparently on the ground that the relevant request

submitted by the MEP had disappeared. The author was allegedly led to believe by police authorities that no obstacle would be laid if he were to hold the parade, but, on 24 April 1983, an order was given by the police authorities to break up the MEP parade and a policeman shot the author in the chest two inches below the heart. He was operated on and subsequently flown to a hospital in Miami, United States, where he underwent a second operation. It is further alleged that the policeman who did the shooting has not been prosecuted, although the author requested his prosecution on 11 June 1983 and again on 16 November 1983 in a complaint to the Judge of First Instance in Aruba. After the judge rejected prosecution on 22 December 1983, the author directed a request to the Supreme Court of the Netherlands Antilles, which, on 24 February 1984, declared the author's request inadmissible. It is thus claimed that domestic remedies have been exhausted with respect to this allegation, and that "the duration of the investigation itself had taken much too long, unreasonably long in the terminology of the Optional Protocol".

2.3 The author alleged, particularly, that his right to life, his right to being treated equally and his right to see others treated equally under the laws of the Netherlands Antilles was violated by the authorities of the Netherlands Antilles and of the Netherlands. He further alleged that the right to self-determination of the Aruban people was threatened with gross violation by the authorities concerned.

3. In response to a request for further information, the author, in a letter dated 27 September 1984, stated that the alleged attempt on his life "was the result of a conspiracy, inspired to kill me as a leader of the Aruba independence movement", and gave details on another shooting incident and on an alleged raid on his parents' home in August 1977.

4. By its decision of 26 October 1984 the Human Rights Committee transmitted the communication under rule 91 of the Committee's provisional rules of procedure to the State party, requesting information and observations relevant to the question of the admissibility of the communication.

5.1 In its submission dated 28 May 1985, the State party presented the facts as follows:

"The complainant, Mr. Gilberto François Croes, is the leader of a political party on the island of Aruba. Aruba is one of the islands which together constitute the Netherlands Antilles. The Netherlands Antilles is a part of the Kingdom of the Netherlands, consisting of two self-governing countries, the Netherlands and the Netherlands Antilles.

"The political party of which Mr. Croes is the leader strives for an independent status of Aruba.

"On 24 April 1983, during disturbances surrounding a car parade on the island of Aruba, held by Mr. Croes' political party without the required permission from the authorities, Mr. Croes was wounded by a pistol shot. He alleged that the shot was deliberately fired by a policeman.

"On 26 May 1983, the Minister of Justice of the Netherlands Antilles appointed a Committee of Inquiry to investigate the actions and conduct of the police during the events that took place on 24 April. This investigation was

concluded on 8 July 1983. The Committee of Inquiry concluded that the police forces serving that day had shown sufficient self-restraint and self-discipline.

"The Committee of Inquiry purposely did not go into the question whether the shot that wounded Mr. Croes was in fact fired by a policeman, and if so, whether the policeman could be held guilty of this fact, in view of the forthcoming investigations by the prosecuting authorities into these questions.

"The prosecuting authorities in their investigations came to the conclusion that there was no proof of premeditated or deliberate or intentional firing on the part of [the policeman], and moreover that there was even no proof of guilt on the part of [the policeman] that his gun fired the shot which hit Mr. Croes. For this reason the case against [the policeman] was dropped.

"On 16 November 1983, Mr. Croes filed a request with the court in first instance, requesting the prosecution of [the policeman]. The court, in a decision dated 12 December 1983, supported the Public Prosecutor's Decision not to prosecute [the policeman], and rejected the request of Mr. Croes.

"Mr. Croes then, on 12 January 1984, filed a complaint with the Court of Justice of the Netherlands Antilles, which was rejected on grounds of form."

5.2 With regard to the rights invoked by the author, the State party addresses itself to alleged violations of the following rights:

"(a) 'His right to life',

"(b) 'His right to being treated equally',

"(c) 'His right to see others treated equally',

"(d) 'The right to self-determination of the Aruban people',

"(e) Furthermore a complaint in a letter of Mr. Croes' lawyer dated 18 May 1984, 'that the duration of the investigation itself had taken much too long, unreasonably long'. It is unclear whether this complaint refers to the treatment of Mr. Croes himself or the treatment of the [policeman]. In the latter case, this part of the communication would in any case be inadmissible under rule 90, paragraph 1 (b) of the Committee's Rules."

5.3 With regard to the question of admissibility, the State party "starts from the assumption that Mr. Croes can be supposed to be invoking articles 6, 14, 26 and article 1 of the International Covenant on Civil and Political Rights. As for his "right to see others treated equally", the Government cannot find an article in the Covenant protecting such a right. Confronted with the question whether the Government considers Mr. Croes' communication to be admissible, the Government, to its regret, has to reply in the negative, for the following reasons:

Firstly, the communication indicates an abuse of the right to present a communication, for political and propagandistic motives. Mr. Croes is the leader of a political party propagating a "status aparte" for the island of Aruba. His principal accusation is that, as a political leader, he was discriminated by the

prosecuting and judicial authorities of the Kingdom of the Netherlands. A complaint based on article 26 of the Covenant could only be made on the basis of an allegation that either the prosecuting authorities or the courts applied the laws to Mr. Croes in a discriminatory way. Though Mr. Croes does indeed accuse the authorities of a "conspiracy" against him, and apparently fears that this spirit of conspiracy has even reached the Judicial Laboratory at Rijswijk in the Netherlands, he fails to bring any concrete evidence in support of his accusations and insinuations.

Secondly, Mr. Croes failed to exhaust the available domestic remedies with respect to his complaints under the Covenant. What he did submit to the national authorities were:

- (a) A protest against the decision not to prosecute [the policeman];
- (b) A protest against the decision not to prosecute Mr. Croes himself on charges of perjury and holding a car parade without a permit.

However, Mr. Croes failed to invoke before the national authorities any of the Covenant's rights mentioned above. Of these rights, at least articles 6 and 14 are, in accordance with article 93 of the Constitution, "self-executing" in the sense that they can be invoked by individuals before the national courts. In this way the Constitution provides an important "available domestic remedy" in the sense of article 5, paragraph 2 (b), of the Optional Protocol.

Thirdly, Mr. Croes' allegation that the investigating procedures took too long cannot be brought within the scope of article 14, paragraph 3 (b), of the Covenant, because Mr. Croes was not in the position of a person "charged with a criminal offence" within the meaning of that provision.

Fourthly, a complaint based on article 6 of the Covenant appears to be made as a result of allegations that:

- (a) The shots which wounded Mr. Croes were deliberately fired by a policeman in a premeditated attempt to kill him;
- (b) That the prosecuting and judicial authorities joined in efforts to cover up this fact and to protect [the policeman] from the normal administration of justice.

Mr. Croes fails to submit any evidence in support of such allegations.

Lastly, Mr. Croes cannot claim a right to invoke article 1 of the Covenant without submitting even a beginning of evidence to the effect that:

- (a) The people of Aruba claim to be the victim of a violation of article 1 of the Covenant by the Kingdom of the Netherlands;

- (b) This people has authorized Mr. Croes to submit on its behalf a complaint under article 1 of the Covenant;

- (c) the Kingdom of the Netherlands has violated article 1. In this respect it is significant that Mr. Croes' lawyer, in paragraph 28 of his letter of 11 January 1984, does not as yet allege an actual violation of article 1, but "a

threat" to the right of self-determination. This raises the question whether a possible future violation of a right protected by the Covenant could be the object of a complaint under the Optional Protocol. The Government answers this question in the negative.

For the reasons submitted in the foregoing paragraphs the Government of the Kingdom of the Netherlands submits that the communication of Mr. Gilberto François Croes is inadmissible under rule 90, paragraphs 1 (b), 1 (c), 1 (d) and 1 (f) of the Committee's Rules of Procedure."

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 Article 5, paragraph 2 (a), of the Optional Protocol precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement. There was no indication that the case was under examination elsewhere.

6.3 Article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication unless domestic remedies have been exhausted. In this connection the Committee recalled that in its decision under rule 91 of its provisional rules of procedure it requested the State party, in case it would contend that domestic remedies had not been exhausted, "to give details of the effective remedies available in the particular circumstances of this case". The Committee noted that in its submission of 28 May 1985 the State party contended that the author had failed to exhaust domestic remedies. It mentioned the steps taken by Mr. Croes, but did not specify what effective local remedies would have been available in the circumstances of this case, had Mr. Croes specifically invoked articles 6 and 14 of the Covenant in his submission of complaints to the national authorities. The Committee noted that the steps taken by the author to exhaust domestic remedies ended with the rejection of his appeal to the Supreme Court of the Netherlands Antilles on 24 February 1984. In the absence of any clear indication from the State party concerning other effective domestic remedies which the author should have pursued, the Committee concluded that it was not precluded by article 5, paragraph 2 (b), of the Optional Protocol from considering this case, but indicated that this conclusion could be reviewed in the light of any further information submitted by the State party under article 4, paragraph 2, of the Optional Protocol.

6.4 The Committee noted the State party's contention that the communication indicates an abuse of the right of submission. However, the Committee found that the grounds invoked by the State party in this connection did not appear to support such a conclusion.

7. On 25 October 1985, the Human Rights Committee therefore decided that the communication was admissible in so far as Mr. Croes claimed to be personally affected by the events which he described (as set out in paras. 2.2, 2.3 and 3 above), and in so far as these events could raise issues under articles 6, 9, paragraph 1, first sentence, 19, 21, 25 and 26 of the Covenant.

8.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 16 May 1986, the State party, elaborating on its submission of 28 May 1985, reaffirms that the author failed to exhaust the domestic remedies that were

available to him. It states that the author, in his initial action brought against the State party, failed to invoke the self-executing provisions of the International Covenant on Civil and Political Rights. The State party's obligations under the Covenant were invoked for the first time before the Human Rights Committee. Furthermore, he could have initiated civil proceedings against the State alleging tort. The State party submits that the courts would have dealt with his complaints based on the Covenant except his allegation of a violation of the right of self-determination under article 1. Had the author acted as indicated above, he could have exhausted all domestic remedies up to and including the highest judicial authority in the Kingdom, the Supreme Court (Hoge Raad), and thus met the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

8.2 With respect to the merits of the communication, the State party submits that there has not been any violation of the rights invoked by the author. Concerning article 6, it recalls that after due investigation the prosecuting authorities in Aruba concluded that there was no evidence whatsoever of premeditated or intentional firing on the part of the police officer, that there was no proof that the shot which wounded Mr. Croes had been fired from the police officer's gun, and that for that reason the case against the police officer was dismissed.

8.3 Concerning the alleged violation of article 9, paragraph 1, the State party affirms that it did not violate the author's right to liberty and security of person. It explains that the police forces that were on duty in Aruba on 24 April 1983 sought to uphold law and order, to prevent disorder and to protect all people, including the author, against any form of bodily harm. In this context, the author was neither deprived of his liberty nor of his security. The police forces on duty on the said day were not only sufficiently trained but also displayed behaviour which enabled them to fulfil their duties in every respect. Disturbances resulted because the MEP held a motorcade without permission and partly because of the behaviour of MEP supporters.

8.4 With respect to articles 19, 21 and 25 of the Covenant, the State party rejects the allegations put forth by the author. It points out that Mr. Croes exercised all his democratic rights to express political views, to found a political party and to be elected to the Parliament of the Netherlands Antilles. No violation of article 19 can thus be said to have taken place. In respect of article 21, the State party points out that under the laws of the Netherlands Antilles and Aruba, anyone who wishes to organize a manifestation on public roads must seek and obtain permission from the competent authorities. a/ In the present case, the request for authorization to hold a motorcade filed by the author's party did not reach the authorities, which is why permission to hold a parade was given to another political party. The author's party was, however, granted permission to hold a demonstration. In the interest of public order, the police broke up the motorcade which was held after the demonstration. The State party submits that the regulations in question are compatible with article 21, since the requirement of prior permission to hold public demonstrations is a restriction made in conformity with the law and necessary in the interest of public order. Concerning article 25, the State party summarizes the electoral system in force in the Netherlands Antilles and Aruba at the same time of the submission of the complaint, and emphasizes that the author's rights and the rights of his party under that article were in no way restricted.

8.5 Finally, with respect to the alleged violation of article 26, the State party refers to the decision of the Court of Justice of the Netherlands Antilles of

24 February 1984 and argues that the Court's considerations do not reveal that Mr. Croes was discriminated against.

9.1 Commenting on the State party's submission, the author's heirs, in a submission dated 29 June 1988, maintain that their father's initial allegations are well founded and that he did indeed exhaust all the domestic remedies available to him. In particular, they claim that the State party's argument that the author should have initiated civil proceedings against the Netherlands does not address his concerns, since monetary compensation cannot do away with the human rights violations of which the author was a victim, and which in their opinion still warrant criminal prosecution. Furthermore, they claim that Mr. Croes did not have to invoke international treaty norms and obligations of the State party, since the courts should have applied them ex officio. They claim in that context that the author, in his memorandum to the Supreme Court of the Netherlands dated 10 January 1984, did in fact invoke the Covenant.

9.2 With respect to the alleged violation of articles 6 and 9, paragraph 1, the author's heirs reiterate that the shot fired by [name deleted] which wounded the author was part of a premeditated plot against the author's life. They affirm that the "heavily armed police corps" intended to "victimize" the unarmed MEP loyalists, to cause Aruban citizens to turn against Aruban citizens, which in turn would provide a pretext to postpone the elections scheduled by the Government of the Netherlands Antilles. They deny that MEP supporters acted in any way that could be construed as aggressive during the motorcade and affirm that the parade was held following discussions with the highest police officer on duty on 24 April 1983.

9.3 With respect to the alleged violations of articles 19 and 21, the author's heirs claim that the State party's argumentation reflects an exceedingly narrow interpretation of the scope of these articles. They take issue with the State party's submissions concerning article 21 (see para. 8.4 above) and reiterate that the motorcade was broken up only after it had proceeded for several hours and covered approximately 20 miles, and that there was no danger of crossing the motorcade of a rival political party. Thus there was no basis for prohibiting and/or breaking up the parade.

