Rwanda

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Fifteenth session

SUMMARY RECORD OF THE 348th MEETING

Held at Headquarters, New York,
on Wednesday, 31 March 1982, at 3.00 p.m.

Chairman: Mr. MAVROMMATIS

later: Mr. GRAEFRATH

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The meeting was called to order at 3.40 p.m.

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

Report of Rwanda (continued) (CCPR/C/1/Add.54)

1. Mr. NSENGIYUMVA (Rwanda) replying to questions by members of the Committee, noted with satisfaction the spirit of understanding in the Committee with regard to the reasons for delay in the submission of the report of Rwanda. The factors responsible for that delay included Rwanda's status as a developing country, a certain bureaucratic time-lag and inexperience in submitting the kind of report required. Those factors also explained the brevity of the report. In his opening statement he had decided not to amplify the report with additional information, but to concentrate on answering the questions raised by Committee members. He would group his replies to the questions under several main headings: (i) the general status and effect of the Covenant in Rwanda's legal system; (ii) questions relating to the country and its people; (iii) the National Revolutionary Movement for Development; (iv) the judicial powers of the custodians of civil and political rights. He would then turn to questions of rights and freedoms, including arrest, preventive detention and other penalties, equality before the law, the right of free expression and freedom of movement and the right to peace.

2. Turning first to the basic question of the status of the Covenant in the legal system of Rwanda, he said it was generally true that any instrument concluded between Rwanda and another country or an international organization took precedence over domestic law, whether ordinary or organic, provided that it was not contrary to Rwandese public order or public law.

3. He had been asked whether the Covenant had been published in Rwanda. The answer was that a decree-law of 12 February 1975 stated that Rwanda acceded to the Covenant: thus, all members of the judiciary and citizens could invoke its provisions in the same way as domestic law. The text of the decree-law had of course to be published in the Official Gazette of Rwanda in one of the official languages of the country, French and Kinyarwanda. It had been published in French, and was to be translated into Kinyarwanda. If a Rwandese law was incompatible with the Covenant, the Constitutional Court would refer the law back to the parliament - the National Development Council - for amendment. With regard to the question whether the Constitutional Court could declare provisions of a convention unconstitutional, he explained that there had been cases in which international agreements initialled or signed by ministers had contained unconstitutional clauses, and it had been left to diplomatic negotiations to ensure that the agreements were constitutionally acceptable in Rwanda. There had never been a case in which an international agreement had proved to be incompatible with the Rwandese Constitution.

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4. With regard to the Constitution, he had been asked why it had been necessary to promulgate a new text to replace the Constitution of 1962. The answer was that there had been a change of government. The Second Republic had been proclaimed in 1973 and the concept of the organization of political institutions had changed, so that a new Constitution had been essential.

5. In connexion with the discussion of the question of how far the population was informed about legislation, he had been asked what was the percentage of illiterates in Rwanda; it was about 50 per cent.

6. He had been asked what restrictions on civil and political rights were imposed by the Constitution or by legislation. He could not give a full answer to that question unless he had time to refer to a number of laws which were not before him. However, he could cite the electoral law as an example; it provided that certain rights (e.g. the right to vote) were limited by considerations of compatibility or eligibility. Thus a person who had served more than 12 months in prison, or was in preventive detention, or was insane, could not seek electoral office. Similar considerations applied to some persons in the private sector, and there were also restrictions on the holding of more than one office at a time.

7. The question whether article 95 of the Constitution limited the freedom of foreigners in Rwanda could be answered by saying that, with the possible exception of quarantine for persons who had not been vaccinated, there were no restrictions on the free movement of foreigners in Rwanda.

8. As to how many different nationalities were resident in Rwanda, he had no exact figures; he could only state that foreigners from countries bordering on Rwanda were probably more numerous than foreigners from more distant countries.

