REPORT

OF THE

HUMAN RIGHTS COMMITTEE

GENERAL ASSEMBLY

OFFICIAL RECORDS: THIRTY-SEVENTH SESSION

SUPPLEMENT No. 40 (A/37/40)

UNITED NATIONS

226p

REPORT

OF THE

HUMAN RIGHTS COMMITTEE

GENERAL ASSEMBLY

OFFICIAL RECORDS: THIRTY-SEVENTH SESSION

SUPPLEMENT No. 40 (A/37/40)

UNITED NATIONS

New York, 1982

NOTE

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

[Original: English/French/
Russian/Spanish]

[22 September 1982]

CONTENTS

CONTENTS (continued)

ANNEXES

CONTENTS (continued)

CONTENTS (continued)

I. INTRODUCTION

A. States parties to the Covenant

1. On 30 July 1982, the closing date of the sixteenth session of the Human Rights Committee, there were 70 States parties to the International Covenant on Civil and Political Rights and 27 States parties to the Optional Protocol to the Covenant which were adopted by the General Assembly of the United Nations in resolution 2200 A (XXI) of 16 December 1966 and opened for signature and ratification in New York on 19 December 1966. Both instruments entered into force on 23 March 1976 in accordance with the provisions of their articles 49 and 9 respectively.

2. By the closing date of the sixteenth session of the Committee, 14 States had made the declaration envisaged under article 41, paragraph 1, of the Covenant which came into force on 28 March 1979. A list of States parties to the Covenant and to the Optional Protocol, with an indication of those which have made the declaration under article 41, paragraph 1, of the Covenant is contained in annex I to the present report.

3. Reservations and other declarations have been made by a number of States parties in respect of the Covenant or the Optional Protocol. These reservations and other declarations are set out verbatim in documents of the Committee (CCPR/C/2 and Add.1-5).

B. Sessions

4. The Human Rights Committee has held three sessions since the adoption of its last annual report: the fourteenth session (317th to 333rd meetings) was held at Bonn, Federal Republic of Germany, from 19 to 30 October 1981. This was the first session of the Committee held outside the United Nations in a Member State. The Committee had thereby gained valuable experience in conducting its proceedings in the country of the State party and wished to put on record its appreciation of the gesture of the Federal Republic of Germany in enabling the Committee to hold its fourteenth session at Bonn. The fifteenth session (334th top 359th meetings) was held at United Nations Headquarters, New York, from 22 March to 9 April 1982; and the sixteenth session (360th to 382nd meetings) was held at the United Nations Office at Geneva from 12 to 30 July 1982.

C. Membership and attendance

5. The membership of the Committee remained the same as during 1981. A list of the members of the Committee is given in annex II below.

6. All the members, except Mr. Lallah, attended the fourteenth session of the Committee. All the members, except Mr. Movchan, attended the fifteenth session. The sixteenth session was attended by all the members.

D. Working groups

7. In accordance with rule 89 of its provisional rules of procedure, the Committee established working groups to meet before its fourteenth, fifteenth and sixteenth sessions in order to make recommendations to the Committee regarding communications under the Optional Protocol.

8. The Working Group of the fourteenth session was composed of Messrs. Al Douri, Dièye, Hanga, Herdocia Ortega and Tomuschat. It met at the United Nations Office at Geneva from 12 to 16 October 1981 and elected Mr. Tomuschat as its Chairman/Rapporteur.

9. The Working Group of the fifteenth session was composed of Messrs. Aguilar, Ermacora, Janca, Prado Vallejo and Sir Vincent Evans. It met at United Nations Headquarters, New York, from 15 to 19 March 1982. Sir Vincent Evans was elected Chairman/Rapporteur.

10. The Working Group of the sixteenth session was composed of Messrs. Al Douri, Graefrath, Herdocia Ortega and Tarnopolsky. It met at Geneva from 5 to 9 July 1982 and elected Mr. Tarnopolsky as its Chairman/Rapporteur.

11. Under rule 62 of its provisional rules of procedure, the Committee established working groups to meet before its fifteenth and sixteenth sessions with a view to making recommendations on the duties and functions of the Committee under article 40 of the Covenant and related matters.

12. The Working Group of the fifteenth session was composed of Messrs. Bouziri, Graefrath and Opsahl. It met at United Nations Headquarters, New York, from 15 to 19 March 1981 and elected Mr. Bouziri as its Chairman/Rapporteur.

13. The Working Group of the sixteenth session was composed of Messrs. Bouziri, Movchan and Opsahl. It met at the United Nations Office at Geneva from 5 to 9 July and elected Mr. Bouziri as its Chairman/Rapporteur.

E. Agenda

Fourteenth session

14. At its 317th meeting, held on 19 October 1981, the Committee adopted the provisional agenda, submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its fourteenth session, as follows:

1. Adoption of the agenda.

2. Organizational and other matters.

3. Submission of reports by States parties under article 40 of the Covenant.

4. Consideration of reports submitted by States parties under article 40 of the Covenant.

5. Consideration of communications received in accordance with the provisions of the Optional Protocol to the Covenant.

6. Future meetings of the Committee.

Fifteenth session

15. At its 334th meeting, held on 22 March 1982, the Committee adopted the provisional agenda, submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its fifteenth session, as follows:

1. Adoption of the agenda.

2. Organizational and other matters.

3. Submission of reports by States parties under article 40 of the Covenant.

4. Consideration of reports submitted by States parties under article 40 of the Covenant.

5. Consideration of communications under the Optional Protocol to the Covenant.

Sixteenth session

16. At its 360th meeting, held on 12 July 1982, the Committee adopted the provisional agenda, submitted by the Secretary-General, in accordance with rule 6 of the provisional rules of procedure, as the agenda of its sixteenth session, as follows:

1. Adoption of the agenda.

2. Organizational and other matters.

3. Submission of reports submitted by States parties under article 40 of the Covenant.

4. Consideration of reports submitted by States parties under article 40 of the Covenant.

5. Consideration of communications received in accordance with the provisions of the Optional Protocol to the Covenant.

6. Future meetings of the Committee.

7. Annual report of the Committee to the General Assembly through the Economic and Social Council under article 45 of the Covenant and article 6 of the Optional Protocol.

II. ORGANIZATIONAL AND OTHER MATTERS

A. Question of publicity for the work of the Committee

17. At its fourteenth session, the Committee was informed that the Third Committee of the General Assembly was currently considering the Human Rights Committee's annual report in which the Committee's request concerning the annual publication of its documentation appeared; that a statement on the financial implications of the publications in question had been prepared by the Secretariat and would be submitted to the General Assembly in due time and that the Committee would be informed of any decision which the Assembly might take in this regard. 1/*

18. As regards the question of the publication of selected decisions taken by its under the Optional Protocol, the Committee was informed that the Secretariat would submit to the Committee more concrete proposals which could be used as a model for future publications but that it was only when, in the light of the decisions and wishes of the Committee, it was known what form the publication would take and how much work it would entail that it would be possible to prepare the relevant statement of financial implications. 2/

19. At its fifteenth session, the Committee was informed that the Secretariat had been studying the various options available to it, in consultation with the Publications Board, and that it intended to report to the General Assembly at its thirty-seventh session giving detailed proposals, together with their financial implications, so that a decision could then be taken; that it was intended to include in that report proposals for the publication of selected decisions relating to communications submitted under the Optional Protocol as soon as the Committee agreed on the modalities and format to be used.

20. At its sixteenth session, the Committee was informed of the steps being taken by the Secretary-General to give effect to the wishes of the Committee and that the matter was going to be put to the General Assembly at its forthcoming session. The Committee reiterated its wish that the publication of the bound volumes of its documents should not be delayed further and hoped that the General Assembly would take appropriate action on the matter. With regard to the selected decisions of the Committee under the Optional Protocol, the Committee requested the Secretariat to proceed with the compilation of the first draft of appropriate decisions in consultation with the Committee. The Committee requested one of its members, Sir Vincent Evans, to assist in this task.

B. Participation at regional seminars at Managua and Bangkok on recourse procedures

21. At its fourteenth session, the Committee was informed by its Chairman that, in view of its activities, the Committee had been invited, through him, to send a representative to the third regional seminar to be held at Managua, Nicaragua, under the auspices of the Economic Commission for Latin America, from 14 to 22 December 1981. The seminar, which was being organized in the context of the

---

* The notes to section II may be found on page

Programme for the Decade for Action to Combat Racism and Racial Discrimination, would discuss recourse procedures and other forms of protection available to victims of racial discrimination and activities to be undertaken at the national and regional levels.

22. The Committee decided to accept the invitation and to authorize its Chairman to hold consultations through the Division of Human Rights with a view to designating a representative of the Committee.

23. At its fifteenth session, the Committee was informed by its Chairman that, in accordance with its decision at the fourteenth session, he had represented the Committee at the Managua seminar on recourse procedures and other forms of protection available to victims of racial discrimination; that he had made a statement on behalf of the Committee at the seminar, on the basis of a text prepared by the Secretariat, describing the Committee's work, with special reference to its experience in dealing with communications relating to indigenous populations.

24. At its sixteenth session the Committee was informed by its Chairman that a similar invitation had been received through him to send a representative to a regional seminar to be held at Bangkok from 2 to 13 August 1982.

25. The Committee decided to accept the invitation and delegated one of its members, Mr. Abdoulaye Dièye, to attend the seminar on its behalf and to report to it in due course.

C. Placement of a new item on the agenda of the Committee's spring session every year

26. At its fifteenth session, members noted with appreciation that many of the representatives to the Third Committee of the General Assembly had been able to read the Committee's last annual report and to make comments thereon; that it was necessary for the Committee to be aware of the reactions of the community of nations to its work and to devote some time to considering the summary records of the debate on its report at the General Assembly and to reciprocate that interest by giving its views on that debate; and that if consideration of the summary records of the Third Committee became a separate agenda item in future, that response would be the subject of a separate chapter of the report.

27. The Committee decided to place on the agenda of its spring session every year an item entitled "Action by the General Assembly on the annual report submitted by the Committee under article 45 of the Covenant" and to request the Secretariat to circulate to members of the Committee, in advance of the session, the relevant summary records together with a note indicating the matters raised in the course of the debate. 3/

D. Other matters

28. At its fifteenth session, members of the Committee exchanged preliminary views 4/ on certain draft amendments to the Committee's provisional rules of procedure relating to communications, on the possibility of proposing a different format for the meetings of States parties under which additional matter could be suggested, if need be, for inclusion in its agenda, and on a proposal for

introducing Arabic as a working language in the Committee and decided, for lack of time, to continue discussion on these matters at the sixteenth session.

29. At the sixteenth session, the Committee continued consideration of matters relating to the introduction of Arabic as a working language in the Committee (CCPR/C/SR.366) and the question of coverage for medical expenses for members of the Committee in the performance of their functions (CCPR/C/SR.369). For lack of time the Committee postponed consideration of these and other matters until its next session.

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

A. Submission of reports

30. States parties have undertaken to submit reports in accordance with article 40 of the Covenant within one year of the entry into force of the Covenant for the States parties concerned and thereafter whenever the Committee so requests. In order to assist States parties in submitting the reports required under article 40 of the Covenant, the Committee, at its second session, approved general guidelines regarding the form and content of reports, the text of which appeared in annex IV to its first annual report submitted to the General Assembly at its thirty-second session. 5/

31. At its fourteenth session, the Committee was informed of the status of submission of reports (see annex III to this report) and, according to information received from Uruguayan officials, of the forthcoming submission of the initial report of their country.

32. The Committee decided after a brief discussion between its members to include the consideration of the initial report of Uruguay on its provisional agenda for the fifteenth session; that the Lebanese Government should be officially requested to submit a report or at least to explain its difficulties before the Committee's next session; that the ambassadors of Panama and Zaire, whose reports had been due in 1978, should be contacted with a view to making arrangements for holding informal meetings with the Committee; that an aide-mémoire be sent to the Government of the Dominican Republic in connexion with its report which had been due in 1979; and that reminders should be sent to the Governments of Trinidad and Tobago, New Zealand, the Gambia and India whose reports had been due in 1980. The Committee also decided to send another reminder to the Government of Chile concerning the report requested by the Committee and promised by the representative of that country at the Committee's sixth session held in 1979.

33. As regards Iran, the Ambassador of that country at Bonn, appearing before the Committee at its 326th meeting held on 26 October 1981, informed it that his Government had begun to collect information with a view to preparing a report for submission to the Committee but that the failure of his Government to finalize its report was due to factors beyond its control. Members of the Committee remarked that while the Committee could not discuss the situation currently prevailing in Iran in the absence of any report from that country, it was its duty under the Covenant to seek information from Iran on the steps that were being taken by the Government of Iran to protect human rights, that such information was essential in order to enable the Committee to discuss the Government's compliance with the Covenant and that, if the Government was not currently in a position to submit the kind of report it had itself promised to submit at the sixth session of the Committee, it should at least submit a brief report concerning the situation of human rights obtaining currently in that country. The representative of Iran, who dismissed the reports in the media concerning Iran as slanderous propaganda, stated that he had taken note of the views expressed by members and would convey them to his Government.

34. The Committee decided to address a letter to the Government of Iran reflecting the comments made on the question of its pending report by members of the Committee and requesting it once again to submit its report to the Committee.

35. The Committee also decided that States parties which submitted brief initial reports should be informed that they should be prepared to provide additional information, either orally or in writing, when the time came for the consideration of their reports by the Committee, so as to make their reports more consistent with the guidelines adopted by the Committee in this respect.

36. At its fifteenth session, the Committee was informed of the status of submission of reports (see annex III to this report) and that, since its fourteenth session, Australia, New Zealand, Uruguay and Mexico had submitted their initial reports under article 40 of the Covenant and that Nicaragua had submitted its initial report in the course of the current session, thus bringing the number of initial reports submitted under that article to 55. A supplementary report, as promised at the fourteenth session, had also been submitted by Jordan. However, several States parties which had earlier promised to submit additional information had yet to do so.

37. The Committee was also informed that, after orally notifying the Secretary-General of the imposition of martial law in Poland, the Government of that country had submitted a formal notification in accordance with article 4 of the Covenant on 29 January 1982.

38. In response to the invitation addressed to his Government in accordance with the decision adopted by the Committee at its fourteenth session, the Deputy Permanent Representative of Panama to the United Nations met with the Committee at an informal meeting held on 8 April 1982 and informed it that his country's initial report under the Covenant was now ready and would be submitted very shortly. On the other hand, the Permanent Mission of Zaire to the United Nations, to whose Government a similar invitation had been addressed, declined to send a representative to meet with the Committee on the grounds that it had not received any instructions from its Government to that effect.

39. At its 351st meeting held on 2 April 1982, the Committee was informed by its Chairman that he had received a letter, dated 29 March 1982, addressed to him in his capacity as Chairman, from the Permanent Mission of Chile to the United Nations describing the history of that country's relations with the Committee in connexion with its reporting obligations under article 40 of the Covenant and indicating that, in accordance with the Committee's decision on periodicity, 6/ its Government intended to submit its next periodic report within the prescribed five-year period following the consideration of the initial report, in April 1984. He also informed the Committee of a meeting he had had with the Permanent Representative of Iran to the United Nations, appealing strongly to him to induce his Government to submit its report under the Covenant and that he had handed him a letter addressed to the Foreign Minister of Iran to that effect. The report of Iran was subsequently submitted to the Committee.

40. The Committee was also informed by its Chairman of the text of a letter dated 1 April 1982 addressed to the Committee by the Permanent Representative of Lebanon to the United Nations indicating that his country's report was still under preparation and that the delay was due to difficulties beyond his Government's control. The letter, however, dealt with the traditional Lebanese record in the

area of human rights stressing that, despite the state of war existing in the country since 1975, constitutional authority and institutions had, nevertheless, been preserved and that the Government was doing everything within its power to prevent the excesses of the war.

41. The Committee decided to convey its appreciation to the Permanent Representative of Lebanon to the United Nations for the letter which reflected a commendable effort to provide some information, however summary, on the human rights situation in that country and to review the matter at its next session.

42. The Committee also decided to postpone consideration of Chile's reporting obligations under article 40 of the Covenant until a later session.

43. In addition, the Committee decided that the Secretariat should revise the form used to invite States parties to send representatives to present their countries' reports and should emphasize the importance of sending representatives of such status and experience as to respond to questions asked and comments made by members of the Committee; 7/ to send a telex to the Government of Zaire offering to extend to it such co-operation and assistance as may be required by its Government, such as direct contacts in Zaire itself, in order to enable it to fulfil its obligations under article 40 of the Covenant and expressing the hope of receiving a reply as soon as possible; that reminders should be sent to El Salvador and Sri Lanka and that the Permanent Representatives of the Dominican Republic, India and Trinidad and Tobago be invited to meet with the Committee in connexion with their reporting obligations under the Covenant.

44. The Committee further decided to allocate one of its meetings at the sixteenth session for the conclusion of its consideration of the report of Uruguay; to postpone, at the request of the Government of Jordan, the consideration of its supplementary report until that session, and also to consider during its sixteenth session the initial reports of Iran and Guinea and to inform the Government of Guinea that the Committee, which had so far twice postponed the consideration of that country's report because of the failure of the Government of Guinea to respond to its invitation to send representatives for the consideration of its report, might this time have to consider that report even if no representative of the reporting State was present.

45. At its sixteenth session, the Committee was informed of the status of submission of reports (see annex III to this report) and that, since its fifteenth session, France and Panama had submitted their initial reports under article 40 of the Covenant, thus bringing the number of initial reports submitted under that article to 57. Supplementary reports or additional information had also been submitted by Venezuela and Kenya.

46. The Committee was also informed that no reply had as yet been received from Zaire in response to the Committee's telex addressed to it at the fifteenth session offering to extend to it its co-operation and assistance as may be required by that Government, in order to enable it to fulfil its obligations under article 40 of the Covenant and that attempts to arrange for the Permanent Representative of Zaire at Geneva to meet with the Committee during this session had not been successful. The Committee was also informed that as regards the invitation to the Dominican Republic, India and Trinidad and Tobago to send representatives to meet with the Committee in connexion with their reporting obligations under the Covenant, only India had responded that its report was under preparation and that it would be submitted soon.

47. With regard to the report of Guinea which had been scheduled to be considered for the third time at the sixteenth session, the Committee decided, in view of the absence of a representative from Guinea, to postpone consideration of that report until its eighteenth session. The Committee further decided that in the meantime, one of its members, Mr. Abdoulaye Diéye, should, subject to the agreement of the Government of Guinea, be authorized to pay a visit to Conakry on behalf of the Committee with a view to explaining to the Government the desirability of engaging in a dialogue with the Committee in accordance with its obligations under the Covenant and, to that end, to indicate to the Government the necessity of sending a representative to the Committee when the report of that country is being considered. Mr. Diéye was also asked to explain to the Government all matters relating to the contents of reports and to the working methods and procedures of the Committee. The Secretariat was requested to contact the Government of Guinea to obtain its approval for Mr. Diéye's visit.

48. As regards the report of Lebanon, the Permanent Representative at Geneva of that country appeared before the Committee to explain the reasons why Lebanon was unable to present its report. The Permanent Representative indicated that his Government was eager to submit to the Committee a report not only on the efforts it was making to safeguard the rights and freedoms of its citizens in accordance with the Covenant but also to protect them from the various acts of aggression that violated many of their basic rights. The reason for which this report was not before the Committee was that on 6 June 1982 Lebanon had once again been chosen to be a substitute arena for a substitute war. The Representative said that he found it needless to describe the magnitude of the tragedy of his people which resulted from the blatant and devastating Israeli aggression which was still going on and which was in continuous escalation, taking day after day an ever-increasing toll of human lives and adding more destruction to what had already been destroyed. He added that, in those tragic circumstances, the only priority for his Government was its struggle to protect its citizens from death and to safeguard their inherent right to life. In so doing, his Government was acting in the very spirit of the Universal Declaration of Human Rights and of the Covenant for it believed that no human right, however fundamental, was of any meaning to the dead. For those reasons, he sought the understanding of the Committee for the non-presentation of the report of his country. He hoped that the continuing tragedy would soon end and that Lebanon would become, as it was traditionally before, a land of peace and a haven of freedom, democracy and human dignity which were an integral part of its heritage. He indicated that his Government would then have no difficulties in honouring its obligations in due time including its obligations under article 40 of the Covenant.

49. Members of the Committee observed a moment of silence in memory of those who had been killed in Lebanon. They welcomed the presence of the Permanent Representative of Lebanon who had made it a point to attend the proceedings of the Committee at a time when his country was facing such a tragic situation. They also observed with appreciation the fact that even at such a time of crisis, Lebanon was in the process of preparing its report.

50. Members of the Committee were appalled at the tragic situation caused by the Israeli action, widely condemned as aggression, resulting in gross violations of the supreme right to life sought to be protected by the Covenant. Some members characterized this as an aggression and as a flagrant breach of the right of self-determination of the Palestinian people who had sought refuge in Lebanon and further characterized the Israeli action as amounting to the genocide of the

Palestinian people. Some other members, however, said that the Committee should be careful not to exceed the powers conferred upon it by the Covenant.

51. The Committee follows the tragic situation in Lebanon with deep anxiety and concern and urges all States to deploy every effort to bring this situation to an end. The Committee requested the Permanent Representative of Lebanon to convey to his Government the Committee's sympathy and its readiness to take appropriate decisions in order to facilitate the preparation and submission of Lebanon's report under article 40 of the Covenant. 8/

B. Consideration of reports

52. The following paragraphs are arranged on a country-by-country basis according to the sequence followed by the Committee at its fourteenth, fifteenth and sixteenth sessions in its consideration of the reports of States parties. Fuller information is contained in the initial and supplementary reports submitted by the States parties concerned and in the summary records of the meetings at which the reports were considered by the Committee.

Japan

53. The Committee considered the initial report of Japan (CCPR/C/10/Add.1) at its 319th, 320th and 324th meetings held on 20 and 22 October 1981 (CCPR/C/SR.319, 32 and 324).

54. The report was introduced by the representative of the State party who pointed out that any international treaty concluded by Japan became part of its legal framework; that, before Japan concluded any treaty, the authorities always conducted a thorough examination of its provisions and, if need be, modified laws and regulations in accordance with the provisions of the treaty; that such an examination had taken place in the case of the Covenant; that the Japanese Government had concluded that no discrepancy existed in its laws and regulations to warrant any such amendments; and that all the rights provided for in the Covenant were guaranteed by the Constitution and the laws and regulations in force. The representative assured the Committee that his delegation would do its best to co-operate and to answer all questions and that, if it could not do so, his Government would submit its replies to the Committee at a later date.

55. Members of the Committee thanked the Government of Japan for submitting its report in time and in conformity with its reporting obligations. They noted, however, that the report was too brief and was limited to questions relating to the legal framework, lacking in information about actual practices in the country. In particular it was asked whether any of the long traditions of the country had affected the implementation of the rights provided for by the Covenant. They asked whether the Covenant had been translated into Japanese; whether the text was easily obtainable; whether police and prison personnel and civil servants were apprised of the Covenant during their training and of the obligations it imposed on the State; and what measures were being taken to publicize the contents of the Covenant and to make the general public aware of the rights conferred by it, especially as far as minorities and women were concerned. In this connexion, information was requested on the role played during the "Human Rights Week" by the Civil Liberties Bureau and the Civil Liberties Commissioners, mentioned in the report, in promoting awareness of human rights in schools, universities, trade unions and political parties.

56. Commenting on the statement in several articles of the Constitution that the exercise of human rights in Japan could be "restricted on the ground of the public welfare", members of the Committee pointed out that this statement was not in accordance with the Covenant since "public welfare" was not one of the grounds on which derogations could be made. They requested explanations on the concept of "public welfare" as well as a few examples of its application where it affected the freedom of the individual.

57. With reference to article 1 of the Covenant, satisfaction was expressed at the statement in the report to the effect that Japan recognized the right of peoples to self-determination and worked towards its realization. It was asked whether, in the particular cases of Namibia and Palestine, the Japanese Government had done all that it could have done in the international context to ensure that the peoples concerned enjoyed their right to self-determination; what steps it had taken to discourage South Africa from maintaining its domination over Namibia, and what it had done to prevent private businesses and banks from collaborating with the apartheid régime of South Africa.

58. Commenting on article 2 of the Covenant, members noted that whereas this article stressed the obligation of States parties to ensure to all individuals the rights recognized in the Covenant, without distinction of any kind, certain articles of the Japanese Constitution referred alternately to the "people", "persons" or "nationals", and it was asked whether the difference in terminology was one of substance or incorrect translation. In this connexion, reference was made to a disadvantaged social group in Japan called the Burakumin, which was known to have suffered from discrimination based on certain traditions, and it was asked whether persons belonging to that group were still discriminated against with regard to marriage and the education of children, to what extent the State was responsible for that discrimination and what it was doing to remedy it.

59. More information was requested on the actual status of the Covenant in the legal system of Japan, whose Constitution dated from 1946; on whether the Constitution contained provisions concerning the relationship between national law and treaty obligations; whether the Covenant could be invoked before a court, and whether the courts and the administrative authorities were bound to observe its provisions and to resort to it in interpreting the provisions of the Constitution and Japanese legislation. It was observed that the problem seemed to be more one of how to ensure that the provisions of domestic law were actually implemented in the light of the constraints imposed by the country's historical, social and cultural traditions which might be incompatible with the Covenant. In this connexion, more information was requested on the remedies available in cases of violation of rights and it was asked whether any conditions were attached to the exercise of those remedies; whether an individual could bring a complaint and institute criminal proceedings; whether the authorities were bound to investigate all complaints and take legal action; and whether any dispute between an individual and the public administration could be brought before the courts or whether that remedy was available in only certain specific instances. It was also asked whether the constitutionality of laws could be raised only in connexion with a specific case or whether it could be raised by itself. More information was requested on the Civil Liberties Bureau and the 11,000 Civil Liberties Commissioners referred to in the report and particularly, on their composition and powers, their relationship with the public administration, the judiciary and the legislature as well as on how the Commissioners were chosen; whether they were civil servants; what kind of procedures they followed; whether aliens could avail themselves of the protection

of the Commissioners; how many complaints they had heard and what means were available to them for reaching a settlement since their decisions were not binding.

60. As regards article 3 of the Covenant, members of the Committee requested information on the factual status of women in Japan, on the results obtained to date under the National Plan of Action for Women's Rights mentioned in the report, on the deficiencies that the plan was designed to correct, on how the right to equality between men and women, particularly in relation to education, employment, wages and career prospects was ensured, on the rights enjoyed under the Nationality Law by women married to foreigners as compared with the rights of men married to foreign women, and on the participation of women in the conduct of public affairs.

61. In relation to article 6 of the Covenant, it was pointed out that control of food and pharmaceutical products was vitally important in order to protect the individual's enjoyment of the right to life and that, though Japan was one of the countries where life expectancy was highest, the report should still give information on those subjects, as well as on the economic, social, administrative and other measures which had been taken to ensure the quality of life and to protect the health of workers and the quality of the environment in a highly industrialized country like Japan. More information was requested on capital punishment in view of the fact that it was still applicable to 17 offences, in particular on the number of cases since 1974 in which the death penalty had actually been carried out or commuted, and on whether the abolition of the death penalty was being contemplated. It was also asked whether there were provisions of positive law concerning the punishment of the crime of genocide. Some members wished to be enlightened as to whether abortion was legal in Japan.

62. Commenting on articles 7 and 10 of the Covenant, members asked how the provisions of the Constitution and the Penal Code concerning acts committed in violation of those articles were applied; whether the security forces were trained to observe such provisions; whether there was any control system whereby special boards, independent of the police or the prison administration, had direct access to detainees and prisoners whose complaints they could receive and, if not, whether the control system came within the competence of the judiciary or of the public prosecutor; whether the Civil Liberties Commissioners had access to the prisons and whether the prisoners could contact them; what reforms had been carried out since the Prison Law had been enacted in 1908; whether the Standard Minimum Rules for the Treatment of Prisoners 9/ were incorporated in the legal system and complied with in Japan; whether there had been recent cases of public officials being accused of abuse of power or of maltreatment of the kind mentioned in the Covenant and, if so, what penalty had been established to punish those violations. It was pointed out that there appeared to be no positive rule of Japanese law to ensure the implementation of article 10, paragraph 3, of the Covenant concerning the segregation of juvenile offenders from adults and that the absence of this guarantee for juvenile offenders should be brought to the attention of the Japanese Government.

63. As regards article 8 of the Covenant, members wondered whether the statement in the report to the effect that involuntary "servitude" could be imposed as punishment for a crime, was a correct translation of the relevant provision in the Japanese Constitution. It was asked how "forced labour" was actually enforced in Japanese prisons and what happened if a person refused to perform such labour.

64. Commenting on article 9 in conjunction with article 13, of the Covenant, members asked how and under what conditions foreigners could be detained in immigration centres; whether the courts had the authority to examine the substantive reasons for the detention of persons deprived of their liberty or whether their power was limited to a formal verification of the lawfulness of the detention; whether the relevant legal provisions specified that the family of an arrested person must be informed of his place of detention and whether all detained persons had the right to a lawyer of their choice. In relation to the right of compensation for victims of an unlawful arrest or detention, information was sought on the laws designed to implement that right.

65. As regards article 11 of the Covenant, it was asked whether inability to fulfil a contractual obligation could result in imprisonment.

66. In relation to article 12 of the Covenant, clarification was requested on the effect of the Immigration Control Order on the right of movement and freedom to choose one's residence, and on the extent to which restrictions on the movement of aliens lawfully residing in the country were compatible with the Covenant.

67. With reference to article 13 of the Covenant, it was asked whether the Japanese Government granted the right of asylum for political reasons; whether a person expelled from Japan for justified reasons could appeal and whether a stay of execution of the expulsion order could be granted pending a decision on appeal.

68. Commenting on article 14 of the Covenant, members noted that more information was needed on how the guarantees provided for in this article were implemented in the Japanese legal system and on the features of the judicial system. Questions were asked on who was able to become a judge, on whether, in the event that a judge was not maintained in office after a ten-year term, the procedure required the reasons for that measure to be stated, whether the judges of the Supreme Court came from all regions of Japan or from one or two universities only, what was the percentage of women in the Supreme Court and whether the independence of judges was protected by specific provisions. Noting that Japanese legislation did not expressly provide for the presumption of innocence, members asked whether the Japanese Government considered that principle, which according to the report was nevertheless affirmed in practice, as applying only to the Courts or also to other public authorities such as the police, and whether legal costs and lawyer's fees were covered by the State when a person was found innocent. In this connexion, it was asked whether legal assistance was available for civil cases as well as for criminal ones, whether it was costly to appoint lawyers, in what instances a lawyer was necessary and whether governmental authorization was needed in order to become a lawyer. It was also noted that convicted persons seemed obliged to meet the cost of interpretation services and that, if that was so, it was inconsistent with the Covenant. Clarification was sought on the kind of cases the High Court had competence to decide and in what cases a right of appeal was provided; whether Japanese legislation provided for special courts to try juvenile delinquents; whether the complete rehabilitation of such delinquents was entrusted to the administration or to specialized institutions.

69. As regards article 17 of the Covenant, it was asked whether there were any laws regulating intelligence activities or any rules applicable to electronic surveillance and telephone tapping; what action was taken by the administrative authorities to ensure the protection of individuals against the misuse of data; what exceptions were there to the principle of the inviolability of correspondence;

and whether, from the stand point of jurisprudence, "home" was construed in a narrow sense in Japanese law or in a wider sense covering, for example, tents, caravans, houseboats and the like.

70. With reference to article 18 of the Covenant, it was asked whether the various religious communities in Japan had the right to print and distribute their writings and at what age children were entitled to choose their religion and beliefs themselves.

71. Commenting on the freedoms provided for in articles 19, 21 and 22 of the Covenant, members noted the brevity of the information on the laws authorizing restrictions of those freedoms and it was asked what procedures had been introduced in Japan to ensure that citizens could express opinions through the information media; what was the meaning of the term "terroristic subversive activity" used in the Subversive Activities Prevention Law and to what extent it affected freedom of assembly and association; whether any trade unions had been dissolved on account of terrorist subversive activity; whether fascist, revanchist and neo-Nazi organizations were allowed to operate and, if so, how could such tolerance be reconciled with the Covenant; whether the provisions in the Japanese Constitution relevant to the freedom of assembly were applicable to foreigners; which conditions a group of people had to meet, under the law, in order to form a political party and what political parties were banned in Japan and for what reason.

72. As regards article 20 of the Covenant, it was observed that the report stated that any propaganda for war was almost inconceivable since the Constitution provided for the renunciation of war. The question was raised as to whether this sufficed to meet the requirement of this article which made it mandatory for States parties to prohibit any propaganda for war by law. Reference was also made to the obligation in the same article concerning the advocacy, inter alia, of racial hatred, and it was noted that the relevant provisions of the Penal Code of Japan as cited in the report did not appear to meet the requirements of this article. Questions were asked as to Japan's attitude towards these obligations and as to whether there were other provisions on this matter in Japanese law.

73. In connexion with articles 23 and 24 of the Covenant, it was asked whether Japanese law provided for family allowances and housing grants for large families; what the status of illegitimate children was in Japan; whether such children enjoyed equal rights; which administrative and legal provisions ensured their protection; and whether adoption was the subject of a judicial decision.

74. Commenting on article 26 in conjunction with article 2 of the Covenant, some members pointed out that the Constitution did not seem to have entirely covered the provisions of this article because it spoke only of "equality under the law" and they requested clarification of the meaning of that term.

75. Regarding article 27 of the Covenant, members noted the statement in the report that minorities of the kind mentioned in the Covenant did not exist in Japan and they asked what constituted a minority according to Japanese legislation; whether immigrants could acquire minority status; what the status of Koreans, Chinese, the Ainus, the Burakumin and the people of Okinawa was; whether the principle of equal treatment applied to them; whether their rights to family reunion and participation in national life were recognized, and what guarantees existed to protect their rights.

76. Replying to comments made and questions raised by members of the Committee, the representative of the State party stated that the report could not have contained information on Japanese history, tradition and culture of relevance to human rights problems, as suggested by some members of the Committee, because that would have required a very large encyclopaedic volume which it was not possible to produce and which it had not been the intention of the authors of the Covenant to request. He also stated that although the Covenant itself remained silent on the matter, publicity to the Covenant had been given by the pre-ratification campaign carried out by the Ministry of Foreign Affairs and the press reports of the parliamentary debate on ratification, that after ratification the full text of the Covenant was published in the Official Gazette, and that a pamphlet was then issued explaining the Covenant and the Government's position on it. Knowledge of the Covenant and of human rights in general was also fostered by Human Rights Week in which lectures or discussion meetings were held, films were shown and pamphlets distributed. Various ministries and agencies were engaged in publicizing the importance of strengthening human rights protection for women, children, young people, the disabled and the elderly. The duties of the Civil Liberties Commissioners included publicity of human rights and promotion of non-governmental activities for human rights protection.

77. Responding to comments concerning the possible imposition of restrictions on the exercise of human rights on the ground of the "public welfare", he stated that the concept of public welfare was given a strict interpretation and was not abused to justify unreasonable limitations on human rights and that, in the Japanese view, this term meant the same as public safety, order, health or morals.

78. As regards article 1 of the Covenant, the representative stated that his country was strenuously opposed to the apartheid policy of South Africa and had been consistently calling on it to abolish apartheid as soon as possible and to respect human rights and freedoms, that Japan limited its relations with South Africa to the consular level and did not allow direct investments by Japanese companies, that it restricted cultural, educational and sports exchanges and strictly observed the United Nations resolution on the export of arms to South Africa. However, Japan did not share the view that it was necessary to resort to force in order to compel South Africa to abolish apartheid, nor did it support taking radical measures such as mandatory economic sanctions, but that it had been voting in favour of other proposals designed to eliminate apartheid. Japan's position on the right to self-determination in relation to Palestine was that this question was not solely a refugee problem, that it was necessary, in addition to implementing Security Council resolutions 242 (1967) and 338 (1973) to recognize and respect the legitimate rights of the Palestinian people under the Charter of the United Nations, which extended to the right to self-determination as well as that of equality, and that the right to establish an independent State was included in the concept of the right of self-determination.

79. Replying to questions raised under article 2 of the Covenant, the representative stated that although the provisions of the Constitution, dealing with the rights and duties of the people, used a broad variety of terms, all those terms should be construed as having the same effect and that the administrative and judicial authorities had abided by that interpretation; that the "Burakumin" were Japanese nationals, not different from other nationals ethnically, religiously or culturally; that any unequal treatment of those persons derived from unreasonable social prejudices on the part of certain individuals and that the social sphere was a delicate area in which it was difficult for a Government to intervene; that

aliens in Japan were on an equal footing with Japanese nationals in respect of the rights enumerated in the Covenant except for the rights specifically intended therein for nationals and that he was not in a position to state whether there were any aliens whose offers of marriage to Japanese citizens had been turned down on account of their nationality.

80. As regards the status of the Covenant in the legal system, he stressed that, according to the Constitution "treaties concluded by Japan and established laws of nations shall be faithfully observed", that the administrative and judicial authorities were obliged to comply, and ensure compliance, with treaty provisions and that treaties were deemed to have a higher status than domestic laws. This meant that if the court found a conflict between domestic legislation and the treaty, the latter prevailed and the relevant legislation must be either nullified or amended. In respect of remedies, he explained that the Civil Liberties Bureau, which consisted of a central legal affairs office and regional legal affairs offices, was concerned with the investigation of cases of violations of human rights and the collection of information on them and with matters relating to habeas corpus, legal aid to the poor and the protection of human rights in general. The Civil Liberties Commissioners who had to be well-versed in social conditions, were appointed by the Minister of Justice, on a non-remunerative basis, on the recommendation of mayors. The duties of these commissioners included the investigation of cases of violation of human rights, the collection of information on such cases by hearing the persons concerned and the submission of reports to the Minister of Justice. They also gave effective advice to the persons concerned. Any violation of the human rights of aliens could be redressed through the existing legal arrangements.

81. Replying to questions raised under article 3 of the Covenant, the representative gave a detailed account of the progress achieved by women in various fields of activity, including the role they now played in public affairs since the revision of the Election Law in 1945 which had given equal political rights to men and women for the first time. He pointed out that Japan had signed the Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180, annex) and that measures were being taken with a view to ratifying the Convention by 1985. As part of that preparatory work, the administrative authorities concerned were considering amendments to the Law of Nationality that would ensure equality between husband and wife with regard to both naturalization procedures and acquisition of nationality by birth.

82. As regards article 6 of the Covenant, he informed the Committee that the Legislative Council, one of the advisory bodies to the Minister of Justice, had recently studied the question of capital punishment and had concluded that its abolition would be unwarranted in view of the continued commission of brutal crimes and the fact that a large majority of Japanese people favoured the retention of the death penalty. However, the Council had also concluded that the categories of crimes for which that penalty could be imposed should be reduced from 17 to 9. The code was expected to be revised along the lines recommended by the Council. He also stated that, as a result of strict regulations, the number of executions had decreased in recent years and that during the period 1975-1980, only 15 persons had been executed.

83. In connexion with questions raised under article 8 of the Covenant, he noted that the relevant information provided in the report gave the erroneous impression that slavish bondage could be imposed if it was intended as punishment for a crime,

and drew attention to the fact that the Constitution stated that "no person shall be held in bondage of any kind".

84. Regarding questions raised under articles 7 and 10 of the Covenant, the representative stated that the Prison Law enacted in 1908 had been revised, and its enforcement regulations provided for the treatment of prisoners with humanity and respect for the inherent dignity of the human person; that the Penal Code provided for the imposition of severe punishment for any abuse of authority and for acts of violence committed by prison officials against detainees; that inmates dissatisfied with particular conditions existing in prison could petition the competent Minister or an official visiting the prison, for the purpose of inspection; that the official could take a decision himself and note his decision in the petition record, thus making it mandatory for the Warden to notify the petitioner promptly of its contents; that this official could otherwise request the Minister of Justice to make the decision; and that the Prison Law provided for the competent Minister to send officials to inspect the prisons at least once every two years.

85. Replying to questions raised under article 9 in conjunction with article 13 of the Covenant, the representative explained that the immigration centres were designed for detaining aliens in respect of whom deportation orders had been issued in accordance with the procedures provided for by law, but could not be deported immediately (for example when no country was willing to accept them) until such time as deportation became possible. Detention in these centres, which were under the supervision and control of the Ministry of Justice, was meant to ensure that such aliens would be available for deportation as well as to prevent them from engaging in economic or other activities permitted only to legal residents. These centres differed fundamentally from correctional institutions in that detainees, by virtue of the Immigration Control Order and the relevant regulations, were permitted the maximum liberty consistent with the proper functioning of the immigration centre. He informed the Committee that, at present, detainees possessing permanent resident status were very few in number, that in deciding whether to deport persons possessing such status, the policy of the Japanese authorities was to order deportation only when that was absolutely unavoidable, for example, in certain cases of criminals convicted of serious crimes of violence, and that during the period 1970-1979, the total number of aliens deported from Japan had been 12,509 of whom only 11 had possessed permanent resident status.

86. Commenting on questions asked under article 14 of the Covenant, the representative informed the Committee that the judgeships of the Summary Court were open to persons of ability other than qualified professionals; that an assistant judge had to pass the National Legal Examination, complete two years of training and pass a final qualifying examination before he could exercise limited judicial powers; that after not less than 10 years experience as an assistant judge, public prosecutor, practicing lawyer, professor or assistant professor of law at particular universities, a candidate could be appointed a fully-fledged judge; that with regard to the Supreme Court, 10 of its 15 justices must be selected from among those candidates who had distinguished themselves in law-related positions, but that the remaining five need only be experienced and have knowledge of law; and that all judges were appointed by the Cabinet, except the Chief Justice of the Supreme Court, who was appointed by the Emperor as designated by the Cabinet. There were a number of measures to prevent unsuitable or incompetent judges from disgracing the position, including removal by an impeachment court, periodic review by the members of the House of Representatives and the voters, the limiting of the term of office of lower court judges to 10 years, compulsory retirement for very

old judges and disciplinary action by the High Court or the Supreme Court. He also stated that the assistance of a court-appointed defence counsel where an accused was unable, because of poverty or for other reasons, to select his own defence counsel was guaranteed by the Constitution and the Criminal Procedure law and that the latter law provided that an accused person would have the assistance of an interpreter or translator where necessary.

87. As regards article 17 of the Covenant, he stated that the means of regulating computer use for the purpose of protecting privacy were currently being examined in Japan and that the word "home" as used in the Constitution meant "a home habitation or the premises, structure or vessel guarded by a person" and that that definition would apply to a camping caravan or large boat with sleeping and eating facilities.

88. Replying to questions raised in relation to the freedoms provided for in articles 19, 21 and 22 of the Covenant, the representative pointed out that while the Subversive Activities Prevention Law held out the possibility of restricting freedom of assembly and association, the Law itself provided that it should not be interpreted broadly nor be imposed so as to limit unjustifiably such rights as freedom of assembly and association, and it severely limited the kinds of restricted activity and the manner in which they were punished. He informed the Committee that in fact no activity of any organization had been prohibited and no declaration had been made to dissolve an organization under the Law; and that it was impossible under the Japanese legal system to prohibit crimes under such general headings as fascist, revanchist and neo-Nazi and that only specific crimes could be prohibited.

89. Replying to a question raised under article 20 of the Covenant, on why propaganda for war was no prohibited in Japan by law as stipulated in this article, the representative stated that such law should be considered on the basis of whether it was necessary for the respect of other persons' rights, national security and public order.

90. In connexion with articles 23 and 24 of the Covenant, he pointed out that, according to Japanese laws, children's allowance was granted to persons who took care of three or more children under the age of 18; that permission of the Family Court must be obtained in order to adopt a minor child; and that the share in the succession of an illegitimate child is one half of that of a legitimate child.

91. Replying to questions raised under article 27 of the Covenant the representative stated that "minority" meant a group of nationals who ethnically, religiously or culturally differed from most other nationals and could be clearly differentiated from them from a historical, social and cultural point of view; that the Ainus, who were more properly called "Utari people", were Japanese nationals and treated equally with other Japanese; that the Koreans who had been living in Japan for a long period of time were not considered minorities but aliens and, as such, did not have the right to vote or stand for election to public office. The representative gave a detailed account of the treatment of Koreans residing in Japan and the various rights and privileges enjoyed or not yet enjoyed by them, and stated that he was not in possession of data on the number of Koreans living in Japan in communities with their own particular characteristics but that an answer would be submitted in writing at a later date.

Netherlands

92. The Committee considered the initial report (CCPR/C/10/Add.3 and 5) submitted by the Government of the Netherlands at its 321st, 322nd, 325th and 326th meetings held on 21 and 26 October 1981 (CCPR/C/SR.321, 322, 325 and 326).

93. The report was introduced by the representative of the State party who summarized the major characteristics of the legal and political systems of the Netherlands that were relevant to the Covenant. He pointed out that the new Constitution which would probably enter into force in the first half of 1982 would retain the provisions concerning the relationship between domestic law and international law; that, inspired by the International Covenants on Human Rights, it would contain an extensive catalogue of basic rights; that a new article had been included which laid down that the death penalty could not be imposed; that there had been 48 reported cases in which the Netherlands courts had mentioned provisions of the Covenant in their opinions; that, since the report had been prepared, a law had been enacted broadening the field of application of the provisions of the Penal Code relating to racial discrimination; and that a law had been enacted in 1981 creating the office of National Ombudsman with extensive powers to investigate complaints by individuals about improper behaviour on the part of the authorities. He also informed the Committee that several bills and new statutory provisions were under preparation concerning sex discrimination, equal treatment and protection of privacy and that, in the light of the Committee's general comment 4/13, 10/ various studies and affirmative actions were being conducted and undertaken with a view to eliminating any existing distinctions between men and women and to improving the position of disadvantaged groups in society.

94. He stated that the Netherlands Antilles was currently engaged in discussions with the Kingdom of the Netherlands on ways of achieving a new constitutional relationship between the two countries and attached great importance to the right of peoples to self-determination; and that, in the event that the island territories of the Netherlands Antilles opted for independence, the Netherlands Government had agreed to support their recognition as independent States. He pointed out that many of the provisions regarding the rights set out in part III of the Covenant were directly applicable to the Netherlands Antilles and could be applied by the courts without any legislation being required; and that, where legislation was needed to implement the Covenant the legislative texts were expressly mentioned in the report. He explained the reasons for the reservations made by the Kingdom of the Netherlands upon ratification.

95. Members of the Committee praised the high quality of the report which had been prepared in accordance with the Committee's guidelines and had taken account of the general comments adopted by the Committee at its thirteenth session, but noted, however, that no mention was made of any difficulties encountered in its implementation. They commended the adherence of the Netherlands to the Optional Protocol which had the effect of providing greater protection for the rights of individuals and they asked whether copies of the Covenant in Dutch were readily available to the public; whether the Covenant had been brought to the attention of the police, prison officers and public officials in general as part of their training and whether, in conformity with United Nations resolutions, the Netherlands had established a national commission for the promotion of human rights and, if not, whether there were any private groups for that purpose in the

country. More explanation was requested of the consequences of the complex constitutional relationship between the Netherlands and the Netherlands Antilles in international law.

96. Commenting on article 1 of the Covenant, members noted that the legal framework linking the Netherlands and the Netherlands Antilles could not be amended by one country acting unilaterally. Information was requested about the conclusions of the working party referred to in the report concerning the independence of the Netherlands Antilles, and about the results of the round-table conference held in February 1981 between the Netherlands, the Netherlands Antilles and its four island territories concerning self-determination. It was also pointed out that the Netherlands' firm position regarding self-determination could not be reconciled with the economic, political, cultural and military relations it maintained with Israel and South Africa which were extremely hostile to that principle, and it was asked what steps the Netherlands had taken to help the peoples of South Africa, Namibia and Palestine seeking the right to exercise self-determination.

97. As regards article 2 of the Covenant, it was asked whether the statement in the report that the Netherlands legal system left no scope for discrimination on grounds referred to in this article meant that the prohibition of discrimination was held to be a provision relative to the application of the laws but not to their formulation; what obstacles there were to the achievement of equal opportunities for all living in the country, including foreigners and stateless persons; and whether the provision in the Constitution of the Netherlands Antilles that everyone in the territory shall have an equal right to the protection "of his person and property" was broad enough to cover all the aspects of non-discrimination, including the freedom of assembly, religion and association.

98. It was noted that the report indicated that most provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms were directly applicable in the Netherlands but that, in the case of an international agreement, such as the Covenant, which, by its substance, was capable of extending rights to and be applicable to all persons, it was up to the courts to determine whether it contained substantive rights and should therefore be regarded as directly applicable and having binding force on all concerned without the need for any legislation. Members of the Committee asked whether that did not give rise to an element of legal uncertainty for the individual; to what extent civil servants in the lower ranks of the administration could respect the basic rights of the Covenant when the Government itself did not know which provisions of the Covenant were directly applicable; whether any provision of the Covenant had been applied directly; and whether or not the provisions of articles 3, 20 and 26 of the Covenant had third-party applicability. With reference to the statement of the representative that no less than 48 times the provisions of the Covenant had been referred to in court decisions, it was asked whether the Covenant had merely served to confirm the courts' interpretation of domestic provisions or whether the courts had evolved a rule whereby national legislation should be construed in accordance with the Netherlands international obligations; whether those courts had ever set aside a law as being inconsistent with obligations under the Covenant or the European Convention on Human Rights; and what remedy was available to a person against a court decision that the relevant provisions of the Covenant could not be applied to his complaint. It was also asked whether the Government planned to introduce a system of judicial review of parliamentary enactments under the new Constitution.

99. Information was also requested on whether the Covenant had been referred to in the decisions of the courts of the Netherlands Antilles and on whether it was intended to extend the ombudsman system to the Antilles. Reference was made to the statement in the report to the effect that, if the Governor of the Antilles did not, as he was entitled to do, annul a regulation by an island territory administration restricting the individual in the exercise of his basic rights, any individual may institute legal proceedings whereupon the court could declare the regulation inoperative. It was asked whether the court in question was a court in the Antilles or the Supreme Court of the Kingdom of the Netherlands; whether the term "individual" referred only to an alleged victim or whether it was possible for any individual who claimed that a given legislative measure or administrative act was contrary to the Covenant to institute an actio popularis; and whether all the many remedies available, up to and including a petition to the Queen, had to be exhausted before the Government of the Netherlands would hold the Human Rights Committee competent to consider the merits of a case brought by an individual claiming some violation of the Covenant.

100. In relation to article 4 of the Covenant, reference was made to the proposed constitutional amendments on states of emergency permitting derogation from the right of demonstration and the right to profess one's religion or belief other than in buildings and enclosed spaces, and it was asked whether such an amendment would be fully in conformity with the provisions of this article when read in conjunction with article 18 of the Covenant.

101. Commenting on article 6 of the Covenant, members noted the absence in the report of information on any positive measures that might have been taken to protect the right to life and that the Netherlands legislation appeared to be particularly lenient with regard to drug-taking, and wondered whether that approach was not in conflict with this article which requires the right to life to be protected by law. It was asked what measures the Government had taken to reduce infant mortality and what the rate of infant mortality was in the Antilles in comparison with that of the Netherlands. They commended the intention of the Netherlands to abolish the death penalty and asked for what offences the death penalty could still be imposed.

102. As regards articles 7 and 10 of the Covenant, it was noted that the law did not contain a definition of torture and that no mention was made in the report of any legislative provisions designed to give effect to the prohibition of torture or of cruel, inhuman or degrading treatment or punishment, and it was asked whether there was a system of surveillance and control to prevent prisoners from being subjected to ill-treatment; and whether the maximum penalty of nine years was sufficient for ill-treatment resulting in the death of the victim. Clarification was requested on the position in these matters with regard to the Antilles; whether corporal punishment was expressly prohibited under the legislation of the Antilles and whether there was anything comparable to the Netherlands Board of Visitors in the island territories. It was also asked whether the Netherlands had laws prohibiting a person from being subjected, without his free consent, to medical or scientific experimentation.

103. Commenting on article 9 of the Covenant, members pointed out that more information was needed with regard to the implementation of this article as well as on how each of the safeguards contained in it was implemented in the legal and judicial system of the Antilles. They asked whether in the case of detention of mentally ill persons, judges would simply make sure that the authorities had not

exceeded their competence or whether they would also seek to determine whether the person detained really was mentally ill; and what procedures existed in the Antilles to ensure that persons were not detained unjustifiably in institutions for the mentally ill. Clarification was requested on the proposed constitutional amendments relating to habeas corpus, including the extent of the courts' powers in that matter; whether the examining magistrate could automatically extend the period of detention or whether extension had to be justified by the nature of the investigation; whether detention in cases of arbitrary arrests had resulted in any claims for compensation and whether a person arbitrarily detained had a statutory right to compensation. Clarification was also requested of article 106 of the Constitution of the Netherlands Antilles relating to the exceptional cases provided for by law under which a person might be detained for specified periods without a court order.

104. With reference to article 11 of the Covenant, it was observed that the procedure described in the report appeared unduly complicated and seemed to be incompatible with this article and some explanations were requested on the matter.

105. In connexion with article 12 of the Covenant, reference was made to restrictions imposed on the entry and residence of persons not associated with the Netherlands Antilles, on the basis of certain criteria, in respect of which the Government of the Netherlands had entered a reservation, and it was asked whether there were similar restrictions on the right of inhabitants of the Antilles to settle in the Netherlands and whether any other restrictions were contemplated under this article.

106. As regards article 13 of the Covenant, it was noted that it was possible to apply for an interlocutory injunction to prevent expulsion from the country, and it was asked what results were obtained from such a procedure; whether an alien who had been resident in the Netherlands for less than a year and who was the subject of an expulsion measure could have his case reviewed by the Minister of Justice; and whether, in such cases, the person in question was represented before the Minister of Justice.

107. Commenting on article 14 of the Covenant, members noted that sufficient information was lacking in the report on most of the safeguards stipulated in this article, and it was asked who appointed judges and whether they were irremovable; in which cases citizens could be tried in military courts; whether the Government of the Netherlands agreed that the presumption of innocence concerned not only judges but also all public authorities; and whether the provision under which serious offences committed in the course of their duties by Government officials were tried by the Supreme Court, was also applicable to anyone aiding and abetting such officials. It was also pointed out that the provision of interpretation to the accused who did not understand the Dutch language should be a right and not merely a practice, as mentioned in the report, that could be departed from in certain circumstances.

108. In connexion with article 17 of the Covenant, it was asked what the present legal position was regarding intelligence activities such as telephone tapping; in what circumstances it was possible to derogate from the provisions protecting privacy; which authorities were designated by law to decide on such derogation and what the actual practice was; whether a person who alleged that his rights under this article had been violated was entitled under the Netherlands legal system to

sue for moral as well as material damages; and what the computerized recording of personal data referred to in the report involved and what kind of data were recorded.

109. As regards article 19 of the Covenant, reference was made to an instruction issued by the Prime Minister on the freedom of civil servants to express their opinions outside the civil service and it was pointed out that the Covenant required that any restrictions imposed on the freedom of expression should be laid down by law. Information was requested on the "lesser authorities" which may place restrictions on certain forms of the freedom of expression, and on how the Government of the Netherlands intended to distinguish between commercial advertising aimed at prospective buyers and information for the protection of consumers. Confirmation was requested that the Antilles' Governor's Decree requiring, inter alia, speeches and radio programmes to be submitted to the local chief of police for approval, three days before the broadcast, though still in force, was not applied in practice.

110. In relation to article 20 of the Covenant, the hope was expressed that a bill against war propaganda, similar to the one submitted to the Antilles Parliament, would be laid before the Netherlands Parliament since this article required that war propaganda should be prohibited by law. Information was requested on the position of the Netherlands Government with regard to the prohibition of any advocacy of national, racial or religious hatred; on how the existence of a fascist party in the Netherlands could be reconciled with its obligations under this article; whether the relevant provisions of the Netherlands Penal Code had ever been applied to persons providing material or other support to the apartheid régime and whether there had been any court decisions on that matter.

111. With regard to articles 21 and 22 of the Covenant, it was asked on what grounds a permit for an open-air meeting could be denied and what remedy was available in such cases; whether the Government of the Netherlands had experienced any difficulty in implementing International Labour Organisation conventions concerning the freedom of trade unions; and whether parties could be formed to promote certain idealogies such as Nazism and racism.

112. Commenting on articles 23 and 24 of the Covenant, members requested more information on the social measures taken for the benefit of the family and of the child and asked whether it was compatible with the Covenant to require the parents' consent for a person under the age of 21 to marry; whether acceptance of free marriages and homosexual relationships was consistent with the provisions of the Covenant which expressly recognized the family as the natural and fundamental group unit of society and conferred upon the family the right to be protected by society and the State; whether in the event of divorce, alimony was paid by one of the spouses if either husband or wife was unable to work; whether children born of de facto unions enjoyed the same status as legitimate children under the law; what the consequences were if one of the adoptive parents was a foreigner; and what safeguards existed to protect children from pornography. Reference was made to the Civil Code of the Antilles which appeared to protect families resulting from marriage, but not de facto families, and it was pointed out that that situation was particularly prejudicial to women, who often contributed to running a home or a business without having the right to a settlement when a union was dissolved.

113. In connexion with article 25 of the Covenant, it was pointed out that certain limitations on the right to vote, as mentioned in the report, did not appear to be

reasonable and hardly justifiable in the light of the provisions of this article, and it was asked whether only certain groups of persons were able to hold certain posts in the civil service and what the position of women was with regard to access to employment in those posts. With reference to the introductory statement of the representative to the effect that the restrictions on appointment and termination of employment of women in the civil service of the Antilles applied only to married women who were not considered bread-winners, it was pointed out that it followed that protection against discrimination was extended only to single women or married women who were bread-winners and it was asked whether that conclusion stemmed from a clearly stated legal provision or from an administrative interpretation.

114. As regards article 27 of the Covenant, it was noted that the report did not contain sufficient information on ethnic, religious and linguistic minorities which certainly existed in view of the country's colonial history and that more information was needed on this matter, as well as on the composition of the population of the Antilles and on how the provisions of this article were dealt with in the legal context of the country.

115. Commenting on questions raised by members of the Committee, the representative of the Netherlands stated that, owing to lack of time, replies to some questions would have to be addressed to the Committee in writing; that the obstacles and difficulties affecting the implementation of the Covenant would be dealt with in subsequent reports; that, in addition to the information reflected in the report concerning publicity given to the Covenant, the Dutch text of the Covenant had been published in the Netherlands Treaty Series; that his Government did not intend to establish a national human rights commission, as recommended by the General Assembly, because the structure of legal and administrative remedies as a whole ensured the proper observance of human rights; that there were several non-governmental organizations in the Netherlands concerned with the protection of human rights; and that the Government was in the process of creating an Independent Advisory Committee to deal with human rights in the area of foreign policy.