9.4 Concerning an alleged violation of article 25, the author's heirs challenge without further substantiation the State party's claim that the rights of the author and of his party were in no way restricted. In respect of article 26, finally, they maintain that, under the pretext of justice, the author did suffer from discrimination because of the inadequate investigation of the shooting incident and the authorities' effort to hold back evidence. In other words, the discrimination is said to have consisted in the authorities' attempt to "cover up" the case of the police officer.

10. Pursuant to rule 93, paragraph 4, of its provisional rules of procedure and in accordance with its decision of 25 October 1985, the Human Rights Committee has reviewed its decision on admissibility of 25 October 1985. On the basis of the additional information provided by the State party in its submission of 16 May 1986, the Committee concludes that there would have been effective remedies available to the author both with respect to the shooting incident and the break-up of the motorcade. The Committee has stressed on previous occasions that remedies, the availability of which is not evident, cannot be invoked by the State party to the detriment of the author in proceedings under the Optional Protocol (Communication No. 113/1981, decision of 12 April 1985, para. 10.1). In this case,

however, the Committee comes to the conclusion that remedies were evident. It would have been open to Mr. Croes to institute civil proceedings against the State party and to claim compensation for the damages suffered as a result of the alleged failure of the State party to fulfil its obligations under the International Covenant on Civil and Political Rights. It is true that he claimed that this type of recourse would not address his concerns. In this context, the Committee observes that although States parties are obliged to investigate in good faith allegations of human rights violations, criminal proceedings would not be the only available remedy. Accordingly, the Committee cannot accept the argument of the author and his heirs that proceedings before the Aruban courts, other than those leading to the criminal prosecution of the policeman, do not constitute effective remedies within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. The Committee adds that the authors' complaint could be directed, in all of its aspects, against the Aruban authorities in general and that he and his heirs have failed to pursue all avenues of judicial recourse open to them.

11. The Human Rights Committee therefore decides that:

(a) The decision of 25 October 1985 is set aside;

(b) The communication is inadmissible;

(c) This decision shall be communicated to the heirs of Gilberto François Croes and to the State party.

Notes

a/ Article 32 of the General Police Regulations for Aruba. The State party, in an annex to its submission, provides excerpts of these regulations.

B. Communication No. 213/1986. H. C. M. A. v. The Netherlands
(Decision of 30 March 1989, adopted at the thirty-fifth session)

Submitted by: H. C. M. A. [name deleted]

Alleged victim: The author

State party concerned: The Netherlands

Date of communication: 31 October 1986 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 March 1989,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 31 October 1986, and subsequent submissions of 6 April 1987, 20 June and 18 July 1988) is H. C. M. A., a citizen of the Netherlands residing in the Netherlands. He alleges to be a victim of violations of article 2, paragraphs 2 and 3, articles 7, 9, 10, paragraph 1, and 14, paragraph 1, of the International Covenant on Civil and Political Rights by the Government of the Netherlands. He is represented by counsel.

2.1 The author states that on Friday, 19 March 1982, he participated in a peaceful demonstration in Amsterdam to protest the murder of four Netherlands journalists in El Salvador. After leaving the site of the demonstration, he was assaulted by four unknown persons and sustained injuries. Subsequently, policemen in civilian clothes pushed him into a police car and he was detained in a police cell. After four witnesses testified at the police station that he had not disturbed the public order, he was released on Tuesday, 23 March 1982. He was tried for public disorder before the Amsterdam Criminal District Court and acquitted on 5 September 1984. On 1 April 1985 the Amsterdam District Court, Second Chamber, awarded him 400 Netherlands guilders for unlawful detention.

2.2 The author points out that on 22 April 1982 he complained to the court of first instance about maltreatment by a police officer. His complaint was transmitted by the court of first instance to the military prosecutor, as the rank to which the police officer belonged fell under military jurisdiction. The military prosecutor, however, dismissed the complaint. On appeal, the Military High Court stated that in cases of military procedural law only the Minister of Defence had authority to order prosecution. The Military High Court thus decided that it was not competent to rule on the case. Its president subsequently transmitted the file to the Ministers of Defence and Justice, considering that it would be an anomalous situation if persons falling under military jurisdiction could be immune from prosecution under certain circumstances, while persons falling under civilian jurisdiction could be prosecuted.

2.3 The author maintains, however, that the Government of the Netherlands has not taken any initiative to eradicate the alleged inequality before the law. The author claims that, as no adequate recourse procedure exists for civilians against cruel and inhuman treatment by the military and the police when such cases fall under the jurisdiction of the military, the State party has violated articles 2 and 7 of the Covenant. Concerning his detention, the author claims, without giving any details, that he was subjected to ill-treatment in violation of article 10 of the Covenant. He further claims that article 14 of the Covenant has been violated, because he has been unable to prosecute a police officer falling under exclusive military jurisdiction. Moreover, he maintains that the existing complaints procedure against members of the police is unjust, since police officers themselves investigate such complaints and exercise discretionary powers in their own favour. He alleges that an independent system of control does not exist in the Netherlands legal system.

3. By its decision of 9 December 1986, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication, in particular details of the effective remedies available to the author in case domestic remedies had not been exhausted. It also requested the State party to provide the Committee with copies of any administrative or judicial decisions relevant to the communication.

4.1 In its submission under rule 91, dated 17 February 1987, the State party provides an outline of the factual situation and argues that the communication should be declared inadmissible on the grounds that the allegations put forward by the author do not disclose a violation of any of the rights enumerated in the Covenant and that, therefore, the author has no claim under article 2 of the Optional Protocol.

4.2 With regard to the factual situation, the State party states that the author was arrested in Amsterdam on 19 March 1982 "on the accusation of having committed violent acts (throwing stones at the consulate of the United States of America) during an anti-El Salvador demonstration". The author was arrested by a team consisting of an Amsterdam City Police officer and an officer belonging to the Royal Military Police (Koninklijke Marechaussee), which also has the task of providing military assistance to the Amsterdam City Police. The State party affirms that, since the author did not submit himself willingly to the authorities, a brief struggle ensued, in the course of which the author's jaw was injured. He received medical treatment for a bruise to his jaw; the surgeon on duty stated that the author did not sustain any permanent injury, and the latter did in fact not report for a scheduled medical examination two weeks later.

4.3 Inasmuch as the applicable procedures are concerned, the State party argues that in cases such as the one affecting the author, namely the filing of complaints about the acts of officers of the Royal Military Police, complaints have to be addressed to the prosecutor of the Royal Netherlands Army (the Auditeur-Militair), as civilian judicial authorities are not competent to prosecute military personnel. A decision whether or not to prosecute is taken by a military legal officer (verwijzingsofficier) who acts on behalf of the Commanding-General, upon advice of the Prosecutor of the Army. This was also the procedure applied to the case of the author. Against the decision not to prosecute the military police officer who allegedly maltreated the author, the author lodged a complaint with the

National Ombudsman, an independent body instituted by law that mediates in questions related to governmental acts against which no legal remedy is available. The Ombudsman is supposed to report his findings both to the administrative authority to which the disputed act is imputable and to the plaintiff, evaluating whether the governmental act was proper and, optionally, recommending possible remedies to the Administration. In the present case, the Ombudsman advised the author to appeal to the High Military Court (Hoog Militair Gerechtshof) against the decision communicated by the prosecutor of the Army.

4.4 On 13 June 1983, the High Military Court decided that it was not competent to decide on the case, as only the Minister of Defence can order the military legal officer or Commanding-General to prosecute a case. In this context, the State party points out that a provision analogous to article 12 of the civilian Code of Penal Procedure, under which a complaint with an appeal court can be filed if no prosecution is decided upon, does not exist. In the present case, the Minister of Defence held that, as formal notification of non-prosecution to the Royal Military Police had already been given, he could not oblige the military legal officer or the Commanding-General to prosecute the case. The author, subsequently, did not request further action by the Ombudsman, who therefore did not initiate an inquiry.

4.5 Finally, the State party observes that legislative proposals that would solve the discrepancy between the Code of Military Penal Procedure and its civilian counterpart have been introduced in the Netherlands Parliament and are awaiting approval. An interim solution has been ruled out, given the extensive legislative changes that it would require and the rare occurrence of the complaints in question.

4.6 With regard to the admissibility of the communication, the State party distinguishes between: (a) the actual treatment of the author upon his arrest; and (b) the alleged lack of an adequate legal procedure to see the arresting officer prosecuted.

4.7 With regard to the first issue, the State party recalls the requirement of article 2 of the Optional Protocol that only individuals who have exhausted all available domestic remedies may submit a communication to the Committee and submits that a tort action against the Government could not a priori be called futile. With regard to the alleged violations of articles 7 and 10 of the Covenant, it submits that the allegations of the author do not come within the scope of the concepts "torture" or "cruel, inhuman or degrading treatment" or the obligation to treat individuals "with humanity and with respect for the inherent dignity of the human person", nor indeed, within the scope of any other concept in the Covenant, and therefore cannot be regarded as constituting a violation of Covenant rights. Furthermore, in the State party's view, the author has not substantiated his allegations in such a way as to support his claim credibly.

4.8 Concerning the second issue, the State party submits: "that the allegations in the communication cannot be regarded as constituting a violation of any of the rights enumerated in the Covenant. More in particular, the Government is not aware of any right laid down in the Covenant to see someone else prosecuted. Furthermore, the allegations have not been substantiated in such a way as to credibly support a claim regarding such a violation ...".

5.1 In a submission dated 6 April 1987, the author comments on the State party's charge that he had been arrested because of throwing stones at the United States consulate during a demonstration. He affirms that he only demonstrated and that he

was caught violently by the neck by two men when he tried to leave the building where the demonstration was being held. One of the men, an officer of the Royal Military Police, hit him in the face several times. The policemen were dressed as civilians and did not identify themselves. The author claims that he did not resist, and that immediately after the arrest he was taken off in a police car by the two officers. He was released after being detained for four days, during which he was taken to the hospital every day.

5.2 The author states that, in the civil proceedings against the officer of the Royal Military Police which remain sub judice, five witnesses testified on his behalf, all of whom confirmed that he did not resort to violence during the demonstration in question. Although not currently experiencing any physical effects of the maltreatment suffered at the hands of the police officers, he still suffers from psychic trauma. He encloses the report from the psychiatrist who treated him, according to which there are unmistakable links between the way the author was treated during his arrest and detention and his subsequent psychological disturbances, e.g. the continuing fear of being attacked in the street.

5.3 He reiterates that the right to test the decision of whether or not to prosecute somebody by a competent, independent and impartial tribunal established by law is a right enshrined in article 14 of the Covenant, and that there is also a right, in a suit at law, to be safeguarded against military arbitrariness.

6.1 By further decision under rule 91, dated 6 April 1988, the Working Group of the Human Rights Committee requested the State party, inter alia, to clarify: (a) why the author was subjected to detention for four days; (b) whether the author was brought before a judge or judicial officer during this period; (c) whether he could have invoked the principle of habeas corpus during this period; (d) the extent to which the competent military authorities investigated the author's complaint; and (e) whether any written decision was handed down by the Military Prosecutor, explaining why no criminal proceedings against Mr. O. were initiated; in the affirmative, to provide the Committee with the text; in the negative, to clarify the Military Prosecutor's reasons for not indicting Mr. O.

6.2 The Working Group also requested the author (a) to clarify his allegation that he was subjected to ill-treatment during detention in March 1982; (b) to forward to the Committee an English translation of (i) his complaint of 22 April 1982 to the Court of first instance; and (ii) his legal brief in the civil proceedings against Mr. O.; and (c) to indicate the current stage of the latter proceedings.

7.1 In its reply dated 17 June 1988, the State submits, with regard to the author's arrest and detention:

"The plaintiff arrived at the police station at 2130 hours on Friday, 19 March 1982, and was immediately brought before an assistant public prosecutor. The plaintiff, who was suspected of assault, a criminal offence under article 141 of the Criminal Code, was questioned on the morning of Saturday, 20 March 1982, and a chief superintendent of the municipal police, acting as assistant public prosecutor, ordered him to be remanded in police custody as from 1230 hours for a maximum of two days. The interests of the investigation required that the suspect should remain in the hands of the judicial authorities to allow for further questioning and the examination of witnesses.

"After telephone consultations between the assistant public prosecutor and the public prosecutor, the public prosecutor extended the remand order for a maximum of two days from 1230 hours on Monday, 22 March 1982. The advocate on duty was immediately notified of the arrest and remand of the plaintiff. He provided legal assistance to the plaintiff when he was remanded in police custody. On Tuesday, 23 March 1982, the plaintiff was brought before the examining magistrate in connection with the application by the public prosecutor for him to be remanded in custody for a further period. After questioning the plaintiff, the examining magistrate refused the application. The plaintiff was then immediately released."

7.2 With respect to remedies available to the author, the State party submits that during the four days of detention the author could have applied to the civil courts for an injunction to secure his release if he believed he was being unlawful⁷ detained. It explains that "[the author's] complaint was minutely examined by the competent military judicial authorities. A complaint can lead to three situations:

- "1. If both the Auditeur-Militair and the Commanding-General/Verwijzingsofficier find the complaint well-founded, prosecution will be effected (article 11 RLLu).
- "2. If the Commanding-General and the Auditeur-Militair disagree, the Hoog Militair Gerechtshof (military court of appeal) can order prosecution (article 15 RLLu). Moreover, during the investigation the Minister of Defence can order the Commanding-General to prosecute (article 11 RLLu).
- "3. If both authorities find the complaint ill-founded, no prosecution will follow. In the instance of [A. v. O.], both the Auditeur-Militair and the Commanding-General/Verwijzingsofficier found the complaint ill-founded after thorough review. It was concluded that prosecution of [Mr. O.] should not be effected in view of the fact that the injuries sustained by [Mr. A.] were a consequence of his resistance to the arrest.