9. The question had been raised as to whether it was possible to declare a law incompatible with the Constitution, and whether a private citizen could obtain such a declaration. The answer was that under the Constitution only the President of the Republic and the President of the National Development Council could bring matters before the Constitutional Court. If the National Development Council could not meet, or if there was an emergency, the President, in the Council of Government, could issue a decree-law on a matter normally amenable to legislation, and such decree-law must be confirmed by the National Development Council at its next session. A decree-law could not be promulgated if the Constitutional Court declared it unconstitutional. Also, if the parliament was in normal session and had voted a law, the President of the parliament was required to submit that law to the Constitutional Court, which must take a decision on it within a week. The Court's decision was binding on all public authorities, and decisions on constitutional matters were binding ergo omnes. Thus, a law which had been formally declared to be constitutional and sanctioned by the Head of State and promulgated by him could not be reviewed for constitutionality by a private citizen or another authority.

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10. He had been asked whether the Rwandese Republic recognized the principle of the separation of powers and if so, why it was that the President was the only candidate for the presidency, and how it was possible for the Secretary-General of the National Revolutionary Movement for Development to take part in the work of the Council of Government as provided by article 48 of the Constitution. How could he replace the President of the Republic if he himself was not a member of the Council of Government and had not been elected as Vice-President of the Republic? The answer was that, in general, the principle of the separation of powers was enshrined in article 34 of the Constitution, which referred also to the corollary of separation, namely, the necessity for co-operation between the legislative, executive and judicial branches. The principle of separation was also referred to in chapter 4 of the Constitution.

11. With regard to the question how the National Revolutionary Movement could take part in the work of the government, given its status under article 7 of the Constitution, he explained that although the 1962 Constitution had stated that the President of the Republic would appoint the Vice-President, such an appointment had never in fact been made because in the early days of the Republic there had been fears of collusion between the President and the Vice-President. However, it was obvious that if the President could not perform his functions there must be some authority able to substitute for him, and the Secretary-General of the National Revolutionary Movement was designated by the Constitution to replace the President of the Republic.

12. It had been stated that the principle of the separation of powers was incompatible with a situation in which judges could be appointed or dismissed by the President of the Republic. However, the concept of the independence of the judiciary must be understood as referring specifically to the administration of the law. In other words, when a judge decided a case he must administer the law without any outside interference. That did not mean, however, that he was immune to any kind of administrative action. The Constitution provided for the independence of the judiciary and for the giving of judgements with no distinction as to race, colour, religion and so on, and its independence must be viewed in that light.

13. The question had been raised of constitutional provisions governing trial in open court and trial in camera. The Constitution provided for trial in camera where public order might be endangered, and it was for the judge to decide whether public order was at risk. However, if a trial was held in camera all judgements must be given in public, and fully motivated. The arguments of the defence must be reported and assessed by the judge. The new Code of Judicial Organization provided that a copy of the judgement must be given to the accused.

14. He had been asked what constitutional provisions other than those of article 16 prohibited the imposition of restrictive provisions. The answer was that there were various laws within the field of public administration which prohibited the imposition of restrictions, and the Criminal Code expressly prohibited the imposition of restrictions by public officials.

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15. The question had been raised as to the reason for the provision in article 80 of the Constitution, which provided for dissolution of the parliament if the President ceased to exercise his functions for any reason. In his view, the Constitution provided for a harmonious balance among institutions, which were separate but complementary and must work with each other, so that on the one hand, the Government was controlled by the parliament, but on the other hand, the President of the Republic was the Head of the Government; if he could not exercise his functions, the parliament must be prevented from gaining an undue ascendancy. The provision could therefore be seen as a safeguard.

16. Th re was also a question of timing. The Constitution provided that the legislative mandate of the National Council for Development was for five years. The deputies had been appointed in December 1981 and had taken the oath in January 1982; the Council was now in regular session. However, the mandate of the President of the Republic, also for five years, would expire in 1983, when the deputies would have served only two years. The Constitution provided that, if the President of the Republic ceased to function, the deputies would likewise automatically cease their functions and there would be new elections. Those deputies elected in 1983 would be subject to the provisions of article 52 of the Constitution so that the President of the Republic and the deputies would serve the new term concurrently.

17. A question had been raised as to whether agricultural workers were covered by the Labour Code. Agricultural workers were excluded from the Labour Code, article 96 of which provided that such workers would be covered by a special law; that law had not been promulgated yet. It was important to remember, however, that in Rwanda there were hardly any agricultural workers in the sense of persons who worked for others. Approximately 95 per cent of the population consisted of farmers working for their own account.

