UNITED
NATIONS

CCPR

International covenant on civil and political rights

Distr.
GENERAL

CCPR/C/SR.1541
17 January 1997

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Fifty-eighth session

SUMMARY RECORD OF THE 1541st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 28 October 1996, at 10 a.m.

Chairman: Mr. AGUILAR URBINA

CONTENTS

GE.96-18722 (E)

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Gabon (HRI/CORE/1/Add.65; CCPR/C/31/Add.4; CCPR/C/58/L/GAB/3)

1. At the invitation of the Chairman, Mr. Mamboundou Mouyama, Mrs. Ondo, Mr. Razingué, Mr. Embinga and Mr. Ndjoye (Gabon) took places at the Committee table.

2. The CHAIRMAN welcomed the Gabonese delegation and invited it to introduce Gabon's initial report (CCPR/C/31/Add.4).

3. Mr. MAMBOUNDOU MOUYAMA (Gabon) said that he regretted the rather late submission of Gabon's report, which was primarily due to slow progress in setting up the interministerial committee in charge of preparing human rights reports. Since Gabon's accession to international sovereignty, however, in particular since the ratification of the Covenant in 1983 and the holding of the national conference in 1990, the promotion and protection of human rights had always been among the priority concerns of the Gabonese authorities. It was true that the experiment with a multi-party system after accession to independence had only lasted a few years and that the one-party system introduced in 1968 had lasted for 22 years, but observers of political developments in Gabon had not reported any systematic or deliberate violations of human rights during that period.

4. The national conference had decided to put an end to the one-party system. A new Constitution establishing political pluralism had been adopted, free and regular legislative elections organized and a representative National Assembly established that had approved the Constitution currently in force, which introduced a democratic, multi-party system. New institutions such as the Constitutional Court and the National Communication Council had subsequently been established to further strengthen the rule of law.

5. Achievements in the area of promotion and protection of human rights were, to be sure, modest as yet, for which reason the Gabonese authorities welcomed the action taken by the United Nations High Commissioner for Human Rights after meeting with the authorities during a recent visit to Gabon. A Centre for Human Rights mission would soon be leaving for Libreville to assess Gabon's needs with a view to establishing a technical assistance and cooperation programme. In that connection, the Gabonese Government reaffirmed its determination to respect its international commitments.

6. The CHAIRMAN thanked Mr. Mamboundou Mouyama for his introductory statement and invited the Gabonese delegation to reply to the questions in part I of the list of issues (CCPR/C/58/L/GAB/3).

7. Mr. MAMBOUNDOU MOUYAMA (Gabon), replying to question (a) on the status of the Covenant, said that, in accordance with article 113 of the Gabonese Constitution, the President of the Republic negotiated international treaties and accords and ratified them after the enactment of an enabling law by

Parliament. Since the Covenant had been duly ratified by Gabon, it had entered into effect on being ratified and published in the Journal officiel, and was therefore applied under Gabonese internal law.

8. Concerning question (b) on the drafting of the new Constitution, he said that the Constitution, which dated from 1991, attached primary importance to human rights and their effective protection. The preamble reaffirmed Gabon's commitment to human rights as defined in the different human rights instruments, and the Preliminary Title, on Fundamental Rights and Principles, repeated many of the Covenant's provisions.

9. Replying to question (c) on the transition to democracy, he said that, after Gabon had achieved independence in 1960, the 1961 Constitution had established a multi-party system; the multi-party system had in 1967 been changed to a one-party system, which had lasted until 1990, when a national conference had restored a multi-party, pluralist democracy in Gabon. Twenty-two years of a one-party system had created some unrest in the country. To maintain public order and guarantee the security of individuals and property, especially public property, the Government had had to take several steps derogating from some of its obligations under the Covenant, particularly the introduction of a state of siege in one province in the country in May 1990 and the declaration of a state of emergency in part of the national territory. Nevertheless, the provisions of the Covenant from which no derogation was permitted had always been fully respected and implemented, even during that difficult transition period.

10. Mrs. ONDO (Gabon), replying to question (d) on the human rights bodies, said that the Ministry of Human Rights was responsible for ensuring the promotion of human rights and fundamental freedoms in Gabon. To that end, it cooperated with other bodies and partners, especially the non-governmental organizations (NGOs), with a view to raising the people's awareness, informing it and educating it in an effort to introduce a culture of peace and tolerance. The Ministry also monitored compliance with Gabon's international human rights commitments, to which end it coordinated the activities of the interministerial committee in charge of preparing reports on Gabon's human rights situation. It also made recommendations to the Government on how to take the provisions of international instruments ratified by Gabon into account in the preparation of internal legislation. In addition, it was conducting a campaign on the prevention of human rights violations by the State. Hence the Ministry of Human Rights had been involved in the preparation of a 1995 campaign to regularize the situation of people without identity papers; it had prepared a document listing the conditions to be met in order to protect the rights of the target group, which had been distributed to the task force set up to deal with the crisis and to the security forces.

11. Mr. RAZINGUE (Gabon) said that the Ministry of Justice was responsible for ensuring the proper functioning of all courts and law enforcement bodies in the country and all bodies responsible for initiating prosecutions. Hence the Ministry of Justice did not hold judicial power but made sure that the judicial system functioned properly throughout Gabonese territory.