"One of the tasks entrusted to the police is the effective maintenance of law and order. This can, under certain circumstances, necessitate the use of force. At the time of the arrest, [Mr. O.] was seconded to the civilian police. Therefore civilian police regulations on the use of force were applicable. The police must act according to their standing instructions on the use of force, whereby the principles of last resort and proportionality must be observed, which is to say that a police officer may only use force if no other means is available to him, and that he must act in a reasonable and restrained manner. The Netherlands Government has no evidence to suggest that these rules were not observed during the applicant's arrest."

In the State party's opinion, the procedure concerning the decision not to prosecute Mr. O. described above did not diverge from the standard procedure in the author's case. It adds that the Auditeur-Militair notified the author's counsel of the decision not to prosecute Mr. O.

8. The State party reiterates that it considers the communication to be inadmissible:

"The first complaint, contained in the communication, regarding the actual treatment of [Mr. A.] upon his arrest, is deemed inadmissible since the tort procedure against the Government is still sub iudice (before the

subdistrict court in Haarlem); thus it cannot be maintained that all available domestic remedies have been exhausted. Furthermore the complaint is submitted to be neither compatible with the provisions of the Covenant nor sufficiently substantiated.

"The second complaint contained in the communication, regarding the lack of adequate legal procedure to see the arresting officer prosecuted, is in the view of the Government also to be declared inadmissible, as the allegations concerned cannot be regarded to constitute a violation of any of the rights enumerated in the Covenant. Nor have the allegations been sufficiently substantiated."

9.1 In his submission of 20 June 1988, author's counsel states, inter alia,

"I sent to you previously two medical records of the physical and psychical injuries sustained by my client. Dr. Baart investigated my client during his detention (report dated 16 June 1982). Dr. van Ewijk, the psychiatrist (report dated 19 December 1986), diagnosed my client's illness as a traumatic neurosis in connection with his arrest in March 1982."

9.2 In his comments of 18 July 1988 on the State party's submission, author's counsel argues:

"The Netherlands Code of Criminal Procedure is not in accordance with article 9 of the Covenant. ... In the Code of Criminal Procedure a suspect can be held in custody for 4 days and 15 hours before he shall be brought before a judge or officer authorized by law to exercise judicial power.

"[Mr. A.] has also not been held in custody in accordance with articles 52 to 62 of the Code of Criminal Procedure. Normally the suspect is held in custody for two days ... after questioning. In plaintiff's case the questioning was held on Monday, 22 March 1982. Before that [Mr. A.] had been questioned very shortly, so it is not true that [Mr. A.] was questioned on the morning of Saturday, 20 March 1982. Nor is it true that [Mr. A.] could apply to the civil court for an injunction to secure his release. [Mr. A.] was detained during the weekend, at which time the Court is not in session."

9.3 Counsel further claims the civil proceedings initiated against Mr. O. have nothing to do with the complaint, since the State party is not a party in it. It serves only the purpose of personal satisfaction and reparation. Counsel reiterates that the author's request for prosecution of the police officer is admissible and reaffirms that the right to demand prosecution of this officer is protected by article 14 of the Covenant.

10. On 13 September 1988, the State party submitted further comments on the author's submission:

"In accordance with article 57 of the Code of Criminal Procedure, the applicant was questioned before the decision to remand him in custody was taken. ... Questioning took place at 10 a.m. on Saturday, 20 March. The Government has already pointed out in its memorandum of 17 June 1988 that the procedures required under Netherlands law were followed. These procedures are also in accordance with article 9 of the Covenant on Civil and Political Rights.

"The president of the district court can be called upon at all times (i.e. also during the weekend) when an injunction is being sought (see article 289, para. 2, of the Code of Civil Procedure).

"The conclusion contained in the Public Prosecutor's letter ... that [Mr. A.] resisted arrest is based upon the official reports drawn up under oath of office."

11.1 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.

11.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

11.3 With respect to the requirement of exhaustion of domestic remedies, the Committee notes that in respect of the author's allegations of a violation of article 7 of the Covenant, the author instituted civil proceedings against the officer of the Royal Military Police who allegedly maltreated him, which remain pending. Furthermore, the State party has indicated the possibility of initiating tort proceedings against the Government. The author has not established that such proceedings would be a priori futile. Therefore, this part of the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

11.4 With respect to the alleged violation of article 9, paragraph 4, the Committee has taken note of the State party's clarification that pursuant to article 289, paragraph 2, of the Code of Civil Procedure, the author could have called upon the president of the district court at any time after his arrest on 19 March 1982. Considering that the author has not contested the State party's clarification, and taking into account that he was released by order of a magistrate on 23 March 1982 (i.e. four days after his arrest), the Committee finds that the author has not substantiated his claim for purposes of admissibility.

11.5 With respect to the alleged violation of article 10, paragraph 1, the Committee notes that the author has not provided the relevant clarifications requested in the Working Group's decision of 6 April 1988 and has thus failed to adduce any facts to show that he was subjected to improper treatment during detention.

11.6 With respect to the author's allegation of a violation of article 14, paragraph 1, of the Covenant, the Committee observes that the Covenant does not provide for the right to see another person criminally prosecuted. Accordingly, it finds that this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

12. The Human Rights Committee therefore decides:

(a) The communication is inadmissible;

(b) This decision shall be communicated to the State party and to the author.

C. Communication No. 231/1987, A. S. v. Jamaica (Decision of 21 July 1989, adopted at the thirty-sixth session)

Submitted by: A. S. [name deleted]

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 7 June 1987 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 July 1989,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 7 June 1987; several subsequent submissions) is A. S., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation of his human rights by the Government of Jamaica.

2.1 The author states that he and Winston Wright were arrested and charged with the murder, on 28 November 1983, of one Jasper Vernon, but claims to be innocent of the crime. He was convicted and sentenced to death on 29 January 1985 in the St. James Circuit Court, while his co-defendant was convicted of manslaughter and sentenced to 10 years of hard labour.

2.2 With respect to the facts of the case, it appears a/ that the deceased and the author were living in the same area and reputed to be good friends. On the night of 28 November 1983, at or around 9 p.m., one of the witnesses, Roy Clarke, heard the sound of wrestling and of two gunshots outside his house, and then a voice calling out for help. After a few moments, he went outside and found the victim, who had been seriously wounded by bullets fired at close range. He then recognized that it was the victim's voice which he had previously heard, asking "[Name], what do you want to kill me for?". During the trial, the author's representative objected to this statement of Mr. Clarke as being hearsay and thus inadmissible, but the judge ruled it to be admissible, as part of the res gestae.

2.3 Mr. Vernon was brought to the Cornwall Regional Hospital in Montego Bay, where emergency surgery was performed on him. Two police inspectors went to the hospital shortly after his admission. One of them, upon his arrival in the casualty ward, heard a voice calling out the author's name and identifying him as the one who had fired the shots. He later recognized the voice as being that of the deceased. The inspector conducted a brief interview with the victim, who was in a serious condition but still conscious. At the trial, author's counsel again objected to the inspector's evidence as hearsay and requested that it be excluded, but the judge ruled the evidence admissible as the "dying declaration of a victim of homicide". Mr. Vernon succumbed to his injuries later on 28 November or in the early hours of 29 November 1983.

2.4 The author and his co-defendant claimed that they themselves had been held up that same evening by three gunmen near the spot where the deceased had been shot, and gave evidence to this effect during the trial. The prosecution, however, contended that their account contained so many discrepancies as to suggest that their version was merely a concoction to persuade others that they had not perpetrated the crime in question.

2.5 The author appealed against his sentence on the grounds of "unfair trial" and "unreliable evidence", but on 9 July 1986, the Court of Appeal refused leave to appeal and confirmed the sentence, after counsel for the author had conceded that there were no grounds of appeal that could be argued with any hope of success. The Court of Appeal delivered a written judgement on 24 September 1986. The author submits that his representative subsequently told him that there was no merit in the case justifying an appeal to the Judicial Committee of the Privy Council, and that the case would be placed before the Governor-General for clemency.

3. By decision of 21 July 1987, the Human Rights Committee transmitted the communication, for information, to the State party and requested it, under rule 86 of the provisional rules of procedure, not to carry out the death sentence against the author before it had had an opportunity to consider further the question of the admissibility of the communication. The author was requested, under rule 91 of the provisional rules of procedure, to furnish information concerning the facts of his case and the circumstances of his trial and to provide the Committee with the transcripts of the written judgements.

4. In a submission dated 21 October 1987, the State party argues that the communication is inadmissible on the ground of non-exhaustion of domestic remedies because the case has not yet been adjudicated by the Judicial Committee of the Privy Council. The State party adds that "[i]n circumstances such as these a reasonable interpretation of the Optional Protocol and the Committee's rules of procedure does not yield to the conclusion that the State party is required to furnish documents and information in relation to a communication which is patently inadmissible". Under cover of a further note dated 10 December 1987, the State party does, however, forward a copy of the Notes of Evidence in the author's case.

5. Under cover of a letter dated 10 February 1988, the lawyer who represented the author before the Court of Appeal forwarded a copy of the judgement of the Court of Appeal. He states that he had formed the opinion that there was no merit in the author's case, since the author had been, in his opinion, properly identified. He adds that the case was not further pursued with a view to filing a petition for leave to appeal to the Judicial Committee of the Privy Council.

6. By decision of 16 March 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the provisional rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. In particular, it requested the State party to clarify whether the author retained the right to petition the Judicial Committee of the Privy Council for leave to appeal and whether legal aid would be available to him in that respect. The Working Group further requested the State party, under rule 86 of the rules of procedure, not to carry out the death sentence against the author while his communication was under consideration by the Committee.

7. In its submission under rule 91, dated 20 July 1988, the State party contends that the communication is inadmissible on the ground of non-exhaustion of domestic remedies because the author retains the right, under section 110 of the Jamaican Constitution, to petition the Judicial Committee of the Privy Council for special leave to appeal. The State party adds that legal aid would be available to him for this purpose pursuant to section 3, paragraph 1, of the Poor Prisoners' Defence Act.

8. Commenting on the State party's submission, the author, in a letter dated 11 January 1989, states that he has contacted a law firm in London, which he claims would be willing to assist him for purposes of filing a petition for leave to appeal to the Privy Council. By phone call of 8 June 1989, author's counsel in London confirmed that he is preparing a petition on behalf of the author.

9.1 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.

9.2 The Committee has ascertained as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement.

9.3 With respect to the requirement of exhaustion of domestic remedies, the Committee has noted the State party's contention that the communication is inadmissible because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal. It observes that the author, although claiming that there would be no merit in pursuing such a petition, has obtained pro bono representation for this purpose, and that his representative is currently preparing a petition for special leave to appeal on his behalf. The Committee cannot conclude, on the basis of the information before it, that a petition for special leave to the Privy Council must be considered a priori futile. It therefore finds that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

10. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's provisional rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the State party shall be requested, taking into account the spirit and purpose of rule 86 of the Committee's provisional rules of procedure, not to carry out the death sentence against the author, before he has had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;

(c) That this decision shall be transmitted to the State party and to the author.

Notes

a/ The author's initial and subsequent submissions do not provide a detailed account of the facts. The following description is drawn primarily from the outline of the facts contained in the judgement of the Court of Appeal.

D. Communication No. 262/1987, R. T. v. France (Decision of 30 March 1989, adopted at the thirty-fifth session)

Submitted by: R. T. [name deleted]

Alleged victim: The author

State party concerned: France

Date of communication: 14 October 1987 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 March 1989,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 14 October 1987; further letters dated 30 June, 10 September and 20 October 1988) is R. T., a French citizen born in 1942, at present living at Sevran, France. He claims to be a victim of a violation by the French Government of articles 2, paragraphs 1-3, 19, paragraphs 2, 26 and 27 of the International Covenant on Civil and Political Rights.

2.1 The author states that he has taught the Breton language at a number of high schools in Paris for the past 10 years. The French authorities have allegedly tried to deny him the right to teach Breton and exerted pressure on him by, for example, reducing his salary. The author claims that there is no justification for this pressure, because over a million Bretons live in the Greater Paris area and there is a growing demand for the teaching of Breton among high school students.

2.2 The author states that he has taught only Breton over the past 10 years, and that he is the only teacher of the subject in the Paris Educational District. The French authorities have never officially recognised this fact and have instead classified him as a "teaching assistant" (adjoint d'enseignement) for English (which the author claims he has never taught) and an "auxiliary teacher" (maître auxiliaire) of Armenian (which he says he does not know). With effect from the school year 1987/88, the French authorities are said to have attempted to force him to teach English. Upon his refusing to comply, the Paris Educational District apparently threatened to consider him as having abandoned his post, which would mean that he would not be entitled to unemployment benefits. Since the Academy has in the past discontinued the teaching of other regional languages such as Basque and Catalan, the author considers himself particularly threatened.

2.3 With regard to the requirement of exhaustion of domestic remedies, the author encloses copies of his correspondence with the competent educational authorities, which illustrate his attempts at reaching an amiable solution (recours amiables).

3. By decision of 15 March 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the provisional rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. The author was requested to clarify whether he had submitted his case to any administrative or judicial tribunal and, if so, with what result.

4.1 In his submission under rule 91, dated 30 June 1988, the author reiterates that the facts in his case testify to the desire of the French authorities to eliminate the teaching of the Breton language and adds that since his initial submission to the Committee, this issue has been raised by many members of the French National Assembly and of the European Parliament. With respect to his duties as a teacher, he states that he is required, in principle, to lecture 18 hours per week. Starting in 1982/83 he taught a full 18 hours a week at three high schools in the Greater Paris area, where he claims his work was constantly disrupted by administrative measures and delays of several months before permission to teach Breton was granted. For the year 1987/88 the educational authorities at first opposed the resumption of his teaching duties in September 1987. Finally, in December 1987, he was again permitted to give instruction in the Breton language, but only for 10 hours a week; 8 hours, which were allegedly guaranteed under an agreement with the Rectorate of the Paris Educational District, had been "arbitrarily eliminated". According to the author, the explanations advanced by the authorities for limiting the Breton classes to 10 hours per week cannot be justified.