18. In reply to the question relating to the composition of the Supreme Council of Justice, the judges were appointed by the President on the advice of the Minister of Justice. Some speakers had expressed surprise that in Rwanda there were so many judges and as many as four levels of jurisdiction. There appeared to be a misunderstanding on that point. The roots of Rwanda's judicial system pre-dated the colonial period. At that time there had been special tribunals with expertise in agriculture, livestock and military matters; the whole system had been governed by the King working through the provincial chiefs. Jurisdictions had corresponded to the boundaries of communities. It had always been a basic principle in Rwanda that justice should be brought close to those who were in litigation.

19. In regard to the operation of the appeal system, courts of the first instance were gen rally located in the chief town of each department. Once that court had considered appeals against decisions of the district courts, litigants could appeal to the courts of appeal and finally to the Court of Cassation.

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20. In reply to the question as to whether there was an organic law relating to legislative controls over government, such a law had not yet been promulgated but the matter continued to be under study; in that connexion it had to be remembered that the National Development Council had been elected only two months previously.

21. In reply to questions relating to the composition of the population, he said that approximately 86 per cent belonged to the Hutu race, 14 per cent to the Tutsi and the remaining 1 per cent comprised the Twoi. Historically, notwithstanding recent problems, those races had lived together in harmony and spoke the same Kinyarwanda language. All had the same customs and members of the different ethnic groups intermarried. In the 1960s it had been suggested in the United Nations Trusteeship Council that the troubles from which Rwanda was then suffering wer ethnic in origin. That was emphatically not so. Rwanda had then been engaged in its struggle for independence and underlying that struggle had been disagreement regarding the type of régime which the country should have in the future. Th re had been monarchists, constitutional monarchists and revolutionaries but those groups did not correspond to ethnic groups. In the event, those who favoured a republican democracy had won; nevertheless, it was true that many Hutu as well as many Tutsi had been monarchists. It was false to claim that the different ethnic groups had a different outlook from one another. The 1960s were long past, and all categories of the population were treated alike.

22. There were two major religions, namely, Christianity and Islam. Approximately 50 per cent of the population were Catholics while a minority were faithful to Islam. Nevertheless all lived harmoniously together. On public occasions, the religious leaders of all religious groups were invited and sat in the same room. Representatives of the religious groups were among the leaders of the National Revolutionary Movement for Development.

23. The third group of questions related to the National Revolutionary Movement for Development. The Movement was not a party in so far as the word "party" implied that some individuals did not belong to it. The Movement was an assembly of all the people of Rwanda with a single goal, and in 1975 had published a manifesto. It was a popular movement and called for the unreserved adhesion of the entire nation in a single unified mold. No individual or group could escape the social control of the Movement, which was seeking a better life for all. It was a revolutionary movement because the impulse for its creation had sprung from within the people; it had not been imposed from above.

24. A question had been raised regarding the consequences for human rights of article 7 of the Constitution and whether its stipulations might not represent an infringement of political rights. Such an allegation would be untrue, as all rights could be exercised within the Movement. Many opinions could be expressed but there was a single goal, namely, to achieve the development of Rwanda. The Statutes of the Movement had been revised recently and the Permanent Representative of Rwanda to the United Nations would shortly provide the Committee with a complete text.

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25. There had been a question as to whether there was freedom of expression within the Movement. The statutes stipulated that there should be "freedom of discipline" within the Movement; all could express their views without fear. It was ridiculous, however, to suggest that anybody could be against the President, whether in Rwanda or in any other country. Confusion of ideas could not be permitted in a country which was striving to escape from poverty. There must a centre of strength.

26. It had been suggested that the Movement was a "state within a State". That was not so. Under the Constitution, the organs of State were separate from the Movement. The stipulation in article 7 that members of the Central Committee of the Movement could be tried only in the Court of Cassation was a legal privilege made available to the distinguished personalities who comprised the Central Committee.

27. A question had been raised as to how the Movement could function in a country with large ethnic minorities. There was no problem. The Movement had been founded with a view to ensuring that minorities had a voice in the country's affairs. At the time of Rwanda's independence, parties had been founded, seemingly based on ethnic considerations. Some people had, however, taken advantage of that situation and had caused trouble. There had been an attempt to eliminate the current President and other influential people on the pretext that they belonged to a particular ethnic grup. The Movement had accordingly been created in order to overcome ethnic difficulties. Ethnic groups retained their identities but, within the Movement, each was judged according to the goodwill which it displayed in co-operating for peace and progress.