12. Mr. MAMBOUNDOU MOUYAMA (Gabon) said that his delegation would provide further details on the guarantees of the independence of the judiciary at a later stage.

13. On the question whether the Government was considering the establishment of a national human rights commission, he said that preparations to that end were already under way, and that the authorities welcomed the Centre for Human Rights' offer of cooperation and technical assistance in establishing such a commission. The commission should be independent of the Government and hence of the Ministry of Human Rights, and should be established pursuant to a law. Gabon was in the middle of an electoral period, and not until the new national assembly had been elected, in November 1996, could the bill establishing the national human rights commission be tabled, considered and adopted.

14. Replying to question (f) on equality of the sexes, he said that Gabon was one of the African countries where the problem of sexism was not much in evidence, for girls had access to education and there were no early marriages or particular prohibitions for women. It was for the voters to elect more women deputies to the next Parliament. Women were heavily represented, however, at the various levels of the public administration and in the various ministries. It should also be noted that the State Director-General of Protocol was a woman and that a woman presided over the most important judicial institution in Gabon, the Constitutional Court. Barring aspects that escaped the law itself and that related mostly to custom, the situation of women in Gabon was one of full equality. Even in the Muslim community, women were not subjected to the mutilations that were common practice in other countries.

15. Mrs. ONDO (Gabon) said that equality of the sexes in Gabon was guaranteed by the Constitution and that women had equal access to education and vocational training, in the workplace, in political life and in the conduct of public affairs. It was true that there had been a drop in the number of women deputies in the National Assembly, but women did participate fully in the economic, social, political and cultural life of the country, at the highest levels, especially in higher education and diplomacy. There was room for improvement, but any remaining inequalities were in no way due to deliberate discrimination against women on the part of the Gabonese authorities.

16. Mr. MAMBOUNDOU MOUYAMA (Gabon), replying to question (g) on the death penalty, said that the most recent execution in Gabon had taken place 10 year's earlier. Criminals were still sentenced to death, but the penalty was systematically commuted to one of life imprisonment, and sentences were often reduced since the basic purpose of imprisonment was to give prisoners a opportunity to mend their ways and rejoin society. The Gabonese Government was in fact considering acceding to the Second Optional Protocol to the Covenant. In view of the unfortunate increase in crime in the country, however, the Gabonese authorities believed that it was preferable to wait until the process of stabilizing the democratic structures had yielded the expected results, in order to avoid dividing the Gabonese on a sensitive issue.

17. Mr. EMBINGA (Gabon), replying to question (h) on the use of weapons by the police, said that the members of the national police were only entitled to use firearms for purposes of deterrence, as a rule in self-defence, and that they were strictly forbidden to use a weapon unless they had first been threatened during an armed attack. Hence the use of firearms for the maintenance or reestablishment of order was prohibited, and only truncheons or tear-gas could be used. Any violations of the rules gave rise to prosecution in the ordinary courts in accordance with the legislation in force, and any infliction of gun shot wounds led to an inquiry by the competent courts, which ruled on the degree of responsibility of the person who had committed the act. The use of ammunition was strictly controlled and all police officers who were issued firearms were bound to account in writing for their use of the ammunition issued; hence use of firearms was closely monitored and there were practically no violations.

18. Mr. MAMBOUNDOU MOUYAMA (Gabon), replying to question (j) on extrajudicial executions, disappearances and torture, said that even during the one-party period, no one had been executed without trial in Gabon. Currently, if a person was reported disappeared and the family filed a complaint, an inquiry was opened and an investigation conducted.

19. Mr. NDJOYE (Gabon), referring to question (k) on torture and confessions under duress, said that the members of the security forces had long been aware of potential problems in that area. A judge who learned that confessions or testimony had been obtained by torture immediately took steps to annul the proceedings and begin new ones, and anyone who used illegal methods was duly punished in accordance with the law.

20. Mr. MAMBOUNDOU MOUYAMA (Gabon) said that police officers were educated in quality schools, not only in Africa but elsewhere in the world, and that, resources permitting, all modern investigatory methods were used, in particular laboratory analyses. Any technical assistance which the Centre for Human Rights might provide in that connection would be extremely useful.

21. Mr. RAZINGUE (Gabon), referring to question (l) on conditions of detention, said that pre-trial detention was generally ordered for a maximum period of 6 months, renewable once, which meant that it could not exceed 12 months' duration. If at the end of the 12 months the investigation procedure had not been completed, the accused was automatically released. For more serious offences, the pre-trial detention period was 12 months, renewable for two 6-month periods, for a total authorized duration of 24 months. If at that point proceedings had not been completed and the accused was not released, the accused could bring indemnification proceedings for harm suffered as a result of abusive and arbitrary detention. Police custody was the exception rather than the rule and could not exceed 48 hours unless a derogation was authorized by the Public Prosecutor. Custody could be extended to eight days in criminal proceedings.

