



## International Covenant on Civil and Political Rights

Distr.: General  
16 May 2012  
English  
Original: French

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### Human Rights Committee

#### 103rd session

#### Summary record of the 2841st meeting

Held at the Palais Wilson, Geneva, on Friday, 21 October 2011, at 10 a.m.

*Chairperson:* Ms. Majodina

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*The meeting was called to order at 10 a.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
(continued)

*Second periodic report of Kuwait* (continued) (CCPR/C/KWT/2;  
CCPR/C/KWT/Q/2 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Kuwait took places at the Committee table.*
2. **Mr. Razzooqi** (Kuwait) said that the Kuwaiti delegation wished to provide further information on the situation of illegal residents and the laws applicable to them.
3. **Mr. Alwahib** (Kuwait) said that, in accordance with regulations on alien residents, only those in possession of a valid passport could obtain a residence permit. That ruled out those without documents, who resided in the country illegally. The granting of nationality was a sovereign right of the State and was governed by the 1959 Nationality Act and decisions in that regard were taken with the best interests of the country in mind. The Committee had asked whether illegal residents known as the Bidoun, who had been present in the country for decades, would be granted Kuwaiti nationality. Decree No. 460 of 2010 establishing the central authority for determining the status of illegal residents stipulated that their status must be decided within five years and that applications for nationality would therefore be processed in that period. The central authority would hold talks with the relevant bodies in neighbouring countries in order to resolve the issue. It would be possible for Bidoun who had fled the country during the war with Iraq to return, provided that they had been registered as lawful residents with the competent authorities in the host country, were not in conflict with the law and could prove that they were not nationals of a neighbouring country.
4. **Ms. Alnaser** (Kuwait) said that Decree No. 409 of 2011 guaranteed illegal residents certain rights, particularly in the areas of health care and education, as well as access to various services and benefits, including exemption from certain taxes. Those rights actually predated the decree, which had served merely to put them on a formal legal footing. Under the decree, a rule allowing only persons holding nationality to receive birth, death, marriage and divorce certificates had been abolished and illegal residents could therefore obtain them without having to prove their nationality. As a result, since April 2011, 11,000 birth certificates, 520 death certificates, 1,244 marriage certificates and 2,046 driving licences had been issued. Illegal residents could also apply for jobs in the public and private sectors and almost 7,000 worked in the public service.
5. **Mr. Razzooqi** (Kuwait) said that during the consideration of its second periodic report by the Committee against Torture in May 2011 (CAT/C/KWT/2), the State party had committed itself to including in its legislation a definition of torture that was fully compliant with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He hoped that the ad hoc group of lawyers looking at the matter would shortly produce a definitive outcome.
6. Although sharia law provided for the death penalty, society was changing and, just as polygamy was in decline, it tended to be applied more sparingly. Indeed, there had been no executions since 2007.
7. **Mr. Alshamali** (Kuwait) said that no one had been executed since 2007, although 52 people were on death row. However, no death sentence could be carried out without the prior consent of the Emir.

8. **Mr. Razzooqi** (Kuwait) said that the law was applied to all without distinction or favour. Anyone who committed an offence was judged on their acts alone. The law was the same for everyone.

9. **Mr. Thelin** asked for which crimes the 52 convicts on death row had been convicted. He welcomed the undertaking by the head of the delegation with regard to including a definition of torture in the domestic legislation, in compliance with the Convention against Torture. He hoped the State party would stand by that commitment and establish an independent mechanism to investigate all torture allegations, as the Committee against Torture had recommended (CAT/C/KWT/CO/2, para. 10). The statistics provided on police officers accused of ill-treatment were very useful and he would like to know if similar statistics were available for prison staff. He was also expecting replies to the Committee's questions about the average duration of, and number of people held in, pretrial detention (question 10), and the situation of persons sentenced by military tribunals in 1991 (question 11).

10. He failed to see how the fact that some judges were foreign nationals ensured the independence of the judiciary. On the contrary, the situation called for still greater vigilance, because those judges could be subjected to pressure not just by the Kuwaiti authorities but also be influenced by their own Governments. The subordination of the Supreme Judiciary Council to the Ministry of Justice raised questions about its independence from the executive branch. The provision whereby the testimony of a man in family courts was worth that of two women, regardless of its foundation in Islamic law, was incompatible with the Covenant, which took absolute precedence over other legislation.

