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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1977

Addendum

SWEDEN

[27 March 1979]

The following comments are based on the debates of the Committee during its 52nd and 53rd meetings,[1/] as reflected in the Report of the Committee to the General Assembly (document A/33/40 paragraphs 70 - 83). It should be recalled in this connection that the Swedish representative during the 53rd meeting of the Committee extensively commented on most of the issues raised during the 52nd meeting (paragraphs 84 - 93).

This supplementary report will deal with the issues in the same order as in document A/33/40.

Ad para 70. It was argued in the Committee that the technique used in Sweden to implement the provisions of the Covenant does not ensure complete consistency at all times between the international legal order as embodied in the Covenant and the domestic legal order. The opinion was expressed that an individual should have the right directly to invoke the

1/ These debates covered the consideration of the initial report of the Government of Sweden contained in document CCPR/C/1/Add.9 and Corr.1.

provisions of the Covenant before a court or an administrative tribunal. In answer to this, the Swedish Government wishes to recall that the Covenant leaves it to the States Parties to decide as to the measures necessary to give effect to the rights recognized in the Covenant. In effect, article 2, paragraph 2, expressly speaks about "legislative or other measures".

It should, further, be recalled that Sweden has accepted the right of individual petition as contained in the Optional Protocol to the Covenant. This acceptance has, no doubt, created a further guarantee of the consistency between the provisions of the Covenant and the domestic legal order.

As to the right of the individual to challenge laws running counter to the Covenant, it should be observed that Swedish courts and administrative authorities have the power to set aside laws and regulations, if they consider them to be manifestly in conflict with the Constitution. As explained in the initial Swedish report, this is, furthermore, an issue under active consideration. A Parliamentary Commission has been considering the right of courts and administrative authorities to examine the constitutionality of laws and regulations with special reference to the protection offered by the Constitution to basic human rights and fundamental freedoms. In its recently submitted report, the Commission proposes, inter alia, that the legal usage which has thus developed shall be expressly laid down in the Constitution.

One expert noted that the initial report was incomplete as regards the actual situation affecting the progress made in the enjoyment of rights. The Swedish Government wishes, in this connection, to refer to article 2, paragraph 1, of the Covenant, according to which each State Party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant. When assuming its

obligations under the Covenant, a State Party shall, thus, be able to give immediate effect to these rights. No transitory period is allowed. As stated in the initial Swedish report (paragraph 1), reservations were made on three points where Swedish legislation did not comply with the provisions of the Covenant and where, for reasons of principl a revision of the legislation in force was not being contemplated. It should be recalled in this connection that, according to international law, reservations have the effect of modifying provisions of an international instrument to the extent provided for by the reservations, subject to objections by other Contracting Parties. No objections were raised against the Swedish reservations to the Covenant and, consequently, the reservations have their full legal validity. Since the provisions in respect of which Sweden has made reservations are not binding on Sweden, the Swedish Government does not find it necessary to provide further information in regard to these provisions.

Ad para 71. The wording of chapter 2, section 16, of the Constitution (paragraph 2 (iv) of the initial Swedish report) implies that laws and decrees shall be generally applicable without discrimination on account of sex. This is, for instance, the case with the rights of men and women regarding the devolution of property, succession and legal representation, which are particularly referred to in the Report of the Committee.

It should be added that a Government Commission has been charged with the task of considering in depth the implementation of the principle of non-discrimination on account of sex. The Commission has proposed legislation in order to ensure equal treatment of men and women in working life. A summary of the Commission's proposals is enclosed.[2/] The Government has acted upon these proposals by submitting a Bill to the Parliament. It is expected that the new Act will enter into force on January 1, 1980.

2/ This summary is available for consultation in the files of the Secretariat, in English, as submitted.

Ad para 72. The principle underlying the Swedish Constitution is that in times of war or danger of war it shall not be possible to resort to uncodified constitutional rules of emergency. A fall-back on such rules may always give cause to question the legality of the acts of the State authorities, and this should be avoided.

Chapter 13 of the Constitution contains special provisions for war and danger of war, and they become applicable in situations when it may be impossible to keep the entire Parliament assembled. It is, therefore, provided that in such a case a War Delegation established within the Riksdag shall replace the Riksdag if circumstances so demand. It consists of 51 members, among them the Speaker of the Parliament, and is accordingly a Parliament in miniature. It has all the powers otherwise conferred on the Riksdag (sections 2 and 3). If, in times of war, not even the War Delegation can fulfil its duties, these shall be incumbent upon the Government insofar as the latter finds it necessary for the purpose of protecting the Realm and bringing the war to an end. However, the Government may not enact, amend or repeal the Constitution, the Riksdag Act or the Election Act (section 5). If, in consequence of a war, the Government cannot fulfil its duties, the Riksdag or the War Delegation may decide on the formation of a Government and on the working-methods of the Government (section 4).