22. Mr. MAMBOUNDOU MOUYAMA (Gabon), providing additional information on conditions of detention (question (l)), said that there was a large prison at Libreville, which was the central prison, and local prisons in the nine provincial county seats, which were more in the nature of transit centres and, unlike the central prison at Libreville, not overcrowded. Regarding the

different categories of prisoners, the political prisoners' block in Libreville had recently been eliminated and reassigned to women prisoners; there was a small area for young offenders, since Gabon did not have reformatories with semi-custodial systems, and the other areas were reserved for convicted prisoners. Gabon was trying to set up a rehabilitation system within the prison, but it did not always have the means to improve conditions of detention and, especially, to prepare the prisoners for release and reintegration into society.

23. Mr. RAZINGUE (Gabon), replying to question (m) on the United Nations Standard Minimum Rules for the Treatment of Prisoners, said that prisons in Gabon were monitored periodically, if not daily, by the prosecution service. All courts were divided into the bench, whose role was to try cases, and prosecution service, which was responsible for the conduct of criminal proceedings. All prosecutions came within the purview of the prosecution service, which was bound to ensure the strict implementation of the laws governing deprivation of liberty. Whether police custody or pre-trial detention was involved, the Office of Criminal Affairs and Pardons, attached to the Ministry of Justice, coordinated all the activities of the prosecution service. Hence the Standard Minimum Rules were listed by the Ministry of Justice and communicated to each court through the Office of Criminal Affairs. Similarly, the Standard Minimum Rules were taken into account when laws were amended.

24. Mr. EMBINGA (Gabon), replying to question (n) in his capacity as Ministry of Defence expert responsible for the police, said that incommunicado detention did not exist in Gabon. Regarding police custody, he said that the visiting rights of people in police custody could be withdrawn for security reasons or to protect judicial secrecy during an investigation, as provided for in particularly sensitive cases by the Code of Criminal Procedure.

25. Mr. RAZINGUE (Gabon), replying to question (o) on the independence of the judiciary, said that the Gabonese Republic was organized politically around the principle of separation of powers; judicial power was held by the courts, which passed judgement in the name of the Gabonese people and answered only to the law. The courts based their judgements on the legislation in force and not on instructions or orders. Trial judges, or the bench, were independent from the prosecution service, which was organized according to a hierarchy. Judges' independence in making their decisions was based on their status, which was one of irremovability; they could not be removed from office against their will for having handed down a decision which was not to the liking of a particular authority. Judges' independence was also based on immunity; they could only be prosecuted under a specific mechanism that had to be activated not by a single individual but by the Supreme Judicial Council. That guarantee protected them against potential abuses by a higher-ranking authority. Judges were also protected from financial temptations that might expose them to corruption, because their salaries freed them from financial worries.

26. Mr. MAMBOUNDOU MOUYAME (Gabon) said he believed that his delegation had replied to all the questions in part I of the list of issues (CCPR/C/58/L/GAB/3).

27. The CHAIRMAN invited the members of the Committee to ask questions orally on the Gabonese delegation's replies.

28. Mr. LALLAH commended Gabon for having submitted its initial report, 13 years after the Covenant's entry into force for Gabon; unfortunately the document was extremely brief, very general, and did not provide an idea of what was actually happening in the country. There were references to the Constitution and various laws, but that was far from sufficient. The report should be redone, for the Committee had not been told how the Covenant was implemented, not only in the legislation, but in practice.

29. For example, Gabon had declared a state of siege and state of emergency in the early 1990s. Had it respected article 4, paragraph 3, of the Covenant, which required States parties to inform the Secretary-General of the United Nations of the provisions from which they had derogated and the extent of the derogations? The question of equality between men and women was addressed by some rather general statements that did not indicate the real problems preventing practical steps from being taken to make women equal in status to men.

30. He would like to know which crimes carried the death penalty. Concerning the abolition of capital punishment, the delegation had referred to the reactions of the public to the corpses in the streets and the rise in crime in explaining why the Government had refrained from abolishing the death penalty and had maintained the existing provisions. In view of the fact that there had been no executions in Gabon for the previous 10 years, however, he did not find that reply very satisfactory.

31. He would also like to know which legal texts governed detention. The Gabonese delegation had said that police custody could last up to eight days and even longer, which was not in conformity with the Covenant. He would like to know whether a person in police custody was entitled to a lawyer, whether the person's family was informed of the detention and whether the person could consult a physician. The fact that custody could be extended by the Ministry of the Defence, for a length of time that was unacceptable, appeared to be serious in the light of the Covenant.

32. Since both the initial report and the core document were clearly inadequate, the Covenant would have to be taken virtually article by article and questions asked on the implementation of each of its provisions to see which laws were relevant, which would be too time-consuming. In any event, he thanked the delegation for the additional information it had given orally.

33. Mrs. EVATT associated herself with all of Mr. Lallah's remarks on Gabon's initial report and stressed that it was difficult for the members of the Committee to formulate questions without precise written information to begin with. She hoped that the dialogue under way with the Gabonese delegation would give the State party a better idea of how to prepare its future periodic reports.

