

*SEMINAR*  
*ON*  
*HUMAN RIGHTS*  
*IN DEVELOPING*  
*COUNTRIES*

DAKAR, SENEGAL  
8 - 22 February 1966

ORGANIZED BY THE UNITED NATIONS  
IN CO-OPERATION WITH THE GOVERNMENT OF SENEGAL

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## A. INTRODUCTION

### I. Organization of the Seminar

1. At the invitation of the Government of Senegal, and pursuant to General Assembly resolution 926 (X) and Economic and Social Council resolution 605 (XXI), the Secretary-General of the United Nations organized in Dakar, Senegal, a regional Seminar on Human Rights in Developing Countries. All member countries of the Economic Commission for Africa were invited by the United Nations to nominate participants. This Seminar was the second to be held on the subject, a previous one having been organized in Kabul, Afghanistan, from 12 to 25 May 1964, for participants from countries and territories within the geographic scope of the Economic Commission for Asia and the Far East.

2. The Seminar was held at the National Assembly, Dakar, from 8 to 22 February 1966.

3. The participants and alternate participants at the Seminar were as follows:

#### Algeria

Participant: Mr. Mahiddine Djender, Procureur général adjoint, Ministry of Justice, Algiers.

Alternate: Mr. Ali Berchiche, Assistant at the Faculty of Law, Algiers.

#### Cameroon

Participant: Mr. Eloi Langoul, Secretary General, Ministry of Justice of Cameroon, Yaoundé.

#### Central African Republic

Participant: Mr. Honoré Willickond, Procureur général at the Supreme Court, Bangui.

#### Congo (Brazzaville)

Participant: Mr. Placide Lenga, Deputy Procureur de la République, Tribunal de Brazzaville.

#### Congo (Democratic Republic of)

Participant: Mr. Trudon Lubamba, Judge of the Court of Appeal, Leopoldville.

Alternates: Mr. Gerard Kamanda, Law Officer of the Court of Appeal, Leopoldville; Mr. Phanzu Valentin, First Deputy Procureur d'Etat, Leopoldville; Mr. Vital M'bungo, Law Officer of the Court of Appeal, Leopoldville.

## Dahomey

Participant: Mr. Honoré Ahouansou, Procureur général at the Supreme Court, Cotonou.

## Gambia

Participant: Mr. Alieu Badara N'Jie, Minister of State, Ministry of Foreign Affairs, Bathurst.

Alternates: Mr. Samuel George, Solicitor-General, Attorney General's office, Bathurst; Mr. Cmadi Diarra, First Secretary, High Commission of the Gambia, Dakar.

## Guinea

Participant: Mr. Fadiala Keita, Procureur général, Head of the Judiciary Service, Republic of Guinea, Conakry.

Alternate: Mr. Missa Kourouma, First Secretary of the Embassy of Guinea, Dakar.

## Ivory Coast

Participant: Mrs. Antoinette Berrah, Secretary of Embassy, Ivory Coast Permanent Mission to the United Nations, New York.

Alternate: Mrs. Elisabeth Diaco, Inspector of Labour and Social Legislation, Abidjan.

## Liberia

Participant: H.E. Mr. Francis Okai, Jr., Ambassador of Liberia to Senegal.

Alternate: Mr. J. Hilary Wilson, Jr., Research Assistant, International Organizations Affairs, Department of State, Monrovia.

## Madagascar

Participant: Mrs. Rachel Razafimandranto, Magistrate, Tananarive.

## Mali

Participant: Mr. Ibrahima Sall, First President of the Supreme Court, Bamako.

## Morocco

Participant: Mr. Ahmed Kettani, Procureur général at the Court of Appeal, Rabat.

## Nigeria

Participant: Mr. George U. Osakwe, Senior State Counsel, Ministry of Justice, Lagos.

## Nigeria (continued)

Alternate: Mr. Samuel O. Ogunjuyigbe, Second Secretary, Embassy of Nigeria, Dakar.

## Rwanda

Participant: Mr. Stanislas Rutagengwa, First Deputy to the Procureur de la République, Kigali.

## Senegal

Participants: Mr. Ibrahima Boye, Procureur général at the Supreme Court of Senegal; Mr. Ousmane Goundiam, Judge of the Supreme Court, Liaison Officer of the Senegalese Government to the Seminar; Mr. Abdoulaye Wade, Law Officer of the Court, Assistant Lecturer, Faculty of Law and Economic Sciences, Dakar University; Mr. Khar N'Dofène Diouf, Chairman of the Legislation Committee in the National Assembly; Mr. Coumba N'Dofène Diouf, Director of Labour, Ministry of the Civil Service and Labour.

Alternates: Mr. Abdoulaye Diop, President of the Chamber, Court of Appeal, Directeur de Cabinet de M. le Garde des Sceaux; Mr. N'Déné N'Diaye, Juge d'instruction; Mr. Babacar Seye, Law Officer of the Court, Chairman of the Economic Affairs Committee, Economic and Social Council; Mr. Adama Diallo, Director of Planning, Republic of Senegal; Mr. Bocar Yoro Sy, President of the Chamber, Court of Appeal.

## Somalia

Participant: Mr. Mohamed Awes Afrah, Assistant Deputy State Attorney, Magadiscio, Somali Republic.

## Sudan

Participant: Judge Mohamed Yousif Mudawi, Chairman, Election Commission of the Sudan, Khartoum.

## Togo

Participant: Mr. Louis Koffi Amega, Vice-Chairman, Tribunal de droit moderne de première instance, at Lomé.

## Uganda

Participant: Mr. Saulo Musoke, Director of Public Prosecutions, Ministry of Justice, Kampala.

## United Arab Republic

Participant: Mr. Mostafa Ali El Moslemany, Director General, Department for Family and Child Welfare, Ministry of Social Affairs, Cairo.

United Republic of Tanzania

Participant: Mr. Robert Habesh Kisanga, State Attorney, Dar-es-Salaam.

Zambia

Participant: The Hon. Musonda Justin Chimba, Minister of Labour and Social Development, Lusaka.

Alternates: Mr. Durton Konoso, Minister of Justice; Mr. A.B. Munyama, Permanent Secretary, Ministry of Justice, Lusaka.

4. The following observers from Governments of Member States attended the Seminar:

France

Mrs. Sabine Le Porz

Union of Soviet Socialist Republics

Mr. Boris Nikolaevich Topornin, Professor, Deputy Scientific Secretary General, USSR Academy of Sciences; Mr. Igor Ivanovich Yakovlev, Expert, Law Department, USSR Ministry of Foreign Affairs.

United States of America

H.E. Mr. Mercer Cook, Ambassador of the United States to Senegal;  
Miss Sarale A. Owens, Cultural Attaché, United States Embassy to Senegal.

5. The Government of the Republic of Viet-Nam nominated Mr. Nguyen Dinhky, Counsellor at the Embassy of Viet-Nam, Senegal, as observer.

6. The following specialized agencies were represented at the Seminar:

International Labour Organisation (ILO): Mr. Jean Lasserre-Bigorry;

United Nations Educational, Scientific and Cultural Organization (UNESCO):  
Mrs. M. E. Glean.

World Health Organization (WHO): Dr. J. Cros.

7. The Office of the United Nations High Commissioner for Refugees was represented by Mr. Robert J. Muller.

8. The following non-governmental organizations in consultative status with the Economic and Social Council were represented at the Seminar:

Category A

International Chamber of Commerce                      Mr. Henry Charles Gallenca

International Confederation of  
Christian Trade Unions                                      Mr. David Soumah



International Confederation of Free Trade Unions	Mr. Francis L. Luyimbazi
International Organization of Employers	Mr. Marc Delhaye
World Federation of United Nations Associations	Mr. Lat Senghor
World Veterans Federation	Mr. Daniel Dias
<u>Category B</u>	
Amnesty International	Lord Hugh Reay
Anti-Slavery Society	Mr. John Alexander-Sinclair
Catholic International Union for Social Service	Miss Suzanne Isaac
Friends World Committee for Consultation	Mr. Jean Volkmar
International Commission of Jurists	Mr. Sean MacBride Mr. Vladimir M. Kabes (from 8-14 February)
International Council of Women	Mrs. Mary Craig Schuller
International Federation of Women in Legal Careers	Mrs. Suzanne Diop
International Federation of Women Lawyers	Miss Marlène Mazouz
International Union of Family Organizations	Mr. Corneille Kokora
Society of Comparative Legislation	Mr. Jean-Claude Gautron
World Confederation of Organizations of the Teaching Profession	Mr. Pat Ehidiamen Uriesi
World Federation for Mental Health	Mr. Henri Collomb
World Jewish Congress	Mr. Maurice L. Perlzweig
World Union of Catholic Women's Organizations	Mrs. Elisabeth N'Diaye
World Young Women's Christian Association	Mrs. Irene E.B. Ighodaro

## Register

Coordinating Committee for International Voluntary Service	Mr. Pierre-Martin Dumeste
International Council for Philosophy and Humanistic Studies	Mr. Alassane N'Daw
International Association of University Professors and Lecturers	Mr. Jean Pierre Queneudec
Society of African Culture	Mr. Bakary Traore

The African Trade Union Confederation, a non-governmental organization in consultative relationship with the International Labour Organisation, was represented by Mr. Alassane Sow.

9. The Secretary-General of the United Nations was represented by Mr. John P. Humphrey, Director of the Division of Human Rights, United Nations Secretariat. Mr. Stephen Landau acted as Secretary of the Seminar.

10. Mr. Cusmane Goundiam, Judge of the Supreme Court of Senegal, acted as Liaison Officer between the United Nations and the Senegalese Government. He was assisted by Mr. Mamadou Seck, Head of the United Nations Affairs Division, Ministry of Foreign Affairs.

## II. Opening of the Seminar and election of officers

11. At the opening meeting, on 8 February 1966, an address was delivered by Mr. Alioune Badara M'Bengue, Minister of Justice of Senegal. Mr. John P. Humphrey, representing the Secretary-General of the United Nations, thanked the Senegalese Government for its hospitality and congratulated it on the excellent arrangements it had made for the meeting.