In addition, chapter 13 of the Constitution contains a great many provisions for different situations. For a more complete picture of the provisions for war and danger of war, reference is made to the text of chapter 13 which is enclosed in an unofficial English translation.3/

Some members of the Committee requested clarification on the reference in the initial Swedish report to the limitation in respect of certain rights and freedoms permitted in the Constitution in order to satisfy "a purpose which is acceptable in a democratic society".

3/ **This text is available for consultation in the files of the Secretariat.**

This request for clarification obviously refers to section 12, paragraph 2, of chapter 2 of the Constitution. It should, however, be clear from the initial Swedish report (paragraph 3) that this paragraph 2 of section 12 is intended - as is the rest of the same paragraph - to restrict the extent of limitations authorized under the first paragraph of section 12. No derogation from proclaimed rights and freedoms should, thus, be made without the law-maker carefully accounting for its purpose and the purpose must be one which is compatible with democratic ideas. This means, generally speaking, that restrictions must be kept to a minimum and must not be imposed for repressive purposes but are permitted only to safeguard certain public or private interests which are compatible with democracy. A similar idea lies behind Articles 8, paragraph 2, 9, paragraph 2, 10, paragraph 2, and 11, paragraph 2, of the European Convention on Human Rights, which all speak of limitations which are "necessary in a democratic society".

The safeguard in chapter 2, section 12, paragraph 2, of the Constitution should also be seen as an expression of the proclamation made in section 1 of chapter 1 of the Constitution, which provides, inter alia, that the Swedish democracy is founded on freedom of opinion and on universal and equal suffrage and shall be realized through a representative and parliamentary polity and local self-government.

Ad para 73. Members of the Committee expressed concern in respect of the implementation of the Act (1964:450) on anti-social behaviour which is prejudicial to the community. They indicated the danger that the possibility of depriving someone of his liberty on the terms laid down in the act might be misused.

The Act provides for the confinement of a person, having reached the age of 20 years, to an occupational institution, if he fails to endeavour to the best of his ability to gain an honest living and, furthermore, leads such an asocial

life so as to be manifestly prejudicial to public order or security (section 1). The Act is intended to be instrumental in the combatting of criminality, for instance by preventing that those persons falling within the scope of its application will have a detrimental effect on youths in difficult situations. In the Government Bill proposing the draft legislation it was, however, expressly stated that the Act would only be subsidiary to the legislation on the punishment or social rehabilitation of the individual. In particular, the Government Bill stated that, if possible, less far-reaching measures should be applied, for instance according to the Temperance Act (1954:579) or the Act (1966:293) on the provision of institutional psychiatric care. The Act is, furthermore, subsidiary to the Aliens Act (1954:193). These limitations of the application of the Act are reflected in section 3.

There is only one case known where the applicability of the Act was put to the test and the Supreme Court then decided that the Act was not applicable. Consequently, the Act can be said now to be virtually without practical importance.

As is explained in the initial Swedish report, the ruling to admit a person to an occupational institution is made by a court (of first instance) at the request of the public prosecutor. The individual may have the benefit of a counsel. The rights of the individual are further safeguarded through the existence of the possibility of an appeal to a court of higher instance.

Ad para 74. As explained in the initial Swedish report a system of bail or other financial guarantees for the purpose of securing appearance at trial does not exist in Swedish law. Such a system would be considered in Sweden to be incompatible with the principle of the equality of all men before the law, irrespective of economic conditions. On the other hand, in those cases where the alleged offender has to be subjected to some form of coercive measure, the Swedish legislation offers alternatives to his arrest and

detention. In the case of a person who, on reasonable grounds, is suspected of having committed an offence punishable by imprisonment, an order may be issued prohibiting him from leaving the place of stay assigned to him (travel prohibition order). A prerequisite for such an order is that, in view of the nature of the offence, the behaviour of the suspect or any other circumstances, it can be expected that he will escape or otherwise evade legal proceedings or punishment, but that there is otherwise no cause for his arrest or detention (chapter 25 of the Code of the Judicial Procedure). Irrespective of the nature of the offence, such a prohibition may also be issued if it can reasonably be expected that the suspect, by leaving the Realm, will evade legal proceedings or punishment, or the obligation - which may be expected to be placed upon him by reason of the offence - to pay damages or any other compensation to an injured party.

In conjunction with a travel prohibition order, directives may be prescribed requiring the suspect to be present at fixed hours at his place of dwelling or work, or to report to the police authority within the district, or to comply with any other condition found necessary for his supervision.