116. As to the questions raised concerning the consequences of the constitutional relationship between the Netherlands and the Netherlands Antilles in international law, he pointed out that sovereignty rested with the Kingdom of the Netherlands which was a composite and not a united State, currently consisting of two countries, each having its own legal system. A treaty to which the Kingdom was a party and whose provisions were directly applicable for both countries, as was the case of the Covenant, could therefore be implemented differently in the two countries.

117. Replying to questions raised under article 1 of the Covenant, the representative acknowledged that, under the Charter of the Kingdom, the legal framework linking the Netherlands and the Netherlands Antilles could not be amended unilaterally, but that the Netherlands Government had decided to support recognition of one or more independent States, depending on whether the islands chose to become independent together or separately. He informed the Committee that the representatives of the four island territories in the Working Party had taken different positions concerning the exercise of the right of self-determination, a principle which had been endorsed by all participants. He explained the position of the representatives of each territory and stated that the Netherlands considered it its right to participate in the adoption of decisions concerning future relations with those islands which preferred to maintain constitutional relations with the Netherlands. He also stated that his Government regarded the problem of

South Africa as a human rights problem, condemned the policy of apartheid and believed that all sorts of pressures, including economic measures, should be exerted on the régime of South Africa in order to force it to abide by United Nations resolutions; that it was looking for the most effective manner to participate in the oil embargo, and that it was rendering humanitarian assistance to liberation movements that opposed apartheid. The Namibian problem was a decolonization problem and the continued presence of South Africa in Namibia was regarded by his Government as illegal. It recognized the legal competence of the United Nations Council for Namibia to issue Decree No. 1 relating to the protection of the natural resources of Namibia. As to the Palestinian people, his Government recognized its right to self-determination while at the same time recognizing the right to existence and to security of all States in the region, including Israel.

118. As regards article 2 of the Covenant, he stated that the Netherlands Constitution was not decisive regarding the question of whether Netherlands law fully implemented the non-discrimination clauses of the Covenant; that, according to Netherlands constitutional law, provisions of the Covenant, particularly those of article 2, paragraph 1, articles 3 and 26, could have direct application in the legal order; that his Government was currently analysing national legislation concerning discrimination on grounds of sex or race; and that specific anti-discrimination legislation was necessary in order to guarantee individual freedom and individuality by forbidding any distinctions on unjustified grounds, in particular in public life. He stated that the provision of the Constitution of the Antilles stressing the equal right to protection of one's person and property should be read in conjunction with other constitutional provisions and seen in the light of the over-all constitutional system of the Antilles which assigned direct legal consequences to appropriate treaty provisions in their application to individuals.

119. He also stated that the treaty provisions binding on all persons were both provisions creating rights and imposing obligations; that no law in force in the Kingdom would be applied if it was incompatible with directly applicable treaty provisions; that the judge would first have to determine whether the treaty provision in question was directly applicable and, if so, whether the disputed rule of national law was compatible with the treaty provision; that, to date, there had been no cases in which the courts had found an act to be incompatible with the Covenant; that regulations other than those enacted by the central legislation had sometimes not been applied because of conflict with provisions of the Covenant; and that if the judiciary in last instance denied the direct applicability of a particular provision of the Covenant, there was no further remedy at the national level, and the individual concerned could then appeal to the Human Rights Committee which the Netherlands had recognized as competent to receive and consider individual complaints. He also pointed out that successive Netherlands Governments had rejected the competence of the judiciary to examine whether acts of Parliament were in conformity with constitutional provisions on basic rights, their central argument being that in the field of national law, the central legislature was the final instance for judging the constitutionality of those acts since the procedure for preparing them guaranteed that the relevant problems would be taken into account.

120. Replying to questions concerning the Netherlands Antilles, the representative stated that there were no immediate plans for instituting an ombudsman in the Antilles; that, in his view, a person in the Antilles who had been the victim of a violation of his basic rights recognized in the Covenant could not institute court

proceedings except by basing his action on the Civil Code under which an individual is entitled to file suit if an unlawful act resulting in the infringement of his basic rights had been perpetrated against him by the authorities; and that the Queen could not make use of her powers to suspend or annul a Government measure claimed to violate someone's basic rights, if the court did not regard the relevant provision of the Covenant as directly applicable, for lack of incorporation in domestic law.

121. In connexion with article 6 of the Covenant, the representative pointed out that the central objective of the Netherlands' policy concerning problems raised by drugs was the prevention and elimination of individual and social risks involved in its use; and that the new legislation, and the law enforcement measures, concentrated on tackling the problem of the drug trade, particularly the trade in drugs involving unacceptable risks. He informed the Committee that the infant mortality rate in the Netherlands was 8.6 million in 1980, whereas it was 15.5 per thousand in 1979 in the Netherlands Antilles; that the death penalty was provided for in cases of offences against State security, breaches of military obligations such as desertion, violence against the sick or wounded, espionage, and treason and voluntary service for the enemy in time of war.

122. As regards questions raised under articles 7 and 10 of the Covenant, he stated that the written consent of the person concerned was required for medical and scientific experimentation to be undertaken; that in the case of a minor or mentally disturbed person, a declaration signed by the legal representative of the individual concerned was required; and that, even if the consent was given, the Minister of Justice was required to decide whether or not the experiment could take place. He also informed the Committee that the Board of Visitors monitored the treatment of inmates and the observance of regulations; that the members of the Board took turns visiting the institutions under their supervision at least once a month and that the inmates could talk with them on those occasions. He also informed the Committee that, in the Netherlands Antilles, the provisions of the Criminal Code concerning ill-treatment of any kind were similar to the relevant provisions of the Netherlands Criminal Code and that, in his opinion, the provisions of the Covenant on this matter were directly applicable although a final decision in this respect was for the courts to make; that every place of detention had a Board of Supervisors, appointed by the Minister of Justice, which received complaints from prisoners and that the information on protection of detainees, given in the Netherlands report, was also generally applicable to detainees in the Antilles.

123. Replying to questions raised under article 9 of the Covenant, he pointed out that a judge ruling on the lawfulness of the detention of a mentally-ill person had to see the individual in person and to seek the opinion of psychiatrists in order to determine whether the detained person was really ill. He also stated that, in cases of pre-trial detention, the magistrate had to determine whether there were sufficient grounds to warrant renewal of the detention or its extension; and that a wrongly detained person could obtain compensation only if he requested it. He informed the Committee that the explanation given in the Netherlands report regarding pre-trial detention was applicable to the Netherlands Antilles and that, with regard to the detention of mentally-ill persons in mental institutions, the Attorney-General of the Antilles was required, within five months of the date of temporary confinement, to request authorization from the Court of Appeal to have that confinement made definite, in which case it could last only one year with

a possible extension by the court. If the court denied the request, the persons concerned must be freed.

124. Regarding article 11 of the Covenant, he informed the Committee that his Government intended to amend the existing legislation so that the judge responsible for deciding the case could also determine whether the debtor was acting with malice or was genuinely unable to fulfil his contractual obligations.

125. In relation to article 12 of the Covenant, he pointed out that there were no restrictions on persons from the Netherlands Antilles who wished to settle in the Netherlands.

126. Replying to questions raised under article 14 of the Covenant, the representative stated that judges were appointed for life by the Queen and that only the Supreme Court could remove them from office under certain conditions which were extremely restrictive; that the cases in which citizens could be tried by military courts were the offences set forth in the Criminal Offences in Time of War Act; and that accessories to Government officials were tried by the ordinary courts and had the possibility of appealing to a higher court. He also informed the Committee that most of the guarantees provided for in this article were covered by the Antilles domestic law and that standard practice and judicial decisions ensured the application of the remaining provisions.

127. In connexion with article 17 of the Covenant, the representative stated that intelligence activities were regulated by a law which did not give the intelligence services powers to restrain citizens except in accordance with the regular legal powers recognized by the Criminal Code and the Code of Criminal Procedure; that telephone tapping was supervised by the judges for the purpose of criminal proceedings and, where the requirements of State security were involved, authorization had to be given by the Prime Minister and three other ministers; that the existing law did not contain a general provision on non-material damages but that this right would be provided for in new legislation; that with regard to registration of certain data on such matters as political opinions, religion and private matters, strict requirements were imposed and, in general, data recording could be allowed only for legitimate purposes and within reasonable limits; and that a new institution, the Data Registration Board, would supervise the implementation of the relevant legal provisions.

128. Replying to questions raised under article 19 of the Covenant, he pointed out that the instructions issued by the Prime Minister, on the freedom of expression of civil servants, were guidelines issued in order to assist civil servants in determining the scope of their obligations which were defined in broad and general terms in a Royal Decree concerning the "General Rules for the Civil Service". He explained that the term "lesser authorities" meant every law giving authority in the Netherlands Public Order lower than the central legislation, and that commercial advertising would in future have no explicit constitutional protection but that publicity for the purpose of disseminating ideas would be protected by the Constitution. He also informed the Committee that the Antilles Governor's Decree referred to in the report had been repealed and that accordingly, Antillean legislation now complied fully with article 19 of the Covenant.

129. Turning to questions raised under article 20 of the Covenant, the representative referred the Committee to the Netherlands' latest report to the Committee on the Elimination of Racial Discrimination which explained why the Netherlands courts had so far been unable to prohibit the political party with racist opinions, and that his Government was aware that the lack of such a prohibition made it difficult to perform certain treaty obligations. He wondered whether the prohibition of that party, given its extremely poor performance in the latest elections, would be the most effective way of reducing its influence. He pointed out that the Penal Code prohibited the provision of financial or other material assistance for activities directed towards racial discrimination against persons on account of their race and that he knew of no case in which that matter had arisen in connexion with support for the apartheid system.

130. As regards articles 21 and 22 of the Covenant, he stated that a licence for open-air meetings could be refused only in the interest of public order, that it could not be refused on account of the purpose of the meeting and that, in the event of refusal, it was possible to appeal to the judicial division of the Council of State. The Netherlands Government considered freedom of association to be a fundamental human right and regretted that in some cases it had been obliged to enforce certain measures affecting the principle of free collective bargaining which had been rejected by some of the organizations concerned. As to whether a political party preaching nazism would be tolerated, the representative referred to his reply summarized in the preceding paragraph and stated that such a party could not be prohibited and that was a case where legitimate constraints on the freedom of association would run counter to the basic features of the Netherlands electoral system.

131. In connexion with questions raised under articles 23 and 24 of the Covenant, the representative referred the Committee to his country's report under the International Covenant on Economic, Social and Cultural Rights concerning measures taken by his Government for the protection of the family and the child. As to the concern expressed about current developments in Netherlands society, such as free marriages and homosexuality, and their possible impact on Netherlands legislation, he pointed out that, as far as families with children were concerned, Netherlands legislation considered not the marital status of the parent or parents but the practical situation of the family; and that public authorities and private institutions with a public function were not free to make arbitrary distinctions between persons on such grounds as, inter alia, marital status and homosexuality, because this was an infringement on individual freedom and dignity. He assured the Committee that any legislative modifications that may be adopted to meet changes in social behaviour would not run counter either to the letter or to the spirit of the Covenant. He also stated that a person who was under an obligation to pay alimony but was unable to do so could always apply to the court for reduction or termination of that obligation; and that it was sufficient for the adoptive father to be a Netherlands national. He informed the Committee that though the de facto family as such was not protected by Antillean law, institutions had been set up to give aid to all families, including de facto families, and that children born in that kind of relationship had an enforceable right to financial support from their father.

132. Replying to questions raised under article 25 relating to the Netherlands Antilles, the representative stated that the restrictions on appointment and termination of employment of women in the civil service were not applicable to married women when they contributed to a great extent to the necessary cost of living of the family or to married women who were employed under a labour contract

and that, in its efforts to end all forms of discrimination against women, the Antilles Government was reviewing all existing legal provisions which could be considered discriminatory and was taking care that bills and other new measures should not contain any such provisions.

133. As to questions raised under article 27 of the Covenant, he stated that the main ethnic minority groups, which represented over 4 per cent of the population of the Netherlands, were the migrant workers and their families from the Mediterranean countries, Suriname and the Antilles, and the Moluccans and that he could give only estimates of the numbers since registration of the population on the basis of ethnic origin or race was considered to be incompatible with the right to privacy and to be morally unacceptable; that the Government's policy on minorities was based on the recognition that the Netherlands was a multicultural community in which minorities would occupy a permanent place; that many measures had been taken to combat disabilities and discrimination in the various fields as well as in the area of personal relations between members of the various minorities; and that his Government did not view minorities as such as bearers of group rights which needed to be protected, its concern being to protect the rights of the individuals who were members of those groups, an approach fully in conformity with the Covenant. As to minorities in the Antilles, he pointed out that although there were foreigners of various nationalities residing in the country, their numbers were extremely small and that, in any case, domestic law did not prohibit anyone from enjoying his own culture, professing and practicing his own religion or using his own language.

Morocco

134. The Committee considered the initial report of Morocco (CCPR/C/10/Add.2) at its 327th, 328th and 332nd meetings held on 27 and 29 October 1981 (CCPR/C/SR.327, 328, 332). The report was introduced by the representative of the State party who stated that the Constitution of Morocco, which was ratified by the people, provided for a democracy based on the separation of powers and guaranteed all the individual political, economic and social rights, and that, in order to give concrete expression to those rights, a body of texts, which drew both upon the tradition of Islam and upon modern law, had been drawn up.

135. Members of the Committee commended the State party for submitting, on time, a detailed report as far as the Constitution and the legislation giving effect to the provisions of the Covenant were concerned, for indicating the manner in which Islamic law was compatible with human rights, and for including in the report specific information regarding judicial decisions and, particularly, legal texts and references to treaties signed by Morocco. The report, however, was found lacking in information on the difficulties encountered in giving effect to the provisions of the Covenant, and it was pointed out that it would have been useful if, in his statement, the representative of the Government of Morocco had referred to the events of June 1981, which apparently constituted one of the difficulties affecting implementation of the Covenant referred to in article 40 of the Covenant. Noting that individuals should be aware of their rights under the Covenant, members asked whether the Covenant had been given publicity in Morocco in both the Arabic and Berber languages; whether the police, prison and administrative authorities were aware of their obligations under the Covenant; whether the report now before the Committee had been published in Morocco; and whether there were in the country any private organizations, recognized by the State, which were concerned with the promotion and protection of human rights.

136. In connexion with article 1 of the Covenant, it was noted that the report contained no informaton on the self-determination of the territory known as Western Sahara, and it was asked what measures had been taken to enable the population of that territory to freely determine their political status and to freely pursue their economic, social and cultural development.

137. As regards article 2 of the Covenant, attention was drawn to what appeared in the Constitution as a deliberate distinction between nationals and foreigners as far as the enjoyment of a number of rights was concerned, and it was asked whether the principle of equality before the law also applied to persons who were not Moroccan nationals. Noting that, according to the report, the provisions of the Covenant had become an integral part of the internal public order and took precedence over internal law, except for the Constitution, members asked whether it was to be concluded that there was no conflict of law between the Constitution and the Covenant but that if there was, members wondered how Morocco intended to apply those provisions of the Covenant that may be in conflict with the Constitution; whether the Covenant had to be approved in accordance with the procedures laid down in the Constitution for a constitutional amendment in order to confer the same legal force as a constitutional amendment on the provisions of the Covenant; what the status of the Covenant was in relation to the Constitution; and whether an individual who believed that his rights had been violated by a public authority could invoke the provisions of the Covenant before a competent court. Informaion was requested regarding cases of violations of human rights which might have occurred in Morocco since it had ratified the Covenant, the remedies available in such cases, the inquiries to which those cases of violation might have given rise and the results of such inquiries. It was also asked whether individuals could invoke available remedies when the violation of their rights resulted not from an act but from an omission and whether there were administrative tribunals to deal with complaints by individuals against the State.

138. In relation to article 3 of the Covenant, it was noted that the report referred to the teachings of Islam concerning the status of women, and it was asked how a distinction between men and women regarding inheritance and access to some professions, such as the judiciary, could be reconciled with the statement in the report that the equal right of both sexes to the enjoyment of all civil and political rights was fully reflected in the Moroccan Constitution; what the present position of women was regarding civil rights and, particularly, in existing labour legislation; whether, in the new draft Labour Code, a distinction would be drawn between women based on marital status; whether women were eligible by law for employment in the armed forces; and what the law was regarding voluntary termination of pregnancy. Information was requested on the role of women in political life in Morocco.

139. In connexion with article 4 of the Covenant, members noted that, under the Constitution, the King was empowered, when a state of emergency was declared, to take such measures as might be necessary for the defence of the territorial integrity of the State and that there did not seem to be any limit to that power, contrary to the provisions of this article. Members also asked whether there was, at present in Morocco, a state of emergency or a state of siege and, if so, how it affected the provisions of the Constitution, and whether the Secretary-General of the United Nations had been notified in accordance with the provisions of article 4 of the Covenant. In this connexion, information was requested on the number of people arrested or killed in the events of June 1981, on the trial of the persons arrested on that occasion and whether they were tried individually or collectively.

140. Commenting on article 6 of the Covenant, members requested information on the measures adopted in Morocco to reduce the rate of infant mortality and to improve public health and occupational safety. It was asked what the "crimes against the internal and external security of the State" were for which the death penalty could be pronounced, and for which other crimes that penalty could still be imposed; how many sentences of capital punishment the Moroccan courts delivered each year, the number of cases in which the sentence was actually carried out, particularly in cases of violation of internal security, and the number of cases in which the sentence was commuted. In this connexion, mention was made of the existence in some states of cases of "disappeared persons" of whom all trace was lost following their arrest by the plain-clothes officers and it was asked whether there were any grounds for believing that there had been cases of "disappeared persons" in Morocco and whether such cases had been brought before the Minister of the Interior and the Minister of Justice. Members expressed their regret that the death penalty could still be imposed on persons below 18 years of age contrary to the provisions of the Covenant, and that a pregnant woman sentenced to death could be executed 40 days after the delivery of her child, and they asked whether the Moroccan Government had given any consideration to the possibility of abolishing the death penalty, whethere there was any private movement or campaign in Morocco for its abolition and what the state of public opinion was in that respect.

141. With regard to articles 7 and 10 of the Covenant, it was asked whether there were any cases in which public officials had been accused by private individuals of torture, cruel, inhuman or degrading treatment and, if so, how many; whether appropriate proceedings had been brought by the competent authorities and what penalties had been imposed in this respect. It was also asked whether the United Nations Standard Minimum Rules for the Treatment of Prisoners had been adopted in Morocco and, if not, whether existing regulations governing the treatment in prisons had been applied in recent years, and whether there had been any cases of sanctions imposed accordingly; what the rules were concerning solitary confinement, for how long a person could be subjected to it, whether there were any provisions for the family to be informed of the state of health of the person in solitary confinement, in what circumstances there was medical supervision of such cases; how did the supervisory committees, established to monitor conditions in prisons and detention centres operate, how often did they visit each prison, whether prisoners and detainees were able to contact the members of supervisory committees and whether the Government considered the possibility of instituting a system of completely independent prison visitors.

142. Commenting on article 9 of the Covenant, members requested clarification of the circumstances in which an arrest could be effected without a warrant and of the statement in the report concerning the possible detention of a person by virtue of a warrant to appear, up to 24 hours without being questioned, since a warrant to appear was different from a warrant for arrest and thus required bringing the person concerned before the examining magistrate immediately. Noting that remand in custody could be extended for a period of four months, members asked for how long it could be extended and whether there had been instances in which it had been extended several times; whether there were any procedures for speeding up trials in Morocco; whether the Moroccan authorities were required to notify the prisoner's family immediately of the place where he was being held in custody; whether the incommunicado régime had been applied to detainees for periods exceeding those permitted by the Code of Criminal Procedure; whether an accused person held in custody could communicate freely with his counsel prior to his appearance in court; whether there were currently any persons, including members of Parliament, detained

for political reasons without trial and, if so, on what authority and for how long were they detained and how their detention was justified under the Covenant; whether the legal authorities were empowered to exercise control over detention of the mentally ill, of aliens awaiting deportation, of minors detained for educational reasons or even of drug addicts and, if so, whether the courts could review the merits of the grounds for detention or whether they merely reviewed the formal legality of the detention. It was also asked whether there had been any instances in Morocco of complaints, inquiries, or proceedings for damages in respect of the violations of Covenant rights and whether, in recent years, there had been any cases of disciplinary sanctions and of claims of that kind.

143. Commenting on article 13 of the Covenant, members asked which authority was competent to decide on the expulsion of aliens; whether an alien who had applied for review of his case to the Directorate-General of the Sûreté Nationale was granted a stay of execution while his case was being decided; whether the appeal mentioned in the report could be considered a formal and standardized remedy which would enable an alien to put forward the reasons against his expulsion; whether any alien had been expelled within 24 hours in recent years and, if so, on what grounds and whether this was done in conformity with the relevant provisions of the Covenant.

144. With regard to article 14 of the Covenant, information was requested on the power accorded to the Supreme Court to take over a case, irrespective of its nature on grounds of public interest, as well as some examples of how that power was exercised; on whether, in the case of a minor or of a political offender, the accused could be brought directly before the competent court in the absence of a preliminary investigation; on the crimes and offences which were removed from the jurisdiction of the ordinary courts and transferred to that of military tribunals; on whether there were special courts to deal with labour disputes and special courts for juvenile delinquents; on whether there were any special rules for exceptional procedures, for example, where proceedings were instituted against a large number of persons or whether the judges considered each person as a separate case. It was also asked whether interpretation was provided when the accused claimed that he did not understand the language of the judges or the witnesses; whether, in certain trials, there had been cases of accused persons who had not had the time to prepare their defence or to obtain the attendance of witnesses of their choice and, if so, whether there had been any inquiries into allegations of that nature and what the results had been; which cases were expressly excluded by the law as not being subject to appeal; and whether the right to compensation in the event of a miscarriage of justice had been applied and, if so, whether there were any examples of recent judgements in this respect.

145. In relation to article 16 of the Covenant, it was asked whether the recognition of every individual as a person before the law began at birth or at conception; why Moroccans who were neither Moslems nor Jews were subject to the Moroccan Personal Status Code and whether an attempt was being made to evolve a standardized personal status régime by unifying those three systems through a corpus of modern law.

146. Commenting on article 18 of the Covenant, members asked whether, in Morocco, religions other than Islam were merely tolerated or whether they were placed on an equal footing by law; to what extent everyone was authorized to observe and practice the religion or belief of his choice; how an individual's beliefs could be subject to restriction on the ground of public safety; how Islam guaranteed freedom of worship to all; and what the role of parents and guardians was in ensuring the religious and moral education of children.

147. In connexion with article 19 of the Covenant, members noted that whereas the Covenant permitted restrictions on the freedoms provided for in this article subject to certain circumstances specified in it, the Moroccan Constitution stated that those freedoms could be limited by law, and it was asked which laws defined precisely the restrictions of freedom of expression and whether they were in keeping with the permitted restrictions defined in the Covenant; whether individuals had the right to engage in public discussion of public matters, including criticism of public bodies, and to call for Morocco to become a republic; whether there had recently been any acts or statements displaying opposition to the Government which had given rise to arrests and legal proceedings and, if so, what the charges had been, who and what category of people had been found guilty, for what offences and pursuant to which law; whether the publication by an organ or political party of a statement criticizing certain aspects of government policy was an offence punishable by law; and whether the crime of lèse-majesté existed in Morocco. It was also asked whether Moroccan law made a substantive distinction between citizens and non-citizens regarding the restrictions on the exercise of freedoms which were necessary to protect national security, public order, or public health or morals and, if so, how such distinctions were justified in the light of the Covenant.

148. As regards article 20 of the Covenant, more information was requested on the implementation of this article, particularly regarding the prohibition of any advocacy of national, racial or religious hatred.

149. Commenting on article 22 of the Covenant, members requested explanations on the "illicit cause" and "illicit objective" contrary to the law and morality which could render an association null and void, and asked how the declaration as null and void of an association seeking a change of the monarchial form of the State could be reconciled with the provisions of this article; what the current status of trade unions was and what freedoms did they enjoy, and whether they played a political as well as an economic role; whether Moroccan law contained provisions for the dissolution of political parties and trade unions and, if so, in what circumstances they could be dissolved and what remedies were available to them to contest the lawfulness of their dissolution; what restrictions were placed on the exercise of the right of trade unions to strike and what the current status was of trade unions which did not seem to agree with the Government; and whether any difficulties had arisen lately between the Moroccan Government and the International Labour Organisation regarding the implementation of certain conventions relating to trade union rights.

150. In connexion with articles 23 and 24 of the Covenant, it was asked whether the family was protected by fiscal and social legislation and how the problem of working mothers was being tackled in Morocco. Reference was made to the provision of the Moroccan Code of Personal Status which guaranteed the right of intending spouses to contract marriage with their free and full consent and it was asked how that guarantee was enforced and what assurance there was that young girls from families bound by traditional customs were in fact consulted; whether a marriage arranged by a magistrate "as a measure of social protection" for "a woman who might otherwise be exposed to the risk of moral downfall" was not an infringement of the freedom of the woman; whether it was possible for a Moroccan woman facing an arranged marriage to request and obtain an annulment of the magistrate's decision by invoking thi article of the Covenant; and whether the marriage, with the consent of the legal guardian, of persons who had not reached marriageable age within the meaning of the Covenant could be reconciled with the provisions of this article. It was also as ed whether parental authority was exercised by the father, the mother, or both, and

whether such authority could be restricted when it was exercised improperly; whether the Moroccan Nationality Law placed women on an equal footing with men as far as the nationality of the child was concerned; and what the status of illegitimate children was under Moroccan legislation. With reference to the statement in the report that "in all circumstances, women retain the custody of their minor children", it was asked what became of the children in the event of divorce when the mother was not morally fit, because of misconduct, to bring them up. More information was requested on the family and child protection associations mentioned in the report.

151. Regarding article 27 of the Covenant, information was requested on the ethnic, religious or linguistic minorities that might exist, particularly in the southern and western regions of Morocco, on the precise legal position of those minorities and on whether Moroccan law recognized that the persons belonging to them had the rights provided for in this article.

152. Replying to the questions raised by members of the Committee, the representative of the State party pointed out that the report had not made reference to difficulties in applying the Covenant because, since its ratification, the Moroccan authorities had not observed any such difficulties and that, Morocco's ratification of the Covenant had been followed by the adoption, on 8 November 1979, of Dahir No. 1-79-186 concerning publication of the Covenant.

153. In connexion with article 1 of the Covenant, he pointed out that the requirements of this article concerning self-determination were fully met within Morocco by the constitutional provisions referred to in the report and informed the Committee of the role played by his Government in the international application of that principle, particularly in the Arab world and on the African continent.

154. As regards article 2 of the Covenant, the representative stated that Morocco had developed rules of law largely based on Moslem law which had proclaimed respect for human life, human rights, equality of individuals without distinction based on race or colour, and on freedom of worship; that treaties which might affect constitutional provisions were approved by means of a referendum, in accordance with the procedure laid down for amendment of the Constitution and that the fact that the Covenant had been ratified without a referendum demonstrated that it did not affect the provisions of the Constitution.

155. Replying to questions raised under article 3 of the Convenant, he reiterated that the equality of men and women in Morocco was ensured by the Constitution which provided that all Moroccan men and women were equal before the law, and stated that that general rule was confirmed by the solemn proclamation of equality in the field of political rights. As to the civil rights of Moroccan women, he referred the members to what had already been mentioned in the report in this respect.

156. With regard to article 4 of the Covenant, the representative informed the Committee that, since Morocco had ratified the Covenant, neither a state of siege nor a state of emergency had been declared in the country and that, in any event, such declaration would not affect the provisions of this article since neither a state of siege nor a state or emergency would involve discrimination based on colour, race, language, etc.

157. Commenting on questions raised under article 6 of the Covenant, he stated that several persons facing the death sentence had recently been pardoned by the King,

that there were currently two such persons in prison who had asked to be pardoned, that no capital punishment could be carried out unless preceded by a petition for reprieve which has been refused, and that there were no women facing the death penalty in Morocco.

158. In connexion with articles 7 and 10 of the Covenant, the representative stated that torture and ill-treatment of persons under detention were prohibited; that the law provided for the punishment of any public officer, including prison officers, for committing, in the exercise of their duties, acts of violence against detained persons; and that prison conditions were monitored by Prison Supervisory Committees which were composed of private and independent individuals and civil servants and were under the chairmanship of the governor, who was in the best position to find ways of reintegrating prisoners into society after their release.

159. As regards article 9 of the Covenant, the representative stated that the criminal police could hold, for the purpose of an investigation, one or more persons whose identity it was necessary to determine or verify; that it was not possible to detain them for more than 92 hours, which could be extended for a single additional period of 48 hours upon the approval of the King's prosecutor; that if the case involved an attack against the security of the State, the period was doubled; that such provisions were applicable in cases of flagrante delicto in respect of which the law provided for imprisonment; that administrative arrest was prohibited by law and that only the judicial authority was competent to order arrest under the law. He also stated that detention pending trial, which generally followed the period of police custody, was an extremely serious measure which was ordered by the examining magistrate only in certain circumstances; that if the penalty for the offence alleged was higher than two years' imprisonment, the period of time in detention could not exceed four months, which could be extended for further four-month periods only by order of the examining magistrate, accompanied by a statement on the reasons for such a decision. He stressed that at any point in the proceedings, the accused could request conditional release and the examining magistrate must decide upon that request within five days; that, if he did not, the accused could apply directly to the chamber of correctional appeal, which must then hand down a decision within 15 days; that when committal had been ordered by the King's prosecutor in cases of flagrante delicto, the detainee had to be brought before the court within three days and the court must decide either to release him or to confirm his detention; and that the prosecutor was prohibited from ordering the detention of a person who had committed a political offence or an offence under the press laws, or of a minor less than 16 years of age.

160. In relation to questions raised under article 13 of the Covenant, concerning expulsion of aliens, the representative stated that any one harmed by an administrative measure subsequent to the lodging of an appeal with the competent authority could apply to the Administrative Division of the Supreme Court for the act to be annulled.

161. In connexion with questions raised under article 14 of the Covenant, he stated that there was only one permanent military court which was competent to try members of the armed forces charged with the commission of offences; that in cases where a number of people had been involved in the commission of a particular crime, it was legitimate for them to appear before the same court at the same time; that at all stages of the proceedings, the accused had the right to the assistance of a defence counsel and, if need be, an interpreter paid for by the State; and that in all cases where the law provided for prison terms, a prisoner had the right to appeal.

162. With respect to questions raised under article 19 of the Covenant, he pointed out that freedom of the press was regulated by law which imposed restrictions on that freedom only in respect of crimes and offences committed through the press or any other kind of publication, and that the Minister of the Interior could order the administrative seizure of any issue of a newspaper or periodical whose publication was likely to disturb the public order or undermine the political and religious institutions of the Kingdom. In this connexion, he pointed out that the King was entrusted with a religious, national and political mission and that his responsibilities and role as arbiter of the nation could be exercised only if his person was secure from any partisan or sectarian attack as stipulated in the Constitution.

163. Replying to questions raised under article 22 of the Covenant, the representative reiterated that an association was null and void if it was based upon an illicit cause or illicit objective contrary to the law and morality, or designed to impair the integrity of the territory of the nation or the monarchial form of the State.

164. As regards article 23 and 24 of the Covenant, he stated that, in Moslem law, a woman could contract marriage freely, that forced marriages were prohibited and subject to annulment pronounced by a magistrate, that no marriage was valid without the consent of the woman and that a woman retained her legal personality even after marriage. He also informed the Committee that, according to Moroccan law, the child of a Moroccan mother and an unknown or stateless father was given Moroccan nationality.

165. Replying to questions raised under article 27 of the Covenant, the representative stated that there were no ethnic minorities in Morocco; that the religious minority of persons of the Jewish faith enjoyed full rights recognized in the Constitution as well as in the Hebraic Code of Personal Status and that in all other fields the principle of the equality of all religions before the law, embodied in the Constitution, constituted the rule.

Jordan

166. The Committee considered the suppplementary report of Jordan (CCPR/C/1/Add.55) 11/ at its 331st and 332nd meetings held on 29 October 1981 (CCPR/C/SR.331 and 332).

167. The supplementary report was introduced by the representative of the State party who stated that it was not possible to understand the human rights situation in Jordan without having an idea of the political, social and economic obstacles that the country had been facing since Israel's occupation of the West Bank and the Gaza Strip in 1967 which had caused an influx of hundreds of thousands of refugees, living in wretched conditions, to the East Bank; that this grave situation had obliged the Government to proclaim a state of emergency in accordance with the Constitution and that the notificaton required under article 4 of the Covenant was being given consideration by his Government. Referring to an Amnesty International report about Jordan, he denied all the information contained in it and dismissed it as based on ill-intentioned and false rumours though acknowledging the sentencing to 10 years' imprisonment of four persons for belonging to the prohibited communist party of Jordan, and that the reason for the sentencing of one of them had been his involvement in subversive activities and instigation of illegal acts designed to undermine the security of the State.

168. The representative also stated that his Government strongly adhered to the right to self-determination and deplored the denial of this sacred principle to the Palestinian people; that the Constitution of Jordan, which was inspired by the teachings of Islam, prohibited all forms of discrimination on grounds of race, language or religion; that Muslim and Christian religions co-existed peacefully, neither prevailing over the other; that law was sovereign in Jordan, guaranteeing protection of human rights, within the limits permitted by the volatile political situation prevailing in the neighbouring countries; that the provisions of the Covenant were being observed both legislatively and in practice with the exception of certain rights which had been suspended because of "Israel's aggressive attitude towards Jordan"; that only four people had been executed in Jordan in recent years, all for premeditated murder; that although sentences of the martial law courts could not be appealed, they must be ratified by the Prime Minister who, in his capacity as Martial Law Governor, had the authority to increase, reduce or annul the sentence; that Jordanians could not be detained or imprisoned except in accordance with the provisions of the law and within the limits imposed by the situation which prompted the proclamation of public emergency.

169. Members of the Committee welcomed the submission by Jordan of a supplementary report as an obvious indication of its desire to continue its co-operation with the Committee and appreciated the frank introductory remarks made by its representative which shed some light on the factors and difficulties affecting the implementation of the Covenant in his country and on the abnormal situation imposed upon Jordan by the Israeli occupation of the West Bank. They would have liked the report, however, to be more explicit and specific in explaining how those factors and difficulties affected the civil and political rights of Jordanians.

170. With reference to article 1 of the Covenant, it was pointed out that the statement in the report that "Jordan believed that self-determination was a continuous process and did not end with the declaration of independence" was important and showed that the Government was conscious of its duties towards Jordanian society and its aspirations. In this connexion, it was asked whether, with regard to the West Bank of the Jordan, the Jordanian Government considered that the Palestinian people should enjoy autonomy even insofar as Jordan was concerned, or whether it considered that the West Bank was an integral part of Jordan and that self-determination should therefore be interpreted as meaning integration into Jordan.

171. Commenting on article 2 of the Covenant, members referred to a statement in the report that international agreements which Jordan ratified or acceded to had the force of law and had precedence over all domestic laws with the exception of the Constitution and they asked how any possible inconsistencies between the provisions of the Covenant and the provisions of the Constitution were resolved; whether examples could be cited of cases in which the provisions of the Covenant had been invoked in the country's courts; which bodies were responsible for implementing the Covenant; what remedies existed in peace-time and also when a state of emergency existed; and whether there were any special tribunals to deal with complaints by individuals that their rights under the Covenant had been violated.

172. As regards article 3 of the Covenant, more information was requested on the actual situation of women in Jordan and on the extent to which they had reached in the enjoyment of their civil and political rights, and it was asked what prevented women in Jordan from availing themselves of the provisions of article 2 of the Covenant and from occupying a municipal position.

173. In connexion with article 4 of the Covenant, it was noted that there had been a state of emergency in Jordan for the previous 23 years, that although the Covenant had entered into force for Jordan several years before, the Jordanian Government had not yet informed the other States parties as required by article 4 of the Covenant of the provisions from which it had derogated because of the state of emergency, and it was asked what prevented the Government from doing so and when it intended to take such action. It was also noted that, under articles 124 and 125 of the Constitution, the application of all the provisions of the Covenant could be suspended, since those articles authorized the King to take any measures he deemed necessary, and it was asked what the effects of the state of emergency in Jordan were on the application of the provisions of the Covenant and what was left of the safeguards provided by the Covenant.

174. In relation to article 6 of the Covenant, it was noted with satisfaction that there had been only four executions in recent years in Jordan and it was asked whether the Jordanian Criminal Law provided for the guarantees stipulated in the Covenant in this respect and for the possibility of amnesty, pardon or commutation; whether there were, in Jordan, any movements favouring the abolition of the death penalty and, if so, what was the attitude of the Government towards them and whether the Government had considered the possibility of repealing the provisions allowing for the execution of pregnant women three months after giving birth so as not to deprive a child of its mother.

175. Commenting on articles 7 and 10 of the Covenant, members noted that, in the report, the Government of Jordan had recognized that excesses were sometimes committed by some public security personnel but that those excesses were not institutionalized and had always been condemned and outlawed and information was requested on specific cases in which such excesses, had been penalized and on whether the victims of torture were entitled to compensation; on the legal provisions regulating solitary confinement in Jordan, the period of time for which it was permitted, whether it could be renewed, the physical conditions in which it was practised and on the family contacts of detained or imprisoned persons and their access to counsel. In this connexion, it was pointed out that it was important there there should be adequate arrangements for supervisory bodies to monitor conditions in prisons and adequate procedures for receiving and investigating complaints by prisoners and that the members of those supervisory bodies should be independent of both the police and the prison authorities, and it was asked what kind of arrangements and procedures existed in Jordan in that respect and whether the International Committee of the Red Cross had been given an opportunity to visit prisons in Jordan and, if so, with what results.

176. Members of the Committee noted that the information in the report regarding article 9 of the Covenant was very brief and they requested information on the pertinent parts of the Criminal provisions as well as on the measures taken to implement this article, particularly, on whether there were any provisions for the preventive detention of politically suspect persons; on whether it was possible to detain a person for reasons not contemplated by the criminal law, on the arrangements for dealing with the mentally sick; and on whether an individual who had been arbitrarily arrested or detained was entitled to compensation.

177. In relation to article 13 of the Covenant, members requested more information on the Aliens Law of 1973 and on the measures adopted to ensure the guarantees provided for in this article.

178. Members of the Committee also sought more information on the Jordanian legislation with regard to the principles and guarantees provided for in article 14 of the Covenant. Particular emphasis was put on the principle of the independence of the judiciary and on the law governing the appointment and dismissal of judges by royal decree, and it was asked whether the Jordanian Government really considered that in the existing circumstances it was essential to give military courts jurisdiction over civilians and whether it would not be more satisfactory to have offences by civilians dealt with by the ordinary courts considering that the military courts tended to proceed in a summary manner and often with no normal right of appeal.

179. It was noted that no informaton at all was provided on the measures taken to implement article 15 of the Covenant and the Government of Jordan was requested to remedy that situation, particularly as far as the prohibition of retroactive punishment was concerned.

180. As regards article 18 of the Covenant, it was noted that the children of a Muslim were always Muslims according to the Sharia and it was asked whether that meant children up to a certain age or whether it meant that a child of Muslim parents could not change his religion; and it was pointed out that if the latter was the case, there might be some conflict with article 18 of the Covenant. Reference was also made to a statement in the report that freedom of religion was observed within the limits of the Islamic Sharia and that the Christian communities in Jordan practised freedom of religion within the limits and boundaries of their denominations, and it was asked whether the Sharia was also applicable to the Christian communities or whether it applied only to Muslims, whether there was discrimination on grounds of religion and what the legal relationship was between the Islamic and Christian communities. The view was expressed that it would be desirable for Jordan, as well as other Muslim States parties, to give fuller information concerning the principles of Islam and the relationship between Muslims and persons of other religions in order to correct any misconceptions on the part of non-Muslims.

181. Detailed information was requested regarding laws and other measures restricting the freedoms provided for in articles 17, 19, 21 and 22 of the Covenant. It was asked why the Government of Jordan had not ratified the Conventions Nos. 29, 98 and 105 of the International Labour Organisation concerning Freedom of Association and Protection of the Right to Organize.

182. Commenting on article 23 of the Covenant, one member noted that, under Jordanian law, children held the nationality of their father and he pointed out that this might contravene article 23, paragraph 4, of the Covenant, which taken in conjunction with articles 3 and 26, suggested that nationality should be transmitted equally through both the father and the mother.

183. In connexion with article 25 of the Covenant, members asked why the Chamber of Deputies had been suspended and why elections to that assembly had been discontinued; could elections take place in the part of Jordanian territory over which the Government had full authority and, if not, what obstacles there were to prevent such elections from being held; what the situation was regarding the National Consultative Council, whether it was in a position to perform its role as an intermediary between the people and the Government and whether an expansion of its powers was being contemplated.

184. Replying to questions raised under article 1 of the Covenant, the representative of Jordan recalled that his Government had often stated that after the liberation of the West Bank from Israel's occupation, the Palestinian people would be able to practise self-determination.

185. As regards article 2 of the Covenant, he pointed out that Jordanian courts gave international agreements precedence over domestic laws except when public order was in danger; that most of the provisions of the Covenant were embodied in Jordanian legislation to a certain extent; that no discrepancies between that legislation and the articles of the Covenant had been noted; and that there was nothing to prevent any Jordanian citizen from gaining access to the courts, from the Magistrate's Court right up to the Court of Cassation.

186. In relaton to article 3, the representative gave some information about the level of development achieved by women in the various fields and pointed out that the restrictions on the employment of women in the municipality had to be seen in the context of the widespread illiteracy that existed at the local level and that, in any event, legislation had been prepared to remedy this situation.

187. Replying to questions under article 4, he denied that a state of emergency had been in force in Jordan for the past 23 years since the emergency regulations introduced in 1957 had been lifted in 1958 and were not reintroduced until 1967 when the war with Israel broke out; that the notification required under article 4 was being considered by the Council of Ministers and that, according to the Constitution, when the Defence Law was not considered to be sufficient for the protection of the country, the King could proclaim martial law; and that martial law had been in force in Jordan since 1967, but that nobody suffered unjustly from its application.

188. Replying to questions under article 25, he stated that the National Consultative Council was composed of representatives from different sectors of Jordanian life and that its role was to advise the Government on legislation, to help formulate Government policy in the social, political and economic fields, and that it had temporary status pending the holding of further elections. He informed the Committee that the Jordanian people had the possibility of participating in municipal elections every four years.

189. The representative of Jordan undertook to submit further information in writing for the consideration by the Committee at its fifteenth session.

190. The Committee decided to consider such supplementary information at its fifteenth session if submitted by January 1982 and that the date of submission of Jordan's subsequent report should be calculated on the basis of the date of that submission.

191. At its sixteenth session, the Committee considered the additional supplementary report submitted by Jordan (CCPR/C/1/Add.56), containing replies to the questions raised during the consideration of the supplementary report (CCPR/C/1/Add.55; see paras. 166-190) at its 361st and 362nd meetings on 13 July 1982 (CCPR/C/SR.361 and 362).

192. The additional supplementary report was introduced by the representative of the Sate party who stated that since the submission of the supplementary report, the Middle East had witnessed a tremendous upheaval following the Israeli invasion

of the Lebanon with serious effects on the human rights situation in the whole region, for the Israeli invasion has as its aim the extermination of the Palestinian people residing in that country.

193. The Committee began its consideration of the additional supplementary report with the question of the implementation of article 1 of the Covenant relating to self-determination. Members of the Committee expressed their appreciation for the continued co-operation of Jordan with the Committee, particularly under the present difficult circumstances. They expressed their deep concern at the situaton resulting from the Israeli invasion of Lebanon which constituted one of the major factors affecting the enjoyment of human rights in the region to which Jordan belonged, particularly the enjoyment of the right to self-determination and the violation of the basic right to life. Noting that the Israeli occupation of the West Bank of Jordan, had already prevented Jordan from extending the implementation of the Covenant in that territory, members asked how many Palestinians inhabited the Kingdom of Jordan, what was the exact legal status of the West Bank from the Jordanian point of view, what steps the Government of Jordan had taken to implement article 1, paragraph 3, of the Covenant, whether it was possible for it to ensure by means of administrative and legislative measures that the crimes committed against the Palestinian people would not be forgotten when its right to self-determination was re-established and to what extent the Jordanian representative felt that the Committee and States parties to the Covenant could support the Government of Jordan in its present situation and assist it in overcoming the difficulties encountered in implementing the Covenant. A question was also asked whether a policy of non-recognition of a State was compatible with a people's right of self-determination.

194. The representative of Jordan replied that the Government had proclaimed that, after the liberation of the West Bank, the Palestinians would exercise their right to self-determination and thus establish their own State. Legally, the West Bank was still part of the Hashemite Kingdom of Jordan and such a position did not involve any contradiction since the 1950 Parliamentary Declaration on the unity between the two banks of the River Jordan had included a provision to the effect that such unity did not affect the Palestinian people's right to self-determination. The number of Palestinians living in Jordan amounted to 1,250,000 persons. He stated that since the unification of the two Banks of Jordan in 1950 Palestinians and Jordanians shared responsibilities and enjoyed political representation. The Government had done its utmost to ensure that justice was done to the Palestinian people, both those living on the West Bank and those living in Jordan, and was providing them with financial assistance to enable them to remain on the West Bank and in order to foil Israel's persistent attempts to evict them from their homeland. Jordan's position was, he concluded, therefore, legally and politically in conformity with article 1 of the Covenant. His Government did not want to evict the Israelis from the area. It wanted them to stay on the land granted to them by the United Nations. Unless that was achieved, peace was not possible, since the Palestinians had lived in Palestine long before Israel had been created and could not forget their homeland. There ought to be two States living together, provided that Israel ceased to be covetous, expansionist and racist.

195. With regard to article 2 of the Covenant, some members of the Committee wished to know the extent to which the right to equal enjoyment of human rights prescribed in that article were implemented in Jordan since article 6 of the Constitution guaranteed equality before the law only to Jordanians. Members enquired about the position with regard to Palestinians in Jordan. The representative of Jordan

replied that, since Palestinians living in Jordan had opted for Jordanian citizenship, that article of the Constitution applied to them. Insofar as those Palestinians still resident on the West Bank and who were in possession of Jordanian passports were concerned they were regarded as Jordanians for the purposes of that article.

196. With respect to the reply given by the representative during the consideration of the first supplementary report of Jordan that Jordanian courts gave international agreements precedence over domestic laws except when public order was in danger, it was asked whether since 1967 remedies have been available as requred by article 2, paragraph 3, of the Covenant. The representative indicated that the Court of Cassation in its judgement No. 32/82 of 6 February 1982 has held that international covenants and treaties superseded local laws.

197. In relation to the equal rights of men and women, members asked whether there was, in fact, full equality in marriage between men and women; whether any steps were taken to ensure that the woman's consent to marriage had in fact been obtained; whether a woman could apply for divorce under the same conditions as a man; whether there was genuine equality within the family or did the man still occupy a dominant position; whether women had the right to vote; what measures were being taken to encourage female participation in secondary schooling so that women would be in a position to play a more equitable part at the decision-making level in the country; whether the Government through the mass media advised women of their rights. Information was also requested on the participation of women in the armed forces, the police and in the Government. In reply the representatives of Jordan pointed out that men and women had equal rights in marriage and the founding of a family in accordance with the Personal Status Act of 1976. The Act provided that the consent of both parties was essential for a marriage to take place and also laid down the conditions governing the separation of the spouses and the rights of the children of the marriage. Women - both Moslem and Christian - were entitled under the law to apply to the courts for divorce. As regards the education of girls, he indicated that greater opportunities for girls to receive higher education were desirable, but the reforms of the educational system were hampered by budgetary considerations. The schools in the villages provided a limited standard of education but those girls who wished to attend secondary schools could do so by going to a nearby town, although their parents would probably prefer them to remain to help at home and in agriculture. The representatives also stated that women had the right to vote in parliamentary but not in municipal elections which were held in villages and small towns where most women were not well educated. However, a new law had been passed which gave women the right to vote in municipal elections. The country, in its television and radio programmes, encouraged girls to pursue their education and urged heads of families to allow them to do so. There were also programmes on the political and civil rights of women.

198. Commenting on article 4 of the Covenant, members of the Committee inquired whether emergency legislation had been enacted as a result of the emergency situation; what civil and political rights had been derogated from and the extent to which they had been derogated from; whether there had been any derogations from the normal application of the rule of law, in particular, insofar as it affected detention and arrest, investigation of offences, the appointment of special courts and judges, sentencing and the right of appeal; whether, since the Covenant had entered into force for Jordan, a state of emergency had been officially declared and, if so, whether Jordan had so informed the other State parties to the Covenant

in accordance with article 4 of the Covenant and whether Jordan had also indicated to them the reasons of the emergency.

199. Regarding the emergency measures mentioned in the report, the representatives referred to article 124 of the Constitution and explained that the reason for the taking of emergency measures was the defence of the realm in view of the war with Israel. He stated that the present time was hardly propitious for the abolition of the state of emergency, but that the situation was kept under close scrutiny by the Government. He indicated that only a few people had been subjected to harsh treatment under the emergency regulations. Any person who considered that he had been wronged was entitled to appeal to the Court of Cassation against his conviction and sentence or against any administrative order made. The Court of Cassation in one of its judgements considered that any action taken by the executive power which was not fully justified on grounds of the internal or external safety of the realm could be rescinded. Such judgements had the force of law. The Government considered itself bound by them and respected them.

200. The representatives drew attention to the administrative regulations made under martial law and stated that the Military Governor General exercised all the functions delegated to him by the King to safeguard the country and to guarantee security. He could also issue an arrest warrant without a specific charge but if the person arrested was charged, he had to be brought before a military court after an investigation by the military prosecutor. Persons brought before a military court in that way suffered no kind of discrimination: they had the right to be represented and to be defended by a lawyer, and if they could not pay for the services of a lawyer, the court appointed an attorney ex officio. These exceptional powers of the Governor General could be considered a derogation, but the Governor General, who was the Prime Minister of the Kingdom, took his decisions after consultations with highly experienced legal advisers and he could confirm or reduce a sentence imposed by a military tribunal. The military courts could decide on crimes against State security, crimes against the protection of State secrets and secret documents, crimes with weapons and possession of weapons, membership in a political party that had been dissolved, dealing with the enemy, infiltration or the sale of property to the enemy. However, the sentence passed in such cases could be reduced by the King and the convicted were treated with clemency.

201. In reply to questions concerning notification on the emergency measures under paragraph 3 of article 4 of the Covenant, the representatives stated that the legal authorities had informed the Jordanian Government of its obligation to inform the United Nations Secretary-General and other States parties of any provisions from which it had derogated. The reminder had been well received by the Government which might not yet have had time to comply with it, but it would do so in due course.

202. With regard to the right to life which it dealt with in article 6 of the Covenant, members of the Committee asked whether capital punishment could be imposed by the military courts and in which cases; whether the death penalty could be inflicted on someone who attempted to prevent the authorities from exercising their functions; who was empowered to judge the author of such an attempt, whether it knew the name of the persons condemned to death and executed in 1981 and whether hanging was the only form of execution. In reply the representatives explained that article 138 of the Penal Code prescribed the death penalty for all persons who prevented the Government from discharging its constitutional responsibility of conducting the smooth running of the affairs of the country. The representatives

also indicated that seven or eight persons condemned to death for very serious crimes had been executed during the past few years and that the persons condemned to death were executed by hanging except members of the armed forces who were shot.

203. Commenting on articles 7, 9 and 10 of the Covenant, members of the Committee inquired as to what safeguards were available to persons; whether the remedy of habeas corpus was available; whether a detainee could be released on bail and, in view of the need to treat with humanity any person deprived of his liberty, what contacts a detainee could have with his family in the event that he was in solitary confinement. Members also asked whether the Jordanian prison system guaranteed the rehabilitation and social reintegration of prisoners; what measures were taken to guarantee humane treatment to any person deprived of his liberty, especially persons whose mental condition required special treatment; whether an individual could be arrested or detained for reasons other than those given in the report; whether the normal procedures for arrest were respected; and whether administrative detention existed and how long it could last.

204. The representatives replied that the remedy of habeas corpus did not exist in Jordan, but that it was possible for a person who had been arrested or imprisoned on the order of an administrative authority to appeal to the courts. Except for cases when it was necessary to keep a prisoner in solitary confinement, as in cases of espionage, the detainee had the right to receive visits from his lawyer and, if his detention was prolonged, visits from his family. The representatives also stated that no one could be imprisoned for debt, since cases of debt came under the jurisdiction of civil courts. If the court was convinced that the person in queston was trying to evade his obligations, it could order his detention for a period not exceeding 91 days a year. With regard to the rehabilitation of offenders, the representatives said that the Minister of Social Affairs had set up centres for young offenders where they could receive vocational training. In connexion with the procedures for arrest, they explained that in Jordan no one could be arrested unless he was charged with an offence and that persons suffering from mental disorders which might disturb public order could be apprehended but only to be taken to institutions where they would be given appropriate treatment to the extent that available means permitted.

205. The representatives also said that anyone arrested or detained could submit a petition to the Supreme Court. If the Supreme Court decided that the arrest or detention was illegal, the person concerned was released without delay but, in certain cases for which express provision was made, for example premeditated murder or parricide, the accused could not be released and could not challenge the lawfulness of his arrest. However, a person could only be detained on the order of the prosecutor of the district responsible for the pre-trial procedure who decided whether that person had been lawfully arrested or not. The Government could not be sued for damages in the case of illegal arrest, but if the person concerned had been arrested as a result of untrue statements, he could sue the author of those statements in damages for the wrongs he had suffered.

206. Referring to freedom of movement, for which provision is made in article 12 of the Covenant, it was asked whether there were Palestinian camps in Jordan and, if so, how many, and what were the reasons justifying their existence. The representatives of the State party explained that freedom of movement was guaranteed in Jordan and that it was not necessary to obtain authorization or to apply to a police station in order to travel from one point in Jordanian territory to another. The Palestinians lived in five or six large camps and they were

entirely free to move from one camp to another or to go anywhere they wished in Jordan.

207. Some members requested further information on the status of foreigners and the degree to which they were treated on a basis of equality with citizens of Jordan. The representatives explained that foreigners enjoyed the same rights as Jordanians except with regard to political rights. For example, a recent law granted them equal rights with regard to the pension scheme.

208. Concerning the right of any person to a fair and public hearing by a competent, independent and impartial tribunal, members observed that the report only dealt with cases of penal charges, whereas article 14 of the Covenant also envisaged rights and obligations of a civil nature. Further information was requested on that point. It was also asked whether the Government was giving consideration to putting an end to the jurisdictional authority of the military courts over matters which would normally be dealt with by civil courts and thus to abolish a form of summary justice which could only be justified by exceptionally serious circumstances. Referring to the statement in the report that, in Jordan, "... if the charge against the accused is punishable by the death penalty or by hard labour for life or imprisonment for life, he is asked whether he has chosen an attorney to defend him", one member of the Committee asked if that meant that the accused was judged without an attorney when he did not risk the death penalty or a life sentence and, if so, whether this might not be in conflict with the provisions of article 14, paragraph 3 (b), of the Covenant.

209. The representatives of Jordan explained that the Jordanian judicial system included magistrates' courts, district courts, courts of appeal and a supreme court of appeal and that all of them, except the latter, had jurisdiction in both penal and civil cases. They also said that the military courts would continue to function as long as martial law remained in force, that their jurisdiction was being constantly extended and that martial law was ensuring respect for legality by everybody, whether civilians or soldiers. Questions were currently being raised in Jordan about the desirability of abolishing the jurisdiction of the military courts, but the present circumstances made any change impossible. As regards the choice of an attorney, the representatives pointed out that no court could judge a person who was not assisted by an attorney if that person was liable to a prison sentence of over five years and that if the accused had no means, the Government granted legal aid.

210. With reference to article 17 of the Covenant, one member inquired whether the military authorities had to obtain a warrant from a magistrate to undertake a search. The representatives of Jordan explained that the police could only undertake a search with a warrant from the District Prosecutor and that the village headman ("mukhtar") also had to be present and the operation had to take place in daytime. However, if the search warrant was issued by the military authorities, that procedure was not followed and the operations were conducted according to the instructions of the military prosecutor of the district.

211. Referring to articles 19 and 22 of the Covenant whose implementation appeared to be limited by legal restrictions on certain political parties in Jordan, members of the Committee asked whether Jordanians could freely express their political opinions; which rules were applicable in Jordan in that respect and whether only those parties which advocated the use of force were banned or whether the ban was more general. The representatives of Jordan said that the right of individuals to

freedom of expression did not necessarily depend on political parties whose existence was guaranteed by the Constitution, even if the Government had had to dissolve them in 1957. Since that period no request for the creation of a political party had been addressed to the Government.

212. As regards the protection of access to public office provided for in article 25 of the Covenant, it was requested whether the enforcement of martial law required every person holding public office to take an oath of allegiance or to undergo security clearance. Additional information was also asked on the work of the Jordanian Senate, the Houe of Deputies, the National Consultative Council as well as other local institutions. The representatives of the State party stated that no Jordanian civil servant had to take an oath of allegiance, except judges, who had to swear an oath before the President of the Judicial Council to apply the law with complete fairness and for the good of the people. All appointments were made on the basis of merit and nobody in Jordan was subjected to discriminatory treatment in his career. Security clearance was not provided for by law but was clearly a matter of internal procedure which could be applied by the administration when recruiting its personnel.

213. As regards the Senate, it continued to function and, every two years, the King appointed new members. In the absence of elections since the occupation of the West Bank, a new National Consultative Council had been created and could make recommendations about the country's economic and political affairs to the Government which the latter could accept or reject. The National Consultative Council was initially composed of 60 members when it was established in 1978 on the occasion of the renewal of its mandate; that number had been increased in 1982 to 75. The members of the Council were chosen in such a way as to represent a wide range of institutions and sectors of the population.

Rwanda

214. The Committee considered the initial report of Rwanda (CCPR/C/1/Add.54) at its 345th, 346th and 348th meetings held on 30 and 31 March 1982 (CCPR/C/SR.345, 346 and 348).

215. The report was briefly introduced by the representative of the State party who explained the principle of separation of powers as laid down in the Constitution of his country, the categories of courts responsible for protecting public rights and freedoms and the provisions governing the appointment and removal of judges. He indicated that there were no lower administrative courts in Rwanda other than the Council of State, owing to a shortage of qualified judges and legal personnel.

216. Members of the Committee noted with appreciation that Rwanda had been one of the first 35 countries to ratify the Covenant, thus bringing it into force in 1976. However, they regretted the fact that, although submitted much later than the date on which it was due, its report was too brief to provide specific information under each article of the Covenant. Moreover, the report was lacking in information on the national upheavals that Rwanda had experienced in 1978 and their impact on the enjoyment of the rights provided for in the Covenant, as well as on the National Revolutionary Movement for Development which seemed to be the foundation of all political life in Rwanda and to have direct involvement in the Government of the country, on its statutes, structure and operation, and on its role in protecting human rights in the country.