12. The following officers were elected unanimously:

<u>Chairman:</u>	Mr. Ibrahima Boye (Senegal)
<u>Vice-Chairmen:</u>	Mr. Ibrahima Sall (Mali) Mr. M.J. Chimba (Zambia) Mr. Mostafa Ali El Moslemany (United Arab Republic)
<u>Rapporteur:</u>	Mr. Ahmed El Kettani (Morocco)

## III. Agenda

13. The agenda of the Seminar was as follows:

I. The consideration of problems relating to certain human rights in developing countries

1. The right of everyone:

- (a) not to be held in slavery or subjected to similar practices;
  - (b) not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment;
  - (c) not to be arrested or detained;
  - (d) to be heard in a fair trial concerning any criminal charge brought against him;
  - (e) to choose his employment freely and to enjoy just conditions of work.
2. The right to own property, particularly in relation to the problems of land reform and foreign investments.
  3. Rights and freedoms in religious matters.
  4. Freedom of information.
  5. The right to participate in political activities, particularly in relation to freedom of association, including trade-union rights.
  6. The right to education.

II. Institutions and procedures for ensuring the promotion of and respect for human rights in developing countries. The role of judicial authorities, of parliamentary institutions, and of any other body responsible for encouraging and controlling the implementation of human rights.

#### IV. Documentation

14. The following background papers were prepared for the Seminar:

Background Paper A: by Mr. Ousmane Goundiam, Judge of the Supreme Court of Senegal, Technical Adviser to the Ministry of Foreign Affairs.

Background Paper B: by Mohamed Yousif Mudawi, Judge of the High Court, Chairman of the Election Commission of the Republic of the Sudan.

Background Paper C: by Mr. Gaius Ezéjiofor, Lecturer in Law, University of Lagos, Nigeria.

Background Paper D: by the International Labour Organisation.

15. Participants submitted the working papers listed below:

Working Paper 1	Mr. Ahmed Kettani	(Morocco)
Working Paper 2	Mr. Honoré Ahouansou	(Dahomey)
Working Paper 3	Mr. B.O. Kazeem	(Nigeria)
Working Paper 4	Mr. Fadiala Keita	(Guinea)
Working Paper 5	Mr. Mohamed Awes Afrah	(Somalia)
Working Paper 6	Mr. Louis Koffi Amega	(Togo)
Working Paper 7	Mr. Mohamed Yousif Mudawi	(Sudan)
Working Paper 8	Mr. Robert H. Kisanga	(United Republic of Tanzania)
Working Paper 9	Mrs. Rachel Razafimandranto	(Madagascar)
Working Paper 10	Mr. M.J. Chimba	(Zambia)
Working Paper 11	Mrs. Antoinette Berrah	(Ivory Coast)
Working Paper 12	Mr. Ibrahima Boye	(Senegal)
Working Paper 13	Mr. Placide Lenga	(Congo (Brazzaville))
Working Paper 14	Mr. Mahiddine Djender and Mr. Ali A.H. Berchiche	(Algeria)
Working Paper 15	Mr. Stanislas Rutagengwa	(Rwanda)
Working Paper 16	Mr. Eloi Langoul	(Cameroon)

## B. ITEMS DISCUSSED

### I. The consideration of problems relating to certain human rights in developing countries

#### 1. Rights of the individual

16. This item was discussed at the 2nd to 5th meetings of the Seminar (from 8 to 10 February 1966). The discussion leader was Mr. Ahouansou (Dahomey).

#### (a) The right of everyone not to be held in slavery or subjected to similar practices.

17. Several speakers attempted to define or explain the concept of slavery, the subject of this item of the agenda.

18. One of the participants addressed the Seminar on slavery in the strict sense of the term. In his view, this consisted of practices which, in certain economic and social circumstances, tended to reduce the individual to the rôle of a means of production or tool, and to reduce the human being to the status of an object.

19. Viewed in that light, slavery had, in the course of history, assumed three main forms: ancient slavery of the Greco-Roman type; medieval slavery of the oriental or Moslem type, which had been mainly concerned with providing domestic service; and, from the 16th century onwards, colonialist slavery, practised by the European powers as a means of exploiting overseas resources through the subjection and forced labour of a large proportion of the African population.

20. No objections were raised to that historical analysis of the forms of slavery in the strict sense. It was generally acknowledged that while some vestiges still remained, on the whole slavery in those particular forms was in process of disappearing completely from the African continent. Nevertheless, one speaker expressed the opinion that, far from diminishing, the slave trade from Africa towards certain other regions of the world, such as the Near East, was, according to some reports, tending to increase, particularly since the control and inspection of maritime traffic between those regions had come to an end. It was suggested that the continued existence of traditional forms of slavery in some regions was the result of economic and social conditions, such as nomadism in desert zones, and the very low level of national income which made it impossible to pay for the services of slaves. One speaker suggested that the Organization of African Unity should go into the allegations made on this subject and carry out a detailed investigation of them.

21. There was some discussion as to whether practices other than slavery in the strict and "traditional" sense, such as those by which certain categories of individual or entire peoples were placed under the domination of other individuals or peoples, should be examined and debated under agenda item 1 (a).

22. The participant who had spoken on slavery in the strict sense took the view that the domination of one people by another, and in particular colonialism, which should be utterly condemned and abolished as a violation of human rights and the right of self-determination of peoples, was a different phenomenon, of more recent origin than slavery. While that phenomenon had occurred simultaneously with individual slavery in certain areas and during particular periods of history, such as Africa south of the Sahara during the 18th and 19th centuries, there also existed forms of colonial domination which did not include the enslavement of individuals, such as North Africa before its accession to independence. In addition the domination of woman by man took the form of a series of phenomena that were also distinct from slavery. This domination occurred in both slave societies and in other economic and social contexts where slavery did not exist. It was, moreover, a much older phenomenon than slavery, for the domination of woman by man went back to one of the very first divisions of labour and to the origins of the patriarchal system. Consequently the domination of woman by man would be much more difficult to abolish than slavery. In the interests of studying and overcoming those evils, it would be better not to confuse the two problems.

23. Most other speakers, however, considered it necessary to adopt a broader and more elastic definition of slavery for the purposes of the discussion, and emphasized that agenda item 1 (a) covered both slavery and "similar practices".

24. Very many participants took the view that a study of the various forms of domination of one people by another and of woman by man should take pride of place in the discussion of slavery in Africa.

25. From the outset several speakers stressed the fact that it was impossible to speak of the freedom and dignity of the individual in the case of the people dominated or exploited by another people. In particular, frequent references were made to the oppression of the peoples of South Africa and Rhodesia by minority groups of usurpers. The liberation of peoples and the abolition of colonialism in all its forms were prerequisites for the freedom of the individual. Some participants stated that those prerequisites could be achieved only by the revolt of the oppressed peoples, to whom the community of free nations should offer assistance.

26. Several speakers pointed out that according to custom the woman in Africa was strongly dependent on the man. In traditional society the African woman very rarely enjoyed freedom in the course of her life. At a very early age she passed from the extensive authority of the father to that of her husband, following a marriage for which her consent was not required. She had very little control over the use and administration of family property and only limited rights with regard to inheritance. Upon the death of her husband, she often devolved as part of the inheritance to a relative of the deceased. In the past, the woman's rôle in public life had been non-existent or very small. Sweeping reforms had recently been introduced to change the status of women in accordance with the Universal Declaration of Human Rights. Various participants outlined the considerable efforts made in their countries in that direction, and others referred to the working papers which described those reforms. Today, for instance, in an increasing number of African countries a minimum age was set by law for the marriage of women, and their explicit and personal consent to marriage was required. In that connexion, one participant pointed out that, contrary to certain mistaken beliefs, Islam accorded women extensive rights, and in particular the right to contract

marriage freely on an equal footing with men. The woman's full consent was required. If she was a minor, she had to have her parents' permission. It was true that according to tradition a woman could not arrange her own marriage directly and entrusted this task to an appointed person, but she alone took the decision in full freedom. Considerable progress was also being made with regard to the participation of women in public life.

27. The institution of the dowry engaged the attention of many participants. The dowry was an often considerable quantity of movable goods, which the intended husband had to present to the family of his future wife. This was one of the main conditions governing the validity of the marriage. According to existing customs, the husband chosen by the woman's family was the man who was in a position to provide the dowry, whatever the woman's personal preferences might be. In the opinion of several participants, the dowry thus constituted an essential factor in the de facto slavery of the African woman. Of course, in order to justify that institution, the argument had been advanced that the dowry represented compensation paid to the parents of the engaged woman for the loss of her services to the paternal household. Nevertheless, the majority of persons who had studied that institution considered that in reality a purchase or barter transaction was involved, in which the woman was in effect reduced to the status of a mere chattel. It therefore appeared that efforts should be made to abolish that institution. On the other hand, some investigations and some exchanges of view, such as that which took place at the Seminar on the Status of Women in Family Law (Lomé, Togo, 1964), seemed to show that young women, on the whole, could reconcile themselves to the continued existence of the dowry, if certain reforms were introduced. They appeared to regard it as a guarantee of the husband's attachment, of the stability of the marriage and of material security for their parents in old age, and not as a purchase price. It would therefore perhaps be appropriate if the public authorities were to introduce the necessary reforms gradually, rather than decree the immediate abolition of the institution.

28. Among reforms recently introduced in this field, emphasis was placed in the first instance on the consent of the woman tending to become the main condition of the marriage's validity, and provision of the dowry a secondary condition. Certain judicial decisions had upheld the principle that the woman could marry the man that she had freely chosen, despite the opposition of her parents who had arranged her engagement to another individual. It was also noted that recent laws had fixed a maximum limit for the amount of the dowry. Finally, legislators had turned their attention to the problem of disposal of the dowry in case of divorce. In several countries, the dowry was in future only to be returned to the husband if the wife was declared to be alone at fault in the divorce case, or if she sued for divorce, without valid reason, against a husband who was meeting the family obligations incumbent upon him by law.

29. In the realm of the status of women, other practices were exposed to adverse comment. Mention was made, for example, of the practice whereby a man gave his sister in marriage in return for a promise that any daughter born of the union would become his son's bride.

30. Several participants, referring to their working papers, considered that some traditional rules relating to parental authority and the guardianship of children could give rise to abuses comparable with slavery.

31. Attention was likewise drawn to other practices that were generally placed on a footing with slavery, such as pledging a person in order to guarantee a debt.

32. Some speakers supported still wider conceptions of the nature of slavery or of similar practices. In their opinion, the essential factor in those conceptions was arbitrary deprivation of freedom. Doubtless, in that connexion there were various degrees of deprivation; and deprivation of freedom in some forms did not perhaps result in changing a human being purely and simply into an object, as was the case with "traditional" slavery, but those forms of domination of man by man none the less constituted serious violations of human freedom and dignity, which the Seminar could not pass over in silence. For instance, when in certain countries members of a particular ethnic group were, for that reason alone, subjected to restrictions on their freedom and to discrimination in respect of housing, travel, access to employment or discrimination in other fields, that in reality constituted an intolerable degradation of the human person.