Travel prohibition orders are issued by the investigating authority, the prosecutor, or the court. When the order has been issued by an authority other than a court, the suspect may request that it be reviewed by a court. If the order has been issued or confirmed by a court, the court shall fix the time-limit within which prosecution shall be instituted. The time-limit may, upon application, be extended. If the order was neither issued nor confirmed by a court, prosecution shall be instituted within one month of the issuance of the order. A court may, however, decide to extend this time-limit.

Another alternative to the arrest and detention of the alleged offender may be to place his personal property under provisional attachment or, if sufficient, under an injuction against dissipation. A prerequisite is that he is on reasonable grounds suspected of an offence and that it can reasonably

be expected that he, by escaping, removal of property or otherwise, will evade the obligation that may be placed on him to pay fines, the value of forfeited property or any other compensation.

An order of provisional attachment or injunction against dissipation is issued by a court at the request of the investigating authority, the public prosecutor or, after prosecution has been instituted, by the injured party as well as on the initiative of the court itself. If prosecution has not been instituted, the court shall set a time-limit within which prosecution shall be instituted. Upon application, this time-limit may, if necessary, be extended.

If, in the absence of a court decision, property has been taken into custody, the competent authority shall submit to the court, as soon as possible and not later than five days thereafter, an application to the court for provisional attachment or for injunction against dissipation.

It should be added that detention is not permissible in respect of persons under 18 years of age, unless special reasons so warrant (section 7 of the Act (1964:167) containing certain provisions on young offenders). This provision is an implementation of chapter 24, section 3, of the Code of Judicial Procedure which provides for supervision as an alternative to detention (also in cases other than those involving persons under 18 years of age); paragraph 1 of this section reads (translation into English):

"If, owing to the youth of the suspect, or his illness, detention can be assumed to be seriously detrimental to him, and it is found that such supervision can be so arranged that there is no longer cause for his detention, he may not be detained. A woman who is in an advanced stage of pregnancy, or who has given birth so recently that detention can be assumed to be seriously detrimental to her or the child, may not be detained unless it is evident that secure supervision cannot be arranged. If the suspect does not wish to submit to supervision, detention shall take place."

Instead of detention, travel prohibition may be used, if the suspect does not wish to submit to supervision.

The question was also raised as to the length of time a person awaiting trial on a criminal charge could be detained in custody. Reference is here being made to chapter 24 of the Code of Judicial Procedure which provides that, where a court orders the detention of a person prior to formal charges being brought against him, it shall set a time-limit within which the prosecutor is to present the charges. This period must be kept to the absolute minimum necessary. Where the court allows more than two weeks, it must hold another hearing by the end of the second week to review the question of detention and to ensure that the investigation proceeds as speedily as possible. It may, however, decide to hold this hearing at a later date, if a hearing held within two weeks would be useless in view of the nature of the investigations required or for some other reason. The time-limit may be extended if the request for extension is submitted to the court before the expiration of the original period. If no charge is brought within the time-limit set by the court or if no request for extension reaches the court or if the reasons for detention cease to exist, the court must immediately order the release of the detained person.

Furthermore, chapter 45 of the Code of Judicial Procedure provides that, once the charges have been formally presented, the main proceedings must be held within one week from that day, if the accused is under arrest or detention. If he has been detained after the presentation of the charges, they must be held within one week of his detention. In order to permit the completion of the main proceedings without interruption, these limits may (according to chapter 46) be extended, if it proves necessary to supplement the preliminary investigation, to institute such an investigation where none had been held, to produce expert opinion, to obtain evidence or to take similar preparatory steps.

Chapter 47 of the Code of Judicial Procedure deals with the case, where criminal charges have been instituted by a private party. The first preparatory hearing shall be held within a week of the detention, except if there are special circumstances; if another hearing is required, this one must take place within a week of the previous hearing or, if the accused has since been detained, within a week of his detention, except if there are special circumstances. The main proceedings must take place within a week of the last preparatory hearing or, if the accused was detained after that hearing, within a week of his detention.

In cases where a court of appeal acts as court of first instance, the main proceedings must be held within two weeks from the day the charges were formally presented or from the subsequent arrest of the accused (chapter 53).

Information was also requested as to what reason other than a criminal charge could justify taking a person into police custody. On this it can be mentioned that, according to section 1 of the Act (1973:558) on provisional custody, a police official may take someone into provisional custody if, under another law, the police board is authorized to decide about the taking into custody of a person. An exhaustive list of laws containing such authorization is:

- section 35 of the Aliens Act (1954:193) with regard to persons who have been refused leave to enter the country;
- section 21 of the Temperance Act (1954:579);
- section 33 of the Child Welfare Act (1960:97); and
- section 7 of the Act (1966:293) on the provision of institutional psychiatric care.