217. It was pointed out that it was for the courts and the administrative authorities, including the police, to give effect to the provisions of the Covenant on behalf of the State and it was asked whether the Covenant had been published in French and the other languages used in the country; whether information on the Covenant was given to law enforcement personnel as part of their training; whether copies of the Covenant were made available to the bar and law schools in the country; what percentage of the population was illiterate and to what extent the population was acquainted with the concepts embodied in the Covenant, and how, and to what extent, the understanding and implementation of human rights were influenced by the culture and traditions of the Rwandese people.

218. With respect to article 2 of the Covenant, it was noted that, according to the Constitution, treaties affecting the rights of sovereignty could be executed only after approval by law and it was asked what the status of the Covenant was under the Constitution; whether the Covenant required approval in the form of an ad hoc law in Rwanda and, if so, whether such a law had been enacted, whether when drafting the new Constitution in 1978, the Government had specifically taken into account the obligations it had assumed internationally for the protection and promotion of human rights in its territory. Noting that, according to the Constitution, the judicial branch would ensure respect for the "peoples rights and freedoms", members asked whether someone whose rights had been violated by the Government could invoke the Covenant before Rwandese courts or whether he had to invoke corresponding internal legislation; whether the courts had a role in the interpretation and application of human rights; whether the Constitutional Court was already in operation; whether a law could be declared incompatible with the Covenant or unconstitutional and, if so, what judicial measures were available to citizens in that regard. Information was requested on the access which ordinary people had to the courts, how expensive that procedure was and what role the courts played in the day-to-day life of society, particularly in view of the shortage of legal personnel to give effect to, or to monitor observance of, the rights provided for in the Covenant, and on the steps taken by the Government to ensure that people would be trained for the legal profession in sufficient numbers not only for government service but also to advise and assist citizens in the defence of their rights.

219. Regarding article 3 of the Covenant, information was sought on the present status of women in Rwanda and on their role in practice and, particularly, on the percentage of women who had acquired economic independence and were involved in the political life of the country or held positions in legislative, judicial and other State organs; on the extent to which they participated in the educational, medical and other professions of particular importance to society; whether the law discriminated between men and women in such matters as adultery, and on the extent to which traditions had helped or obstructed the implementation of the equal rights of men and women to the enjoyment of their rights under the Covenant.

220. In relation to article 4 of the Covenant, it was asked whether there had been an emergency situation in Rwanda in recent years and, if so, whether normal procedures and provisions of the Covenant were derogated from.

221. As regards article 6 of the Covenant, it was pointed out that ensuring equal enjoyment of the right to life included affirmative action by States parties to protect human life against criminal offences, epidemics and infant mortality and it was asked what steps had been taken or were envisaged to ensure the enjoyment of the right to life. Noting that although the Covenant did not prohibit the death

penalty, it provided that the death penalty should be imposed only for serious crimes, members asked what crimes were punishable by death in Rwanda, whether the State Security Council could pass the death sentence; how many death sentences had been pronounced and by which courts since the coming into force of the Covenant on 23 March 1976 and how many of them had been carried out.

222. With reference to articles 7 and 10 of the Covenant, members pointed out that it was not enough to enact legislation providing for the punishment of anyone who committed torture but that the Government had to exercise control over its own agents in order to prevent torture, punish those responsible for it and provide compensation to the victims, and it was asked how many individuals were confined in prisons or detailed elsewhere in recent years; whether any allegations of ill-treatment or torture while in detention had been made by detainees and, if so, what measures were taken in that respect; how many prisoners had died in detention and what the cause of death had been in such cases; how many prisons existed in Rwanda and what kind of control the authorities exercised to ensure that torture or cruel, inhuman or degrading treatment was not inflicted on persons in custody and to punish those responsible for such acts when they occurred; for how long and under what conditions solitary confinement could be applied in Rwanda; what steps were taken to ensure that persons deprived of their liberty were treated with respect and that they were visited by legal representatives and members of their family.

223. In connexion with article 8 of the Covenant, information was requested on the circumstances in which forced or compulsory labour might be imposed.

224. As regards article 9 of the Covenant, reference was made to a statement in the report that ministerial directives prescribed for the conditions governing arrest and preventive detention and it was pointed out that, according to the Covenant and the Constitution of Rwanda, persons could only be detained in accordance with procedures established by law and that the report gave no indication of what the applicable law was. Information was requested on the cases provided for by law where measures of security could be applied for reasons of public order or State security referred to in the Constitution. It was asked what procedures governed detention before a suspect was charged with an offence, what guarantees applied during the period of such detention, whether the courts had any control over the kind and duration of detention before formal charges were brought and whether any procedure similar to habeas corpus existed in Rwanda, what the average length of time was between the date on which charges were brought and the date of trial and whether, in the event of conviction, the time spent in detention pending trial was taken into account in sentencing. Reference was made to "convictions of a political nature" mentioned in the report and it was asked how many political prisoners there were and what the scope of such "convictions" was.

225. In connexion with article 12 of the Covenant, it was noted that the Constitution stipulated that the right to circulate freely might be restricted in certain circumstances and it was asked how such restrictions were implemented and whether there were aliens within the territory of Rwanda who were not permitted to move freely and, if so, what the applicable laws were.

226. With regard to the article 14 of the Covenant, reference was made to a provision in the Constitution that in criminal matters members of the Central Committee of the National Revolutionary Movement for Development could be tried only in the Court of Cassation and it was asked how this restriction could be reconciled with the principle of equality before the law. Reference was also made

to a provision in the Constitution which listed courts of common jurisdiction but made no mention of the State Security Council. Information was requested on this Council, including the reasons for its establishmet and on the nature of its competence and operations and on the safeguards designed to ensure the independence of the judiciary against the possible abuse of the executive power. It was also asked how many judges there were and how and where they were educated and what percentage of those judges were women. A detailed account was requested of the minimum guarantees of due process and fair trial provided for in the Covenant to persons charged with criminal offences and of how they were implemented in Rwanda.

227. With reference to articles 18, 19, 21 and 22 of the Covenant, it was stressed that the extent to which a State exercised its right under the Covenant to limit various fundamental freedoms not only by law but also in practice, was a reflection of the true scope of those freedoms in a society. Noting that the National Revolutionary Movement for Development had a monopoly of political activity in the country, members asked what freedoms were allowed under this Movement, whether everyone had the right to freedom of thought, conscience and religion, and the right to hold opinions without interference; what kinds of acts could lead to an individual being convicted for sedition and whether criticism of public figures could be construed as defamation. Information was requested on the number and distribution of newspapers, on the extent of the Government's authority over editors, and on the reasons for the exclusion, under recent legislation, of agricultural workers from some of the benefits conferred under the Labour Code.

228. Commenting on articles 23 and 24 of the Covenant, members asked whether the State took effective measures to ensure equality of rights and responsibilities of spouses, in marriage as well as at the time of divorce, and whether there were provisions protecting the children in cases of divorce.

229. As regards article 25 of the Covenant, information was requested regarding the institutions and State organs in Rwanda which conducted public affairs, particularly with regard to composition, election, competence, powers and the terms for access to public service. Specific information was also requested on the law governing elections and the number of representatives chosen to serve on the National Development Council and on whether citizens had a choice of candidates. Reference was made to cases in which, according to the Constitution, persons could be denied the right to vote or to be elected to certain bodies, and it was asked what guarantees there were against the use of political factors to justify such restrictions. Information was sought on the reasons for the mandatory dissolution of the National Development Council if the President ceased to exercise his functions, whatever the reasons, as provided for in the Constitution.

230. In relation to article 27 of the Covenant, members requested information on ethnic, religious or linguistic minorities existing in the country, particularly the Tutsi; on the extent to which their rights to practise their own culture, language or religion were protected and ensured and on how the existence of these minorities affected the concept of national unity referred to in the Constitution.

231. One member expressed the view that consideration of reports from developing countries, especially countries in Africa, need not take place in the abstract, with little heed being paid to the actual conditions prevailing in those countries; that to discuss a country's theoretical compliance with the Covenant in isolation from its circumstances was to turn the consideration of reports into an academic exercise which was not the purpose of the Committee, and that the Committee had to

appreciate the nature of the problems facing the developing States parties, which adhered to the Covenant in good faith, and to seek solutions through a genuine direct dialogue and by devising a new formula for co-operation and assistance.

232. Replying to questions raised by members of the Committee, the representative of Rwanda stated that the factors responsible for the delay in the submission of his country's report, which also explained the brevity of the report, included Rwanda's status as a developing country, a certain bureaucratic time-lag and inexperience in submitting the kind of report required. He informed the Committee about the National Revolutionary Movement for Development, its structure and operation and indicated that no individual or group could escape the social control of the Movement which was seeking a better life for all, and he promised to make available to the Committee a complete text of the Statutes of the Movement as recently revised. He stressed that the Movement was not a "state within a state"; that the organs of State were separate from the Movement, and that the Secretary-General of the Movement was designated by the Constitution to replace the President of the Republic, if the President could not perform his functions, because no Vice-President was appointed for fear of collusion between the President and the Vice-President.

233. As regards questions raised concerning the dissemination of information about the Covenant, he stated that the text of the Covenant had been published in the Official Gazette by a decree law of 12 February 1975 and was to be translated into Kinyarwanda. In this connexion, he informed the Committee that the percentage of illiteracy in Rwanda was about 50 per cent.

234. Replying to questions raised under article 2 of the Covenant, the representative stated 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; that all members of the judiciary and citizens could invoke its provisions in the same way as domestic law; that if a law was incompatible with the Covenant, the Constitutional Court would refer the law back to the National Development Council for amendment; that if the Parliament - the Development Council - had voted a law, its President was required to submit that law to the Constitutional Court; that 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, and that only the President of the Republic and the President of the Development Council could bring matters before the Constitutional Court. As to the question of training for the legal profession, he pointed out that this profession in Rwanda would be in a better position if judges and lawyers had solid legal training, but that his country had limited resources. If the Committee could help in that regard it would be performing a great service and laying the ground for better implementation of the Covenant. In this connexion, he pointed out that there was only one woman judge and that the entire Rwandese legal system had to be modernized and traditional law had to be adapted to contemporary legal procedure.

235. Regarding article 3 of the Covenant, the representative informed the Committee of the current level achieved by women in the educational, economic, social and political fields and stated that in the more traditional Rwandese society, men and women were equal but that his country had made a good start in the direction of achieving equality between both sexes all over the country and in the various walks of life.

236. In relation to article 4 of the Covenant, he stated that no state of siege had been declared in the country since its accession to independence; that 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 ordinary courts under normal circumstances and recalled that the penal procedure prevented hasty verdicts and ensured that the defendent's rights were upheld.

237. In connexion with questions raised under article 6 of the Covenant, he stated that his country was making as much of an effort to protect human life and improve the health system as many other countries. He informed the Committee that so far only two death sentences had been passed by the Court of State Security but that they had not been carried out because there was still a possibility of appeal; that since the stabilization of the situation in his country, following the upheavals of 1974, when the country had undergone a spate of organized attacks, all death sentences had been commuted to life imprisonment.

238. Commenting on articles 7 and 10 of the Covenant, the representative assured the Committee that there was no torture or other cruel, inhuman or degrading punishment of prisoners in his country; that there was a law which provided that a member of the parquet or a criminal police officer could be imprisoned if found guilty of inflicting torture on a prisoner; that, recently, two members of the parquet had been convicted of that crime and that they were now in prison. He did not know the total number of people currently in prison but informed the Committee that there were 12 prisons in the entire country; that two of them were model prisons where a new, more modern concept of incarceration was being experimented with; that the prison system was administered by the Ministry of Justice through a prison Board and prison inspection divisions and offices; that he believed prisoners were lodged in good conditions; and that a directive of the Ministry of Justice allowed prisoners' families to visit and even bring food to them.

239. In response to a question under article 8, he stated that under the monarchy, peasants had had to work free of charge for their masters and that it was largely that system that the revolutionary movement had opposed; that the Constitution expressly banned forced labour but that, however, all Rwandese were expected to offer their help so that their country's projects could bear fruit and that, accordingly, once a week everybody volunteered to work in the fields or on the roads for the benefit of the State.

240. Replying to questions under article 9 of the Covenant, the representative pointed out that temporary arrests and custody pending trial were measures strictly limited by the law; that the criminal police had to bring the accused before the competent judicial authority within 24 hours of the arrest; that the judge could authorize a warrant for temporary arrest not to exceed five days, that during that time the detainee had to be brought before the court of the first instance, where he could defend himself and ask to appeal his arrest and that, if he did so, a court of appeal had to rule on his request. He also informed the Committee 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; that any prison director who did not release a prisoner in custody upon expiration of the 30-day limit was himself liable to imprisonment for the offense of arbitrary detention; that the duration of detention before trial depended on the backlog before the courts but that if the accused was not considered dangerous, he could be granted provisional release from custody; and that individuals in custody pending trial

could be visited by their legal counsel and their family, but that the visits by the latter were strictly limited.

241. In connexion with questions raised under article 12 of the Covenant, he pointed out 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.

242. In relation to article 14 of the Covenant, the representative pointed out that the stipulation in the Constitution 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; that although the Court of State Security had not been provided for in the Constitution, the latter, however, provided that courts could be created by law; that the Security Council had actually been set up to facilitate punishment of human rights violations committed by high government officials, that it was formed primarily of career lawyers and judges who were not afraid of convicting influencial politicians and that there were no politicans or officers of the Ministère Publique in it. He also stated that separation of powers, independence of the judiciary, accessibility of the courts and equality before the law were at the basis of the organization of the judicial branch, that this principle was impossible to apply with regard to the removability of judges because the country's judicial system had only recently been set up, but that the consent of the Supreme Council of Justice was, however, required for the removal of a judge, even for disciplinary reasons. He explained that the concept of the independence of the judiciary as provided for in the Constitution was to be understood as referring specifically to the administration of justice, without any outside interference, but that this did not mean that a judge was immune to any kind of administrative action. He informed the Committee that in principle all accused persons could be defended by a lawyer of their choice, but that there were few lawyers in the country and no bar whatsoever; that the law, however, provided that any person, whether a lawyer or not, could represent another person in a civil or military court; that trials could be held in camera if the competent judge decided that public order was at risk; that, however, all judgements must be given in public; and that once the Court of First Instance considered appeals against decisions of the district courts, litigants could appeal to the court of appeal and finally to the Court of Cassation.

243. In connexion with questions raised under articles 18, 19, 21 and 22 of the Covenant, the representative stated that all could express their views without fear within the National Revolutionary Movement for Development, for there was a single goal, namely, to achieve the development of Rwanda; that the Statutes of the Movement stipulated that there should be freedom of discipline "within the Movement", and that confusion of ideas could not be permitted in a country which was striving to escape from poverty. He informed the Committee that free organs of the press outnumbered government organs and that, although there was no censorship, extensive collaboration existed between the private and offical press. As regards the question concerning the exclusion of agricultural workers from some of the benefits of the Labour Code, he stated that such workers would be covered by a special law which was yet to be promulgated and that, in Rwanda, there were hardly any agricultural workers in the sense of persons working for others, since approximately 95 per cent of the population consisted of farmers working for their own account.

244. Replying to questions raised under articles 23 and 24 of the Covenant, he stated that only monogamous marriage was recognized in his country; that in traditional Rwandese society, even if all family property belonged to the man, husband and wife were in practice equal in the management of the estate; that both of them contributed to the education of their children; that divorces were permitted and that, 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.

245. Regarding questions raised under article 25 of the Covenant, he pointed out that the electoral law provided that certain rights, such as voting rights, were limited by consideration 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. The Constitution provided that the legislative mandate of the National Council for Development was for five years; that deputies of the first such Council had taken the oath in January 1982; that the reason for the dissolution of the Council, if the President whose mandate also ran for five years ceased to exercise his function, was so that the President of the Republic and the deputies would serve the new term concurrently. All Rwandese were eligible for employment in the civil service, but they were required to demonstrate their capacity for such employment and provided that they did not hold more than one office at a time.

246. Replying to questions raised under article 27 of the Covenant, the representative informed the Committee about the ethnic and religious composition of the population, indicating that the Tutsi formed 14 per cent of the population whereas 86 per cent belonged to the Hutu; that 50 per cent of the population were Catholics while a minority were faithful to Islam. At the time of independence, parties had been founded, seemingly based on ethnic consideration, with each differing from the other regarding mainly the type of régime which the country should have in the future; that there had been an attempt to eliminate the current president and other influential people on the pretext that they belonged to a particular ethnic group; and that the National Revolutionary Movement had accordingly been created in order to overcome ethnic difficulties. He stressed that historically those races had lived together in harmony and spoke the same Kinyarwanda language and had the same customs, that members of the different ethnic groups intermarried; that Catholics and Moslems all lived together harmoniously and that their representatives were among the leaders of the Movement; that 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.

247. Members of the Committee expressed their appreciation to the representative of Rwanda for his co-operation and his attempt to answer at such short notice many of the questions put to him. They reiterated their position, according to their mandate, that they were interested not only in gaining understanding of a given country's legal structure, but also in knowing how successfully that system operated in practice, in the hope of gaining indications as to how human rights were exercised and protected in any given State party. The Committee was aware of the different situations and difficulties States parties faced. If it were to take those difficulties into account, however, it must be officially notified to that effect by the State party concerned.

248. The Chairman pointed out that he believed that the Committee would have to discuss the suggestion on how to conduct such discussions of reports from States parties in future, and that it must also take up the novel suggestion of the representative of Rwanda for assistance in training lawyers and judges.

Guyana

249. The Committee considered the initial report of Guyana (CCPR/C/4/Add.6) at its 353rd, 354th and 357th meetings held on 5 and 7 April 1982 (CCPR/C/SR.353, 354 and 357).

250. The report was introduced by the representative of the State party who elaborated on the information provided in the report, giving more detailed references to the articles of the Constitution and legislative acts which were relevant to the articles of the Covenant.

251. Members of the Committee observed that the report was extremely concise, providing only a general legal framework with reference to the Constitution and statute law and it was pointed out that the Committee's task under the Covenant was not confined to comparing the laws of a State party with the normative standards established under the Covenant. Reference was made to a statement in the report denying the existence of any factors and difficulties affecting the enjoyment of the rights and freedoms provided for in the Covenant, and it was asked whether that meant that the rights and freedoms embodied in the Covenant were fully enjoyed in the country since the coming into force of the Covenant in Guyana in 1977 and, if so, how Guyana had managed to avoid any of the difficulties encountered by most countries in fully implementing the provisions of the Covenant. Members of the Committee observed that the new Constitution of Guyana was a basic charter for the country's political life, characterized by a number of original features which could have important implications in the field of human rights. Questions were asked as to whether the change of Constitution was due to certain difficulties encountered under the previous Constitution and, if so, what those difficulties had been and what innovations and remedies the new Constitution had introduced. Information was requested on the extent to which the Covenant was known in Guyana to the general public, to the courts, police and prison authorities and to all those responsible for the administration of public affairs. Noting that there was little point in ratifying an international treaty such as the Covenant if the citizenry of the country did not know about it, members asked whether the Government was taking action to make the authorities in the country at all levels as well as the public aware of the Covenant, and whether Government officials concerned were aware of the Committee's approach to its work, of its guidelines for the preparation of reports and of the general comments which were contained in its last report to the General Assembly. 10/

252. In relation to article 2 of the Covenant, members noted that according to the report, the provisions of the Covenant may not be invoked before or directly enforced by the Courts, other tribunals or administrative authorities but that they could indirectly be enforced by the Courts to the extent that they are subsumed in comparable provisions of the Constitution, and the ordinary statute law of Guyana. They also referred to certain articles of the Schedule to the Constitution and asked whether, under their terms, the President could change any law, including the Constitution. Stressing that the provisions of the Covenant contained specific rights and freedoms and that they transcended those of the Constitution in that they were binding international treaty obligations, members requested information on the specific laws which had been enacted to implement the Constitution and to ensure that the rights stipulated in the Covenant were effectively enjoyed, on any national bodies responsible for implementing human rights and on any court decisions which might have been taken relating to the practical application of human rights provisions.

253. Noting that the ombudsman system could represent a very effective remedy but that it could be an excuse for a lack of other remedies, members requested information on the background to the establishment of this office in Guyana, how many cases were dealt with each year, whether the ombudsman was responsible for reporting on his activities and, if so, to whom and in what form, and on both the successful and unsuccessful work of the ombudsman in protecting fundamental rights and freedoms. Information was also requested on all other available remedies, particularly on remedies available for someone who was subject to discrimination; on the jurisdiction of the High Court and on whether it covered all human rights or merely those specified in article 153 of the Constitution and whether, in practice, people had availed themselves of recourse to the High Court to ensure that their basic rights were safeguarded. In this connexion, reference was made to article 8 of the Constitution and it was asked who determined whether a law was inconsistent with the Constitution and declared it null and void, whether the judiciary had the authority to do so and at whose request this could be done, and whether the power of review extended to the executive.

254. As regards article 3 of the Covenant, reference was made to the Committee's general comment 4/13, 10/ and more information was requested on the steps, in addition to purely legislative measures of protection, which had been or were being taken to give effect to the precise and positive obligations under this article, on the progress that was being made and on the factors and difficulties that were being met in this regard.

255. In connexion with article 4 of the Covenant, it was noted that article 150 (2) of the Constitution appeared to allow derogations that would be contrary to the provisions of article 4 of the Covenant which stipulated that measures derogating from obligations under the Covenant, in time of public emergency, could not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin and it was asked how, if that was so, such derogations could be justified and whether there had been any proclamation of emergency since the Covenant had entered into force in respect of Guyana.

256. Regarding article 6 of the Covenant, it was stated that implementation of this article required that the law must strictly control and limit the circumstances in which a person might be deprived of life by the State authorities and that one very important context in which that applied was the use of force by the police; and it was asked what rules applied to the use of force by the police, whether they were strictly enforced and whether the police received proper training and instruction in that regard. In this connexion, it was asked whether an investigation had been conducted concerning the mass deaths which occurred during the events at Jonestown as well as the death of the political activist Walter Rodney and, if so, what the findings had been. It was also asked whether any consideration had been given to abolishing the death penalty in Guyana.

257. Commenting on articles 7 and 10 of the Covenant, members wondered whether, in the light of article 141 of the Constitution, antedating the Constitution there were some laws which authorized some form of inhuman or degrading treatment or punishment and, if so, how that could be explained. Information was requested regarding the procedures for reviewing and investigating complaints brought by persons detained in prisons or other establishments; on whether juvenile persons were separated from adults, on the opportunities for contact between detainees and relatives, and for independent supervision of conditions of imprisonment, and on whether prisoners were required to work and, if so, whether they were remunerated.

258. In relation to article 9 of the Covenant, it was asked in what circumstances and under what conditions a person could be subjected to preventive detention, whether any persons, including members of the opposition, were held in preventive detention or had been arrested and charged in the recent past and, if so, on what grounds and for how long. It was noted that the provision of the Constitution that any person who was arrested or detained should be informed "as soon as reasonably practicable" of the reasons for his arrest or detention, fell short of article 9 (2) of the Covenant which required that such person should be promptly informed of any charges against him and it was asked whether the right of habeas corpus, as called for in the Covenant, was duly provided for and respected in Guyana and what criteria applied in assessing reparation claims for the inconvenience suffered by persons who were subjected to wrongful arrest.

259. In connexion with article 14 of the Covenant, it was pointed out that a truly independent judiciary was a firm guarantee of the rights of individuals and that nothing should be done to impair that independence, and it was asked how the independence of the Guyanan judiciary was safeguarded, whether the President could appoint or dismiss judges, whether there were legal provisions to protect judges who arrived at decisions differing fom the Government's notion of public order and whether there had been any complaints from judges that they had been subjected to pressure from any quarter.

260. As regards article 17 of the Covenant, information was requested on the provisions which had been adopted to guarantee the right to privacy as well as on any restrictions on the exercise of this right and on the provisions which enabled agents of the State to enter the homes of individuals or to interfere with private correspondence.

261. In relation to articles 19 and 22 of the Covenant, reference was made to a provision of the Constitution recognizing the need to ensure fairness and balance in the dissemination of information to the public, and it was asked what was done to that end and how that provision operated in practice, how many newspapers there were and how many of them belonged to the opposition; whether persons opposed to Government policies were free to present their views on state-controlled radio and television stations. It was asked what laws existed in Guyana concerning sedition, treason and offences against the State, how many people had been arrested, charged and convicted under such laws since 1977; and whether the perception of an immediate threat to the State was sufficient to secure the conviction of individuals who were not actually using force. Information was requested on trade unions and human rights organizations in the country and on the mode and extent of Government co-operation with them, as well as on whether the various political parties were on a footing of legal equality.

262. Commenting on article 25 of the Covenant, members requested detailed information on the electoral process, particularly on how elections were organized in practice, how lists of candidates were drawn up; what measures existed in Guyana to ensure that people could register as voters and what remedies they had in that regard; and whether there were any independent bodies to supervise elections so as to ensure the effective protection of rights under article 25 of the Covenant.

263. As regards article 27 of the Covenant, information was requested on the various ethnic groups in the country, including the Amerindian population; on any special efforts that were made to preserve their religion and culture and protect their rights as well as information on the racial composition of public bodies, and

on the extent to which the Constitution allowed such groups to participate in public service.

264. The representative of the State party replied briefly to some questions relating to the organization of the judiciary in Guyana and apologized for not being able, owing to the shortage of time to prepare his replies, to reply to all the questions posed by members of the Committee. He assured the Committee, however, that he would refer its questions to his Government for consideration and reply and would inquire as to when a supplementary report might be submitted and inform the Committee accordingly.

Uruguay

265. The Committee considered the initial report of Uruguay (CCPR/C/1/Add.57) at its 355th, 356th, 357th and 359th meetings held on 6, 7, and 8 April 1982 (CCPR/C/SR.355, 356, 357 and 359) and at its 373rd meeting held on 21 July 1982 (CCPR/C/SR.373).

266. The report was introduced by the representative of the Sate party who recalled that representative democracy and highly developed human rights legislation had been in force in his country for some 50 years before the eruption of "terrorism and political violence" in the early 1970s. He recognized that, since then, his country had undergone a crisis, the effects of which were still being felt and which had had a negative impact on human rights in the country. It had been necessary to enact special legislation and to suspend some rights, on a strictly temporary basis, because of the grave situation menacing the life of the country. These measures entailed the dissolution of the national parliament, the General Assembly, as well as derogations from certain rights set forth in the Covenant. In particular, restrictions had been placed on the right of association and political meetings had been banned. He informed the Committee that only some 150 people had been killed over a period of five to six years, of which most had been bystanders or members of the security forces; that, even at the height of the crisis, Uruguay had been concerned to defend the right to life, the inviolability of the person and justice; and that it was possible that the security forces had violated those rights on occasion, but that the Government had made efforts to investigate such cases. He stated that the number of subversives detained in prisons had decreased from some 1,300 in 1979 to approximately 900 in 1982 and denied that there were political prisoners in his country, stressing that those incarcerated were people imprisoned for their deeds not their ideas. He informed the Committee that his Government had devoted considerable resources to prison facilities as a result of which Uruguayan prisons were unsurpassed in the world.

267. The representative informed the Committee that the fundamental prerequisites for the restoration of all freedoms already existed, recognizing meanwhile that the process of normalizaton would not be complete until the Parliament was again functioning on a democratic basis. He referred to a programme that was being carried out for the purpose of re-establishing all the guarantees of human rights; that, in October 1981, the Government had enacted a law concerning professional associations which had resulted in the establishment of a large number of trade unions; that currently there were no limitations on political meetings provided that such meetings were not held in a public place and that political groups notified the authorities of the location of their headquarters; and that Institutional Act No. 8 had been superseded by Institutional Act No. 12 which restored the total independence of the judiciary.

268. Members of the Committee expressed their satisfaction at the submission, though belatedly, of Uruguay's initial report and at the designation of such a senior offical to represent that country during the consideration of its report and to make, as he did, an informative introduction to the report, indicating the desire of the Government of Uruguay to continue co-operation with the Committee. The report was thought to be a substantial one but it referred solely to legal provisions and was mainly based on a Constitution which, exemplary and progressive as it was, had been overridden for some 10 years by the proclamation of public emergency in the country and superseded by drastic changes in the political order. Referring to the Committee's views on a number of communications pertaining to Uruguay under the Optional Protocol, members felt that the human rights situation in that country was fraught with features which were not acceptable, even by emergency standards, and that the Committee would have been greatly assisted in discussing communications from individuals in Uruguay had the Government submitted its earlier and complied with the requests of the Committee for information.

269. The current political order in Uruguay was thought to have undergone drastic changes over the past 10 years and was determined more by a series of Institutional Acts than by the Constitution. Mention was made of Institution Act No. 1 which suspended all elections, Act No. 2 which established the Council of State and vested it with powers not provided for in the Constitution, Act No. 4 which banned all political parties for 15 years, Act No. 5 which subordinated the enjoyment of human rights to the requirements of national security, and Act No. 8 which eliminated the important constitutional principle of the separation of powers. This political order was described as a unification of the three separate powers of Governments - legislative, administrative and judicial - in the military authorities, which escaped the control of popular political bodies, its establishment being characterized not only by the length of its duration but also by the breadth of its application. In this connexion, reference was made to a statement made in December 1978 by the former President of the Council of State in Uruguay, set up specifically to control the exercise of executive power, in which he admitted that the Council had failed to limit the assumption of executive power, in relation to the observance of the rights of the individual. The information provided by the representative in his introductory statement to the effect that Institutional Act No. 8 had been superseded by Institutional Act No. 12 and whether the independence of the judiciary was now really ensured. It was pointed out that the fact remained, however, that when Institutional Act No. 8 had been issued, the Covenant had already entered into force for Uruguay and its provisions were clearly at variance with the requirements of the Covenant with respect to the independence of the judiciary.

270. Noting that it was lawful under the Covenant for a State party to declare a state of emergency, members stressed that this could be done only in compliance with the requirements of the Covenant's provisions. The letter and spirit of article 4 of the Covenant, stipulated that when a country took measures to suspend human rights, those measures, which, however, could not affect certain rights specified in that article, must be temporary. It was pointed out that, in the case of Uruguay, those requirements of article 4 of the Covenant, as well as of the relevant articles of the Constitution itself, had not been complied with. Mention was made of violations of the rights provided for in articles 7 and 15 of the Covenant as found by the Committee in dealing with communications under the Optional Protocol, as well as of the notification of derogations under article 4 of the Covenant by the Government of Uruguay, 12/ which was thought to have failed to meet the formal requirements of that article and thus to have given the distrubing

impression that all the rights embodied in the Covenant had been suspended. particular reference was made to article 168 (17) of the Constitution which provided for prompt security measures under the supervision of the General Assembly, the Uruguayan Parliament, but that this was not being implemented since the Assembly had long been dissolved. Information was requested on the specific rights which had been suspended in Uruguay, on how far derogations from the Covenant were strictly required by the exigencies of the current situation and on the measures taken to control violation of those rights which the Government might not abrogate, to discipline officials charged with such violations and to compensate their victims.

271. Reference was made to the State Security and Internal Order Act which established a series of offences, including lèse-nation, divulging secrets and association for subversive purposes and the offence of speaking out against the prestige of the military, which conferred extremely broad search powers on the authorities and placed restrictions on the freedom of speech, and it was noted that those offences were to be tried by military courts whose judges were appointed by the executive. In this connexion, clarification was requested of the "new concept of security" referred to in the report in that respect; of the relationship between military jurisdiction and normal jurisdiction; and of the difference between ordinary and exceptional remedies.

272. In general comments under articles 7, 9 and 10 of the Covenant, members expressed their concern, in view of the information which had come to their attention under the Optional Protocol regarding physical assault and mental torture of detainees and prisoners, the abduction of individuals into Uruguayan territory by Government authorities, denial to detainees of their right to be informed promptly of any charges against them and the long delays which seemed to be the rule in bringing cases to trial. They asked how many places of incarceration existed in Uruguay and where; how could the Government of Uruguay justify the fact that detainees were required to pay for the costs of their being kept in captivity, what happened if they were unable to do so and to what extent the work performed by them offset such costs, and they felt that to require prisoners to pay for their keep was not in keeping with the spirit of the Covenant. Information was requested on the number of people who had been detained for political violence and similar offences. They noted the statement in the report that, up to 1977 there had been 16 cases of officials who had abused their powers, and they asked what had happened since 1977; what measures had been taken to strengthen the control over the police and prison authorities, to educate the security forces, to punish those who overstepped the limits of the law; to what extent had the Government implemented the minimum standard rules for treatment of prisoners, including medical care, and what investigations had been carried out in the cases of death which had occurred in suspicious circumstances in Uruguayan prisons.

273. Commenting on remedies under article 9 of the Covenant, members noted that, according to the report, the interested party or any other person might, in the event of unlawful unrest, apply to the competent judge for a writ of habeas corpus unless the arrest was ordered under the prompt security measures régime, and that in considering communications under the Optional Protocol the Committee had been informed by the Government of Uruguay that the remedy of habeas corpus was not in effect in the country. They wondered what the meaning of "unlawful" was in the context of the emergency situation; whether the prompt security measures régime in effect suspended the application of the remedy of habeas corpus, whether an individual would be unable to invoke that remedy as long as this régime was in force and, if so, whether that did not amount to the legalization of unlawful acts

carried out under the prompt security measures régime. It was also asked whether conditional release was only an administrative measure based on a judicial decision taken by a court which had special jurisdiction in such matters.

274. As regards article 14 of the Covenant, it was pointed out that military courts could take over in an emergency certain functions normally performed by the ordinary courts, provided the former's independence and impartiality were duly protected. However, considering the fact that Uruguayan judges were appointed by the Government, that the military courts in Uruguay had clearly superseded the civil courts under the emergency régime and that military courts in general were concerned less with providing minimum guarantees than the exercise of exceptional and summary powers, and that they, in practice, had acted in a way which was not conducive to impartiality, members wondered whether the principles and minimum guarantees embodied in article 14 of the Covenant were really upheld and ensured and, if so, to what extent. It was pointed out that the general definition of such criminal offences as subversive association might violate the principle of the presumption of innocence inasmuch as any individual hostile to the Government would be liable to criminal sanctions merely by discussing political issues with friends. Information was requested on the scope of such offences, on the persons who were generally brought before military courts and on the practice of courts in dealing with them. It was maintained that it was implicit in the right to a fair trial that sentences for long periods of detention should be handed down in writing and, in that connexion, members noted with regret that the Committee, in the course of its consideration of communications under the Optional Protocol, had never been provided by the Government with the text of any court decisions despite repeated requests.

275. Members noted that, in Uruguay, accused persons did not always have access to a defence lawyer at the stage of preliminary proceedings and that challenging evidence obtained in the course of those proceedings under military jurisdiction was not possible if more than six days had elapsed since it had been submitted to the court at a preliminary hearing, and it was pointed out that if that were the case and a trial took place months or years later, the defendant stood no chance whatever of being acquitted. They also indicated that it seemed that there were considerable difficulties in enforcing the guarantee provided in article 14 (3) (e) of the Covenant, since evidence was taken primarily in the preliminary investigation when the accused had little opportunity of influencing the proceedings. It was asked whether hearings were oral or written and whether cases before the Military Judge of First Instance were tried in the presence of the accused and, if not, whether the existing public emergency would indeed justify the derogation from an individual's right to be tried in his presence. More information was requested on the remedy of appeal, particularly in cases involving offences of lèse-nation as well as military cases, the recourse for review and on the composition of the Supreme Court of Justice when it considered exceptional remedies and whether the military officers serving on this court in such cases were required to have legal training.

276. Commenting on the rights and freedoms provided for in articles 19, 21, 22 and 25 of the Covenant, members recognized that article 4 of the Covenant did not prohibit derogations from those articles. They inquired, however, about the circumstances in which derogations from those articles had been made in Uruguay. Mention was made of the steps taken against Uruguayans who disagreed in one way or another with the authorities, whether illegally or by making use of various political freedoms, with particular reference to the suppression of the trade union

movement, to the outlawing of 14 political parties as well as to the persons who were proscribed from political life because they had served in an earlier Government. In this connexion, it was asked who decided when and how normality was to be restored in the country.

277. Questions were also raised concerning other articles of the Covenant, particularly as regards the position of Uruguay concerning the right of the Palestinian people to self-determination under article 1 of the Covenant; the rights of women, the family and children under articles 3, 23 and 24 and the ban on war propaganda under article 20 of the Covenant.

278. Several references were made to a number of specific complaints against the Government of Uruguay which the Committee had considered under the Optional Protocol and which had involved allegations of the denial of effective remedies, detention without court order, torture and ill-treatment. It was pointed out that the Committee had tried to give Uruguay a fair hearing, but that the information supplied had not been adequate and had sometimes been practically non-existent. The Committee's final views on many of those cases had appeared in its reports to the United Nations General Assembly and hence were public knowledge. Members wondered whether the Government had ever investigated the allegations which the Committee had found substantiated, punished those responsible, released the individuals in question or provided them with compensation, as the case might be. They urged the Government of Uruguay to make all relevant information available to the Committee when so requested.

279. Members of the Committee noted that positive signs seemed to indicate that Uruguay was beginning to return to the democratic and free tradition. Stressing that the rights and freedoms guaranteed by the Covenant could not be suspended indefinitely, they expressed the hope for further development in the right direction which would be a marked improvement in the protection of personal freedom and the treatment of detainees. They sought an assurance that the advent of democracy would be hastened, with participation in public life by all citizens without distinction, including the political leaders who had been banned from political life. They further sought an assurance that an amnesty or release would be extended to all persons who had been convicted only of the broadly defined offences established under the state of emergency and who had not been personally responsible for acts of violence.

280. Replying to questions raised and comments made by members of the Committee, the representative of Uruguay denied that the Constitution had become inoperative, that the executive, legislative and judiciary formed a monolithic whole, and stated that the dissolution of the legislature did not destroy the very foundations of the political system in his country; that although the Institutional Acts had introduced changes, they took as their point of reference the Constitution; that the Council of State, all of whose members were civilians, had been established as a provisional body following the dissolution of Parliament but that it was not a parliament, although it had acted to curb government power on occasion, and that the Minister of Justice had recognized that it had not been completely effective in defending human rights. He emphasized that Institutional Act No. 8 had limited only the administrative functions of the judiciary, not the general exercise of its powers; that throughout all the years of the crisis in the country the judicial branch of the Government had continued to function normally in other respects; and that Act No. 12, which superseded Act No. 8, restored the total independence of the judiciary and the balance of power between the three branches of the Government.

281. He stated that his Government had derogated from articles 9, 19 and 25 of the Covenant to a limited degree because of the public emergency which threatened the life of the nation and that, at no time, had Uruguay derogated from the articles from which there could be no derogation in accordance with article 4 (2) of the Covenant. He assured the Committee that his Government would reply in detail, in a future report, to the objections raised by members of the Committee regarding derogations from certain articles of the Covenant and emphasized that at no time during the past 10 years had the Government violated the right to life as provided for in the Covenant. On the contrary, his Government had made great efforts to protect that right in conditions of civil war and had provided full explanations in other international fora concerning the cases of individuals who had died while in prison, the rate of which was among the lowest in the world. He asserted that members of the Committee had not understood the gravity of the emergency situation in Uruguay caused by "terrorist acts and foreign intervention" and that clear understanding of the situation was needed in order to comprehend why it was necessary to curtail the exercise of certain fundamental rights in Uruguay. He stressed that the enactment of the State Security Internal Order Act should be seen in this context and that conferring jurisdiction on military courts for offences of lèse-nation, which consitituted threats to the life of the nation, was appropriate since the defence of the nation in such times of danger was the responsibility of the military.

282. As regards comments made under articles 7, 9 and 10 of the Covenant, he denied allegations of torture and quoted from a pamphlet in which the Tupamaros were said to have urged their followers who were arrested, especially women, to charge the police and military with ill-treatment and torture in order to win the sympathy of the public. He pointed out that, according to the Code of Military Penal Procedure, preventive arrests were to be carried out in the manner least detrimental to the suspect and his reputation and that, in any event, preventive detention could not exceed 12 days, that persons so held were entitled to communicate with the judge through a defence attorney, to attend proceedings at which witnesses were heard and to communicate in writing with the head of the establishment in which they were held and with the judicial authorities. In this connexion, he emphasized that not a single person had been arrested in Uruguay for his opinions; that 985 persons had been arrested for subversion, an offence that had a specific legal meaning, only 15 of whom had not yet been sentenced; that some trade union members and five former members of Parliament had been imprisoned for the offences of sedition and subversive activities, respectively; that prison conditions were excellent, in particular, with regard to the recreational and health-care facilities provided, and that while prisoners might, in some circumstances, be required to pay the cost of their incarceration, no one had been obliged to remain in prison for failing to do so.

283. Replying to questions relating to the remedy of habeas corpus, he informed the Committee that the right of habeas corpus had been suspended only in cases which came under the prompt security measures régime, which had been imposed in order to deal with an emergency situation, but that in all other cases habeas corpus was fully observed; and that his Government was now considering abolishing the prompt security measures régime and restoring the full exercise of the right of habeas corpus. As to the distinction between ordinary and exceptional remedies, he stated that ordinary remedies were those available against sentences that had not yet acquired the status of res judicata, whereas exceptional remedies were available against sentences which had acquired that status.

284. In relation to article 14 of the Covenant, the representative stated that the appointment of judges in Uruguay was not a novelty because judges were appointed by

the Executive in a number of countries and that this could not, per se, be construed as affecting their impartiality; that the Supreme Court of Justice was a civil body; that military courts in Uruguay operated in a genuinely independent manner; that judgements were always handed down in writing and provided to both the prisoner and his attorney and published in law digests; that Act No. 14.068 provided that an appeal might be lodged against the indictment in cases involving offences of lèse-nation with the Supreme Court of Justice; that in actual practice in some 50 to 60 cases such decisions had been appealed; and that the law had been enacted to serve as a counter-weight to the powers which had been granted to the Military Examining Magistrates.

285. As regards the suspension of rights and freedoms provided for in articles 19, 21, 22 and 25 of the Covenant, the representative emphasized the transitory nature of the measures taken to meet special circumstances in the country's political life; that measures would be revised by a three-member commission with a view to achieving a gradual return to normality; that the press was gaining ground rapidly, including the opposition press which was in fact very critical of the Government and the security forces; that the Government supported free trade unions but wanted to ensure that they concerned themselves only with trade union matters and not be used as political tools by any party; that changes had been made in trade union legislation and the observations made by the International Labour Organisation in the past were therefore no longer valid; and that political rights of only some 25 persons continued to be suspended. He informed the Committee that elections were planned for November 1982 to select the leaders of the country's political parties as an essential step towards the resumption of normal political life and that, during 1983, the political parties would participate with the Government in the drafting of a new Constitution which would be submitted to a referendum at the time of the general elections planned for the following year.

286. He replied briefly to the few questions raised under articles 1, 3, 20, 23 and 24 of the Covenant indicating his country's support for the right of the Palestinian people to self-determination and to establish their own State; the rights of women, family and children; and on propaganda for war.

287. Responding to observations made by members of the Committee in connexion with communications submitted to it against Uruguay under the Optional Protocol, the representative stated that his Government would provide the Committee with all necessary information in the future and suggested the setting up by the Committee of some sort of machinery permitting the Committee to review its decisions in the light of additional information.

288. He expressed his regret that the report was found to contain not enough details and promised the Committee that his Government would supplement its report to provide additional information on all the matters raised by members of the Committee.

289. The Chairman pointed out that Uruguay's subsequent report would be due in February 1983 and that the supplementary information requested could be included therein.

290. Some members made brief comments on the replies of the representative of Uruguay. Others were unable to do so in view of the shortage of time and the Chairman announced that the Committee would continue its consideration of Uruguay's report at the next (sixteenth) session.

291. At its sixteenth session, the Committee at its 373rd meeting held on 21 July 1982 concluded its consideration of the report of Uruguay in the presence of the representative of the State party (CCPR/C/SR.373).

292. Questions were raised by some members of the Committee, who, for lack of time, were unable to put them during the consideration of the report of Uruguay at its fifteenth session. Members asked whether the provisions of State Security Law No. 14068 punishing officials in charge of detention centres who abuse their powers by committing physical assaults on detainees had ever been implemented and whether that law applied to officials committing similar acts outside detention centres; whether decree No. 466 of 1973 requiring prior authorization for the exercise of the right of assembly was still in force and, if so, whether the restrictions extended to cultural, social and sports activities; whether the right to strike had been recognized; whether the Government of Uruguay had now abolished the régime of "prompt security measures" and re-established the full exercise of the right of habeas corpus; and what steps had been taken by the Uruguayan authorities to give effect to the views of the Committee on communications concerning Uruguay.293. In their comments, members expressed the hope that, in its ne t report, Uruguay would be able to assur the Committee that it fully guaranteed the rights of the accused to a fair trial; to present a complete analysis of Constitutional Act No. 12 which had a great impact on the juridical and political life of Uruguay; to give to the Committee information on the election of the party leadership due to take place late in 1982 and on the general elections scheduled for 1983; and to inform the Committee that restrictions on the issue of passports to all Uruguayan citizens living abroad are no longer in force. They also emphasized the need for Uruguay to co-operate more fully with the Committee in respect of communications by transmitting all relevant information, including judgements rendered by Uruguayan courts, and expressed the hope that actual practices would be radically modified so as to ensure the progressive return of the country to normal life.

294. Replying to questions raised and comments made by members of the Committee, the representative of Uruguay stated that sanctions had already been imposed in cases of abuse of power and that a number of officials had been interrogated; that, although political meetings were limited during the fight against subversion, more than 500 meetings had taken place in 1982; that the right to strike was guaranteed by the Constitution; that the country had been witnessing all sorts of strikes in both the public and private sectors and that the Council of State was now trying to introduce provisions for a better definition of that right. He reiterated the statement which he had made before the Committee at the fifteenth session to the effect that not one accused person had been condemned without a written judgement, and he referred to a particular case before a military court involving some foreigners and he indicated that foreign lawyers who represented them agreed that there had been no irregularity at the trial.

295. The representative explained the law and policy of his country governing the issue of passports to Uruguayan citizens living abroad and indicated that most of these citizens had obtained their passports in accordance with the law. He promised that his Government would be more responsive to requests of the Committee for more information concerning communications.

296. He finally assured the Committee of his Government's readiness to continue the dialogue and co-operation which had now been established.

297. The Chairman expressed the Committee's satisfaction at the encouraging replies given by the representative of Uruguay and expressed the hope that the fruitful and constructive dialogue would continue. He informed the representative that, in accordance with the decision of the Committee on the periodicity of reports, the next report of Uruguay would be due in February 1983 and expressed the hope that this report would contain fuller information on all questions which had remained unanswered. He finally noted the undertaking that the Uruguayan authorities would respond fully to the requests of the Committee for information in connexion with communications concerning Uruguay.

Iran

298. The Committee considered the report of Iran (CCPR/C/1/Add.58) at its 364th, 365th, 366th and 368th meetings held on 15, 16 and 19 July 1982 (CCPR/C/SR.364, 365, 366 and 368).

299. The report was introduced by the representative of the State party who explained the ideological foundation of the Islamic Revolution in Iran. He stated that, in spite of the internal and external difficulties encountered in establishing the Islamic Republic of Iran, his Government had at no time suspended the freedoms and liberties enshrined in the Covenant and in the Iranian Constitution of 15 November 1979, and that no state of emergency had been imposed, nor had martial law been declared.

300. The representative stated that, although many of the articles of the Covenant corresponded to the teachings of Islam, in the case of differences between the two sets of laws, the tenets of Islam would prevail. He then referred to the text of the constitutional provisions relevant to the implementation in Iran of the various provisions of the Covenant and provided further information on other legislative provisions aimed at protecting the rights enshrined in it. He also explained that the laws and regulations of Iran were still divided into two categories: post-revolutionary laws and regulations approved by the Islamic Consultative Assembly and laws and regulations enacted before the revolution which were still in force. The Islamic Consultative Assembly was at present examining laws and regulations relating to criminal acts, including the Code of Criminal Procedure and the Military Penal Code. The judiciary in his country was independent in accordance with the Constitution and steps had been taken to incorporate military and revolutionary courts within the framework of the Ministry of Justice. The death penalty was imposed in Iran for very serious offences such as murder or armed operations against the Islamic Republic of Iran. The death penalty was carried out only after a final judgement rendered by a competent court. A more comprehensive report would be submitted to the Committee as soon as the present session of the Islamic Consultative Assembly had completed its task of approving the above-mentioned laws and regulations.

301. Members of the Committee welcomed the fact that the Iranian Government had submitted its report and expressed appreciation for the additional information provided by the representative of the reporting State concerning the revolutionary process which laid the foundation of a new society which had started in that country. While understanding the difficulties of an internal and an external nature that Iran had to face during its revolutionary process which might have affected the preparation of a report, members of the Committee regretted that the report under consideration was narrower in scope than article 40 of the Covenant envisaged, that it did not follow the general guidelines for the submission of reports established by the Committee, that the information provided had been

limited to a description of laws and regulations and that no mention had been made of other measures to implement the various provisions of the Covenant as indicated in its article 2, paragraph 2, nor of remedies available to those who believed that their rights under the Covenant had been violated. Noting that every revolution had its own laws, members of the Committee needed more detailed information on the revolutionary process itself in order to ascertain how far it affected the human rights situation in the country and what its effects were in relation to the Covenant. Members of the Committee noted with satisfaction the intention of the Iranian Government to submit shortly a more comprehensive report which would strengthen the dialogue that had just started between the Committee and that Government and wished to know when exactly the new report would be submitted.

302. With reference to article 1 of the Covenant, information was requested on any legislative or administrative measures that had been taken by the Iranian Government to achieve equitable distribution of wealth, to facilitate the participation of the masses in the productivity of the country and to eliminate the exploitation of man by man.

303. Clarification was also requested with regard to the meaning attributed by the Iranian Government to the right to self-determination, since the notion of exporting the Islamic revolution referred to in official declarations made by the leaders of the country seemed to be in contradiction with the principle of respect for the right to self-determination enshrined in article 1 of the Covenant. In this connexion, it was asked what the Government's position was with regard to t right of self-determination of certain minorities in Iran, what legal means were available to them to achieve that right and what the Iranian Government had done in practice to promote the realization of the right of the Lebanese and Palestinian peoples to self-determination in view of the present invasion of the Lebanon by the Israeli army.

304. Commenting on article 2 of the Covenant, members asked what the fundamental role of Islamic law really meant in the context of the Covenant, especially since the Iranian Constitution often referred to it, how the precepts of the Islamic faith were reflected in law, whether Islamic law was a body of rules appropriate to govern a modern State, whether customary law existed in the country and what its relation to human rights was, whether an individual could invoke the Covenant in a court of law and whether a judgement could be based directly on the provisions of the Covenant. Noting that, whereas in the context of international law, the Covenant should prevail over domestic law, it appeared from the information provided that, in Iran, in case of conflict between the Covenant and Islamic law, the latter would prevail. Moreover, members of the Committee wished to know how a legal system based on the precepts of a single religion could protect all human rights as enshrined in the Covenant and what the status of the Covenant itself was within the new constitutional framework. It was observed that the Covenant reflected what the international community, including many States with an Islamic tradition, considered to be a universally applicable minimum standard of human rights and it was therefore asked whether any official comparative study had been made between the Covenant and the laws in force in Iran and, if so, whether any provisions of the Covenant were found to be contrary to or inconsistent with Islamic laws or tenets. It was also noted that the Iranian Constitution provided for limitations or restrictions which seemed to be in contradiction with the provisions of the Covenant and more information was requested on specific legislation implementing the various constitutional provisions. Furthermore, certain fundamental political, economic, social and cultural rights as well as

women's rights were guaranteed under articles 20 and 21 of the Constitution "with due observance of the Islamic precepts", and clarification was requested on this reservation. In this connexion, reference was made to article 2, paragraph 1, of the Covenant and it was asked whether there were in Iran any legislative texts prohibiting discrimination for reasons other than those referred to in the Constitution. With reference to the effective remedies envisaged in article 2, paragraph 3, of the Covenant, information was requested on the jurisdiction in Iran of the State Inspectorate and the Administrative Court of Justice, their relation to other courts, their legal status, and their functions and, in particular, on recourse procedures available to claimants before the Administrative Court of Justice. Information was also requested on the role and legal status of the revolutionary guards, and the revolutionary tribunals, their legal competence and jurisdiction, their relation to ordinary courts and ordinary police, and on whether government officials had been prosecuted for involvement in disorders and discords resulting from the revolution. Information was requested on efforts made by the Iranian Government to publicize the Covenant, whether it had been translated into the Parsi language, what the Government had done to make young people aware of their civil and political rights and whether it had undertaken a process of education in human rights involving all levels of Government, including the head of State himself.

305. In connexion with article 3, in conjunction with articles 25 and 26 of the Covenant, some members of the Committee wished to know what progress had been made in Iran with regard to women's rights and whether women actively participated in the public life of the country, how many women were employed in the judiciary, in political organs, in the police and in medical services, whether legislative measures had been taken to guarantee equality of men and women in the enjoyment of all civil and political rights or whether some discrimination still existed in this field. It was asked, in particular, how many girls were participating in the different levels of education and whether it was true that universities in Iran were closed since 1979. It was also observed that equality between men and women was provided by article 20 of the Iranian Constitution "under the protection of the law", while article 26 of the Covenant stipulated also equality of men and women "before the law".

306. Members of the Committee sought explanations as to how, in view of the revolutionary process and of the state of war, Iran had not found it necessary to avail itself of the right of derogation envisaged under article 4 in case of public emergency. However, the report described the impact of the emergency on the operation of law and order and members requested that more information be provided by the Iranian Government, in the light of article 4 of the Covenant and of general comment 5/13 of the Committee 10/, on the nature of the emergency, on whether rights under the Covenant had been actually derogated from, to what extent and for what reasons.

307. In connexion with article 5, reference was made to article 14 of the Constitution which provided for respect of the human rights of non-Moslems. It was stated in that article that its provisions were valid in the case of those who did not engage in any plotting whatsoever against Islam and the Islamic Republic of Iran and clarification was requested on this reservation also in the light of the principle of non-discrimination based on religion enshrined in the Covenant.

308. Several questions were raised by members of the Committee with regard to article 6 of the Covenant. It was asked, in particular, how many executions had

been carried out in Iran after the revolution and what were the charges against those who had been executed. Noting that, according to the representative of Iran, the death penalty was only applicable in cases of murder and military operation, members requested clarification of the meaning of "military operation" and asked whether a person carrying a weapon was considered to be contemplating a military operation and was chargeable with a capital offence. Information was also requested on the reported allegations on the death penalty being inflicted for other charges, such as "corruption on earth", "war on God", "war on God's property" or for minor sexual violations and on the reported mass executions of persons, including children. In this connexion, it was asked whether it was true that Islamic law did not allow the imposition of the death penalty for political offences and, if so, how the hundreds of executions which had been reported since the revolution started were justified, whether the death penalty was inflicted only for crimes violating the provisions of the Iranian Penal Code, whether the death penalty was ever used in the case of persons under the age of 18, or of pregnant women, whether the trials had been conducted with the necessary guarantees and safeguards, including the right of review or appeal envisaged by article 6, paragraph 4, and article 14, paragraph 5, of the Covenant respectively, and whether measures had been taken or envisaged for abolishing the death penalty or, at least, reducing the number of crimes punishable by that penalty.

309. Referring to article 7 of the Covenant, members of the Committee noted that the Constitution prohibited torture for obtaining confession or information but did not explicitly prohibit it as a matter of principle and they asked whether torture was practised in Iran during interrogations of terrorists or alleged terrorists, what measures the Government was taking in practice to ensure that detained persons were not tortured or ill-treated, whether it had ever investigated allegations of torture, whether execution by stoning or punishment by the cutting off of a hand were still practised in the country, and whether, in the light of the provisions of articles 10 and 23 of the Covenant, persons deprived of their liberty could freely contact their relatives and their counsel.

310. With regard to article 9 of the Covenant, it was asked whether there were in Iran any persons detained or in custody for political or security reasons without trial and, if so, how many there were, for how long they had been in custody, under what legal authority they were detained, whether persons arrested were informed, at the time of arrest, of the reasons for their detention, whether persons who were deprived of their liberty were entitled to take proceedings before the court to have the causes of their detention determined, as required by the Covenant, and whether release on bail and habeas corpus recourses were possible only in a trial by an ordinary court. It was also asked under what legislative authority the Revolutionary Guards could arrest citizens, whether they acted in accordance with the Covenant and the Iranian Constitution, and what moral, political or other criteria were required for recruitment in the police force.

311. In connexion with article 10 of the Covenant, members of the Committee wished to know what regulations existed in Iran concerning the treatment of detained persons and how the enforcement of those regulations was supervised, whether there were any arrangements for prisons and other detention centres to be supervised or visited by persons who were independent of the prison authorities and who were empowered to receive complaints and have them investigated, what procedures were available for these purposes and how effective they were, whether arrangements had been made for prisons and detention centres to be visited by representatives of the International Committee of the Red Cross and whether the conditions of detention envisaged under the Covenant were fully respected in the country.

312. In connexion with article 12 of the Covenant, explanations were requested on the applicability of exile according to law envisaged by articles 33 and 39 of the Iranian Constitution which appeared to be in contradiction with the provisions of the Covenant.

313. In connexion with article 13 of the Covenant, reference was made to the law concerning the entry of aliens into Iran and it was asked whether it was a new law and how it was implemented.

314. In relation to article 14 of the Covenant, members of the Committee wished to know whether and how the Iranian Constitution, laws and regulations guaranteed an independent judiciary capable of ensuring that Iranians enjoyed fully their rights. More information was also requested on the judicial system existing in Iran, in particular on the Supreme Judicial Council mentioned in the Constitution and its effect on the independence of the judiciary, on the Administrative Court of Justice dealing with complaints of the public against government officials, on the degree of independence of military courts, and on the existence and jurisdiction of special tribunals. It was asked what injustices or oppressive acts had been committed by government employees or agents which had led to the establishment of the Administrative Court of Justice, what kind of other courts, such as civil and criminal courts, existed in Iran or had been in existence since the revolution, how judges had been appointed and what qualifications they were required to have, what laws regulated their dismissal, whether any members of the former judiciary had been appointed or kept in post or whether they had been replaced, whether it was possible for a Christian, a Jew or a Baha'i to become a judge, whether there had been any special courts to deal with the emergency situation created by the revolution and, in particular, to deal with political or security offences. Referring to the rules of due process of law designed to ensure that the individual was given a fair trial, members asked whether those rules and guarantees, provided for in article 14 of the Covenant, had been duly observed in the courts since the revolution. It was also asked how legal assistance was provided in Iran, whether the accused had the possibility to obtain the attendance and examination of witnesses on his behalf and what procedure existed for the revision of the sentence, especially in the case of serious crimes. With reference to article 171 of the Iranian Constitution, it was asked whether compensation was envisaged only in case of judicial error or the quashing of a conviction and, in that event, who tried the judge concerned, and what meaning was given to the expression "responsible for such failure according to Islamic practice" contained in that article. Information was also requested on the organization of the legal profession in Iran. It was asked, in particular, whether defence lawyers needed a special authorization by the Government, whether the Bar Association of Teheran had been suspended, whether there were sufficient lawyers in the capital and whether lawyers were reluctant to defend opponents of the Government.