33. One participant stated that two forms of slavery could be considered. On the one hand, there was the ancient form of slavery, with its physical and legal duress. On the other hand, the word "slavery", in a very broad sense, could be applied to any complete alienation of the individual. In that sense, it could be said that man could be the slave of a machine or become the slave of a party. It had been seen how in Africa freed slaves had gone to the length of begging their former masters to take them back, as they felt incapable of facing the hazards of freedom. It was essential to awaken, revive and maintain the inner sense of freedom in the human spirit by all appropriate means.

34. At the close of the discussion, one speaker considered that there were no grounds for undue pessimism, despite the persistence of certain forms of slavery. In the age of Plato and Aristotle, economic and social conditions were such that jurists and philosophers had considered slavery a matter of course. Since then, economic and social development had brought about spectacular progress in the moral conscience everywhere - so much so that today there was unanimity in the condemnation of slavery and in insistence that its last vestiges must disappear.

35. Various participants stressed the necessity of accelerating that process, although they did not deny the progress already achieved. According to a proposal put forward by one of those participants, the Seminar should play an effective part in that connexion, in particular by recommending: that all African States should become parties to the international conventions on slavery; that systematic research on slavery and similar practices should be conducted within the African regional context; that the validity of marriage should in all cases be subject to the free consent of the woman; and that international labour standards should be effectively applied.

(b) The right of everyone not to be subjected to torture, or to cruel, inhuman or degrading treatment or punishment.

36. Several participants stressed that torture and the use of degrading treatment in the administration of justice were methods that had been constantly applied throughout the centuries. Some speakers stated that these methods were not used exclusively by a single group of countries, but that on the contrary they were to be found virtually everywhere, both in the developing countries and in the developed countries. Some speakers observed that the awakening of popular conscience in almost all countries lay at the root of the fact that today the problem of torture arose in an acute form.



37. Some speakers expressed the opinion that a distinction must be drawn between torture by the police, on the one hand, which had the aim of discovering the truth, and collective torture, on the other hand, which was practised in some countries by the dominant group upon another. That second category differed from the first in that, having no precise aim, it was all the more unjustifiable.

38. Several participants remarked that torture could assume various forms, and that besides acts of violence in the literal sense, cases existed in which torture was practised in a subtle fashion through humiliating treatment which, in the long run, produced effects identical with physical suffering. Some speakers emphasized the psychological aspect of the problem, considering that the maltreatment of a defenceless person was inhuman, and contested the value of confessions extracted in such circumstances. They also stated that, in cases of torture by the police, that torture quite frequently had disastrous consequences for a person who clung tenaciously to a truth that was not accepted by authority.

39. Many participants expressed their views on the reasons for the practice of torture and of cruel, inhuman or degrading treatment. Opinions were very divided. Some speakers maintained that those methods were the result of ignorance. Others asserted that the causes were often of a political nature, and that those practices constituted one form of the struggle between the Government in power and the opposition. Some speakers expressed the opinion that there was resort to these practices because confession had been made a form of conclusive proof, whereas some other speakers declared that their employment in the developing countries was a logical consequence of the fact that the police were insufficiently trained, that they were short of experts, that they were technically incapable of establishing a card-index system and were therefore unable to assemble material evidence that could replace confessions. Finally, one speaker maintained that true economic independence would eliminate the reasons for the use of torture.

40. All speakers condemned the use of torture and of cruel, inhuman or degrading treatment. They were unanimous in their forceful censure of those practices and in demanding their total prohibition. One speaker voiced the opinion that, in the present state of the law, torture was scarcely necessary, since the accused person did not testify on oath and could therefore lie without fear of being charged with perjury. General agreement was reached on the need to protect the individual against any encroachment upon his physical and moral integrity. Many speakers also recalled that the principles expressed in the Declaration of the Rights of Man and the Citizen of 1789 and those contained in the Universal Declaration of Human Rights of 1948 had been incorporated in the constitutions of their countries and in their codes of penal procedure. One speaker emphasized, however, that in practice the problem was often taken insufficiently into consideration by judges, whereas others stated that in their own countries great efforts were currently being made to extend effective protection to the accused.

41. The participants in the Seminar were unanimous in recognizing the necessity of establishing measures to abolish the use of torture and of cruel, inhuman or degrading treatment. The majority of them recalled that the laws of their countries provided for sanctions against the authorities responsible. Several speakers stressed that, under the systems of their countries, the law also gave the accused and his family the right to lodge a complaint and to call for an inquiry. One speaker maintained that the Procureur (Public Prosecutor), when acting in his official capacity, should be empowered to open an inquiry. Another participant advocated that the judge should be in a position to supervise the execution of a sentence in order to prevent the occurrence of ill treatment in prisons.

42. Some participants emphasized the importance of re-organizing police services. They considered that close supervision of these services was essential in order to prevent the use of torture. One speaker suggested that training of the upper echelons of the police and the ideological preparation of the members of that body should be designed to inculcate the idea of respect for the dignity of the person.

43. One speaker, while emphasizing the necessity of condemning torture, remarked that it was also necessary to protect society. He voiced the opinion that the administration of justice would gain by the systematic use of the services of welfare workers, psychologists and psycho-analysts.

44. One participant pointed out that the laws of the French-speaking African countries provided for extradition in their mutual relationships, and proposed that the extradition procedure should not be implemented in cases where the person concerned was in danger of being subjected to torture. The observer from a Non-Governmental Organization advocated that, as far as extradition was concerned, the country in which the person concerned was living should be free to evaluate the alleged offence according to its own standards, both under ordinary law and in the political context. He furthermore proposed that efforts should be undertaken to establish that right as a rule of international law.

(c) The right of everyone not to be arrested or detained

45. There was little discussion on this subject, although several participants acknowledged the existence of cases of arbitrary arrest in some countries. All speakers were unanimous in condemning such practices. They also recognized that although it might be impossible to abolish detention pending trial completely, it was at least necessary to confine the practice within strict limits. The participants were in general agreement in affirming that the courts of justice were the sole guarantors of individual freedom.

46. One speaker considered that the very principle of detention pending trial, in the present state of the law, led to a patent contradiction. On the one hand, the law proclaimed the principle that the detainee was presumed innocent until proved guilty, whereas on the other hand detention pending trial implied a presumption of guilt. Another speaker raised the problem of administrative internment and observed that in some countries measures of that kind, very often arbitrary, allowed no possibility of appeal.

47. There was general agreement on the necessity of guaranteeing freedom of the person, so long as the person concerned respected the freedom of others and the operation of the law. Several speakers pointed out that the relevant principles of the Declaration of the Rights of Man and the Citizen of 1789 and of the Universal Declaration of Human Rights of 1948 had been incorporated in the constitutions and laws of their countries.

48. Some participants pointed out that it was the arbitrary nature of arrest that should be condemned and not arrest in itself. One speaker thought it might be valuable to appoint an authority responsible for deciding whether or not a provisional arrest was arbitrary, since the individual concerned always regarded his arrest as arbitrary. Another speaker considered that all countries should be free to decide themselves what was meant by arbitrary.

49. All speakers proposed ways of limiting the powers of the police authorities with regard to custody (garde à vue). Some considered that the penal code in all countries should contain clear provisions regarding detention pending trial. In the view of some participants, the law should oblige the responsible authorities to bring the detainee before a magistrate within a short period of time. One speaker recommended that a maximum limit should be set for police custody, while another suggested a general extension of the detainee's right to demand his release, or habeas corpus. One participant thought that in order to avoid abuses the complainant should be required to pay a deposit, at the time of the investigation, for the purpose of compensating the detainee if he were found not guilty.

50. Some speakers broached the subject of administrative internment. They condemned the excessive use of such measures and proposed that they should be banned except in the case of a serious threat to public order and State security. In such cases the person concerned should be placed under the supervision of the judge. One speaker pointed out that when a state of emergency was declared the law in many countries contained no provision to safeguard the rights of the individual; even under those circumstances, he believed, the individual should be protected against arbitrary decisions. A further speaker stated that in ordinary law any intervention by the administrative authorities constituted a serious danger and that the very principle of such intervention should be firmly rejected.

(d) The right of everyone to be heard in a fair trial concerning any criminal charge brought against him

51. All speakers unanimously recognized the right of an accused person to be judged in a fair trial. One participant emphasized that the problem of the guarantee of due process had long since been basically solved and recalled in that connexion the principles of the Declaration of the Rights of Man and the Citizen of 1789 and of the Universal Declaration of Human Rights of 1948.

52. Several participants also mentioned certain specific rights that the law should guarantee to the accused. Some speakers claimed that the right of the accused to communicate with his family and his lawyer was a fundamental safeguard. Other speakers laid stress on the freedom that the accused should enjoy to choose his own defence counsel and the State's duty to appoint one for him if he was found to be without means. One participant stated that his country's code of criminal procedure specifically guaranteed that right to the accused.

53. The right of the accused to be heard at a public trial, and his right to be assisted by defence counsel in both indictable and minor offences, were unanimously recognized. One speaker observed that deprivation of liberty must be shown to be in the public interest and that that was the best way of guaranteeing the right of the accused to a fair trial. All participants agreed that the principle whereby the accused was assumed innocent until proved guilty should be upheld.

54. There was a lively discussion of the role and remuneration of lawyers. Several speakers pointed out that the lawyer occupied an extremely important position. While some participants laid stress on the liberal nature of the legal profession, others considered that in the under-developed countries of Africa the lawyer, like the teacher, should be regarded as a servant of society.

It was pointed out that the status of the Bar in such countries was different from that in the Western countries. In Africa, the Bar really protected only the rich and poor people found it difficult to gain a hearing. Measures were needed to ensure that everyone had access to the law. Nevertheless, all the participants unanimously acknowledged that the lawyer should be the collaborator and not the adversary of the judge.

55. One speaker felt that the question of remuneration had a considerable influence on the conduct of the lawyer. In many countries the excessively close collaboration between the Bar and financial circles was likely to compromise the integrity of the lawyer, and he recommended that the Bar should be reorganized to ensure that its members were financially independent. Another speaker said that in order to combine justice with solidarity his country was now experimenting with a completely free judicial system, in both criminal and civil cases, under which the State itself paid all lawyers' fees and other legal expenses.