The police board shall as soon as possible after someone has been taken into provisional custody make its decision in accordance with the relevant law.

Furthermore, according to section 2 of the Act (1973:558) on provisional custody someone believed to be under 15 years of

age may be taken into provisional custody, if he is found under circumstances which indicate an imminent and serious risk for his health or development. He shall then immediately be handed over to his parents or other guardian or the Child Welfare Board.

Section 3 of the Act (1973:558) provides for the taking into custody of someone who through his behaviour disturbs public order or is an immediate danger for the public order. The taking into custody shall also occur when required for the prevention of an act punishable according to law. The custody may not last more than six hours.

An intoxicated person appearing in a public place may, according to the Act (1976:511) on the taking into custody of intoxicated persons etc., be taken into police custody for at most eight hours, if, on account of the intoxication, he is unable to take care of himself or otherwise represents a danger to himself or others. During the custody a medical examination shall, if deemed necessary, be performed.

Ad para 75. An appeal can be lodged against a decision whereby a person is denied a passport. In the last instance, the case may be decided upon by the Government. With regard to the possibility to refuse a passport on the ground that the issuing authority knows or has reason to suspect that the applicant is pursuing relations with a foreign power which constitute a danger to the security of the State or is conducting other activities which constitute such a danger, a research has been made for the purpose of clarifying the implementation of this ground for refusal. It seems, however, that it has never been applied. Furthermore, a similar ground for refusal is not incorporated in the Passport Act (1978:302), which is expected to enter into force later this year.

Ad para 76. The Aliens Act (1954:193) lays down the conditions under which an alien may be prohibited to enter

and to remain in the country. There are four different forms of prohibition, viz. refusal of leave to enter the country, removal, expulsion and deportation. The Aliens Act clearly states in what circumstances each form is to be applied and by which authority the decision is to be taken. The main points with regard to each of the four forms of prohibition can be summarized as follows:

- Refusal of leave to enter the country (avvisning). Technically, the alien has not lawfully entered the country, and the decision to refuse leave to enter is taken by the police.
- Removal (förpassning). An alien may be removed from the country, if he, although having lawfully entered, remains there without holding, if required, a passport and a permit to stay in the country. The visa-free period may have elapsed or a visa previously granted to him may have expired. The removal of an alien is ordered by the Central Aliens Authority.
-Expulsion (förvisning). Prerequisites for a decision to expel an alien are that he has been found guilty in Sweden of having committed an offence punishable by imprisonment for more than one year and that, on account of the nature of the offence and other circumstances, it can be feared that he will continue criminal activities in Sweden, alternatively that the offence is otherwise of such a nature that he ought not to be allowed to remain. When judging whether the alien should be expelled, regard should be had to his living and family conditions as well as to the length of the time he has stayed in the country. If the alien, when being formally charged with the offence, holds a permanent permit of sojourn or if at that time he has been living in the country for at least five years, he shall be expelled only if special reasons so warrant. - It follows from what has been said that expulsion is combined with the imposition of a sanction in criminal proceedings. Consequently, expulsion is ordered by a court of general jurisdiction.

- Deportation (utvisning). This measure is applied if the alien leads a dishonourable life, or if, through obstinacy or manifest negligence, he repeatedly fails to fulfil his obligations towards the public or a private individual, or if, during the last five years, he has been sentenced abroad for an offence of certain gravity and it can be supposed that, in view of the nature of the offence and other circumstances, he will continue his criminal activities in Sweden. - None of the grounds of deportation causes a criminal procedure to be instituted in Sweden against the alien. The deportation procedure is, thus, purely administrative, and the deportation is ordered by a regional administrative court. In judging whether the alien should be deported, the court shall make the same considerations as a court of general jurisdiction when judging whether an alien shall be expelled.

The deportation of an alien may, however, also be ordered directly by the Government. This is the case when there are good reasons for assuming that the alien belongs to or is working for an organization or group, which in view of its previous activities may be feared to use violence, threats or coercion for political purposes outside its home country and, therefore, to resort to an act of this nature in Sweden, and that the alien intends to engage in such activities in Sweden.

As to the general legal safe-guards for an alien, who is refused leave to enter Sweden or to remain there, reference is made to the initial Swedish report.

This account would, however, not be complete without the mentioning of the rules governing the right of asylum. Section 2 of the Aliens Act stipulates on that point (translation into English):

"A political refugee shall not without grave reasons be refused asylum in Sweden when he is in need thereof.

In this Act "political refugee" means an alien who in his home country runs the risk of political persecution. "Political persecution" is undertstood to mean the exposure of a person by reason of his descent, his belonging to a certain class or his religious or political convictions, or otherwise on account of political circumstances, to persecution directed against his life or liberty or that is otherwise of a serious nature, and also the liability of a person to serve a severe punishment because of a political offence.