28. Turning to the organization of the judicial branch, he said that separation of power, independence of the judiciary, accessibility of the courts and equality before the law were at its basis. With regard to the removability of judges, he said that, because the country's judicial system had only recently been set up, it was impossible for that principle to apply. Furthermore, many judges spoke only the national language, Kinyarwanda, whereas bilingual judges were needed for cases involving French-speaking citizens. The consent of the Supreme Council of Justice was required for the removal of a judge, even for disciplinary reasons.

29. On the question of types of courts, he said that there were judicial, administrative and political courts, with the judicial subdivided into common and special courts. The courts of common jurisdiction included district courts, courts of the first instance, courts of appeal and the Court of Cassation. Courts of special jurisdiction included the military courts and the Council of War and were responsible for trying members of the armed forces. If, however, a civilian accomplice was involved, both the accused were arraigned before a court of common jursidiction. Thus the latter had precedence over the courts of special jurisdiction. As to whether the Court of State Security had been provided for in the Constitution, he said that it had not. However, the Constitutions of both 1962 and 1978 provided that courts could be created by law. The Court of State Security

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had actually been set up to facilitate punishment of human rights violations committed by high Government officials. It was made up of judges who were not afraid of convicting influential politicians. There were no politicians or officers of the ministère public in it; it was formed primarily of career lawyers and judges.

30. As to the question concerning states of siege, he said that none had been declared since the country's accession to independence. Under a state of siege, the judicial system was administered by the military courts, which, according to the Code of Criminal Procedure, had to apply penal procedure exactly as it was applied by the common courts under normal circumstances. Those provisions prevented hasty verdicts and ensured that the defendant's rights were upheld.

31. Replying to the question of how many death sentences passed by the Court of State Security had been carried out, he said that so far only two had been passed, and they had not been carried out because there was still a possibility of appeal.

32. As to whether persons indicted before the Court of State Security received legal counsel free of charge, he said that in principle all accused persons could be defended by the lawyer of their choice, but that there were few lawyers in the country and no bar whatsoever, The law, however, provided that any person, whether a lawyer or not, could represent another person in a civil or military court. As to the question of the training given to judges, he said that the country was poor and had limited resources for that purpose. A training grant from the Committee would assist Rwanda in training its judges and would concretize the Committee's desire to apply the Covenent. Judges in Rwanda currently did everything they could to hand down good verdicts, but it would be better if they had solid, legal training. If the Committee could help in that regard, it would be performing a great service. As to whether women could be judges, he said that they currently served as clerks and secretaries to the ministère public, but that there was only one woman judge. The entire Rwandese legal system had to be modernized, and traditional law had to be adapted to contemporary legal procedure.

33. With regard to the system of rights and freedoms and with particular reference to the questions concerning temporary arrests and custody pending trial, he said that those measures were strictly limited by the law. In order for them to be taken, the penalty for the offence had to be at least six months' imprisonment, there had to be evidence of guilt, the identity of the accused had to be either unknown or doubtful or there had to be reasonable suspicion of his escaping or being lynched before being brought to trial. The criminal police could prepare a charge but had to bring the accused before the competent judicial authority within 24 hours of the arrest. If the judge found that one of the requirements just described applied, he could authorize a warrant for temporary arrest not to exceed five days. During that time, the prisoner had to be brought before the court of the first instance, where he could defend himself and ask to appeal his arrest. If he did so, a court of appeals had to rule on his appeal. Thus, it was clear that the law and legal procedure were designed to protect individuals in respect of temporary arrest and custody pending trial.

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34. As to whether prisoners could be detained indefinitely under the option for 30-day renewal of the warrant for temporary arrest, he said that every week all presiding judges and members of the parquet in the courts of the first instance had to check the dossiers of all those in custody, which made it possible to monitor who was in prison and for how long. Furthermore, any prison director who did not release a prisoner upon expiration of the 30-day limit was himself liable to imprisonment for the offence of arbitrary detention. As to the time which elapsed between detention and trial, he said that it was longer if the courts had many cases before them, but that if a criminal was not considered dangerous, he could be granted provisional release from custody. He did not know how many people were currently in custody pending trial. Individuals in custody pending trials could be visited by their legal counsel and their family, but the latter visits were strictly limited.