56. On this subject one participant expressed doubt as to the real freedom of the lawyer in cases of a political nature, where the opponent of the accused was in fact the State. In reply it was stated that the problem should be viewed within the political and social context of Africa. Whereas Europe had advanced from the idea of the nation to that of the State, in Africa the reverse was true. A situation of that kind called for unity of effort. The speaker then declared that no lawyer had yet been persecuted for defending a client.

57. There was a short but very lively debate on the role of the judge in a trial. One participant pointed out that while the right of the accused to a fair trial was unquestionably generally acknowledged, its application sometimes gave rise to difficulties.

58. Several participants stated that the judge must be free from all external influence. One speaker, however, while supporting that principle, pointed out that independence should not be confused with indifference. Obviously the judge should not accept orders from any authority, but at the same time he should remain true to the political ideals and choices of his country. Unless that was so, the accused would be exposed to the arbitrary decision of the judge, since in evaluating certain offences - in particular economic offences - the judge's mind would be influenced by purely personal political ideals and choices. The speaker recalled that the Western liberal outlook was the result of a long process of evolution. In conclusion, he pointed out that the political ideas and choices of the African peoples could emerge either as a result of free elections or on the basis of a programme drawn up by a revolutionary organization.

59. Some participants expressed doubts about the necessity and value of the idea of a "committed judge". Moreover, they drew attention to the abstract nature of the concept of political ideals and choices, pointing out that it would be difficult, if not impossible, to define them with any kind of precision. In their view, the judge's only duty was to apply the law, and they thought that the administration of justice would meet with too serious difficulties if the conduct of judges were to be based on ideas that were as vague as they were imprecise.

(e) The right of everyone to choose his employment freely and to enjoy just conditions of work

60. All the participants who spoke on this item stressed the fact that the economic and social situation in Africa at the present time did not allow application of the principle of the free choice of employment, contained in article 23 of the Universal Declaration of Human Rights, without reservations and qualifications.

61. Africa was obliged to face the most serious problems of under-development and under-employment, which were in large measure the fatal consequences of colonialism. In those circumstances, all the African countries had rejected the policy of absolute freedom and of "laissez-faire" in the matter of employment, as a policy of that kind would only have resulted in perpetuating economic stagnation and in establishing freedom to die of hunger. The public authorities had been obliged to intervene and mobilize all available efforts in order to translate into reality the right of everyone to protection against unemployment, as stated in the Universal Declaration, and in order to ensure economic development. Such State intervention often made itself felt in a quite different manner and on a far larger scale than in the economically developed countries.

62. Nevertheless, the necessity of safeguarding individual freedom to the maximum was acknowledged by the majority of countries, and in most cases recourse to compulsion was accepted only as a very last resort and as a temporary measure, when this was inescapable. The prohibition of forced labour was incorporated in many constitutions.

63. In the course of discussion, it became apparent that a wide variety of efforts had been made to reconcile the two overriding needs of planned development and the maintenance of essential freedoms.

64. Numerous measures, in the nature of State intervention, left a large place for individual choice. Far from wishing to abolish private initiative, the State sought to associate such initiative with the collective effort. Thus, in the majority of African countries, the public authorities endeavoured to detect the aptitudes of young people as early as possible, and to guide them vocationally towards whatever employment was most useful in the general interest, without thereby imposing upon them a choice of occupation.

65. Young people who wished to pursue advanced studies had to give an undertaking to the State that they would exercise their profession in specified areas, particularly in the countryside, and for a given period; but in that case a free decision of those concerned was involved.

66. Employment exchanges and public services responsible for manpower established in the majority of African countries centralized all offers of and requests for employment and attempted to direct workers to the employment that most nearly matched their skills. Nevertheless, in many countries employers and workers remained free to accept or reject the proposals of those bodies.

67. In order to mobilize all the manpower available and to stimulate the feeling of personal participation in the collective effort, several African countries employed young people on work of public importance, both in the army and in the

civic services. In that connexion, several speakers emphasized that the question of safeguarding individual freedom did not arise when the army was composed of volunteers and when employment in the civic services was not compulsory.

68. Even within the context of that policy, however, which should undoubtedly leave wide scope for individual freedom, it had sometimes been judged legitimate, and indeed necessary, to introduce some measure of compulsion. In one country, for instance, the national civic service was voluntary, except in the case of individuals without a lawful occupation.

69. With other policies, the emphasis was placed more or less strongly on the obligation to work (an obligation that was sometimes enshrined in the constitution), and on the duty incumbent upon each citizen of performing such functions as would be most useful to the community.

70. Thus, in one country, all persons aged between 18 and 55 years had to prove that they were either in employment or pursuing their studies. The idle received a plot of land, which they were obliged to farm, or incur the risk of legal proceedings. Moreover, farmers were obliged to follow the directives of the Plan, as far as the choice of crops was concerned. Furthermore, in several countries efforts were made to keep young unemployed persons, and the few persons in easy circumstances, in country areas. Left to themselves, these persons would have been tempted to settle in the towns, without making any noteworthy contribution to the national economy and at the risk of making the problems of delinquency still more acute.

71. In several countries, young people were compulsorily employed in various forms of socially useful work, and thus received a degree of vocational training within the framework of military service or civic service, with the result that full use was made of manpower and the sense of collective effort and the feeling of national unity were encouraged.

72. In one country, which applied that policy rigorously in the context of its socialist system, it had even been stated as a principle that, in the interests of national development, the choice of employment should no longer rest exclusively with the individuals concerned.

73. Thus, pupils and students had to be guided towards the type of instruction or vocational training that the public authorities considered most useful in attaining the aims of the development Plan - obviously taking into account, as far as possible, the skills and aspirations of those concerned. Young people holding the certificate of elementary education, aged upwards of 18 years and considered unfitted for secondary education, were guided towards vocational or technical education. Persons holding the certificate of primary education were, after completing a training course, placed at the disposal of the Minister of Education as instructors. Educational guidance was entrusted to a board composed not only of planning technicians but also of teachers, educators and psychologists.

74. It was likewise noted that the country in question had often entrusted fresh duties to promising higher-grade students from the private sector, having regard to the country's urgent requirements.

75. In the same country, measures had been taken to eliminate middlemen from trade channels. The aim was to get rid of the numerous and economically useless brokers, the sole effort of whose activities was to multiply profit margins, and who were often corrupting elements or agents of foreign powers. By way of contrast, honest traders, whose activities were vital to the economic development of the country, were encouraged. For that purpose the law now required the proven possession of a fairly high minimum capital in order to carry on business.

76. It had been asked whether that policy of systematic interference in matters of employment might not encroach unduly upon individual freedom. Some participants expressed apprehension lest those measures, in particular officially imposed vocational guidance and the compulsory enrolment of young people in civic groups, might tend to indoctrinate citizens and dangerously restrict their critical sense. While accepting the demands of national development and observing collective discipline, men should take every care to preserve that precious faculty. Other participants defended those policies of interference, maintaining that they could not be regarded as violations of human rights provided that they met the real aspirations of the great majority of the people. In that respect it was pointed out that in some countries which applied such measures, the official directives were promulgated only after extensive consultations had been held at all levels and the agreement of those concerned had been obtained. That being so, even if the decisions were drawn up by a single party, there was no question of coercion but of genuinely democratic methods.

77. The representative of the International Labour Organisation outlined the ILO's work with regard to the defence and promotion of human rights, and in particular economic and social rights. The concept of free choice of employment was vague. It was preferable to begin by abolishing certain forms of compulsion, such as forced labour, legal sanctions and so on.

78. The competent authorities of the ILO had indicated the precise limits of the exceptions contained in the Conventions on forced or compulsory labour, in particular the normal "civic obligations". Many of the measures described by the participants definitely did not in themselves constitute forced labour within the meaning of those Conventions; that applied to the compulsory registration of labour supply and demand at employment exchanges and to the public works performed by the Army or civic services composed of volunteers and not conscripts or enlisted men. The same was true of services concerned solely with vocational training and re-training. As several participants had stressed, it was preferable to have recourse to persuasion rather than to compulsion. The dangers inherent in the methods used to "mobilize enthusiasm" had been emphasized by the competent authorities of the ILO.

79. The main point seemed to be that all participants had expressed their support for securing the widest possible respect for all the rights set forth in the Universal Declaration: differences of opinion had arisen only with regard to priorities. The fact that certain forms of compulsion were regarded as exceptional and temporary, justifiable only through force of circumstance, might make it possible to avoid their incorporation into the system of ordinary law and gradually to adapt policies to the situation in each particular country.

80. All speakers said that it was necessary to guarantee individuals the best possible working conditions having regard to the limited resources of the African countries. The detailed regulations contained in the Labour Codes and civil service statutes recently published in the respective countries demonstrated the great importance attached to that question.

81. The African countries, however, were experiencing serious difficulties both in that respect and in other spheres of economic and social life.

82. In the first place, the available budgetary resources were often insufficient to remunerate public authorities and officials adequately in relation to the importance of their responsibilities. That was an inevitable consequence of underdevelopment, which the persons concerned had usually accepted in a spirit of sacrifice to the common good. Indeed, it was stated that as part of the policy of austerity adopted by one country, the members of the legislative assemblies were not receiving any salary.

83. While wages were often low, they should nevertheless conform to the minimum rates set by the States concerned.

84. It was pointed out that the principle of equal pay for men and women for equal work was proving difficult to apply because of the persistence of certain traditions. It should be noted that the same problem existed, in different forms perhaps, in many of the developed countries.

85. Protection against discrimination in vocational training, in access to employment and in promotion was guaranteed by law.

86. All those legal safeguards were still not well enough known by the persons concerned. For instance, it was mentioned that illiterate young people coming from rural areas to the towns often, out of ignorance, accepted wages and working conditions that violated the standards laid down by the law.

87. Several speakers drew attention to the need to set up competent bodies of labour inspectors to ensure that the laws were effectively applied. Unfortunately, there was a shortage of personnel qualified for that work in many countries. Because of the special advantages offered by the colonial authorities, the profession had attracted numerous candidates under the former regime. Since independence, however, it had been observed that States were often financially unable to continue that policy.

2. The right to own property, particularly in relation to the problems of land reform and foreign investments

88. This agenda item was discussed at the 6th and 7th meetings of the Seminar, on 10 and 11 February 1966. The discussion leader was Mr. Babacar (Senegal).

89. Most of the speakers drew a distinction between the principle and the content of the right to own property. Almost all of them recalled the provisions of the Universal Declaration of Human Rights of 1948, according to which "everyone has the right to own property alone as well as in association with others". They also pointed out that their countries' Constitutions guaranteed the right to own property,



defining it as an inviolable right of which no one might be deprived. One speaker emphasized the importance of property in the history of peoples, stating that without that right there could have been neither development nor technical progress. Nevertheless, the participants unanimously recognized the need to place restrictions on the exercise of that right. However, some differences of opinion emerged during the debate as to the scope and extent of those restrictions.