315. In connexion with article 15 of the Covenant, information was requested on the laws under which a person could be accused of acts committed at the time of the previous régime.

316. With regard to article 18 of the Covenant, members of the Committee observed that the Iranian Constitution contained guarantees of freedom of religion, but only in respect of Islamic, Zoroastrian, Jewish and Christian religions and did not cover other religions of minority groups existing in the country, such as the Baha'is. In this connexion, reference was made to a resolution adopted by the Commission on Human Rights at its thirty-eighth session in 1982, which mentioned the perilous situation that the Baha'is were facing in Iran, as well as to reports

on executions and disappearances in Iran of a number of leaders of the Baha'i faith, on the denial of validity of Baha'i marriages by the Iranian authorities and on the denial of birth certificates to children of Baha'is. Members of the Committee asked for clarification on the reported treatment of the Baha'is which, if true, appeared to be contrary to the provisions of articles 18, 23, 25 and 27 of the Covenant. It was also asked whether it was possible for a Moslem to renounce his religion, to become an atheist or to convert to another religion or whether repressive measures were applied in such a case according to Islamic law.

317. In respect to article 19 of the Covenant, information was requested on the number of newspapers existing in Iran and, in particular, in Teheran and on the meaning of the sentence contained in article 24 of the Constitution which stated that "The press and publications shall be free in their writings unless such writings are detrimental to the foundations of Islam ...". It was also asked whether it was possible for anyone to establish a newspaper in the country, whether views opposed to those of the Government could be expressed in it or whether an authorization was necessary and, if so, whether it was easily given.

318. With reference to article 22 of the Covenant, it was asked whether it was possible for a person in Iran to join a political party or association whose aim was to voice dissent and advocate guiding principles for political action different from those held by the present Government.

319. As regards articles 23 and 24 of the Covenant, information was requested on how parental authority was exercised in Iran, especially in the case of dissolution of the marriage and on the law providing for the registration of the name of the child immedately after birth.

320. As to article 25 of the Covenant, it was asked how the right to hold public office contained in its provisions was guaranteed on the basis of equality in Iran where the President of the Republic had to belong to the official State religion.

321. With regard to article 27 of the Covenant, information was requested on the various ethnic, linguistic and religious minorities existing in Iran, such as the Kurds, the Turkomans, the Baluchis and the Arabs. It was asked in this regard whether and how the Government recognized the rights of these minorities, whether they had the right to express themselves freely, even if they were not Moslems, and whether they could have their own schools and use their own language.

322. Before replying to questions raised by members of the Committee, the representative of Iran referred to the duties of the Committee as set forth in article 40 of the Covenant. He wished to register a strong protest against what he considered to be a violation of the provisions of that article by some of the members of the Committee, whose statements were, in his view, outside the limits set for the performance of their functions and not in conformity with the impartiality and objectivity required for the performance of their duties. This, he said, was not conducive to establishing a constructive dialogue between the Committee and the reporting State.

323. Replying to questions raised under article 1, paragraph 3, the representative stated that if his Government had not been preoccupied for almost two years by the war launched against it by the Iraqi régime, its assistance to the Lebanese and Palestinian peoples in their efforts to achieve their right to self-determination would have been more effective.

324. With reference to article 2 of the Covenant, he stressed that the criteria for determining the validity of any law would be the values given by God and transmitted to earth, that since human traits were consiered to be in harmony with revealed values, values derived from human civilization and from reason were held to be close to Islamic values, and that whenever divine law conflicted with man-made law, divine law would prevail. He explained that the Koran contained guidance on a comprehensive range of matters involving morals, historical analysis, a criminal code and precepts regarding the distribution of wealth, teachings on community growth and spiritual values, and when a nation recognized and accepted the principles of Islam, as the basis for its existence, Islamic precepts would be followed in resolving problems. However, in Shi'ite canon law the basic requirements governing the continuity of community life could be viewed in historical terms, and the divine laws could be interepreted and implemented accordingly. Unfortunately, the conspiracies that had occurred in Iran since the revolution had prevented the Government from having sufficient time to develop new laws along those lines. Nevertheless, an attempt was being made to establish, at an early date, the three separate powers of the judiciary, the executive and the legislative in conformity with Islamic law. After the legislative power had been established, the relative conformity of each law with Islamic precepts would be determined. In this connexion, he explained his Government's position on the incorporation of international instruments on human rights in Islamic law and stated that if the intention was that such instruments should complement and add to the Islamic laws with a view to harmonizing them in a single legal system, then his Government would have to respond negatively, since it considered that the Islamic laws were universal and Shi'ite canon law would take any new needs of society into account. If, however, it was intended that international instruments on human rights and Islamic laws should be taken together in an effort to achieve mutual understanding and to explore what they had in common, then such an endeavour would be accepted with pleasure. He pointed out that laws of non-religious inspiration were not necessarily contrary to the Moslem faith; however, any laws contrary to the tenets of Islam would notbe acceptable.

325. The representative stated that the parliamentary committee established pursuant to article 90 of the Constitution, which consisted of a number of members of Parliament and some legal experts, could receive petitions from ministries, foundations and revolutionary units, while the Administrative Justice Tribunal dealt with complaints and protests against the actions of government officials, with allegations of unconstitutionality and with complaints against judicial decisions. Ministries, governmental entities and agencies and their subsidiary bodies, as well as revolutionary units, were under an obligation to comply with the Tribunal's ruling relating to them. Any person failing to do so would be removed from office and subjected to legal prosecution. Disputes regarding judicial jurisdiction would be settled by the Supreme Court. The Administrative Justice Tribunal must also refer any complaints relating to governmental rules and regulations to the Council of Custodians. If the Council determined that a given rule or regulation was illegal the Administrative Justice Tribunal would issue a ruling to that effect. Judicial police had been separated from military police by a law passed by Parliament in 1980 and amended in 1981. Their duties were to communicate legal and judicial documents, to give effect to penal and civil judgements, to prosecute accused persons and, inter alia, to deal with affairs relating to the coroner's office.

326. In connexion with article 6 of the Covenant, the representative informed the Committee that, in the event of a death sentence being imposed, an appeal for

clemency might be submitted, which would be examined by a Committee consisting of the President of the Association for the Protection of Prisoners, the Chief Prosecutor of Teheran, the head of the Bureau of Identification and a judge appointed by the Supreme Court of Iran. Notification of the acceptance or rejection of appeals for clememcy was made within 15 days.

327. With reference to article 9 of the Covenant, he stated that the Revolutionary Guards had no right to arrest any individual or to enter anyone's home or to seize any person's property without written authorization from the Revolutionary Prosecutor and that any violation would result in the guard's dismissal by order of the Prosecutor. Persons that might escape or persons recognized as being particularly dangerous could be arrested without the Prosecutor's authorization, but the arrest had to be reported at once to the Prosecutor.

328. As regards article 10 of the Covenant, he informed the Committee that an Act, passed in 1979, had brought the organization of all State prisons, including their attached agricultural and industrial establishments, under the control of the Ministry of Justice. A supplementary Act, passed in 1980, has set up a council consisting of a judge, a police officer and a political prisoner belonging to the previous régime, which was to be appointed by the Supreme Judicial Council and function under the authority of the State Prosecutor. Work was proceeding and in some cases had already been completed on the drafting of laws, the compilation of prison manuals and the preparation of prison regulations. An association for the protection of prisoners had in addition been formed to supervise and assist the families of prisoners and to deal with the rehabilitation, refomation and guidance of the prisoners. Furthermore, prison regulations contained provisions relating to the violation of prisoners' rights by guards, prisoners' labour, care of prisoners' families, the availability of religious ceremonies, as requested, and the organization of open prisons.

329. In connexion with article 14 of the Covenant, the representative provided additional information on the judicial system of his country and stated that the Supreme Judicial Council, established under article 158 of the Constitution, consisted of five members: the State Prosecutor General, the President of the Supreme Court of Cassation and three well-qualified jurists. The Council was responsible for creating appropriate justice organizations, drafting judicial bills and recruiting, appointing and dismissing judges. At present there were in Iran 44 provincial and criminal courts in 12 provinces, as well as 121 courts of first instance in 52 towns. There were also other independent and local courts in 60 towns. Special civil courts for the promotion of family life on the basis of Islamic laws and morality had been established under a law of 1979. In February 1979 an Islamic Revolutionary Tribunal had been established in Teheran to deal with offences committed against the Revolution. The representative also provided information on the composition and jurisdiction of the Islamic Revolutionary courts established in accordance with the relevant provisions of the rules of procedure of the Revolutionary Tribunal and stated that a law had been approved by Parliament in 1981 to integrate Revolutionary courts into the Ministry of Justice. Moreover, he stated that the bill establishing the conditions for the employment of judges, which had been recently approved by Parliament, provided that a judge had to be just, religious, faithful to the Islamic Republic, a person of good reputation and an authority on canon law, or else appointed by such an authority. Since the continuation of the Bar Association in its old form had no longer been feasible, a new bill had been approved in 1980 according to which the Bar Committee was composed of legal experts, provincial judges and Supreme court judges assigned by the High Judicial Council.

330. Replying to questions on the situation of the Baha'i community in Iran, the representative pointed out that the allegations of executions concerned 60 to 70 members of that community out of 60,000 to 70,000 members still living in his country. He stated that those Baha'is were executed, not because of their religious faith, but for their participation in the Government of the previous régime, in its activities of oppression and in the crimes it had perpetrated and he provided detailed information on that participation.

331. The representative of Iran finally assured the Committee that a comprehensive and detailed report was in the course of preparation and would be submitted to the Committee when the constituent assembly had approved all laws and communicated its findings to the executive power.

332. The Chairman expressed the Committee's appreciation for the information given in part of the replies but felt bound at the same time to express his profound regret that the representative of Iran had found it necessary to resort to accusations against individual members of the Committee and individual Governments - possibly due to a misconception of the purpose, functions and motivations of the Committee. The Committee had been functioning for six years and had received praise from all sides for the work it had done. It was not accustomed to the treatment that had been meted out at the present meeting. He wished to make it amply clear that any accusations made against individual members touched the Committee as a whole.

333. The representative of Iran stated that it had not been his intention to attack individual members of the Committee but that his delegation had been confronted with rumours and accusations emanating from Iran's enemies that were immediately quoted by imperialist news media. He expressed the hope that members of the Committee would remain impartial and independent if they were not to lose the trust of the international community.

334. Noting the Iranian representative's statement that there had been no intention to attack members of the Committee, the Chairman hoped that suspicion and distruct had been dispelled and expressed the hope that the dialogue that had now been engaged with the Iranian Government would continue when the comprehensive report which the Iranian representative had promised to submit would next be considered by the Committee.

335. Some members of the Committee made brief comments on the replies of the representative of Iran.

C. Question of the reports and general comments of the Committee

336. At its fourteenth session, the Committee was informed that, in accordance with paragraph 2 (a) of the Committee's decision of periodicity, 13/ notes verbales had been sent to all States parties whose subsequent reports would be due in 1983, informing them of that decision and that of the exact date by which their subsequent report should be submitted; that no such notes verbales had been sent to a group of States parties whose initial reports had been due in 1977 and 1978 but had not yet been submitted to the Committee, and whose subsequent reports would be due in 1983 in accordance with paragraph 2 (b) of the decision on periodicity, nor to another group of States parties whose initial reports had been considered at the

fourth and sixth sessions but whose representatives had later promised to submit new reports which were still to be received by the Committee. The Secretariat sought guidance from the Committee as to whether notes verbales should be addressed to those two groups of States parties or to any of them.

337. The Committee decided that the States parties concerned could be informed of the Committee's decision on periodicity without a specific date of their subsequent reports being mentioned, reminding them that their second report would soon be due and to consider the matter at its next session.

338. At the fifteenth session, members of the Committee exchanged views on whether, in order to encourage State's parties to submit supplementary reports, to amend the Committee's decision on periodicity to the effect that the Committee would, if appropriate, defer the date for the submission of the State party's next periodic report in the case where that State party submitted a supplementary report following the examination of its initial report or of any subsequent report. And, if so, whether the amendment should provide for a time-limit within which such supplementary report had to be submitted in order that the State party concerned would benefit from the extension of the period during which its subsequent report had to be submitted. A draft compromise amendment was subsequently circulated between members of the Committee which read as follows:

> "In cases where a State party submits a supplementary report within one year, on such other period as the Committee may decide, following the examination of its initial report or of any subsequent periodic report and the supplementary report is examined at a meeting with representatives of the reporting State, the Committee will, if appropriate, defer the date for the submission of the State party's next periodic report" (see CCPR/C/SR.349, 357 and 359).

339. At its sixteenth session, the Committee decided to adopt the proposed additional paragraph (see CCPR/C/SR.380). The full text of the decision on periodicity, as amended appears in annex IV below.

340. Members of the Committee exchanged views on what some of them called the general problem of derogation and notification under article 4 of the Covenant and its relation to the reporting system and the obligations of both the States parties and the Committee under the Covenant, particularly article 40 (see CCPR/C/SR.334, 349 and 351). Reference was made to paragraph 3 of general comment 5/13 10/ which, it was noted, implied that the procedures of notification and reporting were equally important but which did not explain how those two procedures should interact.

341. Maintaining that the Committee could not discharge its responsibilities under the Covenant if it did not consider major changes in a country's constitution or law, or suspension therof, which had a bearing on the protection of human rights, and that States parties under article 40 (1) (b) had undertaken to submit reports whenever the Committee so requested, some members were of the opinion that whenever a notification under article 4 (3) of the Covenant had been made, it should be transmitted forthwith to the members of the Committee; that the Committee had the power to request a special report on how public emergency affected human rights; that the Committee should avail itself of all information available, at least in the United Nations system, in this regard; that such situation or report should be considered, if need be, at an extraordinary session of the Committee or by an intersessional working group, and that the procedure for requesting such reports

must be formalized and be applied to all States parties without exception and should reflect a quick response to emergency situations and prevent possible cases of excés de pouvoir by States parties.

342. The position of some members who favoured the establishment of a procedure for requesting reports on emergency situations was contested on various grounds. It was pointed out by other members that article 4 of the Covenant specifically provided for the possibility of a State party's derogating from obligations under the Covenant in time of national emergency, that measures taken in such situations in accordance with article 4 could not be characterized as wrongful nor considered violations of the Covenant because the effect of such a derogation is that certain obligations are temporarily suspended and that the proclamation of a state of emergency might well be the last resort to protect human rights and that was precisely what was envisaged in article 4. It was also maintained that there was nothing in article 4 to indicate or justify the assumption that States parties had conferred on the Committee any competence to determine whether a situation threatening the life of a nation existed; that information from a State derogating from the Covenant was to be transmitted to other States parties or the Committee for approval or that States parties had accepted any third party scrutiny in regard to whether derogations were limited to the extent strictly required by the exigencies of the situation. It was recalled that, under article 4, a State party availing itself of the right of derogation was required to inform not the Committee but the other States parties and that only a notification, and not a report, was required. The Committee's role under article 4 was described as being limited to ascertaining whether other States parties had been immediately informed, what rights were affected by the emergency measures and whether there had been derogations from the provisions mentioned in article 4 (2) and determining what were the reasons by which the State had been actuated and when the derogations had been terminated. Citing cases of public emergencies declared in several States parties, some of them dating back to the time when the Covenant came into force, and in connexion with which no special report had been requested from any one of them, one member wondered what changes had occurred, prompting some members to urge the establishment of such a procedure now. He warned that if the proposal was adopted the Committee might lay itself open to criticism that it was biased and be faced with suspicion and reluctance to co-operate on the part of States parties.

343. Other members, while asserting that the motives of Committee members were beyond question, stressed that it was important that the Committee should be seen to be acting with impartiality. Referring to article 1 of the Covenant, one member stated that the situation with regard to self-determination in southern Africa was even graver than a state of emergency, since it represented the institutionalization of the negation of humanity by law. Although South Africa was not a party to the Covenant, it was the duty of the Committee to bring the situation in that country to the attention of States parties. The Committee might wish to try to understand those people who thought that sanctions were desirable where the victims were white but not where they were non-white and that it should be seen to act, not because it contained members from third world countries or because it wished to politicize matters or react selectively, but because its deliberations reflected the provisions of the Covenant. It was pointed out that, in considering situations under article 4 of the Covenant, the Committee, for the time being, could only consider that article in terms of its functions under article 40; that the role of the Committee, however, was not limited to taking note of reports which had been submitted because if that had been the case there would have been no need for its independence to be safeguarded by the Covenant; that if

the Committee requested a report on the emergency situation it would merely recieve some indication of the legal framework; that the Committee should do everything possible to make States aware of their obligations under the Covenant, perhaps by altering the rules for the submission of reports or by making general comments. It was also suggested that the Committee could consider emergency situations in terms of their relevance to the implementation by the reporting State of its obligations under the Covenant in the course of the Committee's exercise of its functions under article 40.

344. Members of the Committee agreed to defer for further consideration the question of derogations and notifications under article 4 of the Covenant and other questions raised during the discussion in relation to the reporting system and the obligations of States parties under article 40 (see CCPR/C/SR.379).

345. The Committee was informed that the general comments adopted by the Committee at its thirteenth session 10/ had been transmitted to all States parties by a note verbale dated 18 September 1981.

346. At its sixteenth session, the Committee considered the draft general comments as prepared before and during the fifteenth and sixteenth sessions by its working group and adopted a number of general comments relating to articles 6, 7, 9 and 10 of the Covenant (see CCPR/C/SR.369, 370, 371, 373 and 378/Add.1 and annex V below).

IV. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

347. Under the Optional Protocol to the International Covenant on Civil and Political Rights, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit written communications to the Human Rights Committee for consideration. Twenty-seven of the 79 States which have acceded to or ratified the Covenant have accepted the competence of the Committee for dealing with individual complaints by ratifying or acceding to the Optional Protocol. These States are Barbados, Canada, the Central African Republic, Colombia, Costa Rica, Denmark, the Dominican Republic, Ecuador, Finland, Iceland, Italy, Jamaica, Madagascar, Mauritius, the Netherlands, Nicaragua, Norway, Panama, Peru, Saint-Vincent and the Grenadines, Senegal, Suriname, Sweden, Trinidad and Tobago, Uruguay, Venezuela and Zaire. No communicaion can be received by the Committee if it concerns a State party to the Covenant which is not also a party to the Optional Protocol.

348. Consideration of communications under the Optional Protocol takes place in closed meetings (article 5 (3) of the Optional Protocol). All documents pertaining to the work of the Committee under the Optional Protocol (submission from the parties and other working documents of the Committee) are confidential. The texts of final decisions of the Committee, consisting of views adopted under article 5 (4) of the Optional Protocol, are however made public. This may also apply to such other decisions which the Committee decides to make public.

349. In carrying out its work under the Optional Protocol, the Committee is assisted by Working Groups on Communications, consisting of not more than five of its members, which submit recommendations to the Committee on the actions to be taken at the various stages in the consideration of each case. A working group may also decide on its own to request additional information or observations from the parties on questions relevant to the admissibility of a communication. 14/ The Committee has also designated individual members to act as Special Rapporteurs in a number of cases. The Special Rapporteurs place their recommendations before the Committee for consideration.

350. Since the Committee started its work under the Optional Protocol at its second session in 1977, 124 communications have been placed before it for consideration (102 of these were placed before the Committee from its second to its thirteenth session; 22 further communications have been placed before the Committee since then, i.e. at its fourteenth, fifteenth and sixteenth sessions, covered by the present report). During these six years some 249 formal decisions have been adopted. A publication intended to contain a selection of these decisions, in a suitable edited form, is in preparation.

351. The status of the 124 communications placed before the Human Rights Committee for consideration, so far, is as follows:

(a) Concluded by views under article 5 (4) of the Optional Protocol:	32
(b) Concluded in other manner (inadmissible, discontinued, suspended or withdrawn):	40
(c) Declared admissible, not yet concluded:	21

(d) Pending at pre-admissibility stage (18 thereof transmitted to the State party under rule 91 of the Committee's provisional rules of procedure): 31

352. At its fourteenth session, held from 9 to 30 October 1981, the Human Rights Committee, or its Working Group on Communications, examined 21 communications submitted to the Committee under the Optional Protocol. The Committee concluded consideration of two cases by adopting its views thereon. These are cases nos. R.7/27 (Larry James Pinkney v. Canada) and R.14/63 (Raul Sendic Antonaccio v. Uruguay). Two communications were declared admissible and one inadmissible. Decisions were taken in eight cases under rule 91 of the Committee's provisional rules of procedure, requesting information on questions of admissibility from one or both of the parties. Consideration of two cases was suspended. Secretariat action was requested in the remaining six cases, mainly for the collection of further information from the authors to allow further consideration by the Committee.

353. At its fifteenth session, held from 22 March to 8 April 1982, the Human Rights Committee or its Working Group on Communications examined 42 communications submitted to the Committee under the Optional Protocol. The Committee concluded consideration of nine cases by adopting its views thereon. These are cases nos. R.2/10 (Alberto Altesor v. Uruguay); R.7/30 (Eduardo Bleier v. Uruguay); R.11/45 (Pedro Pablo Camargo on behalf of the husband of María Fanny Suarez de Guerrero v. Colombia); R.12/50 (Gordon C. Van Duzen v. Canada); R.13/57 (Vidal Martins v. Uruguay); R.14/61 (Leo R. Hertzberg et al. v. Finland); R.15/64 (Consuelo Salgar de Montejo v. Colombia); R.17/70 (Mirta Cubas Simones v. Uruguay); and R.18/73 (Mario Teti Izquierdo v. Uruguay). Seven communications were declared admissible and one inadmissible. Decisions were taken in six cases under rule 91 of the Committee's provisional rules of procedure requesting information on questions of admissibility from one or both of the parties. Secretariat action was requested in the remaining 19 cases (10 of which concern in substance the same matter, submitted individually by 10 alleged victims), mainly for the collection of further information from the authors to allow further consideration by the Committee.

354. At its sixteenth session, held from 12 to 30 July 1982, the Human Rights Committee or its Working Group on Communications examined 24 communications submitted to the committee under the Optional Protocol. The Committee concluded consideration of two cases by adopting its views thereon. These are cases nos. R.6/25 (Carmen Améndola Massiotti and Graciela Baritussio v. Uruguay) and R.11/46 (Orlando Fals Borda et al. v. Colombia). No communication was declared admissible but three inadmissible. Decisions were taken in 6 cases under rule 91 of the committee's rules of procedure, requesting information on questions of admissibility from one or both of the parties. Secretariat action was requested in the remaining 13 cases (some of which concern in substance the same matter, submitted individually by several alleged victims), mainly for the collection of further information from the authors to allow further consideration by the committee.

355. The text of the views adopted by the Committee at its fourteenth, fifteenth and sixteenth sessions is reproduced in annexes VII to XIX of the present report. The text of one decision on inadmissibility, adopted at the Committee's sixteenth session (R.26/121, A.M. v. Denmark), is reproduced in annex XX, together with an individual opinion submitted by a Committee member.

356. The various stages in the consideration by the Human Rights Committee of communications under the Optional Protocol are described in the Committee's last annual report to the General Assembly. 15/ The relevant parts of that report are reproduced in annex VI to the present report.

357. A number of issues pertaining to questions relating to the admissibility of communications have been dealt with in the Committee's earlier reports to the General Assembly. These issues concerned, in particular, (a) the standing of the author; (b) the relevance of the date on which the Covenant and the Optional Protocol have entered into force for the State party concerned and events alleged to have taken place prior to that date; (c) the application of article 5 (2) (a) of the Optional Protocol which precludes consideration by the Committee if the same matter is being examined under another procedure of international investigation or settlement and (d) the application of article 5 (2) (b) of the Optional Protocol concerning the exhaustion of domestic remedies. The conditions of admissibility set out in article 3 of the Optional Protocol (relating to anonymous communications, abuse of the right of submission and inadmissibility of communications which are considered incompatible with the provisions of the Covenant) have also been relevant to the examination of a number of communications. 16/ (For reference, the reader is referred to the Committee's last annual report.)

358. The issues already reflected in earlier reports and referred to in paragraph 357 above, have continued to be the subject of decisions adopted by the Committee at its fourteenth, fifteenth and sixteenth sessions. As regards questions of admissibility, the Committee has also taken into account reservations made by States parties precluding consideration of communications if the same matter has been considered under another procedure of international investigation or settlement. In that connexion, the Committee has recognized that consideration by the European Commission of Human Rights constitutes another procedure of international investigation within the meaning of article 5 (2) (a) of the Optional Protocol.

V. FUTURE MEETINGS OF THE COMMITTEE

359. At its sixteenth session, the Committee confirmed its calender of meetings for 1983 and 1984 as suggested by the Division of Conferences and General Services. The eighteenth session would be held at United Nations Headquarters from 21 March to 8 April 1983, the nineteenth session at the United Nations Office at Geneva from 11 to 29 July 1983, the twentieth session at Geneva from 24 October to 11 November 1983, the twenty-first session at United Nations Headquarters from 26 March to 13 April 1984, the twenty-second session at the United Nations Office at Geneva from 9 to 27 July 1984 and the twenty-third session at Geneva from 22 October to 9 November 1984, and that in each case the working groups would meet during the week preceding the opening of each session.

VI. ADOPTION OF THE REPORT

360. At its 381st and 382nd meetings on 29 and 30 July 1982, the Committee considered the draft of its sixth annual report covering the activities of the Committee at its fourteenth, fifteenth and sixteenth sessions, held in 1981 nd 1982. The report, as amended in the course of the discussions, was adopted by the Committee unanimously.

Notes

1/ See Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 40 (A/35/40), para. 19, and Supplement No. 40 (A/36/40), paras. 23 and 24.

2/ Ibid.

3/ For the views exchanged between the members of the Committee in this respect, see CCPR/C/SR.338.

4/ At the 342nd, 343rd and 344th meetings (see CCPR/C/SR.342, 343 and 344).

5/ Official Records of the General Assembly, Thirty-second Session, Supplement No. 44 (A/32/44), annex IV.

6/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex V.

7/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII, general comment 2/13.

8/ For the views exchanged by members, see CCPR/C/SR.379.

9/ Human Rights: A compilation of International Instruments (United Nations publication, Sales No. E.78.XIV.2) pp. 65-72.

10/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII.

11/ The initial report of Jordan (CCPR/C/1/Add.24) was considered by the Committee at its 103rd meeting, on 1 August 1978; see CCPR/C/SR.103 and Official Records of the General Assembly, Thirty-third session, Supplement No. 40 (A/33/40), paras. 399-408.

12/ For the text of the notification under article 4 of the Covenant, see document CCPR/C/2/Add.3.

13/ See Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex V.

14/ The authority for the establishment of these working groups and the scope of their functions are laid down in rules 89, 91 and 94 (1) of the Committee's provisional rules of procedure (CCPR/C/Rev.1).

15/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), sect. IV.

16/ Ibid., para. 398 and annex VIII.

ANNEX I

States parties to the International Covenant on Civil and Political Rights and to the Optional Protocol and States which have made the declaration under article 41 of the covenant, as at 30 July 1982

A. States parties to the International Covenant on Civil and Political Rights

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Australia	13 August 1980	13 November 1980
Austria	10 September 1978	10 December 1978
Barbados	5 January 1973 (a)	23 March 1976
Bulgaria	21 September 1970	23 March 1976
Byelorussian Soviet Socialist Republic	12 November 1973	23 March 1976
Canada	19 May 1976	19 August 1976
Central African Republic	8 May 1981 (a)	8 August 1981
Chile	10 February 1972	23 March 1976
Colombia	29 October 1969	23 March 1976
Costa Rica	29 November 1968	23 March 1976
Cyprus	2 April 1969	23 March 1976
Czechoslovakia	23 December 1975	23 March 1976
Democratic People's Republic of Korea	14 September 1981 (a)	14 December 1981
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 (a)	4 April 1978
Ecuador	6 March 1969	23 March 1976
Egypt	14 January 1982	14 April 1982
El Salvador	30 November 1979	29 February 1980
Finland	19 August 1975	23 March 1976

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

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
New Zealand	28 December 1978	28 March 1979
Nicaragua	12 March 1980 (a)	12 June 1980
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	28 April 1978	28 July 1978
Poland	18 March 1977	18 June 1977
Portugal	15 June 1978	15 September 1978
Romania	9 December 1974	23 March 1976
Rwanda	16 April 1975 (a)	23 March 1978
Saint Vincent and the Grenadines	9 November 1981 (a)	9 February 1982
Senegal	13 February 1978	13 May 1978
Spain	27 April 1977	27 July 1977
Sri Lanka	11 June 1980 (a)	11 September 1980
Suriname	28 December 1976 (a)	28 March 1977
Sweden	6 December 1971	23 March 1976
Syrian Arab Republic	21 April 1969 (a)	23 March 1976
Trinidad and Tobago	21 December 1978 (a)	21 March 1979
Tunisia	18 March 1969	23 March 1976
Ukrainian Soviet Socialist Republic	12 November 1973	23 March 1976
Union of Soviet Socialist Republics	16 October 1973	23 March 1976
United Kingdom of Great Britain and Northern Ireland	20 May 1976	20 August 1976
United Republic of Tanzania	11 June 1976 (a)	11 September 1976
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Yugoslavia	2 June 1971	23 March 1976
Zaire	1 November 1976 (a)	1 February 1977

B. States parties to the Optional Protocol

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Barbados	5 January 1973 (a)	23 March 1976
Canada	19 May 1976 (a)	19 August 1976
Central African Republic	8 May 1981 (a)	8 August 1981
Colombia	29 October 1969	23 March 1976
Costa Rica	29 November 1968	23 March 1976
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 (a)	4 April 1978
Ecuador	6 March 1969	23 March 1976
Finland	19 August 1975	23 March 1976
Iceland	22 August 1979 (a)	22 November 1979
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Madagascar	21 June 1971	23 March 1976
Mauritius	12 December 1973 (a)	23 March 1976
Netherlands	11 December 1978	11 March 1979
Nicaragua	12 March 1980 (a)	12 June 1980
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	3 October 1980	3 January 1981
Saint Vincent and the Grenadines	9 November 1981 (a)	9 February 1982
Senegal	13 February 1978	15 May 1978
Suriname	28 December 1976 (a)	28 March 1977
Sweden	6 December 1971	23 March 1976
Trinidad and Tobago	14 November 1980 (a)	14 February 1981

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Zaire	1 November 1976 (a)	1 February 1977

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

State party	Valid from	Valid until
Austria	10 September 1978	Indefinitely
Canada	29 October 1979	Indefinitely
Denmark	23 March 1976	22 March 1983
Finland	19 August 1975	Indefinitely
Germany, Federal Republic of	28 March 1979	27 March 1986
Iceland	22 August 1979	Indefinitely
Italy	15 September 1978	Indefinitely
Netherlands	11 December 1978	Indefinitely
New Zealand	28 December 1978	Indefinitely
Norway	23 March 1976	Indefinitely
Senegal	5 January 1981	Indefinitely
Sri Lanka	11 June 1980	Indefinitely
Sweden	23 March 1976	Indefinitely
United Kingdom of Great Britain and Northern Ireland	20 May 1976	Indefinitely

ANNEX II

Membership of the Human Rights Committee

Name of member	Country of nationality
Mr. Andrés AGUILAR**	Venezuela
Mr. Mohammed AL DOURI**	Iraq
Mr. Nèjib BOUZIRI*	Tunisia
Mr. Abdoulaye DIEYE*	Senegal
Mr. Felix ERMACORA**	Austria
Sir Vincent EVANS**	United Kingdom of Great Britain and Northern Ireland
Mr. Bernhard GRAEFRATH*	German Democratic Republic
Mr. Vladimir HANGA**	Romania
Mr. Leonte HERDOCIA ORTEGA**	Nicaragua
Mr. Dejan JANCA*	Yugoslavia
Mr. Rajsoomer LALLAH*	Mauritius
Mr. Andreas V. MAVROMMATIS**	Cyprus
Mr. Anatoly Petrovish MOVCHAN**	Union of Soviet Socialist Republics
Mr. Torkel OPSAHL*	Norway
Mr. Julio PRADO VALLEJO*	Ecuador
Mr. Waleed SADI*	Jordan
Mr. Walter TARNOPOLSKY**	Canada
Mr. Christian TOMUSCHAT*	Germany, Federal Republic of

---

* Term expires on 31 December 1982.

** Term expires on 31 December 1984.

ANNEX III

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

A. Initial reports

States parties	Date due	Date of submission	Date of reminder(s) sent to States whose reports have not yet been submitted
Australia	12 November 1981	11 November 1981	
Dominican Republic	3 April 1979	NOT YET RECEIVED	(1) 25 April 1980 (2) 27 August 1980 (3) 27 November 1981
El Salvador	28 February 1981	NOT YET RECEIVED	(1) 14 May 1982
France	3 February 1982	3 May 1982	
Gambia	21 June 1980	NOT YET RECEIVED	(1) 7 December 1981 (2) 14 May 1982
India	9 July 1980	NOT YET RECEIVED	(1) 7 December 1981
Mexico	22 June 1982	19 March 1982	
New Zealand	27 March 1980	11 January 1982	
Nicaragua	11 June 1981	12 March 1982	
Panama	7 June 1978	NOT YET RECEIVED	(1) 14 May 1979 (2) 23 April 1980 (3) 29 August 1980
Sri Lanka	10 September 1981	NOT YET RECEIVED	(1) 14 May 1982
Trinidad and Tobago	20 March 1980	NOT YET RECEIVED	(1) 7 December 1981
Uruguay	22 March 1977	29 January 1982	
Zaire	31 January 1978	NOT YET RECEIVED	(1) 14 May 1979 (2) 23 April 1980 (3) 29 August 1980 (4) 31 March 1982

a/ From 2 August 1981 to 30 July 1982 (end of thirteenth session to end of sixteenth session).

B. Additional information submitted subsequent to the examination of the initial reports by the Committee

State party	Date of submission
Jordan	22 January 1982
Kenya	4 May 1982
Venezuela	28 March 1982

ANNEX IV

Decision on periodicity a/ b/

1. Under article 40 of the Covenant, States parties have undertaken to submit reports to the Human Rights Committee:

(a) Within one year of the entry into force of the Covenant for the State party concerned (initial reports);

(b) Thereafter, whenever the Committee so requests (subsequent reports).

2. In accordance with article 40, paragraph 1 (b), the Human Rights Committee requests:

(a) States parties which have submitted their initial reports or additional information relating to their initial reports before the end of the thirteenth session to submit subsequent reports every five years from the consideration of their initial report or their additional information;

(b) Other States parties to submit subsequent reports to the Committee every five years from the date when their initial report was due.

This is without prejudice to the power of the Committee, under article 40, paragraph 1 (b), of the Covenant, to request a subsequent report whenever it deems appropriate.

3. In such cases where a State party submits additional information within one year, or such other period as the Committee may decide, following the examination of its initial report or of any subsequent periodic report and the additional information is examined at a meeting with representatives of the reporting State, the Committee will, if appropriate, defer the date for the submission of the State party's next periodic report.

Notes

a/ As amended by the Committee at its 380th meeting (sixteenth session) held on 28 July 1982 (CCPR/C/SR.380).

b/ Also issued separately in document CCPR/C/19/Rev.1.

ANNEX V

General comments under article 40, paragraph 4 of the Covenant a/ b/ c/

General comment 6 (16) d/ (article 6)

1. The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (article 4). However, the Committee has noted that quite often the information given concerning article 6 has been limited to only one or other aspect of this right. It is a right which should not be interpreted narrowly.

2. The Committee observes that war and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year. Under the Charter of the United Nations the threat or use of force by any State against another State, except in exercise of the inherent right of self-defence, is already prohibited. The Committee considers that States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. Every effort they make to avert the danger of war, especially thermo-nuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life. In this respect, the Committee notes, in particular, a connexion between article 6 and article 20, which states that the law shall prohibit any propaganda for war (paragraph 1) or incitement to violence (paragraph 2) as therein described.

3. The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.

4. States parties should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life. Furthermore, States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.

5. Moreover, the Committee has noted that the right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connexion, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adoping measures to eliminate malnutrition and epidemics.

6. While it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally, they are obliged to limit its use and, in

particular, to abolish it for other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes". The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the Committee. The Committee notes that a number of States have already abolished the death penalty or suspended its application. Nevertheless, States' reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.

7. The Committee is of the opinion that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.

General comment 7 (16) (article 7)

1. In examining the reports of States parties, members of the Committee have often asked for further information under article 7 which prohibits, in the first place, torture or cruel, inhuman or degrading treatment or punishment. The Committee recalls that even in situations of public emergency such as are envisaged by article 4 (1) this provision is non-derogable under article 4 (2). Its purpose is to protect the integrity and dignity of the individual. The Committee notes that it is not sufficient for the implementation of this article to prohibit such treatment or punishment or to make it a crime. Most States have penal provisions which are applicable to cases of torture or similar practices. Because such cases nevertheless occur, it follows from article 7, read together with article 2 of the Covenant, that States must ensure an effective protection through some machinery of control. Complaints about ill-treatment must be investigated effectively by competent authorities. Those found guilty must be held responsible, and the alleged victims must themselves have effective remedies at their disposal, including the right to obtain compensation. Among the safeguards which may make control effective are provisions against detention incommunicado, granting, without prejudice to the investigation, persons such as doctors, lawyers and family members access to the detainess; provisions requiring that detainees should be held in places that are publicly recognized and that their names and places of detention should be entered in a central register available to persons concerned, such as relatives; provisions making confessions or other evidence obtained through torture or other treatment contrary to article 7 inadmissible in court; and measures of training and instruction of law enforcement officials not to apply such treatment.

2. As appears from the terms of this article, the scope of protection required goes far beyond torture as normally understood. It may not be necessary to draw sharp distinctions between the various prohibited forms of treatment or punishment. These distinctions depend on the kind, purpose and severity of the particular treatment. In the view of the Committee the prohibition must extend to

corporal punishment, including excessive chastisement as an educational or disciplinary measure. Even such a measure as solitary confinement may, according to the circumstances, and especially when the person is kept incommunicado, be contrary to this article. Moreover, the article clearly protects not only persons arrested or imprisoned, but also pupils and patients in educational and medical institutions. Finally, it is also the duty of public authorities to ensure protection by the law against such treatment even when committed by persons acting outside or without any official authority. For all persons deprived of their liberty, the prohibition of treatment contrary to article 7 is supplemented by the positive requirement of article 10 (1) of the Covenant that they shall be treated with humanity and with respect for the inherent dignity of the human person.

3. In particular, the prohibition extends to medical or scientific experimentation without the free consent of the person concerned (article 7, second sentence). The Committee notes that the reports of States parties have generally given little or no information on this point. It takes the view that at least in countries where science and medicine are highly developed, and even for peoples and areas outside their borders if affected by their experiments, more attention should be give to the possible need and means to ensure the observance of this provision. Special protection in regard to such experiments is necessary in the case of persons not capable of giving their consent.

General comment 8 (16) (article 9)

1. Article 9 which deals with the right to liberty and security of persons has often been somewhat narrowly understood in reports by States parties, and they have therefore given incomplete information. The Committee points out that paragraph 1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc. It is true that some of the provisions of article 9 (part of paragraph 2 and the whole of paragraph 3) are only applicable to persons against whom criminal charges are brought. But the rest, and in particular the important guarantees laid down in paragraph 4, i.e. the right to control by a court of the legality of the detention, applies to all persons deprived of their liberty by arrest or detention. Furthermore, States parties have in accordance with article 2 (3) also to ensure that an effective remedy is provided in other cases in which an individual claims to be deprived of his liberty in violation of the Covenant.

2. Paragraph 3 of article 9 requires that in criminal cases any person arrested or detained has to be brought "promptly" before a judge or other officer authorized by law to exercise judicial power. More precise time limits are fixed by law in most States parties and, in the view of the Committee, delays must not exceed a few days. Many States have given insufficient information about the actual practices in this respect.

3. Another matter is the total length of detention pending trial. In certain categories of criminal cases in some countries this matter has caused some concern within the Committee, and members have questioned whether their practices have been in conformity with the entitlement "to trial within a reasonable time or to release" under paragraph 3. Pre-trial detention should be an exception and as short as possible. The Committee would welcome information concerning mechanisms existing and measures taken with a view to reducing the duration of such detention.

4. Also if so-called preventive detention is used, for reasons of public security, it must be controlled by these same provisions, i.e. it must not be arbitrary, and must be based on grounds and procedures established by law (paragraph 1), information available (paragraph 4) as well as compensation in the case of a breach (paragraph 5). And if, in addition, criminal charges are brought in such cases, the full protection of article 9 (2) and (3), as well as article 14, must also be granted.

General comment 9 (16) (article 10)

1. Article 10, paragraph 1, of the Covenant provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. However, by no means all the reports submitted by States parties have contained information on the way in which this paragraph of the article is being implemented. The Committee is of the opinion that it would be desirable for the reports of States parties to contain specific information on the legal measures designed to protect that right. The Committee also considers that reports should indicate the concrete measures being taken by the competent State organs to monitor the mandatory implementation of national legislation concerning the humane treatment and respect for the human dignity of all persons deprived of their liberty that paragraph 1 requires.

2. The Committee notes in particular that paragraph 1 of this article is generally applicable to persons deprived of their liberty, whereas paragraph 2 deals with accused as distinct from convicted persons, and paragraph 3 with convicted persons only. This structure quite often is not reflected in the reports, which mainly have related to accused and convicted persons. The wording of paragraph 1, its context - especially its proximity to article 9, paragraph 1, which also deals with all deprivations of liberty - and its purpose support a broad application of the principle expressed in that provision. Moreover, the Committee recalls that this article supplements article 7 as regards the treatment of all persons deprived of their liberty.

3. The humane treatment and the respect for the dignity of all persons deprived of their liberty is a basic standard of universal appliction which cannot depend entirely on material resources. While the Committee is aware that in other respects the modalities and conditions of detention may vary with the available resources, they must always be applied without discrimination, as required by article 2 (1).

4. Ultimate responsibility for the observance of this principle rests with the State as regards all institutions where persons are lawfully held against their will, not only in prisons but also, for example, hospitals, detention camps or correctional institutions.

5. Subparagraph 2 (a) of the article provides that, save in exceptional circumstances, accused persons shall be segregated from convicted persons and shall receive separate treatment appropriate to their status as unconvicted persons. Some reports have failed to pay proper attention to this direct requirement of the Covenant and, as a result, to provide adequate information on the way in which the treatment of accused persons differs from that of convicted persons. Such information should be included in future reports.

6. Subparagraph 2 (b) of the article calls, inter alia, for accused juvenile persons to be separated from adults. The information in reports shows that a number of States are not taking sufficient account of the fact that this is an unconditional requirement of the Covenant. It is the Committee's opinion that, as is clear from the text of the Covenant, deviation from States parties' obligations under subparagraph 2 (b) cannot be justified by any consideration whatsoever.

7. In a number of cases, the information appearing in reports with respect to paragraph 3 of the article has contained no concrete mention either of legislative or of administrative measures or of practical steps to promote the reformation and social rehabilitation of prisoners, by, for example, education, vocational training and useful work. Allowing visits, in particular by family members, is normally also such a measure which is required for reasons of humanity. There are also similar lacunae in the reports of certain States with respect to information concerning juvenile offenders, who must be segregated from adults and given treatment appropriate to their age and legal status.

8. The Committee further notes that the principles of humane treatment and respect for human dignity set out in paragraph 1 are the basis for the more specific and limited obligations of States in the field of criminal justice set out in paragraphs 2 and 3 of article 10. The segregation of accused persons from convicted ones is required in order to emphasize their status as unconvicted persons who are at the same time protected by the presumption of innocence stated in article 14, paragraph 2. The aim of these provisions is to protect the groups mentioned, and the requirements contained therein should be seen in that light. Thus, for example, the segregation and treatment of juvenile offenders should be provided for in such a way that it promotes their reformation and social rehabilitation.

Notes

a/ For the nature and purpose of the general comments, see Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII, introduction.

b/ Adopted by the Committee at its 378th meeting (sixteenth session) held on 27 July 1982.

c/ Also issued separately in document CCPR/C/21/Add.1.

d/ The number in parenthesis indicates the session at which the general comment was considered.

ANNEX VI

Brief description of the various stages in the consideration of communications under the Optional Protocol to the International Covenant on Civil and Political Rights a/

[Excerpts from the fifth annual report of the Human Rights Committee to the General Assembly]

397. Consideration of communications under the Optional Protocol is, in practice, divided into several stages. In view of the periodicity of the Committee's meetings (normally three sessions each year) and the various time limits established either by the Optional Protocol (article 4(2)) or by the Committee, in accordance with its provisional rules of procedure, for the submission of information, clarifications, observations, or explanations by either party, the duration for the consideration of a single case may extend for several years. If a case is declared inadmissible or its consideration is discontinued for another reason at a procedural stage, this time is normally much shorter.

397.1 Although consideration of communications may be described as falling mainly into two stages, i.e. (a) consideration prior to admissibility and (b) consideration on the merits after a communication has been declared admissible, the following explanatory observations may further elucidate the Committee's methods of work as it has evolved in practice:

(i) Gathering of basic information:

397.2 Under rules 78(2) and 80 of the Committee's provisional rules of procedure, the Secretary-General b/ may request clarifications from an author of a communiction on a number of points of fact which are necessary for any meaningful consideration by the Committee (or its Working Group on Communications) of the case. This information gathering process does not, however, preclude the communication from being drawn to the attention of the Committee (or its Working Group on Communications).

(ii) Initial consideration:

397.3 The Working Group on Communications examines the material placed before it by the Secretariat and decides (a) whether further information should be sought from the author of the communication on issues relevant to the question of its admissibility; (b) whether the communication should at the same time be transmitted to the State party (or should only be transmitted to the State party) requesting observations or information relevant to the question of admissibility; (c) whether to recommend to the Committee that it decide on either of the two possibilities listed in (a) or (b) above; (d) whether to recommend to the Committee that the communication be declared inadmissible under the Optional Protocol (or that consideration should be discontinued) because of clear deficiencies that cannot be remedied by seeking further information from the author (conditions for admissibility are laid down in articles 1, 2, 3, 5 (2) (a) and 5 (2) (b) of the Optional Protocol).

397.4 At the first round of discussion, the Committee decides on any recommendation from its Working Group, or decides to take a different approach than

that recommended by the Working Group. It may also decide at this stage (or at any later stage) to designate a Special Rapporteur for a case. Any decision requesting additional information or observations from either party, sets out a time limit for such submission.

(iii) Further consideration prior to admissibility:

397.5 If a case goes forward from the first round of discussion, it is subject to further consideration by the Committee at a later session (based again on any recommendations which may be received from its Working Group on Communications or a Special Rapporteur, if assigned). The Committee may approve, change or reject any recommendation placed before it. Again further information may be sought from either party (with new time limits for the submission of such information), but the aim at this round of discussion is to declare the communication admissible, inadmissible or discontinued (possibly suspended, e.g. because contact has been lost with the author of the communication). No communication can be declared admissible before the State party has received a copy thereof and has been given an opportunity to furnish such information or observations as it deems relevant to the question of the admissibility of the communication.

(iv) Consideration on the merits:

397.6 Any communication declared admissible is subject to consideration on the merits of the claims presented by the authors. At this stage the State party has six months to submit its explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it (article 4 (2) of the Optional Protocol). Under rule 93 (3) of its provisional rules of procedure the Committee usually grants six weeks for the author of the communications to provide any additional information or observations which he may be prompted to make after the State party's submission under article 4 (2) of the Optional Protocol has been communicated to him. c/

397.7 Even at this stage in the consideration of a case, the Committee may decide that specific additional information is needed from either party, before it reaches its final conclusion by adopting its views under article 5 (4) of the Optional Protocol. The Committee has, therefore, on a number of occasions resorted to the method of adopting Interim decisions aimed at collecting further information from one party or both, before adopting its final views.

397.8 Any of the stages described in paragraphs 397.3 to 397.7 above may entail discussions extending for more than one session of the Committee. This is necessitated both by established deadlines for either party, the principle of equality of arms and by the limited time available at each session.

Notes

a/ See Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), paras. 397 to 397.8.

b/ On behalf of the Secretary-General, the Division of Human Rights acts as the Secretariat of the Human Rights Committee.

c/ At all stages in the consideration of a communication, the Committee works on the basis of the principle of equality of arms, giving each party an opportunity to comment on any information submitted at the Committee's request by the other party.

ANNEX VII

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. R.7/27

Submitted by: Larry James Pinkney

Alleged victim: the author

State party concerned: Canada

Date of communication: 25 November 1977 (date of initial letter)

The Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 29 October 1981,

Having concluded its consideration of communication R.7/27 submitted to the Committee by Larry James Pinkney under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party concerned,

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of the communication (initial letter dated 25 November 1977 and a further letter dated 7 April 1978 as well as numerous further letters received from the author during the course of the proceedings) is a citizen of the United States of America who is serving a prison sentence in Canada. He describes himself as a black political activist, having been involved in the activities of several political organizations since 1967 (Black Panther Party (1967-1968), Black National Draft Resistance League (Chairman) (1969-1970), San Francisco Black Caucus (Co-Chairman) (1970-1973), Minister of Interior for the Republic of New Africa (1970-1972) under the name of Makua Atana and, since 1974, Chairman of the Central Committee of the Black National Independence Party). He entered Canada as a visitor in September 1975. On 10 May 1976 he was arrested by police authorities in Vancouver, British Columbia, on charges under the Canadian Criminal Code and remanded to the Lower Mainland Regional Correction Centre at Oakalla British Columbia, pending his trial on certain criminal charges. Because of his arrest his continued presence in Canada came to the attention of immigration officials and, consequently during the period when he was incarcerated at the Correction Centre, proceedings were taken under the Immigration Act to determine whether he was

lawfully in Canada. These proceedings took place during the period between 21 May 1976 and 10 November 1976 when an order of deportation was issued against him. On 9 December 1976 he was convicted by the County Court of British Columbia of the charge of extortion and on 7 January 1977 he was sentenced to a term of five years' imprisonment. On 8 February 1977, he sought leave to appeal against his conviction and sentence to the British Columbia Court of Appeal. He was transferred to the British Columbia Penitentiary on 11 February 1977. On 6 December 1979 the Court of Appeal dismissed his appeal against conviction and adjourned his appeal against sentence sine die.

2. Mr. Pinkney claims (a) that he had been denied a fair hearing and review of his case in regard to the deportation order, which is due to come into effect on his release from prison, (b) that he is the victim of a mistrial in regard to the criminal charges brought against him, and (c) that he has been subjected to wrongful treatment while in detention. He alleges that, in consequence, the State party has violated articles 10 (1) and (2) (a), 13, 14 (1) and (3) (b), 16 and 17 (1) of the International Covenant on Civil and Political Rights.

3. By its decision of 18 July 1978 the Human Rights Committee transmitted Mr. Pinkney's communication under rule 91 of the provisional rules of procedure to the State party concerned requesting information and observations relevant to the question of admissibility of the communication.

4. The Committee also communicated its decision to Mr. Pinkney.

5. The State party's submissions on the question of admissibility were contained in letters of 18 June 1979 and 10 January 1980 and further comments from Mr. Pinkney were contained in letters of 11 and 15 July 1979 and 21 and 22 February 1980.

6. On 2 April 1980 the Human Rights Committee decided:

(a) That the communication was inadmissible in so far as it related to the deportation proceedings and the deportation order issued against Mr. Pinkney;

(b) That the communication was admissible in so far as it related to Mr. Pinkney's trial and conviction on the charge of extortion;

(c) That the communication was admissible in so far as it related to Mr. Pinkney's treatment at the Lower Mainland Regional Correction Centre on or after 19 August 1976.

7. In its observations under article 4 (2) of the Optional Protocol, dated 21 October 1980, the State party submits that there is no merit to the author's allegations which were found admissible by the Committee and that they should therefore be dismissed. Further submissions regarding the admissibility and merits of the case were received in a note of 22 July 1980 from the State party and in letters of 10 and 22 December 1980 and 30 April, 24 June, 27 August and 18 September 1981 from the author of the communication and his lawyer.

(a) The claims concerning the deportation order

8. The Human Rights Committee, having examined the further submissions regarding the admissibility of the communication, has found no grounds to reconsider its decision of 2 April 1980.

(b) The claims concerning the alleged mistrial

9. Mr. Pinkney alleges that prior to his arrest in May 1976, he has spent over three months in Vancouver compiling specific information on alleged smuggling activities of certain East Indian Asian immigrants in Canada, involving smuggling out of Africa into Europe, Canada and the United States, with the comlicity of Canadian Immigration officials. He maintains that he was doing this work on behalf of the Governing Central Committee of the Black National Independence Party (BNIC) with a view to putting an end to these illegal activities, which he contends were to the detriment of the economy of African countries. The author further indicates that, during the period prior to his arrest, he had managed to establish contact with a relative of the persons involved in the smuggling of diamonds and large sums of money from Kenya, Tanzania, Uganda and Zaire into Canada. He states that the relative revealed to him many details about these smuggling activities, that he recorded this information on tape, that he made copies of the letters showing dates and amounts of transactions, names of people involved and other details and that he placed this material in a briefcase kept in a 24-hour public locker. He asserts that in one of the letters which was copied reference was made to a gift in cash to certain Canadian immigration offices for their assistance and also to the necessity to pay more money to a BOAC airline pilot for his help. The author maintains that he periodically informed by telephone the Central Committee of the BNIC and a security official at the Kenyan Embassy in Washington of his investigation and that he recorded these conversations and placed the tapes in the briefcase. The author maintains that after he was arrested, in May 1976, the briefcase was discovered and confiscated by the police and that the material necessary for his defence mysteriously disappeared before his trial. He alleges that these facts were ignored by the trial court, that he was accused of having used the information in his possession with a view to obtaining money from the persons allegedly responsible for the smuggling, that evidence that he had no intention of committing extortion was deliberately withheld, and that he was convicted on the basis of evidence which had been tampered with and distorted but which was nevertheless presented by the police and crown attorney.

10. From the information submitted to the Committee it appears that Mr. Pinkney was convicted by the County Court of British Columbia on a charge of extortion on 9 December 1976. The sentence of five years' imprisonment was pronounced on 7 January 1977. On 8 February 1977, he sought leave to appeal against his conviction and his sentence to the British Columbia Court of Appeal. He argued that he had not been able to make full answer and defence to the charge of extortion before the trial court because of alleged inability of the authorities to produce the missing briefcase. His appeal, however, was not heard until 34 months later. This delay, which the Government of British Columbia described as "unusual and unsatisfactory", was due to the fact that the trial transcripts were not produced until June 1979. Mr. Pinkney alleges that the delay in the hearing, due to the lack of the trial transcripts, was a deliberate attempt by the State party to block the exercise of his right of appeal. The State party rejects this allegation and submits that, notwithstanding the efforts of officials of the Ministry of the Attorney General of British Columbia to hasten the production of the trial transcripts, they were not completed until June 1979, "because of various administrative mishaps in the Official Reporters' Office". On 6 December 1979, that is 34 months after leave to appeal was applied for, the British Columbia Court of Appeal heard the application, granted leave to appeal and on the same day, after hearing Mr. Pinkney's legal counsel (i) dismissed the appeal against conviction, and (ii) adjourned the appeal against sentence sine die, to be heard at a time convenient for Mr. Pinkney's counsel.

11. Mr. Pinkney claims violations of article 14 (1) and (3) (b) of the Covenant in that he was not given a fair hearing or adequate time and facilities for the preparation of his defence since he was denied the right to produce the documents and tapes allegedly proving his innocence. He also claims that the long delay in hearing his appeal has resulted in violations of article 14 (3) (c) and (5).

12. As to Mr. Pinkney's claim that he was denied a fair trial because evidence was withheld which would have proven that he had no intent to commit the crime of extortion, the State party in its observations of 21 October 1980 under article 4 (2) of the Optional Protocol makes the following submission:

> "Mr. Pinkney was charged under section 305 of the Criminal Code:
>
> '305.(1) Everyone who, without reasonable justification or excuse and with intent to extort or gain anything by threats, accusations, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done is guilty of an indictable offence and is liable to imprisonment for 14 years.
>
> '(2) A threat to institute civil proceedings is not a threat for the purposes of this section.'
>
> "In order to prove that he had committed this offence, the Crown had to prove beyond reasonable doubt:
>
> (1) That the accused used threats to induce the doing of something;
>
> (2) That he did so with intent to extort or gain something, and
>
> (3) That he did so without reasonable justification or excuse.
>
> "In the present case the Crown met this burden of proof. Using tape recordings (and transcripts thereof) of two telephone conversations between Mr. Pinkney and his intended victims, it showed that he threatened to turn over the content of a stolen file containing information on the smuggling of money from Kenya to Canada as well as an application requesting that family allowance payments be made to a person who was not entitled to receive them under Canadian law to Canadian and Kenyan authorities unless he was paid the sum of $100,000, later reduced to $50,000. His Honour Judge Mackinnon, of the County of Vancouver, who presided at Mr. Pinkney's trial, indicated that, in the absence of any explanation, this evidence (which, it should be noted, Mr. Pinkney agreed with) was sufficint to support a conviction. Although Mr. Pinkney contended that when he threatened his intended victims he had no intention to extort money from them, but merely wanted to substantiate the information found in the above-mentioned file in order to maintain his reputation as a reliable informer with the Kenyan Embassy in the United States, the trial judge, after a study of the evidence adduced by both the Crown and the accused, including testimony by the accused, concluded that the communicant did intend to extort money. The trial judge noted that in a written statement dated 7 May 1976 which he had made to the police after his arrest, Mr. Pinkney made absolutely no mention of Kenya, smuggling activities or his attempt to verify information, but rather referred to the attempted extortions as a "business deal". The judge concluded that this "can only be

interpreted in this context as an exchange of the file for money" and that he could "put no other rational interpretation on this statement written by Pinkney himself ...". Furthermore, he indicated that additional evidence of Mr. Pinkney's intention could be found in various papers found in his apartment and largely in his handwriting. On these papers were written specific ideas concerning threats, plans to pick up the money and other matters which Mr. Pinkney denied having considered.

"At the communicant's trial, the Crown showed that he had intended to extort money. To this effect, the 7 May 1976 statement which Mr. Pinkney made to the police and the various papers found in his apartment were particularly decisive. In the face of such evidence, the defence of the accused failed. It is doubtful whether the alleged missing evidence would have been of any assistance to Mr. Pinkney. The trial judge was made aware, in the course of pleadings of the smuggling activities of Mr. Pinkney's intended victims. He also accepted as a fact that Mr. Pinkney was in contact with a representative of the Kenyan Embassy in the United States and that he had sent and intended to continue sending information to the Embassy. Part, if not all of the evidence which the communicant alleges to be missing was, therefore, available at trial. Quite evidently, part of this evidence was not pertinent: evidence of crimes which might have been committed by other individuals in Canada or abroad does not assist Mr. Pinkney in proving that he had no intention of committing an offence in Canada. The rest had some relevance to the accused defence but did not succeed in creating in the mind of the presiding judge a reasonable doubt as to the absence of criminal intent on the part of the accused. Considering the overwhelming proof of criminal intent adduced by the Crown, this is not surprising."