11. **Mr. Amor** said that the presence of six women in the delegation was an encouraging sign with regard to the status of women in the State party. He questioned the reasoning behind Kuwait's reservations to article 3 of the Covenant, which affirmed the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant, and to article 23, which guaranteed equality of rights and responsibilities of spouses as to marriage, on the ground that those articles were incompatible with Islamic law, in particular with regard to polygamy. The Committee had made clear in its general comment No. 4 on article 3 (HRI/GEN/1/Rev.9) that polygamy was an affront to the dignity of women and constituted a breach of the Covenant. A distinction should also be drawn between the Koran itself and how it was interpreted. The Koran did not at all authorize polygamy but made it conditional on the man being able to treat his wives equally, a task it conceded was impossible, hence making polygamy unworkable. The State party should reconsider its position on the issue and recognize the primacy of the Covenant.

12. **Mr. Neuman** asked whether the duration of detention prior to deportation was limited by law and whether detainees were entitled to challenge the legality of their detention in the courts.

13. **Mr. Fathalla** asked whether the State party viewed all Bidoun — “those without nationality” — as illegal residents and therefore barred from acquiring Kuwaiti nationality, or whether the Nationality Act permitted those who had arrived undocumented in the 1950s and 1960s and had remained there since to apply for naturalization, given the many years they had spent in the country. He agreed with Mr. Amor that the Koran, by making polygamy conditional on equitable treatment, unambiguously implied that no one could be polygamous because it was impossible to treat several wives fairly. There should therefore be a legal limit on the number of wives one could have.

14. **Sir Nigel Rodley** noted with satisfaction that there had been no executions since 2007. Nevertheless, he wished to know how many people had been executed between 2000 and 2007, and for what crimes.

15. It would be useful to know the maximum period of detention in police custody and whether the detainee was granted immediate access to a lawyer. The Committee felt that persons held in police custody should not simply be left in the hands of the police and should be brought before a judge within 48 hours of their arrest. The delegation's replies appeared to indicate that there were no women judges in Kuwait and it would be good to know exactly why that was so. Did any of the prerequisites for becoming a judge bar their way? With regard to the compatibility between article 14 of the Covenant and the provision that one man's testimony was equivalent to that of two women in family courts, the delegation had explained that it was based on the tenets of Islamic sharia law, which, under article 2 of the Constitution, was one of the fundamental sources of domestic law. However, it had stressed that, in some cases, a woman's testimony could be equivalent to that of a man, which the Committee could only welcome. In any event, Kuwait had made no reservations to the relevant provisions of the Covenant, namely article 14, with which there must therefore be full compliance, and article 26. In that context, he joined Mr. Amor in underlining that any reservation to that article would be considered null and void because it set forth a peremptory norm of international law. Any provision preventing a woman from testifying or attributing less importance to her testimony was therefore contrary to the Covenant. He had absolutely no intention of discussing the merits of sharia law – that would be inappropriate coming from someone who did not share its value system. His sole purpose was to determine whether Kuwaiti law and practices were compatible with the Covenant, which appeared still not to be the case.

16. The Committee welcomed the fact that hospital services in Kuwait were free of charge for everyone. However, information brought to its attention indicated that patients in fact must pay fees which, while inexpensive for the majority of the population, could be prohibitive for groups such as migrant workers. Comments from the delegation on that subject would be welcome.