90. Several speakers said that the laws of their countries had firmly rejected the old idea that the right to own property was unlimited, exclusive and perpetual. Some pointed out that since independence the evolution of the concept of property rights had begun to take concrete form, and that the requirements of economic development necessitated the reform of land-tenure law. Some participants stated that in their countries the right to own property was today no longer regarded as a right conferring prerogatives, but as a social function whose performance had to be subordinated to the national interest. Other speakers considered that in the countries of the Third World, the right to own personal property must not be allowed to interfere with development plans, particularly in view of the fact that the survival of many of the nations concerned depended on increased production. One speaker thought that property was harmful when it did not serve society, and stated that the absolute enjoyment of the right to own property would endanger Africa's future, while another participant expressed the view that the real problem lay in determining the origin, scope and exercise of the right to own property and not in the idea of property itself.

91. While the Seminar as a whole acknowledged the principle of the right to own property, and recognized the need to place restrictions on the exercise of that right, the question whether the Western concept of the right was applicable to Africa gave rise to a very lively discussion. One participant pointed out that in Africa today there was a tendency to think more of the Western concept than the African concept, which really did exist, and to overlook on occasion the realities of Africa. The Western concept of individual rights differed from the African one in so far as the holder of the right was concerned. In Africa, property was basically communal and by general rule the collectivity was paramount. The first priority in development should be to work out concepts which corresponded to the African mentality.

92. The Universal Declaration of Human Rights of 1948 was itself challenged. Some speakers wondered whether the Declaration corresponded with the present state of society in the Third World. After raising doubts about this, one speaker expressed the view that the economic and political requirements of Africa could not be met within the legal framework of the Declaration. He pointed out that changes were now taking place in the concept of property and recalled that, at the international level, the Protocol to the Rome Convention 1/ of 1950 had already gone beyond the principles of the Universal Declaration and contained a provision according to which the right to own property should be subject to its use in the general interest. Another participant pointed out that as the Universal Declaration dated from 1948, it did not therefore take into account the problems raised by the independence of the African countries. Furthermore, it had been drawn up on the

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1/ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome, on 4 November 1950. The Protocol was signed at Paris, on 20 March 1952. United Nations, Treaty Series, vol. 213, 1955.

basis of the ideas and needs of States whose economic and social structures were radically different from those of the African countries. Yet another participant proposed that in view of the obstacles to development which might arise from the principles of the Universal Declaration relating to property, the Seminar should call for a revision of the 1948 Declaration in order to adapt it to African realities.

93. In that regard, while emphasizing that all the African States had acceded to the Universal Declaration, one speaker pointed out that that document was no more than a set of principles offering guidance to States in the conduct of their affairs, and that the text therefore did not have the force of a formal and compulsory undertaking. In his view, a State did not commit an international offence by violating one of the principles set forth in the Universal Declaration; in fact, in one way or another, all States violated those principles, as well as those contained in their own Constitutions. In conclusion, he said that the question could be solved by drawing up an international convention on economic and social rights to meet the needs of the African peoples.

94. The Seminar made a detailed examination of the extent to which the land reforms introduced in the various African countries had affected the right to own property. Most speakers stated that the situation in their countries had made land reform necessary. Various arguments were put forward to explain the causes and aims of the reforms that had been introduced. Many participants took the view that the present situation was due to the policies carried out during the colonial period. Others drew attention to the basically agricultural nature of their economies, the rural character of their countries or the special importance they attached to land-tenure law. All agreed, however, that the basic idea underlying their land-reform legislation was to increase and diversify production. One participant pointed out that in his country land reform was also the result of its decision to create a planned society. Another speaker stated that in his country economic freedom was regarded as a prerequisite for development.

95. While the consensus recognized the need for land reform for the economic and social development of the African countries, some reservations were nevertheless expressed on the subject. One speaker said that in some circumstances land reform could bring about a fall in production. It would be an illusion to regard land reform as a panacea for the problems created by development. In addition, proper attention had to be paid to the factors peculiar to each country, which did not always require a reform of land tenure. Another speaker said that owing to the abundance of land, its low cost and the ease with which property transactions could be carried out, no land reform had been introduced in his country. Yet another speaker said that in his country land reform had been applied only in certain specific areas.

96. With regard to the content of the legal texts affecting individual property rights, several participants outlined the basic laws of their countries. They all emphasized that their land-tenure laws were based on the following ideas: first, that land should no longer be regarded as a source of personal income but as a means of combating underdevelopment; and second, that the landowner might no longer invoke his right not to cultivate his own land. While one participant stated that in his country legislators had attempted to reconcile the irreconcilable by restricting the rights stemming from property without denying the principle of those rights, another said that in his country restrictions could now be placed both on the principle and the exercise of property rights.

97. Among measures of land reform, numerous speakers mentioned expropriation. They emphasized that in almost all countries expropriation was at once an administrative and a judicial procedure, that was carried out in the public interest, in circumstances determined by the law, and that provided for fair compensation to be fixed by agreement between the parties concerned, or by the judge in case of legal dispute. The accounts given by some participants showed that in certain countries land reform consisted in the transfer of unrecorded and unregistered land to State ownership. One speaker pointed out that, in that case, the State held the land with the sole purpose of ensuring its development in accordance with the development plan. One participant also pointed out in his statement that cases existed where exercise of the right to own property was modified in the interests of developing a specified economic area. Although the individual remained the owner, the State prohibited any alienation in such cases, and made redistribution of holdings and tenancy agreements compulsory. In cases where the owner died, the heirs had to designate a single representative. However, other participants stated that in their countries any owner could freely farm his land. Regulations were designed solely to increase production. One speaker pointed out that the law governing land reform in his country limited the acreage that one individual might own. The surplus land was then distributed to farmers. Another speaker stated that in his country land reform had gone through the following phases: in the initial phase, the property of Europeans and of such nationals as had assisted the enemy in the armed struggle for independence had been nationalized, and then a system of self-management had been established. He stressed that the future aim of the Government of his country was restriction in principle of property rights so that property would serve only the needs of the individual and not be used to build up capital. The speaker also said that the system of self-management was admittedly encountering certain difficulties - lack of supervisory staff, difficulties in marketing products and illicit trafficking - but that corrective measures were being taken as the difficulties arose. Another speaker stated that in his country all real estate transactions had to be approved by the Government.

98. One speaker pointed out that the land reform laws of his country, besides providing for expropriation and other measures, also strictly regulated the legal relationships between peasants and landowners, in order to encourage evolution of the system of share-cropping to farming proper, and thus to accelerate the economic development of rural areas. Numerous participants stressed that the laws of land reform provided for the establishment of autonomous public bodies responsible for the supervision and implementation of the measures adopted.

99. Many speakers raised the question of the efficacy of the measures taken. Opinions were divided. Some participants stated that the experiment was still too recent to enable a valid assessment to be made. Others merely stressed that the experiment was worth attempting. It was also considered that legal measures proved to be ineffective where they were not accompanied by generalized efforts to achieve recovery in all fields. Finally, one speaker observed that the real problem was the fair application of the laws, despite temporary impediments and setbacks, as the idea of land reform in the developing countries was basically sound.

100. With reference to popular reactions to land reform laws, one participant said that the reform had been well received in his country, as it had been preceded by a measure abolishing the functions of the rural chiefs. Another speaker declared that land reform laws had been followed by a law to punish crimes against the national

heritage. One participant stated that it was in the minds of his country's legislators that any restrictions applied to property rights would not continue indefinitely, but would disappear when the country had attained full development.

101. The Seminar was unanimous in acknowledging the necessity of foreign investment. It was also generally recognized that there must be guarantees. Opinions were, however, very divided on the question of the laws governing investment. Some participants emphatically maintained that the African countries must do their best to attract foreign capital, to respect international conventions on investment scrupulously and to afford effective protection. Others considered that the African countries and foreign capital needed each other, that a problem of relationships was being created between them and that, consequently, it was difficult to take a hard and fast position. The opinion was also expressed that nationalization was not incompatible with the principle of the supremacy of property rights.

102. One speaker emphasized that the advanced countries bore a major share of responsibility for the financial dependence of Africa, and stated that international solidarity demanded that those nations should "agree to be less rich" so that the African countries might be less poor.

103. Whereas some participants stated that their countries had adopted a liberal policy of tax relief and free movement of capital in respect of foreign investment, others said that in their countries a relatively strict system of regulations governed such investment, particularly as far as controls on the movement of invested capital were concerned. One speaker remarked that in his country the Investment Code reflected two ideas: guarantee and restriction. Restriction applied to the export of profits, to the obligation placed upon a foreign enterprise to participate in training higher-grade staff, to the Government's right to lay down priorities and to control the movement of capital. One participant said that his country had adopted a policy whereby the State was associated with foreign capital.

104. A participant remarked that investment was a burning issue because each country followed an independent policy. He maintained that that situation led to competition that weakened all the African countries, and he advocated a policy of economic integration for those countries, which would render Africa less dependent upon foreign capital. He indicated, in particular, that violations of rights had their origin in the economic difficulties of the young States, that development was difficult, if not impossible, within the narrow framework of the existing African States, and that the approach to such development should be broadly based. He considered that if each country continued to follow the present course, measures violating the rights of man would go on increasing. He then launched an appeal for African unity.

105. One speaker regretted that the question of literary and artistic property had not been discussed. He voiced the opinion that the African countries would be well advised to ask the European countries to liberalize the existing system governing literary and artistic property. He reminded participants that a conference would shortly be held in Geneva to revise the international agreements on literary and artistic property, and considered that the African countries should send representatives there. He stated further that the position of the

African countries would be strengthened if the United Nations organized a seminar on the subject in co-operation with the specialized agencies concerned. The European or Asian members of the Berne Union 2/ should revise their idea of the right of literary and artistic property in the light of the realities of under-development.

### 3. Rights and freedoms in religious matters

106. This agenda item was discussed at the 8th and 9th meetings on 11 and 14 February 1966. The discussion leader was Mr. El Moslemany (United Arab Republic).

107. All speakers recognized that religion was the expression of mankind's highest aspirations. To it men owed their moral codes without which social life would have been impossible. The task of religious communities, free from all superstition, was to teach the individual the standards of love, justice and tolerance.