13. The State party also relies on the consideration of the case by the Court of Appeal in dismissing the appeal against conviction. The Court of Appeal had gone through the information and arguments about the allegedly missing evidence. It held in this respect that "if this matter had been as consequential as it is now suggested it was, much more strenuous efforts would have been taken at every stage of the proceedings of trial to endeavour to resolve the issue of the missing briefcase" and that the information put before it was "altogether too vague to support the submissions now advanced on behalf of the applicant". The Government adds: "In other words, Mr. Pinkney was unable to convince the Court (of Appeal) that the allegedly missing evidence existed, that it had been withheld by the Crown and was in any way relevant."

14. The Government's view is that the facts show:

(a) That in one form or another most if not all of the allegedly missing evidence was put before the trial judge and found not to be relevant or pertinent;

(b) That the communicant failed to exercise due diligence in order to obtain the allegedly missing evidence, evidence which he described as vital to his case;

(c) That he failed to exhaust all local remedies when he failed to ask the Supreme Court of Canada to grant him leave in order to ascertain whether in the present case there had occurred a breach of the rights to a full defence and to a fair hearing which are protected by the Criminal Code and the Canadian Bill of Rights.

15. Concerning the issue of the length of the proceedings before the Court of Appeal due to the delay in the production of the transcripts of the trial, the State party denies any allegation of wrongdoing, negligence or carelessness on the part of the Ministry of the Attorney-General. It acknowledges that the delay was due to "administrative mishaps in the Official Reporter's Office", but submits that responsibility must nevertheless rest with Mr. Pinkney in that he failed to seek an order from the Court of Appeal requiring production of the transcripts, as he was entitled to do under the Criminal Code and the Rules of the British Columbia Supreme Court.

16. In his reply of 22 December 1980, Mr. Pinkney's lawyer submits the following:

"(i) Missing evidence

"The following is a summary of evidence presented at Mr. Pinkney's trial:

"Mr. Pinkney was arrested by detectives and members of the Vancouver City Police at his apartment in the city of Vancouver on 7 May 1976. Just prior to that arrest, Vancouver police detectives conducted a search of that apartment and seized a large number of documents and other items. Subsequent to Mr. Pinkney's arrest, two black briefcases belonging to him were seized as well by police from a bus depot locker. Mr. Pinkney testified that he had been in possession of a grey briefcase in addition to the two black briefcases prior to his arrest. The briefcase that he alleges contained the materials vital to his defence was one of the black briefcases seized from the bus depot locker. He testified further that only the grey briefcase and one of the black briefcases had ever been returned to him. Detective Hope testified that he took two black briefcases to the police station in Vancouver, where the contents were cursorily examined. Detective Hope further testified that no list of the contents of those briefcases was ever made, and also testified that while he did not personally recall seeing any grey briefcase at the apartment of Mr. Pinkney and that he did not himself seize such a briefcase, other members of the police were present at that apartment and may have seized such a briefcase.

"There was evidence led at trial that indicated that both of the black briefcases were at one point in time given into the custody of the Royal Canadian Mounted Police, that the contents were photocopied by the R.C.M.P., and that both briefcases were then returned to Vancouver City Police. There was as well testimony that other agencies had shown interest in the contents of those briefcases, including the United States Federal Bureau of Investigation, Canadian Immigration, and the Royal Canadian Mounted Police Subversive Section.

"While Vancouver police records indicated that both black briefcases had been turned over to Mr. Pinkney's lawyer acting at that time, Ms. Patricia Connors, Ms. Connors herself gave evidence at trial indicating that she had recovered one grey briefcase and one black briefcase, and that when she signed the police record indicating that she had picked up two black briefcases, she had not carefully examined it and had signed it carelessly. Records from the Lower Mainland Regional Correctional Centre (Oakalla) the prison where Mr. Pinkney was detained pending his trial, indicated that one grey briefcase and one black briefcase were received by them for Mr. Pinkney.

"Mr. Pinkney testified of extensive attempts made by himself and by others on his behalf to recover the remaining black briefcase from the police, all of which were unsuccessful. He testified that these attempts commenced shortly after his arrest and well before his trial, and included an attempt to obtain the briefcase by order of a provincial court judge at the time of Mr. Pinkney's preliminary hearing and an attempt to seek the assistance of the Federal Minister of Justice Basford via letter.

"The foregoing summary of evidence led at Mr. Pinkney's trial is substantiated by the transcripts of those proceedings. Those transcripts are in the possession of ourselves as well as of representatives of the Province of British Columbia. They comprise some nine volumes, and can be made available to the Committee if requested.

"This summary of evidence is submitted at this time in response to the rather minimal summary provided in the State party's submission at pages 7 and 8. In addition, it is clear that counsel for Mr. Pinkney at trial sought an adjournment of that trial sine die on the basis of the evidence adduced concerning the briefcases and their contents, on the grounds that until the missing briefcase and contents were produced, Mr. Pinkney's right to make full answer and defence was imparied. The trial judge refused this application.

"(a) The State party argues that "most if not all of the allegedly missing evidence was put before the trial judge and found not to be relevant or pertinent".

"It is submitted on behalf of Mr. Pinkney that there is no basis to this submission. While mention of the contents of the missing briefcase was made at trial by Mr. Pinkney, this is hardly analogous to putting this evidence before the trial judge. The only issue at trial was whether Mr. Pinkney had the intent to extort money. His defence was that he was for political reasons testing the veractiy of information he had obtained, and that his method was to request money in return for the information. Clearly, the political motivations of Mr. Pinkney were extremely relevant, and if further evidence corroborating his evidence of political activity could have been produced, that may have been crucial. It is impossible to determine at this juncture what effect the presentation of all of Mr. Pinkney's evidence might have had on the trial judge's finding of credibility.

"(b) The State party further argues that Mr. Pinkney 'failed to exercise due dilingence in order to obtain the allegedly missing evidence'.

"It is respectfully submitted that this submission also is completely without merit and flies in the face of the evidence led at Mr. Pinkney's trial of the extensive efforts made by him to recover the missing evidence. It must as well be noted that Mr. Pinkney alleged that the missing briefcase was in the hands the police, and that from the date of his arrest until his trial, he was being held in custody at the Oakalla prison on remand. It is submitted that it is remarkable that he managed to make the efforts that he did to recover the missing evidence, and further that the evidence of the attempts made corroborate his allegations as to the vital nature of the missing evidence. The evidence led at trial indicating that the Vancouver police turned the black briefcase in question over to the Royal Canadian Mounted Police for examination and indicating the interest shown by other agencies,

including Canadian Immigration and the American F.B.I. further corroborates Mr. Pinkney's allegations concerning the nature of the evidence contained in the missing briefcase."

17. It is further submitted on Mr. Pinkney's behalf that the Government of British Columbia must be held responsible for delay resulting from mishaps in producing the trial transcripts and that the Court of Appeal itself, being aware of the delay, should also of its own motion have taken steps to expedite their production.

18. In its decision of 2 April 1980, the Human Rights Committee observed that allegations that a domestic court had committed errors of fact or law did not in themselves raise questions of violation of the Covenant unless it appeared that some of the requirements of article 14 might not have been complied with; Mr. Pinkney's complaints relating to his alleged difficulties in producing evidence in his defence and also the delay in producing the trial transcripts did appear to raise such issues.

19. The question now before the Committee is whether any facts have been shown which affected Mr. Pinkney's right to a fair hearing and a proper conduct of his defence. The Committee has carefully considered all the information before it in connexion with his trial and subsequent appeal against conviction and sentence.

20. As regards the allegedly missing evidence, it has been established that the question whether it existed, and, if so, whether it would be relevant, was considered both by the trial judge and by the Court of Appeal. It is true that in the absence of the allegedly missing material itself, the Court's findings depended on an assessment of the information before them. However, it is not the function of the Committee to examine whether this assessment by the Courts was based on errors of fact, or to review their application of Canadian law, but only to determine whether it was made in circumstances indicating that the provisions of the Covenant were not observed.

21. The Committee recalls that Mr. Pinkney was unable to convince the courts that such evidence would in any way have assisted his defence. Such a point is normally one on which the assessment of the domestic courts must be decisive. But in any event the Committee has not, in all the information before it, found any support for the allegation that material evidence was withheld by the Canadian authorities, depriving Mr. Pinkney of a fair hearing or adequate facilities for his defence.

22. As regards the next aspect, however, the Committee, having considered all the information relating to the delay of two and a half years in the production of the transcripts of the trial for the purposes of the appeal, considers that the authorities of British Columbia must be considered objectively responsible. Even in the particular circumstances this delay appears excessive and might have been prejudicial to the effectiveness of the right to appeal. At the same time, however, the Committee has to take note of the position of the Government that the Supreme Court of Canada would have been competent to examine these complaints. This remedy, nevertheless, does not seem likely to have been effective for the purpose of avoiding delay. The Committee observes on this point that the right under Article 14 (3) (c) to be tried without undue delay should be applied in conjunction with the right under Article 14 (5) to review by a higher tribunal, and that consequently there was in this case a violation of both of these provisions taken together.

(c) The claims concerning alleged wrongful treatment while in detention

23. Mr. Pinkney alleges that he has been subjected to continual racial insults and ill-treatment in prison. He claims, in particular, (i) that prison guards insulted him, humiliated him and physically ill-treated him because of his race, in violation of articles 10 (1) and 17 (1) of the Covenant, and (ii) that during his pre-trial detention he was not segregated from convicted persons, that his correspondence was arbitrarily interfered with and that his treatment as an unconvicted person was far worse than that given to convicted persons, in violation of articles 10 (1) and (2) (a) and 17 (1) of the Covenant.

24. The State party asserted that the Corrections Branch of the Department of the Attorney General of British Columbia undertook two separate investigations of the allegations of racial insults and on both occasions found no apparent evidence to support Mr. Pinkney's claims. Moreover, the State party maintained that these allegations of the author appeared in the context of sweeping and numerous accusations of wrongdoing by various federal and provincial government officials and by the courts in Canada. It therefore submitted that these allegations should be considered to be "an abuse of the right of submission" and declared inadmissible under article 3 of the Optional Protocol. In so far as the communication alleged that before conviction Mr. Pinkney was housed in the same wing of the Lower Mainland Regional Correction Centre as convicted persons and that his mail had been interfered with, the State party claimed that these allegations were not brought in writing to the attention of the appropriate authority, namely the Corrections Branch of the British Columbia Ministry of the Attorney General, by or on behalf of Mr. Pinkney (though he made other complaints and therefore was aware of the procedure) until the Branch became aware of his letter of 7 April 1978 to the Human Rights Committee. The State party therefore submitted that Mr. Pinkney had failed in this respect to exhaust all available domestic remedies before submitting his claims to the Committee. Mr. Pinkney, however, pointed out that he was informed that an investigation had been made into his complaints by the Attorney General's Office and that his charges were unsubstantiated.

25. The Human Rights Committee did not accept the State party's argument that the author's complaint concerning alleged racial insults should be declared inadmissible as an abuse of the right of submission. Moreover, the Committee was of the view that the author's complaints appeared to have been investigated by the appropriate authorities and dismissed and consequently it cannot be argued that domestic remedies had not been exhausted. The Committee therefore found that it was not barred, on any of the grounds set out in the Optional Protocol from considering these complaints on the merits, in so far as they related to events taking place on or after 19 August 1976 (the date on which the Covenant and the Optional Protocol entered into force for Canada).

26. According to the information submitted to the Committee by the State party, Mr. Pinkney's allegations that he was insulted, humiliated and physically ill-treated because of his race by prison guards while he was detained in the Lower Mainland Regional Correction Centre were the subject of inquiries on three occasions by the Inspection and Standards Division of the British Columbia Correction Service. The first of these was in February 1977 following a complaint by Mr. Pinkney to the British Columbia Human Rights Commission when an inspector of the Division interviewed him but concluded that Mr. Pinkney was unable to furnish sufficiently specific information to substantiate his complaints. The second and third were in 1978 following Mr. Pinkney's communication to the Human Rights

Committee when he was not interviewed personally as he had by then left the Lower Mainland Regional Correction Centre but his lawyers were contacted and the Director of Inspection and Standards reported that, apart from one comment by a prison guard which was overheard by one of his lawyers and said to be "detrimental in nature or tone", the investigations he had ordered revealed no evidence to justify Mr. Pinkney's allegations.

27. Mr. Pinkney denies that he was ever interviewed personally about these complaints and objects that inquiries conducted by another department of the service complained against cannot be regarded as sufficiently independent. Mr. Pinkney has not, however, submitted to the Committee any contemporary written evidence of complaints of ill-treatment made by him and the Committee finds that it does not have before it any verifiable information to substantiate his allegations of violations of articles 10 (1) and 17 (1) of the Covenant in this respect. The Committee is not in a position to inquire further in this matter.

28. With regard to Mr. Pinkney's complaints that during his pre-trial detention he was not segregated from convicted prisoners and that his treatment as an unconvicted prisoner was worse than that given to convicted prisoners, the State party in its submission of 22 July 1981 has given the following explanations:

"A. Services to remand prisoners:

"In his 7 April 1978 letter to the Human Rights Committee, Mr. Pinkney alleges, without giving any specific example, that he was treated, as a remand prisoner, in a less favourable manner than was enjoyed by prisoners under sentence. It is inevitable that the treatment extended to remand prisoners will be regarded by them unfavourably when compared with that of sentenced prisoners, since the recreational, occupational and educational programmes offered to sentenced prisoners are not available to remand prisoners in the light of the nature and anticipated duration of their incarceration.

"The fact that benefits identical to those available to convicted persons are not available to remand prisoners does not mean that they are not treated, as required under Article 10, paragraph 1, of the International Covenant on Civil and Political Rights, with humanity and with respect for the inherent dignity of the human person. Like all prisoners, they can benefit from the physical and intellectual amenities offered by the Correctional Services, e.g. exercise, medical treatment, library services, religious counselling. It is true that they cannot avail themselves of certain programmes mostly destined to facilitate the social reinsertion of convicted persons. However, this does not, in the view of the Government of Canada, imply inhuman treatment or an attack on the dignity of remand prisoners. In fact, the contrary might be implied since these programmes aim to give effect to Canada's obligation to socially rehabilitate convicted individuals (Covenant, art. 10, para. 3).

"B. Contact with convicted prisoners:

"On page 3 of his letter of 7 April 1978 and on pages 2 and 3 of his letter of 10 December 1980 to the Committee, Mr. Pinkney alleges that he was incarcerated at the Lower Mainland Regional Correctional Centre in an area of that institution which held sentenced prisoners while he was on remand status. The practice at the L. M. R. C. C. is for some sentenced prisoners in protective custody to serve as food servers and cleaners in the remand area of

the prison. This arrangement is designed to keep them away from other sentenced prisoners who might cause them harm. The sentenced prisoners in the remand unit are not allowed to mix with the prisoners on remand except to the extent it is inevitable from the nature of their duties. They are accommodated in separate tiers of cells from those occupied by remand prisoners.

"The Government of Canada is of the view that lodging convicted prisoners in the same building as remand prisoners does not contravene article 10, paragraph 2, of the International Covenant on Civil and Political Rights. This was recognized in the annotations on the text of the draft international covenant on human rights prepared by the Secretary-General of the United Nations. In paragraph 42 of the said annotations, it was indicated that:

> 'Segregation in the routine of prison life and work could be achieved though all prisoners might be detained in the same buildings. A proposal that accused persons should be placed 'in separate quarters' was considered to raise practical problems; if adopted, States parties might be obliged to construct new prisons.'

"Further, the Government of Canada does not consider that casual contact with convicted prisoners employed in the carrying out of menial duties in a correction centre results in a breach of the segregation provisions of the Covenant."

29. Mr. Pinkney claims that the contacts resulting from such employment of convicted prisoners were by no means "casual" but were "physical and regular" since they did in fact bring unconvicted and convicted prisoners together in physical proximity on a regular basis.

30. The Committee is of the opinion that the requirement of article 10 (2) (a) of the Covenant that "accused persons shall, save in exceptional circumstances, be segregated from convicted persons" means that they shall be kept in separate quarters (but not necessarily in separate buildings). The Committee would not regard the arrangements described by the State party whereby convicted persons work as food servers and cleaners in the remand area of the prison as being incompatible with article 10 (2) (a), provided that contacts between the two classes of prisoners are kept strictly to a minimun necessary for the performance of those tasks.

31. Mr. Pinkney also complains that while detained at the Lower Mainland Regional Correction Centre he was prevented from communicating with outside officials and was thereby subjected to arbitrary or unlawful interference with his correspondence contrary to article 17 (1) of the Covenant. In its submission of 22 July 1981 the State party gives the following explanation of the practice with regard to the control of prisoners' correspondence at the Correction Centre:

"Mr. Pinkney, as a person awaiting trial, was entitled under section 1.21 (d) of the Gaol Rules and Regulations, 1961, British Columbia Regulations 73/61, in force at the time of his detention to the 'provision of writing material for communicating by letter with (his) friends or for conducting correspondence or preparing notes in connexion with (his) defence'. The Government of Canada does not deny that letters sent by Mr. Pinkney were subject to control and could even be censored. Section 2.40 (b) of the Gaol Rules and Regulations, 1961 is clear on that point:

'2.40 (b) Every letter to or from a prisoner shall (except as hereinafter provided in these regulations in the case of certain communications to or from a legal adviser) be read by the Warden or by a responsible officer deputed by him for the purpose, and it is within the discretion of the Warden to stop or censor any letter, or any part of a letter, on the ground that its contents are objectionable or that the letter is of excessive length.'

"Section 42 of the Correctional Centre Rules and Regulations, British Columbia Regulation 284/78, which came into force on 6 July 1978 provides that:

'42 (1) A director or a person authorized by the director may examine all correspondence other than privileged correspondence between an inmate and another person where he is of the opinion that the correspondence may threaten the management, operation, discipline or security of the correctional centre.

'(2) Where in the opinion of the director, or a person authorized by the director, correspondence contains matter that threatens the management, operation, discipline or security of the correctional centre, the director or person authorized by the director may censor that matter.

'(3) The director may withhold money, or drugs, weapons, or any other object which may threaten the management, operation, discipline, or security of a correctional centre, or an object in contravention of the rules established for the correctional centre by the director contained in correspondence, and where this is done the director shall

(a) Advise the inmate,

(b) In so far as the money or object is not held as evidence for the prosecution of an offence against an enactment of the province or of Canada, place the money or object in safe-keeping and give it to the inmate on his release from the correctional centre, and

(c) Carry out his duties under this section in a manner that, in so far as is reasonable, respects the privacy of the inmate and person corresponding with the inmate.

'(4) An inmate may receive books or periodicals sent to him directly from the publisher.

'(5) Every inmate may send as many letters per week as he sees fit.'

32. Although these rules were only enacted subsequent to Mr. Pinkney's departure from the Lower Mainland Regional Correction Centre, in practice they were being applied when he was detained in that institution. This means that privileged correspondence, defined in section 1 of the regulations as meaning 'correspondence addressed by an inmate to a Member of Parliament, Members of the Legislative Assembly, barrister or solicitor, commissioner of corrections, regional director of corrections, chaplain, or the director of inspection and standards', were not examined or subject to any control or censorship. As for non-privileged correspondence, it was only subject to censorship if it contained matter that threatened the management, operation, discipline, or security of the correctional

centre. At the time when Mr. Pinkney was detained therein, the procedure governing prisoners' correspondence did not allow for a general restriction on the right to communicate with government officials. Mr. Pinkney was not denied this right. To seek to restrict his communication with various government officials while at the same time allowing his access to his lawyers would seem a futile gesture since through his lawyers, he could put his case to the various government officials whom he was allegedly prevented from contacting."

33. In his letter of 27 August 1981 Mr. Pinkney comments as follows on these submissions of the State party:

> "Further, on page 5 of the Government of Canada's submission, it is alleged by the Government that my mail was not tampered with at Oakalla, when in point of fact, not only was my mail interfered with by prison authorities in the normal sense of the requirements affecting all prisoners, but in point of fact, as the Government well knows, in some instances my mail to members of Government (whose mail should indeed have been privileged mail) never even got to these people, for it never even left the prison, once I mailed it. To imply, as does the Government, that such actions would be 'futile' for prison authorities to engage in, due to my having access to my lawyer at certain very definite times, is absolute nonsense."

34. No specific evidence has been submitted by Mr. Pinkney to establish that his correspondence was subjected to control or censorship which was not in accordance with the practice described by the State party. However, article 17 of the Covenant provides not only that "No one shall be subjected to arbitrary or unlawful interference with his correspondence" but also that "Everyone has the right to the protection of the law against such interference". At the time when Mr. Pinkney was detained at the Lower Mainland Regional Correction Centre the only law in force governing the control and censorship of prisoners' correspondence appears to have been section 2.40 (b) of the Gaol Rules and Regulations 1961. A legislative provision in the very general terms of this section did not, in the opinion of the Committee, in itself provide satisfactory legal safeguards against arbitrary application, though, as the Committee has already found, there is no evidence to establish that Mr. Pinkney was himself the victim of a violation of the Covenant as a result. The Committee also observes that section 42 of the Correctional Centre Rules and Regulations that came into force on 6 July 1978 has now made the relevant law considerably more specific in its terms.

35. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the communication discloses a violation of article 14 (3) (c) and (5) of the Covenant because the delay in producing the transcripts of the trial for the purpose of the appeal was incompatible with the right to be tried with undue delay.

ANNEX VIII

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. R.14/63

Submitted by: Violeta Setelich on behalf of her husband Raúl Sendic Antonaccio

State party concerned: Uruguay

Date of communication: 28 November 1979

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 28 October 1981,

Having concluded its consideration of communication No. R.14/63 submitted to the Committee by Violeta Setelich under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party concerned,

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of this communication (initial letter dated 28 November 1979 and further letters dated 28 and 31 May, 23 June, 7 July and 3 October 1980, 9 February, 27 May and 22 July 1981) is Violeta Setelich, a Uruguayan national residing in France. She submitted the communication on behalf of her husband, Raúl Sendic Antonaccio, a 54 year old Uruguayan citizen, detained in Uruguay.

2.1 The author stated in her submission on 28 November 1979 that her husband had been the main founder of the Movimiento de Liberación Nacional (MLN-Tupamaros). She commented that the MLN(T) had been a political movement - not a terrorist one - aimed at establishing a better social system through the radical transformation of socio-economic structures and recourse to armed struggle. She further stated that, on 7 August 1970, after seven years of clandestine activity, her husband was arrested by the Uruguayan police; that on 6 September 1971 he escaped from Punta Carretas prison together with 105 other political detainees; that he was re-arrested on 1 September 1972 and taken, seriously wounded, to a military hospital; and that, after having been kidnapped by a military group, he finally appeared in Military Detention Establishment No. 1 (Libertad prison).

2.2 The author further stated that, between June and September 1973, eight women and nine men, including her husband, were transferred by the army to unknown places of detention, and that they were informed that they had become "hostages" and would be executed if their organization, MLN(T), took any action. She added that, in

1976, the eight women "hostages" were taken back to a military prison, but that the nine men continued to be held as "hostages". The author enclosed a statement, dzted February 1979, from Elena Curbelo de Mirza, one of the eight women "hostages" who were released in March 1978. (In her statement, Mrs. Mirza confirmed that Raúl Sendic and eight other men detainees continued to be considered as "hostages". She listed the names of her fellow hostages, both the men and the women. She stated that a hostage lived in a tiny cell with only a mattress. The place was damp and cold and had no window. The door was always closed and the detainee was kept there alone 24 hours a day. On rare occasions he was taken out to the yard, blindfolded and with his arms tied. She further stated that hostages were often transferred to fresh prisons, that relatives had then to find where they were and that visits were authorized only at very irregular intervals.)

2.3 The author described five places of detention where her husband was kept between 1973 and 1976, and stated that in all of them he was subjected to mistreatment (solitary confinement, lack of food and harassment), while in one of them, as a result of a severe beating by the guards, he developed a hernia. She mentions that, in September 1976, he was transferred to the barracks of Ingenieros in the city of Paso de los Toros.

2.4 The author declared that, beginning in February 1978, her husband was once again subjected to inhuman treatment and torture: for three months, he was made to do the "plantón" (stand upright with his eyes blindfolded) throughout the day; he was only able to rest and sleep for a few hours at a time; he was beaten and given insufficient food and he was not allowed to receive visits. In May 1978, he received his first visit after this three months' sanction and his state of health was alarming.

2.5 At the end of August 1978, the authorities officially stated that, because of the danger he represented, her husband was not detained in Libertad Prison, but at Paso de los Toros. The author maintained that the fact that her husband was held as a hostage and the cruel and discriminatory treatment to which he was subjected constituted flagrant violations of both national and international law, particularly the Geneva Conventions of 1949.

2.6 The author stressed that her husband's situation had not changed with the coming into force of the International Covenant on Civil and Political Rights and the Optional Protocol on 23 March 1976. She requested the Human Rights Committee to take appropriate action with a view to securing her husband's right to submit a communication himself.

2.7 The author further alleged that her husband had needed an operation for his hernia since 1976; that, despite a medical order to perform such an operation, the military authorities had refused to take him to a hospital, and that his state of health continued to deteriorate. (Because of his hernia, he could take only liquids and was unable to walk without help; he also suffered from heart disease.) She feared for his life and even thought that it had been decided to kill him slowly, notwithstanding the official abolition of the death penalty in Uruguay in 1976. She therefore requested the Human Rights Committee to apply rule 86 of its provisional rules of procedure in order to avoid irreparable damage to his health.

2.8 The author stated that her husband had been denied all judicial guarantees. She further stated that, since December 1975, it had been compulsory for all cases relating to political offences to be heard by military courts and that her husband's trial, which was still pending, would, therefore, be before such a body.

2.9 She added that in July 1977, the Government issued "Acts Institucional No. 8", which in effect subordinated the judicial power to the Executive, and that independent and impartial justice could not be expected from the military courts. She further alleged that domestic remedies such as habeas corpus, were not applicable, that civilians were deprived of the safeguards essential to a fair trial and of the right to appeal, that defence lawyers were systematically harassed by the military authorities and that her husband had not been allowed to choose his own counsel. She maintained that all domestic remedies had been exhausted.

2.10 She also stated that, at the time of writing (28 November 1979), she was unaware of her husband's whereabouts. She requested the Human Rights Committee to obtain information from the State party about his place of detention and conditions of imprisonment.

3. The author claimed that the following provisions of the International Covenant on Civil and Political Rights had been violated by the Uruguayan authorities: articles 2, 6, 7, 10 and 14.

4. On 26 March 1980, the Human Rights Committee decided to transmit the communication to the State party, under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility of the communication. The Committee also requested the State party to furnish information on the state of health of Raúl Sendic Antonaccio, the medical treatment given to him and his precise place of detention.

5. By a note dated 16 June 1980, the State party contested the admissibility of the communication on the ground that the same matter had been submitted to the Inter-American Commission on Human Rights (IACHR) as case No. 2937. In this connexion the Committee ascertained from the Secretariat of IACHR that the case referred to was submitted by a third party and opened before IACHR on 26 April 1978. The State party did not furnish any information concerning Raúl Sendic's state of health, the medical treatment given to him or his whereabouts.

6. In her submission dated 23 June 1980, the author, commenting on the State party's submission, stated that she had never submitted her husband's case to the IACHR. She further stated that it had become known, thanks to strong international pressure on the military authorities, that her husband was detained in the Regimiento "Pablo Galarza" in the department of Durazno. She alleged that the State party had refrained from giving any information on her husband's state of health because he was kept on an inadequate diet in an underground cell with no fresh air or sunlight and his contacts with the outside world were restricted to a monthly visit that lasted 30 minutes and took place in the presence of armed guards.

7. In a further submission dated 7 July 1980, Violeta Setelich identified the author of the communication to IACHR concerning its case No. 2937 and enclosed a copy of his letter, dated 8 June 1980, addressed to the Executive Secretary of IACHR, requesting that consideration of case No. 2937 concerning Raúl Sendic should be discontinued before that body, so as to remove any procedural uncertainties concerning the competence of the Human Rights Committee to consider the present communication under the Optional Protocol.

8. In the circumstances, the Committee found that it was not precluded by article 5(2)(a) of the Optional Protocol from considering the communication. The

Committee was unable to conclude from the information at its disposal that there had been remedies available to the victim of the alleged violations which had not been invoked. Accordingly, the Committee found that the communication was not inadmissible under article 5(2)(b) of the Optional Protocol.

9. On 25 July 1980, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) of the Optional Protocol, the State party should be requested to submit to the Committee, within six months of the date of the transmittal to it of the Committee's decision, written explanations or statements clarifying the matter and the measures, if any, that it had taken to remedy the situation;

(c) That the State party should be requested to furnish the Committee with information on the present state of health of Raúl Sendic Antonaccio, the medical treatment given to him and his exact whereabouts;

(d) That the State party should be informed that the written explanations or statement submitted by it under article 4 (2) of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that, in order to discharge its responsibilities, it required specific responses to the allegations which had been made by the author of the communication, and the State party's explanations of its actions. The State party was requested, in that connection, to enclose copies of any court orders or decisions of relevance to the matter under consideration.

10. In a letter dated 3 October 1980, the author argued that her husband had the right to be informed of the Committee's decision of 25 July 1980, declaring the communication admissible, and that he should be given copies of the relevant documents and afforded an opportunity to supplement them as he saw fit.

11. On 24 October 1980, the Human Rights Committee:

Noting that the author of the communication, in her submission of 28 November 1979, had expressed grave concern as to her husband's state of health and the fact that his whereabouts were kept secret by the Government of Uruguay,

Taking into account the fact that its previous requests for information about the present situation of Raúl Sendic Antonaccio had gone unheeded,

Noting further the letter dated 3 October 1980 from the author of the communication,

Decided,

1. That the State party should be reminded of the decisions of 26 March and 25 July 1980 in which the Human Rights Committee requested information about the state of health of Raúl Sendic Antonaccio, the medical treatment given to him and his exact whereabouts;

2. That the State party should be urged to provide the information sought without any further delay;

3. That, as requested by Violeta Setelich, the State party should be requested to transmit all written material pertaining to the proceedings (submissions of the parties, decisions of the Human Rights Committee) to Raúl Sendic Antonaccio, and that he should be given the opportunity himself to communicate directly with the Committee.

12.1 In further letters dated 9 February, 27 May and 22 July 1981, the author restated her deep concern about her husband's state of health. She reiterated that after soldiers had struck him in the lower abdomen with gun butts at Colonial barracks in mid-1974, her husband had developed an inguinal hernia and that there was a risk that the hernia might become strangulated. She stated that Sendic's relatives had repeatedly requested that he should be operated on because of his extremely poor state of health, but to no avail.

12.2 She added that her husband's conditions of detention were slightly better at the Regimiento Pablo Galarza No. 2, since he was allowed to go out to the open air for one hour a day. She stressed, however, that he should be transferred to the Libertad Prison, where all other political prisoners were held.

12.3 Concerning her husband's legal situation, she added the following information:

(i) In July 1980, her husband was sentenced to the maximum penalty under the Uruguayan Penal Code: 30 years' imprisonment and 15 years of special security measures. He had not been informed of the charges against him before the trial, or allowed to present witnesses and the hearing had been held in camera and in his absence. He had been denied the right of defence as he had never been able to contact the lawyer assigned to him, Mr. Almicar Perrea.

(ii) In September 1980 and in April and May 1981, the authorities announced that her husband's sentence was to be reviewed by the Supreme Military Tribunal, but this has not yet occurred.

(iii) Though Sendic's relatives had appointed Maître Chéron to be his lawyer, Maître Chéron was denied in September 1980 and in January 1981 the right to examine Sendic's dossier and to visit him.

13. The time-limit for the State party's submission under article 4(2) of the Optional Protocol expired on 27 February 1981. To date, no such submission has been received from the State party.

14. On 21 August 1981, the State party submitted the following comments on the Committee's decision of 24 October 1980 (see para. 11 above):

"The Committee's decision of 24 October 1980 adopted at its eleventh session on the case in question exceeds its authority. The competence granted to the Committee on Human Rights by the Optional Protocol to the International Covenant on Civil and Political Rights is contained in article 5 (4) which states: 'The Committee shall forward its views to the State party concerned and to the individual.' The scope of this rule is quite clearly defined. The Committee has authority only to send its observations to the State party concerned.

"On the contrary, in the present decision, the Committee had arrogated to itself competence which exceeds its powers.

"The Committee on Human Rights is applying a rule which does not exist in the text of the Covenant and the Protocol, whereas the function of the Committee is to fulfil and apply the provisions of those international instruments. It is inadmissible for a body such as the Committee to create rules flagrantly deviating from the texts emanating from the will of the ratifying States. Those were the circumstances in which the decision in question was taken. Paragraph 3 requests, with absolutely no legal basis, that a detainee under the jurisdiction of a State party - Uruguay - be given the opportunity to communicate directly with the Committee. The Government of Uruguay rejects that decision, since to accept it would be to create the dangerous precedent of receiving a decision which violates international instruments such as the Covenant and its Protocol. Moreover, the Uruguayan Government considers that the provisions in those international instruments extend to State parties as subjects of international law. Thus these international norms, like any agreement of such nature, are applicable to States and not directly to individuals. Consequently, the Committee can hardly claim that this decision extends to any particular individual. For the reasons given, the Government of Uruguay rejects the present decision of the Committee, which violates elementary norms and principles and thus indicates that the Committee is undermining its commitments in respect of the cause of promoting and defending human rights".

15. The Human Rights Committee, having examined the present communication in the light of all the information made available to it by the parties as provided in article 5 (1) of the Optional Protocol, hereby decides, in the absence of comments by the State party, to base its views on the following facts as set out by the author:

16.1 Events prior to the entry into force of the Covenant: Raúl Sendic Antonaccio, a main founder of the Movimiento de Liberación Nacional (MLN) - Tupamaros, was arrested in Uruguay on 7 August 1970. On 6 September 1971, he escaped from prison, and on 1 September 1972 he was re-arrested after having been seriously wounded. Since 1973 he has been considered as a "hostage", meaning that he is liable to be killed at the first sign of action by his organization, MLN (T). Between 1973 and 1976, he was held in five penal institutions and subjected in all of them to mistreatment (solitary confinement, lack of food and harassment). In one of them, in 1974, as a result of a severe beating by the guards, he developed a hernia.

16.2 Events subsequent to the entry into force of the Covenant: In September 1976, he was transferred to the barracks of Ingenieros in the city of Paso de los Toros. There, from February to May 1978, or for the space of three months, he was subjected to torture ("plantónes", beatings, lack of food). On 28 November 1979 (date of the author's initial communication), his whereabouts were unknown. He is now detained in the Regimiento-Pablo Galarza No. 2, Department of Durazno, in an underground cell. His present state of health is very poor (because of his hernia, he can take only liquids and is unable to walk without help) and he is not being given the medical attention it requires. In July 1980, he was sentenced to 30 years' imprisonment plus 15 years of special security measures. He was not informed of the charges brought against him. He was never able to contact the lawyer assigned to him, Mr. Almicar Perrea. His trial was held in camera and in his absence and he was not allowed to present witnesses in support of his case. In September 1980 and in April and May 1981, it was publicly announced that his sentence was to be reviewed by the Supreme Military Tribunal.

17. The Human Rights Committee observes that, when it took its decision on admissibility on 25 July 1980, it had no information about Raúl Sendic's trial before a court of first instance. The Committee further observes that, although his sentence is to be reviewed by the Supreme Military Tribunal (there has as yet been no indication that these final review proceedings have taken place), the Committee is not barred from considering the present communication, since the application of remedies has been unreasonably prolonged.

18. The Human Rights Committee cannot accept the State party's contention that it exceeded its mandate when in its decision of 24 October 1980, it requested the State party to affort to Raúl Sendic Antonaccio the opportunity to communicate directly with the Committee. The Committee rejects the State party's argument that a victim's right to contact the Committee directly is invalid in the case of persons imprisoned in Uruguay. If governments had the right to erect obstacles to contacts between victims and the Committee, the procedure established by the Optional Protocol would, in many instances, be rendered meaningless. It is a prerequisite for the effective application of the Optional Protocol that detainees should be able to communicate directly with the Committee. The contention that the International Covenant and the Protocol apply only to States, as subjects of international law, and that, in consequence, these instruments are not directly applicable to individuals is devoid of legal foundation in cases where a State has recognized the competence of the Committee to receive and consider communications from individuals under the Optional Protocol. That being so, denying individuals who are victims of an alleged violation their rights to bring the matter before the Committee is tantamount to denying the mandatory nature of the Optional Protocol.

19. The Human Rights Committee notes with deep concern that the State party has failed to fulfill its obligations under article 4 (2) of the Optional Protocol and has completely ignored the Committee's repeated requests for information concerning Raúl Sendic's state of health, the medical treatment given to him and his exact whereabouts. The Committee is unable to fulfill the task conferred upon it by the Optional Protocol if States parties do not provide it with all the information relevant to the formation of the views referred to in article 5(4). Knowledge of the state of health of the person concerned is essential to the evaluation of an allegation of torture or ill-treatment.

20. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay), disclose violations of the International Covenant on Civil and Political Rights, particularly:

of article 7 and article 10 (1) because Raúl Sendic is held in solitary confinement in an underground cell, was subjected to torture for three months in 1978 and is being denied the medical treatment his condition requires;

of article 9 (3) because his right to trial within reasonable time has not been respected;

of article 14 (3) (a) because he was not promptly informed of the charges against him;

of article 14 (3) (b) because he was unable either to choose his own counsel or communicate with his appointed counsel and was, therefore, unable to prepare his defence;

of article 14 (3) (c) because he was not tried without undue delay;

of article 14 (3) (d) because he was unable to attend the trial at first instance;

of article 14 (3) (e) because he was denied the opportunity to obtain the attendance and examination of witnesses on his behalf.

21. The Committee, accordingly, is of the view that the State party is under an obligation to take immediate steps to ensure strict observance of the provisions of the Covenant and to provide effective measures to the victim, and in particular to extend Raúl Sendic treatment laid down for detained persons in articles 7 and 10 of the Covenant and to give him a fresh trial with all the procedural guarantees prescribed by article 14 of the Covenant. The State party must also ensure that Raúl Sendic receives promptly all necessary medical care.

ANNEX IX

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. R.2/10

Submitted by: Alice Altesor and Victor Hugo Altesor

Alleged victim: Alberto Altesor

State party concerned: Uruguay

Date of communication: 10 March 1977 (date of initial letter)

Date of decision on admissibility: 29 October 1980

The Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 29 March 1982,

Having concluded its consideration of communication No. R.2/10, submitted to the Committee by Alice Altesor and Victor Hugo Altesor, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and by the State party concerned,

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The authors of the communication (initial letter dated 10 March 1977 and further letters dated 1 August and 26 November 1977, 19 May 1978, 16 April 1979, 10 June 1980 and 28 January and 6 October 1981) are Uruguayan nationals, residing in Mexico. They submitted the communication on behalf of their father, Alberto Altesor González, a 68-year-old Uruguayan citizen, a former trade union leader and member of the Uruguayan Chamber of Deputies, alleging that he is arbitrarily detained in Uruguay.

1.2 The authors of the communication state that their father was arrested in Montevideo on 21 October 1975 without any formal charges brought against him. Although the fact of his arrest and the place of his imprisonment were not made public, the writers claim that from information provided by eye-witnesses arrested at the same time and subsequently released, it can be affirmed that their father was first detained in a private house and afterwards at the Battallón de Infanteria No. 3. There he was allegedly subjected to beatings and electric shocks, forced to remain standing for a total of more than 400 hours, and strung up for long periods,

although shortly before his arrest he had undergone a heart operation which saved his life but at the same time made it necessary for him to observe very strict rules regarding work, diet and medication. On 14 December 1975 he was transferred to the Batallón de Artillería No. 5, where he remained handcuffed, hooded and in absolute solitary confinement. He was later moved to the Libertad prison. He was detained under the "prompt security measures" and was not brought before a judge until over 16 months after his arrest, when he was ordered to be tried, allegedly on no other charge than that of his public and well-known trade union and political militancy. He has been deprived of his political rights under Acta Institucional No. 4 of 1 September 1976.

1.3 The authors further contend that in practice internal recourses in Uruguay are totally ineffective and that the recourse of habeas corpus is denied by the authorities to persons detained under the prompt security measures.

1.4 In a further submission, dated 1 August 1977, the authors allege that in view of their father's very poor state of health, interim measures should be taken, in accordance with rule 86 of the rules of procedure of the Committee, in order to avoid irreparable damage to their father's health and life. The authors claim that the following provisions of the International Covenant on Civil and Political Rights have been violated: articles 7 (1), 9 (3) and (4), 10 (2) (a) and (3), and 25 (a), (b) and (c).

2. By its decision of 26 August 1977, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules to the State party concerned requesting information and observations relevant to the question of admissibility of the communication, as well as information concerning the state of health of the alleged victim.

3. By a note dated 27 October 1977, the State party objected to the admissibility of the communication on two grounds: (a) that the same matter was already being examined by the Inter-American Commission on Human Rights (IACHR) as case No. 2112 and (b) that the alleged victim had not exhausted all available domestic remedies.

4. By a further decision of 26 January 1978 the Committee:

(a) Informed the authors of the communication of the State party's objection on the ground that a case concerning their father was already under examination by IACHR, as case No. 2112, and solicited their comments thereon;

(b) Informed the State party that, in the absence of more specific information concerning the domestic remedies said to be available to the author of this communication and the effectiveness of those remedies as enforced by the competent authorities in Uruguay, the Committee was unable to accept that he had failed to exhaust such remedies and the communication would therefore not be considered inadmissible in so far as exhaustion of domestic remedies was concerned, unless the State party gave details of the remedies which it submitted had been available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective;

(c) Expressed concern over the fact that the State party had, so far, furnished no information on Alberto Altesor's state of health, urged the State party as a matter of urgency to arrange for him to be examined by a competent

medical board and requested the State party to furnish it with a copy of the board's report.

5.1 By a note dated 14 April 1978, the State party reiterated that the same matter was before IACHR and it submitted information which consisted of a general description of the rights available to the accused persons in the military criminal tribunals and of the domestic remedies at their disposal as means of protecting and safeguarding their rights under the Uruguayan judicial system. The State party also stated the following concerning Alberto Altesor:

> "He was a member of the Executive Committee of the Communist Party and was responsible for the so-called fourth section of the prohibited communist party, i.e. the infiltration of the armed forces. He was arrested owing to his connection with the clandestine and subversive activity of the said unlawful organization on 21 October 1975 and placed in custody under the prompt security measures. Subsequently he was brought before the military examining judge of the first circuit; on 24 September 1976 the judge ordered him to be placed on trial, charged with the offence referred to in article 60 (V) of the Military Criminal Code concerning subversive associations."

5.2 Concerning the state of health of Alberto Altesor, the State party submitted that Alberto Altesor González underwent surgery on 26 December 1974 for a slight aortic stenosis, that he was entirely exempt from any kind of task involving physical effort, that he was given a diet suitable for the disease and was under medical supervision, that the conditions under which Altesor was detained were governed by the rules of the prison establishment which are generally applicable to all ordinary offenders and which make adequate provision for recreation, visits, correspondence, etc.; that a panel of doctors had been asked to examine Alberto Altesor and that the opinion of this panel of doctors was going to be communicated to the Committee in due course. The medical report was received on 5 October 1979 and transmitted to the authors of the communication for information.

6. Further proceedings before the Human Rights Committee were considerably delayed owing, first, to the authors' repeated efforts to conceal the fact that they were indeed also the authors of case No. 2112 before IACHR and, thereafter, by their statements, which could not be confirmed, that they had withdrawn case No. 2112 from consideration by IACHR. Finally, on 10 June 1980, the authors furnished the Human Rights Committee with a copy of their withdrawal request by the secretariat of IACHR. The Committee has however ascertained that the case concerning Alberto Altesor continues to be pursued by IACHR, on the basis of a new complaint from an unrelated third party, submitted to IACHR in March 1979.

7.1 For the determination of admissibility of the communication which the Committee had before it, the following facts were established:

(a) Alice and Victor Hugo Altesor submitted their father's case to IACHR in October 1976;

(b) They submitted their father's case to the Human Rights Committee on 10 March 1977;

(c) In March 1979, an unrelated third party complained to IACHR about the situation of Alberto Altesor;

(d) By letter of 6 May 1980, Alice and Victor Hugo Altesor withdrew their submission from consideration by IACHR.

7.2 The Committee concluded that it was not prevented from considering the communication submitted to it by the authors on 10 March 1977 by reason of the subsequent complaint made by an unrelated third party under the procedures of IACHR. Accordingly the Committee found that the communication was not inadmissible under article 5 (2) (a) of the Optional Protocol.

7.3 With regard to the exhaustion of local remedies, the Committee was unable to conclude, on the basis of the information before it that there were remedies available to the alleged victim which he should have pursued. Accordingly, the Committee found that the communication was not inadmissible under article (5) (2) (b) of the Optional Protocol.

8. The Human Rights Committee therefore decided on 29 October 1980:

(1) That the Communication was admissible, and that the authors were justified in acting on behalf of their father;

(2) That the authors should be requested to clarify without delay, and not later than six weeks from the date of the transmittal of the present decision to them, which of the events previously described by them were alleged to have occurred on or after 23 March 1976 (the date on which the International Covenant on Civil and Political Rights entered into force for Uruguay) and to provide the Committee with detailed information (including relevant dates) as to their present knowledge about their father's treatment and situation after 23 March 1976;

...

(4) That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee within six months of the date of the transmittal to it of any submission received from the authors of the communication pursuant to operative paragraph 2 above, written explanations and statements clarifying the matter and the remedy, if any, that may have been taken by it;

(5) That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that, in order to perform its responsibilities, it required specific and detailed responses to each and every allegation made by the authors of the communication, and the State party's explanations of the actions taken by it. The State party was requested, in this connexion, to enclose copies of any court orders or decisions of relevance to the matter under consideration;

...

(7) That, further to the requests set out in operative paragraphs 4 and 5 above, the State party be requested to furnish the Committee, as soon as possible, with information concerning the present state of health of Alberto Altesor, considering that the latest information from the State party on this point was dated 5 October 1979.

9.1 On 28 January 1981 the authors submitted further information and clarifications pursuant to paragraph 2 of the Committee's decision of 29 October 1980.

9.2 With regard to acts which allegedly occurred or continued or had effects which themselves constituted a violation of the Covenant after 23 March 1976, the authors maintain that all the alleged violations of the International Covenant on Civil and Political Rights occurred or continued to make their effects felt after that date. In particular the authors indicate that their father was kept in solitary confinement without being brought before a judge for 16 months, 11 of which were after the date on which the Covenant entered into force for Uruguay.

9.3 The authors further allege that violations of the Covenant occurred not only after its entry into force, but also after this communication was filed with the Committee, including specific violations of article 14, inter alia, that Alberto Altesor was not tried until 1977 (i.e. after undue delay), that he was tried by a military and not by a civilian court, that the judge was not competent, independent or impartial, that the accused was not promptly informed of the charges against him, that he was not allowed to defend himself in person, that there was no public hearing, and that the witnesses on his behalf were not allowed to be examined under the same conditions as the witnesses against him. The authors also allege procedural irregularities in the trial, including the sentencing of Alberto Altesor to eight years' imprisonment, although the prosecution had allegedly asked only for a sentence of six years. Although more than five years have elapsed since his arrest (at the time of writing in January 1981), his case is supposedly still in a court of second instance.

9.4 With regard to Alberto Altesor's state of health, the authors allege that he has been a patient at the Military Hospital since 29 December 1980; before that, at the Libertad prison, he had been found to be suffering from chest pains, fainting and loss of weight.

10.1 In its submission under article 4 (2) of the Optional Protocol, dated 21 August 1981, the State party rejects the authors' assertion in their submission of 28 January 1981 that article 14 of the Covenant was violated because Alberto Altesor was tried by a military and not by a civilian tribunal, referring to the Uruguayan law No. 14068 (State Security Act), which establishes the jurisdiction of military courts over offences against the State, including the offences of "subversive association" and "action to upset the Constitution" of which Mr. Altesor was accused. The State party further asserts that due procedural guarantees were observed during the trial, and that Alberto Altesor had court-appointed counsel.

10.2 With regard to the authors' assertion that the case is still pending in a court of second instance, the State party explains that this is incorrect and that the court of second instance confirmed the judgement of the court of first instance on 18 March 1980.

10.3 The State party also rejects the assertion that Alberto Altesor is being subjected to persecution because of his political ideas.

10.4 With regard to Alberto Altesor's state of health, the State party indicates that he underwent medical examination on 20 March 1981, without, however, specifying the result of the examination. The State party adds that it has communicated to the authors via the Uruguayan Embassy in Mexico that the Government

of Uruguay is prepared to carry out any further medical examinations and treatment as may be required by Alberto Altesor's state of health.

11.1 In a further letter dated 6 October 1981 the authors refer to the State party's submission under article 4 (2), and claim that it does not answer their specific complaints of violations of guarantees embodied in the Covenant. The fact that their father was brought before the military courts because of the terms of a particular Uruguayan law cannot alter the essence of the matter: "that the procedure applied in this way is lacking in internationally established guarantees".

11.2 With respect to their allegation that the sentence against their father was politically motivated, they indicate that the State party still has not specifically stated which acts the detainee committed in order to warrant his present situation.

11.3 The authors also declare that they never received any information about their father's state of health through the Embassay of Uruguay in Mexico.

12.1 The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol. The Committee bases its views on the following facts:

12.2 Alberto Altesor was arrested in Montevideo on 21 October 1975 and placed in custody under the prompt security measures. Recourse to habeas corpus was not available to him. On 24 September 1976 a military judge ordered him to be placed on trial, charged with the offence referred to in article 60 (V) of the Military Criminal Code concerning "subversive association". The court of first instance sentenced him to eight years' imprisonment (the Committee is not informed of the date of this decision). The court of second instance confirmed the judgement of the court of first instance on 18 March 1980.

13.1 In formulating its views the Human Rights Committee also takes into account the following considerations, which reflect a failure by both parties to furnish the information and clarifications necessary for the Committee to formulate final views on a number of important issues:

13.2 In operative paragraph 2 of its decision on admissibility of 29 October 1980, the Committee requested the authors to clarify which of the events previously described by them were alleged to have occurred on or after 23 March 1976 (the date on which the Covenant entered into force for Uruguay) and to provide detailed information as to their present knowledge about their father's treatment after this date. The Committee notes that the authors' reply on 28 January 1981 and their submission of 6 October 1981 do not furnish the Committee with any further precise information to enable it to establish with certainty what in fact occurred after 23 March 1976. The authors claim that, based on information provided by eye-witnesses arrested at the same time as Alberto Altesor and subsequently released, their father was subjected to torture following his arrest. No eye-witness testimonies have been furnished, nor a clear indication of the time-frame involved. The authors have however explained that the "mistreatment which he suffered earlier, to the point of having to be hospitalized, is not inflicted on him at present".

13.3 With respect to the date when Alberto Altesor was first brought before a judge, the authors claim that he was kept incommunicado and not brought before a judge for over 16 months after his arrest. The State party's explanations in its note of 14 April 1978 are ambiguous in this respect: "Fue detenido ... el 21/10/75 e internado al amparo de las medidas prontas de seguridad. Con posterioridad fue sometido al juez militar de instrucción de 1er. turno quien con fecha 24 de Septiembre de 1976 dispuso su procesamiento ...". The Committee cannot determine whether "con posterioridad" (subsequently) means that Alberto Altesor was brought before a judge within a reasonable time; nor is it clear whether "fue sometido al juez militar" means that he was brought personally before the judge or whether his case was merely submitted to the judge in writing or in the presence of a legal representative. The State party should have clearly stated the precise date when Alberto Altesor was brought personally before a judge, since article 9 (3) of the Covenant requires that "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge." Without that statement, the State party has failed to rebut the authors' allegation that their father was not brought before a judge until after 16 months of detention. The fact that Alberto Altesor was committed for trial by a military judge of 24 September 1976 (i.e. over 11 months after his arrest), does not adequately clarify the matter.

13.4 The authors claim that their father was arrested because of his political activities. In reply, the State party stated that Alberto Altesor headed a section of the proscribed Communist Party believed to be engaged in the infiltration of the armed forces, and that he was arrested owing to his connexion with the clandestine and subversive activity of the said unlawful organization. The State party has not furnished any court decision or other information as to the specific nature of the activities in which Alberto Altesor was alleged to have been engaged and which led to his detention.

13.5 In operative paragraph 5 of its decision of 29 October 1980 the Committee requested the State party to furnish specific and detailed responses to each and every allegation made by the authors. The Committee observes that the State party's submission under article 4 (2) of the Optional Protocol, dated 21 August 1981, does not constitute sufficient refutation with regard to various of the allegations made by the authors. The State party's general statements that "the trial was held with all due guarantees" and that Alberto Altesor had "counsel as required by law" are insufficient to rebut the allegations that the accused was not promptly informed of the charges against him, that he was not allowed to defend himself in person, that there was no public hearing, and that defence witnesses were not examined under the same conditions as witnesses against him. The State party has not responded to the Committee's request that it should be furnished with copies of any court orders or decisions relevant to the matter. The Committee is seriously concerned by this omission. Although similar requests have been made in a number of other cases, the Committee has never yet been furnished with the texts of any court decisions. In such circumstances, the Committee feels unable, on the basis of the information before it, to accept the State party's contention that Alberto Altesor had a fair trial.

14. As to the authors' allegation that the enactment of Acta Institucional No. 4 of 1 September 1976, a/ which curtailed the political rights of various categories of citizens, made their father a victim of violations of article 25 of the Covenant, the Committee refers to the considerations reflected in its views on a number of other cases (e.g. in R.7/28, R.7/32, R.8/34 and R.10/44), concerning the compatibility of Acta Institucional No. 4 with the provisions of article 25 of the

Covenant, which proscribes "unreasonable restrictions" on the enjoyment of political rights. It has been the Committee's considered view that this enactment which deprives all citizens, who as members of certain political groups had been candidates in the elections of 1966 and 1971, of any political rights for a period as long as 15 years is an unreasonable restriction of the political rights protected by article 25 of the Covenant.

15. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that these facts, in so far as they have occurred after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay), disclose violations of the Covenant, in particular:

of article 9 (3), because Alberto Altesor was not brought promptly before a judge or other officer authorized by law to exercise judicial power;

of article 9 (4), because recourse to habeas corpus was not available to him;

of article 10 (1), because he was held incommunicado for several months;

of article 14 (1) and (3), because he did not have a fair and public hearing;

of article 25, because he is barred from taking part in the conduct of public affairs and from voting in elections or from being elected for 15 years in accordance with Acta Institucional No. 4 of 1 September 1976.

16. The Committee, accordingly, is of the view that the State party is under an obligation to provide the victim with effective remedies, including compensation, for the violations which he has suffered and to take steps to ensure that similar violations do not occur in the future. The State party should also ensure that Alberto Altesor receives all necessary medical care.

Notes

a/ The relevant part of the Act reads as follows:

"... The Executive Power, in exercise of the powers conferred on it by the institutionalization of the revolutionary process,

DECREES:

"Art. 1. The following shall be prohibited, for a term of 15 years, from engaging in any of the activities of a political nature authorized by the Constitution of the Republic, including the vote:

"(a) All candidates for elective office on the lists for the 1966 and 1971 elections of the Marxist and pro-Marxist Political Parties or Groups declared illegal by the resolutions of the Executive Power No. 1788/67 of 12 December 1967 and No. 1026/73 of 26 November 1973; ..."

ANNEX X

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. R.7/30

Submitted by: Irene Bleier Lewenhoff and Rosa Valiño de Bleier

Alleged victim: Eduardo Bleier, authors' father and husband, respectively

State party concerned: Uruguay

Date of communication: 23 May 1978 (date of initial letter)

Date of decision on admissibility: 24 March 1980

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 29 March 1982,

Having concluded its consideration of communication No. R.7/30 submitted to the Committee by Irene Bleier Lewenhoff and Rosa Valiño de Bleier under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and by the State party concerned,

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of the original communication (initial letter dated 23 May 1978 and further letter dated 15 February 1979) is Irene Bleier Lewenhoff, a Uruguayan national residing in Israel. She is the daughter of the alleged victim. Her information was supplemented by further letters (dated 25 February, 20 June, 26 July and 31 October 1980 and 4 January and 10 December 1981) from Rosa Valiño de Bleier, a Uruguayan national residing in Hungary who is the alleged victim's wife.

2.1 In her letter of 23 May 1978, the author, Irene Bleier Lewenhoff, states the following:

2.2 Her father, Eduardo Bleier, was arrested without a court order in Montevideo, Uruguay, at the end of October 1975. The authorities did not acknowledge his arrest and he was held incommunicado at an unknown place of detention. Her father's detention was, however, indirectly confirmed because his name was on a list of prisoners read out once a week at an army unit in Montevideo where his family delivered clothing for him and received his dirty clothing. His name appeared on that list for several months until the middle of 1976. On

11 August 1976, "Communiqué No. 1334 of the Armed Forces Press Office" was printed in all the Montevideo newspapers requesting the general public to co-operate in the capture of 14 persons, among whom Eduardo Bleier was listed, "known to be associated with the banned Communist Party, who had not presented themselves when summoned before the military courts". The author also alleges that her father was subjected to particularly cruel treatment and torture because of his Jewish origin.

2.3 A number of detainees who were held, together with the author's father, and who were later allowed to communicate with their families or were released, gave independent but similar accounts of the cruel torture to which Eduardo Bleier was subjected. They generally agreed that he was singled out for especially cruel treatment because he was a Jew. Thus, on one occasion, the other prisoners were forced to bury him, covering his whole body with earth, and to walk over him. As a result of this treatment inflicted upon him, he was in a very bad state and towards December 1975 had to be interned in the Military Hospital.

2.4 At the time of the submission of the communication the author assumed that Eduardo Bleier was either detained incommunicado or had died as a result of torture. The author further states that since her father's arrest, owing to the uncertainty, there has been a complete disruption of family life. She also claims that the honour and reputation of her father were attacked in every possible way by the authorities, in particular by the publication of the above-quoted "communiqué".

2.5 The author maintains that in practice legal remedies do not exist in Uruguay. She claims that habeas corpus or other similar remedies cannot be invoked against arrests under the "prompt security measures". In the case of her father, all of the guarantees of amparo that could be invoked in penal proceedings were irrelevant, because he never appeared before any court; nor was he ever formally informed of the reasons for his arrest. The author claims that her father was arrested because of his political opinions.

2.6 She further states that the authorities never answered the numerous letters addressed to them by various personalities, institutions or organizations, asking for information about her father's situation. She adds that such silence might well indicate that her father died as a result of torture.