34. Her first series of observations concerned article 2 of the Constitution, which proclaimed the equality of all citizens before the law

without any distinction as to origin, race, sex, opinion or religion. The initial report (CCPR/C/31/Add.4) also referred to measures on discrimination (paras. 15-17), but the Committee had not been given a description of the contents of the discrimination laws: what type of procedure or remedies did the law provide against discriminatory acts by the State or private bodies and what proceedings could be instituted in order to obtain compensation? Was there such legislation in Gabon or were the authorities awaiting the next elections to enact it?

35. Her second concern was the situation of women, and the real problems they encountered, concerning which the report said virtually nothing. Despite the additional information provided orally, she wondered what was being done to resolve problems connected with the situation of women, which the delegation attributed mostly to customary law. What did the civil law say on the subject? Had the old, discriminatory laws been repealed or amended with regard to relations between husband and wife, the obedience due by the wife to the husband as head of the family, restrictions on women who wished to leave the territory without their husband's consent and the possibility of practising a profession? If nothing had been done in legislative terms, what were the Government's plans?

36. The Gabonese delegation had spoken of women's participation in certain aspects of public life in Gabon; such participation still appeared to be very low, which was probably due to the persistence of traditional attitudes. Nevertheless, the Committee needed to know indications like the literacy and school enrolment rates among women. If such rates were low, what steps were being taken to remove obstacles for women and bring about attitudinal changes in Gabonese society? On another matter, did women have access to contraception, family planning services and abortion? She was happy to hear that genital mutilation did not take place in Gabon. She would like to know the infant mortality rate and the life expectancy for both men and women.

37. Her third category of questions concerned the independence of the judiciary. The delegation should provide further information on the meaning and implementation of article 69 of the Constitution, which was not clear. According to article 69, “The President of the Republic is the guarantor of the independence of the judicial authority, as laid down in the provisions of the present Constitution, in particular article 36. He shall be assisted by the Supreme Judicial Council and by the Presidents of the Judicial Court, the Administrative Court and the Accounting Court.” She was not clear as to the link between article 69 and article 36. She would also like to know the role of the Supreme Judicial Council (Constitution, art. 70), and how the fact that it was presided over by the President of the Republic (Constitution, art. 71) could be compatible with the independence of the judiciary.

38. Mr. ANDO said that the Covenant had entered into force for Gabon 13 years before and that both the core document (HRI/CORE/1/Add.65) and the initial report itself (CCPR/C/31/Add.4) were far too brief, with the latter basically consisting of quotations of principles set forth in the Constitution and a few excerpts from laws. The Committee needed to know, however, the actual situation in Gabon as far as human rights were concerned, whether the provisions of the human rights legislation were fully implemented and, if not, what obstacles and difficulties prevented them from being

implemented. To be sure, the delegation's oral replies had supplemented the report somewhat, but the Committee needed much more detailed information on the situation in practice rather than in law. The purpose of dialogues between the Committee and States parties was to enable the Committee to examine the provisions of the Covenant together with the State party in order to identify the sensitive sectors where problems arose and think about ways of resolving them.

39. His concerns fell into two broad categories. The first was equality before the law and restrictions on human rights, in the light of the provisions of article 2, paragraph 1, and article 26 of the Covenant. Article 1, paragraph 13, of Gabon's Constitution stipulated that any act of racial, ethnic or religious discrimination was punished by law, and article 2 proclaimed the equality of all citizens before the law, without distinction of origin, race, sex, opinion or religion. But articles 2 and 26 of the Covenant also prohibited discrimination based on language, political or other opinion, national or social origin, property, birth or other status. Did the Gabonese legal order include those grounds?

40. With regard to equality between the sexes (arts. 2, 3 and 26 of the Covenant), traditions and custom were often obstacles to equality in Gabonese society. Considering that part of the Gabonese population was Muslim and that the precepts of Islam occasionally contradicted the principle of equality between the sexes, he wondered whether problems in that connection arose in Gabon and how they were resolved. As a large portion of the population was employed in agriculture, he would also like to know whether men and women worked under conditions of equality or whether there was a division of labour in agriculture, and how it affected equality between men and women.

41. As for the institution of marriage, were men and women fully equal when they entered into marriage, during the marriage and when the marriage was fully dissolved, in other words when they divorced, in the division of assets? Who was entitled to ask for a divorce, who was given priority in awarding custody of the children and how was the decision taken? Did men and women have full equality in transmitting Gabonese nationality to the children?

42. He wondered about foreigners' rights as far as equality before the law was concerned. Because of its vast oil resources, Gabon attracted immigrant workers, especially from the neighbouring countries. According to his information, such immigrants had to pay the equivalent of $1,000 to obtain a work permit; was that true, and what steps had to be taken to obtain one? Were immigrants who did not obtain a work permit considered to be illegal immigrants? According to his information, 70 foreigners in an irregular situation, mostly Ghanaians and Nigerians, had been found dead of suffocation or dehydration in a detention camp at Libreville. Could the Gabonese delegation provide further details?