An alien who, although not a political refugee, does not wish to return to his native country on account of the political situation there, and who can invoke weighty reasons for not wishing to return there, shall not be refused permission to stay in this country, unless there are special reasons for doing so. The same shall also apply to a person, who has deserted a theatre of war or fled from his native country in order to escape compulsory enrolment in active military service (war-service resister)."

The principles embodied in section 2 of the Aliens Act ar reflected in the provisions governing the execution of decisions refusing a person leave to enter or to remain in Sweden.

Ad para 77. According to chapter 5, section 1, of the Code of Judicial Procedure, the proceedings before a court shall be public. There are, however, exceptions. If it can be supposed that, during the proceedings, something will occur that is offensive to decency and morality, or that as a result of the public proceedings something may be divulged which in view of the security of the Realm should be kept secret to foreign powers, the court shall order that the proceedings be held in camera. Such an order shall also be made, if there is reason to suppose that as a result of the public proceedings a professional secret may be given away. Furthermore, in a case involving charges for fraud, breach of postal-secrecy or tele-secrecy, intrusion in a safe-depository or unlawful interception as well as in a case concerning compensation for damages on account of such an offence, the court may order that the proceedings be held in camera, if the court deems that public proceedings would

be to the detriment of a private individual. Proceedings taking place before a court during a preliminary investigation in a criminal matter shall be held in camera, if the alleged offender so requests or the court deems that public proceedings would be detrimental to the investigation. In a criminal matter the proceedings shall, when the circumstances so warrant, be held in camera when they concern an inquiry about the personality of the alleged offender, a mental examination or any other inquiry into the circumstances and personal relations of the alleged offender. The hearing of anyone under 15 years of age or who is suffering from a mental disease, mental deficiency or any other disorder of the mental condition may be held in camera.

Finally, if in a special case it is otherwise stipulated that proceedings may be held in camera, this shall apply. Such stipulations are to be found in:

- chapter 16, section 5, of the Marriage Code relating above all to divorce cases.
- chapter 20, section 10, of the Family Code relating to cases covered by the Code.
- section 8 of the Act (1964:167) containing special provisions on young offenders which concerns certain cases where the alleged offender is below 21 years of age.
- section 12 of the Act (1931:152) containing certain provisions against unlawful competition, the purpose being to protect professional and business secrets.
- section 16 of the Act (1970:417) concerning the Market Court etc. which contains a general reference to chapter 5, section 1, of the Code of Judicial Procedure.
- section 12 of the Act (1956:245) concerning the obligation to supply information on prices and competition, the purpose being to protect professional and business secrets.
- section 92 of the Code of Military Procedure relating to conditions of public emergency and times of war.

- section 19 of the Extradition Act (1957:668), see below (also the Inter-Nordic Extradition Act).
- section 43 of the Aliens Act (1954:193) which provides for secrecy in certain aliens cases.

As explained in the initial Swedish report (page 14), courts are empowered to order that judgments delivered in camera be kept secret. When submitting the Covenant to the Parliament for approval, the Government voiced the opinion that in practice this would constitute no departure from the requirements of the Covenant. The Government stated that almost without exception Swedish courts make public at least the verdict of the judgments. Of course, one could theoretically imagine exceptional cases where there would be reasons not to make the verdict public. This might occur for instance in a case involving espionage, where there may be a special interest to protect the one found guilty of the offence from political persecution. In the Government Bill it was also pointed out that in such a case the purpose would be to protect the person involved against violations of other human rights. In view of this and taking account of the fact that the sentenced person and his defender have access to the files of the court, whereby they are enabled to prepare an appeal to a higher instance, the rights of the sentenced person can hardly be said to be violated.

It is confirmed that the circumstances justifying proceedings in camera are equally applicable to aliens and citizens provided that the proceedings relate to a matter in which an alien as well as a citizen can be on trial. Reference has been made above to proceedings in camera in certain cases under the Aliens Act, which does not apply to Swedish citizens. Moreover, the Extradition Act (1957:668) concerns the extradition of offenders to non-Nordic States and is not applicable to Swedish citizens, since Sweden does not extradite its own citizens to a non-Nordic State. Extradition of a Swedish citizen can, however, occur to another Nordic State

in accordance with the Act (1959:254) on extradition to Denmark, Finland, Iceland and Norway. Both Extradition Acts contain the following provision on proceedings in camera (translation into English):

"Besides in cases otherwise prescribed, proceedings in camera shall be held if it is requested by the party whose extradition is being considered or if it is otherwise required out of regard for a foreign State."