2.7 The author claims that the following provisions of the International Covenant on Civil and Political Rights have been violated by the Uruguayan authorities in respect of her father: articles 2, 3, 6, 7, 9, (1) (2) (3) (4) and (5), 10, 12 (2), 14, 15, 17, 18, 19, 25 and 26.

3. By its decision of 26 July 1978, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

4. By a note dated 29 December 1978 the State party informed the Human Rights Committee that a warrant had been out for the arrest of Eduardo Bleier since 26 August 1976, as he was suspected of being connected with the subversive activities of the banned Communist Party and had gone into hiding ("wanted person No. 1,189").

5. In reply to the State party's submission of 29 December 1978, Irene Bleier Lewenhoff, by a letter dated 15 February 1979, stated that she had

irrefutable proof of the arrest of her father and the treatment inflicted upon him during detention. She claims that she has had the opportunity to talk in various parts of the world with persons formerly imprisoned in Uruguay and that many of them spoke of her father and the barbarous torture to which he had been subjected.

6. By a letter dated 25 February 1980, Rosa Valiño Bleier, the wife of the alleged victim, requested the Human Rights Committee to accept her as co-author of communication No. R.7/30 concerning her husband, Eduardo Bleier. She further confirmed all the basic facts as outlined in Irene Bleier Lewenhoff's communication of 23 May 1978. In addition, she stated that she has received many unofficial statements, the latest in December 1978, indicating that her husband was still alive. She claims that some of the persons who were imprisoned with her husband and witnessed his tortures and who have explained to her the facts in detail, have now left Uruguay. She further stated that in 1976, she submitted an application for habeas corpus to the military court, as a result of which she received a report saying that her husband had been "wanted" since August of the same year.

7. On 24 March 1980, the Committee decided:

(a) That the authors were justified in acting on behalf of the alleged victim by reason of close family connexion;

(b) That the communication was admissible in so far as it related to events which have allegedly continued or taken place after 23 March 1976 (the date of the entry into force of the Covenant and the Optional Protocol for Uruguay);

(c) That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

(d) That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that, in order to perform its responsibilities, it required specific responses to the allegation which had been made by the authors of the communication, and the State party's explanations of the actions taken by it;

...

(f) That the authors be requested to submit any additional detailed information available to them of Eduardo Bleier's arrest and treatment during detention, including statements from other prisoners who claim to have seen him in captivity in Uruguay.

8.1 In reply to the Committee's request for additional detailed information on Mr. Bleier's arrest and treatment, Rosa Valiño de Bleier, in two letters dated 20 June and 26 July 1980, provided detailed information which she had obtained from other ex-prisoners who claimed to have seen her husband in captivity in Uruguay. She also included the text of testimonies on her husband's detention and ill-treatment. In one of the testimonies an eyewitness, Alcides Lanza Perdomo, a Uruguayan citizen, at present resident in Sweden as a political refugee, declared, inter alia, the following:

"I have known Mr. Eduardo Bleier personally since 1955; our acquaintance continued until 1975. Therefore my ability to identify him in person is beyond doubt. I was detained in Montevideo on 2 February 1976 and held until 1 July 1979 ... At the beginning of my imprisonment, on a date between 6 and 10 February 1976 which I cannot specify more exactly with any certainty, the events which I am about to relate took place. I was imprisoned in the barracks of Infantry Regiment No. 13, in C n Casavalle, Montevideo, held completely incommunicado and tortured along with other prisoners. On two or three occasions I struggled violently with the torturers and, driven by pain and desperation, snatched off the hood which I had to wear all the time.

"On those occasions I saw Eduardo Bleier, who was being subjected to savage torture by a group of men. I identified him quite clearly and positively, without the slightest doubt, and so confirmed my certainty that Mr. Bleier was there and was being tortured, because I had for a long time fully recognized his voice, both in its normal tone and in his heart-rending shrieks under torture;

"What I was able to see and hear showed that Mr. Bleier was being subjected to particularly brutal torture and continually insulted at the same time." a/

8.2 The additional information submitted by Rosa Valiño de Bleier on 20 June and 26 July 1980 was transmitted to the State party on 23 June and 2 September 1980, respectively.

9. In its submission of 9 October 1980, the State party repeated what it had stated in its brief submission of 29 December 1978, namely, that a warrant was still out for the arrest of Eduardo Bleier, whose whereabouts were still unknown. No information, explanations or observations were offered with regard to the various submissions from the authors concerning Mr. Bleier's detention.

10.1 With reference to operative paragraph 6 of the Committee's decision of 24 March 1980, Mrs. Rosa Bleier submitted on 31 October 1980 three further testimonies from persons who claim to have seen Eduardo Bleier in detention. One of them, Manuel Piñeiro Pena, a Spanish citizen, declared in Barcelona, Spain, on 24 September 1980:

"I was arrested in my house by an intelligence squad of the Uruguayan army in the early morning of 27 October 1975 and taken hooded to a private house used by this squad for all kinds of torture ... In this place, three days after my arrest, I heard for the first time the voice and cries of Eduardo Bleier as he was being tortured. I heard them again in the early days of November of the same year when I was transferred to the barracks of the 13th Infantry Battalion in Calle Instrucciones, where I could also see him through a small gap in the blindfold which covered my eyes during the first eight months of my detention and also because, for some 15 days, we were lying on the floor side by side ... Then, one night in early December, I heard them calling him as always by his number, which was 52, and they took him to the interrogation room; for hours his cries were heard, and then there came a moment when his cries ceased and we heard the medical orderly being summoned urgently."

10.2 Another witness, Vilma Antúney de Muro, a Uruguayan citizen residing in Sweden, testified that she had been arrested on 3 November 1975 and taken to the barracks of the 13th Infantry Battalion, where she first saw Bleier on 7 November.

> "During the night of the same day we heard cries and saw Bleier falling down the stairs which led to the little room upstairs. When he reached the bottom, he sat up and said something to them for which he was beaten. On another day, between the cries of one of the worst torture sessions, I suddenly heard about six or seven people approaching, struggling with someone who clutched me for a moment and said, 'They want to kill me'. At that moment they trampled on one of my breasts and the pain forced me to sit up ... my blindfold slipped and I saw that some torturers were again taking Bleier upstairs."

10.3 These testimonies were transmitted to the State party on 17 February 1981. By note of 5 May 1981 the State party, referring to Mrs. Bleier's communications of 31 October 1980, reiterated its position that it did not know the whereabouts of Eduardo Bleier.

11.1 By an interim decision of 2 April 1981 the Human Rights Committee stated that before adopting final views in the matter,

> "the Committee considers that it is the clear duty of the Government of Uruguay to make a full and thorough inquiry (a) into the allegations concerning Mr. Bleier's arrest and his treatment while in detention prior to 26 August 1976, and (b) as to his apparent disappearance and the circumstances in which a warrant for his arrest was issued on 26 August 1976. The Committee urges that this should be done without further delay and that the Committee should be informed of the action taken by the Government of Uruguay and of the outcome of the inquiry".

11.2 The Committee based its interim decision on the following considerations:

> "11. As to the merits of the case, the Committee had before it (i) detailed information, including statements of family members and eyewitness testimonies of persons who had been detained in Uruguayan prisons together with Eduardo Bleier and who were later released, concerning his detention and severe mistreatment in prison and later 'disappearance' and (ii) a brief categorical denial of Eduardo Bleier's detention by the Government of Uruguay, which, in the light of (i), is totally insufficient.
>
> "12. The Committee cannot but give appropriate weight to the overwhelming information submitted by the authors of the complaint. This information tends to corroborate the author's allegation that Eduardo Bleier was arrested at the end of October 1975 in Montevideo, Uruguay. His detention would appear to be confirmed at that time by the authorities because his name was on a list of prisoners read out once a week at an army unit in Montevideo; it also appears to be confirmed by several fellow prisoners and other persons who had seen and talked to him in several identified detention centres in Uruguay. Also, several eyewitnesses have reported that Eduardo Bleier was subjected to severe torture during detention.
>
> "13. The failure of the State party to address in substance the serious allegations brought against it and corroborated by unrefuted information,

cannot but lead to the conclusion that Eduardo Bleier is either still detained, incommunicado, by the Uruguayan authorities or has died while in custody at the hands of the Uruguayan authorities."

12. By a note of 14 August 1981 the State party submitted the following observations on the Committee's interim decision of 2 April 1981:

> "the Government of Uruguay wishes to state that, in paragraph 13 of that document, the Committee displays not only an ignorance of legal rules relating to presumption of guilt, but a lack of ethics in carrying out the tasks entrusted to it, since it so rashly arrived at the serious conclusion that the Uruguayan authorities had put Eduardo Bleier to death. The Committee, whose purpose is to protect, promote and ensure respect for civil and political rights, should bear in mind that this task should always be carried out under the rule of law in accordance with its mandate and the universally accepted procedures concerning such matters as guilt and presumption of guilt."

13.1 The Human Rights Committee cannot accept the State party's criticism that it has displayed an ignorance of legal rules and a lack of ethics in carrying out the tasks entrusted to it or the insinuation that it has failed to carry out its task under the rule of law. On the contrary, in accordance with its mandate under article 5 (1) of the Optional Protocol, the Committee has considered the communication in the light of the information made available to it by the authors of the communication and by the State party concerned. In this connexion the Committee has adhered strictly to the principle audiatur et altera pars and has given the State party every opportunity to furnish information to refute the evidence presented by the authors.

13.2 The Committee notes that the State party has ignored the Committee's repeated requests for a thorough inquiry into the authors' allegations.

13.3 With regard to the burden of proof, this cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, especially when such allegations are corroborated by evidence submitted by the author of the communication, and to furnish to the Committee the information available to it. In cases where the author has submitted to the Committee allegations supported by substantial witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

13.4 The Committee finds that the disappearance of Eduardo Bleier in October 1975 does not alone establish that he was arrested by Uruguayan authorities. But, the allegation that he was so arrested and detained is confirmed (i) by the information, unexplained and substantially unrefuted by the State party, that Eduardo Bleier's name was on a list of prisoners read out once a week at an army unit in Montevideo where his family delivered clothing for him and received his dirty clothing until the summer of 1976, and (ii) by the testimony of other

prisoners that they saw him in Uruguayan detention centres. Also there are the reports of several eyewitnesses that Eduardo Bleier was subjected to severe torture while in detention.

14. It is therefore the Committee's view that the information before it reveals breaches of articles 7, 9 and 10 (1) of the International Covenant on Civil and Political Rights and that there are serious reasons to believe that the ultimate violation of article 6 has been perpetrated by the Uruguayan authorities.

15. As regards the latter point the Human Rights Committee urges the Uruguayan Government to reconsider its position in this case and to take effective steps (i) to establish what has happened to Eduardo Bleier since October 1975; to bring to justice any persons found to be responsible for his death, disappearance or ill-treatment; and to pay compensation to him or his family for any injury which he has suffered; and (ii) to ensure that similar violations do not occur in the future.

Notes

a/ Alcides Lanza Perdomo was one of the authors and one of the victims of communication No. R.2/8. Final views adopted on 3 April 1980 (CCPR/C/DR(IX)/R.2/8).

ANNEX XI

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. R.11/45

Submitted by: Pedro Pablo Camargo on behalf of the husband of Maria Fanny Suarez de Guerrero

State party concerned: Colombia

Date of communication: 5 February 1979 (date of initial letter)

Date of decision on admissibility: 9 April 1981

The Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 31 March 1982,

Having concluded its consideration of communication No. R.11/45 submitted to the Committee by Pedro Pablo Camargo on behalf of the husband of Maria Fanny Suárez de Guerrero under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party concerned,

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The communication (initial letter dated 5 February 1979 and further letters dated 26 June 1979, 2 June, 3 and 31 October 1980 and 2 January 1981) was submitted by Pedro Pablo Camargo, Professor of International Law of the National University of Colombia, at present residing in Quito, Ecuador. He submitted the communication on behalf of the husband of Maria Fanny Suarez de Guerrero.

1.2 The author of the communication describes the relevant facts as follows: On 13 April 1978, the judge of the 77th Military Criminal Court of Investigation, himself a member of the police, ordered a raid to be carried out at the house at No. 136-67 Transversal 31 in the "Contador" district of Bogotá. The order for the raid was issued to Major Carlos Julio Castaño Rozo, the SIPEC Chief of the F-2 Police, Bogotá Police Department. The raid was ordered in the belief that Miguel de Germán Ribón, former Ambassador of Colombia to France, who had been kidnapped some days earlier by a guerrilla organization, was being held prisoner in the house in question. Those taking part in the raid were

Captains Jaime Patarroyo Barbosa and Jorge Noel Barrero Rodriguez; Lieutenants Alvaro Mendoza Contreras and Manuel Antonio Bravo Sarmiento; Corporal First Class Arturo Martin Moreno; Constables Joel de Jesus Alarcon Toro, Joaquin Leyton Dominguez, Efrain Morales Cardenas, Gustavos Ospina Rios and Jaime Quiroga, and a driver, Jose de los Santos Baquero. In spite of the fact that Miguel de Germán Ribón was not found, the police patrol decided to hide in the house to await the arrival of the "suspected kidnappers". They were killed as they arrived. In this way, seven innocent human beings were shot dead: Maria Fanny Suarez de Guerrero, Alvaro Enrique Vallejo, Eduardo Sabino Lloredo, Blanco Florez Vanegas, Juan Bautista Ortiz Ruiz, Omar Flores and Jorge Enrique Salcedo. Although the police stated initially that the victims had died while resisting arrest, brandishing and even firing various weapons, the report of the Institute of Forensic Medicine (Report No. 8683, of 17 April 1978), together with the ballistics reports and the results of the paraffin test, showed that none of the victims had fired a shot and that they had all been killed at point-blank range, some of them shot in the back or in the head. It was also established that the victims were not all killed at the same time, but at intervals, as they arrived at the house, and that most of them had been shot while trying to save themselves from the unexpected attack. In the case of Mrs. Maria Fanny Suárez de Guerrero, the forensic report showed that she had been shot several times after she had already died from a heart attack.

1.3 The author adds that, according to witnesses, the victims were not given the opportunity to surrender. He mentions that the police stated that they were dealing with persons with criminal records but that subsequent investigation by the police did not prove that the victims were kidnappers.

1.4 The author alleges that seven persons - including Maria Fanny Suárez de Guerrero - were arbitrarily killed by the police, that the police action was unjustified and that it has been inadequately investigated by the Colombian authorities. He claims that, at the beginning, the case was shelved under Legislative Decree No. 0070 of 20 January 1978 because the Colombian authorities considered that the police had acted within the powers granted by that Decree. He further alleges that there have been other cases of arbitrary killings by the army and the police on the pretext that they were dealing with suspicious people and that it has later been proved that the victims were either innocent or persecuted for political reasons.

1.5 Legislative Decree No. 0070* "introducing measures for the restoration of public order" amended article 25 of the Colombian Penal Code by adding a new paragraph 4. The substantive part of the Decree reads as follows:

> "Article 1. For so long as public order remains disturbed and the national territory is in a state of siege, article 25 of the Penal Code shall read as follows:
>
> "Article 25. The [penal] act is justified if committed:
>
> "... (4) By the members of the police force in the course of operations planned with the object of preventing and curbing the offences of extortion and kidnapping, and the production and processing of and trafficking in narcotic drugs".

---

* See the text of Legislative Decree No. 0070 in the appendix below.

1.6 The author states that Legislative Decree No. 0070 of 1978 has established a new ground of defence against a criminal charge so as to justify crimes committed by members of the police force when they are taking part in operations to repress certain types of offences. In other words, the otherwise penal act is justified and does not give rise to penal responsibility when it is committed by members of the police force. He further argues that, if public authorities are allowed to kill an individual because he is suspected of having committed certain types of offences specified in Decree No. 0070, it means that they are allowed to commit arbitrary acts and, by doing so, to violate fundamental human rights, in particular the most fundamental one of all - the right to life. The author claims that Decree No. 0070 of 1978 violates articles 6, 7, 9 and 14 and 17 of the International Covenant on Civil and Political Rights because public authorities are allowed to violate the fundamental guarantees of security of person, of privacy, home and correspondence, individual liberty and integrity, and due process of law, in order to prevent and punish certain types of offences.

1.7 The author states that domestic remedies to declare Decree No. 0070 unconstitutional have been exhausted, since there is a decision of the Supreme Court of Colombia of 9 March 1980 upholding the Decree's constitutionality.

1.8 The author states that the case has not been submitted to any other procedure of international investigation or settlement.

2. On 9 August 1979, the Human Rights Committee decided to transmit the communications to the State party, under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility.

3.1 By letter dated 5 May 1980, the State party refuted the allegations made by the author of the communication that the enactment of Legislative Decree No. 0070 of 20 January 1978 constitutes a breach of articles 6, 7, 9, 14 and 17 of the Covenant.

3.2 The State party submitted that it cannot reasonably be claimed that this Decree establishes the death penalty or empowers the police to practise torture or cruel, inhuman or degrading treatment or that it infringes the rights or guarantees established by articles 9, 14 and 17 of the Covenant. It cited the ruling on the scope of the Decree given by the Supreme Court of Justice in its judgement of 9 March 1978, by which it held the Decree constitutional. The Court said in particular:

> "... as can be seen, the Decree, in article 1, paragraph 2 (4), introduces a temporary addition to the current text of article 25 of the Penal Code, for the purpose of creating a new defence to a criminal charge; the Decree provides that it is a good defence in answer to such a charge to show that the punishable act was 'committed ... by the members of the police force in the course of operations planned with the object of preventing and curbing the offences of extortion and kidnapping and the production and processing of and trafficking in narcotic drugs'. This amendment contemplates a legal situation different from those referred to in the first three subparagraphs of article 25, which formerly constituted the entire article and hence has special characteristics.

"The sense in which the provision in question creates a different legal situation is that it does not deal with a case of obedience to a mandatory order given by a competent authority, nor with self-defence, nor with a state of necessity affecting an individual.

"The provision introduced by Decree No. 70 concerns another class of circumstances to justify action taken by the police with the object of preventing or curbing the offences of extortion, kidnapping and the production and processing of and trafficking in narcotic drugs.

"On the one hand, the provision is broad in scope in that it does not limit the means of action, for under the provision both armed force and other means of coercion, persuasion or dissuasion may be used.

"On the other hand, however, the provision limits the field of action to the objectives referred to therein, namely, preventing and curbing the offences of kidnapping, extortion and the production and processing of and trafficking in narcotic drugs ..."

The Court observed that the Decree was obviously related to the fact that the national territory was in a state of siege and it further stated:

"... this is a special measure that involves a right of social defence; for, on the one hand, it is legitimate that the members of the armed forces who are obliged to take part in operations like those described and whose purpose it is to prevent or curb offences which, by their nature, are violent and are committed by means of violence against persons or property, should be protected by a justification of the punishable acts that they are constrained to commit, and, on the other hand, both the Government, acting on behalf of society, and society itself, have an interest in the defence of society and in ensuring that it is adequately defended by the agencies to which the law has entrusted the weapons for its defence".

3.3 In considering the provisions of Decree No. 0070, the State party argued that it should be borne in mind that the new grounds do not establish a statutory presumption of justification of the act, for such a presumption must be expressed, as is required by article 232 of the Code of Criminal Procedure, which provides: "There is a statutory presumption if the law prescribes that an act shall constitute conclusive proof of another act". Accordingly, before the fourth ground in article 25 can be applied to a specific case, it is always necessary to weigh the circumstances of the act, in order to determine whether it is justifiable on that ground.

3.4 With regard to the specific incident involving the death of Maria Fanny Suárez de Guerrero, the State party stated that: (a) in the course of a police operation on 13 April 1978 in the "Contador" district of Bogota the following persons died in the house at 136-67 Thirty-first Street: Maria Fanny Suárez de Guerrero, Alvaro Enrique Vallejo, Eduardo Sabino Lloredo, Bianca Florez Vanegas, Juan Bautista Ortiz Ruiz, Omar Flórez and Jorge Enrique Salcedo; (b) the Office of the State Counsel for the national police instituted an administrative inquiry into the case and the judge of the 77th Criminal Military Court was ordered to hold a criminal investigation; (c) as a result of the criminal investigation, police captains Alvaro Mendoza Contreras and Jorge Noel Barreto Rodriguez, police lieutenant Manuel Bravo Sarmiento and officers Jésus Alarcon, Gustavo Ospina, Joaquin Dominguez, Arturo Moreno, Efrain Morales and

Jose Sanchez were concerned in the criminal proceedings; (d) the trial had not yet been completed. Consequently, the State party submitted, domestic remedies of the local jurisdiction had not yet been exhausted.

4.1 In his comments dated 2 June 1980, the author stated that "the new ground included in Decree No. 0070 of 1978 does indeed establish 'a statutory presumption of justification of the act', because it is left to the police authorities themselves to determine what is justified, through the so-called 'military criminal judges' and the Higher Military Court, even if the victim or victims are civilians. Up to now all extrajudicial deaths caused by the police force have been justified by the police force itself, without any intervention of the ordinary courts".

4.2 As regards the events which took place in the "Contador" district of Bogotá on 13 April 1978, the author maintained that it was the police themselves who entrusted the criminal investigation to the judge of the 77th Military Criminal Court and he, after more than two years, had not summoned those involved to appear in court: "There is no question of genuine criminal proceedings for, contrary to the principle that no one may be judge in his own cause, it is the police who have carried out the investigation with respect to themselves, and the military criminal procedure does not permit the civilian victims to be represented. Ordinary criminal procedure provides both for a criminal action and for a civil action for damages." The author further maintained that the Government of Colombia had not permitted the institution of civil proceedings on behalf of the victims in the military criminal case against the accused and he claimed that the application of domestic remedies was unreasonably prolonged.

5. On 25 July 1980 the Human Rights Committee decided to request the State party to furnish detailed information as to:

(a) How, if at all, the state of siege proclaimed in Colombia affected the present case;

(b) Whether the institution of civil proceedings for damages had been permitted on behalf of the victims of the police operation on 13 April 1978 in the "Contador" district of Bogotá, and, if not, the reasons for any refusal to permit such proceedings;

(c) The reasons for the delay, for more than two years, in the abjudication of the Higher Military Court in the matter.

6.1 By letters dated 9 September and 1 October 1980 the State party submitted further information.

6.2 The State party maintained that the state of siege might affect this case if the following conditions were met:

> "(a) If those responsible for the violent death of various persons in the 'Contador' district police operation invoke in justification of the act the new ground provided in Decree 0070 of 1978 promulgated in exercise of the powers conferred by article 121 of the National Constitution; and

(b) If the Military Tribunal (Oral Proceedings) (Consejo de Guerra Verbal) which is to try those responsible for the acts in question agrees that the ground mentioned is applicable thereto. If it should consider that the ground is not applicable, no effect would derive from the state of siege. Only when the decision of the Military Tribunal is delivered will it be possible to establish whether, by virtue of Decree 0070 of 1978, the state of siege does in fact affect this case."

The State party added:

"As regards the questions of trial formalities, jurisdiction and competence, the state of siege has no effect on either the criminal or the civil proceedings or the action under administrative law that could be brought if the injured parties claimed compensation for the damage suffered."

6.3 As regards the question whether the institution of civil proceedings for damages had been permitted on behalf of the victims of the police operation, the State party affirmed that the institution of a civil action in conjunction with military proceedings was restricted to proceedings dealing with ordinary offences and that, since the present case was a military offence, no civil action could be instituted in conjunction with the military proceedings. Military offences are "those covered by the Code of Military Criminal Justice, committed by soldiers on active service and in relation to their service". However, the State party submitted that persons who have suffered loss or injury may apply to an administrative tribunal to obtain the appropriate damages on the ground of the extracontractual responsibility of the State. Such a claim may be made independently of the outcome of the criminal trial and even if it has not begun or been concluded. This is because the State must bear responsibility for the abuses and negligence of its agents when they unjustifiably result in damage. Thus the institution of a civil action in conjunction with military criminal proceedings is completely unimportant for this purpose, since another remedy is available to those suffering loss or injury. In addition, the State party explained that the Code of Military Criminal Justice contains the following provisions on compensation:

"Article 76. On any conviction for offences that result in loss or injury to any person, either natural or legal, those responsible shall be jointly sentenced to compensate for all such damage as has been caused.

"..."

6.4 As regards the reasons for the delay, for more than two years, in the abjudication of the Higher Military Court in the matter, the State party submitted that this was due to the heavy workload of all the judges and prosecutors. The Office of the State Counsel for the National Police, which is responsible for exercising judicial supervision over the system of military criminal justice with regard to proceedings against national police personnel (Decree-Law 521 of 1971) through general and special inspections (Decree-Law 2500 of 1970), found that the delay in handling the case concerning the events in the "Contador" district was justified, since it was due to the heavy workload and not to negligence, it having been established that the judges produce a high monthly average of decisions.

6.5 As regards the administrative inquiry instituted by the Office of the State Counsel for the national police into the incident in the "Contador" district, the State party in its letter of 1 October 1980 informed the Committee that this had

been completed. The Office of the State Counsel had requested the dismissal of all the members of the patrol involved in the operation. This dismissal was ordered on 16 June 1980 and had been carried out.

6.6 Nevertheless, the State party reiterated that domestic remedies had not been exhausted.

7.1 In further letters dated 3 and 31 October 1980 the author submitted the following additional information: "... the investigation into the massacre on 13 April 1978 was conducted by the very police officer who had led the raid, namely Captain Carlos Julio Castaño Rozo, the SIPEC Chief of the Bogotá Police Department". He further stated in July 1980, the Inspector General of Police, General Fabio Arturo Londoño Cardenas, acting as judge of first instance, issued an order for all criminal proceedings against those charged with the massacre to be discontinued, on the basis of article 417 of the Code of Military Criminal Justice, which states:

> "Article 417. If, at any stage of the proceedings, it becomes fully established that the act for which charges have been laid or which is under investigation did not take place, or that it was not committed by the accused, or that the law does not consider it a criminal offence, or that there were no grounds for instituting or continuing the criminal proceedings, the judge of first instance or the investigating official shall, with the approval of the Public Prosecutor's department, issue an official ruling to that effect and shall order all proceedings against the accused to be discontinued."

The author alleged that the Inspector General of Police invoked the ground of justification of the criminal act provided for in article 1 of Decree No. 0070, of 20 January 1978. This ruling went to the Higher Military Court for ex officio review. The Higher Military Court, through its Fourth Chamber, annulled the decision of the Inspector General of Police. The dossier then remained in the hands of the judge of first instance and the author stated that up to the date of his letter (3 October 1980) no order had been issued convening a military court to try the accused (Consejo Verbal de Guerra).

7.2 However, in his letter of 2 January 1981, the author informed the Committee that on 30 December 1980 a military court acquitted the 11 members of the Police Department. He stated that Dr. Martinez Zapata, the lawyer for the "Contador" victims, was not allowed to attend the trial, submit appeals or make objections. He affirmed that the acquittal was based on Decree Law No. 0070 of 1978.

7.3 The author further stated that as a result of the acquittal no administrative suit for compensation could be filed and the police officers and agents, who were dismissed on the recommendation of the Deputy Procurator General for Police Affairs, would be reinstated in their functions. The author had earlier stated:

> "... in principle, an action for compensation may be brought before an administrative tribunal. However, if the accused are acquitted and the State turns out not to be responsible, how could such an action be brought before an administrative tribunal? It is quite clear, moreover, that the lawyers for the victims are not simply seeking compensation; above all they want justice to be done and a declaration that Legislative Decree No. 0070 of 1978 is manisfestly a breach of articles 6, 7, 14 and 17 of the International Covenant on Civil and Political Rights."

7.4 The author claimed that this was a serious case of a denial of justice which definitively confirmed that murders of civilians by the police would go unpunished.

8.1 The Committee found, on the basis of the information before it, that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication since there was no indication that the same matter had been submitted under another procedure of international investigation or settlement.

8.2 As to the question of exhaustion of domestic remedies, the Committee, having been informed by the author of the communication that on 30 December 1980 the military tribunal acquitted the 11 members of the Police Department who were on trial and this information not having been refuted by the State party, understood that the military tribunal found the measures taken by the police which resulted in the death of María Fanny Suárez de Guerrero to have been justified. It appeared from the information before the Committee that there was no further possibility of an effective domestic remedy in regard to the matters complained of. The Committee was therefore unable to conclude on the basis of the information submitted by the State party and the author, that there were still effective remedies available which could be invoked on behalf of the alleged victim. Accordingly the Committee found that the communication was not inadmissable under article 5 (2) (b) of the Optional Protocol. The Committee stated, however, that this decision could be reviewed in the light of any further explanations which the State party might submit under article 4 (2) of the Optional Protocol.

9. On 9 April 1981, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it. These should include a copy of the judgement of the military tribunal acquitting the members of the Police Department who were on trial.

10. The time limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 26 November 1981. To date, no submission has been received from the State party in addition to those received prior to the decisions on admissibility.

11.1 The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol. The Committee bases its views on the following facts, which are not in dispute or which are unrefuted by the State party.

11.2 Legislative Decree No. 0070 of 20 January 1978 amended article 25 of the Penal Code "for so long as the public order remains disturbed and the national territory is in a state of seige" (see text of Decree in appendix below). The Decree established a new ground of defence that may be pleaded by members of the police force to exonerate them if an otherwise punishable act was committed "in the course of operations planned with the object of preventing and curbing the offences of extortion and kidnapping, and the production and processing of and trafficking in narcotic drugs".

11.3 On 13 April 1978, the judge of the 77th Military Criminal Court of Investigation, himself a member of the police ordered a raid to be carried out at the house at No. 136-67 Transversal 31 in the "Contador" district of Bogotá. The order for the raid was issued to Major Carlos Julio Castaño Rozo, the SIPEC Chief of the F-2 Police, Bogotá Police Department. The raid was ordered in the belief that Miguel de Germán Ribón, former Ambassador of Colombia to France, who had been kidnapped some days earlier by a guerrilla organization, was being held prisoner in the house in question.

11.4 In spite of the fact that Miguel de Germán Ribón was not found, the police patrol decided to hide in the house to await the arrival of the "suspected kidnappers". Seven persons who subsequently entered the house were shot by the police and died. These persons were: María Fanny Suárez de Guerrero, Alvaro Enrique Vallejo, Eduardo Sabino Lloredo, Blanca Flórez Vanegas, Juan Bautista Ortiz Ruiz, Omar Flórez and Jorge Enrique Salcedo.

11.5 Although the police initially stated that the victims had died while resisting arrest, brandishing and even firing various weapons, the report of the Institute of Forensic Medicine (Report No. 8683, of 17 April 1978), together with the ballistics reports and the results of the paraffin test, showed that none of the victims had fired a shot and that they had all been killed at point-blank range, some of them shot in the back or in the head. It was also established that the victims were not all killed at the same time, but at intervals, as they arrived at the house, and that most of them had been shot while trying to save themselves from the unexpected attack. In the case of Mrs. María Fanny Suárez de Guerrero, the forensic report showed that she had been shot several times after she already died from a heart attack.

11.6 The Office of the State Counsel for the national police instituted an administrative inquiry into the case. The administrative inquiry was completed and the Office of the State Counsel for the national police requested the dismissal of all the members of the patrol involved in the operation. This dismissal was ordered on 16 June 1980.

11.7 In addition, the judge of the 77th Military Criminal Court was ordered to hold a criminal investigation into the case. The preliminary investigation of the case was conducted by Major Carlos Julio Castaño Rozo. This investigation did not prove that the victims of the police action were kidnappers. In July 1980, the Inspector General of Police, acting as judge of first instance, issued an order for all criminal proceedings against those charged with the violent death of these seven persons during the police operation on 13 April 1978 in the "Contador" district of Bogotá to be discontinued. This order was grounded on article 7 of Decree No. 0070. A Higher Military Court as a result of an ex officio review, annulled the decision of the Inspector General of Police. On 31 December 1980 a military tribunal (Consejo de Guerra Verbal), to which the case had been referred for retrial, again acquitted the 11 members of the Police Department who had been involved in the police operation. The acquittal was again based on Decree-Law No. 0070 of 1978.

11.8 At no moment could a civil action for damages be instituted in conjunction with the military criminal proceedings. An action for compensation for the persons injured by the police operation in the "Contador" district depended first on determining the criminal liability of the accused. The accused having been acquitted, no civil or administrative suit could be filed to obtain compensation.

12.1 In formulating its views, the Human Rights Committee also takes into account the following considerations:

12.2 The Committee notes that Decree No. 0070 of 1978 refers to a situation of disturbed public order in Colombia. The Committee also notes that the Government of Colombia in its note of 18 July 1980 to the Secretary-General of the United Nations (reproduced in document CCPR/C/2/Add.4), which was designed to comply with the formal requirements laid down in article 4 (3) of the Covenant, made reference to the existence of a state of siege in all the national territory since 1976 and to the necessity to adopt extraordinary measures within the framework of the legal régime provided for in the National Constitution for such situations. With regard to the rights guaranteed by the Covenant, the Government of Colombia declared that "temporary measures have been adopted that have the effect of limiting the application of article 19, paragraph 2, and article 21 of that Covenant". The Committee observes that the present case is not concerned with articles 19 and 21 of the Covenant. It further observes that according to article 4 (2) of the Covenant there are several rights recognized by the Covenant which cannot be derogated from by a State party. These include articles 6 and 7 which have been invoked in the present case.

13.1 Article 6 (1) of the Covenant provides:

> "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

The right enshrined in this article is the supreme right of the human being. It follows that the deprivation of life by the authorities of the State is a matter of the utmost gravity. This follows from the article as a whole and in particular is the reason why paragraph 2 of the article lays down that the death penalty may be imposed only for the most serious crimes. The requirements that the right shall be protected by law and that no one shall be arbitrarily deprived of his life mean that the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State.

13.2 In the present case it is evident from the fact that seven persons lost their lives as a result of the deliberate action of the police that the deprivation of life was intentional. Moreover, the police action was apparently taken without warning to the victims and without giving them any opportunity to surrender to the police patrol or to offer any explanation of their presence or intentions. There is no evidence that the action of the police was necessary in their own defence or that of others, or that it was necessary to effect the arrest or prevent the escape of the persons concerned. Moreover, the victims were no more than suspects of the kidnapping which had occurred some days earlier and their killing by the police deprived them of all the protections of due process of law laid down by the Covenant. In the case of Mrs. María Fanny Suárez de Guerrero, the forensic report showed that she had been shot several times after she had already died from a heart attack. There can be no reasonable doubt that her death was caused by the police patrol.

13.3 For these reasons it is the Committee's view that the action of the police resulting in the death of Mrs. María Fanny Suárez d Guerrero was disproportionat to the requirements of law enforcement in the circumstances of the case and that she was arbitrarily deprived of her life contrary to article 6 (1) of the International Covenant on Civil and Political Rights. Inasmuch as the police

action was made justifiable as a matter of Colombian law by Legislative Decree No. 0070 of 20 January 1978, the right to life was not adequately protected by the law of Colombia as required by article 6 (1).

14. It is not necessary to consider further alleged violations, arising from the same facts, of other articles of the Covenant. Any such violations are subsumed by the even more serious violations of article 6.

15. The Committee is accordingly of the view that the State party should take the necessary measures to compensate the husband of Mrs. María Fanny Suárez de Guerrero for the death of his wife and to ensure that the right to life is duly protected by amending the law.

APPENDIX

Decree No. 0070 of 20 January 1978

introducing measures for the restoration of public order

The President of the Republic of Colombia

in the exercise of the authority vested in him by article 121 of the National Constitution, and

Considering:

That, by Decree No. 2131 of 1976, the public order was declared to be disturbed and a state of siege was proclaimed throughout the national territory;

That the disturbance of the public order has increased with the intensification of organized crime, particularly as a result of the commission of offences against individual freedom, against the life and integrity of the person and against the health and integrity of society;

That it is the duty of the Government to take whatever measures are conducive to the restoration of a normal situation;

Decrees:

Article 1. For so long as the public order remains disturbed and the national territory is in a state of siege, article 25 of the Penal Code shall read as follows:

"Article 25. The act is justified if committed:

"(1) Pursuant to a legislative provision or to a mandatory order given by a competent authority;

"(2) By a person who is constrained to defend himself or another against a direct or wrongful act of violence against the person, his honour or his property, provided that the defence is proportionate to the attack;

"The circumstances referred to in this subparagraph are presumed to exist in any case where a person during the night repels any person who climbs or forcibly enters the enclosure, walls, doors or windows of his dwelling or outbuildings, whatever the harm done to the attacker, or where a person finds a stranger in his dwelling, provided that in the latter case there is no justification for the stranger's presence in the premises and that the stranger offers resistance;

"(3) By a person who has to save himself or another from a serious and imminent danger to the person which cannot be avoided in any other way, which is not the result of his own action and to which he is not exposed in the course of the exercise of his profession or occupation;

"(4) By the members of the police force in the course of operations planned with the object of preventing and curbing the offences of extortion and kidnapping, and the production and processing of and trafficking in narcotic drugs".

Article 2

This decree shall enter into force on the date of its enactment and shall suspend any provisions inconsistent therewith.

For transmittal and enforcement

Done in Bogotá, D.E., on 20 January 1978.

(Signed) Alfonso Lopez Michelsen

Minister of the Interior

(Signed) Alfredo Araujo-Grau

Minister for Foreign Affairs

(Signed) Indalecio Lievano Aguirre

Minister of Justice

(Signed) Cesar Gomez Estrada

Minister of Finance

(Signed) Alfonso Palacio Rudas

ANNEX XII

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. R.12/50

Submitted by: Gordon C. Van Duzen (represented by Professor H. R. S. Ryan)

Alleged victim: Gordon C. Van Duzen

State party concerned: Canada

Date of communication: 18 May 1979 (date of initial letter)

Date of decision on admissibility: 25 July 1980

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 7 April 1982,

Having concluded its consideration of communication No. R.12/50 submitted to the Committee by Gordon C. Van Duzen under the Optional Protocol to the International Covenant on Human Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party concerned,

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of this communication (initial letter dated 18 May 1979 and further letters of 17 April 1980, 2 June and 11 June 1981) is Gordon C. Van Duzen, a Canadian citizen, who is represented before the Committee by Professor H. R. S. Ryan.

2.1 The author alleges that he is the victim of a breach by Canada of article 15 (1) of the International Covenant on Civil and Political Rights. The relevant facts, which are not in dispute, are as follows:

2.2 On 17 November 1967 and 12 June 1968, respectively, the author was sentenced upon conviction of different offences to a three year and a 10-year prison term. The latter term was to be served concurrently with the former, so that the combined terms were to expire on 11 June 1978. On 31 May 1971, the author was released on parole under the Parole Act 1970, then in force. On 13 December 1974, while still on parole, the author was convicted of the indictable offence of breaking and entering and, on 23 December 1974, sentenced to imprisonment for a term of three years. By application, of section 17 of the Parole Act 1970 his parole was treated as forfeited on 13 December 1974. As a consequence, the author's combined terms

have been calculated to expire on 4 January 1985.* In 1977 several sections of the Parole Act 1970, among them section 17, were repealed. New provisions came into force on 15 October 1977 (Criminal Law Amendment Act 1977).

2.3 According to the author the combined effect of the new law was that forfeiture of parole was abolished and the penalty for committing an indictable offence while on parole was made lighter, provided the indictable offence was committed on or after 15 October 1977, because, inter alia, pursuant to the new provisions, time spent on parole after 15 October 1977 and before suspension of parole, was credited as time spent under sentence. Therefore, a parolee whose parole was revoked after that date was not required to spend an equivalent time in custody under the previous sentence.

2.4 The author alleges that, by not making the "lighter penalty" retroactively applicable to persons who have committed indictable offences while on parole before 15 October 1977, the Parliament of Canada has enacted a law which deprives him of the benefit of article 15 of the Covenant and thereby failed to perform its duty, under article 2 of the Covenant, to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to take the necessary steps to adopt such legislative measures as may be necessary to give effect to those rights.

3.1 As regards the admissibility of the communication the author claimed that in the present state of the law in Canada the benefit of article 15 of the Covenant could only be afforded to him through the royal prerogative of mercy, exercised by the Governor-General of Canada on the advice of the Privy Council for Canada. A petition submitted by the author in this connexion was rejected on 19 January 1979 denying the validity of the author's claim. It was explained that the relevant provisions in article 15 of the Covenant applied only where the penalty for an offence had been reduced by law, and since there was no suggestion that the penalties attributable to the offences for which the author was incarcerated had been reduced, after he committed them, the said provision was not applicable in his case.

3.2 The author maintained that, as a result, domestic remedies had been exhausted. He also stated that he had not applied to any other international body. He requested the Committee to find that he was entitled to receive credit, as partial completion of his combined terms of imprisonment, for the time spent by him on parole, namely 1,292 days, between 31 May 1971 and 13 December 1974.

4. By its decision of 7 August 1979 the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

5. By a note dated 24 March 1980 the State party objected to the admissibility of the communication on the ground that the communication was incompatible with the provisions of the Covenant and as such inadmissible under article 3 of the Optional

---

* This date appears from a correction submitted by the State party (19 February 1982), the date having earlier been given by the parties as 19 December 1984.

Protocol to the Covenant. The State party submitted, in particular, that the word "penalty" in article 15 of the Covenant referred to the punishment or sanction decreed by law for a particular offence at the time of its commission. Therefore, in respect of a particular criminal act, a breach of the right to a lesser penalty could only occur when there was a reduction of the punishment which could be imposed by a court. Parole was the authority granted by law for an inmate to be at liberty during his term of imprisonment; it did not reduce the punishment which, according to law, could be imposed for a given offence, but rather dealt with the way a sentence would be served. The State party further maintained that the relevant provisions of the Criminal Law Amendment Act 1977 did not reduce the penalty which the law decreed for any given criminal offence and that, therefore, the new provisions did not result in a "lighter penalty" within the meaning of article 15 of the Covenant.

6.1 On 17 April 1980, comments on behalf of the author of the communication were submitted in reply to the State party's submission of 24 March 1980. They refuted the State party's contention that the granting of parole did not come within the legal term of "penalty" and that the provisions of the Criminal Law Amendment Act 1977 did not result in a "lighter penalty". Discussing a wide range of meanings of the word "penalty", the submission referred to several laws enacted in Canada which, by way of legal interpretations and judicial decisions, did not permit the State party's conclusion that a punishment not imposed by a court is not a penalty. The author further claimed that, according to Canadian Court rulings in specific cases, it was not unjustifiable to conclude that automatic deprivation of "statutory remission" (application of forfeiture of parole) by operation of law, although without any court order, was a penalty and that therefore the provisions of the Criminal Law Amendment Act 1977, if applied to his case, would result in a lighter penalty.

6.2 Discussing applicable principles of interpretation it was submitted that, in case of doubt, a presumption in favour of the liberty of the individual should be applied to article 15 (1). As a consequence, this provision - unlike the Canadian Interpretation Act, section 36 - was said not to be limited to a penalty imposed or adjudged after the change in the law. In this connexion it was argued that this meaning was assumed in reservations made by certain other States parties when they ratified the Covenant, and was also supported in the proceedings in the Third Committee of the General Assembly of the United Nations in 1960, in which Canada had participated.

7. By its decision of 25 July 1980 the Committee, after finding, inter alia, that the communication was not incompatible with the provisions of the Covenant, declared the communication admissible.

8.1 In its submission under article 4 (2) of the Optional Protocol, dated 18 February 1981, the State party sets out, inter alia, the law relating to the Canadian parole system and asserts that it is not in breach of its obligations under the International Covenant on Civil and Political Rights. It contends:

(a) That article 15 of the International Covenant on Civil and Political Rights deals only with criminal penalties imposed by a criminal court for a particular criminal offence, pursuant to criminal proceedings;

(b) That the forfeiture of parole is not a criminal penalty within the meaning of article 15 of the Covenant;

(c) That by replacing forfeiture of parole by revocation of parole it did not substitute a "lighter penalty" for the "commission of an indictable offence while on parole".

8.2 The State party further elaborates on the definition of the word "penalty" as used in article 15 (1) of the Covenant.

8.3 The State party submits that there are various kinds of penalties: these may be criminal, civil or administrative. This distinction between criminal penalties and administrative or disciplinary ones, the State party argues, is generally accepted. Criminal penalties, it further submits, are sometimes referred to as "formal punishment" while the administrative penalties are referred to as "informal punishment".

8.4 The State party adds that the setting or context of article 15 of the Covenant is criminal law. The words "guilty", "criminal offence" and "offender" are evidence that when the word "penalty" is used in the context of article 15, what is meant is "criminal penalty". The State party finds unacceptable Mr. Van Duzen's proposition, that the word "penalty" in article 15 of the Covenant must be given a wide construction which would mean that article 15 would apply to administrative or disciplinary sanctions imposed by law as a consequence of criminal convictions.

8.5 The State party furthermore refers to a series of Canadian court decisions on the nature and effects of parole, its suspension or revocation. It also argues, quoting various authorities, that the Canadian process of sentencing permits flexibility with respect to forfeiture of parole. It points out that the last sentence of three years (plus forfeiture of parole) when the statutory maximum is 14 years, makes it possible to argue, in view of Mr. Van Duzen's criminal record, that the judge did take into consideration his forfeiture of parole. Also the role of the National Parole Board is discussed in this context.

8.6 The State party agrees with the alleged principle of interpretation referred to in paragraph 6.2 above, but is unable to find any ambiguity in article 15 of the Covenant because it is clearly restricted, it submits, to the field of criminal law. Therefore, the State party submits, the author cannot benefit from the presumption in favour of liberty.

8.7 In the light of the above, the State party submits that the Human Rights Committee ought to dismiss Mr. Van Duzen's communication. Article 15, it submits, deals with criminal penalties, while the process of parole is purely administrative, and therefore the Criminal Law Amendments Act 1977 cannot be regarded as providing a lighter penalty within the ambit of article 15.

9.1 On 2 June 1981 the author through his representative submitted observations under rule 93 (3) of the Committee's provisional rules of procedure in response to the State party's submission of 18 February 1981 under article 4 (2) of the Optional Protocol.

9.2 The author observes that in article 15 (1) the word "criminal" is associated with "offence" and not with "penalty". The State party's attempt to narrow the meaning of "penalty" is not supported by the words of the article. It is submitted that if the offence is criminal within the meaning of the article, any penalty for the offence is a penalty within the meaning of the article. The State party admits that forfeiture and revocation of parole were penalties and that revocation

continues to be a penalty, but tries to divide penalties into categories for which it has no authority in the words of the article, in precedent or in reason.

9.3 The author maintains in his submission that the word "penalty" is not confined to a "criminal penalty", as defined by the State party, and is consistent not only with the language of article 15 (1) but also with judicial and other usage in the English-speaking world.

9.4 The penalty of forfeiture or revocation of parole, he states, is an integral part of the penal process resulting from conviction and imposition of a sentence of imprisonment and enforced by the agencies executing that sentence. The Penitentiary Service, the National Parole Board and the National Parole Service are all under the jurisidiction of the Solicitor-General of Canada, and the Penitentiary Service and the National Parole Service are branches of the Correctional Service of Canada, under the jurisdiction and administrative direction and control of the Commissioner of Corrections.

9.5 As the Government has emphasized, the author states, parole affects the mode of undergoing a sentence of imprisonment imposed for the offence. Forfeiture and revocation of parole were, before 15 October 1977, penalties for breach of conditions of parole. Revocation of parole continues to be such a penalty. The State party's argument is that a penalty within the meaning of article 15 (1) is only a so-called "criminal penalty" imposed by a criminal court for a particular criminal offence, pursuant to criminal proceedings. It must surely be agreed that a term of imprisonment is such a penalty. A penalty is not exhausted when it is pronounced. It continues in operation until it has been completely executed. Being at large on parole is therefore a mode of undergoing a criminal penalty. Forfeiture and revocation of parole and their consequences were penalties for breach of conditions of a mode of undergoing a criminal penalty. Even if the State party's definition of "penalty" within the meaning of article 15 (1) were correct, which is not admitted, forfeiture and revocation of parole would be criminal penalties within that interpretation of the article. The attempted distinction put forward by the Government between an administrative and a criminal penalty is without foundation in this context. In this connexion, attention is drawn to the statement of Mr. Justice LeDain, in the Canadian Federal Court of Appeal, in his reasons for judgement in Re Zong and Commissioner of Penitentiaries (1976) 1 C.F. 657, at 679-80, cited in the reply, where he said that forfeiture of parole was a penalty for the act of committing an indictable offence while on parole.

9.6 The author further maintains that the distinction between formal punishment, which is administered through the courts, and informal punishment which is used extensively in a wide variety of interpersonal and institutional contexts, misses the point of this communication. The penalty here at issue clearly entails "punishment for crime". The distinction does not depend on the agency that administers or imposes the penalty. The nature of the penalty, its relation to the offence, and its consequences are the critical factors, not the agency that imposes it.

9.7 Forfeiture of parole, when in effect, was a lawful automatic consequence by operation of law of conviction of an indictable offence in certain circumstances, but this per se is not the subject of the complaint. The author states that he would have no complaint under article 15 (1) about the forfeiture of his parole or the consequence of forfeiture of parole, as they applied to him, if the amendments of 1977 had not made lighter the penalty for breach of conditions of parole without making the amendment retroactive.

9.8 Commenting on the State party's submissions as to the process of sentencing and the alleged flexibility both before and after the amendments of 1977, the author refers to statistics showing that despite the maximum fixed by law at 14 years, his last sentence, which was a prison term of three years, is close to the normal upper end for such offences. He therefore considers the suggestion that the sentencing judge took his forfeiture of parole into account in reduction of his term to be without foundation. The author maintains that, although revocation of parole continues to be authorized not only on conviction for offences for which forfeiture would have automatically ensued before 15 October 1977, but also following conviction of other offences or for some other reason not constituting an offence, the consequences of revocation are less severe under the present law than they were before 15 October 1977.

9.9 Finally, the author's submission of 2 June 1981 provides information that on 1 May 1981 he was again released under the Parole Act, under mandatory supervision, which is substantially equivalent to parole. It is argued, however, that as a result of the conditions of his release, he is not a free man and may be re-imprisoned at any time until late in 1984.* He claims to be entitled to be completely free after 9 June 1981.

9.10 In additional observations, dated 11 June 1981, the author further maintains that he was indeed subjected to the jurisdiction of a judicial authority in connexion with the forfeiture of his parole. He states that in accordance with the law in force, he was brought before a Provincial judge, on or about 13 January 1975 (at a time when he was already in custody following his conviction on 13 December 1974) who, in the exercise of his judicial functions, declared that the author's parole was forfeited and issued a warrant, pursuant to section 18 (2) of the Parole Act, for his recommitment to a penitentiary pursuant to section 21 of the Parole Act, then in force.

10.1 The Human Rights Committee notes that the main point raised and declared admissible in the present communication is whether the provision for the retroactivity of a "lighter penalty" in article 15 (1) of the Covenant is applicable in the circumstances of the present case. In this respect, the Committee recalls that the Canadian legislation removing the automatic forfeiture of parole for offences committed while on parole was made effective from 15 October 1977, at a time when the alleged victim was serving the sentence imposed on him under the earlier legislation. He now claims that under article 15 (1) he should benefit from this subsequent change in the law.

10.2 The Committee further notes that its interpretation and application of the International Covenant on Civil and Political Rights has to be based on the principle that the terms and concepts of the Covenant are independent of any particular national system of law and of all dictionary definitions. Although the terms of the Covenant are derived from long traditions within many nations, the Committee must now regard them as having an autonomous meaning. The parties have made extensive submissions, in particular as regards the meaning of the word "penalty" and as regards relevant Canadian law and practice. The Committee

---

* According to a correction submitted by the State party (19 February 1982), Mr. Van Duzen's combined terms have been calculated to expire on 5 January 1985.

appreciates their relevance for the light they shed on the nature of the issue in dispute. On the other hand, the meaning of the word "penalty" in Canadian law is not, as such, decisive. Whether the word "penalty" in article 15 (1) should be interpreted narrowly or widely, and whether it applies to different kinds of penalties, "criminal" and "administrative", under the Covenant, must depend on other factors. Apart from the text of article 15 (1), regard must be had, inter alia, to its object and purpose.

10.3 However, in the opinion of the Committee, it is not necessary for the purposes of the present case to go further into the very complex issues raised concerning the interpretation and application of article 15 (1). In this respect regard must be had to the fact that the author has subsequently been released, and that this happened even before the date when he claims he should be free. Whether or not this claim should be regarded as justified under the Covenant, the Committee considers that, although his release is subject to some conditions, for practical purposes and without prejudice to the correct interpretation of article 15 (1), he has in fact obtained the benefit he has claimed. It is true that he has maintained his complaint and that his status upon release is not identical in law to the one he has claimed. However, in the view of the Committee, since the potential risk of re-imprisonment depends upon his own behaviour, this risk cannot, in the circumstances, represent any actual violation of the right invoked by him.

10.4 For the reasons set out in paragraph 10.3, the Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights is of the view that the present case does not disclose a violation of the Covenant.

ANNEX XIII

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. R.13/57

Submitted by: Sophie Vidal Martins

Alleged victim: The author of the communication

State party concerned: Uruguay

Date of communication: 13 August 1979 (date of initial letter)

Date of decision on admissibility: 2 April 1980

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 23 March 1982,

Having concluded its consideration of communication No. R.13/57 submitted to the Committee by Sophie Vidal Martins under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party concerned,

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of this communication (initial letter dated 13 August 1979 and a further letter dated 7 March 1981) is Sophie Vidal Martins, a Uruguayan national residing in Mexico. She works as a journalist and submits the communication on her own behalf.

2.1 She states that she is holding a Uruguayan passport which was issued by the Uruguayan consulate in Stockholm (Sweden) in 1971 with a 10 years' validity upon condition that its validity would be confirmed after five years, i.e. on 28 January 1976. The author alleges that, living in France at that time, she applied to the Uruguayan consulate in Paris in June 1975 for renewal of her passport (renovacion). She claims that Uruguayan citizens living abroad could obtain a passport without any difficulties until August 1974, when a Government decree came into force which provided that the issuance of a passport was subject to the approval of the Ministry of Defence and the Ministry of the Interior. She further states that, not having received any reply to her first application for renewal of her passport which she had submitted in Paris in June 1975, upon her arrival in Mexico in October 1975 as correspondent of the French periodical Temoignage chretien, she submitted an application to the Uruguayan consulate in

Mexico on 16 November 1975. One month later she was informed orally that the consul had received a communication requesting him to "wait for instructions". He sent two cables in order to obtain these instructions in January and March 1977, but without result. In October 1978 the author applied to the Uruguayan consulate in Mexico for a new passport. Two months later she was informed orally that the Uruguayan Ministry of the Interior had refused to give its approval. She appealed against this decision on 13 December 1978 to the Minister of the Interior through the Uruguayan Embassy in Mexico. The Ambassador offered her a document which would have entitled her to travel to Uruguay but not to leave the country again. She did not accept this for reasons of personal security. On 28 February 1979 she received an official note from the Uruguayan Foreign Ministry refusing, without giving any reasons, to issue her with a passport.

2.2 The author considers the Uruguayan authorities' refusal to issue a passport to her was a "punitive measure" taken against her because of her former employment by the Uruguayan weekly, Marcha, which, together with 30 other newspapers, was prohibited by the authorities and whose director was living as a political refugee in Mexico. She claims that this constitutes a violation of articles 12 (2) and 19 of the International Covenant on Civil and Political Rights. The author adds that, according to her knowledge, she was never charged with any offence, either in Uruguay or abroad, and that she has never belonged to any political party.

2.3 The author does not mention whether she has had recourse to any further domestic remedy.

3.1 By its decision of 10 October 1979 the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned requesting information and observations relevant to the question of admissibility. No such reply was received from the State party to this request.

3.2 The Human Rights Committee ascertained that the same matter had not been submitted to the Inter-American Commission on Human Rights.

3.3 Consequently the Committee found, on the basis of the information before it, that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that, in the circumstances of the case, there was any effective domestic remedy available to the alleged victim which she had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

3.4 On 2 April 1980, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) of the Protocol, the State party should be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

(c) That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Protocol must primarily relate to the substance of the matter under consideration, and in particular the specific violations of the Covenant alleged to have occurred.

4. On 29 October 1980 the time-limit for the observations requested from the State party under article 4 (2) of the Optional Protocol expired. However, no submission has yet been received from the State party.

5.1 In a further letter dated 7 March 1981, the author of the communication notes the lack of a response from the Government of Uruguay and informs the Human Rights Committee that the numerous difficulties caused for her by the refusal of the Uruguayan authorities to extend the validity of her passport have considerably increased, thus seriously affecting not only herself but also other members of her family. The author claims in this connexion that after the death of her mother, Iclea Martins de Vidal, which occurred on 12 December 1979 in Uruguay, she and her brother became the sole heirs to their mother's estate and that the legal formalities in this respect have been completed before the appointed judge. Not being able to travel to Uruguay herself, she instructed a Mexican notary to take a number of necessary steps in order to terminate the regime of community property existing between her brother and herself. For this purpose, she requested the Uruguayan consul in Mexico to certify the signature of the competent Mexican official, Mr. Luis del Valle Prieto which the consul allegedly refused and still refuses to do, thus making it impossible for her and her brother to pursue the separation procedures further. The author points out that her request is covered by national legislation (Act No. 14,534 of 24 June 1976), in conformity with a treaty between Uruguay and Mexico signed in Panama on 29 January 1975 and ratified by the Government Council of Uruguay. She concludes that despite the efforts and demarches made, including those by the Mexican consul in Montevideo, it has not so far been possible for her and her brother to change the situation, adding that her brother, who lives in Uruguay, is in no way involved in any activity that might be held against her.

5.2 A copy of the author's submission of 7 March 1981 has been forwarded to the State party. No comments have been received from the State party in this respect either.

6.1 The Committee has considered the present communication in the light of all information made available to it, as provided in article 5 (1) of the Optional Protocol. The Committee notes that no submissions have been received from the State party in this case, particularly as to the reasons for refusal for an ordinary passport or the reasons for the offer of only a restricted travel document.

6.2 The Committee decides to base its views on the following facts that can be deduced from the author's submissions which also include official documents issued by the Uruguayan authorities in the case: Sophie Vidal Martins, a Uruguayan citizen residing at present in Mexico, and holder of a passport issued in 1971 in Sweden with a 10 years' validity upon condition that its validity be confirmed after five years, was refused such confirmation by the Uruguayan authorities without explanation several times between 1975 and 1977. In 1978 the author then applied for a new passport at the Uruguayan consulate in Mexico. According to the author, issuance of a passport is subject to the approval of the Ministry of Defence and the Ministry of the Interior. Two months after her application, Sophie Vidal Martins was informed that the Ministry of the Interior had refused to approve the issue to her of a new passport. She then appealed against this decision which later was officially reconfirmed by the Uruguayan Foreign Ministry without any reasons given. The author was offered a document which would have entitled her to travel to Uruguay, but not to leave the country again. The author declined this offer for reasons of personal security.