4.2 The author claims that the decision to reduce severely the number of Breton classes is contrary to commitments made by the Minister of Education on 15 June 1987, when he stated that "the provisions in respect both of number of hours and of teaching posts made available to district rectors [concerning regional languages spoken in France] have been maintained for the academic year 1987/88". Moreover, officials of the Department of Education have allegedly asserted that there is no need to teach Breton to pupils in Paris. The author contends that this statement is at variance with the trend observed since the mid-1980s.

4.3 With respect to the requirement of exhaustion of domestic remedies, the author explains that his démarches, up to the time of his communication to the Committee, have been of an administrative nature. Since the change of Government in France in May 1988, he has written to the new Minister of Education denouncing the discriminatory measures described above. The author states that he has not submitted his case to an administrative tribunal or to any other judicial authority; he adds that this is an eventuality that he can no longer rule out.

5.1 In its submission under rule 91, dated 5 August 1988, the State party objects to the admissibility of the communication on the grounds of non-exhaustion of domestic remedies and of incompatibility with the provisions of the Covenant.

5.2 With respect to the exhaustion of domestic remedies, the State party affirms that correspondence with associations or members of Parliament cannot be considered as remedies under French law and that only two letters addressed by the author to the Rector of the Paris Educational District and to the Minister of Education on 9 September 1987 and 8 October 1988, respectively, present some of the characteristics of an administrative remedy. Several judicial remedies would also have been open to the author with respect to his assignment to teach English since 1984. The State party explains that in order to have this measure revoked, he

could have submitted an ex gratia appeal to a higher administrative authority. The advantage of such an appeal is that it may be based not only on the legally relevant facts of the case but also on considerations of equity and expediency. Furthermore, if he considered that any decision violated his rights, he could have sought a contentious remedy for abuse of power, requesting the administrative judge to annul the decision. Such an application should have been filed within two months after the date on which he was notified of the measure affecting him. But since the author did not respect the deadlines for pursuing this remedy, the decision became final.

5.3 The State party emphasizes that although it is no longer open to the author to have an administrative court annul the contested decision on grounds of illegality, this situation is entirely of his own making, and that his inactivity or negligence cannot be attributed to State organs: "The right to submit a communication to the Human Rights Committee cannot be used as a substitute for the normal exercise of domestic remedies in cases where such remedies have not been pursued purely through the fault of the interested party."

5.4 The State party further submits that the author could have brought his case before an administrative tribunal on the grounds of abuse of power, invoking violations of the Covenant resulting from the Minister of Education's explicit or implicit rejection of the author's request of 8 October 1987 for "resumption of Breton classes in Paris". Furthermore, although the author can no longer ask the courts to decide on the legality of the contested measure, he could still plead the damage caused to him by not having been given tenure as a teacher of the Breton language and lodge an appeal with a view to obtaining compensation for the damage he claims to have suffered. In conclusion, the State party contends that the author "did not exercise any of the jurisdictional remedies available to him".

5.5 Additionally, the State party submits that the communication should be declared inadmissible as incompatible with the provisions of the Covenant. With respect to the alleged violation of article 19, paragraph 2, of the Covenant, it claims that the author has failed to substantiate his complaint and that, on the contrary, each of his submissions proves that he had every opportunity to make his position known. It further affirms that "freedom of expression" within the meaning of article 19 cannot be construed as including a right to exercise a specific teaching activity.

5.6 Concerning the alleged violation of article 26, the State party recalls that under applicable law and regulations, tenure as a teacher of Breton can only be granted if two conditions are met: (a) the existence of a body into which the person to be given tenure can be integrated; and (b) the existence of a budgeted post enabling a teacher with tenure to be remunerated. Since, at the time of consideration of the author's case, these two conditions were not met, the authorities could not comply with his request. This did not entail discrimination against him, but merely the application of the existing rules to his case.

5.7 With respect to the alleged violation of article 27 of the Covenant, the State party refers to the declaration made by the Government of France upon accession to the Covenant, which stipulates: "In the light of article 2 of the Constitution of the French Republic, ... article 27 [of the Covenant] is not applicable as far as the Republic is concerned".

5.8 Finally, the State party contends that a violation of article 2 cannot be committed directly and in isolation, and that any violation of this provision can only be a corollary to the violation of another article of the Covenant. Since the author has not shown that he has been injured in respect of one of his rights protected by the Covenant, he cannot invoke article 2.

6.1 Commenting on the State party's submission under rule 91, the author, in a letter dated 10 September 1988, maintains that his allegations are well founded. He takes issue with the State party's contention that he has not been discriminated against and reiterates that obstacles to his teaching of the Breton language are frequent and numerous. Thus, the 1987/88 school year for him began in December and not in September, and half of his classes were discontinued contrary to earlier agreements. The situation for the years 1985/86 and 1986/87 is said to have been comparable. The author considers that "the deliberate intention to forbid or considerably hamper the teaching of an ethnic minority's language constitutes a violation of cultural rights", and that it constitutes not only language discrimination but also job discrimination. With respect to article 27, he suggests that the State party cannot simply, because of a mere declaration, be excused from respecting the rights of individuals belonging to an ethnic minority.

6.2 With respect to the requirement of exhaustion of domestic remedies, the author contends that the State party's argumentation on this point must fail, because the State party's submission itself demonstrates that he could not have challenged his tenure as an assistant teacher of English within two months after being given tenure in 1984. In particular, he explains that a small body of teachers of the Breton language, in which he had aimed to be included, was only established subsequently, in 1986. Furthermore, he affirms that an administrative court could not order the educational authorities to give him tenure in Breton and that, in order for him to exhaust domestic remedies, it would have been necessary for the State party to provide him with the judicial means. He concludes that in the circumstances it was more reasonable for him to redouble his efforts to obtain tenure in Breton and not in English by way of petitions for review, rather than to allow himself "to be kept in a vicious and empty legislative and judicial circle". He submits that because of the way its legal system operates the State party has not afforded him the means to challenge its decisions on an equal footing with other citizens and in particular with colleagues who teach modern foreign languages. He suggests that he has not enjoyed equal and effective protection by the courts simply because he wants to continue teaching his own language, the language of an ethnic minority in France.

6.3 By a further letter dated 20 October 1988, the author points out that since France acceded to the Covenant, no legislation that could enable the Breton minority to use its language without discrimination has been adopted by the National Assembly, and concludes that this constitutes a violation of article 2, paragraph 2, of the Covenant. He requests the Committee's opinion on whether the fact that France acceded to an international instrument that prohibits linguistic discrimination does not require it to modify its legislation so that Bretons may use their language at all levels.

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 With regard to the State party's submission that the communication should be declared inadmissible pursuant to article 3 of the Optional Protocol as incompatible with the provisions of the Covenant, the Committee observes that the author cannot invoke a violation of his right to freedom of expression under article 19, paragraph 2, of the Covenant, on grounds of having been denied tenure as a teacher of the Breton language. With respect to the alleged violation of article 26, the Committee finds that the author has made a reasonable effort sufficiently to substantiate his allegations, for purposes of admissibility, that he has been a victim of discrimination on grounds of language. For reasons set out below, the Committee finds it unnecessary to pronounce on the French declaration concerning article 27 of the Covenant.

7.4 The Committee observes that the author has not pursued any domestic judicial remedies. It understands his assertion that he did not want to become engaged in "a vicious and empty legislative and judicial circle" as an indication of his belief that the pursuit of such remedies would be futile, and takes note of his contention that, in the circumstances of the case, it was more reasonable for him to seek extra-judicial redress by way of petition for review of his situation to the educational authorities. The Committee observes that article 5, paragraph 2 (b), of the Optional Protocol, by referring to "all available domestic remedies", clearly refers in the first place to judicial remedies. Even if the author's contention were accepted that an administrative tribunal could not have ordered the educational authorities to grant him tenure as a teacher of the Breton language, the fact remains that the decision challenged by the author might have been annulled. The author has not shown that he could not have resorted to the judicial procedures which the State party has plausibly submitted were available to him, or that their pursuit could be deemed to be, a priori, futile. The Committee notes that he himself mentions that he does not rule out submitting his case to an administrative tribunal. It finds that, in the circumstances disclosed by the communication, the author's doubts about the effectiveness of domestic remedies did not absolve him from exhausting them, and concludes that the requirements of article 5, paragraph 2 (b), have not been met.

8. The Human Rights Committee therefore decides:

- (a) The communication is inadmissible.
- (b) This decision shall be communicated to the State party and to the author.

E. Communication No. 266/1987, I. M. v. Italy
(Decision of 23 March 1989, adopted at the
thirty-fifth session)

Submitted by: A. M. [name deleted]
Alleged victim: I. M. [author's brother, deceased]
State party concerned: Italy
Date of communication: 5 November 1987 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 23 March 1989,

Adopts the following:

Decision on admissibility*

1. The author of the communication (initial submission postmarked 5 November 1987; further letters dated 20 June, 4 August, 5 and 28 September 1988 and 7 February 1989) is A. M., a Spanish citizen residing at Geneva, Switzerland. He submits the communication on behalf of his deceased brother, I. M., born on 18 August 1941 in Spain, who died in an Italian prison on 26 August 1987 following a hunger strike. He alleges that Italian authorities violated his brother's human rights.

2.1 The author states that his brother was arrested in Milan on 6 April 1987 on suspicion of involvement in the traffic of drugs. He was allegedly not visited by the investigating officer, Judge A. C., until 3 June 1987, that is, almost two months after the beginning of his detention. It appears that this interrogation proved inconclusive and that no formal charges were raised, so that I. M. requested a second interrogation in order to establish his innocence. However, no further interrogation was granted and I. M. protested against his continued detention by going on a hunger strike on 7 July 1987. During this period he was allegedly seen only once by the prison doctors, when he was transferred to the hospital, only to be returned to the prison because his condition was not considered sufficiently serious. The doctors recommended that he be fed intravenously, but this recommendation was not implemented.

2.2 I. M.'s companion, M. R. R., was able to visit him every 15 days at the prison. When she saw him on 20 August, he allegedly complained that his head had been injured and that he could not see well. In spite of her insistence, he was not taken to the hospital until 24 August, when he was already in a coma, and he died two days later.

2.3 With regard to the exhaustion of domestic remedies, the author and M. R. R. have addressed a complaint to the Italian Attorney-General. The Italian lawyers

* Pursuant to rule 85 of the provisional rules of procedure, Committee member Fausto Pocar did not take part in the adoption of the decision.

responsible for the case have informed the author that a criminal investigation has been opened against the doctors at the prison and at the hospital.

3. By decision of 15 March 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the provisional rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. The State party was further requested to provide a number of clarifications concerning the case of I. M. The author himself was requested to specify the nature of the complaint submitted to the Italian Attorney-General and the current stage of the investigations.

4. In a letter dated 20 June 1988, the author gives fuller information in reply to the questions raised by the Working Group. He states that in the complaint made to the Italian Attorney-General the charge is "involuntary homicide". As to the current stage of the investigation, the author indicates that they are still pending and forwards copies of his correspondence with the Italian authorities and his counsel at Milan.

5.1 In its submission under rule 91 of the provisional rules of procedure, dated 4 August 1988, the State party provides the clarifications requested by the Working Group and objects to the admissibility of the communication. Recapitulating the facts, it explains that the alleged victim:

"was arrested on 6 April 1987 by the Anti-Drug Operations Unit of the Fraud Squad for the offences covered in articles 495 and 473 of the Penal Code and taken into custody (fermo) by the judicial police on the strong suspicion of having committed the offences referred to in articles 71 and 75 of Act No. 685 of 22 December 1975 (traffic in significant quantities of drugs and unlawful association with persons engaged in drug traffic). The official notices of the arrest and preventive detention were formally drafted in the name of R. F. J. v. D., appearing in the identity papers produced by the accused; the Fraud Squad immediately established that the same individual had been identified on a previous occasion as I. M. and on another occasion as J. L."

5.2 The State party adds that I. M. was duly notified of the criminal activities: "ascribed to him at the first interrogation carried out by the Deputy Prosecutor of the Milan Prosecutor's Office, Dr. I. B., on 11 April 1987 at 9.20 a.m. At the end of the interrogation I. M. was served with arrest warrant No. 634/87 D, issued on 10 April 1987 by the aforementioned magistrate, which contained the charges and the statement of grounds. I. M. received a further formal notice of the charges against him by arrest warrant No. 508/87 F, issued on 26 May 1987 by the examining magistrate Dr. A. C.". I. M. was interrogated on two subsequent occasions by the examining magistrate, Dr. A. C., on 3 and 8 June 1987.

5.3 I. M.'s request for a further interview with the examining magistrate at the time he began his hunger strike was rejected by the latter on 21 August 1987. She pointed out that the accused had already been heard on three occasions and for many hours about the activities that had led to his arrest, that court proceedings were suspended for the vacation period and that, in any event, the defendant could have addressed to her, under article 35 of the prison regulations, any request or statement which he might have considered useful for his defence. I. M.'s companion, M. R. R., had been authorized to visit the defendant first by the Deputy Prosecutor and subsequently by the examining magistrate, as can be ascertained from

a statement sent by her to the Attorney-General on 28 August 1987. This permission, according to the State party, was not withdrawn during the month of August; on 17 August 1987, I. M. had declined to see her because of his state of health.

5.4 The State party considers that the events described above "point to the fact that the responsibility for I. M.'s tragic end cannot be attributed to the examining magistrate, who showed herself to be responsive, in the context of her competence and in conformity with the requirements of the investigation, to the requests made by members of the prisoner's family".