In respect of the question of rejection of counsel, chapter 12, section 5, of the Code of Judicial Procedure entitles the court to reject a counsel who has given proof of dishonesty, incompetence or lack of judgment or who is otherwise found to be unsuitable. The appointment as public defender in a criminal case may - according to chapter 21, section 6, of the Code - be revoked if there is a valid reason for so doing. A decision by the court to reject a counsel may be appealed against to a higher instance.

Ad para 78. With regard to the question of the telephone-tapping of aliens it clearly appears from initial Swedish report (page 20) that this measure is taken in the interest of the security of the State in a situation where the alien cannot be expelled from the country. The reason why an expulsion cannot take place is that the status of the alien as a political refugee is being taken into consideration. At the same time as the State is protecting his basic human rights and fundamental freedoms by not expelling him, it must, however, in these very exceptional cases have the possibility of protecting its own security. The measure is being taken by virtue of law, and this law is annually being reviewed by the Parliament. It is the firm conviction of the Swedish Government that this measure cannot be termed as an "arbitrary or unlawful interference" with the privacy of the alien.

Telephone-tapping as a measure of coercion in a criminal matter is not limited to the cases covered by the Act (1975:1360) on coercive measures in the search for wanted

persons in certain cases. As mentioned in the initial Swedish report (page 19), chapter 27 of the Code of Judicial Procedure contains provisions on the use of telephone-tapping, and these stipulations are applicable to aliens as well as citizens.

Discussing the comments on article 17 of the Covenant, one expert requested more detailed information on circumstances in which searches were permitted. The basic rules on the subject are laid down in chapter 28 of the Code of Judicial Procedure, and the main elements contained therein may be summarized as follows.

If there is reason to believe that an offence punishable by imprisonment has been committed, any house, room or closed place of storage may be searched in order to uncover any object which is subject to seizure, or otherwise to detect any circumstance which may be of importance for the investigation of the offence. A search of the premises of a person other than the one who reasonably can be suspected of the offence may, however, be executed only if the offence was committed there, or the suspect was apprehended there, or there is reason to believe that the search will reveal an object subject to seizure or any other information concerning the offence. The consent of the suspect must not be invoked to justify a search, unless a delay would entail risks.

For the search of a person who is to be apprehended, arrested or detained, or taken into custody for examination or appearance in court, a search of his premises may be made. The premises of any other person may also be searched if special reasons indicate that the person sought is present there.

Orders for the search of premises are issued by the investigating officer, the prosecutor, or the court. When the search can be assumed to be on a large scale, or to cause extraordinary inconvenience to the person at whose premises the search is to be conducted, the search should not be made

without a court order unless a delay would entail risks. A policeman may, however, conduct a search of premises without the search order just referred to, if the purpose is to search for a person who is to be apprehended, arrested or detained, or taken into custody for examination or appearance in court, or to seize an object that has been pursued or traced directly from the scene of an offence. Such a search may also be conducted otherwise, if a delay would entail risks.

A search of premises should not cause inconvenience or damage beyond what is unavoidable. Whenever possible, a reliable witness commissioned by the officer making the search shall be present. The person whose premises are being searched or, if he is not present, his household servants who are available shall be given an opportunity to attend the search as well as to call a witness, provided that the search is not delayed thereby. A record shall be kept of a search of premises, stating the purpose of the search and what occurred at the search.

If there is reason to believe that an offence punishable by imprisonment has been committed, a search of a person may be made for the purpose of searching for an object subject to seizure, or otherwise to discover a circumstance that can be of importance for the investigation of the offence. As to a person other than the one who can reasonably be suspected of the offence, a search may be made only for special reasons indicating that an object subject to seizure will thereby be found. For the same purposes a bodily search can be made, if the person concerned can be reasonably suspected of an offence punishable by imprisonment. The rules governing the right to order a search of premises apply, mutatis mutandis, to the right to order the search of a person or a bodily search.

Notwithstanding chapter 28 of the Code of Judicial Procedure, provisions governing search of premises, search of a person or bodily search in special laws shall prevail. Such special

laws are, inter alia, the Act (1968:231) against infectious diseases and the Act (1970:926) on special checks at airports.

The request for information on provisions in Swedish law for electronic surveillance by the police and other authorities relates apparently to the comments that experts made with regard to the Act (1977:20) concerning surveillance by closed circuit television. A comprehensive account of that Act is given in CCPR/C/1/Add.9/Corr. 1. In answer to the comments, it should be stated that the Act makes no exception for electronic surveillance by the police and other authorities. Exempted from the field of application of the Act are only monitoring cameras used for the protection of premises of importance for the national defence in general. Furthermore, it should be made clear that in all circumstances, i.e. not only in those where a permission is necessary, it is the obligation of the user of the camera to give notice, continuously and in an effective manner, about the existence of the camera and its use.