108. One speaker recalled that for many years the United Nations had shown great interest in religious problems. He mentioned the study and draft principles on freedom and absence of discrimination in religious matters prepared by Mr. Krishnaswami and recommended to the Commission on Human Rights by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. 3/ He also recalled that the Commission on Human Rights was now drawing up a draft Declaration and Convention on the elimination of all forms of religious intolerance, 4/ as requested by the United Nations General Assembly.

109. A large number of participants emphasized the fact that religion was essentially subjective, a matter of conscience for each individual. Everyone should be free to form or change his beliefs. Several speakers said that from the standpoint of freedom of conscience no restriction whatever should be placed on religion. The public authorities should ensure that freedom of conscience was respected and that all religions could be legitimately practised on an equal footing.

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2/ Berne Convention for the protection of literary and artistic works, signed at Berne, on 9 September 1886, revised at Berlin on 13 November 1908, completed at Berne on 20 March 1914, revised at Rome on 2 June 1928 and revised at Brussels on 26 June 1948 (United Nations, Treaty Series, vol. 331, 1959).

3/ Arcot Krishnaswami, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study of Discrimination in the Matter of Religious Rights and Practices, United Nations, New York, 1960. Sales No: 60.XIV.2.

4/ Official Records of the Economic and Social Council, Thirty-Sixth Session, Supplement No. 8 (E/3743, chap. X); ibid., Thirty-Seventh Session, Supplement No. 8 (E/3873, chap. III); ibid., Thirty-Ninth Session, Supplement No. 8 (E/4024, chap. II).

110. In that respect it was pointed out that freedom of religion was guaranteed in many African constitutions, both in secular States and in countries having a State religion. Care was taken to stress the distinction which should be drawn between a State religion and a religion imposed by the State.

111. It was also apparent that in several countries the Constitution or the laws guaranteed religious communities the freedom to organize and develop their religion in complete independence. With regard to education, when religion was separated from the State, the State schools were themselves secular, but the curricula provided for free periods during which pupils could receive religious instruction at their place of worship. In addition, parents could choose to enrol their children in private schools, which could freely be established and run by religious communities. In some countries, the State assisted the various religious communities, without discrimination, by offering tax relief or subsidies for the construction of buildings for cultural purposes.

112. Other laws laid down penalties for offences against religious belief or interference with freedom of worship, and protected ministers of religion in the practice of their faith.

113. Several participants considered that in all countries religions naturally tended to embrace and regulate a very wide variety of human activities. One speaker pointed out that the hold of religious beliefs on the individual was infinitely stronger and more extensive on the African continent than in the advanced countries. In Africa, men sometimes blindly obeyed many traditions which were accepted without a trace of religious feeling. To hold in check traditions that ran counter to public order, health and morality, the State was obliged to set limits to the freedom to practise certain beliefs.

114. Efforts had been made, for instance, to eliminate the criminal practices of certain fetichistic sects, which went so far as to perform ritual murder. In one country, since independence, the State had successfully applied radical measures, such as death sentences pronounced at the scene of the crime, to root out such practices. It was stressed that those measures had aroused no public outcry. In another country, the authorities had also vigorously intervened against a sect of Christian origin which had degenerated into a criminal association dominated by crude superstitions.

115. Campaigns had been launched against backward and pernicious beliefs which were harmful to the health of the population, such as beliefs which prohibited vaccination or blood transfusions, and those which encouraged their followers to indulge in unhealthy practices. It was to be deplored that in some regions charlatans took advantage of the awe in which religion was held to forbid visits to the doctor, to persuade people to accept the remedies of witch-doctors, and by various pretexts to extort money from the credulous.

116. Furthermore, it was intolerable and contrary to the Universal Declaration of Human Rights that certain religious communities, which paradoxically proclaimed the principles of justice and love, should practise and encourage racial discrimination. That was the case in South Africa and Rhodesia, where the so-called "Natives" were excluded from communal worship in churches.

117. One of the participants said that in his view polygamy, which was recognized by certain religions, was prejudicial to the dignity and freedom of African womanhood. Under such religions, women could be forced to choose between polygamy and divorce. Either solution was disadvantageous, not merely for the woman's own development but also for that of her children. A further speaker, who likewise deplored the seclusion of women in certain societies, nevertheless pointed out that in his opinion that practice was the result of a false, though traditional, interpretation of certain religions. Yet another participant emphasized that Islam, once freed from those false interpretations, in no way encouraged polygamy or divorce at the husband's whim, but that on the contrary it offered recourse against such abuses.

118. Although they did not necessarily constitute serious and immediate dangers to the community, nor real or potential violations of human rights, a number of allegedly religious practices or attitudes should be modified, as they placed impediments in the path of the country's progress and of its economic and social development. It had been said for example, that some food prohibitions of a religious nature made it difficult to employ believers in certain industries, and that the economy might thus be deprived of skilled manpower. It was likewise considered that the periodical fast imposed by a number of religions diminished the working capacity and productivity of those concerned. Some speakers were, in a more general manner, inclined to think that certain religions tended to encourage economic progress, owing to essential aspects of their dogmas, whereas others rather exercised the contrary effect as a result of their fatalist nature. Several participants said that they were opposed to any coercion aimed at modifying religious practices that discouraged progress, except in cases where public order or morality were threatened (see paragraph above). It would be preferable to continue efforts towards achieving mass education in religious matters, so as to dispel the errors which for the most part lay at the root of such backward practices. That responsibility in the educational sphere was mainly incumbent upon the heads of religious communities and, where necessary, upon the public authorities. Some speakers briefly recapitulated the history of religions, and said they were convinced that religions could adapt themselves to the demands of progress.

119. Many participants drew attention to the varied problems connected with the relationship between religions and political activities in Africa. A number of them considered that the religious communities perhaps by reason of a natural tendency, frequently took sides in the political sphere and sought by various means to influence the public authorities.

120. In some countries, emphasis was placed on the dangers inherent in such practices, especially as far as freedom of worship was concerned. The view appeared to be held that religious communities which indulged in interference of that kind were first and foremost seeking to attain a dominant position in the State and to undermine the legitimate interests of rival religions. Thus the law imposed legal penalties for any interference in political affairs by ministers of religion.

121. Other speakers maintained that it was important to distinguish between the political activities of the various religious groupings, according to the origin and nature of those groupings and the objectives that they wished to attain. When a religious community resisted the country's development or indulged in manoeuvres that were prejudicial to the maintenance of national independence, it was

absolutely essential to prevent its meddling in political affairs. On the other hand, there could be no objection to the political activities of religious groups that tended to promote collective efforts towards development. It might even be desirable to encourage them, as they brought to the State the enthusiastic co-operation of the population.

122. One speaker, moreover, stressed that the religious communities were only fulfilling their exalted mission when they caused the voice of universal moral conscience to be raised in opposition to political systems that violated human rights. This speaker was of the opinion that the right of religions to maintain their international character must be recognized. Through the exercise of that right, religions could mitigate the possible excesses of certain types of nationalism, and draw the attention of the international community to its responsibilities towards the under-developed countries.

123. Several participants quoted, as examples of interference that was opposed to the national interest, those of the religions of non-African origin that had for the most part taken root on the African continent through colonial conquest. It was said that the clergy of those churches sometimes adopted reactionary attitudes towards development plans. In some African countries the clergy had indulged in obstructive manoeuvres against such essential reforms as the nationalization of education.

124. A number of participants maintained that colonization had, to a large extent, been carried out with the Cross of Christ, and that the churches of foreign origin had attempted, with the support of the colonial authorities, to wipe out indigenous religions or thwart their development. One speaker, however, was of the opinion that the colonial authorities had generally endeavoured to protect local beliefs. Some aspects of those traditional beliefs called forth reservations, but that was a problem common to all religions. It was asserted that indigenous religions such as Vodoo and certain forms of animism were imbued with high moral values. It was likewise observed that some religious communities, basing their beliefs on beliefs of foreign origin, had adapted them successfully to genuinely African spiritual needs. According to these speakers, indigenous or adapted religions had the great advantage of meeting the deeply felt aspirations of the African people and enabled them to rediscover African culture. Being direct expressions of popular conscience, they were in no way opposed to national development, but on the contrary encouraged their believers to participate in the collective effort. It was thus necessary, according to these speakers, to formulate and strengthen African national religions, or adapt beliefs of foreign origin to popular aspirations. In the opinion of one participant, the Seminar should recommend the African Governments to follow a policy of that kind, without however resorting to coercion.

125. Some other participants expressed reservations regarding that proposal. They declared that the expression "national religion" was vague and open to interpretations that differed widely from one another, and that it would be difficult to choose the most valuable elements from among the manifold beliefs existing on the African continent. Fears had been expressed that a policy designed to encourage national religions might degenerate into pressure exerted by the Government on individual consciences. One speaker emphasized that the African peoples must show clear-sightedness in returning to the sources of their culture, and reject the obscurantist aspects of traditional beliefs. He considered, moreover, that religion need not necessarily play an important part in the awakening to awareness of African culture.



126. Some speakers were of the opinion that the public authorities in the developing countries should always show greater interest in different forms of worship, without thereby seeking to influence or guide religions. To stand completely aside from religion would have the effect of alienating the masses, whose co-operation was essential in order to bring the task of development to a successful conclusion.

127. By the end of this debate, it was apparent that speakers were in agreement in recognizing the right of every individual to freedom of conscience and the necessity of harmonious co-operation between the religious communities. It was likewise acknowledged that these communities, whatever their beliefs, must not obstruct efforts towards development. The constant necessity of educating the masses was stressed, in order to rectify certain errors and to prevent the excesses that the fanatical and credulous might commit in the name of religion.

#### 4. Freedom of information

128. This item of the agenda was discussed at the 10th and 11th meetings of the Seminar, on 14 and 15 February 1966. The discussion leader was Mr. Amega (Togo).

129. Although some participants stated that consideration of this item was extremely delicate, the Seminar nevertheless recognized unanimously that of all the rights of the individual the right to freedom of information was one of the most important, and in fact underpinned all other rights. One participant pointed out that freedom of information was usually the first victim of a totalitarian regime. Several speakers attempted to define the meaning of freedom of information. One speaker said that the right to freedom of information was the right of every man to express his opinions and feelings by word of mouth, in writing or pictorially. Another considered that freedom of thought, expression and communication were the three elements of freedom of information. After pointing out that, technically speaking, the term "information" meant all the forms and conditions of the dissemination of knowledge and opinion, another participant proposed that the Seminar should adopt a definition that would bring out two essential ideas: the dissemination of knowledge or facts, and the dissemination of opinion or ideas. It was also stated that freedom of information implied the right of access to sources of information, the right of the public to be informed, and the Government's duty to inform the citizens.