5.5 The State party further adds that immediately after I. M.'s death the examining magistrate prepared and submitted a report detailing the facts of the case to the Attorney-General's office, which instituted criminal proceedings against the persons alleged to be responsible for the death of the victim. Pre-trial proceedings are currently under way, and it is submitted that they are progressing normally.

5.6 The State party recalls that the author's principal complaint relates to the fact that the victim's request for a further interview with the examining magistrate had been rejected, and emphasizes that there is no obligation on the part of the magistrate to grant such requests, and that the Code of Penal Procedure, which exhaustively regulates the circumstances and modalities of such requests (art. 190), does not provide for the possibility of an appeal. With the exception of the initial interrogation of the prisoner (arts. 245 and 365 of the Penal Code) for the purpose of enabling him to respond to the charge and authorize his defence, the magistrate has no obligation to hear the accused on several occasions. On the contrary, under article 299 of the Code of Penal Procedure, the examining magistrate "has the obligation to execute promptly all - and solely - those acts which appear necessary in order to establish the truth in the light of the evidence collected and having regard to the progress of the investigation". The authorities thus enjoy discretionary power in ascertaining whether a further interrogation of the defendant is necessary.

5.7 Finally, the State party points out that the author retains the right, under article 91 of the Code of Penal Procedure, to introduce a civil action against the individuals held to be responsible for his brother's death.

6.1 Commenting on the State party's submission, the author, in a letter dated 28 September 1988, does not contest that his brother's companion, M. R. R., had been authorized by the magistrate to visit the deceased in prison, but contends that the difficulties M. R. R. encountered before she could see him either in the prison or in the hospital were solely attributable to the prison authorities. Thus, he explains that between 17 and 20 August 1987, M. R. R. was turned away under spurious pretexts at the prison gates on several occasions until, at noon on 20 August 1987, she could finally see I. M. The victim, at that time, already was confined to a wheelchair and had visible co-ordination problems.

6.2 In spite of her repeated requests, M. R. R. was unable to speak with the prison director or assistant director. An intervention on the part of the Spanish Consul in Milan did not produce tangible results either. On 24 August 1987, M. R. R. again asked to see her companion. In the prison's visitors' room, she was told by an inmate that I. M. was still in the prison, although in a life-threatening condition. Subsequently, a guard told her that I. M. had just

been transferred to a hospital. At the hospital she was told that the magistrate's authorization to visit him was invalid and that she needed an authorization by the prison director. The director's assistant cursorily showed her a paper alleging that I. M. no longer wanted to see her, but after emphatic requests, she was able to see him on 25 August 1987. I. M. did not recognize her because he was in a coma, and the doctor on duty told her that he had been transferred to the hospital much too late. The author claims that if the Assistant Director of the prison alleged that I. M. was in "good physical health", this was not only negligence but incompetence. Similarly, he contends that the doctors, both in the prison and in the hospital, acted negligently in that they were, or seemed to be, incapable of giving I. M. the appropriate treatment.

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 Inasmuch as the exhaustion of domestic remedies is concerned, the Committee observes that it would be open to the author, pursuant to article 91 of the Italian Code of Criminal Procedure, to introduce a civil action against those alleged to be responsible for his brother's death. The Committee has further noted the State party's uncontested claim that it did institute criminal proceedings against the individuals held to be responsible for the death of I. M., on 26 August 1987, and that the investigations are proceeding normally. The Committee concludes that available domestic remedies have not been exhausted and that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

7.4 With respect to the author's complaint that the alleged victim was denied the opportunity of a further interview with the examining magistrate, the Committee finds that this raises no issue under the Covenant.

8. The Human Rights Committee therefore decides:

(a) The communication is inadmissible;

(b) This decision shall be communicated to the author and to the State party.

F. Communication No. 273/1989, B. d. B. et al. v. The Netherlands
(Decision of 30 March 1989, adopted at the thirty-fifth session)

Submitted by: B. d. B. et al.

Alleged victims: The authors

State party concerned: The Netherlands

Date of communication: 14 January 1988 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 March 1989

Adopts the following:

Decision on admissibility

1. The authors of the communication (initial letter dated 14 January 1988; further submission dated 29 December 1988) are B. d. B., G. B., C. J. K. and L. P. M. W., four Dutch citizens. They claim to be the victims of a violation by the Government of the Netherlands of articles 14, paragraph 1, and 26 of the International Covenant on Civil and Political Rights. They are represented by counsel.

2.1 The authors are joint owners of the Teldersweg physiotherapy practice in Rotterdam. They allege that they have been discriminated against by the Industrial Insurance Board for Health and for Mental and Social Interests (hereafter BVG) and the Central Appeals Board (Centrale Raad van Beroep) because of the way in which social security contributions payable by them are regulated under Netherlands social security legislation.

2.2 The authors state that the BVG, as the executive organ of the social security insurance legislation, has the task of assessing social insurance claims and of fixing the contributions payable by employers to finance these employees' insurance schemes. Until 1984, the BVG held the view that part-time physiotherapists working on the basis of a collaboration contract with a practitioner were not in employment; there was thus no question of compulsory insurance for these more or less independent collaborators within the framework of the said employees' insurance scheme.

2.3 This situation changed on 19 April 1983, when the Central Appeals Board ruled, contrary to what the BVG had previously accepted, that part-time physiotherapists working on an invoicing basis were in fact working in such a dependent socio-economic position vis-à-vis the owner or owners of the practice that their work status was socially comparable to employment and had therefore to be regarded as such in the framework of social security insurance legislation. On the basis of this judgement, the BVG informed the national professional organizations of physiotherapists that part-time physiotherapists working on an invoicing basis henceforth would have to be insured and that contributions due would have to be paid by the owner of a physiotherapy practice as if he were an employer. In its

circular, the BVG announced that contributions due would be collected from 1 January 1984, on the understanding that those required to pay the contributions would send their names to the BVG before 1 January 1985. The collection of contributions for the years prior to 1984 would then be waived.

2.4 Despite the BVG view that, from 1984 onwards, there was no longer any question of such a special situation in respect of the obligation for owners of physiotherapy practices to pay contributions, the authors maintain that physiotherapists are still treated differently with regard to the date of commencement of the obligation to contribute. Thus, it has become apparent that those physiotherapy practices which, at an earlier stage, were unambiguously informed in writing by the association that there was no obligation to contribute, were regarded as liable to pay the first contribution in 1986, whereas practices that had not received a letter sent directly by the BVG, in which they were informed that there was no such obligation, were required to pay contributions retroactively to January 1984.

2.5 As soon as the complainants learned that, in the former case, the requirement to pay their contributions could have begun in 1986 and thus did not have retroactive effect to 1 January 1984, they invoked the principle of equality before the law, by means of the appeals procedure then prevailing in the Central Appeals Board. They argued that the situation in their practice had not been essentially different from that in other practices which had learned directly from the BVG that no insurance obligation was required with regard to their part-time physiotherapists. The part-time physiotherapist who collaborated with the authors was also working on an invoicing basis, as others who collaborated with practices that, before 1983, had learned directly from the BVG that there would be no question of an insurance obligation.

2.6 Despite the invocation of the principle of equality before the law, the Central Appeals Board held, in its final judgment in the case on 19 August 1987, that the decision by the BVG to demand contributions from the complainants with retroactive effect to 1984 was based on legal rules of compulsory nature which could not or must not be tested against general principles of law.

2.7 To the authors, the Central Appeals Board thereby implicitly concluded that the acknowledged difference in treatment in the manner of demands for contributions between various physiotherapy practices is in accordance with law. The authors point to what they consider an inconsistency in the Central Appeals Board's judgement. On the one hand, the Board appears to take the view that the application of compulsory legal rules cannot or must not be tested against general principles of law; on the other hand, it appears from established case-law that such rules must not be applied if they are in conflict with the principle of confidence in the law, i.e. the principle of the certainty of the law. The authors question why owners of physiotherapy practices who were not directly informed by the BVG in the past that part-time physiotherapists co-operating with them were not subject to social security contributions should be subjected to different and less favourable treatment with respect to contributions due after 1984 than those practitioners who had received such direct information.

2.8 The authors claim that since the principle of confidence in the law can, under certain circumstances, prevent the application of compulsory legal rules, it is all the more surprising that this does not apply to the principle of equality before the law, enshrined in article 1 of the Netherlands Constitution and article 26 of

the Covenant. They refer to the decision adopted by the Human Rights Committee on 9 April 1987 in communication No. 172/1984, which states, inter alia, that article 26 of the Covenant is not limited to the civil and political rights provided for in the Covenant but also applies to social insurance law. Concerning the differences noted above in the treatment of owners of physiotherapy practices, the authors allege that it is possible to speak of a violation of article 26 in conjunction with article 14, paragraph 1, of the Covenant. They contend that the distinction made by the BVG in practice is an arbitrary one.

3. By decision dated 15 March 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party under rule 91 of the Committee's provisional rules of procedure, requesting information and observations relevant to the question of the admissibility of the communication. By note dated 6 July 1988, the State party requested an extension of three months for the submission of its observations.

4.1 In its submission under rule 91, dated 28 October 1988, the State party objects to the admissibility of the communication on a number of grounds. Recapitulating the facts, it points out that the alleged victims are joint owners of a physiotherapy practice where a part-time physiotherapist worked on the basis of a co-operation contract as from 1982; she was paid by invoice, worked more or less independently and was not insured as an employee under social security legislation. The State party further indicates that there are three social security insurance schemes: schemes paid out of public funds, national insurance schemes and employee insurance schemes. Unlike the first two, employee insurance schemes are only applicable where there is an employer/employee relationship. Both employer and employee pay part of the employment insurance contribution, determined in accordance with a standard formula. This contribution is calculated as a certain percentage of the employee's income and is payable to the competent industrial insurance board.

4.2 The State party explains that for the purpose of determining who, as an employee, should pay employment insurance contributions, a broad definition of the term "employment" is used. It is not confined to situations in which there is an employment contract governed by civil law but also extends to co-operative relationships that meet certain criteria defined by the relevant act of parliament or the executive rules and regulations based on it; in accordance with these criteria, employment relationships not governed by employment contracts can be equated with those that entail, with all the relevant consequences concerning entitlement to benefits, an obligation to pay contributions.

4.3 In the past it had been generally assumed that a physiotherapist working for a physiotherapy practice who was paid by invoice should not normally be regarded as being employed by the practice. However, the Central Appeals Board took a different view in its judgment of 19 April 1983. The BVG is entrusted with the implementation of social security legislation with regard to employees in the health sector and must determine the social insurance contributions of employers and employees for employee insurance schemes such as medical insurance, disability insurance and unemployment insurance contributions. As from 1 January 1984, the BVG claimed these contributions from the applicants for the aforementioned physiotherapist. The applicants did not agree that this date was correct and contested the decision on the grounds, inter alia, that the principle of equality had been violated because other physiotherapists had only been required to pay contributions as from 1986. The court of first instance, the Board of Appeals and

the court of second and last instance, the Central Appeals Board, dismissed the case. The main reason for the dismissal of the case was that peremptory statutory provisions had been properly applied, that such provisions must always be applied unless there are special circumstances, and that these were lacking in the authors' case.

4.4 With respect to the requirement of exhaustion of domestic remedies, the State party acknowledges that the authors pursued legal proceedings up to the court of last instance. It points out, however, that the authors did not invoke either article 26 or article 14, paragraph 1, before the Board of Appeal and, on appeal, before the Central Appeals Board. It was merely in a supplementary petition to the Central Appeals Board, dated 29 April 1987, that the principle of equality was also mentioned, if only in general terms and without specific reference to provisions of domestic or international law. Nor were the articles of the Covenant invoked by the authors in either of the judgements given in the case. In these circumstances, the State party does not "consider it to be altogether clear that the applicants have exhausted domestic remedies, as they did not explicitly invoke any provisions of the Covenant during domestic proceedings". The State party requests the Committee to decide on whether and to what extent authors of a communication must invoke the provisions of the Covenant purported to have been violated in the course of domestic legal proceedings.

4.5 With respect to the alleged violations of article 14, paragraph 1, and article 26, the State party contests that the actions complained of by the authors can be brought within the scope of application of these provisions and thus considers the communication to be inadmissible pursuant to articles 2 and 3 of the Optional Protocol. With respect to article 14, paragraph 1, first sentence, it points out that article 14 is concerned with procedural guarantees for trials and not with the substance of judgements handed down by the courts. Individuals who believe that the law has been wrongly applied to them in the Netherlands may seek redress through the courts. The rules governing appeals against decisions under social security legislation are laid down in the Appeals Act of 1955. The State party emphasizes that it has not been alleged that the Board of Appeal or the Central Appeals Board failed to observe these rules, which are compatible with article 14, and that there is no evidence that the boards failed to observe them.

4.6 With respect to the alleged violation of article 26, the State party questions the authors' apparent assumption that article 26 also applies to the contributions that employers and employees are required to make, and invites the Committee to give its opinion on this question. It further indicates that the authors do not appear to have complained about the substance of the statutory provisions concerning mandatory social insurance but only about the fact that the BVG set 1 January 1984 as the date from which contributions were payable. The issue thus is whether the application of a law which is not in itself discriminatory and which the Central Appeals Board considers to have been correct can run counter to article 26. Earlier communications concerning Netherlands social security legislation submitted to the Committee g/ related to provisions laid down by an act of parliament which the authors deemed to be discriminatory. The present communication, however, does not relate to the provision's substance, which is neutral, but to the application of social security legislation by an industrial insurance board. The State party invites the Committee to formulate its opinion on this point and refers to the Committee's decision in communication No. 212/1986, where it was stated, *inter alia*, that the scope of article 26 of the Covenant does not extend to differences of results in the application of common rules in the

allocation of benefits. b/ This statement, according to the State party, should apply all the more to situations in which social insurance contributions are determined by an industrial insurance board.