It is certainly true that modern development has produced other electronic devices that can be used for surveillance. The improper use of such devices is, however, covered by chapter 4, section 9 a, of the Penal Code (reproduced in the annex to the initial Swedish report), which - needless to say - is applicable to the police and other authorities as well as to private individuals.

Ad para 79. In the travaux préparatoires to the proclamation in the Constitution about freedom of religion it was confirmed that practice of religion could not be allowed to disturb the peace of the community or provoke public indignation. This is expressly stated already in the Act (1951:680) on freedom of religion (section 1), and in stressing this point the law-maker has intended to recall the provision in chapter 16, section 16, of the Penal Code about penalty for disorderly conduct. It is the view of the Government, also confirmed by the Parliament, that this reservation cannot be considered to be a limitation of the freedom of religion. As far as it has

been possible to ascertain, the question of what constitutes "public indignation" in the meaning of section 1 of the Act (1951:680) has, however, never been submitted to a court for consideration.

In the initial Swedish report it is being acknowledged that the Church of Sweden has another status in Sweden than other religious communities in the country. Principally, the privileges of the Church derive from the automatic membership in the Church and the right of the Church to levy taxes. With regard to the automatic membership it should be noted that different rules apply to children of Swedish citizens, to naturalized Swedish citizens and to aliens permanently living in Sweden. Generally, the membership is, however, depending on the free will of the individual, or in the case of children, of the parent(s) or the guardian, as the case may be. Any member of the Church is free, through a simple notification to that effect to leave the Church of Sweden.

As a result of the special relationship between the State and the Church of Sweden, the clergymen and other officials of the Church are civil servants appointed by the Government, and they also perform civil functions. The legal position of the Church is continuously, as explained in the initial Swedish report, being debated, but so far no decision has been taken about a separation from the State.

With regard to the freedom not to profess a religion or to be an atheist, this freedom is inscribed in section 4 of the Act (1951:680) on freedom of religion; the first paragraph of that provision reads (translation into English):

"No one shall be obliged to belong to a religious community. Any undertaking in contravention of this stipulation shall be without effect."

As concerns paragraph 79 in fine, it has just been recalled that the status of the Church of Sweden is under active consideration. All in all, however, the present situation has been considered to be compatible with the undertakings of the Swedish Government under the Covenant.

A question was also asked whether religious instruction was compulsory in schools. For a detailed answer to this question, reference is being made to the initial Swedish report (page 22).

Ad para 80. Some members of the Committee requested more information as to the possibility under the Constitution to restrict the freedom of expression and the freedom of information in the interests of the "security of the Realm" and of the "economic well-being of the people".

The expression "security of the Realm" is intended to cover both the internal and the external security of the country. This ground of restriction principally aims at such penal provisions as are contained in the following chapters of the Penal Code:

chapter 18 insurrection and related offences;

chapter 19 offences against the security of the Realm;

chapter 22 special provisions applicable in times of war.

It should be recalled, in this connection, that paragraph 3 of article 19 of the Covenant provides for the possibility of restricting in certain cases the freedom of expression on the condition that such restrictions are provided by law and are necessary inter alia for the protection of national security.

With regard to the expression "economic well-being of the people", it should be recognized that a more adequate

translation of the expression used in the original Swedish text would be "national economy". It is thereby indicated that the purpose of a restriction would be to safeguard the economic interests of the Realm. A provision based on this ground would be for instance section 4 of the Act (1937:249) on restrictions of the right of access to public documents.

This section provides for the withholding for at most 50 years of public documents relating to, inter alia, the national economic defence in times of war, danger of war or other exceptional circumstances caused by war. Rules of implementation are laid down in a Decree (1939:835). In the light of this explanation it ought to be clear that also a restriction made in the interest of the national economy would be covered by paragraph 3 of article 19 of the Covenant.

The said paragraph also allows other restrictions to be made of the freedom of expression. The possibility under the Ordinance (1959:348) on Cinema Performances not to allow films that are conducive to coarseness or dangerously inflammatory to be shown in Sweden has been deemed to fall within the scope of restrictions necessary for the protection "of the public order (ordre public), or of public health or morals". The interpretation of what constitutes a film to be conducive to coarseness or dangerously inflammatory may, of course, vary between different time periods. These expressions should be interpreted in the light of the values prevailing at the time when the approval of the film is being considered. A decision not to allow, wholly or in part, a film to be shown may be appealed aginst to the Government.

In assessing the extent to which restrictions of the freedom of expression and the freedom of information may be made under chapter 2, section 13, of the Constitution, due regard has to be taken to paragraph 2 of section 13, which emphasizes that the freedom of expression and the freedom of information in political, religious, trade union, scientific and cultural affairs shall be as wide as possible.