43. His second subject of concern was the independence of the judiciary. He would like an explanation of the relations among the different branches of government (CCPR/C/31/Add.4, para. 35), in the light of the principle of separation of powers set forth in the Constitution. Paragraph 15 of the core document (HRI/CORE/1/Add.65) stated that the Republic of Gabon was revising the Constitution with a view to the disappearance of the Supreme Court and the

establishment of three new independent and autonomous courts, namely the Judicial Court, the Administrative Court and the Accounting Court. He would like to know whether there were emergency courts such as military tribunals, and would like further information on the structure of the Gabonese court system. Similarly, he would like to know how the members of the judiciary, especially judges and prosecutors, were trained, how they were appointed and on what grounds they could be removed. He would like to know whether they enjoyed irremovability, whether there was a specific retirement age and whether they were entitled to a retirement pension. He also inquired whether there were problems with delays of justice in Gabon, as frequently occurred in many countries, including the developed countries, and what steps were taken to correct them.

44. Mrs. CHANET said that she was impressed by the size and level of competence of the Gabonese delegation, which attested to how seriously the Government of the State party took the consideration of its report. Obviously, she regretted that Gabon had taken over 10 years to fulfil its obligation to submit a report, and an extremely brief one at that. Nevertheless, she was pleased at the developments in the situation in Gabon, in particular the introduction of a multi-party system.

45. As she had seen no mention of a Ministry of the Interior and as the member of the Gabonese delegation who had replied to questions about the police was a member of the military, she asked whether there was a Ministry of the Interior and a civilian police force in Gabon.

46. The grounds for discrimination set forth in article 1, paragraph 13 of the Constitution did not cover all the grounds laid down in articles 2 and 26 of the Covenant, in particular discrimination based on sex or political opinion, and she would appreciate further details in that connection. She associated herself with the questions on women's status, and stressed that the reports made no mention of equality in marriage or the existence of a standardized civil code governing the rights of women throughout the country.

47. Regarding the death penalty, she understood the Government's reluctance to confront public opinion by opening a debate that would very probably lead, as in most countries, to rejection of the abolition of the death penalty, preferring to let the current legislation fall into abeyance. In her view the death penalty should cease to be handed down; however, although the delegation had explained that executions no longer took place, it had not specified how may people had been sentenced to death in recent years, and especially, for which offences the death penalty could be pronounced. The length of pre-trial detention and police custody was also a matter of concern. The drafters of the initial report (CCPR/C/31/Add.4) had had the honesty to acknowledge (para. 30) the lack of training of law-enforcement officers, judges and prison staff, stating that consequently there was an urgent need for Gabon, with the help of the international community and the United Nations specialized agencies, to establish a major on-the-job training programme, placing particular emphasis on respect for the human person and therefore making it possible to combat the practice of torture; however, strict rules of a dissuasive nature must first be established at the domestic level. Police custody of eight days' duration, likely to foster ill-treatment, was certainly not compatible with article 9 of the Covenant, and she would like to know

whether a police custody register was actually kept, whether interrogations were duly entered, whether a physician was present if necessary and whether people in custody had access to a lawyer. She would also like to know whether detention always took place in a judicial framework or whether administrative detention was practised in Gabon. She would also like further information on the nature of the emergency courts mentioned in article 82 of the Constitution.

48. Mr. EL SHAFEI said he was gratified by the fact that Gabon was represented by a delegation of an extremely high level. The delegation would be called on to fill the gaps in a report that was too brief (he hoped that the next report would be prepared in conformity with the Committee's guidelines). The smooth return to democracy, with the introduction of a multi-party system and the enactment of a number of laws to strengthen the protection of human rights, was certainly a welcome development. He had noted with interest the existence of a "National Charter of Freedoms" (report, para. 7) and would like details of its legal status and influence in the field of protection of human rights. While associating himself with the questions raised earlier, he would return to four main areas of concern. First, regarding equality and the prohibition of discrimination, he would like to know whether, in addition to the articles of the Constitution cited, there were legislative provisions explicitly prohibiting discrimination, in particular on the ground of political opinion. Regarding equality, the Gabonese delegation had mentioned the steps taken to guarantee participation by women in public life, but it had said nothing of any affirmative action to end discrimination in that area.

49. He was concerned at the length of pre-trial detention and police custody. He would like to know whether there was a limit to the number of possible extensions of the duration of custody and whether a maximum duration had been set for detention before trial. He would also like information on the conditions of detention in establishments other than prisons and on the guarantees provided, in particular regarding access to a lawyer and communication with the family.

50. Regarding protection of the right to life, he would like to know which offences carried the death penalty and the circumstances in which law-enforcement officers were authorized to use force; if the delegation had such information, it would also be helpful to have examples of cases where the use of force had led to casualties.

51. The situation of refugees in Gabon was also a matter of concern. He had learned that the Gabonese authorities intended to take measures against illegal immigrants, and would like to know what measures were being planned. He would also like to know whether the Gabonese authorities were cooperating with the United Nations High Commissioner for Refugees and where most of the refugees came from. His last question was whether family reunification was possible while a request for asylum was pending.

52. Mr. BÁN expressed appreciation for the opportunity for the Committee to hold an exchange of views with the Gabonese delegation on the implementation of the Covenant. He had been pleased to note the ample information given by the delegation, which had supplemented some of the gaps in the report. He

wondered what the Gabonese Government intended to do to avoid submitting the next report as late as the initial report, especially considering the fact that Gabon had become a party to several other international instruments.