35. With regard to the prison system in general, he said that there was no torture or other cruel, inhuman or degrading punishment of prisoners. There was a law which provided that a member of the parquet or a criminal police officer could be imprisoned if found guilty of infliting torture on a prisoner. Recently, two members of the parquet had been convicted of that crime, and they were now in prison. He did not know the total number of people currently in prison. There were 12 prisons in the entire country, one in each prefecture and two model prisons where a new, more modern concept of incarceration was being experimented with. As to whether a person illegally or arbitrarily detained could demand compensation, he said that one could not do so of the State, but that a citizen could bring a case against, and demand compensation from, members of the parquet or criminal police officers.

36. The prison system was administered by the Ministry of Justice through a Prison Board and prison inspection divisions and offices. Each prison had a director, an assistant director and a guard corps, which was mainly made up of retired members of the armed forces. As to whether prisoners was lodged in good conditions, he said he believed so, but that most prisons dated from about 1930, when the country's population and the incidence of crime had been significantly lower. The law allowed some prisoners to be provisonally released from custody, and the courts had a tradition of giving suspended prison sentences. As to whether members of a prisoner's family could visit him in prison, he said that a directive of the Ministry of Justice allowed them to visit and even bring food to the prisoner.

37. The three main penalties applicable under the Rwandese legal system were the death penalty, imprisonment and fines. In connexion with Rwanda's retention of the death penalty - and he was not sure whether the countries which had abolished it outnumbered those that had not - he also referred to members' questions on the protection of the right to life, including how the health system worked and whether adequate medical supplies were available. Rwanda was making as much of an effort in that direction as many other countries. In any event, the number of death sentences carried out since 1962 could be counted on one's fingers. Some executions had taken place in 1962 while the country was in a state of complete revolt and the monarchists, who were trying to subjugate the republicans, almost

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managed to infiltrate republican territory. There had been others in 1974, when the country had undergone a spate of organized bandit attacks; at that stage there had been killings across the country, and the ordinary population had lynched any thieves that fell into their hands. Since then, however, all death sentences had been commuted to life imprisonment, and the sentences handed down in 1981 on State security grounds could not be carried out, since appeal was still possible.

38. Amnesties - which annulled both sentence and offence - were quite often applied. The President granted clemency even to political prisoners: the most recent decree of clemency made no distinction between them and ordinary prisoners. There was a tendency to think of political convictions as a recent phenomenon, but some had occured in 1959 and 1960. One leader of the monarchist movement, sentenced to death by the trusteeship authorities, had had his sentence reduced to life imprisonment by an act of clemency at independence: when the current President had been elected he had commuted all life sentences to twenty-year terms and the leader, having just completed 20 years in prison, had been set free. The issue thus affected people who had been all but forgotten as well as those more recently convicted. Clemency was a useful means of promoting national reconciliation.

39. Committee members had asked about the relationsip between articles 16 and 7 of the Rwandese Constitution. Citizens enjoyed all the rights specified in article 16 under the aegis of the National Revolutionary Movement, without which those rights could not be enforced. It was indeed possible to disagree with the views of the Movement, or even of the President of the Republic, provided that one agreed on basic principles.

40. On the question of women's equality, he stated that Rwandese society appeared to be less advanced in that respect than the United Nations. Nevertheless, in the more traditional Rwandese society, men and women were equal. Indeed, whereas the secretaries in the Rwandese offices had once all been men, now they tended to be young women. Boys and girls were required to attend school from the age of seven, and could move on to secondary schooling depending on the results of the public examinations they took. There were more female than male drop-outs at the primary level, and only 10 per cent of university students were women, but the door was open to everybody.

41. In the economic sense, women were largely responsible for the upkeep of the rural economy, and generally did the work on the land while the men marketed the produce. That kind of division of labour appeared to be established among the peasantry and at the household economic level.