130. After emphasizing the complexity of this right, many speakers recalled the provisions of article 19 of the Universal Declaration of Human Rights, which stated that: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." In addition, they stated that that right was enshrined in their countries' constitutions. They also maintained that, while the existence of freedom of information was doubtless insufficient to ensure respect for other rights, it was nevertheless thanks to freedom of information that individuals were aware of the extent of their various rights and the means by which they were guaranteed. One participant considered that the difficulty and ambiguity of the problem were mainly the result of the wording of article 19 of the Universal Declaration. The other principles in the Declaration spoke of the "freedom of" or the "right to" something,

and he wondered why article 19 referred to the "right to freedom". In his opinion, that wording betrayed some sort of contradiction in the minds of the authors of the Declaration, since every freedom took the form of a right, otherwise it remained abstract.

131. There was a very lively debate on the subject of the attitude of Governments towards the right to freedom of information. While the Seminar was unanimous in recognizing the necessity of this right, it was also unanimous in stating that it was difficult to apply, that it could not be absolute and that certain restrictions were indispensable. However, opinions varied on the basis, content and scope of those restrictions. Furthermore, the discussion showed that there could be two different forms of State action in the field of information: in the first place, the State might intervene by controlling the activities of individuals in that sphere, and in the second place, the State might itself intervene in the process of disseminating news. It was also pointed out that that problem was not essentially an African one, and that it arose in all countries, whether they were advanced or not.

132. Several participants took the view that absolute freedom of information, left to its own devices under the fallacious pretext of respecting the free play of democratic forces, would be absurd and would bring about the downfall of the African countries. They believed that Governments were aware of the seeds of destruction present in freedom of information when applied without due caution. They therefore maintained that a proper balance had to be kept between the privileges arising from freedom of information and the duty of Governments to watch over the general interests of their countries. One speaker stated that restrictions in his country were governed by the need to establish and maintain a strong and stable State, the desire to avoid any dissipation of intellectual and moral effort, and by the goal of rallying the entire nation to a common ideal. Another speaker pointed out that the fragile structure of the African nations obliged States to impose restrictions on the freedom of information, and that in any case that freedom should not and could not have the same currency as it had in the highly democratized European countries. It was also maintained that however much a State might wish to ensure freedom of information, it could not allow the exercise of that freedom to lead to the disintegration of the nation.

133. The attention of the Seminar was also called to the advantages of freedom of information and the disadvantages of the lack of that freedom. One speaker took the view that freedom of information could bring about reforms, promote the spread of culture and help to build up a universal civilization, whereas the lack of freedom led to the creation of pirate broadcasting stations which spread false news, while censorship and the seizure of books and journals, by awaking people's curiosity, tended to produce the opposite effect to that desired by the Government concerned. In his view, no one had the right, either in Africa or anywhere else, to put man in a strait-jacket. Men must have the right to inform and be informed, for there were two sides to every question. The right to information must be free if men were to be prevented from turning to other sources which might prove dangerous. Other speakers considered that some restriction on the freedom of information was essential but strongly emphasized that State control should never deny that right. They therefore felt that all such restrictions should be precisely defined.

134. Many participants outlined the legal provisions governing freedom of information in their countries. Some of them pointed out that those regulations were based on the French Press Law of 1881. They had two underlying ideas: the safeguarding of public security and morality, and protection against defamation. One participant said that in his country everyone had the right to express himself freely provided that public order was respected, while another stated that in his country citizens exercised their right to freedom of information without any form of control. It was also stated that individuals could express themselves freely only to the extent that they did not challenge the basic policies of the State. On the subject of political minorities, one speaker declared that they were allowed to criticize only the exercise and not the basis of authority.

135. One participant said that in his country the law protected freedom of information against foreign interference and prohibited journalists from receiving money from a foreign Government under threat of legal proceedings. Some participants said that in their countries the Government had very wide powers of control. The law authorized the precautionary seizure of newspapers in cases where public morality was threatened or the Head of State held in contempt.

136. The representative of the ILO said that International Convention No. 105 of 1957 prohibited the use of forced labour, including prison work, "as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system". Convention No. 87 of 1948, concerning freedom of association and protection of the right to organize provided that workers, employers and their respective organizations must respect the law, but that the law must not be such, or be applied in such a way, as to interfere with the rights and guarantees set forth in the Convention.

137. There was some discussion of the aims to be attained through the exercise of the right to freedom of information. Once again, widely differing views were expressed. One speaker thought that the purpose of freedom of information was not propaganda. First and foremost, it should be a factor of international solidarity. Many speakers considered that the chief aim of freedom of information in the African countries should be the instruction, education and entertainment of the masses. One participant said that in his country the literacy campaign begun on the radio had had to be stopped because of the large number of dialects. However, it had been taken up again on television. Many speakers pointed out that in their countries radio and television were entirely non-commercial and devoted themselves exclusively to education. One participant said that his country believed that freedom of information had a social basis. It was also suggested that, given the powerful network of media that organs disseminating information had at their disposal, the right to freedom of information should serve as a common unifying factor both at home and abroad and as a means of promoting brotherhood between peoples, since a single idea or phrase launched by the Press or the radio might, through its impact on the masses, become an active force capable of causing a nation-wide upheaval.

138. There was a lively discussion on State intervention in the process of news dissemination. Some speakers drew attention to the dangers inherent in State intervention in the dissemination of news. They emphasized the lack of objectivity of news when it was controlled by the Government. One participant said that the right to freedom of information was respected in his country, and recalled that opposition parties had used the State radio during a recent referendum. Most

speakers, however, believed that in one way or another the State interfered in news dissemination. The discussion also revealed that, in one group of countries, State intervention took place for specific purposes, whereas in another group the State intervened on ideological grounds.

139. Several participants considered that State intervention in the realm of news dissemination was a restriction on freedom of information. Nevertheless, they explained that State intervention by recalling the economic conditions inseparable from development. They pointed out that as the private sector did not have sufficient capital to set up a system of communication, the State considered it a duty to take action which would ensure that the right of peoples to be informed did not become a purely theoretical provision.

140. Other participants, however, thought that the actual implementation of the right to freedom of information, in the existing African political context, demanded the assumption of responsibility for information media by the State. They maintained that "information" and "expression" presupposed the existence of facilities that the individual did not possess. In all countries, radio broadcasting stations, television stations and newspapers required the financial participation of a group, and that group could either be financiers or the State. They stated that, as a consequence, radio, television and the Press always belonged to a group, and that therefore the content of the news reflected the views of whatever group possessed the facilities for dissemination. It was inconceivable that, if the State controlled the means of expression, they could be utilized to destroy that State. The same speakers observed that there was a paradox inherent in the question of freedom of information. It was easy enough to talk about the right of mankind to inform and be informed. Yet to obtain information and to express oneself, an intermediary was required, and nothing was said of the part played by that intermediary. There was something irreconcilable between those facts and the right of everyone to information, and that was a problem that recurred everywhere. The same speakers considered that the African countries would derive a definite advantage from the State possessing a monopoly of information media. One participant stated that, in his country, information had a social purpose and that, consequently, the right to freedom of information should be exercised within the context of concrete realities.

141. The opinion was also expressed that in the application of the Universal Declaration of Human Rights in Africa two trends were apparent. One was to adopt outright European principles and institutions - without, however, the checks and balances that accompanied them - whereas the other sought to adapt them to the particular needs of Africa. It was also stated that the principle of freedom of information, in the form which it assumed in the West, would lead in Africa to total domination by those groups that possessed the information media. One speaker suggested that the African countries might usefully consider the question of guidance in information, in order to enrich the concept of human rights. Africa had the right, the duty and the ability to seek and discover the principles that were appropriate to African society.

142. The Seminar discussed the techniques employed by various States when they intervened in the process of disseminating information. The same techniques generally recurred in all countries. In the opinion of the speakers, those States considered that radio and television were public services. Nevertheless, the discussions revealed that the system governing the Press varied from country to

country. It was emphasized that full exercise of the right to freedom of information necessitated a solid infra-structure, and that as a result of under-development the Governments alone were in a position to intervene effectively in order to establish that infra-structure. The majority of participants said that in their countries the Government had established a national radio broadcasting and television service. Many speakers mentioned that those stations broadcast educational and news programmes, both in French and in vernacular languages. It was also stated that communal radio-receiving facilities had been established in the villages in order to meet the needs of the rural masses. Mention was also made of the building of printing presses, libraries, cinemas and large numbers of information centres by the State. Several participants, however, declared that in their countries the Press was free, and that no permission was required to publish books or newspapers. One speaker remarked that in his country although radio and television had been established by the Government, they operated under the authority of an entirely independent body. Some participants stated that in their countries the Government published no newspaper. Others, however, referred to the monopoly of a press agency, the existence of Government-subsidized newspapers or assistance provided by the Government in training journalists. It was further mentioned that in one country the Government indirectly assisted the Press by granting exemption from all import duties on printing equipment.

143. The activities of Governments in those countries that had established the single party system was the subject of a brief discussion. One speaker declared that in his country freedom of information was protected, as any citizen could organize a meeting and express his point of view in the presence of official party representatives. He stated that the establishment of the single party had been necessary, as independence had been given at a moment when the country was disunited. Another speaker said that in his country direct democracy had been established, and that every individual had the opportunity of expressing his views within the party organization.

144. One speaker proposed the establishment of an international radio, in order to create an international conscience concerning the vital problems confronting the peoples of the world.

145. The question whether the Government had a duty to inform the public arose in the course of debate. Several speakers considered that that obligation was incumbent upon Governments, although they remarked that very few Governments were inclined to carry out that task impartially. One speaker thought that the problem could not be considered in the abstract, in view of its complexity. He said that the executive should have wide freedom to evaluate information, but that nevertheless the public had a right to a minimum of news. With regard to legislative activities, he observed that although laws were generally published in an official bulletin or gazette, reports of parliamentary debates were published in very few countries. Yet the electors had the right to be informed about the work of their representatives. Finally turning to the judiciary, he set forth the reasons why trials must always be reported.

146. Some speakers raised the question of the free circulation of the foreign Press in the African countries. There was, however, very little discussion on the subject. One speaker said that all too frequently foreign journalists ridiculed the African countries or deliberately published false news regarding them. One

participant said that foreign newspapers were able to circulate without restriction in the territory of his country. Another stated, however, that in his country the admission and circulation of foreign newspapers were subject to certain restrictions.