4.7 The State party expresses doubts as to whether an action by an industrial insurance board can be attributed to its State organs, in the sense that the State party could be held liable for it under the Covenant or the Optional Protocol thereto. In this context, it emphasizes that an industrial insurance board such as the BVG is not a State organ: such boards are merely associations of employers and employees established for the specific purpose of implementing social security legislation, and the management of such a board consists exclusively of representatives of the employers' and employees' organizations. Industrial insurance boards operate independently and there is no way in which the State party's authorities could influence concrete decisions such as that complained of by the authors.

5.1 Commenting on the State party's observations, the authors, in a submission dated 29 December 1988, affirm that it was not necessary for them to invoke either the principle of equality or article 26 of the Covenant in domestic proceedings. In Netherlands administrative law, the principle of equality has traditionally been a legal standard against which the courts test the administrative practices of governmental authorities. They consider it to be unnecessary to invoke, in administrative procedures, sources of law that embody the principle of equality, since the judge is bound to accept this principle and should ex officio test the case against it. The fact that the contested judgements do not refer to the provisions of the Covenant is, therefore, irrelevant.

5.2 With respect to the alleged violation of article 14, first sentence, of the Covenant, the authors acknowledge that the provisions of article 14 contain further guarantees intended to secure the conduct of a fair trial and add that they have no reason to complain about the conduct of the judicial proceedings as such. They reiterate, however, that the judicial review of general principles of justice in their case by the Central Appeals Board was contradictory, and that the Board treated them differently from others and, therefore, unequally.

5.3 The authors further reject the State party's contention that the communication should be declared inadmissible because it was directed against discriminatory application of legislation which in itself is neutral. They refer to the Committee's decision in communication No. 172/1984 c/ which stipulated, inter alia, that "article 26 is concerned with the obligations imposed on States in regard to their legislation and the application thereof". With respect to the State party's argument that because it left the implementation of some aspects of social security legislation to industrial insurance boards and is therefore unable to exercise influence on concrete decisions adopted by such boards, they argue that the mere inability to supervise the implementation of social security legislation by industrial insurance boards cannot detract from the fact that the State party is responsible for seeing to it that these bodies charged with the implementation of the law perform their statutory assignments in conformity with legal standards. Where loopholes become apparent, it is for the legislator to eliminate them. Therefore, according to the authors, the State party should not be allowed to claim that it cannot influence the decisions of bodies such as the BVG. Were this to be allowed, it would be easy for States parties to undermine the "basic rights" of their citizens. The authors conclude that in their case, the State party seeks to deny its responsibility for the concrete application of social security legislation by invoking a situation which it had created itself.

6.1 Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 With respect to the requirement of exhaustion of domestic remedies, the Committee has taken note of the State party's argument that it is doubtful whether the authors have complied with article 5, paragraph 2 (b), of the Optional Protocol, given that they did not invoke any provisions of the Covenant in the course of domestic proceedings. The Committee observes that whereas authors must invoke the substantive rights contained in the Covenant, they are not required, for purposes of the Optional Protocol, necessarily to do so by reference to specific articles of the Covenant.

6.4 With regard to an alleged violation of article 14, paragraph 1, of the Covenant, the Committee notes that while the authors have complained about the outcome of the judicial proceedings, they acknowledge that procedural guarantees were observed in their conduct. The Committee observes that article 14 of the Covenant guarantees procedural equality but cannot be interpreted as guaranteeing equality of results or absence of error on the part of the competent tribunal. Thus, this aspect of the authors' communication falls outside the scope of application of article 14 and is, therefore, inadmissible under article 3 of the Optional Protocol.

6.5 With regard to an alleged violation of article 26, the Committee recalls that its first sentence stipulates that "all persons are entitled without discrimination to the equal protection of the law". In this connection, it observes that this provision should be interpreted to cover not only entitlements which individuals entertain vis-à-vis the State but also obligations assumed by them pursuant to law. Concerning the State party's argument that the BVG is not a State organ and that the Government cannot influence concrete decisions of industrial insurance boards, the Committee observes that a State party is not relieved of its obligations under the Covenant when some of its functions are delegated to other autonomous organs.

6.6 The authors complain about the application to them of legal rules of a compulsory nature, which for unexplained reasons were allegedly not applied uniformly to some other physiotherapy practices; regardless of whether the apparent non-application of the compulsory rules on insurance contributions in other cases may have been right or wrong, it has not been alleged that these rules were incorrectly applied to the authors following the Central Appeals Board's ruling of 19 April 1983 that part-time physiotherapists were to be deemed employees and that their employers were liable for social security contributions; furthermore, the Committee is not competent to examine errors allegedly committed in the application of laws concerning persons other than the authors of a communication.

6.7 The Committee also recalls that article 26, second sentence, provides that the law of States parties should "guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The Committee notes that the authors have not

claimed that their different treatment was attributable to their belonging to any identifiably distinct category which could have exposed them to discrimination on account of any of the grounds enumerated or "other status" referred to in article 26 of the Covenant. The Committee, therefore, finds this aspect of the authors' communication to be inadmissible under article 3 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 authors.

Notes

a/ Communications Nos. 172/1984 (Broeks), 180/1984 (Danning) and 182/1984 (Zwaan-de Vries), final views adopted on 9 April 1987 (twenty-ninth session).

b/ P. P. C. v. the Netherlands, inadmissibility decision adopted on 24 March 1988 (thirty-second session), para. 6.2.

c/ See note 1; Committee's final views (twenty-ninth session), para. 12.3.

G. Communication No. 296/1988, J. R. C. v. Costa Rica
(Decision of 30 March 1989, adopted at the
thirty-fifth session)

Submitted by: J. R. C. [name deleted]
Alleged victim: The author
State party concerned: Costa Rica
Date of communication: 25 March 1988 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 March 1989,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 25 March 1988, and further letter dated 27 December 1988) is J. R. C., of undetermined nationality, at present detained at the Centro de Detenciones de San Sebastián in San José, Costa Rica, awaiting expulsion from that country. He states that according to his adoptive parents he was born in Mexico, but that there is no evidence of this fact and that he has no document to establish his identity. He claims to be a victim of violation of articles 9 and 14 of the International Covenant on Civil and Political Rights by Costa Rica. He is represented by counsel.

2.1 He states that on 4 July 1982 he clandestinely entered Costa Rica from Nicaragua, where he had participated in the Sandinista movement. The Costa Rican immigration police, however, arrested him and a tribunal sentenced him to two years' imprisonment on charges of "ideological falsehood" and use of a false document. In 1985, upon completion of his term of imprisonment, he was expelled to Honduras, where police authorities immediately detained him under charges of having participated in a kidnapping said to have occurred in 1981. After escaping from prison in 1987, he re-entered Costa Rica in order to marry a Costa Rican woman by whom he had a son out of wedlock. On 24 November 1987, however, he was again detained by Costa Rican police.

2.2 With regard to the exhaustion of domestic remedies, the author states that on 11 December 1987 he invoked article 48 of the Costa Rican Constitution before the Costa Rican Supreme Court, requesting to be released from detention or, in the alternative, to be brought before a judge if there were any charges against him. The Supreme Court, however, denied the author's requests on the grounds that on 25 November 1987 the Ministry of Immigration had adopted a resolution to deport him as a danger to national security. The author claims that he has exhausted all domestic remedies available.

3. By decision of 8 July 1988, the Working Group of 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.

4.1 In its submission under rule 91, dated 31 October 1988, the State party objects to the admissibility of the communication under article 3 of the Optional Protocol as incompatible with the provisions of the Covenant and as an abuse of the right of submission and, under article 5, paragraph 2 (b), of the Optional Protocol, because the author has not exhausted all available domestic remedies.

4.2 With regard to the facts, the State party points out that the author: "... possesses no documents accrediting him as a citizen of any country, and therefore considers himself to be stateless. There are indications that he may have been born in Mexico, but there is no evidence to confirm this. He took an active part in the revolutionary struggle in Nicaragua, which culminated in the overthrow of the régime by the Sandinistas and the establishment of the Government of the Sandinista National Liberation Front. He was also involved in guerrilla activities, alternately in El Salvador and Honduras, and also in Nicaragua, between 1978 and 1981. He has been linked with the Sandinista National Liberation Front and is known among Central American guerrillas by the alias of 'Commander Sarak'."

4.3 In July 1982, he entered Costa Rican territory clandestinely and without documents. He never took any steps to obtain migrant status in Costa Rica. However, he did try to obtain papers identifying him as a refugee through the Regional Office of the United Nations High Commissioner for Refugees (UNHCR) in Costa Rica, by using false documents. He was arrested in Costa Rican territory together with other aliens in 1982, in the city of Liberia, armed with an M-23 sub-machine-gun and ammunition. The papers confiscated from him on this occasion included documents implicating him in a terrorist plan to attack the Guatemalan Embassy at San José, in order to take diplomats hostage and subsequently to demand a cash ransom as well as the release and granting of amnesty to Guatemalan political prisoners and their transfer to Mexico.

4.4 He was tried and sentenced by the Costa Rican court in 1982 on two charges of "ideological falsehood" and one charge of the use of false documents, and sentenced to two years' imprisonment. On completion of his sentence, the Costa Rican authorities ordered his deportation, and this subsequently took place after considerable efforts to find a country that would agree to take him. It was finally possible to deport him to Honduras on 1 October 1985, and he was then banned from entering the national territory.

4.5 Subsequently, although it is not known exactly when, he re-entered Costa Rican territory clandestinely and illegally. He was again arrested by the Costa Rican authorities on 24 November 1987 and immediately, in a decision taken on 25 November 1987, the Directorate-General for Migration and Aliens' Affairs again ordered his deportation, since he was illegally in the country, had previously been deported and had a criminal record that marked him out as a dangerous person and a threat to national security and public order. He was detained until a country could be found that would agree to take him. The State party points out that it has approached the consulates and embassies of numerous friendly countries, thus far without success, and that it is continuing its endeavours to find a receiving country.

5.1 The State party further observes that the author committed the serious offence of unlawful association prejudicial to the public peace. For this offence, the Second Higher Criminal Court, First Section, of San José, in a judgement handed down on 7 December 1982, sentenced him to two years' imprisonment.

5.2 From the above judgement it emerges that the following was proved in the proceedings:

"(a) The author received political and military instruction in the Republic of Cuba and, at the time when the offence was committed, was part of a guerrilla commando known as the 'Ernesto Che Guevara Commando', in which he was known as 'Commander Sarak';

"(b) At the time when he was arrested, an M-23 sub-machine-gun was confiscated from him with four magazines and 170 9 mm-calibre projectiles for that weapon, and triangular black-cloth masks, one of which carried a badge reading 'Che Guevara Commando'. A number of documents were also confiscated, including one confirming his membership of the guerrilla movement and the draft of a 'war report' of the so-called 'Che Guevara Commando';

"(c) The Commando was proposing to carry out in Costa Rican territory a terrorist operational known as 'Death to the Fascist Government of Guatemala'. The details of this terrorist attack against the Guatemalan Embassy at San José and its aims are specified in the judgement of the court;

"(d) The author of this communication, the accused in the trial in question, admitted to the courts that he was part of the 'Che Guevara' guerrilla commando and gave details of plans which were going to be put into effect in Costa Rica, coinciding with the details of the 'war report' confiscated from him when he was arrested. Mr. J. R. C. added that the commando of which he was chief was made up of two other men who were not arrested, and that one of them was also carrying a sub-machine-gun;

"(e) Documentary evidence was adduced at the trial proving that the author was in the vanguard of the army of the Sandinista National Liberation Front, as a member of the 'Filemón Rivera' and 'Facundo Picado' columns."

6.1 With regard to an alleged violation of article 9, paragraph 1, of the Covenant, the State party submits that this provision does not apply to the author because he entered illegally into the national territory and is breaking the country's laws (since he was prohibited from entering Costa Rica by a final decision of 1 October 1985 of the Directorate-General for Migration and Aliens' Affairs). The State party further submits that there are other provisions of the Covenant relating to liberty of person and freedom of movement which show that persons who are unlawfully in the territory of a State do not have the right to reside in the country or to move freely within it. These restrictions are set out in article 12, paragraph 1, of the Covenant. Pursuing the analysis of the provisions of article 9, paragraph 1, of the Covenant, the State party argues:

"... that the author is not subject to arbitrary detention or imprisonment, since he has been detained under a decision by the competent authority and if he is deprived of his freedom this is because in accordance with the Migrants and Aliens Act and its regulations anyone who has unlawfully entered the country and who is under an order of expulsion shall be kept in detention during the deportation procedure, particularly if allowing him to remain at liberty would endanger national security and public order. The author's background shows him to be a highly dangerous person owing to his past guerrilla and terrorist activities, as well as his criminal record in Costa Rica, where he was sentenced for a number of offences. The security measures

adopted by the State in keeping him in detention until he can be deported are therefore fully justified."

The length of the author's detention pending deportation is attributable to the fact that in spite of concerted efforts by the State party, no other country has hitherto agreed to accept Mr. J. R. C. into its territory.

6.2 With regard to an alleged violation of article 9, paragraph 4, of the Covenant, the State party submits that the evidence presented by the author himself demonstrates that his claim is unfounded, since on 11 December 1987 he applied for habeas corpus before the Supreme Court of Justice, which on 5 January 1988 declared the application unfounded, thus confirming the lawfulness of his detention. In its decision, the Court stated that "in the case of aliens unlawfully present in the territory of the Republic, detention constitutes the physical means of ensuring their expulsion, a measure already decreed by the Directorate-General for Migration and Aliens' Affairs".

6.3 With regard to an alleged violation of article 14 of the Covenant, the State party submits that at the time when the author submitted his communication, no criminal charge had been brought against him for his second illegal entry into Costa Rican territory. The State, acting through the Directorate-General for Migration and Aliens' Affairs, merely ordered the deportation of Mr. J. R. C. for entering the country illegally once the Costa Rican authorities had decided to deport the author, and their sole responsibility was to expedite the process, and to find a country which would agree to accept him.