6.3 After the death of her mother in Uruguay in December 1979 when the legal questions concerning an inheritance arose between the author and her brother who is a resident of Uruguay, Sophie Vidal Martins was unable in the circumstances described above to go to Uruguay to settle these questions herself, but authorized a Mexican notary, Luis del Valle Prieto, to act on her behalf. As is necessary in such cases, the signature of the notary had to be certified by the Uruguayan consul in Mexico. The consul, however, refused without reason to certify Mr. Valle Prieto's signature, although Mrs. Martins requested him to do so in conformity with (i) Uruguayan legislation (Act No. 14,534 of 24 June 1976) and (ii) a treaty between Uruguay and Mexico which was ratified by the current Government Council of Uruguay. The inheritance settlement thus continues to remain unresolved, to the author's detriment and the detriment of her brother.

7. The Human Rights Committee has examined, ex officio, whether the fact that Sophie Vidal Martins resides abroad affects the competence of the Committee to receive and consider the communication under article 1 of the Optional Protocol, taking into account the provisions of article 2 (1) of the Covenant. Article 1 of the Optional Protocol applies to individuals subject to the jurisdiction of the State concerned who claim to be victims of a violation by that State of any of the Covenant rights. The issue of a passport to a Uruguayan citizen is clearly a matter within the jurisdiction of the Uruguayan authorities and he is "subject to the jurisdiction" of Uruguay for that purpose. Moreover, a passport is a means of enabling him "to leave any country, including his own", as required by article 12 (2) of the Covenant. It therefore follows from the very nature of the right that, in the case of a citizen resident abroad it imposes obligations both on the State of residence and on the State of nationality. Consequently, article 2 (1) of the Covenant cannot be interpreted as limiting the obligations of Uruguay under article 12 (2) to citizens within its own territory.

8. As to the allegations made by the author with regard to a breach of article 19 of the Covenant, they are in such general terms and seem to be of such secondary nature in the case that the Committee makes no finding in regard to them.

9. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by it, in so far as they have occurred after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay), disclose a violation of article 12 (2) of the Covenant, because Sophie Vidal Martins was refused the issuance of a passport without any justification therefor, thereby preventing her from leaving any country including her own.

10. Accordingly, the Committee is of the view that the State party is under an obligation pursuant to article 2 (3) of the Covenant to provide Sophie Vidal Martins with effective remedies which would give her the possibility of enjoying the rights under article 12 of the Covenant, including a passport valid for travel abroad.

ANNEX XIV

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. R.14/61

Submitted by: Leo R. Hertzberg, Ulf Mansson, Astrid Nikula and Marko and Tuovi Putkonen, represented by SETA (Organization for Sexual Equality)

Alleged victims: The persons mentioned above

State party concerned: Finland

Date of communication: 7 August 1979 (date of initial letter)

Date of decision on admissibility: 25 July 1980

The Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 2 April 1982,

Having concluded its consideration of communication No. R.14/61, submitted to the Committee by SETA (Organization for Sexual Equality), Finland, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and by the State party concerned,

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The authors of this communication (initial letter dated 7 August 1979) are five individuals, who are represented by a Finnish organization, SETA (Organization for Sexual Equality).

2.1 The facts of the five cases are essentially undisputed. The parties only disagree as to their evaluation. According to the contentions of the authors of the communication, Finnish authorities, including organs of the State-controlled Finnish Broadcasting Company (FBC), have interfered with their right of freedom of expression and information, as laid down in article 19 of the Covenant, by imposing sanctions against participants in, or censuring, radio and TV programmes dealing with sanctions against participants in, or censuring, radio and TV programmes dealing with homosexuality. At the heart of the dispute is paragraph 9 of chapter 20 of the Finnish Penal Code which sets forth the following:

"If someone publicly engages in an act violating sexual morality, thereby giving offense, he shall be sentenced for publicly violating sexual morality to imprisonment for at most six months or to a fine.

"Anyone who publicly encourages indecent behaviour between persons of the same sex shall be sentenced for encouragement to indecent behaviour between members of the same sex as decreed in subsection 1."

2.2 In September 1976, Leo Rafael Hertzberg, a lawyer, was interviewed for the purposes of a radio programme entitled "Arbetsmarknadens uteslutna" ("The Outcasts of the Labour Market"). In the interview, he asserted on the strength of his knowledge as an expert that there exists job discrimination in Finland on the ground of sexual orientation, in particular, to the detriment of homosexuals. Because of this programme criminal charges were brought against the editor (not Mr. Hertzberg) before the Helsinki Municipal Court and, subsequently, before the Helsinki Court of Appeals. Although the editor was acquitted, Mr. Hertzberg claims that through those penal proceedings his right to seek, receive and impart information was curtailed. In his view, the Court of Appeals (decision No. 2825 of 27 February 1979) has exceeded the limits of reasonable interpretation by construing paragraph 9 (2) of chapter 20 of the Penal Code as implying that the mere "praising of homosexual relationships" constituted an offence under that provision.

2.3 Astrid Nikula prepared a radio programme conceived as part of a young listeners series in December 1978. This programme included a review of the book, "Pojkar skall inte grata" ("Boys must not cry") and an interview with a homosexual about the identity of a young homosexual and about life as a homosexual in Finland. When it was ready for broadcasting, it was censored by the responsible director of FBC against the opposition of the editorial team of the series. The author claims that no remedy against the censorship decision was available to her.

2.4 Ulf Mansson participated in a discussion about the situation of the young homosexual depicted in Mrs. Nikula's production. The discussion was designed to form part of the broadcast. Like Mrs. Nikula, the author states that no remedy was available to him to challenge the censorship decision.

2.5 In 1978, Marko and Tuovi Putkonen, together with a third person, prepared a TV series on different marginal groups of society such as Jews, gypsies and homosexuals. Their main intention was to provide factual information and thereby to remove prejudices against those groups. The responsible programme director, however, order that all references to homosexuals be cut from the production, indicating that its transmission in full would entail legal action against FBC under paragraph 9 (2) of chapter 20 of the Penal Code.

2.6 The authors claim that their case is an illustration of the adverse effects of the wide interpretation given to that provision, which does not permit an objective description of homosexuality. According to their allegations, it is extremely difficult, if not impossible, for a journalist to start preparing a programme in which homosexuals are portrayed as anything else than sick, disturbed, criminal or wanting to change their sex. They contend that several of such programmes have been broadcast by FBC in the recent past.

2.7 The authors state that the same matter has not been submitted for examination under another procedure of international invstigation or settlement.

3. By its decision of 28 March 1980, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of admissibility.

4. By a note dated 9 June 1980, the State party, while rejecting the allegation that the Government of Finland was in breach of article 19 of the Covenant, confirmed that there were no further domestic remedies available to the alleged victims in the sense of article 5 (2) (b) of the Optional Protocol. The State party argued that the authors of the communication appeared to give to the concept of freedom of speech, protected by article 19 of the Covenant, a content different from that generally used by maintaining that it would restrict the right of the owner of a means of communication to decide what material will be published. The State party expressed its expectation that the Committee would focus its attention on this issue when considering the question of admissibility of the communication in the light of the provisions of article 3 of the Optional Protocol.

5. By decision of 25 July 1980 and on the basis of the information before it, the Committee concluded:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statement clarifying the matter and the remedy, if any, that may have been taken by it.

6.1 In its submission under article 4 (2) of the Optional Protocol, dated 25 February 1981, the State party refutes the allegation that there has been a violation of the Covenant on Civil and Political Rights in Finland. It affirms that the Finnish legislation in force, including the Finnish Penal Code, was scrutinized in connexion with the process of ratifying the Covenant and found to be in conformity with it. It stresses that the purpose of the prohibition of public encouragement to indecent behaviour between members of the same sex is to reflect the prevailing moral conceptions in Finland as interpreted by the Parliament and by large groups of the population. It further contends that discussion in the Parliament indicates that the word "encouragement" is to be interpreted in a narrow sense. Moreover, the Legislative Committee of the Parliament expressly provided that the law shall not hinder the presentation of factual information on homosexuality.

6.2 The State points out that there has not been any case where any person was convicted under paragraph 9 (2) of Chapter 20 of the Penal Code and concludes that "the application of the paragraph in question shows no indication of an interpretation of the term in such a large sense that might be considered to unduly limit the freedom of expression".

6.3 While admitting that paragraph 9 (2) constitutes a certain restriction on freedom of expression, the State specifically refers to article 19 (3) of the Covenant, which states that the exercise of the rights provided for in article 19 (2) may be subject to certain restrictions, in so far as these are provided by law and are necessary for the protection of public order, or of public health or morals.

6.4 Yet, the State contends that the decision of the Finnish Broadcasting Company concerning the programmes referred to by the submitting organizaton did not involve

the application of censorship but were based on "general considerations of programme policy in accordance with the internal rules of the Company".

7. On 7 May 1981, the authors presented an additional submission in which they discuss in general terms the impact of paragraph 9 (2) of chapter 20 of the Penal Code on journalistic freedom. They argue that article 19 in connexion with article 2 (1) of the Covenant requires Finalnd "to ensure that FBC not only deals with the subject of homosexuality in its programmes but also that it affords a reasonable and, in so far as is possible, an impartial coverage of information and ideas on the subject, in accordance with its own programming regulations." On this basis they challenge, in particular, the relevant programme directive of FBC of 30 October 1975, still in force today, which states, inter alia, "All persons responsible for programmes are requested to observe maximum strictness and carefulness, even when factual information about homosexuality is given", drawing attention at the same time to the fact that on the same day a written warning had been issued to the head of the film service of FBC to reject any production which gave a "positive picture of homosexuality". In addition, they dispute the State party's contention that the decisions taken by the Finnish Broadcasting Company with respect to radio and television programmes dealing with homosexuality were based on general considerations of programme policy and did not constitute censorship measures taken in pursuance of paragraph 9 (2) of chapter 20 of the Penal Code.

8. The Committee, considering the present communication in the light of all information made available to it by the parties as provided for in article 5 (1) of the Optional Protocol, hereby decides to base its views on the facts as submitted by the parties, which are not in dispute.

9.1 In considering the merits of the communication, the Human Rights Committee starts from the premise that the State party is responsible for actions of the Finnish Broadcasting Company (FBC), in which the State holds a dominant stake (90 per cent) and which is placed under specific government control.

9.2 The Committee wishes further to point out that it is not called upon to review the interpretation of paragraph 9 (2) of chapter 20 of the Finnish Penal Code. The authors of the communication have advanced no valid argument which could indicate that the construction placed upon this provision by the Finnish tribunals was not made bona fide. Accordingly, the Committee's task is confined to clarifying whether the restrictions applied against the alleged victims, irrespective of the scope of penal prohibitions under Finnish penal law, disclose a breach of any of the rights under the Covenant.

9.3 In addition, the Committee wishes to stress that it has only been entrusted with the mandate of examining wheter an individual has suffered an actual violation of his rights. It cannot review in the abstract whether national legislation contravenes the Covenant, although such legislation may, in particular circumstances, produce adverse effects which directly affect the individual, making him thus a victim in the sense contemplated by articles 1 and 2 of the Optional Protocol. The Committee refers in this connexion to its earlier views on communication No. R.9/35 (S. Aumeeruddy-Cziffra and 19 other Mauritian women v. Mauritius).

10.1 Concerning Leo Rafael Hertzberg, the Committee observes that he cannot validly claim to be a victim of a breach by the State party of his right under

article 19 (2) of the Covenant. The programme in which he took part was actually broadcast in 1976. No sanctions were imposed against him. Nor has the author claimed that the programme restrictions as applied by FBC would in any way personally affect him. The sole fact that the author takes a personal interest in the dissemination of information about homosexuality does not make him a victim in the sense required by the Optional Protocol.

10.2 With regard to the two censored programmes of Mrs. Nikula and of Marko and Tuovi Putkonen, the Committee accepts the contention of the authors that their rights under article 19 (2) of the Covenant have been restricted While not every individual can be deemed to hold a right to express himself through a medium like TV, whose available time is limited, the situation may be different when a programme has been produced for transmission within the framework of a broadcasting organization with the general approval of the responsible authorities. On the other hand, article 19 (3) permits certain restrictions on the exercise of the rights protected by article 19 (2), as are provided by law and are necessary for the protection of public order or of public health or morals. In the context of the present communication, the Finnish Government has specifically invoked public morals as justifying the actions complained of. The Committee has considered whether, in order to assess the necessity of those actions, it should invite the parties to submit the full text of the censored programmes. In fact, only on the basis of these texts could it be possible to determine whether the censored programmes were mainly or exclusively made up of factual information about issues related to homosexuality.

10.3 The Committee feels, however, that the information before it is sufficient to formulate its views on the communication. It has to be noted, first, that public morals differ widely. There is no universally applicable common standard. Consequently, in this respect, a certain margin of discretion must be accorded to the responsible national authorities.

10.4 The Committee finds that it cannot question the decision of the responsible organs of the Finnish Broadcasting Corporation that radio and TV are not the appropriate forums to discuss issues related to homosexuality, as far as a programme could be judged as encouraging homosexual behaviour. According to article 19 (3), the exercise of the rights provided for in article 19 (2) carries with it special duties and responsibilities for those organs. As far as radio and TV programmes are concerned, the audience cannot be controlled, In particular, harmful effects on minors cannot be excluded.

11. Accordingly, the Human Rights Committee is of the view that there has been no violation of the rights of the authors of the communication under article 19 (2) of the Covenant.

APPENDIX

Individual opinion submitted by a member of the Human Rights Committee under rule 94 (3) of the Committee's provisional rules of procedure

Communication No. R.14/61

Individual opinion appended to the Committee's views at the request of Mr. Torkel Opsahl:

Although I agree with the conclusion of the Committee, I wish to clarity certain points.

This conclusion prejudges neither the right to be different and live accordingly, protected by article 17 of the Covenant, nor the right to have general freedom of expression in this respect, protected by article 19. Under article 19 (2) and subject to article 19 (3), everyone must in principle have the right to impart information and ideas - positive or negative - about homosexuality and discuss any problem relating to it freely, through any media of his choice and on his own responsibility.

Moreover, in my view the conception and contents of "public morals" referred to in article 19 (3) are relative and changing. State-imposed restrictions on freedom of expression must allow for this fact and should not be applied so as to perpetuate prejudice or promote intolerance. It is of special importance to protect freedom of expression as regards minority views, including those that offend, shock or disturb the majority. Therefore, even if such laws as paragraph 9 (2) of chapter 20 of the Finnish Penal Code may reflect prevailing moral conceptions, this is in itself not sufficient to justify it under article 19 (3). It must also be shown that the application of the restriction is "necessary".

However, as the Committee has noted, this law has not been directly applied to any of the alleged victims. The question remains whether they have been more indirectly affected by it in a way which can be said to interfere with their freedom of expression, and if so, whether the grounds were justifiable.

It is clear that nobody - and in particular no State - has any duty under the Covenant to promote publicity for information and ideas of all kinds. Access to media operated by others is always and necessarily more limited than the general freedom of expression. It follows that such access may be controlled on grounds which do not have to be justified under article 19 (3).

It is true that self-imposed restrictions on publishing, or the internal programme policy of the media, may threaten the spirit of freedom of expression. Nevertheless, it is a matter of common sense that such decisions either entirely escape control by the Committee or must be accepted to a larger extent than externally imposed restrictions such as enforcement of criminal law or official censorship, neither of which took place in the present case. Not even media controlled by the State can under the Covenant be under an obligation to publish all that may be published. It is not possible to apply the criteria of article 19 (3) to self-imposed restrictions: Quite apart from the "public morals" issue, one cannot require that they shall be only such as are "provided by law and are

necessary" for the particular purpose. Therefore I prefer not to express any opinion on the possible reasons for the decisions complained of in the present case.

The role of mass media in public debate depends on the relationship between journalists and their superiors who decide what to publish. I agree with the authors of the communication that the freedom of journalists is important, but the issues arising here can only partly be examined under article 19 of the Covenant.

The following members of the Committee associated themselves with the individual opinion submitted by Mr. Opsahl: Mr. Rajsoomer Lallah, Mr. Walter Surma Tarnopolsky.

ANNEX XV

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. R.15/64

Submitted by: Consuelo Salgar de Montejo (represented by Pedro Pablo Camargo)

Alleged victim: Consuelo Salgar de Montejo

State party concerned: Colombia

Date of communication: 18 December 1979 (date of initial letter)

Date of decision on admissibility: 29 July 1980

The Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 24 March 1982,

Having concluded its consideration of communication No. R/15/64 submitted to the Committee by Pedro Pablo Camargo on behalf of Consuelo Salgar de Montejo, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party concerned,

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The author of the communication (initial letter dated 18 December 1979 and further letters dated 18 June 1980 and 7 April 1981) is Consuelo Salgar de Montejo, a Colombian national. She submitted the communication on her own behalf through her legal representative.

1.2 The author alleges that by enacting Legislative Decree No. 1923 of 6 September 1978 (Statute of Security) the Government of Colombia has breached articles 9 and 14 of the Covenant.

1.3 She claims to be a victim of these violations and, through her legal representative, describes the relevant facts as follows:

1.4 Consuelo Salgar de Montejo, Director of the Colombia newspaper El Bogotano, was sentenced to one year of imprisonment by a military judge on 7 November 1979 on grounds of the alleged violation of article 10 of the Statute of Security for the alleged offence of having sold a gun. Through the only recourse procedure available, the recurso de reposición, her sentence was confirmed by the same judge on 14 November 1979.

1.5 She alleges that by application of the decree, she was denied the right to appeal to a higher tribunal in violation of article 14 (5) of the Covenant and that she was denied the guarantees laid down in article 14 (1) of the Covenant because military tribunals are, allegedly, not competent, independent and impartial. On the basis of these allegations, the author claims that she was arbitrarily detained and subjected to arbitrary imprisonment and, accordingly, that article 9 (1) of the Covenant was violated. She further alleges, without giving any specific details, that the principles of non bis in idem and of res judicata have been violated.

1.6 The author maintains that there are no further domestic remedies to exhaust and the present case has not been submitted for examination under any other procedure of international invetigation or settlement.

2. On 18 March 1980, the Working Group of the Human Rights Committee decided to transmit the communication to the State party, under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility.

3.1 By letter dated 29 May 1980 the State party refuted the allegations made by the alleged victim.

3.2 The State party contested, in particular, the allegation that Colombia was in breach of article 14 (5) of the Covenant. It argued that in that provision, the phrase "according to the law" leaves it to national law to determine in which cases and circumstances application may be made to a court of higher instance and that if the meaning of this provision should be differently interpreted, it must be borne in mind that Colombia is experiencing a situation of disturbed public order, within the meaning of article 4 (1) of the Covenant, and that consequently the Government may take the measures therein referred to. The State party further maintained that Mr. Salgar de Montejo was released after having served a term of detention for three months and 15 days and that she now enjoys full liberty without any restriction. With regard to the exhaustion of domestic remedies, the State party recognized that in the case in question there are no further remedies.

4. Commenting on the State party's submission, the author argues, in her letter dated 18 June 1980, that the State party cannot invoke article 4 (1) of the Covenant because it has not so far fulfilled the requirements of the provisions of article 4 (3), and that she should be compensated for the violations of articles 9 and 14 of the Covenant which she has allegedly suffered. She again argues, without further explanation, that the principles of non bis in idem and res judicata have been violated.

5. The Committee found, on the basis of the information before it, that it was not precluded from considering the communication by article 5 (2) (a) of the Optional Protocol. As to the exhaustion of domestic remedies, the parties agreed that there were no further domestic remedies which the alleged victim could pursue. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

6. On 29 July 1980, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it.

7.1 In its submission under article 4 (2) of the Optional Protocol, dated 17 February 1981, the State party reiterated that article 14 (5) of the Covenant establishes the general principle of review by a higher tribunal without making such a review mandatory in all possible cases involving a criminal offence since the phrase "according to the law" leaves it to national law to determine in which cases and circumstances application may be made to a higher court. It explained that under the legal régime in force in Colombia, criminal offences are divided into two categories, namely delitos and contravenciones and that convictions for all delitos and for almost all contravenciones are subject to review by a higher court. It added that Consuelo Salgar de Montejo committed a contravención which the applicable legal instrument, namely Decree No. 1923 of 1978, did not make subject to review by a higher court.

7.2 The State party submits that Decree No. 1923 of 6 September 1978 establishing rules for the protection of the life, honour and property of persons and guaranteeing the security of members of associations, known as the "Security Statute", has as its legal basis article 121 of the Colombian Constitution. The decree was issued because of the social situation created by the activities of subversive organizations which were disturbing public order with a view to undermining the democratic system in force in Colombia. The State party added that this Decree does not affect people's normal peaceful activities; it does not restrict political rights, which in Colombia are exercised with total freedom; its objective is to punish offences and it does not differ in nature from any ordinary penal code.

7.3 The State party further submitted that the extension of the jurisdiction of the military criminal courts to the trial of certain offences and of civilians who are not serving in the armed forces, in situations where public order is seriously disturbed, is not a novel feature of the Colombian legal order, and it cited several decrees to illustrate this point.

7.4 As to the allegation that article 7 of Decree No. 1923 of 1978, which establishes grounds for deprivation of liberty, violates the guarantee established in article 9 of the Covenant that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law", the State party argued that the grounds for deprivation of liberty and the procedure to be followed in such a case may be specified in Colombia not only by virtue of an ordinary law of the Congress but also by legislative decrees issued under powers granted by article 121 of the Constitution. These decrees are mandatory and prevail over any legislative provision inconsistent therewith for as long as the state of siege during which they were issued remains in effect. The State party further observed that Decree No. 1923 of 1978 was issued by the President of Colombia in exercise of the powers vested in him by article 121 of the Constitution, and that by its ruling of 30 October 1978 the Supreme Court of Justice declared the Decree to be enforceable, i.e., in conformity with the Constitution, with the exception of certain provisions which are consequently no longer in force (these provisions are not relevant to the present case).

7.5 The State party further observed that there are no grounds for claiming that the judicial powers provided for in articles 9, 11 and 12 of Decree No. 1923 impair the guarantee of a competent, independent and impartial tribunal. It quoted the Supreme Court of Justice of Colombia, which has ruled that "... under article 61 of the Constitution it is permissible, during a state of siege, to enlarge the military penal jurisdiction so that it may deal with ordinary offences connected with the disturbance of order or with the causes of the exceptional situation. As military tribunals, like ordinary courts, are established by the Constitution, the mere transfer of competence from the ordinary courts to the military tribunals for the hearing, under military judicial procedure, of certain ordinary offences in times of state of siege does not imply that ad hoc courts are established nor does it mean that the accused are subjected to new rules of procedure, as these rules are embodied in pre-existing law. The military tribunals' competence is extended by authority of the Constitution for the purpose of trying ordinary offences".

7.6 The State party concluded that Consuelo Salgar de Montejo was tried by the authority with exclusive competence in the matter under the legal rules in force, and no other judge or court could legally have tried her for the offence of which she was accused, in view of the time at which the offence was committed and she was brought to trial. She was tried in accordance with legal provisions existing prior to the criminal offence she committed, by the competent authority and with full observance of the appropriate procedures for the action brought against her. The State party rejects as totally baseless the allegation that Consuelo Salgar de Montejo was tried twice for the same offence. It maintains that she was tried only once for the offence in question.

8.1 In her additional information and observations dated 7 April 1981 (submitted under rule 93 (3) of the Committee's provisional rules of procedure), the author argued that article 14 (5) of the Covenant provides for dual jurisdiction for judgements in criminal cases and, therefore, the Government of Colombia cannot restrict that guarantee, particularly not by means of emergency provisions such as the "Security Statute". She emphasized that the Colombian Code of Criminal Procedure provides for the guarantee of dual jurisdiction for judgements in criminal cases and the Government of Colombia cannot fail to take account of it without violating the Covenant and the universally recognized right to appeal against custodial sentences.

8.2 She reiterated that the Government of Colombia cannot in the present case, invoke article 4 of the Covenant because it has not so far fulfilled the requirements of that provision in respect of states of emergency and derogations from its obligations under the Covenant. The author stated that under article 121 of the Colombian Constitution a state of siege has, for all intents and purposes, been in effect in Colombia since the disturbances of 9 April 1948. She mentioned, in particular, that by Decree No. 2131 of 7 October 1976, the previous Government of Colombia declared "a disturbance of public order and a state of siege throughout the national territory" to put an end to the "unconstitutional stoppage" which was in progress at the Colombian Institute of Social Security and was, according to the Decree, affecting "its medical, paramedical and auxiliary services". She added that although the strike was broken within a few months, the state of siege has been extended sine die.

8.3 The author continued to maintain that the only competent, independent and impartial tribunals with criminal jurisdiction in Colombia are those of the judicial power, which were established previously under title XV ("Administration

of Justice") of the Constitution, article 58 of which states that "justice is administered by the Supreme Court, higher district courts and such other tribunals and courts as may be established by law". The author stressed that the Constitution of Colombia in no case permits military courts to try civilians and, at the same time, she remarked that "an unfortunate interpretation of article 61 of the Constitution by the Supreme Court of Justice has, however, enabled the Government and the military to extend military criminal jurisdiction to civilians".

8.4 The author observed that although it is true that, in its ruling of 30 October 1978, the Supreme Court of Justice declared that Decree No. 1923 of 1978 was compatible with the Constitution, it is equally true that the Court did not rule on the compatibility or incompatibility of such Decree with the Covenant. She claims that it is ultimately for the Committee to rule on this matter.

8.5 Finally, the author alleged that she has [in effect] been tried twice for the same offence: in the first military trial for alleged illegal possession and purchase of weapons she was acquitted, but authorization was obtained to institute further criminal proceedings against her for selling a weapon, "obviously in retaliation for the opposition she had voiced in her newspaper, El Bogotano". She considers this to be a violation of the principles of res judicata and non bis in idem.

9.1 The Human Rights Committee bases its views on the following facts, which are not in dispute: Consuelo Salgar de Montejo, Director of the Colombian newspaper El Bogotano, was sentenced to one year of imprisonment by a military tribunal on 7 November 1979 for the offence of having sold a gun in violation of article 10 of Decree No. 1923 of 6 September 1978, also called Statute of Security. For this offence she was tried only once. Through the only recourse procedure available, the recurso de reposicion, her sentence was confirmed by the same judge on 14 November 1979. She was convicted for an offence (contravencion) which the applicable legal instrument, namely Decree No. 1925 of 1978, did not make subject to review by a higher court. She was released after having spent three months and 15 days in prison.

9.2 As to the allegations made by the author with regard to breaches of articles 9 (1) and 14 (1) of the Covenant, they are in such general terms that the Committee makes no finding in regard to them.

10.1 In formulating its views the Human Rights Committee also takes into account the following considerations:

10.2 The Committee notes that the Government of Colombia in its submission of 29 May 1980 made reference to a situation of disturbed public order in Colombia within the meaning of article 4, paragraph 1, of the Covenant. In its note of 18 July 1980 to the Secretary-General of the United Nations (reproduced in document CCPR/C/2/Add.4), which was designed to comply with the formal requirements laid down in article 4 (3) of the Covenant, the Government of Colombia has made reference to the existence of a state of siege in all the national territory since 1976 and to the necessity to adopt extraordinary measures within the framework of the legal regime provided for in the National Constitution for such situations. With regard to the rights guaranteed by the Covenant, the Government of Colombia declared that "temporary measures have been adopted that have the effect of limiting the application of article 19, paragraph 2, and article 21 of that

Covenant". The present case, however, is not concerned with article 19 and article 21 of the Covenant.

10.3 In the specific context of the present communication there is no information to show that article 14 (5) was derogated from in accordance with article 4 of the Covenant; therefore the Committee is of the view that the State party, by merely invoking the existence of a state of siege, cannot evade the obligations which it has undertaken by ratifying the Covenant. Although the substantive right to take derogatory measures may not depend on a formal notification being made pursuant to article 4 (3) of the Covenant, the State party concerned is on duty bound, when it invokes article 4 (1) of the Covenant in proceedings under the Optional Protocol, to give a sufficiently detailed account of the relevant facts to show that a situation of the kind described in article 4 (1) of the Covenant exists in the country concerned.

10.4 The Committee considers that the expression "according to law" in article 14 (5) of the Covenant is not intended to leave the very existence of the right of review to the discretion of the States parties, since the rights are those recognized by the Covenant, and not merely those recognized by domestic law. Rather, what is to be determined "according to law" is the modalities by which the review by a higher tribunal is to be carried out. It is true that the Spanish text of article 14 (5), which provides for the right to review, refers only to "un delito", while the English text refers to a "crime" and the French text refers to "une infraction". Nevertheless the Committee is of the view that the sentence of imprisonment imposed on Mrs. Consuelo Salgar de Montejo, even though for an offence defined as "contravención" in domestic law, is serious enough, in all the circumstances, to require a review by a higher tribunal as provided for in article 14 (5) of the Covenant.

11. The Committee, acting under article 5 (4) of the Optional Protocol, is therefore of the view that the facts as set out in paragraph 9 above, disclose a violation of article 14 (5) of the Covenant because Mrs. Consuelo Salgar de Montejo was denied the right to review of her conviction by a higher tribunal.

12. The Committee accordingly is of the view that the State party is under an obligation to provide adequate remedies for the violation which Mrs. Consuelo Salgar de Montejo has suffered and that it should adjust its laws in order to give effect to the right set forth in article 14 (5) of the Covenant.

ANNEX XVI

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. R.17/70

Submitted by: Elsa Cubas on behalf of her sister, Mirta Cubas Simones ,

Alleged victim: Mirta Cubas Simones

State party concerned: Uruguay

Date of communication: 3 May 1980 (date of initial letter)

Date of decision on admissibility: 31 March 1981

The Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 1 April 1982,

Having concluded its consideration of communication No. R.17/70, submitted to the Committee by Elsa Cubas under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party concerned,

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of the communication (initial letter dated 3 May 1980 and further submissions dated 14 July and 22 December 1980) is a Uruguayan national at present living in Canada. She submitted the communication on behalf of her sister, Mirta Cubas Simones, a 37-year-old Uruguayan national, alleging that she is imprisoned in Uruguay without any justifiable reason.

2.1 The author states that Mirta Cubas Simones was arrested without a warrant in her home on 27 January 1976, that she was held incommunicado until April 1976 and that during this period her detention was denied by the authorities although her mother and a sister were present at the time of her arrest. The author further states that in July 1976 her sister was brought to trial and charged with the offence of "aiding a conspiracy to violate the law" (Asistencia a la asociacion para delinquir) and that a three-year prison sentence was requested by the public prosecutor. Upon appeal to the Supreme Military Tribunal in August 1978, she was charged in addition with the offence of "subversion", and the public prosecutor asked for the sentence to be increased to six years. In November 1979 a plea was

made on the sister's behalf that the sentence asked for be reduced, but the author states that this plea has been rejected by the Supreme Military Tribunal, and adds that no more domestic remedies are available to her sister because all cases concerning political prisoners are under military jurisdiction. The author alleges that her sister had no fair and public hearing as the proceedings have taken place before a closed military tribunal and that she had no effective access to legal assistance as she had never been able to communicate with her court-appointed defence lawyer, Dr. Pereda. The author states that because of the absolute inaccessibility of the court records she is not in a position to provide more detailed information about the judicial proceedings concerning her sister. The author further alleges that since mid-1976 her sister has been subjected to severe and inhuman prison conditions, such as lack of food and solitary confinement in small cells over long periods of time, at Punta de Rieles, Montevideo.

2.2 The author declares that the same matter has not, to her knowledge, been submitted to another procedure of international investigation or settlement, and claims that her sister is a victim of violations of articles 7, 9, 10, 14, 15, 17 and 19 of the International Covenant on Civil and Political Rights.

3. By its decision of 11 July 1980, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the admissibility of the communication.

4. By a note dated 17 October 1980, the State party objected to the admissibility of the communication on the ground that it did not fulfil the requirements of article 5, paragraph 2 (b), of the Optional Protocol to the International Covenant on Civil and Political Rights. In this connexion, the State party asserts that "although the appeals procedure which culminated in the judgement of the second instance pronounced on 2 October 1979 has been completed, there still remain available the extraordinary remedies of annulment and review, as provided for in article 507 of the Code of Military Penal Procedure and Law 3,439 of 5 April 1909, which have not been invoked". The State party adds: "similarly, Law 14,997 of 25 March 1980 establishes procedures for requesting early and conditional release in cases under military jurisdiction ... the party concerned has not so far petitioned the Supreme Court of Military Justice to apply that law to her case, ... consequently, all domestic remedies have not been exhausted".

5. On 22 December 1980, the author forwarded her comments in reply to the State party's submission of 17 October 1980. She claims therein that the remedies provided for by the law and the various actions to be taken before the Supreme Court of Military Justice available under the law, referred to by the State party, even if they exist, have not been brought to her sister's attention by her military defence counsel, which indicates that the officially appointed defence counsel has failed in his duty. She points out that her sister does not have freedom of action, that she does not know the law governing her case and that she is tried under the military legal system to which the defence counsel belongs. The author further challenges the validity of the "remedies" referred to by the State party on the ground that the climate of terror, the harsh and inhuman treatment to which her sister is subjected in prison and the lack of support from her defence counsel make it impossible for her to take action in her own defence. The author therefore concludes that the proceedings in her sister's case cannot be assessed according to what is applicable in a normal case ("no puede jugarse con la formalidad de un caso normal").

6.1 The Human Rights Committee noted the State party's assertion that there were further remedies available to Mirta Cubas Simones. The State party, however, did not adduce any grounds to show that the remedies which in other cases have been described as being exceptional in character, should be pursued in the present case. On the contrary, the Committee noted that the officially appointed defence counsel had not invoked them on behalf of Mirta Cubas Simones although more than a year had passed since the Supreme Military Court rendered judgement against her. They could not therefore be regarded as having, in effect, been "available" within the meaning of article 5 (2) (b) of the Optional Protocol.

6.2 In the circumstances, the Committee was unable to conclude, on the basis of the information submitted by the State party, that the communication was inadmissible under article 5 (2) (b).

6.3 In its submission dated 17 October 1980 the State party did not contest the author's assertion that the same matter had not been submitted to any other international body.

6.4 Consequently, the Committee found that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication.

7. On 31 March 1981, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) of the Optional Protocol, the State party should be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

(c) That the State party should be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that in order to perform its responsibilities, it required specific responses to the allegations which had been made by the author of the communication, and the State party's explanations of the actions taken by it. The State party was requested in this connexion, to enclose copies of any court orders or decisions of relevance to the matter under consideration.

8. By a note dated 15 October 1981, the State party submitted the following explanations under article 4 (2) of the Optional Protocol:

> "It (the Government of Uruguay) rejects the libellous assertions in the communication, regarding 'the climate of terror' and 'the harsh and inhuman treatment' to which Miss Mirta Cubas was said to be subjected; it is also incorrect to state that the case of the above-mentioned detainee 'cannot be assessed according to what is applicable in a normal case' ('no puede jugarse con la formalidad de un caso normal'). The proceedings were conducted with all the guarantees required in the relevant legislation. The reason why the application to the Supreme Court of Military Justice for a reduction of her sentence was rejected was simply the nature of the offences committed and the fact that they were duly proved.

"The Government of Uruguay also wishes to state that, on 7 August 1981, an application for conditional release for Miss Mirta Cubas was submitted to the Supreme Court of Military Justice. The application is being considered by the Court."

9. The Human Rights Committee notes the State party's observation that an application for conditional release for Mirta Cubas Simones has been submitted to the Supreme Court of Military Justice. This is not, of course, a remedy within the meaning of article 5 (2) (b) of the Optional Protocol concerning exhaustion of domestic remedies in regard to the violations of the Covenant complained of. Nevertheless, her release would constitute an important step towards alleviating her situation.

10. The Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol.

11.1 The Committee decides to base its views on the following facts which have either been confirmed by the State party or are uncontested, except for denials of a general character offering no particular information or explanation:

11.2 Mirta Cubas Simones was arrested on 27 January 1976, without any warrant for her arrest, in her family's home, in the presence of her mother and her sister. For the subsequent three months she was held incommunicado at an unknown place. During this time the Uruguayan authorities denied her detention. In July 1976, five months after her arrest, Mirta Cubas Simones was brought to trial and charged with the offence of "aiding a conspiracy to violate the law" (asistencia a la asociación para delinquir) and a three-year prison sentence was requested by the public prosecutor. Upon appeal to the Supreme Military Tribunal in August 1978, she was charged in addition with the offence of "subversion", and the public prosecutor asked for the sentence to be increased to six years. Judgement was pronounced on 2 October 1979. In November 1979 a plea was made on her behalf that the sentence be reduced. This plea was rejected by the Supreme Military Tribunal. Mirta Cubas Simones was tried in camera, the trial was conducted without her presence and the judgement was not rendered in public. She was assigned a court-appointed military defence counsel whom she was unable to consult. The Committee further notes that the State party did not comply with the Committee's request to enclose copies of any court order or decisions of relevance to the matter under consideration. For all these reasons the Committee is unable to accept that Mirta Cubas Simones had a fair trial. In addition, since 1976 Mirta Cubas Simones has been subjected to continuously harsh prison conditions.

12. Accordingly, the Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts as found by it, in so far as they occurred after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay), disclose the following violations of the Covenant, in particular:

of article 10 (1), because Mirta Cubas Simones was held incommunicado for three months and during this period the authorities wrongfully denied that she was detained;

of article 14 (1), because she did not have a fair and public hearing;

of article 14 (3) (b), because she was unable to communicate with her court-appointed defence lawyer and therefore did not have adequate facilities for the preparation of her defence;

of article 14 (3) (d), because she was not tried in her presence.

13. The Committee, accordingly, is of the opinion that the State party is under an obligation to provide the victim with effective remedies, including compensation, for the violations she has suffered and to take steps to ensure that similar violations do not occur in the future.

ANNEX XVII

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. R.18/73

Submitted by: Ana Maria Teti Izquierdo on behalf of her brother, Mario Alberto Teti Izquierdo

Alleged victim: Mario Alberto Teti Izquierdo

State party concerned: Uruguay

Date of communication: 7 July 1980

Date of decision on admissibility: 27 July 1981

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 1 April 1982,

Having concluded its consideration of communication No. R.18/73 submitted to the Committee by Ana Maria Teti under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party concerned,

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of this communication (initial letter dated 7 July 1980 and further letters dated 26 December 1980 and 16 January, 8 June and 12 September 1981) is Ana Maria Teti, an Uruguayan national residing in France. She submitted the communication on behalf of her brother, Mario Alberto Teti Izquierdo, 37 years old, holding dual nationality (Uruguayan and Italian), detained in Uruguay.

1.2 The author stated in her submission of 7 July 1980 that her brother, a medical student, was arrested in Uruguay, on 24 May 1972, allegedly for belonging to a youth movement opposed to the regime. She alleged that for two months after his arrest he was held incommunicado and tortured several times, that for this purpose he was removed from the Libertad prison to an unknown place, and that as a result he suffered serious physical and psychological injury, which led him to attempt suicide in 1974. The author further stated that from the time of her brother's arrest in 1972 until October 1976 he had access to three lawyers, Dr. Wilmar Olivera, Dr. Alba Dell'Acqua and Dr. Mario Dell'Acqua, each one for a short period of time only, because they were harassed and persecuted and finally

had to leave the country on account of their defence of political prisoners such as Mario Teti. Thereafter it was impossible for Mario Teti himself to appoint a lawyer to act in his defence and Colonel Barbé, a military defence counsel, was officially appointed by the court to act in the case. (The author added, in her further submission of 16 January 1981, that since October 1976, her brother had been deprived of the rights of an accused person to prepare his defence, to have adequate means to do so and to have a defence counsel of his choice.)

1.3 The author further claimed that her brother was brought to trial towards the end of 1972 and that he was sentenced, in a final judgement by the Supreme Military Tribunal in 1978, to 10 years' imprisonment. She mentioned that in May 1982 her brother will have served the whole of his sentence. She also mentioned that, on the ground of good conduct and because of his advanced studies in medicine, he was allowed to give medical treatment to his fellow prisoners, a task which he performed for several years and which earned him the recognition and esteem of the other prisoners.

1.4 With regard to her brother's more recent treatment, the author alleged that, in March 1980, Mario Teti was held responsible by Major Mauro Mauriño (a member of the Prison Administration who took part in the torture sessions during the two months following his arrest in 1972) for having instigated statements made by prisoners to the Red Cross mission which visited the prisoners in the Libertad prison in February/March 1980. In consequence, measures of reprisal consisting of threats of death and physical attacks were inflicted on a group of prisoners which included Mario Teti. In August 1980, he was moved to a punishment cell where he was deprived of any kind of physical exercise and held in total isolation from the other prisoners.

1.5 Concerning the allegations of ill-treatment, the author enclosed inter alia (i) a letter dispatched by a relative of a prisoner on 2 June 1980 and (ii) the testimony of a former detainee, Charles Serralta, released in April 1980. The latter states, inter alia, in his testimony:

> "I was arrested in July 1972 and expelled to France in April 1980. I spent six months in a barracks and the rest in Libertad Prison. It was there that I met Mario Teti. We spent several years together on the same floor. He provided the prisoners on that floor with medical attention.
>
> "It was towards the end of 1979 that Major Mauriño took over the post of Prison Director. He questioned Mario several times. The Major knew him already because he was the officer who had tortured him during the interrogations.
>
> "After the Red Cross delegation left, Mario was once again questioned by Major Mauriño. The latter accused Mario of being responsible for the complaints allegedly made by the prisoners to the Red Cross that he was a torturer. Until the day I left, Mario was constantly harassed and threatened."

1.6 The author stated that, on 26 September 1980, her brother was moved from the Libertad prison. In her letter of 16 January 1981 she complained that, after his removal from the Libertad prison, neither his relatives nor the international agencies nor the Italian Embassy in Uruguay had managed to see him or to obtain any definite information regarding his situation and place of detention; the information obtained from the Uruguayan military authorities was vague,

contradictory and impossible to verify. She added that, on 11 November 1980, in response to a request by the International Red Cross for information, the military authorities said only that he had been moved so that he could be interrogated in connexion with the review of his trial and that he would be returned to the Libertad prison on 20 November 1980. He was not, however, returned to the Libertad prison until towards the end of May 1981, that is, after being kept incommunicado for eight months. At that time (27 May 1981) his wife and his father were allowed to visit him.

1.7 The author alleged that in June 1980 her brother was forced to sign a statement in connexion with new charges which were brought against him and which were to be added to the charges for which he had already been sentenced in 1978. She further alleged, in her submission dated 26 December 1980, that the new charges against her brother were revealed to the press by General Rafela (communiqué published on 28 November 1980 by the Uruguayan daily El Día). In this connexion she stated:

> "On 27 November, General Julio César Rafela, Chief of No. 2 Regional Military Headquarters, denounced an alleged invasion plan, organized from Libertad Prison. Several charges were brought against Mario Teti in this connexion which were said to justify a retrial; but no mention was made of his whereabouts nor was he allowed any contact with his defence lawyer or his relatives. It is no mere chance that, like Mario Teti who was due to be released in May 1982, other prisoners who were nearing the end of their full sentences were also charged by the military authorities. This was the case with Professor Raúl Martínez, sentenced to 9-1/2 years of imprisonment, who was due to be released in April 1981, and also the psychologist Orlando Pereira, who was due to be released in August 1981 on completion of his nine-year sentence. It is no mere chance, either, that the statements in question were made only three days before the constitutional referendum. The obvious purpose was to sway public opinion so as to secure a vote in support of the draft constitution submitted by the military Government. The conditions at Libertad Prison, which is known to be one of the penal establishments with the most efficient security systems, totally belie the statements made by General Rafela."

The author also mentioned that, at the start of the new proceedings against her brother in June 1980, her relatives were informed that another lawyer, in addition to Colonel Barbé, would act in the case. This lawyer was Dr. Amilcar Perea.

1.8 In her letter of 16 January 1981, the author also alleged that, in the period prior to his move from the Libertad prison, Mario Teti was in a very poor physical and psychological state and she believed that this must have been due to the persecution and physical and psychological pressure to which he was subjected after the Red Cross mission left, as the medical report which the mission made at the time it interviewed him did not indicate any serious disturbance or disorder. In her letter of 8 June 1981 she said that she was extremely alarmed about her brother's health - when he was transferred from the Libertad prison he weighed 80 kilograms and after his return only 60 kilograms; she feared that, if he continued to be subjected to unsatisfactory conditions of imprisonment, his health might suffer even more to the point where his life might be in danger. In her letter of 12 September 1981, the author stated that as soon as her brother returned to Libertad, he was given an electrocardiogram, which revealed that the heart attack he had suffered in October 1980 had resulted in a blockage of the left

artery. She pointed out that as her brother suffered from chronic asthma, threatment of his cardiac disease was very difficult and that, in addition, her brother was suffering from thrombophlebitis in both legs. She claimed that these facts confirmed the seriousness of her brother's situation.

1.9 The author claimed that her brother was a victim of violations of articles 7, 9 (2), (3) and (4) and 14 of the International Covenant on Civil and Political Rights. She asserted that no domestic remedies are applicable in her brother's present situation and added that the same matter has not, to her knowledge, been submitted to another procedure of international investigation or settlement.

2. On 24 October 1980, the Human Rights Committee decided to transmit the communication to the State party, under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility of the communication. The Committee also requested the State party to furnish without delay information concerning the whereabouts and state of health of Mario Alberto Teti Izquierdo.

3.1 By a note dated 10 December 1980, the State party objected to the admissibility of the communication on the ground that it did not fulfil the requirements of article 5, paragraph 2 (b), of the Optional Protocol, since domestic remedies had not been exhausted. The State party submitted that the Uruguayan Code of Military Penal Procedure, in articles 489 and 507 respectively, provided for the remedies of appeal for annulment and review in respect of final sentences and in addition that, since Mario Alberto Teti Izquierdo underwent two trials and the decision in one of them was submitted to the Supreme Military Tribunal on appeal only on 30 June 1980, it was evident that domestic remedies had not been exhausted.

3.2 In a further submission dated 3 March 1981, the State party provided additional information concerning the case of Mario Alberto Teti Izquierdo as follows:

> "The accused, Mario Alberto Teti Izquierdo, was arrested on 7 December 1970. He took part in the escape from the Punta Carretas prison and was also involved in the attack on the notary's office in Calle Treinta y Tres and in the attack on the Union Branch of the Pan de Azucar Bank. On 11 December 1970, he was committed for trial by the first examining magistrate on a charge of having committed the offences of 'conspiracy to commit an offence', 'attempts to overthrow the Constitution' and 'being in possession of explosives', contrary to articles 150, 152 (6) and 197 of the Ordinary Criminal Code. His defence counsel was Dr. Wilmar Olivera. On 3 May 1971, he was freed under the system of 'provisional release' and left the country - making use of the option afforded by article 168 (17) of the Constitution - for Chile. On 1 October 1976, his case came up before the third military examining magistrate. On 24 May 1976*, he was arrested for alleged involvement in subversive activities. A second case was brought against him on 15 September 1972 and he was committed for trial by the third military examining magistrate on a charge involving a series of offences, namely,

---

* This would appear to be a typographical error; the correct date seems to be 24 May 1972.

'attempts to overthrow the Constitution amounting to conspiracy followed by preparatory acts', 'conspiracy to commit an offence' and 'use of a fraudulent public document', contrary to article 132, subparagraph (vi), in conjunction with articles 137, 150 and 243 of the Ordinary Criminal Code. His defence counsel was Dr. Juan Barbé. In a judgement at first instance, he was sentenced to nine years' rigorous imprisonment less the time spent in preventive detention. On 12 May 1976, the case came up on appeal before the Supreme Court of Military Justice. On 3 November 1977, the judgement at first instance was set aside and the accused was instead sentenced, as a principal offender, to 10 years' rigorous imprisonment, less the time spent in preventive detention, for a combination of principal and secondary offences, namely 'attempts to overthrow the Constitution amounting to conspiracy followed by preparatory acts', 'conspiracy to commit an offence', 'use of a fraudulent public document', 'accessory after the fact' and 'escape from custody'.

"On 21 April 1980, in a judgement delivered in the first of the cases, he was sentenced at first instance to eight years' rigorous imprisonment for a series of offences ('conspiracy to commit an offence', with aggravating circumstances, 'attempt to overthrow the Constitution amounting to conspiracy followed by preparatory acts', with aggravating circumstances, 'use of explosive bombs' and 'failure to disclose personal particulars' in which connexion he was declared to be a habitual offender) and to two to four years' precautionary measures, without prejudice to such final combined sentence as might be deemed appropriate. On 30 June 1980, this case came up on appeal before the Supreme Court of Military Justice. The defence counsel magistrate is now Dr. Amilcar Perea. Subsequently, the fourth military examining magistrate ordered another inquiry to be made as further evidence had come to light that would warrant new proceedings. When the authorities learnt of the so-called 'six-point' plan that was being plotted outside the prison, they again investigated that establishment with the result that new ringleaders of the 'Tupamaros' extremist movement were identified there, among them Mario Teti, who was responsible for conducting operations to reactivate the subversive organization in question. He was moved from Military Detention Establishment No. 1 to another detention establishment, with the agreement and knowledge of the competent court, for the purpose of the requisite investigation, interrogation and inquiries, and also for reasons of security, with a view to dismantling the said plan. His state of health is good."

3.3 In a further submission of 6 May 1981 the State party stated that:

"After the authorities learned of the so-called 'six-point' plan which was being devised by subversive elements outside Military Detention Establishment No. 1 with the participation of similar elements confined in the prison, a further investigation was carried out within the prison.

"This investigation led to the identification of new ringleaders of the extremist 'Tupamaros' movement who were operating there and among whom Mario Teti was found to be responsible for the conduct of operations aimed at reactivating the above-mentioned subversive organization.

"The fourth Military Court of Investigation ordered that he should be further questioned because of this new evidence, which would appear to constitute grounds for holding another trial.

"Mario Teti was moved from Military Detention Establishment No. 1 to another detention establishment with the agreement and knowledge of the competent court, for the purposes of the necessary investigation, questioning and inquiries, and for reasons of security in order to disrupt the above-mentioned subversive plan.

"The prisoner's state of health is good."

4.1 The Human Rights Committee noted the assertion of the State party, in its first submission, that further remedies were available to Mario Teti Izquierdo. Nevertheless, in other cases the State party has described these remedies by way of appeal for annulment or review as being exceptional in character. No grounds had been adduced to show that these exceptional remedies were applicable in the present case. They could not, therefore, be regarded as, in effect, being "available" within the meaning of article 5 (2) (b) of the Optional Protocol. The Committee noted that an appeal against the judgement of 21 April 1980 came before the Supreme Court of Military Justice on 30 June 1980 and the Committee had not been informed of the conclusion of these proceedings. However, if no decision had yet been reached the Committee could not but conclude that, in so far as the appeal was relevant to the matters complained of, the proceedings in this case had been unreasonably prolonged. The Committee was therefore of the view that there were no further domestic remedies which had to be exhausted before the communication was declared admissible.

4.2 With regard to article 5 (2) (a), the author's assertion that the same matter had not been submitted to any other procedure of international investigation or settlement had not been contested by the State party.

5. On 27 July 1981, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of its decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it; the State party is requested, in this connexion, to enclose copies of any court orders or decisions of relevance to the matter under consideration;

...

(d) That having regard to the concern expressed in Ana María Teti Izquierdo's letter of 8 June 1981, the State party is requested again to inform the Committee of Mario Teti's state of health and to ensure that he was given suitable medical treatment.

6. The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 19 February 1982. No submission has been received from the State party, in addition to those received by the Committee prior to the decision on the admissibility of the communication.

7.1 The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol. The Committee bases its views on the

following facts which are not in dispute or which are unrepudiated or uncontested by the State party except for denials of a general character offering no particular information or explanation:

Events prior to the entry into force of the Covenant:

7.2 First case: Mario Alberto Teti Izquierdo was arrested by 7 December 1970. On 11 December 1970 he was committed for trial by the first examining magistrate on charges of "conspiracy to commit an offence", "attempts to overthrow the Constitution" and "being in possession of explosives". On 3 May 1971 he was provisionally released.

7.3 Second case: On 24 May 1972 Mario Alberto Teti Izquierdo was rearrested for alleged involvement in subversive activities. He was kept incommunicado for two months and subjected to ill-treatment. On 15 September 1972 he was again committed for trial by the third military examining magistrate on charges involving a series of offences, namely "attempts to overthrow the Constitution amounting to conspiracy followed by preparatory acts", "conspiracy to commit an offence" and "use of a fraudulent public document". From 1972 to 1976 Mario Alberto Teti Izquierdo had access to three defence lawyers of his choice, Dr. Wilmar Olivera in 1972, Dr. Alba Dell'Acqua from January 1973 to December 1975 and Dr. Mario Dell'Acqua from January 1976 to October 1976. All these lawyers left Uruguay, allegedly because of harassment by the authorities.

Events subsequent to the entry into force of the Covenant:

7.4 Concerning the second case: The military court of the first instance sentenced him to nine years' rigorous imprisonment less the time spent in preventive detention. On 12 May 1976 the case came up on appeal before the Supreme Court of Military Justice. In October 1976 Mario Alberto Teti Izquierdo was assigned a court-appointed military defence counsel, Dr. Juan Barbé. On 3 November 1977 Mario Alberto Teti Izquierdo was sentenced to 10 years' rigorous imprisonment less the time spent in preventive detention. It would appear that he would have served the whole of this sentence in May 1982.

7.5 Concerning the first case: On 21 April 1980 he was sentenced at first instance to eight years' rigorous imprisonment and to two to four years' precautionary measures. On 30 June 1980 this case came up on appeal before the Supreme Court of Military Justice.

7.6 In June 1980 Mario Alberto Teti Izquierdo was forced to sign a statement in connexion with new charges which were brought against him.

7.7 Since October 1976 he has been unable to have the assistance of counsel of his own choice.

7.8 After a visit of the International Red Cross to Libertad prison in February/March 1980, Mario Alberto Teti Izquierdo was subjected to physical attacks and threats of death. In August 1980 he was moved to a punishment cell and held in solitary confinement. He was then in a very poor physical and psychological state of health.

7.9 On 26 September 1980 he was moved to another detention establishment for interrogation in connexion with his alleged involvement, together with other

detainees, in operations aimed at reactivating a subversive organization (the "Tupamaros" movement) from within the Libertad prison. In this connexion Mario Alberto Teti Izquierdo faces new charges. His family was unable to obtain information about his whereabouts until May 1981, when he was brought back to Libertad. From September 1980 to May 1981 he was held incommunicado. When Mario Alberto Teti Izquierdo was transferred from Libertad he weighed 80 kilograms, and after his return only 60 kilograms.

8. As regards the allegations of ill-treatment made by the author, the State party has adduced no evidence that these allegations have been investigated.

9. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay) disclose the following violations of the International Covenant on Civil and Political Rights: of articles 7 and 10 (1), because of the ill-treatment which Mario Alberto Teti Izquierdo has been subjected;

of articles 9 (3) and 14 (3) (c), because his right to trial within a reasonable time has not been respected;

of article 14 (3) (b) and (c), because he was unable to have the assistance of counsel of his own choice and because the conditions of his detention, from September 1980 to May 1981, effectively barred him from access to any legal assistance;

of article 14 (3) (g), because he was forced to sign a statement in connexion with charges made against him.

10. The Committee, accordingly, is of the view that the State party is under an obligation to take immediate steps to ensure strict observance of the provisions of the Covenant and to provide effective remedies to the victim and, in particular, in view of the fact that Mario Alberto Teti Izquierdo is facing new charges, to give him all the procedural guarantees prescribed by article 14 of the Covenant. The State party should also ensure that Mario Alberto Teti Azquierdo receives promptly all necessary medical care.

ANNEX XVIII

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. R.6/25

Submitted by: Initially submitted by Carmen Amendola Massiotti on behalf of herself and on behalf of Graciela Baritussio who later joined as submitting party

Alleged victims: Carmen Amendola Massiotti and Graciela Baritussio

State party concerned: Uruguay

Date of communication: 25 January 1978 (date of initial letter)

Date of decision on admissibility: 24 April 1979

The Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 26 July 1982,

Having concluded its consideration of communication No. R.6/25, initially submitted by Carmen Amendola Massiotti under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the initial author of the communication, by the second alleged victim and by the State party concerned,

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The initial author of the communication, Carmen Amendola Massiotti (initial letter dated 25 January 1978) is a 32-year-old Uruguayan national residing in the Netherlands.

1.2 The author alleges that she herself was arrested in Montevideo on 8 March 1975, that she was kept incommunicado until 12 September that year and subjected to severe torture (giving detailed description) in order to make her confess membership in political organizations which had been declared illegal by the military régime. She states that on 17 April 1975 she was brought before a military judge and that her family was only informed the following day about her detention which had been denied by the military authorities. On 12 September she was again brought before a military judge and tried for "assistance to illegal

association" and "contempt for the armed forces". Until 1 August 1977 she served her sentence at the Women's prison "Ex Escuela Naval Dr. Carlos Nery" which she describes as an old building where pieces of concrete kept falling off the ceiling and on the prisoners. During the rainy period the water was 5 to 10 cm deep on the floor of the cells. In three of the cells, each measuring 4m by 5m, 35 prisoners were kept. The prison had no open courtyard and the prisoners were kept indoors under artificial light all day.

1.3 On 1 August the author was transferred to Punta Rieles prison. There she was kept in a hut measuring 5m by 10m. The place was overcrowded with 100 prisoners and the sanitary conditions were insufficient (one washbasin and four toilets). The prisoners were constantly subjected to interrogations, harassment and severe punishment. The officers in charge of S2 - military intelligence inside the prison - Major Victorino Vázquez and Lieutenant Echeverría, themselves carried out the interrogations and also supervised torture. She also mentions that the prisoners were compelled to do hard labour which involved making roads inside the prison, putting up new prison buildings, mixing concrete, carrying heavy building materials, as well as gardening, cleaning and cooking for the detainees and the guards, i.e. a total of 800 persons, the last task being assigned to 10 women prisoners. The author points out that work was compulsory even for women who were ill or had physical infirmities. She adds that food was very poor (giving details).

1.4 The author further claims that, despite having served her sentence on 9 November 1977, she was kept in detention until 12 December 1977, when the choice was offered to her of either remaining in detention or of leaving the country. She opted for the latter and obtained political asylum in the Netherlands.

1.5 She alleges in this connexion that in the Paso de los Toros prison there were 17 women whose release had been signed by the military courts, but who continued to be imprisoned under the prompt security measures. She mentions in particular the case of Graciela Baritussio de Lopez Mercado.

2.1 With respect to Graciela Baritussio, a 34-year-old Uruguayan national, the author states that she was informed by the alleged victim's former defence counsel that she approved the author's acting on her behalf. She claims that the alleged victim is not in a position to act on her own behalf since this was not possible for a person detained under the prompt security measures. She further claims that Graciela Baritussio had no defence counsel at the time of the submission of the communication.