17. **Mr. Lallah** thanked the Kuwaiti delegation for its replies and said that he appreciated the sense of humour with which the head of the delegation had addressed some issues of particular concern. Nevertheless, he stressed that the concluding observations on the initial report of Kuwait (CCPR/CO/69/KWT), which had been adopted on 27 July 2000, had not been written in jest and warranted close attention. In paragraph 4, compatibility between the Covenant's purpose and Kuwait's interpretative declarations regarding articles 2 (para. 1), 3 and 23, and its reservations to article 25 (b) of the Covenant were called seriously into question. In the same paragraph, the Committee added that articles 2 and 3 of the Covenant set forth fundamental rights and basic principles of international law that could not be circumscribed by the sweeping legal limitations imposed by Kuwait, which ran counter to the purpose of the Covenant as a whole. As Sir Nigel had pointed out, article 26 of the Covenant, as well as articles 2 and 3, set forth the basic principles governing States parties' exercise of legislative, executive and judicial power. Such fundamental rules could be waived only in situations provided for in the Covenant. The delegation was well aware that the Committee's interpretations were authoritative. That had been illustrated by the advisory opinion of the International Court of Justice of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, in which the Court relied heavily on the Committee's interpretation of the Covenant, and by a more recent judgement on the merits in the case of Ahmadou Sadio Diallo, in which it had relied entirely on the Committee's jurisprudence to support its reasoning. Kuwait's interpretative declarations and reservations therefore remained, 11 years after the State party's initial report had been considered, null and void and should be officially withdrawn.

18. In paragraph 26 of the concluding observations, the Committee had urged the State party to make its initial report and the concluding observations available to the public. It had also urged Kuwait to circulate its second periodic report widely among the public, including civil society and NGOs operating in the country. It would be interesting to know

how those recommendations had been followed up. For instance, the delegation might wish to indicate whether Kuwait's second periodic report and the Committee's concluding observations on its initial report had been discussed in Parliament or submitted to the Emir's close advisers for consideration.

19. **Mr. Razzooqi** (Kuwait) said that it would take a lot of time to answer the many questions raised by Committee members. The delegation would nevertheless strive to clarify the main points in the limited time available. Firstly, it must be emphasized that the Koran was, without the shadow of a doubt, the supreme instrument in Kuwait. That did not mean that the authorities did not endeavour to reconcile, as far as possible, national traditions and culture with the provisions of international instruments to which the country was a party, including the Covenant. There were always potential areas of disagreement between States parties and the Committee, which should not forget that, leaving aside legitimate differences between cultures and religions, respect for individuals and institutions was a fundamental and universal rule that Kuwait observed.

20. He took note of Mr. Amor's comments regarding verses of the Koran on polygamy but noted that the Koran had, happily, always been subject to a variety of interpretations, none of which was exclusively valid. Mr. Amor's interpretation was thus in no way superior to that of Kuwait, which advocated a moderate form of Islam, far removed from some extremist interpretations of the Koran. The fact that sharia was a fundamental source of Kuwaiti law in no way hindered Kuwait's capacity to respect human rights or its international obligations, as had been demonstrated, for instance, by amendments made to adoption legislation.

21. Kuwait attached great importance to the Committee's concluding observations but the difficulty of putting them into practice, which required much work over the long term, should not be underestimated. Prodding the relevant bodies into action, even with a concerted effort, was no easy task. No effort was being spared to introduce the crime of torture, as defined in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, into domestic law, as recommended by the Committee against Torture in its concluding observations on the second periodic report of Kuwait (CAT/C/KWT/CO/2). Committee members should be in no doubt that the State party's sizeable delegation was determined to pass on their observations and recommendations to the competent authorities. However, the Human Rights Committee was not a court. Its role was to conduct a dialogue with States parties, which also meant that their views should be heard.

22. It was true that there were currently no woman judges in Kuwait but the authorities were striving to facilitate women's access to senior positions. Several women had been appointed ministers in the past. Kuwait had for many years been committed to promoting women's rights, particularly in terms of their representation in Parliament, which currently had four women members.

23. **Mr. Alwahib** (Kuwait) said that the Bidoun often discarded their identity papers upon entering the country in order to be treated as stateless persons, in the belief that in so doing they had a better chance of being granted Kuwaiti nationality, with all its attendant benefits. Contrary to statements by one Committee member, they were, therefore, not really stateless.

24. **Mr. Razzooqi** (Kuwait) said that a distinction should be drawn between Bidoun who had arrived in the country in the 1960s and who deserved to be granted nationality (all citizenship applications by the persons concerned would be processed within five years by the central authority for determining the status of illegal residents) and those who had entered Kuwait illegally after it had been invaded and who were being encouraged to return to their country of origin, in order to maintain the demographic balance.