53. The preamble to the Constitution mentioned a number of international instruments, but the Covenant was not among them; he wondered why. Clarifications were all the more necessary as a comparison of the rights laid down in the Gabonese Constitution with those in the Covenant revealed some striking differences. The grounds for discrimination had already been mentioned by other members, but he also noted that absolutely nothing was said of other rights, such as the right to life, the prohibition against slavery and the rights of prisoners and minorities. In other cases, rights were laid down but subject to restrictions that were not provided in the Covenant; freedom of movement, for example, was only guaranteed to Gabonese citizens, which called for an explanation. There was no provision of the Constitution stipulating a general right to compensation. For certain specific violations, there appeared to be the possibility of a remedy on a case-by-case basis. Article 2 of the Covenant, however, laid down a general obligation to provide an effective remedy. On another matter, it was not very clear how the courts resolved conflicts between a domestic law and an international instrument, for the only provision that might cover such a situation was article 86 of the Constitution, which provided for any accused person, through proceedings before an ordinary court, to introduce an action of unconstitutionality in respect of a law or an act which did not recognize his fundamental rights; nothing was said of a law being incompatible with the Covenant.

54. In connection with the judiciary, he would like to know which “other emergency courts” were referred to in article 82 of the Constitution and why the legislature had seen fit to provide for the possibility of establishing such emergency courts. The provision in article 79 to the effect that the Supreme Court was bound, “with the exception of decisions by the President of the Republic,” by the “definition of crimes and misdemeanours ...” called for an explanation, especially in the light of articles 14 and 15 of the Covenant.

55. Mr. BHAGWATI thanked the Gabonese delegation for its introduction. Unfortunately the report was too general and did not enable the Committee to see how the rights set forth in the Covenant were exercised in practice. The report gave the impression that Gabon had no difficulties and that all rights were fully achieved. The Committee needed to know the facts, for example the percentage of women participating in political life and public office, their educational situation, how equal employment and equal wages were ensured and what legal system governed marriage, divorce and succession. The same was true of the situation of the judiciary; the Committee needed to know how judges were appointed and the conditions for eligibility, remuneration and retirement in order to assess the extent of judges’ independence.

56. Paragraph 25 of the core document (HRI/CORE/1/Add.65) stated that human rights information and dissemination of the international human rights instruments at the national level remained one of the weakest sectors with regard to the promotion of human rights. He would like to know what steps were being taken to overcome that obstacle, in particular whether courses on

human rights were given in schools and police and armed forces training centres and for officials, and whether an information effort was made among the public at large.

57. The refugee situation required some clarifications. He would like the Gabonese delegation to indicate whether the draft legislation on refugees, which had been under review in Parliament in March 1996, had been adopted, what was the procedure for determining refugee status and whether the definition of refugee used by Gabon was that of the 1951 Convention or that applied by the Organization of African Unity. He would also welcome details on the remedies available to people whose application for refugee status had been rejected and on the actual situation of asylum-seekers and refugees: were they detained or were they free to leave and return to the country and to work? According to some sources, refugees not holding a document issued by the Gabonese authorities were subject to severe restrictions, and he would like to know whether it was true that documents issued by the Office of the United Nations High Commissioner for Refugees were still not recognized. He also asked whether families were reunited without difficulty and whether it was true that foreigners had to obtain an exit visa in order to leave the country.

58. Paragraph 25 of the initial report (CCPR/C/31/Add.4) stated that requisitioning of people and goods were measures which might be taken in circumstances established by law and that they were regulated by law, without spelling out the circumstances under which the services of certain people might be required, the modalities for the performance of those services and the compensation provided when goods were requisitioned. In another area, the fundamental rights whose application could be suspended during a state of emergency were not specified.

59. As other members of the Committee had stressed, the conditions of police custody should be described in detail. Although the compensation provided if detention was followed by dismissal, release or acquittal (para. 34 of the report) was a welcome development, the Committee would like to know in how many cases compensation had in fact been paid and whether compensation was also provided when pre-trial detention exceeded the prescribed duration. It would also be interesting to know why neither the Penal Code nor the Constitution contained any provisions explicitly recognizing the general principle of res judicata, since paragraph 52 indicated that Gabonese law implicitly recognized that principle.

60. Mr. KLEIN expressed appreciation for the opportunity to welcome the representatives of Gabon and said he did not doubt that the dialogue would be valuable to both parties.

61. The Gabonese authorities were to be commended for their honesty in stating, in paragraph 70 (b) of the report, that Gabon was a developing country and therefore lacked the necessary organization and human resources to translate into reality the political commitment to fulfil its international obligations under the Covenant; however, since Gabon had entered no reservations to the Covenant, which was commendable, the Committee had to ask it to make that commitment a reality. The return to democracy had been a first step forward. In that connection, he would like to know how the

authorities distinguished between the concept of “multi-party democracy” and that of “pluralist democracy”, which had replaced that term in the 1994 version of the Constitution. Since elections had recently taken place, he would like to know the current composition of the Government and how many political parties were represented in Parliament.