42. Politically, women were quite advanced, although to a lesser extent than men; there were women in the Central Committee of the National Revolutionary Movement, in local organizations, and in the National Development Council; the director of the National Population Office, which was responsible for all aspects of family well-being, was a woman. The national civil service also employed many women. Over all, he believed that Rwanda had made a good start in that direction.

43. Under the Constitution, only monogamous marriage was recognized. In

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traditional Rwandese society, even if all family property belonged to the man, man and wife were in practice equal in the management of the estate. On the question of responsibility for the children, he could say only that both man and wife contributed to their education. Broken marriages were starting to appear in Rwanda; divorces were permitted, and after divorce a woman was no longer subject to her husband's authority and could support herself by her own efforts without a man's protection.

44. In principle, all Rwandese were eligible for employment in the civil service, but they were required to demonstrate their capacity for such employment. Turning to the issue of freedom of expression, he stated that free organs of the press outnumbered government organs, of which there were only two or three. The National Revolutionary Movement encouraged the free press, which it regarded as a source of assistance to the country. There was no censorship, which was not to say that chaos ruled: quite simply, there was extensive collaboration between the private and official press.

45. The Rwandese Constitution expressly banned forced labour. Under the monarchy, peasants had had to work free of charge for their masters and it was largely that system that the revolutionary movement had opposed. Naturally, all Rwandese were expected to offer their help so that the country's projects could bear fruit: accordingly, once a week everybody went to work in the fields or on the roads for the benefit of the State. In other words, the citizenry did the work on which the State would otherwise have to spend money. Such voluntary activities included, for example, the planting of trees for firewood, the laying of water-pipes and electricity mains. Coffee was planted, since it generated income for the country. But people worked because they recognized the need for the country to break out of poverty.

46. Threats to State security, incitement to armed combat within the country, against another country and incitement to combat between two other countries from Rwandese territory was punishable under the Criminal Code. The Rwandese tradition was to live in peace.

47. In conclusion, he undertook to report back to his capital that the Covenant was a beacon which could guide peoples and individuals safely towards peace and prosperity: he thanked the members of the Committee for their patience in considering his country's compliance with the Covenant.

48. Mr. Graefrath took the Chair.

49. Mr. LALLAH said he hoped that the Rwandese representative who had referred to some of the Committee's questions as "subtle" or even "insidious", had not misunderstood the Committee's desire to be of assistance to his country in complying with the Covenant. It was important to understand that that was how the Committee approached the question of compliance. Members were not interested only in coming to understand a given country's legal structure, they wished to see how successfully that system operated in practice. Their questions about women's equality, infant mortality, the available level of expertise in the legal

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profession and so on were raised in the hope of gaining indications as to how human rights were exercised in practice in any given State party. The Committee took exactly the same approach to developing and developed countries.

50. Mr. TARNOPOLSKY congratulated the Rwandese representative on his tour de force in anwering so many of the Committee's questions at such short notice. He agreed with Mr. Lallah that the Committee was aware of the different situations and difficulties countries faced. If it was to take those difficulties into account, however, it must be officially notified of them by States parties.

51. He urged the representative to collect the summary record containing his replies and to annotate it with the details of the legislation that applied to each of the points raised, with a view to assisting the Committee in understanding how the legislation operated. Personally, he was still not entirely sure what legal provisions restricted the rights granted under, for example, articles 17, 18, 19, 21 and 22 of the Covenant. At the same time, he hoped that the representative would also provide answers to the questions he had been unable to answer at such short notice.

52. Mr. TOMUSCHAT called for the Rwandese representative's replies to be given the fullest possible coverage in the summary record. He pointed out that one of his questions had not been fully answered: namely, whether administrative internment as well as preventive detention were permissible under Rwandese legislation.

53. Mr. BOUZIRI thanked the representative for explaining that the conflict in the country had been between monarchists and republicans rather than between the Tutsi minority and the Hutu majority. He was glad to hear that order had finally been restored.

54. The CHAIRMAN said he believed that the Committee would have to discuss further Mr. Dieye's suggestion on how to conduct such discussions of reports from State parties in future, and that it must also take up the Rwandese representative's novel request for assistance in training lawyers and judges.

The meeting rose at 6.10 p.m.