25. Replying to question 11 of the list of issues, he said that the Government had been blamed during the war for human rights violations committed in the country. In the chaotic conditions of the time it had been extremely difficult to apply human rights standards but military courts had never been set up. Moreover, in 1994 the Commission on Human Rights had discontinued its consideration of the human rights situation in Kuwait.

26. **The Chairperson** thanked the Kuwaiti delegation for its detailed replies and invited Committee members to proceed to the second part of the list of issues. The delegation would be able to send additional replies in writing to questions that could not be addressed during the meeting.

27. **Mr. O'Flaherty**, referring to question 19 of the list of issues concerning the compulsory military service bill, asked whether allowance would be made for conscientious objectors. He also wished to know if proposals made in 2008, in particular one to make enlistment compulsory for all citizens aged from 18 to 35 years, were still under consideration. The delegation might also wish to reply to a question raised by the Committee on the Rights of the Child on safeguards put in place to prevent the recruitment of children, especially street children, by private security companies.

28. No reply had been forthcoming to the second part of question 20, in which the Committee had asked whether conversion from Islam to another religion could result in the loss of Kuwaiti citizenship. According to one NGO, the Court of Cassation had upheld a ruling by a lower court not to allow a citizen who had converted from Islam to Christianity to amend the entry regarding his religion on his birth certificate on the ground that such an amendment would be in breach of apostasy laws. Comments from the delegation on that subject would be welcome. The Committee would also like the delegation to answer question 21 concerning authorized non-Muslim places of worship and officially recognized religious institutions, the State party's written replies having been silent on the subject. It would also like to know the delegation's views on an NGO's report, according to which the activities of non-Muslim religious organizations were hampered by registration requirements, that some Christian churches were not recognized by the Government and therefore could not conduct their activities openly, and that some churches that were recognized complained that their allocated visa quotas were insufficient to meet staffing needs. Shiites were worse off than Sunnis, and adherents of religions not recognized by the Koran, such as the Baha'is, Buddhists, Hindus and Sikhs, were not allowed to have official places of worship. Clarification of the State party's written reply to question 22 was needed, because, perhaps due to a problem of translation, it was unclear. He asked whether it was true that non-Muslim Kuwaiti pupils were required to study Islam, while non-Muslim foreign nationals were not. He also wished to know whether the latter could receive education in their own religion and, if so, where.

29. Turning to question 23, he said that the statistics provided by the State party were alarming. In 2005, 371 complaints of alleged violations of the law in the areas of publishing and the media had been filed, which was a lot in a country with a population of 3.5 million. In 2010, according to one NGO, there had been 678 complaints of alleged violations of the freedom of expression. Comments from the delegation on those figures would be welcome. The Committee would also welcome information on the situation of the journalist and lawyer Mohammed Abdulqader Al-Jassem, about whom the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the President of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights defenders had repeatedly expressed concerns. He drew the delegation's attention to the Committee's recently adopted general comment No. 34 on freedom of expression, which contained a detailed explanation of its importance and the limits on restrictions that States could legitimately apply to it, because it appeared that in Kuwait such restrictions were excessive and incompatible with article 19 of the Covenant.

30. Turning to question 24, the English version of the State party's written replies (para. 90) suggested that it was illegal to use telecommunications equipment without permission from the Office of the Public Prosecutor. There was doubtless a translation error and that only the use of telephone tapping devices required permission. Nevertheless, he asked the delegation to clarify the point. The Committee had information from an independent source suggesting that the Government monitored Internet communications for reasons related to defamation and security and that the Ministry of Communications blocked websites it viewed to be a threat to stability and with religious content that contradicted Kuwaiti customs and traditions. Such restrictions, if they were in place, by far exceeded what was permissible under article 19 and the Committee's recent general comment. In paragraph 43 of the general comment, the Committee asserted that freedoms enjoyed by traditional media also applied to new media, on which only limited restrictions could be imposed. He would like to know the delegation's views on that subject.