62. Article 85 of the Constitution indicated that individuals had a right, of sorts, to complain to the Constitutional Court to contest the constitutionality of a law or legislative act which they considered to undermine their rights. He wondered whether the citizens made use of that right, what was the attitude of the Constitutional Court towards such complaints generally speaking and whether the Constitutional Court was also competent to rule on the lawfulness of an order issued by the President of the Republic.

63. Noting that the Constitution stressed the importance of maintaining public order, he asked under what circumstances the rights guaranteed by the Constitution could be subjected to restrictions; it was true that the Covenant mentioned public order as one of the possible grounds for the restriction of rights, but public order was given such great importance in Gabon that the Committee needed to know whether the case law of the Gabonese courts defined the expression more precisely and whether that case law was consistent. Also in connection with the possible restriction of rights, he would like to know what importance was given to the principle of proportionality.

64. He would also like further information on the prison situation in Gabon, in particular the number of detainees per prison and the size of the cells, and to be informed of the grounds for placing a person in police custody.

65. Mr. POCAR expressed surprise at the Gabonese authorities' long delay in submitting the initial report. That was all the more puzzling since, when he had visited the region, he had had the impression that, on the contrary, the Gabonese system was conducive to the preparation of a timely report, and the establishment of a Ministry of Human Rights should in principle have accelerated matters. The Government of Gabon, which had also made specific commitments for the protection of human rights at the African level, had apparently not deemed it necessary to speed up the preparation of its initial report to the Committee, which was unfortunate. Was that not perhaps due to the people's and institutions' mistrust of universal human rights supervision procedures, to which they might prefer regional procedures? He would like to hear the Gabonese delegation's point of view on the subject.

66. He endorsed the questions put by the other members of the Committee. He had some difficulty in forming a clear idea of the human rights situation in Gabon, on the one hand because of the scant information it was possible to glean from the report (CCPR/C/31/Add.4), and on the other because of some confusion created by the report's obscure references to the corresponding articles of the Constitution. An example was paragraph 41, which stated that the presumption of innocence was a principle established by article 1, paragraph 4, of the Constitution, whereas it was apparently protected by the provisions of article 1, paragraph 23. Similarly, according to paragraph 18 of the report, article 1, paragraphs 1, 2, 3 and 4, of the Constitution contained provisions guaranteeing the equality of human beings, yet the

paragraphs cited did not deal with equality. He wondered whether the text of the Constitution of Gabon being used by the members of the Committee was the text currently in force, or whether the contents of the report were in fact an interpretation of the text of the Constitution. Also in connection with equality, he noted that the relevant provisions of the Constitution were much more restrictive than those of articles 2 and 26 of the Covenant. He would like to know exactly how the principle of equality was applied in Gabon. He was particularly surprised to see that principle protected by an article of the Constitution dealing with secondary, albeit important, questions such as the national emblem and the national anthem, whereas the concept involved was an absolutely fundamental human rights principle.

67. With regard to the right to life, he would like to know which offences carried the death penalty. Moreover, contrary to paragraph 27 of the report (CCPR/C/31/Add.4), the Constitution did not appear to protect the right to life as such, in any case according to the text of the Constitution he had before him. He would also like to know more about the National Human Rights Commission apparently being established. As he understood it, the Commission would not be part of the Government. What then would its status be, what would be its relations with the executive, how would its independence be guaranteed and who would be its members?

68. Mr. KRETZMER expressed disappointment at the initial report of Gabon (CCPR/C/31/Add.4), which contained only minimal information on the country's legal structure and provided no information on the actual human rights situation.

69. He associated himself with the concerns of other members of the Committee with regard to infant mortality, which was a very important aspect of assessment of the right to life. Also in connection with children, he would like additional information to that contained in paragraph 5 of the core document (HRI/CORE/1/Add.65). In particular, was education mandatory, and if so to what age, and free of charge? He would also like to know the actual school enrolment rate for girls and for boys.

70. One member of the Committee had asked about detained foreigners who had allegedly been found dead in their cells in a detention camp at Libreville. He would like to know more about the camp. Did other similar establishments exist? He would also like clarifications on the conditions of detention and the number of detainees in the various establishments. More generally, he would like information on the different types of penitentiaries and prisons in Gabon. Were the provisions of article 10, paragraph 2, of the Covenant fully respected in Gabon? What was the minimum age for criminal responsibility, and at what age could a minor be placed in detention? A number of members of the Committee had remarked on the duration of pre-trial detention, and their concerns might perhaps be ascribed to a misinterpretation of the Gabonese delegation's statements. In any event, he would like particulars of the duration of police custody and pre-trial detention, and the conditions for and duration of such custody and detention. Did the prosecution hear the person concerned before reaching its decision to extend custody? Was a detainee entitled to be represented by counsel, and could the detainee challenge the extension?

71. With regard to article 8 of the Covenant, he would like further information on legislation and practice with regard to slave labour and child labour.

72. Mrs. MEDINA QUIROGA endorsed Mr. Lallah's remarks concerning Gabon's initial report (CCPR/C/31/Add.4). Although she realized that the Gabonese delegation would doubtless not be able immediately to provide the replies the Committee needed to fully assess the human rights situation in Gabon, she nevertheless hoped that the Committee's questions would be duly taken into account by the Gabonese authorities in preparing the next periodic report.