6.4 With regard to the exhaustion of domestic remedies, the State party submits that:

"If, on entering the national territory, the author had intended to seek a means of remaining in the country with some kind of status as a migrant, the correct procedure would have been to apply to the courts to invalidate the expulsion order, proving that this decision on the part of the Directorate-General for Migration and Aliens' Affairs was not legally correct. For this purpose the author had normal remedies available, and could have filed an administrative petition in accordance with article 49 of the Political Constitution and article 20 of the Act Regulating Administrative Jurisdiction, No. 3667 of 12 March 1966 ...

"This was not the procedure chosen by the author ... With his communication to the Human Rights Committee, Mr. [R. C.] is endeavouring to cancel his detention, which is a precautionary measure and the consequence and result of the deportation order issued by the competent authorities, instead of endeavouring to have the order reversed by means of the remedies provided by law, which he has not used."

7.1 On 27 December 1988, the author commented on the State party's submission, pointing out that the exhaustion of domestic remedies in his case would be "highly technical, slow and expensive", whereas international human rights law only requires the exhaustion of remedies that are adequate and effective. According to him, the only effective remedy in his case would have been a successful action of habeas corpus, which the Supreme Court of Costa Rica had denied. The author therefore contends that effective remedies have been exhausted.

7.2 With respect to the State party's argument that the only reason for the author's detention is to assure his deportation, the author complains that such detention has proved disproportionate and indefinite.

8.1 Before considering any claims 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.

8.2 Article 5, paragraph 2 (a), of the Optional Protocol precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement. In this connection the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 Article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication unless domestic remedies have been exhausted. In this connection the Committee notes that the State party has indicated that administrative and judicial remedies are still available to the author, that he could still file an administrative petition to invalidate the expulsion order, and, if unsuccessful, could apply to the courts for review. The author's belief that these remedies would be highly technical, slow and expensive does not absolve him from the requirement of at least engaging the relevant procedures.

8.4 The Committee has also examined whether the conditions of articles 2 and 3 of the Optional Protocol have been met. With regard to a possible breach of article 9 of the Covenant, the Committee notes that this article prohibits arbitrary arrest and detention. The author was lawfully arrested and detained in connection with his unauthorized entry into Costa Rica. The Committee observes that the author is being detained pending deportation and that the State party is endeavouring to find a host country willing to accept him. In this connection, the Committee notes that the State party has pleaded reasons of national security in connection with the proceedings to deport him. It is not for the Committee to test a sovereign State's evaluation of an alien's security rating. With respect to a possible violation of article 14 of the Covenant, a thorough examination of the communication has not revealed any facts in substantiation of the author's claim to be a victim of a violation of this article.

9. The Human Rights Committee therefore decides:

(a) The communication is inadmissible under articles 2, 3 and 5, paragraph 2 (b), of the Optional Protocol because the author's claims are either unsubstantiated or incompatible with the provisions of the Covenant, and because domestic remedies have not been exhausted;

(b) This decision shall be communicated to the author and to the State party.

H. Communication No. 300/1988, J. H. v. Finland (Decision of 23 March 1989, adopted at the thirty-fifth session)

Submitted by: J. H. [name deleted]

Alleged victim: The author

State party concerned: Finland

Date of communication: 31 May 1988

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 23 March 1989,

Adopts the following:

Decision on admissibility

1. The author of the communication (letter dated 3 May 1980; subsequent submission dated 13 December 1988) is J. H., a Finnish citizen born in 1954, currently serving a prison sentence in Finland. The author claims to be the victim of a violation by the Government of Finland of articles 7 and 14, paragraphs 1 and 3 (g), of the International Covenant on Civil and Political Rights.

2.1 The author states that on 5 May 1986 the Municipal Court of Helsinki found him guilty of having smuggled and sold in Finland 15 kilos of drugs (hashish) and sentenced him to seven years' imprisonment and to pay a fine of 399,000 Finnish markkaa. On 17 September 1987, the Court of Appeal modified the sentence to six and a half years and reduced the fine to 378,000 Finnish markkaa. On 21 January 1988, the Supreme Court refused the author's application for leave to appeal. The author thus claims to have exhausted domestic remedies available to him.

2.2 The author also claims that he did not smuggle any drugs and that he merely sold 4.6 kilos of hashish. He further alleges that the Municipal Court admitted into evidence against him the testimony of a mentally disturbed co-defendant who during the trial had retracted his testimony. This person's testimony was allegedly obtained under duress, in the course of an interrogation said to have lasted from 3 p.m. until midnight. Moreover, he contends that the court based its judgement on the hearsay evidence produced by some of the co-defendants in the case. Lastly, he claims that the court used his earlier confession against him, so as to be able to convict him on additional charges.

3. By its decision of 8 July 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. It further requested the State party to provide the Committee with the English translations of the judgements of the Municipal Court of Helsinki and of the Court of Appeal.

4.1 In its submission under rule 91 dated 8 November 1988, the State party confirms that the author has exhausted all the domestic remedies available to him. It does, however, contest the admissibility of the communication on the ground that the facts of the case do not reveal any breach of the author's rights. The State party submits that the author's allegation that article 7 has been violated is completely unfounded, since his submission contains no evidence to support his claim. Nor has he adduced any facts which could substantiate a violation of article 14, paragraph 3 (g), of the Covenant.

4.2 With regard to the alleged violation of article 14, the State party observes that the Human Rights Committee is not a further instance of appeal and, therefore, is not competent to pronounce on the proper weighing of evidence or the measurement of sentences. In this connection, the State party objects that the author is submitting his communication to the Committee as an appeal to a fourth instance for a further review of his case.

5. Commenting on the State party's submission, the author, in a letter dated 13 December 1988, reiterates his initial allegations with respect to the lack of incriminating evidence against him. He further argues that, although the Human Rights Committee is not a further instance of appeal with respect to the measurement of sentences, nevertheless it should be deemed competent to pronounce on the proper weighing of the evidentiary material by domestic courts.

6.1 Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The author of the communication claims that there have been breaches of articles 7 and 14, paragraphs 1 and 3 (g), of the Covenant.

6.3 A thorough examination by the Committee of all the material submitted by the author has not revealed any facts in substantiation of the claim that he is a victim of a violation by the State party of his rights set forth in article 7.

6.4 The Committee observes that the assessment of evidentiary material is essentially a matter for the courts and authorities of the State party concerned. The Committee further notes that it is not an appellate court and that allegations that a domestic court has committed errors of fact or law do not in themselves raise questions under the Covenant unless it also appears that some of the requirements of article 14 may not have been complied with. J. H.'s complaints relating to the alleged violations of article 14 do not appear to raise such issues.

6.5 The Human Rights Committee considers that the author has failed to provide evidence to substantiate his claims.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That the decision be communicated to the author and to the State party.

I. Communication No. 301/1988, R. M. v. Finland
(Decision of 23 March 1989, adopted at the
thirty-fifth session)

Submitted by: R. M. [name deleted]

Alleged victim: The author

State party concerned: Finland

Date of communication: 14 June 1988 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 23 March 1989,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 14 June 1988, further submission dated 12 December 1988) is R. M., a Finnish citizen born in 1956, currently serving a prison sentence in Finland. The author claims to be a victim of a violation by the Government of Finland of articles 7, 14, paragraphs 1, 3 (e) and 3 (g), and 17 of the International Covenant on Civil and Political Rights.

2.1 On 5 May 1986, the author was sentenced to 2 years and 3 months of imprisonment by the Municipal Court of Helsinki for having smuggled into Finland 4.5 kilos of hashish. In July 1986 an accomplice was arrested and a retrial was ordered, in which the author was sentenced, on 12 January 1987, to 8 years and 8 months of imprisonment and to pay a fine of 1 million Finnish markkaa. On 25 March 1988, the Supreme Court dismissed the author's petition for leave to appeal.

2.2 The author complains that the Municipal Court admitted into evidence against him testimonies of a mentally disturbed co-defendant, which were allegedly obtained under duress. The author further claims that the policemen who conducted the interrogation made illegal promises in order to obtain the information and that one testimony was obtained abroad under the threat of extradition.

2.3 The author further alleges that the courts did not evaluate fairly the evidence presented by the prosecutor, and that they were unduly influenced by the media. In addition, he alleges that his plea of not guilty was used against him and that his sentence was disproportionate in comparison with that of his co-defendants. Finally, he alleges that he was unable to defend himself properly in the Court of Appeal since there were no oral proceedings.

2.4 With regard to the exhaustion of domestic remedies, the author contends that he has exhausted all domestic remedies inasmuch as all three instances provided under the Finnish legal system have already adjudicated on his case.

3. By its decision of 8 July 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the provisional rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication.

4.1 In its submission under rule 91, dated 8 November 1988, the State party confirms that the author has exhausted all the domestic remedies available to him. It does, however, contest the admissibility of the communication on the ground that the facts of the case do not reveal any breach of the author's rights. The State party submits that the author's allegation that article 7 has been violated is unfounded, since the prohibition of torture and other inhuman or degrading treatment stipulated therein does not concern the alleged right of a defendant to have legal assistance and a tape recorder during the stage of preliminary investigation. Moreover, the State party contends that the author has not adduced any facts which could substantiate his claims that the Finnish authorities violated article 7.

4.2 With regard to the alleged violations of article 14, the State party observes that the Human Rights Committee is not a further instance of appeal and, therefore, is not competent to pronounce on the proper weighing of evidence or the measurement of sentences. Furthermore, with respect to whether the non-availability of a lawyer and a tape recorder at the preliminary investigation might be deemed a violation of article 14, paragraph 3, the Finnish Government notes that upon ratification of the Covenant it made a reservation concerning the right to have legal assistance at the stage of preliminary investigation, and contends that it cannot be assumed that the provisions of article 14 establish a personal right to have one's criminal investigation tape-recorded.

4.3 As to the alleged violation of article 17, the State party argues that serious offences - and in particular offences in which several people, drugs and large sums of money are involved - frequently are closely followed by the press and that press coverage in itself can hardly be held to be a violation of the defendant's rights.

5. Commenting on the State party's submission, the author, in a letter dated 12 December 1988, reiterates his previous allegations and contends that the absence of a lawyer and of a tape recorder at the stage of preliminary investigation makes it impossible to prove the conditions of ill-treatment to which he was allegedly subjected. He further argues that the weighing of the evidence constitutes the essence of a fair and public hearing by a competent, independent and impartial tribunal, that he is not submitting his communication to the Committee as an appeal to a fourth instance for a review of his case and that the procedure actually followed by the Finnish system of judicial appeal does not conform to the articles of the International Covenant on Civil and Political Rights.

6.1 Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The author of the communication claims that there have been breaches of articles 7, 14, paragraphs 1 and 3 (e) and (g), and 17 of the Covenant.

6.3 A thorough examination by the Committee of all the material submitted by the author has not revealed any precise allegations of fact in substantiation of the claim that he is a victim of violations by the State party of his rights set forth in article 7.

6.4 The Committee takes note of the Finnish reservation on article 14 and further reiterates the view that the assessment of the evidentiary material or the measurement of sentences are essentially matters for the courts and authorities of the State party concerned. The Committee further observes that it is not an appellate court and that allegations that a domestic court has committed errors of fact or law do not in themselves raise questions of violation of the Covenant unless it also appears that some of the requirements of article 14 may not have been complied with. R. M.'s complaints relating to the alleged violations of article 14 do not appear to raise such issues. The Committee believes that the absence of oral hearings in the appellate proceedings raises no issue under article 14 of the Covenant.

6.5 The communication does not disclose any facts in support of the author's allegation that the press coverage in his case adversely affected the procedures before the courts. As to his allegation that the press coverage par se constituted a violation of article 17, the Committee notes that the author has not exhausted domestic remedies against those claimed to be responsible for the violation of his privacy, honour and reputation.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That the decision be communicated to the author and to the State party concerned.

J. Communications Nos. 324 and 325/1988, J. B. and H. K. v. France
(Decision of 25 October 1988, adopted at the thirty-fourth
session)

Submitted by: J. B. and H. K. [names deleted]

Alleged victim: The authors

State party concerned: France

Date of communications: 28 July 1988

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 October 1988,

Adopts the following:

A. Decision to deal jointly with two communications

The Human Rights Committee,

Considering that communications Nos. 324 and 325/1988 concerning J. B. and H. K. refer to closely related events affecting the authors, said to have taken place in Morlaix, France, in March 1985,

Considering further that the two communications can appropriately be dealt with together,

1. Decides, pursuant to rule 88, paragraph 2, of its provisional rules of procedure, to deal jointly with these communications;

2. Further decides that this decision shall be communicated to the State party and the authors of the communications.

B. Decision on admissibility

1. The authors of the communications (two identical letters dated 28 July 1988) are J. B. and H. K., two French citizens resident in Ploufragan, Brittany, France. They claim to be victims of a violation of articles 2, 19, 26 and 27 of the International Covenant on Civil and Political Rights by France.

2.1 The authors, two teachers, state that they had to appear, on 15 March 1985, before the Tribunal Correctionnel of Morlaix, Brittany, on charges of having sprayed and rendered illegible a road sign. in the context of a campaign to obtain the installation of bilingual road signs in Brittany. The Tribunal refused to make available to them the services of an interpreter, allegedly on the grounds that two teachers should be deemed to understand French.

2.2 With respect to the requirement of exhaustion of domestic remedies, the authors state that the pursuit of such remedies as are available is absolutely futile (totalement inefficace) and even risky, because the competent Court of Appeal at Rennes systematically refuses to hear cases in Breton and allegedly tends to aggravate, in cases such " are under examination, the penal sanctions.