31. **Mr. Bouzid** welcomed the Kuwaiti delegation, the size and make-up of which showed that the State party took its obligations seriously. In its written replies to question 26, the State party had indicated that a bill amending provisions of Act No. 56/1979 on public assemblies and gatherings had been drafted in the wake of a decision by the Constitutional Court declaring the Act unconstitutional. He asked if the bill had been adopted and what its contents were. According to reports received by the Committee, the security forces had used force to disperse peaceful meetings. For example, Mr. Obaid Wasmi, a law professor at the University of Kuwait, had been arrested and accused of disinformation and lese-majesty for his participation in a meeting organized by a member of Parliament, Jamaan Al-Harbash. He had been released only after four months of detention and the payment of bail. The police had also used excessive force, including tear gas and truncheons, to crack down on peaceful demonstrations by Bidoun. Many demonstrators had been arrested, charged with serious offences and subjected to cruel and degrading treatment. The Committee would like the delegation to comment on those reports.

32. With regard to question 27, the State party had indicated in its written replies that the Benevolent Clubs and Societies Act No. 24/1962 had been amended by Act No. 14 of 1994. He wished to know what the status of the new Act was and whether it had replaced the old one. The delegation had claimed that nothing stood in the way of foreign nationals joining trade unions but, according to information before the Committee, they could do so only under certain conditions, which included obtaining a certificate of morality, and only 100,000 out of a total workforce of 2 million were unionized. Trade unions were banned in some job categories and those that were not affiliated to the Kuwait Trade Union Federation received no State subsidies. Domestic and farm workers did not have the right to join a trade union and foreign nationals were allowed to do so only after five years' residence in the country. It would be good to have the views of the delegation on those points.

33. Turning to question 29, Act No. 24 of 1962 on associations of general interest allowed the Government broad discretionary power as to whether to issue licences to NGOs and gave it considerable control over their management, which was reserved for Kuwaiti Nationals alone. Most licence applications were turned down, although the State party had indicated that such decisions could be challenged in the courts. He asked on what grounds applications were turned down, how many NGOs had been denied licences, how many had appealed against such decisions and how many appeals had been successful.

34. With regard to question 30 on the right to establish political parties, the State party's replies were unclear and somewhat ambiguous. It would be useful to know if Parliament was empowered to pass a law allowing the establishment of political parties and, if so, why it did not do so.

35. In its concluding observations of 2000 on the State party's initial report, the Committee had said that the delegation's claim that there were no minorities in Kuwait was unacceptable (CCPR/CO/69/KWT, para. 14). There clearly were ethnic and linguistic minorities in the country, which must be protected in accordance with article 27 of the Covenant. The State party had failed to comply with requests for more detailed information in its second periodic report on matters concerning minorities in the context of article 27, just as it had failed to answer question 35 of the list of issues on the rights of persons belonging to ethnic minorities. Kuwait needed to clarify whether or not it was prepared to recognize the existence of minorities on its territory and to protect their language and religious rights, knowing the Committee's view that the presence of more than 2 million foreign nationals necessarily meant that there were minorities in the State party.

36. **Mr. Flinterman** said that it had been reported that young men and women from tribal groups married before reaching the minimum age for marriage of 15 years for girls and 17 years for boys. If so, he wished to know how the State party planned to remedy the situation. He would also like to know the average age at which women and men actually married and what was stopping the State party from setting the age of majority and minimum age for marriage at 18 years for girls and boys.

37. The English-language version of the State party's replies to the list of issues simply skipped question 32, in which the Committee asked the Government if it planned to amend the law in order to enable Kuwaiti women married to non-nationals to pass their nationality on to their children and spouses, and requested detailed information on differences between the Code of Personal Status and the Covenant rights on marriage and divorce.

38. The State party had indicated that corporal punishment was banned in schools but it was important to know what legal avenues were open to children when teachers violated the prohibition. He asked whether corporal punishment was also prohibited in the home and in child protection institutions and, if so, what the penalties were for contraventions.

39. He also asked what remedies were available to prisoners who were subjected to corporal punishment and what the penalties were for perpetrators.

40. He would also like to know whether the domestic workers bill addressed the issue of the withdrawal of their passports by employers and, if so, what the penalties were for doing so, whether it would facilitate access to justice and other remedies, and when it was due to be passed.