73. She wondered about the status of the Covenant in Gabonese internal law. In her understanding - and she had the same difficulties as Mr. Pocar concerning the report's references to constitutional provisions - the Covenant could be directly invoked in the courts. Was that true, and had it already been invoked? More generally, were the Gabonese people properly informed of the Covenant's provisions, and what steps had the Government taken or was it planning to take to inform them? She noted that the Gabonese Constitution did not protect all the rights laid down in the Covenant. In particular, some provisions of article 1 of the Constitution applied only to Gabonese citizens, while others applied to “all”. Why had such a formulation been chosen, and to what exactly did it refer?

74. Regarding equality and non-discrimination, she shared the concerns of other members of the Committee, whose questions she endorsed. In particular, she would like further information on the traditions that gave rise to discrimination between men and women. The Gabonese authorities should reply in a more precise and detailed manner to question (f) of the list of issues (CCPR/C/58/L/GAB/3).

75. On the matter of prohibiting discrimination, she was struck by the wording of article 1, paragraph 13, of the Constitution, which provided for punishment that was apparently motivated not by the effects of the discriminatory act on its victim, but by considerations of internal or external security of the State or the integrity of the Republic. She would like further explanations on that point. On another matter, she endorsed all the questions asked about the implementation of article 9 of the Covenant. Concerning the independence of the judiciary, she would like clarifications on the scope of articles 96-98 of the Constitution; in her view, the composition of the National Communication Council did not appear to be appropriate for a judicial body.

76. Mr. BUERGENTHAL endorsed Mr. Lallah's remarks on Gabon's initial report (CCPR/C/31/Add.4), which not only failed to give an idea of the actual human rights situation in Gabon but undoubtedly did a disservice to the Gabonese authorities in that it did not reflect the achievements they must surely have made in the area of human rights.

77. Since all, or nearly all, his questions had already been asked by other members, he would simply revert to certain aspects. In particular, he wondered how the provisions of article 1, paragraph 4, of the Constitution were to be understood. Did they imply that all laws on pre-trial detention were by definition constitutional, whatever their contents? On another

matter, could the Constitutional Court or the Supreme Court examine the laws enacted by Parliament on pre-trial detention and, if necessary, declare them incompatible with the Covenant, and were they empowered to declare the detention of an individual to be contrary to the Covenant? Did a person held in pre-trial detention beyond the statutory limit of six months with no extension being ordered have the right to challenge the detention?

78. He would like to know to which authority the police reported. Judging from the remarks made by the Gabonese delegation, certain police forces were attached to the Ministry of Defence. Was that true? To which body was the judicial police attached? Was there a local police, and who supervised it?

79. Mr. BRUNI CELLI endorsed the remarks of the other members of the Committee concerning Gabon's initial report (CCPR/C/31/Add.4) and the questions they had asked orally. He would like to revert to an aspect mentioned in the conclusion of the report, in paragraph 70, subparagraph (a). He had been struck by the tenor of that subparagraph, from which it might be inferred that laws were not of a binding nature in Gabon, but reflected a sort of intent on the part of the authorities. Gabon had acceded to the Covenant 13 years before; a Ministry of Human Rights had been established in 1987, and, above all, Gabon had been an independent State since 1960. To be sure, the difficulties inherited from the past and the after-effects of colonization could not be ignored, but 36 years of independence was not a negligible period, and was in any case sufficient to establish institutions for the protection of human rights, which had in fact been done. Although improving the human rights situation would undoubtedly take time and need to be done in stages, the Gabonese authorities should work harder to that end, and take rapid steps to resolve the difficulties. Speaking specifically to the head of the Gabonese delegation, Mr. Mamboundou Mouyama, who was also the Minister of Communication, Culture and Popular Education, he asked what had been done and what was being planned to disseminate human rights standards and provide human rights education, especially in the schools, among public opinion, the police, prisons and the army. The Gabonese authorities should step up their efforts to protect human rights and duly fulfil their obligations under the country's Constitution and the Covenant.

80. The CHAIRMAN endorsed the remarks made by the other members of the Committee. The report (CCPR/C/31/Add.4), which was far too brief and made difficult by its obscure references to the Constitution, did not make it possible to evaluate the human rights situation in Gabon properly and to dispel the Committee's concerns in that connection.

81. Regarding the independence of the judiciary, the National Human Rights Commission shortly to be established would apparently be exercising control over the judicial authorities. What kind of control would be involved? Control over court sentences would obviously be unacceptable in the light of the provisions of the Covenant. The powers of the High Court of Justice, described in articles 78-81 of the Constitution, were not clear, and it would be helpful if the delegation could explain how the relevant provisions of the Constitution should be interpreted.

82. The Gabonese delegation had stated that the police and army did not practise torture and that there were no “disappeared persons” in Gabon, which was naturally welcome news. Nevertheless, in view of the different activities of those two institutions, he would like to know whether the authorities provided different human rights training for each. What was the relationship between the two institutions?

83. He invited the members of the Committee to continue their consideration of the initial report of Gabon (CCPR/C/31/Add.4) at a forthcoming meeting.

The meeting rose at 1.05 p.m.