3.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

3.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

3.3 With respect to the requirement of exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol, the Committee notes that the authors do not intend to appeal the judgement of the Tribunal Correctionnel of Morlaix, because they believe that an appeal would be futile and fear that the Court of Appeal might increase the penal sanctions. The Committee finds, however, that, in the particular circumstances disclosed by the communication, the authors' contentions do not absolve them from the obligation to pursue remedies available to them. The Committee is of the view that the further pursuit of the available remedies cannot be deemed a priori futile and that mere doubts about the success of such remedies do not render them ineffective and cannot be admitted as a justification for non-compliance. Unable to find that the application of domestic remedies in this case has been unreasonably prolonged, the Committee concludes that the requirement of article 5, paragraph 2 (b) of the Optional Protocol has not been met.

4. The Human Rights Committee therefore decides:

(a) That the communications are inadmissible;

(b) That this decision shall be communicated to the authors and, for information, to the State party.

**K. Communication No. 342/1988, R. L. v. Canada
(Decision of 7 April 1989, adopted at the
thirty-fifth session)**

Submitted by: R. L. [name deleted]

Alleged victim: The author

State party concerned: Canada

Date of communication: 1 June 1988

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 7 April 1989,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 1 June 1988, is R. L., a Canadian citizen currently residing in the province of Quebec. He claims to be a victim of violations of his human rights by the Canadian courts, alleging that during bankruptcy proceedings his rights to equality before the law and to a fair trial were denied. In particular, he alleges that the judges in both the trial and the appellate courts relied on false evidence and clearly favoured the other party, a lawyer of a prestigious law firm, in both procedure and substance. He further claims that all decisions rendered were the product of bad faith and bias on the part of the judges.

2. With regard to the issue of exhaustion of domestic remedies, the author claims that it would be futile to file further appeals on the ground of the unfair attitude allegedly exhibited by the judges. He encloses, however, a copy of a petition for a declaratory judgement, dated 31 May 1988, in which he asks the Superior Court of the District of Montreal to declare that the rights to equality before the law and to a fair trial, as enshrined in the Canadian and Quebec Charters of Rights and Liberties, apply to him.

3. Before considering any claims contained in a communication, the Committee must ascertain whether it fulfils the basic conditions of admissibility under the Optional Protocol.

4. A thorough examination of the material submitted by the author does not reveal any substantiation of the claim, for purposes of admissibility, that he is a victim of violations by the State party of any of the rights set forth in the International Covenant on Civil and Political Rights. Furthermore, the author has acknowledged that he has not exhausted all domestic remedies, which he is required to do under article 5, paragraph 2 (b), of the Optional Protocol. The communication does not disclose the existence of any special circumstances which might have absolved the author from exhausting the domestic remedies at his disposal. The Committee concludes that the requirements for declaring the communication admissible under the Optional Protocol have not been met.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision be communicated to the author and, for information, to the State party.

L. Communication No. 360/1989. A newspaper publishing company v. Trinidad and Tobago (Decision of 14 July 1989, adopted at the thirty-sixth session)

Submitted by: A newspaper publishing company

Alleged victim: The company

State party concerned: Trinidad and Tobago

Date of communication: 2 March 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 14 July 1989,

Adopts the following:

Decision on admissibility

1. The communication, dated 2 March 1989, is submitted by a newspaper company registered in Trinidad. The company claims to be the victim of a violation by the Government of Trinidad and Tobago of articles 2, 14 and 19 of the International Covenant of Civil and Political Rights. It is represented by counsel.

2.1 The managing director of the company, Mr. D. C., states that the company publishes a bi-weekly and a weekly newspaper, with wide circulation in Trinidad and throughout the Caribbean. As the material necessary for the publication of the paper has to be imported, the company requires the permission of the Central Bank of Trinidad and Tobago to purchase the foreign currency needed for payment. Every year the Central Bank determines the allocation of foreign exchange for newspapers published in the country, usually at a level which would allow the companies to purchase sufficient raw material for publication purposes. It is stated that in 1988 the Central Bank allocated to the company an amount of foreign exchange wholly insufficient for the purpose of maintaining its annual production and guaranteeing the publication of the newspapers; allocation for other publishers are said to have been sufficient. The company unsuccessfully sought approval of the same amount of foreign exchange allocated to other publishers.

2.2 On 27 April 1988, the company requested the grant of a supplementary allocation from the Central Bank, which was refused. On 13 July 1988, it commenced a Constitutional Motion in the High Court of Trinidad and Tobago under section 14 of the Constitution, alleging that "the Central Bank acted as an arm of the State and directly affected the supply of newsprint and accessories of the company, thus violating an integral part of the freedom of the press, freedom of expression and the right to express political views". It is submitted that the newspapers published by the company have been critical of the policies pursued by the present Government of Trinidad, which has been in power since December 1986 and that as a consequence the company has been discriminated against. While the High Court deemed the case to be urgent, it heard it on several separate days during the period from September to December 1988, when it reserved its judgement. Since that day, the High Court has failed to produce a judgement. On December 1988, the

company reiterated its request to the Central Bank for a supplementary allocation of foreign exchange. This was again denied. According to the company's director, the allocation obtained only enables the company to sustain the production and the publication of its newspapers through the first quarter of 1989.

2.3 With respect to the requirement of exhaustion of domestic remedies, it is submitted that there are no effective remedies within the meaning of article 2 of the Covenant, since the High Court has failed to act expeditiously. It is stated that the matter has not been submitted for examination under another procedure of international investigation or settlement. a/

3.1 Before considering any claims contained in a communication the Human Rights Committee must, pursuant to rule 87 of its provisional rules of procedure, ascertain whether or not it is admissible under the Optional Protocol to the Covenant.

3.2 The present communication is submitted on behalf of a company incorporated under the laws of Trinidad and Tobago. While counsel has indicated that Mr. D. C., the company's managing director, has been duly "authorized to make the complaint on behalf of the company", it is not indicated whether and to what extent his individual rights under the Covenant have been violated by the events referred to in the communication. Under article 1 of the Optional Protocol, only individuals may submit a communication to the Human Rights Committee. A company incorporated under the laws of a State party to the Optional Protocol, as such, has no standing under article 1, regardless of whether its allegations appear to raise issues under the Covenant.

4. The Human Rights Committee therefore decides:

(a) The communication is inadmissible;

(b) This decision shall be communicated to the representative of the alleged victim, and, for information, to the State party.

Notes

a/ The Secretariat has ascertained that the same matter has not been submitted to the Inter-American Commission on Human Rights.

M. Communication No. 361/1989. A publication and a printing company v. Trinidad and Tobago (Decision of 14 July 1989, adopted at the thirty-sixth session)

Submitted by: A publication and a printing company

Alleged victims: The companies

State party concerned: Trinidad and Tobago

Date of communication: 2 March 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 14 July 1989,

Adopts the following:

Decision on admissibility

1. The communication, dated 2 March 1989, is submitted by two companies registered in Trinidad. The companies claim to be the victims of a violation by the Government of Trinidad and Tobago of articles 2, 14 and 19 of the International Covenant of Civil and Political Rights. They are represented by counsel.

2.1 It is stated that the main function of the printing company is to purchase and supply the printing material to the publication company for the purpose of producing, printing and publishing an independent weekly newspaper. Both companies are owned by the same individuals. As the material necessary for the paper's publication must be imported, the companies require the permission from the Central Bank of Trinidad and Tobago to purchase foreign currencies to pay for the material. Every year the Central Bank determines the allocation of foreign exchange for newspapers published in the country, usually at levels which would allow the companies to purchase sufficient raw material for publication purposes. It is claimed that in 1987 the companies received a reduced allocation by the Central Bank and that in 1988 this allocation was further reduced. The companies subsequently sought the approval of an increased amount of foreign exchange and, as a result, in January 1989 the Central Bank granted them a slightly increased allocation: the companies claim, however, that the Central Bank's decision will not enable them to sustain the production and publication of the paper beyond the first two months of 1989. They further allege that the Central Bank has fixed foreign exchange allocation for other newspapers published in the country at levels fully allowing them to maintain their publication; as a result, they claim that they are entitled to expect the same treatment.

2.2 With respect to the requirement of the exhaustion of domestic remedies, it is stated that a judicial review of the matter has been initiated and that a hearing in the Court is forthcoming. It is submitted, however, that the pursuit of domestic remedies is deemed unnecessary since the machinery of justice is ineffective.

2.3 It is stated that the matter has not been submitted for examination under another procedure of international investigation or settlement. g/

3.1 Before considering any claims contained in a communication the Human Rights Committee must, pursuant to rule 87 of its provisional rules of procedure, ascertain whether or not it is admissible under the Optional Protocol to the Covenant.

3.2 The present communication is submitted on behalf of two companies incorporated under the laws of Trinidad and Tobago. Under article 1 of the Optional Protocol, as such, only individuals may submit a communication to the Human Rights Committee. A company incorporated under the laws of a State party to the Optional Protocol, as such, has no standing under article 1, regardless of whether its allegations appear to raise issues under the Covenant.

4. The Human Rights Committee therefore decides:

(a) The communication is inadmissible;

(b) This decision shall be communicated to the representative of the alleged victims, and, for information, to the State party.

Notes

g/ The Secretariat has ascertained that the same matter has not been submitted to the Inter-American Commission on Human Rights.

ANNEX XII

Information received from States parties
following the adoption of final views

Note No. 2489, dated 27 July 1989, from the Permanent Mission of Finland to the United Nations Office at Geneva, concerning the views adopted by the Human Rights Committee on communication No. 265/1987, An'ti Vuolanne v. Finland (see annex X (J) above)

The Permanent Mission of Finland presents its compliments to the Centre for Human Rights and has the honour to forward the following information from the Finnish authorities:

In communication No. 265/1987 submitted to the Human Rights Committee by a conscript sanctioned with military confinement, the Committee was of the view that the communication disclosed a violation of article 9, paragraph 4, of the Covenant, since the author had been unable to challenge his detention before a court.

Legislative preparations are now under way to guarantee that persons who have been deprived of their liberty in an administrative process and who have not previously had the opportunity to have their detention examined by a court shall have that right after the new law enters into force. A government Bill to amend the Law on Military Disciplinary Procedure (331/83) and the relevant Ordinance (939/83) will be submitted to the Parliament in 1989. According to the Bill, a conscript shall have the right to have a decision on military confinement examined by a court.

ANNEX XIII

List of Committee documents issued during the reporting period

A. Thirty-fourth session

CCPR/C/28/Add.10	Second periodic report of Uruguay
CCPR/C/28/Add.11	Note by the Secretary-General - second periodic report of Panama
CCPR/C/32/Add.15	Second periodic report of the United Kingdom of Great Britain and Northern Ireland - Dependent Territories (Supplementary information)
CCPR/C/36/Add.4	Initial report of Cameroon
CCPR/C/36/Add.5	Initial report of Togo
CCPR/C/37/Add.8	Second periodic report of New Zealand
CCPR/C/37/Add.9	Second periodic report of Italy
CCPR/C/42/Add.1	Second periodic report of Portugal
CCPR/C/42/Add.6	Second periodic report of the Netherlands
CCPR/C/42/Add.7	Second periodic report of Panama
CCPR/C/50/Add.1 a/	Initial report of the Philippines
CCPR/C/56	Provisional agenda and annotations - thirty-fourth session
CCPR/C/SR.841-867 and corrigendum	Summary records of the thirty-fourth session

B. Thirty-fifth session

CCPR/C/4/Add.11	Initial report of Zaire (additional information)
CCPR/C/26/Add.2	Initial report of Bolivia
CCPR/C/28/Add.12	Second periodic report of Mauritius
CCPR/C/32/Add.16	Second periodic report of the Dominican Republic
CCPR/C/37/Add.10	Second periodic report of Costa Rica
CCPR/C/37/Add.11	Second periodic report of New Zealand (concerning Niue)
CCPR/C/37/Add.12	Second periodic report of New Zealand (concerning Tokelau)

CCPR/C/42/Add.8	Second periodic report of Nicaragua
CCPR/C/45/Add.1	Initial report of San Marino
CCPR/C/50/Add.1/Rev.1	Initial report of the Philippines
CCPR/C/52/Add.1	Third periodic report of the German Democratic Republic
CCPR/C/52/Add.2	Third periodic report of the Union of Soviet Socialist Republics
CCPR/C/52/Add.3	Third periodic report of the Federal Republic of Germany
CCPR/C/57	Consideration of reports submitted by States parties under article 40 of the Covenant - second periodic reports of States parties due in 1989: note by the Secretary-General
CCPR/C/57/Add.1	Second periodic report of Zaire
CCPR/C/58	Consideration of reports submitted by States parties under article 40 of the Covenant - third periodic reports of States parties due in 1989: note by the Secretary-General
CCPR/C/59	Provisional agenda and annotations - thirty-fifth session
CCPR/C/SR.868-894/ Add.1 and corrigendum	Summary records of the thirty-fifth session

C. Thirty-sixth session

CCPR/C/2/Rev.2	Reservations, declarations, notifications and objections relating to the International Covenant on Civil and Political Rights and the Optional Protocol thereto
CCPR/C/21/Rev.1	General comments
CCPR/C/36/Add.4/ Corr.1 b/	Initial report of Cameroon (corrigendum)
CCPR/C/45/Add.2	Initial report of Argentina
CCPR/C/50/Add.1/ Rev.1/Corr.1	Initial report of the Philippines (corrigendum)
CCPR/C/50/Add.2 and Corr.1 g/	Initial report of Democratic Yemen
CCPR/C/52/Add.4	Third periodic report of Czechoslovakia
CCPR/C/52/Add.5	Third periodic report of Tunisia
CCPR/C/58/Add.1 and 3	Third periodic report of Spain

CCPR/C/58/Add.2

Third periodic report of Chile

CCPR/C/60

Provisional agenda and annotations - thirty-sixth session

CCPR/C/SR.895-922/
Add.1 and corrigendum

Summary records of the thirty-sixth session

Notes

- a/ This document was later replaced by document CCPR/C/50/Add.1/Rev.1.
- b/ French and Russian only.
- a/ English only.

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