Certain questions were raised in the Committee with regard to the radio and television monopoly in Sweden. They are, however, already answered in the initial Swedish report (pages 24/25).

For the convenience of the members of the Committee, an English translation of the Radio Act (1966:755) is enclosed. 4/ Certain amendments have recently been made in this Act. Thus, instead of one single broadcasting corporation the Act as amended provides for several enterprises, the exact number of which will be fixed by the Government. The Act will be supplemented by agreements between these enterprises and the Government. The Act lays down the fundamental principles for the exercise of the radio and television activities. These principles have not been changed. Section 8 of the Act provides that no authority or other public organ may examine in advance or order an advance examination of a broadcast, nor may a broadcast be prohibited on account of its contents.

Ad para 81. Questions were raised by several members of the Committee with regard to the registration of persons on account of their political opinions. As explained in the initial Swedish report (page 26), chapter 2, section 3, of the Constitution provides that annotations about a citizen in public records shall not be made without his consent solely by reason of his political opinion. The basis for this provision is that in Sweden it is generally accepted that registration of opinions shall not occur. Such a prohibition strengthens the constitutional protection of the free formation of opinions as the foundation of the democratic polity.

A certain form of registration of certain persons - but not on account of their political opinions - must, however, be allowed also in a democracy. In Sweden, such a register is being kept by the National Police Board for the special police purpose of preventing and detecting crimes against the

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4/ **This English translation of the Radio Act (1966:755) is available for consultation in the files of the Secretariat.**

security of the Realm. Details about this register are contained in the Decree (1969:446) on the control of personnel and its provisions of implementation. Such persons may be registered who, on certain grounds, may be considered as so called security risks. As such are considered persons suspected of being prepared to commit or participate in the commission of an act aimed at the security of the Realm, for instance espionage, sabotage or an act which, according to its purpose, is apt to change the democratic system by violence or affect the position of the Realm as an independent State.

No Swedish citizen may, thus, be registered only on account of his political opinion or of belonging to a certain political organization. As explained, the prerequisite for a registration is a danger of the person concerned committing or participating in the commission of certain acts that are clearly dangerous to the society.

The register is not public and cannot be consulted by "journalists and private individuals". It is for the National Police Board to decide whether information contained in the register with regard to a certain person shall be supplied upon request.

A person who is recorded in the register is not informed by the police of this fact. Should he, however, otherwise be informed about the recording, he may ask the Government that his name be struck off the register.

A register of this kind is most probably kept in most countries in the world. The important thing is, of course, to prevent the misuse of the register. According to the Swedish control system, a parliamentarian group has been appointed for the purpose of supervising the keeping of the register.

It should be added that the existence and the purpose of this register is regularly brought up and debated in the Parliament. The criticism voiced on such occasions has, however, never resulted in a request from the Parliament that the keeping of the register be discontinued.

With regard to aliens, the Police keeps a register of aliens belonging to or sympathizing with certain terrorist organizations. These aliens will, if appearing at a Swedish border crossing point, be refused leave to enter the country. The criteria for such recording are that there are good reasons for assuming that the alien belongs to or is working for an organization or group, which in view of its previous activities may be feared to use violence, threats or coercion for political purposes outside its home country and, therefore, resort to an act of this nature in Sweden, and that the alien intends to engage in such activities in Sweden.

The list includes approximately one hundred aliens connected with four different terrorist organisations.

Ad para 82. The status of a Swedish citizen does not change, for instance with regard to citizenship or right of residence, if and when he/she marries a foreigner. On the other hand, a foreigner marrying a Swedish citizen considered to have acquired closer links with Sweden and may, inter alia, be granted Swedish citizenship more quickly than foreigners in general. Furthermore, an alien holding a valid permit to stay in Sweden does not require a work permit if he/she is married to a Swedish citizen. As explained in the comments on para 76 of the report of the Committee, the living and family conditions of the alien are also taken into consideration when the question arises of expulsion or any other decision not to allow an alien to remain in the country.

Ad para 83. The Swedish Government considers that the obligations under articles 26 and 27 of the Covenant are similar to those under the International Convention on the

Elimination of All Forms of Racial Discrimination. In its four reports under that Convention, the Government has reported extensively on the work done for the purpose of preventing various forms of discrimination. It would seem superfluous to repeat this information in this context, as the reports are already available to the Division of Human Rights of the United Nations. Furthermore, the initial Swedish report under the Covenant as well as this additional report have touched upon the non-discrimination issues in the comments made on various articles.

Basically, the Constitution lays down the principle of the equality before the law. There is, however, no general rule making discrimination punishable by law, neither is such a rule called for by the Covenant. As explained in the initial Swedish report in the comments on article 26, violations of the principle of non-discrimination are being dealt with in the context of other offences punishable by law.