2.2 The Committee subsequently ascertained that Graciela Baritussio had been released from prison and lived in Sweden. She was contacted and informed the Committee that she wished to join as a co-author of the communication submitted on her behalf by Carmen Améndola Massiotti. In addition, she furnished the following information (letter of 29 January 1981, enclosing a letter from her former defence lawyer, Mario Dell'Acqua): she was arrested on 3 September 1972, tried by a military judge on 5 February 1973 for "complicity in a subversive association" and brought in April 1973 to the Punta Rieles prison where she served her two year prison sentence. On 15 August 1974 she was brought to the same military court as before in order to sign the documents for her provisional release. She also mentions that she had qualified legal assistance from the time of her trial until 15 August 1974, her defence lawyer being Mario Dell'Acqua. The defence lawyer adds in his statement that the decision of 15 August 1974, granting her provisional release became enforceable and final in 1975. Graciela Baritussio continues that

she was informed by the prison authorities on 3 October 1974 that she would be released, but instead she was brought without any explanations to another military detention centre. There she remained for another three years. On 6 October 1977 she was transferred to another military establishment in the interior of the country which was being used as a prison for women detained under the security measures. On 8 August 1978 the governor of the establishment informed her that she was going to be released. Her release took place on 12 August 1978. She adds that she lived during these four years in a state of total insecurity in view of the fact that the military authorities could move her anywhere in the country without any possibility of a legal recourse against these measures. She also mentions the situation of the relatives of the detainees who could only obtain evasive replies from the military authorities.

3.1 With respect to domestic remedies, Carmen Amendola Massiotti claims that they do not exist in Uruguay for persons detained under the prompt security measures as they cannot act on their own behalf and lawyers cannot act without the risk of being themselves detained, as happened allegedly to one of Graciela Baritussio's lawyers. She further claims that copies of decisions of military tribunals are not made available to any person. This information was basically confirmed in the statement by the defence lawyer Mario A. Dell'Acqua (enclosed with Graciela Baritussio's letter of 27 January 1981) who adds that once the document for Graciela Baritussio's provisional release had been signed and also after the judgement in that respect had been rendered final and enforceable in 1975, he made numerous representations to the responsible military judges. He was informed that if the prison authorities did not comply with the court's release order, the judges could do no more.

3.2 Carmen Amendola Massiotti does not specify which articles of the International Covenant on Civil and Political Rights she alleges to have been violated in her own case, but claims that most of them have been violated. Regarding Graciela Baritussio, she alleges that articles 2, 3, 6, 7, 8, 9, 10, 14 and 15 of the Covenant have been violated. She states that to her knowledge, the same matter has not been submitted under another procedure of international investigation or settlement.

4. By its decision of 26 July 1978, the Human Rights Committee, having decided that the author of the communication was also justified in acting on behalf of the second alleged victim, Graciela Baritussio, transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

5. By a note dated 8 January 1979, the State party objected to the admissibility of the communication on the following grounds: (a) that the date of arrest of Carmen Amendola Massiotti preceded the entry into force of the Covenant for Uruguay on 23 March 1976, (b) that she did not apply for any remedy, and (c) with respect to Graciela Baritussio that she did not avail herself of any of the remedies generally available to persons imprisoned in Uruguay.

6. On 24 April 1979, the Human Rights Committee decided:

(a) That the communication was admissible;

(b) That in accordance with article 4 (2) of the Protocol, the State party be

requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

(c) That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Protocol must primarily relate to the substance of the matter under consideration, and in particular the specific violations of the Covenant alleged to have occurred. The State party was requested, in this connexion, to enclose copies of any court orders or decisions of relevance to the matter under consideration.

7.1 In its submission under article 4 (2) of the Optional Protocol dated 9 October 1980, the State party informed the Committee, inter alia, that Carmen Amendola Massiotti had qualified legal assistance at all times, the defending counsel of her choice being Milton Machado Mega; that, having served her sentence, she regained her full freedom and left for the Netherlands on 11 December 1977. With respect to Graciela Baritussio, the State party stated that she also received qualified legal assistance, the defending counsel of her choice being Mario Dell'Acqua, that on 15 August 1974 she was granted provisional release and left for Sweden on 10 July 1979. The State party further contended that there was no justification for the continued consideration of the case. The alleged victims were not under the jurisdiction of the State accused. To consider the communication further would therefore be incompatible with the purpose for which the Covenant and its Protocol were established, namely, to ensure the effective protection of human rights and to bring to an end any situation in which these rights were violated. The State party concluded that in this case no de facto situation existed to warrant findings by the Committee, and that consequently, by intervening, the Committee would not only be exceeding its competence but would also be departing from normally established legal procedures. By a note dated 23 July 1982, the State party reiterated its arguments with respect to Graciela Baritussio and stated that according to article 1 of the Optional Protocol, the Committee had competence to receive and consider communications from individuals only if these individuals were subject to the jurisdiction of the State party which allegedly committed the violation of human rights. Graciela Baritussio, however, had left Uruguay for Sweden and therefore did not fulfil this requirement.

7.2 With respect to the State party's submission under article 4 (2) of the Optional Protocol that consideration of the communication should be discontinued, the Committee notes that the victims were under the jurisdiction of Uruguay while the alleged violations took place. The Committee therefore rejects the contention of the State party that further consideration of the case would be beyond its competence or contrary to the purposes of the International Covenant on Civil and Political Rights and the Optional Protocol thereto.

8. No further submission was received from the author of the initial communication, Carmen Amendola Massiotti, after her second communication dated 5 May 1978.

9. The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol.

10. The Committee decides to base its views on the following facts which are not in dispute or which are unrepudiated or uncontested by the State party except for denials of a general character offering no particular information or explanation:

With respect to Carmen Améndola Massiotti:

11. Carmen Améndola Massiotti was arrested in Montevideo on 8 March 1975, kept incommunicado until 12 September that year and subjected to severe torture. On 17 April 1975 she was brought before a military judge. On 12 September she was again brought before a military judge and tried for "assistance to illegal association" and "contempt for the armed forces". Until 1 August 1977 she served her sentence at the women's prison "Ex Escuela Naval Dr. Carlos Nery". During the rainy period the water was 5 to 10 cm deep on the floor of the cells. In three of the cells, each measuring 4m by 5m, 35 prisoners were kept. The prison had no open courtyard and the prisoners were kept indoors under artificial light all day. On 1 August 1977 Carmen Améndola Massiotti was transferred to Punta Rieles prison. There she was kept in a hut measuring 5m by 10m. The place was overcrowded with 100 prisoners and the sanitary conditions were insufficient. She was subjected to hard labour and the food was very poor. The prisoners were constantly subjected to interrogations, harassment and severe punishment. Despite having served her sentence on 9 November 1977, she was kept in detention until 11 or 12 December 1977 when the choice was offered to her of either remaining in detention or leaving the country. She opted for the latter and obtained political asylum in the Netherlands.

With respect to Graciela Baritussio:

12. Graciela Baritussio was arrested in Uruguay on 3 September 1972, tried by a military judge on 5 February 1973 for "complicity in a subversive association" and brought in April 1973 to the Punta Rieles prison where she served her two years prison sentence. On 15 August 1974 she was brought to the same military court as before in order to sign the documents for her provisional release. The decision granting her provisional release became enforceable and final in 1975. Graciela Baritussio, however, remained in detention. On 6 October 1977 she was transferred to another military establishment in the interior of the country which was being used as a prison for women detained under the security measures. On 8 August 1978 the governor of the establishment informed her that she was going to be released. Her release took place on 12 August 1978. Once the document for Graciela Baritussio's provisional release had been signed and after the decision became final and enforceable in 1975, her defence lawyer had made numerous representations to the military judges responsible for her case. He was informed that, if the prison authorities did not comply with the court's release order, the judges could do no more.

13. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay) disclose the following violations of the International Covenant on Civil and Political Rights:

In the case of Carmen Améndola Massiotti

of articles 7 and 10 (1), because the conditions of her imprisonment amounted to inhuman treatment;

of article 9 (1), because she continued to be detained after having served her prison sentence on 9 November 1977;

In the case of Graciela Baritussio

of article 9 (1), because she was subjected to arbitrary detention under the "prompt security measures" until 12 August 1978 after having signed on 15 August 1974 the document for her provisional release;

of article 9 (4) in conjunction with article 2 (3), because there was no competent court to which she could have appealed during her arbitrary detention.

14. The Committee, accordingly, is of the opinion that the State party is under an obligation to provide the victims with effective remedies, including compensation, for the violations they have suffered. The State party is also urged to investigate the allegations of torture made against named persons in the case.

ANNEX XIX

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. R.11/46

Submitted by: Orlando Fals Borda and his wife, Maria Cristina Salazar de Fals Borda, Justo German Bermudez and Martha Isabel Valderrama Becerra, all represented by Pedro Pablo Camargo

State party concerned: Colombia

Date of communication: 6 February 1979 (date of initial letter)

Date of decision on admissibility: 27 July 1981

The Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 27 July 1982,

Having concluded its consideration of communication No. 11/46 submitted to the Committee by Pedro Pablo Camargo on behalf of Orlando Fals Borda and his wife, Maria Cristina Salazar de Fals Borda, Justo German Bermudez and Martha Isabel Valderrama Becerra under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party concerned,

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The communication (initial letter dated 6 February 1979 and further letters dated 26 June 1979, 2 June, 20 October and 31 October 1980, 30 September 1981 and 19 June 1982) was submitted by Pedro Pablo Camargo, Professor of International Law of the National University of Colombia, at present residing in Quito, Ecuador. He submitted the copmmunication on behalf of Orlando Fals Borda and his wife, Maria Cristina Salazar de Fals Borda, Justo German Bermudez and Martha Isabel Valderrama Becerra. They are all Colombian nationals.

1.2 The author alleges that by enacting Legislative Decree No. 1923 of 6 September 1978 (Statute of Security)* the Government of Colombia has violated

---

* See the text of Legislative Decree No. 1923 in the appendix below.

articles 9 and 14 of the Covenant and he claims that the four persons he represents are victims of these violations.

1.3 Concerning the cases of Orlando Fals Borda and his wife, the author describes the relevant facts as follows: On 21 January 1979, Dr. Fals Borda, a Colombian sociologist and professor, and his wife, Maria Cristina Salazar de Fals Borda, were arrested by troops of the Brigada de Institutos Militares under the Statute of Security. Dr. Fals was detained incommunicado without judicial guarantees, such as legal assistance, at the Cuartel de Infanteria de Usaquin, from 21 January to 10 February 1979, when he was released without charges. His wife continued to be detained for over a year. A court martial then found that there was no justification for detaining Mrs. Fals Borda.

1.4 Concerning the cases of Justo German Bermudez and Martha Isabel Valderrama Becerra, the author describes the relevant facts as follows: On 3 April 1979, the President of the Summary Court Martial (First Battalion of Military Police, Brigade of Military Institutions) found Justo German Bermudez Gross guilty of the offence of rebellion (article 7 of the judgement) and sentenced him to a principal penalty of six years and eight months' rigorous imprisonment and interdiction of public rights and functions, as well as the accessory penalty of loss of patria potestas for the same period. In the same judgement it sentenced Martha Isabel Valderrama Becerra to six years' rigorous imprisonment and interdiction of public rights and functions for the offence of rebellion. The judgement states: "In conclusion, the sentences to be passed on the accused who have been declared guilty of the offence of 'rebellion' shall be those contained in article 2 of Decree No. 1923 of 6 September 1978, known as the Statute of Security".

1.5 The author alleges that by application of Decree No. 1923 Dr. Fals Borda and his wife were arbitrarily detained, that Mr. Bermudez and Miss Valderrama are subjected to arbitrary imprisonment, that Mr. Bermúdez and Miss Valderrama's sentences were illegally increased, that is their sentences are more severe than the maximum penalty stipulated by the Colombian Penal Code, and that they all have been victims of violations of article 14 (1), (2), (3) and (5) of the International Covenant on Civil and Political Rights because they have been brought before military tribunals which were not competent, independent and impartial, and because they have allegedly been deprived of the procedural guarantees laid down in the Colombian Constitution and in the Covenant. He states that all domestic remedies have been exhausted with the decision of the Supreme Court of Justice upholding the constitutionality of the Decree and that the cases of the alleged victims have not been submitted to any other procedure of international investigation or settlement.

2. On 9 August 1979, the Human Rights Committee decided to transmit the communication to the State party, under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility.

3.1 By letters dated 30 April and 30 September 1980 the State party refuted the allegations made by the author.

3.2 The State party, in particular, rejected the allegation made by the author of the communication that the enactment of Legislative Decree No. 1923 of 6 September 1978 and consequently the arrest and detention of the four persons represented by the author were contrary to the Colombian Constitution and in

violation of the International Covenant on Civil and Political Rights. The State party pointed out that the Decree was issued by the President of the Republic of Colombia in the exercise of the constitutional powers vested in him by article 121 of the Colombian Constitution after the declaration of a "state of siege" due to the disturbance of public order and that the Supreme Court of Justice in a judgement of 30 October 1978 had held the Decree to be constitutional. In this connection the State party recalled that Colombia is experiencing a situation of disturbed public order within the meaning of article 4, paragraph 1, of the Covenant.

3.3 The State party also rejected the allegations made by the complainant that articles 9, 11 and 12 of Decree No. 1923 contravene article 14, paragraph 1, of the Covenant. It quoted the ruling of the Supreme Court of Justice, in particular the following:

> "... Decree No. 1923 has done nothing other than apply the exception provided for in article 61 [of the Constitution] which authorizes in exceptional times the cumulative performance, and hence provisional transfer, of powers, and specifically jurisdictional powers, by and to bodies other than those normally exercising them, and which legitimates the introduction of military penal justice, and empowers the military and police authorities specified in the Decree, to deal with and to order penalties for certain offences.
>
> "The Decree does not establish ad hoc bodies nor does it change the origin or composition of existing bodies. It simply empowers certain authorities to perform simultaneously their own ordinary functions and those vested in them provisionally by virtue of the enabling provisions of article 61 of the Constitution. ..."

The State party added that the ruling of the Supreme Court was quoted precisely in order to show that military tribunals are not ad hoc bodies but an integral part of the branch of the public power responsible for the administration of justice in conformity with the National Constitution and cannot be dismissed as unqualified, as was done by the complainant, Dr. Camargo, who sought to deny their legality in order to establish an alleged violation of the Covenant on that basis.

3.4 With regard to the specific case of Mr. and Mrs. Fals Borda, the State party confirmed their release, which was ordered when it was found during an investigation that their continued detention was not justified. The State party added that there is no ground for deducing directly from the fact that these orders were issued that artibtrary detention took place in either or both of these cases. It was further stated by the State party that, should Mr. and Mrs. Fals Borda consider that their detention was arbitrary (in the sense that the requisite legal formalities and rules had not been complied with), they may file a complaint with the competent authorities and institute the appropriate proceedings for the recovery of damages. To challenge their detention on the ground that the requisite legal formalities and rules had not been complied with, a criminal investigation could be initiated by the alleged victims, through the judicial police, the Attorney General or the Judge Advocate General of the Armed Forces. To obtain compensation for damages and injuries resulting from an alleged arbitrary detention civil proceedings may then be instituted; if the violation of rights is the result of action by a public official the complainants may also appeal to the administrative courts. As none of the aforementioned procedures have been resorted

to by Mr. and Mrs. Fals Borda the State party concluded that domestic remedies had not been exhausted in their case.

3.5 With regard to the case of Mr. Justo German Bermudez and Miss Martha Isabel Valderrama, The State party claimed that the accused have benefited from all procedural guarantees accorded by the law and that the allegedly improper length of their prison terms, based on charges of rebellion, was justified by the provisions of Decree No. 1923, applicable under the present "state of siege" in Colombia. The State party stated that the appeal was still being heard in the Higher Military Tribunal and explained that "the time that has elapsed in this connexion ... is due both to the nature of the case and to the large number of appeals and inquiries with which the Higher Military Tribunal has to deal". The State party concluded that domestic remedies had not been exhausted in this case either.

4. On 29 July 1980 the Human Rights Committee decided to request the State party to furnish detailed information as to:

(a) How, if at all, the state of siege proclaimed in Colombia affects the present case;

(b) Which are the competent authorities, before which Mr. and Mrs. Fals Borda may file a complaint and institute proceedings for the recovery of damages in the particular circumstances of their case, as well as the nature of such proceedings, based on the law in force;

(c) The status of the appeal of German Bermudez Gross and Martha Isabel Valderrama before the Higher Military Tribunal, and, if not yet concluded, the reasons for the apparent delay and the anticipated time for the completion of those proceedings.

5.1 By a note dated 1 October 1980, the State party submitted further information.

5.2 The State party maintained that the state of siege affected the present case, so far as concerns the situation of Justo German Bermudez and Martha Isabel Valderrama, by reason of the fact that Legislative Decree No. 1923 of 1978 increased the penalty for the crime of rebellion and also because both the aforesaid Decree and Legislative Decree No. 2260 of 1976 ascribed responsibility for the hearing of cases involving offences against the constitutional regime and against the security of the State to the military criminal courts. It added that with regard to the proceedings which Dr. Orlando Fals Borda and Mrs. Maria Cristina Salazar de Fals Borda could institute, the provisions enacted by virtue of the state of siege had no effect.

5.3 The State party reiterated the information submitted (see para. 3.4) concerning the competent authorities before which Dr. Fals Borda and his wife could file complaints with respect to an alleged arbitrary detention, and the proceedings they could institute for the recovery of damages. It added that a civil action to obtain compensation can be brought in the context of the military criminal proceedings for common-law offences. If the injured parties did not take part in the criminal proceedings and do not agree with the judgement so far as concerns compensation, they can bring an appropriate action before a civil court. They can also appeal to the administrative courts, on the ground of State liability, if in fact it is confirmed that arbitrary detention took place.

5.4 The State party informed the Committee that the case against German Bermudez Gross and Martha Isabel Valderrama for the crime of rebellion was in the offices of Dr. Roberto Ramiraz Laserna, Judge of the Higher Military Tribunal, awaiting a decision by the court of second instance. The apparent delay in reaching a decision on the appeal was due to the heavy workload of the Tribunal, which has to deal with many cases.

6.1 Commenting on the State party's submission, the author claimed that as far as the specific cases of the arbitrary detention of Mr. and Mrs. Fals Borda were concerned, all domestic legal remedies had been exhausted, and no valid remedy existed for claiming damages on account of this arbitrary detention. The arguments were as follows:

"(a) Without Legislative Decree No. 1923 of 1978 (Statute of Security), neither the arbitrary detention of Mr. and Mrs. Fals Borda, nor that of thousands of other victims, would ever have occurred. Mr. and Mrs. Fals Borda were deprived not only of the guarantee laid down in article 9, paragraph 3, of the Covenant, but also the remedy of habeas corpus guaranteed by article 9, paragraph 4 of the Covenant and by article 417 of the Code of Criminal Procedure of Colombia, which states: 'Any person deprived of his freedom for more than 48 hours may, if he considers that a breach of the law has taken place, apply to a municipal, criminal or combined criminal/civil court judge for habeas corpus ...';

"(b) With the decision of the Higher Military Tribunal, which is not open to appeal, domestic legal remedies have been exhausted. However, that decision states, not that a case of aribtrary detention had taken place, but that there was no justification for the continued enforcement of the detention order issued by the military authorities without due process of law;

"(c) It is not possible to bring an action for arbitrary arrest before an ordinary court against the military investigators who ordered the arrest of Mr. and Mrs. Fals Borda. The handling of such a charge would fall to the military authorities, as is made clear in article 309 of the Code of Military Criminal Justice: 'As a general rule, accused persons shall be tried by members of the branch of the armed forces to which they belong.' In other words, any complaint lodged against military personnel for abuse of authority or arbitrary detention falls within the direct jurisdiction of the military authorities or the military prosecutor, both of whom are under the orders of the Government of Colombia;

"(d) In the unlikely event of military criminal proceedings being instituted against the officers responsible for the arbitrary detention of Mr. and Mrs. Fals Borda, it would not be possible to bring a civil suit for damages on behalf of the victims, since the offence in question is supposedly of an essentially military nature ...;

"(e) Article 9, paragraph 5 of the Covenant states: 'Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.' No provision is made for such action in Colombian law;

"(f) The Government of Colombia cites article 67 of the Administrative Code, which states: 'In the event of violation of a right established or recognized by a civil or administrative regulation, the injured party may

request not only that the act be annulled but also that his right be restored.' In the case of Mr. and Mrs. Fals Borda, there has been no ruling to the effect that arbitrary detention took place or that, as a result of such an unlawful act, the State has a duty to compensate the victims. However, the time-limit for bringing such a hypothetical administrative action has expired, by virtue of the provisions of article 83 of the Code in question which states that an action (not a remedy) 'intended to obtain compensation for infringement of individual rights shall, in the absence of any legal provision to the contrary, lapse four months after the date of publication, modification or execution of the act, or the occurrences or administrative procedure giving rise to the action'."

6.2 In his submission of 20 October 1980 the author informed the Committee that in the case of Justo Germán Bermúdez and Martha Isabel Valderrama, sentenced to imprisonment on 3 April 1979 by the Summary Military Court, the sentences had been upheld by the Higher Military Court.

7.1 The Committee found, on the basis of the information before it, that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication since there was no indication that the same matter had been submitted under another procedure of international investigation or settlement.

7.2 As to the question of exhaustion of domestic remedies, in the case of Mr. and Mrs. Fals Borda, the Committee considered whether the communication should be declared inadmissible because of non-exhaustion of domestic remedies. However, the essence of this complaint was that Decree No. 1923 deprived them of safeguards guaranteed by articles 9 and 14 of the Covenant and that in these circumstances the domestic remedies for arbitrary arrest would have been of no avail. The Committee considered that this was a question which it could effectively examine only in the context of the application of the Decree generally to the case of Mr. and Mrs. Fals Borda.

7.3 In the case of Justo Germán Bermúdez and Martha Isabel Valderrama, the Committee, having been informed by the author on 20 October 1980 that the Higher Military Tribunal had upheld the sentences of the court of first instance and, considering that this information had not been refuted by the State party, understood that domestic remedies had now been exhausted and that consequently the communication might be declared admissible in their case.

8. On 27 July 1981, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

(b) That the author of the communication be requested to submit to the Committee not later than 10 October 1981 a statement, in respect of each relevant provision of the Covenant, of the grounds for claiming that the Covenant has been violated (a) in regard to Mr. and Mrs. Fals Borda and (b) in regard to Mr. Justo Germán Bermúdez and Miss Martha Isabel Valderrama;

(c) That a copy of any submission received from the author pursuant to paragraph 2 of this decision be transmitted to the State party as soon as possible to enable it to take it into account in the preparation of its submission under article 4 (2) of the Optional Protocol;

(d) That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of any submission received from the author of the communication pursuant to operative paragraph 2 above, written explanations and statements clarifying the matter and the remedy, if any, that may have been taken by it. The State party was requested, in this connexion, to enclose copies of any court orders or decisions of relevance to the matter under consideration.

9.1 In accordance with operative paragraph 2 of the decision adopted by the Human Rights Committee on 27 July 1981, the author submitted further information dated 30 September 1981.

9.2 He claimed that the detention of Mr. and Mrs. Fals Borda was arbitrary and violated articles 9 and 14 of the International Covenant on Civil and Political Rights for the following reasons:

"1. Article 9 of the Covenant

"Mr. and Mrs. Fals Borda were definitely subject to violation of their right to liberty and security of person, since they were detained arbitrarily. They were not detained for any of the reasons laid down in criminal law (the Penal Code), nor in accordance with the appropriate legal procedure, provided for in the Code of Penal Procedure (articles 426 to 471), but under a substantive and adjectival rule of emergency law, namely, Legislative Decree No. 1923 of 1978 (the 'Statute of Security'), which violates the Colombian Constitution and the International Covenant on Civil and Political Rights.

"Secondly, the right of Mr. and Mrs. Fals Borda to be tried 'within a reasonable time' or be released, as provided for in article 9 (3) of the Covenant, was violated.

"In its submission dated 30 September 1980, the Colombian Government recognized that, besides arbitrary detention, the requirement of reasonable time had not been observed, since it stated: 'The orders under which Mr. and Mrs. Fals Borda were released were an outcome of the decision that there was no justification for their continued detention.' It has been shown that Mrs. Fals Borda had been detained for over a year.

"Thirdly, Mr. and Mrs. Fals Borda were victims of the violation of the habeas corpus safeguard, recognized both in article 417 of the Code of Penal Procedure and in article 9 (4) of the International Covenant on Civil and Political Rights.

"By means of the emergency procedure laid down in the 'Statute of Security', the military authorities prevented and denied the exercise of this right, thus permitting the arbitrary detention of Mr. and Mrs. Fals Borda.

"2. Article 14 of the Covenant

"The subjection of Mr. and Mrs. Fals Borda to military or emergency penal procedure, in implementation of the 'Statute of Security' violated their rights under article 14 (1) of the Covenant.

"In the first place, the military courts which judge civilians, as provided for in article 9 of the 'Statute of Security', as well as the judicial powers granted to army, navy and air force commanders (article 11) and police chiefs (article 12), nullify the right to a competent, independent and impartial tribunal. Articles 9, 11 and 12 of Decree No. 1923 ignore not only the universally recognized principle nemo judex in sua causa but also the right to a natural or judicial tribunal, provided for in article 26 of the Colombian Constitution: 'No one may be tried except in conformity with the laws in force prior to the commission of the act with which he is charged, by a court having competent jurisdiction, and in accordance with all formalities proper to each case.'

"Accordingly, the only competent, independent and impartial tribunals are the courts of common jurisdiction or judiciary set up under title XV, 'the Administration of Justice', of the Colombian Constitution and in accordance with Title II, 'Jurisdiction and Competence', of the Code of Penal Procedure (Decree No. 409 of 1971). This is on the basis not only of the constitutional principle of separation of powers, but also of article 58 of the Colombian Constitution: 'Justice is administered by the Supreme Court, by superior district courts and by such other courts and tribunals as may be established by law.'

"The Colombian Constitution does not allow military or emergency penal justice for citizens or civilians. Article 170 of the Colombian Constitution provides for courts martial but only for 'offences committed by military personnel on active service and in relation to that service.'

"Military courts or courts martial nevertheless operate in Colombia in breach of the country's constitution and laws and of the International Covenant on Civil and Political Rights, in particular to try political opponents, under Decree No. 1923 of 1978 (the 'Statute of Security'); this is in violation of article 14 of the United Nations International Covenant on Civil and Political Rights.

"Secondly, the military or emergency courts provided for in articles 9, 11 and 12 of Decree No. 1923 the 'Statute of Security' are not only not competent, independent and impartial (article 14 (1) of the Covenant), but they were not up under a proper law passed by Congress validly amending or repealing the Code of Penal Procedure (Decree No. 409 of 1971). The 'Statute of Security' is a state-of-seige decree which violates the safeguard of legality provided in the Covenant, particularly since it is indefinite, as may be seen in article 1 of the Statute, which provides for sentences of 30 years which do not exist in the Penal Code.

"In addition, Mr. and Mrs. Fals Borda were obviously deprived of the rights mentioned in paragraphs 2, 3 and 4 of article 14 of the Covenant."

9.3 Concerning Justo Germán Bermúdez and Martha Isabel Valderrama, the author claimed that they were victims of arbitrary arrest and imprisonment,

"... because they were deprived of their liberty on grounds not established by criminal law (the Penal Code) but under an emergency provision such as the 'Statute of Security', in violation of the Colombian Constitution and the International Covenant on Civil and Political Rights. Likewise, they suffered

arbitrary imprisonment because they were subject to a penal procedure that was not that of ordinary penal justice as laid down in the Code of Penal Procedure, but a military, governmental, emergency ad hoc procedure.

"Furthermore, the military sentence pronounced against Germán Bermúdez Gross and Martha Isabel Valderrama deprived them of the rights provided for in paragraphs 2 and 3 of article 9 of the Covenant, as well as the habeas corpus safeguard contained in article 417 of the Code of Penal Procedure and article 9 (4) of the International Covenant on Civil and Political Rights."

9.4 In addition, the author claimed that Justo Germán Bermúdez and Martha Isabel Valderrama had been deprived of the procedural rights mentioned in paragraphs 1, 2, 3, and 5 of article 14 of the Covenant for the same reasons as those mentioned above in paragraph 9.2 concerning Mr. Fals Borda and his wife.

9.5 At this stage in the proceedings the author raised the claim that Justo Germán Bermúdez and Martha Isabel Valderrama are also victims of violations of article 15 of the Covenant. He argues as follows:

"Article 15 of the Covenant lays down the following: 'Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed.' However, Germán Bermúdez Gross and Martha Isabel Valderrama received a heavier penalty under article 2 of Legislative Decree No. 1923 of 6 September 1978, which increased the penalty of ordinary imprisonment for the offence of rebellion to between 8 and 14 years, whereas in the Colombian Penal Code (Decree No. 2300 of 14 September 1936), in force at the time of the military judgement, the penalty was only six months to four years (art. 139).

"In addition, article 125 of the new Colombian Penal Code, promulgated on 25 January 1980 and in force since 25 January 1981 (Decree-Law No. 100 of 1980) provides that 'persons who use arms in attempting to overthrow the national government or to abolish or modify the existing constitutional or legal régime shall be liable to ordinary imprisonment for three to six years'. However, neither the Colombian Government nor the Brigade of Military Institutions applied the principle of benefit of penal law, laid down not only in the Colombian Constitution, but also in article 15 (1) of the Covenant: 'If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby'."

10. In its submission under article 4 (2) of the Optional Protocol, dated 24 March 1982, the State party reiterated that:

"The charges made by Mrs. María Cristina Salazar de Fals Borda, Orlando Fals Borda, Justo Germán Bermúdez and Martha Isabel Valderrama Becerra through their attorney, Dr. Pedro Pablo Camargo, that they were arbitrarily detained lack all legal basis since it is within the power of the Government to carry out investigations through the judiciary in respect of persons who are presumed to have committed an offence and, to ensure that they appear in court, they may be placed under preventive detention. However, if citizens consider that there has been a departure from the law, they may, in accordance with articles 272-275 of the Penal Code, make a complaint on the grounds of arbitrary detention.

"It should be pointed out with respect to civil responsibility arising from a punishable act that there is a prescriptive period of 20 years if an action is brought independently of criminal proceedings and a prescriptive period equal to that for the relevant criminal proceedings if an action is brought as part of such proceedings in accordance with article 108 of the Criminal Code. Where the sentence may be one of deprivation of liberty, the prescriptive period for criminal proceedings is equal to the maximum sentence provided for by law, but in no case may it be less than five years or more than 20 years. In the case with which we are concerned (arbitrary detention), the period will be five years, that being the maximum sentence which may be imposed.

"Concerning Justo Germán Bermúdez and Martha Isabel Valderrama, the law authorizes them, providing the period of prescription is still running, to submit an appeal for review or to vacate if they believe that the judgement of the Higher Military Court was not in accordance with the legal principles in force in our country. There is no period established by law within which an action for review must be submitted, although, according to the interpretation of articles 584-585 of the Code of Criminal Procedure, doctrine holds that this should be done while the person is serving the sentence.

"The parties would have a period of 15 days from the date of notification of the sentence of the Higher Military Court to submit an appeal to vacate. After this period, the right to seek to vacate a judgement by the Supreme Court of Justice, which is the highest body for the verification of trials, is lost, as stipulated in article 573 of the Code of Criminal Procedure, which also states that such appeals must be made on the specific grounds set forth in article 580 of the Code of Criminal Procedure."

11. In his additional information and observations dated 19 June 1982, the author reiterated that Mr. and Mrs. Fals Borda could not start civil or administrative proceedings or try to obtain compensation for reasons already mentioned (see para. 6.1 above) and because there has not been a judgement declaring that they had been arbitrarily arrested. He further argued that Justo Germán Bermúdez and Martha Isabel Valderrama cannot submit an appeal to vacate a judgement because of lapse of time or for review because there are no grounds to request such review.

12.1 The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol. The Committee bases its views on the following facts, which are not in dispute or which are unrefuted by the State party.

12.2 The Supreme Court of Justice of Colombia in a judgement of 30 October 1978 held Decree No. 1923 of 6 September 1978 to be constitutional. In this Decree it is recalled that "by Decree No. 2131 of 1976, public order was declared to be disturbed and the entire national territory in a state of siege". Article 9 of Decree No. 1923 reads as follows: "The military criminal courts, in addition to exercising the competence given them by the laws and regulations in force, shall try by court martial proceedings the offences [in particular of rebellion] referred to in articles 1, 2, 3, 4, 5 and 6, as well as those committed against the life and person of members of the Armed Forces, etc." In this Decree No. 1923 judicial powers are also granted to army, navy and air force commanders (art. 11) and police chiefs (art. 12).

12.3 On 21 January 1979, Mr. Fals Borda and his wife, María Cristina Salazar de Fals Borda, were arrested by troops of the Brigade de Institutos Militares under Decree No. 1923. Mr. Fals was detained incommunicado at the Cuartel de Infantería de Usaquín, from 21 January to 10 February 1979 when he was released without charges. Mrs. Fals continued to be detained for over one year. Mr. and Mrs. Fals Borda were released as a result of court decisions that there was no justification for their continued detention. They had not, however, had a possibility themselves to take proceedings before a court in order that that court might decide without delay on the lawfulness of their detention.

12.4 On 3 April 1979, the President of the Summary Court Martial (First Battalion of Military Police, Brigade of Military Institutions) found Justo Germán Bermúdez Gross guilty of the offence of rebellion (art. 7 of the judgement) and sentenced him to a principal penalty of six years and eight months' rigorous imprisonment and interdiction of public rights and functions, as well as the accessory penalty of loss of patria potestas for the same period. In the same judgement it sentenced Martha Isabel Valderrama Becerra to six years' rigorous imprisonment and interdiction of public rights and functions for the offence of rebellion. The judgement states: "In conclusion, the sentences to be passed on the accused who have been declared guilty of the offence of 'rebellion' shall be those contained in article 2 of Decree No. 1923 of 6 September 1978, known as the Statute of Security". In October 1980, the Higher Military Tribunal upheld the sentences of the court of first instance.

13.1 In formulating its views, the Human Rights Committee also takes into account the following considerations:

13.2 The Committee notes that the Government of Colombia in its submission of 30 April 1980 made reference to a situation of disturbed public order in Colombia within the meaning of article 4, paragraph 1, of the Covenant. In its note of 18 July 1980 to the Secretary-General of the United Nations (reproduced in document CCPR/C/2/Add.4), which was designed to comply with the formal requirements laid down in article 4 (3) of the Covenant, the Government of Colombia has made reference to the existence of a state of siege in all the national territory since 1976 and to the necessity to adopt extraordinary measures within the framework of the legal régime provided for in the National Constitution for such situations. With regard to the rights guaranteed by the Covenant, the Government of Colombia declared that "temporary measures have been adopted that have the effect of limiting the application of article 19, paragraph 2, and article 21 of that Covenant". The present case, however, is not concerned with article 19 and article 21 of the Covenant.

13.3 The allegations as to breaches of the provisions of article 14 of the Covenant concerning judicial guarantees and fair trial, seem to be based on the premise that civilians may not be subject to military penal procedures and that when civilians are nevertheless subjected to such procedures, they are in effect deprived of basic judicial guarantees aimed at ensuring fair trial, which guarantees would be afforded to them under the normal court system, because military courts are neither competent, independent and impartial. The arguments of the author in substantiation of these allegations are set out in general terms and principally linked with the question of constitutionality of Decree No. 1923. He does not, however, cite any specific incidents or facts in support of his allegations of disregard for the judicial guarantees provided for by article 14 in the application of Decree No. 1923 in the cases in question. Since the Committee

does not deal with questions of constitutionality, but with the question whether a law is in conformity with the Covenant, as applied in the circumstances of this case, the Committee cannot make any finding of breaches of article 14 of the Covenant.

13.4 As to the allegations of breaches of the provisions of article 9 of the Covenant, it has been established that the alleged victims did not have recourse to habeas corpus. Other issues are in dispute; in particular, whether the alleged victims were in fact subjected to arbitrary arrest and detention. The author argues on the one hand that in the present state of law in Colombia it would be of no avail to pursue domestic remedies for compensation or damages for arbitrary arrest or detention under Decree No. 1923, since the Decree has been declared constitutional. On the other hand he argues that, notwithstanding this being the state of domestic law, Decree No. 1923 is nevertheless contrary to the rights set out in article 9 of the Covenant to such an extent that its application to an individual makes him a victim of arbitrary arrest and detention. The Committee, however, must limit its findings to an assessment as to whether the measures in question have denied the alleged victims the rights guaranteed by article 9 of the Covenant. In the case before it the Committee cannot conclude that the arrest and detention of the alleged victims were unlawful. It has therefore not been established that the application of Decree No. 1923 has led to arbitrary arrest and detention of the alleged victims, within the meaning of the provisions of article 9 of the Covenant.

13.5 The State party has not commented on the author's further allegations (introduced by him on 30 September 1981) that Justo Germán Bermúdez and Martha Isabel Valderrama are also victims of violations of the provisions of article 15 of the Covenant. The Committee holds that it was not the State party's duty to address these allegations, as they were only introduced after the communication had been declared admissible, in regard to alleged breaches of articles 9 and 14 of the Covenant. The silence of the State party cannot, therefore, be held against it. The Committee has, however, ex officio, considered these new allegations and finds them illfounded. Justo Germán Bermúdez and Martha Isabel Valderrama were tried and convicted for offences which were found by the judgement of 3 April 1979 to constitute a course of action which continued after Decree No. 1923 had entered into force. On the other hand, the author has not shown that those offences, which included assaults on banks, would have come within the scope of the new article 125 of the Colombian Penal Code. The Committee observes, furthermore, that the new law entered into force after Justo Germán Bermúdez and Martha Isabel Valderrama had been convicted and their appeal had been rejected.

13.6 The facts as reflected in the information before the Human Rights Committee do not reveal that Justo Germán Bermúdez and Martha Isabel Valderrama are victims of violations of rights protected by the Covenant.

14. The Committee, acting under article 5 (4) of the Optional Protocol, is therefore of the view that the facts as set out in paragraphs 12.2, 12.3 and 12.4 above disclose violations of the International Covenant on Civil and Political Rights, particularly:

> of article 9 (3), because María Cristina Salazar de Fals Borda's right to be tried or released within reasonable time was not respected;

of article 9 (4), because Orlando Fals Borda and María Cristina Salazar de Fals Borda could not themselves take proceedings in order that a court might decide without delay on the lawfulness of their detention.

15. The Committee accordingly is of the view that the State party is under an obligation to provide adequate remedies for the violations which Orlando Fals Borda and María Cristina Salazar de Fals Borda have suffered and that it should adjust its laws in order to give effect to the right set forth in article 9 (4) of the Covenant.

APPENDIX

Republic of Colombia
Ministry of Justice

Decree No. 1923 of 6 September 1978

promulgating rules for the protection of the lives, honour and property of persons and guaranteeing the security of members of society

The President of the Republic of Colombia

in the exercise of his constitutional powers, and especially those conferred on him by article 121 of the National Constitution, and

Considering:

That, by Decree No. 2131 of 1978, the public order was declared to be disturbed and the entire national territory in a state of siege;

That it is the responsibility of the President of the Republic to ensure the prompt and full administration of justice throughout the Republic, and that he is required to provide the judicial authorities, in accordance with law, with such assistance as is needed in order to give effect to their decisions;

That it is also the responsibility of the President of the Republic to preserve public order throughout the territory of the Nation, to restore it where it has been disturbed, and to defend work, which is a social obligation deserving the special protection of the State;

That the causes of disturbance of public order have from time to time reappeared and have become more acute, creating a climate of general insecurity and degenerating into murder, abduction, sedition, riot or insurrection, or into terrorist practices designed to produce political effects leading to the undermining of the present republican régime, or into efforts to justify crime, acts which infringe the rights of citizens recognized by the Constitution and by the Laws and which are essential for the maintenance and preservation of public order;

That it is essential to enact security measures for the maintenance of social order and peace in the territory of the Republic, and

That, under article 16 of the Constitution, the authorities of the Republic are instituted to protect the lives, honour and property of all persons,

Decrees:

Article 1. Any person who, in order to obtain for himself or for another an unlawful advantage or benefit, or for purely political ends or for purposes of publicity, deprives another of his freedom or plans, organizes or co-ordinates any such act shall incur a penalty of 8 to 10 years' imprisonment with compulsory labour (presidio).

Any person or persons who abduct others and, in order to commit the offence, or in the course of its execution or commission, cause them injuries or subject them to torture, or compel them to act against their will and demand money or lay down other conditions for their release, shall incur a penalty of 10 to 20 years' imprisonment with compulsory labour.

If, because or on the occasion of the abduction, the death of the abducted person or third parties occurs, the term of imprisonment wih compulsory labour shall be from 20 to 30 years.

Persons accused or found guilty of the crime of abduction shall in no case be eligible for suspended preventive detention or a suspended sentence.

Article 2. Persons who foment, head or lead an armed rising to overthrow the legally constituted National Government, or wholly or partly to change or suspend the existing constitutional system, with respect to the formation, functioning or replacement of the public powers or organs of sovereignty, shall incur 8 to 14 years' imprisonment with compulsory labour and shall be debarred from exercising rights and holding public office for the same period.

Those who merely take part in the rebellion, being in its employ and having a military, political or judicial authority or jurisdiction, shall be liable to two thirds of the penalty provided for in the previous paragraph. Other persons involved in the rebellion shall incur one third of this penalty.

Article 3. Those who form armed bands, gangs or groups of three or more persons and invade or attack villages, estates, farms, roads or public highways, causing deaths, fires or damage to property, or who, using violence against persons or objects, commit other offences against the security and integrity of the community, or who by means of threats appropriate livestock, valuables or other movable objects belonging to others or force their proprietors, owners or administrators to surrender them, or who insititute the payment of contributions on the pretext of guaranteeing, respecting or defending the lives or rights of persons, shall incur a term of imprisonment with compulsory labour of 10 to 15 years.

Article 4. Those who cause or take part in disturbances of public order in towns or other urban areas, who disturb the peaceful conduct of social activities or who cause fires, and in so doing bring about the death of persons, shall incur a penalty of 20 to 24 years' imprisonment with compulsory labour. If they merely cause bodily harm, the penalty shall be from 1 to 12 years.

If the acts referred to in this article are not committed with the aim of causing death or bodily injury, the penalty shall be from 1 to 5 years' ordinary imprisonment (prisión).

Article 5. Those who cause damage to property by the use of bombs, detonators, explosives, or chemical or inflammable substances shall incur a term of ordinary imprisonment of 2 to 6 years.

If the death of one or more persons occurs as a consequence of acts as described in the first paragraph of this article, the penalty shall be from 20 to 24 years' imprisonment with compulsory labour.

If the acts cause only bodily injury, the penalty shall be from 4 to 10 years.

The penalties referred to in this article shall be increased by one third if those who commit the acts conceal their identity by the use of disguises, masks, stockings or other devices intended to conceal their identity, or if they use firearms in these circumstances.

Article 6. Any person or persons who, by means of threats or violence, by falsely representing themselves as public officials or as acting on the orders of such officials, and, for the purposes of obtaining an unlawful advantage, for themselves or for a third party, force another person to surrender, dispatch, deposit or place at their disposal articles or money or documents capable of producing legal effects, shall incur 4 to 10 years' imprisonment with compulsory labour. Any person who by the same means forces another to sign or to destroy instruments of obligation or credit shall incur the same penalty.

Article 7. A term of up to one year's incommutable imprisonment (arresto) shall be incurred by any person or persons who:

(a) Temporarily occupy public places or places open to the public, or offices of public or private bodies, for the purpose of exerting pressure in order to secure a decision by lawful authorities, distributing subversive propaganda in such places, posting offensive or subversive writings or drawings in them, or exhorting the population to rebellion;

(b) Incite others to break the law or to disobey the authorities, or who disregard a legitimate order by a competent authority;

(c) Make improper use of disguises, stockings, masks or other devices for concealing identity or who alter, destroy or conceal the registration plates of vehicles;

(d) Fail, without just cause, to provide public services which they are required to furnish or assistance requested of them by the authorities or assistance requested by any person whose life or property is threatened;

(e) Are in improper possession of articles which may be used to commit offences against the life and integrity of persons, such as firearms, daggers, knives, machetes, sticks, blowpipes, stones, bottles filled with petrol, fuses, or chemical or explosive substances;

(f) Print, store, carry, distribute or transport subversive propaganda;

(g) Demand money or goods for the conduct of unlawful activities, so as to permit the movements of persons, goods or vehicles, or who impede the free movement of other persons.

Article 8. So long as public order continues to be disturbed, the Mayor of the Special District of Bogotá, the Governors, Intendents and Superintendents of the capitals of the different departments and the Mayors of Municipalities may order a curfew, and prohibit or regulate public demonstrations, processions, meetings and the sale and consumption of intoxicating beverages.

The Mayors of Municipalities shall immediately advise the Governor, Intendent or Superintendent of such action.

Article 9. The military criminal courts, in addition to exercising the competence given them by the laws and regulations in force, shall try by court martial proceedings the offences referred to in articles 1, 2, 3, 4, 5 and 6, as well as those committed against the life and person of members of the Armed Forces, against civilians working for the Armed Forces and against members of the Administrative Department of Security (DAS), whether or not engaged in the performance of their duties, and against public officials, because of the position they hold or because of the exercise of their functions.

Article 10. Any person who, without the permission of the competent authority, manufactures, stores, distributes, sells, transports, supplies, acquires or carries firearms, ammunition or explosives shall incur a penalty of up to one year's imprisonment (arresto) and the confiscation of the articles concerned.

Should the firearm or ammunition be an article for the exclusive use of the Armed Forces, the term of imprisonment shall be from 1 to 3 years, without prejudice to the confiscation of the article concerned.

Article 11. The penalties referred to in article 7, paragraphs (a) and (b), and in article 10, shall be enforced by Army, Navy or Air Force Base Commanders, in accordance with the following procedure:

The accused shall answer the charge within 24 hours following the hearing of the facts. He must be assisted by a legal representative in these proceedings.

A period of four days, starting on the day following these proceedings, shall be allowed for the submission of any evidence which has been requested by the accused or his legal representative or called for by the official.

If within the 24 hours following the hearing of the facts it has not been possible to hear the plea of the accused because he has failed to appear, he shall be summoned to appear by an order which shall be posted for two days in the adjutant's office of the appropriate Army, Navy or Air Force Base Command.

If the person accused of the offence has not appeared by the end of this period, he shall be declared absent and a lawyer shall be appointed by the court as his defence counsel, to act for him until the close of the investigation.

When the above periods have elapsed, the appropriate written decision, including a statement of reasons, shall be issued. This decision shall indicate, if the accused is found guilty, his name, the offence, the charge against him, the sentence passed on him and the place where he is required to serve it. If, being in custody, he is cleared of the charge, he shall be released forthwith.

The terms specified in this article may be increased by a maximum of 100 per cent if five or more persons committed the offence.

The decision referred to in the preceding provisions of this article shall be notified personally to the offender or to the defence counsel appointed by the court, as the case may be. Any appeal shall be against the decision only and shall be lodged within 24 hours following such notification and heard on the following day.

Article 12. The penalties referred to in article 7, paragraphs (c), (d), (e), (f) and (g), shall be imposed by police station commanders having the rank of Captain or above, who shall hear the case in accordance with the procedure laid down in the preceding article. In localities where there is no such commander, the Mayor or the Inspector of Police shall hear the case.

Article 13. So long as public order continues to be disturbed, radio stations and television channels shall not broadcast information, statements, communiqués or comments relating to public order, cessations of activities, work stoppages, illegal strikes or information which incites to crime or aims to justify it.

The Ministry of Communications shall, by a decision which includes a statement of reasons and against which only an application for reversal may be lodged, impose penalties for any infraction of this article, in conformity with the relevant provisions of Act No. 74 of 1966 and Decree No. 2085 of 1975.

Article 14. The Ministry of Communications is empowered, under article 5 of Decree No. 3418 of 1954 to take over, on behalf of the State, full control of some or all privately operated broadcasting frequencies or channels, where this is necessary in order to avert a disturbance of public order and to restore normal conditions.

Licences for broadcasting services which are taken over by the Colombian State shall be considered temporarily suspended.

Article 15. The penalties referred to in articles 209, 210, 211, 212 and 213 of Volume 2, Title V of the Penal Code relating to association for and instigation of infraction of the law shall consist of from 1 to 8 years' ordinary imprisonment.

Article 16. This Decree shall enter into force as soon as it is issued and shall suspend legal provisions which are contrary to it.

For transmittal and implementation
Done at Bogotá, D.E., on 6 September 1978

SECRETARY OF THE INTERIOR
(Signed) German Zea Hernandez

Acting Minister for Foreign Affairs,
(Signed) Carlos Borda Mendoza

Minister of Justice,
(Signed) Hugo Escobar Sierra

Minister of Finance,
(Signed) Jaime Garcia Parra

Minister of Defence,
(Signed) Luis Carlos Camacho Leyva

Minister of Agriculture,
(Signed) German Bula Hoyos

Minister of Labour and Social Security,
(Signed) Rodrigo Marin Bernal

Minister of Health,
(Signed) Alfonso Jaramillo Salazar

Minister for Economic Development,
(Signed) Gilberto Echeverry Mejia

Minister for Mines and Energy,
(Signed) Alberto Vasquez Restrepo

Minister of Education,
(Signed) Rodrigo Lloreda Caycedo

Minister of Communications,
(Signed) Jose Manuel Arias Carrizosa

Minister of Public Works and Transport,
(Signed) Enrique Vargas Ramirez

Chief of the Administrative Department of the Office of the President of the Republic,
(Signed) Alvaro Perez Vives

ANNEX XX

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. R.26/121

Submitted by: A. M. [name deleted]

Alleged victim: The author of the communication

State party concerned: Denmark

Date of communication: 9 March 1982 (date of initial letter)

Date of present decision on admissibility: 23 July 1982

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 23 July 1982,

adopts the following:

Decision on admissibility*

1. The author of the communication (initial letter dated 9 March 1982 and further letters dated 20 April and 9, 29 and 30 June 1982) is a 39 year-old Pakistani national at present serving a prison term in Denmark. He submits the communication on his own behalf.

2.1 The author states that he has been residing in Denmark since 1970, that in 1977 he married in Pakistan a citizen of that country, that his wife has since then lived with him in Denmark and that they have two children. He describes the facts of the case as follows:

2.2 On 31 July 1980, he was involved in a violent fight in Odense, Denmark, with several other men from Pakistan, Morocco and Algeria. At least four people were severely injured and one of them died. The author subsequently stood trial on charges including "bodily injuries with death as a result" and on 30 January 1981 he was convicted by the Eastern Court of Appeal (Oestre Landsret), sitting with a jury, and sentenced to three and a half years imprisonment. The author applied to the Special Court for Revision (Den saerlige klageret) for a new trial. The Court rejected the request on 4 December 1981.

---

* The text of an individual opinion submitted by a Committee member is appended to the present decision.

2.3 On 21 April 1981, A.M. was informed by the Danish Immigration authorities that he would have to leave Denmark after serving his sentence. This decision was upheld by the Ministry of Justice and A.M. was so informed on 23 October 1981. He states that he is due to be released from prison on 15 August 1982 and that he will be deported on that date.

3.1 The author claims before the Human Rights Committee that he has been unjustly treated because he is a foreigner. He alleges that the police were dishonest in the conduct of pre-trial investigations into the matter and that the Court denied him a fair trial by giving undue weight to evidence against him, including testimony allegedly obtained from his Pakistani enemies in Denmark. He believes that a fair assessment of the evidence would have led to his acquittal. The author further claims that the decision of the Danish authorities to deport him upon release from prison constitutes degrading treatment and punishment.

3.2 In particular he claims to be a victim of breaches by Denmark of articles 5, 7 and 10 of the Universal Declaration of Human Rights as regards the right not to be subjected to degrading treatment or punishment, the right to equality before the law and the right to a fair trial. He also invokes article 11 (a) of the Universal Declaration of Human Rights concerning the presumption of innocence. These articles correspond, in substance, to articles 7, 14 and 26 of the International Covenant on Civil and Political Rights.

4. It appears from the communication that the author has submitted the same matter to the European Commission of Human Rights. His application before that body was declared inadmissible on 1 March 1982 as manifestly ill-founded.

5. Before considering any claims contained in a communication, the Human Rights Committee must decide whether the communication is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights. The Committee observes in this connexion that when ratifying the Optional Protocol and recognizing the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction, the State party Denmark, made a reservation, with reference to article 5 (2) (a) of the Optional Protocol, in respect of the competence of the Committee to consider a communication from an individual if the matter has already been considered under other procedures of international investigation.

6. In the light of the above-mentioned reservation and observing that the same matter has already been considered by the European Commission of Human Rights and therefore by another procedure of international investigation within the meaning of article 5 (2) (a) of the Optional Protocol to the International Covenant on Civil and Political Rights, the Committee concludes that it is not competent to consider the present communication.

7. The Human Rights Committee, accordingly, decides:

That the communication is inadmissible.

8. This decision shall be communicated to the author of the communication and, for information, to the State party concerned.

APPENDIX

Individual opinion

Mr. Bernhard Graefrath, member of the Human Rights Committee, submits the following individual opinion relating to the admissibility of communication No. R.26/121/ (A.M. v. Denmark):

I concur in the decision of the Committee that the communication is inadmissible. However, in my view the communication is inadmissible in accordance with article 3 of the Optional Protocol. The claims of the author do not raise issues under any of the provisions of the Covenant.

I cannot, however, share the view that the Committee is barred from considering the communication by the reservation of Denmark relating to article 5 (2) (a) of the Optional Protocol. That reservation refers to matters that have already been considered under other procedures of international investigation. It does not in my opinion refer to matters, the consideration of which has been denied under any other procedure by a decision of inadmissibility.

In the case of the author of communication R.26/121, the European Commission of Human Rights has declared his application inadmissible as being manifestly ill-founded. It has thereby found that it has no competence to consider the matter within the legal framework of the European Convention. An application that has been declared inadmissible has not, in the meaning of the reservation, been "considered" in such a way that the Human Rights Committee is precluded from considering it.

The reservation aims at preventing the Human Rights Committee from reviewing cases that have been considered by another international organ of investigation. It does not seek to limit the competence of the Human Rights Committee to deal with communications merely on the ground that the rights of the Covenant allegedly violated may also be covered by the European Convention and its procedural requirements. If that had been the aim of the reservation, it would, in my opinion, have been incompatible with the Optional Protocol.

If the Committee interprets the reservation in such a way that it would be excluded from considering a communication when a complaint referring to the same facts has been declared inadmissible under the procedure of the European Convention, the effect would be that any complaint that has been declared inadmissible under that procedure could later on not be considered by the Human Rights Committee, despite the fact that the conditions for admissibility of communications are set out in a separate international instrument and are different from those under the Optional Protocol.

An application that has been declared inadmissible under the system of the European Convention is not necessarily inadmissible under the system of the Covenant and the Optional Protocol, even if it refers to the same facts. This is also true in relation to an application that has been declared inadmissible by the European Commission as being manifestly ill-founded. The decision that an application is manifestly ill-founded can necessarily be taken only in relation to rights set forth in the European Convention. These rights, however, differ in substance and in regard to their implementation procedures from the rights set

forth in the Covenant. They, as well as the competence of the European Commission, derive from a separate and independent international instrument. A decision on non-admissibility of the European Commission, therefore, has no impact on a matter before the Human Rights Committee and cannot hinder the Human Rights Committee from reviewing the facts of a communication on its own legal basis and under its own procedure and from ascertaining whether they are compatible with the provisions of the Covenant. This might lead to a similar result as under the European Convention, but not necessarily so.

The reservation of Denmark was intended to avoid the same matter being considered twice. It did not aim at closing the door for a communication that might be admissible under the Optional Protocol despite the fact that it has been declared inadmissible by the European Commission.

ANNEX XXI

List of Committee documents issued

A. Fourteenth session

Documents issued in the general series

CCPR/C/10/Add.3	Initial report of the Netherlands
CCPR/C/10/Add.5	Initial report of the Netherlands (second part)
CCPR/C/17	Provisional agenda and annotations - Fourteenth session
CCPR/C/SR. 317-333 and corrigendum	Summary records of the fourteenth session

B. Fifteenth session

Documents issued in the general series

CCPR/C/1/Add.56	Additional supplementary report of Jordan
CCPR/C/1/Add.57	Initial report of Uruguay
CCPR/C/10/Add.6	Initial report of New Zealand
CCPR/C/14/Add.1	Initial report of Australia
CCPR/C/2/Add.5	Reservations, declarations, notifications and communications relating to the International Covenant on Civil and Political Rights and the Optional Protocol thereto
CCPR/C/22	Consideration of reports submitted by States parties under article 40 of the Covenant - Initial reports of States parties due in 1982: Note by the Secretary-General
CCPR/C/23	Provisional agenda and annotations - Fifteenth session
CCPR/C/334-359 and corrigendum	Summary records of the fifteenth session

C. Sixteenth session

Documents issued in the general series

CCPR/C/1/Add.58	Initial report of Iran

CCPR/C/1/Add.59	Supplementary report of Kenya
CCPR/C/6/Add.8	Supplementary report of Venezuela
CCPR/C/14/Add.2	Initial report of Nicaragua
CCPR/C/22/Add.1	Initial report of Mexico
CCPR/C/22/Add.2	Initial report of France
CCPR/C/24	Provisional agenda and annotations - Sixteenth session
CCPR/C/SR. 360-382 and corrigendum	Summary records of the sixteenth session

كيفية الحصول على منشورات الامم المتحدة

يمكن الحصول على منشورات الامم المتحدة من المكتبات ودور التوزيع في جميع انحاء العالم . استعلم عنها من المكتبة التي تتعامل معها أو اكتب الى : الامم المتحدة ،قسم البيع في نيويورك او في جنيف .

如何购取联合国出版物

联合国出版物在全世界各地的书店和经售处均有发售。请向书店询问或写信到纽约或日内瓦的联合国销售组。

HOW TO OBTAIN UNITED NATIONS PUBLICATIONS

United Nations publications may be obtained from bookstores and distributors throughout the world. Consult your bookstore or write to: United Nations, Sales Section, New York or Geneva.

COMMENT SE PROCURER LES PUBLICATIONS DES NATIONS UNIES

Les publications des Nations Unies sont en vente dans les librairies et les agences dépositaires du monde entier. Informez-vous auprès de votre libraire ou adressez-vous à : Nations Unies, Section des ventes, New York ou Genève.

КАК ПОЛУЧИТЬ ИЗДАНИЯ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ

Издания Организации Объединенных Наций можно купить в книжных магазинах и агентствах во всех районах мира. Наводите справки об изданиях в вашем книжном магазине или пишите по адресу: Организация Объединенных Наций, Секция по продаже изданий, Нью-Йорк или Женева.

COMO CONSEGUIR PUBLICACIONES DE LAS NACIONES UNIDAS

Las publicaciones de las Naciones Unidas están en venta en librerías y casas distribuidoras en todas partes del mundo. Consulte a su librero o diríjase a: Naciones Unidas, Sección de Ventas, Nueva York o Ginebra.

Litho in United Nations, New York 01500 25050—October 1982—4,350