41. **Sir Nigel Rodley** said that the Covenant was an instrument of international law and that no State could invoke its domestic law in order to avoid its international obligations. Given that the State party was bound by the Covenant's provisions, the delegation might explain, in reply to the Committee's questions, to what extent the Government accepted that its national laws and practice should comply with the Covenant.

42. **Mr. Razzooqi** (Kuwait) said that Kuwaiti citizens, about 1 million people, made up one third of the country's population and were all regarded as part of the same ethnic group. There were therefore no ethnic minorities in Kuwait. Migrant workers from various countries and regions did not count in that context.

*The meeting was suspended at 12.20 p.m. and resumed at 12.35 p.m.*

43. **Mr. Razzooqi** (Kuwait) said that international treaties took precedence over Kuwaiti legislation and were fully incorporated into domestic law. Kuwait was committed to fulfilling its international obligations. However, some areas were covered by sharia law and change would take time.



44. **Mr. Alsulaimi** (Kuwait) said that it was unconstitutional for employers to hold the passports of domestic workers because that thwarted their freedom of movement. Courts hearing such cases ordered the return of passports to their owners.

45. **Ms. Alrumaidreen** (Kuwait) said that corporal punishment of children, which was seen as having an adverse effect on their education, was completely prohibited under Kuwaiti law. Teachers who committed such acts were liable to criminal prosecution. Seminars and workshops on good teaching practice were organized for parents and teachers.

46. **Mr. Alenezi** (Kuwait) said that the Government had invited various civil society organizations to help draft the domestic workers bill. They had, for example, recommended the drafting of a standard contract prohibiting employers from confiscating their employees' passports. Domestic workers whose passports were confiscated could go to court, have legal representation and obtain compensation for wrongdoing, in addition to having their passports returned. Domestic workers were entitled to one day off a week and paid overtime. Lastly, it was impossible to state precisely when the bill in question might be passed.

47. **Ms. Altararwa** (Kuwait) said that children born in Kuwait or abroad of a Kuwaiti mother and father of foreign nationality were entitled to Kuwaiti nationality in some cases, such as when their parents divorced or when the father was deceased, disappeared, or a prisoner of war, or when his identity was unknown. Otherwise, such children took their father's nationality.

48. **Ms. Alshaaji** (Kuwait) said that the Constitution made no mention of the establishment of political parties. A parliamentary committee, made up of representatives of the Ministry of the Interior and other institutions, set up to consider the matter had concluded that the Constitution neither specifically allowed nor prohibited the establishment of political parties. There were therefore no constitutional barriers in that regard.

49. **Ms. Jawhar** (Kuwait) said that she believed the refusal to issue operating licences to some NGOs was either the result of their failure to produce all the necessary paperwork or because their activities were not in the public interest. Licensed NGOs that conducted activities deemed contrary to the public interest could be disbanded but they could appeal against such decisions.

50. **Mr. Alansari** (Kuwait) said that under Public Sector Labour Code No. 6 of 2010, which had been drafted with the help of the International Labour Organization (ILO), all restrictions on foreign workers joining trade unions had been dropped.

51. **Ms. Altararwa** (Kuwait) said that the bill amending Act No. 56 of 1979 on public assemblies and gatherings was still before Parliament. Bearing in mind the constitutional safeguards of basic freedoms, no member of the security forces could be present at lawful public meetings, provided that the Governor received prior notice of such meetings and that they posed no security threat. Meetings had to remain peaceful and respectful of public morals.

52. **Mr. Alenezi** (Kuwait) said that the Governor had at no time been informed of plans to hold the meeting that had taken place on 8 December 2010 at the home of member of Parliament Jamaan Al-Harbash. Participants had attacked the security forces when they had tried to end the meeting.

53. **Mr. Alsaana** (Kuwait) said that the independence of the judiciary was guaranteed by the Constitution and the law. The Minister of Justice could take part in meetings of the Supreme Judiciary Council if he deemed necessary, but could not vote on decisions.

54. Judges of foreign nationality were appointed by decree, with the Council's approval. Foreign nationals working in the justice system were, in the main, highly qualified specialists.

55. **The Chairperson** said that consideration of the second periodic report of Kuwait would proceed at the following meeting, thereby allowing the delegation to answer Committee members' questions fully.

*The meeting rose at 1.05 p.m.*