147. An observer from a Non-Governmental Organization stated that she could understand the reasons that had led some African countries to remove financial groups from controlling positions in information media. She considered, however, that intermediary agencies might be able to play a useful part in the realm of information in the African countries. She stated that the absence of these intermediary agencies was prejudicial to the civic development of the masses.

148. The representative of UNESCO said that the principles which found expression in the Universal Declaration of Human Rights were based upon concepts that were sufficiently broad to be applicable to the peoples of all the continents. She regretted that the Seminar had considered the rights of women in the course of the discussions on slavery, and that the debate had been restricted to the question of the dowry alone. With reference to the right to freedom of information, she voiced the opinion that the existence of radio could have a considerable influence upon the question of mass participation in public affairs. Thus, freedom of information might with justification be considered as a prerequisite for, rather than an impediment to, development.

149. The representative of one Non-Governmental Organization proposed that a role of greater importance should be allotted to information specialists in order to create a consensus on the necessity for development among the countries of the Third World. She considered that it was necessary to win over young people and the feminine public, to act in such a way that young Africans would not remain indifferent to the problems of under-development, and above all that they would not consider under-development as being a normal state of affairs. She also declared that the women in Africa were less well-informed than the men, and that consequently the public authorities should provide special information media for women.

5. The right to participate in political activities, particularly in relation to freedom of association, including trade-union rights

150. This item of the agenda was considered at the 12th and 13th meetings of the Seminar, on 15 and 16 February 1966. The discussion leader was Mr. Chimba (Zambia).

151. All speakers recognized that the right to participate in political activities was fundamental. That right, together with the freedom to form and belong to associations, was enshrined in many African Constitutions. In several countries, the law guaranteed everyone the freedom to form associations, provided only that they were registered with the authorities and that information was made public as to their title, headquarters and purposes and the names of their leaders.

152. Various opinions were expressed with regard to the content and scope of these political rights and freedoms, and the ways in which they were exercised.

153. Several speakers considered that the concept of participation in political activities and the concept of a political party were not immutable, but were closely linked with economic conditions and the needs of society at different

stages in its development. Some participants stated that, in their opinion, politics was the sum of all the means by which society endeavoured to obtain better living conditions for all its members. The individual was inseparable from society, and his fundamental right to take part in political activities should be regarded as his right to participate in the efforts of society to achieve development. On that basis, and in the light of historical analysis, it appeared that the concept of political rights, and in particular the concept of a political party, as they existed in Africa, were bound to be different from those which were generally recognized in the advanced European countries. When the European bourgeoisie had proclaimed the ideals of freedom and equality in 1789, its main purpose had been to gain certain political rights which until then had been the monopoly of the feudal classes. It had not insisted on economic rights, which in fact it already possessed. European political parties were often an extension of the propertied classes, which were determined to retain their economic advantages and privileges.

154. In Africa, colonial rule had produced three effects: certain indigenous democratic institutions, such as the "council of elders" in several tribes, had been suppressed, all political rights had been denied to the people, and they had been kept destitute. Consequently, African political groupings had attempted to gain political freedom and economic rights simultaneously. Concentrating their efforts on those two ends they had not usually formulated political ideologies that were distinct from each other. It was stated that the concepts of freedom and improvement of living standards were so closely linked in the African mind that the idea of freedom of association, for instance, was practically meaningless to the citizen, unless the specific purpose of such association was to obtain better living conditions. After independence, the major problems of economic development and nation building had had to be tackled almost from scratch. Many participants emphatically stated that the existence of those imperatives and the over-all economic and social conditions of the African countries made it necessary to modify the classical European concepts of political freedom and political parties in Africa.

155. Without denying the fact that under different social conditions the national interest might have been compatible with the multi-party system, several speakers maintained that, in their countries, the maintenance of that system would have had the dangerous effect of sharpening dissensions among the different elements of the population, dissipating the efforts of the people, and impeding the Government's economic development activities. Some speakers considered that the existence of several political parties in Africa was mainly a reflection of regional or tribal particularism, or of the conflict between the selfish interests of certain economic groupings. Furthermore, lacking a strongly developed ideology, some parties had a tendency to borrow their doctrines from abroad, thus opening the way to foreign influences that were undesirable in African political life. For all those reasons, it was essential in the national interest that all the energies of the people should be mobilized and channelled towards a single mass party.

156. It was stated that the existence of a single party was valid only when its aims met the aspirations of the people as a whole or of the great majority of citizens. The imposition of a single party against the wishes of the majority would be contrary both to the principles of the Universal Declaration and to the basic aim of the system, which was to win the massive support of the people for the policy of development. Emphasis was therefore placed on the need to gain that

support by means of persuasion. In some countries, the groups opposing the majority had recognized the over-riding need for national unity following independence, and had either dissolved or joined the majority party. In another country, where several groupings were still engaged in unprofitable struggles, the majority party in power hoped to see them disappear by the normal working of the electoral system. On the other hand, a few speakers maintained that, as an expression of the will of the masses, the single party should, when necessary, be imposed upon reactionary minorities. According to those speakers, it had to be acknowledged that economic and social progress might to some extent imply the use of coercion against those retrograde forces.

157. It was clear from the statements made by several speakers that the single party in their country attempted to embrace all elements of the population. For that purpose, the party included youth movements and women's organizations. It was noted that the trade unions in those countries, which were grouped together in a single central organization, were also attached to the party (see paragraph below).

158. These speakers stated that in their countries the single party left untouched the freedom to participate in political activities, and in fact constituted a new form of democracy. The individual was perfectly free to join the party or remain outside it. Within the party, properly conducted elections were held periodically at all levels to ensure that the best candidates occupied the leading positions and that all tendencies were represented. Constructive criticism was not only allowed but encouraged, and no one, not even the Head of State, was immune from it. At any time, the official representatives could be removed from their duties by the members of the party.

159. Some speakers said that although their countries had a single-party system, it was not prescribed by the Constitution, which still allowed citizens to set up and belong to other parties. In one country, the single party was established and regulated by law. Generally speaking, in all those countries the single party was regarded exclusively as a means of serving the people in order to build up the nation and bring about economic development; it was not regarded as an end in itself. If economic and social conditions changed, a different system of political organization might be adopted.

160. Several other speakers expressed their opposition to the theory that a single party was essential in the developing countries of Africa. In their own country - they said - everyone was free, both in law and in fact, to found a party, to join it, or to remain outside political groupings. Little restriction was placed on political rights. Among such restrictions, reference was made to those applying to civil servants, who had the right to belong to a party but not to hold a position of authority nor to make public statements on behalf of the programme of a particular party. Those provisions were an integral part of the civil service statutes, whose essential purpose was to ensure the stability of the administration by removing it from the rough-and-tumble of politics. It was stated that the existence of several parties in those countries in no way compromised national unity or economic development.

161. Without denying that developing Africa had special problems, some speakers took the view that the political problem was basically the same there as anywhere else. The question was to decide what fundamental aim society should set itself.



If improvement in standards of living were placed above all other considerations, there might perhaps be some advantage in restricting individual freedoms in order to strengthen collective discipline and by so doing to hasten development. Such a decision, however, was directly opposed to the concept of man enshrined in the Universal Declaration. The individual's freedom to participate in political life implied freedom of expression and opinion and, consequently, the freedom to found constructive opposition parties. To sacrifice the liberties inherent in the human personality in the name of economic development was to reduce the individual to the rôle of producer and consumer of goods, which was far too high a price to pay for improving the material conditions of existence.

162. Some speakers, who also supported the multi-party system, drew a distinction between what they termed "open authority" and "closed authority". They defined the regimes which exercised "open authority" as those in which the will of the people which supported that authority was accepted in all its complexity, and in which the idea of the law was fluid and subject to review. That type of authority was the closest to the democratic ideal. "Closed authority" was the servant of the will of the people, regarded as an unchanging factor. It was not subject to review. Political power was a monopoly. Opinions opposed to those of the authorities were condemned as heretical. In the opinion of those speakers, the single-party regimes tended to have the characteristics of "closed authority". Some speakers, who tried to justify the single-party system, considered that that distinction reflected a purely formal view of political reality. Before forming a judgement as to the value of a regime, it was essential to determine what were the actual dominating forces within the various political systems. In their view, multi-party regimes, which had been incorrectly likened to "open" systems, too often opened the way to the forces of racial hatred, tribalism and selfish interests. Single-party regimes attempted to strip those tendencies of their power and to provide all talents and all popular forces with an opportunity of serving the nation. Nevertheless, the supporters of the multi-party system continued to uphold their point of view.

163. Single-party regimes were criticized, amongst other things, for tending to place authority, without external control, in the hands of a group or an individual. In order to gain official favour, its servants preferred to flatter the leader and to recommend those policies towards which they knew in advance he was inclined. That was why - it was said - the apparently democratic institutions within a single party, such as elections and congresses, were to a large extent an illusion. To say the least, the principle of the single party itself could not be challenged. Influenced by flattery and dominated by personality cults, authority was ill-informed and tended to lose sight of the true aspirations of the masses, even though it had, at the outset, corresponded with the will of the people. In addition, some participants maintained that in certain cases the single party could be the tool of privileged minorities, tending in practice to perpetuate inequalities and not to develop the country's resources in the general interest. However that might be, opposition to the aims and methods of those in authority could neither reveal itself nor hope to succeed by legal means. Its only recourse, in those circumstances, was to become clandestine and to overthrow the Government by subversion, violence and civil war. Military coups d'état, which were becoming so frequent in Africa, seemed to provide ample proof of that. In order to forestall such happenings, the single party was led to establish a regime of police control, and indeed of terror, which seriously encroached upon human rights and necessitated considerable expenditure that conflicted with the requirements of development. Some participants pointed out, to counter those arguments, that

personalization of power and military coups d'état also occurred under multi-party systems. They stressed that Rhodesia and South Africa, where human rights were trampled underfoot, accepted the multi-party system. The opponents of the single party nevertheless maintained their criticisms.

164. A number of speakers considered that the protection of minority groups and the very survival of the individual, threatened by mass civilization, demanded the recognition of personal freedom in the political sphere. That freedom implied the right of every citizen to join opposition parties that were recognized by the law. The existence of a constructive opposition, and the continuance of exchanges between the opposition parties and those in office, constituted essential conditions for survival of a free society. In the young African countries, it was doubtless fitting to avoid conflicts of opinion as to the necessity of developing and building up the nation. The citizens should be persuaded as far as possible to agree upon vital objectives. Nevertheless, it was legitimate for differing opinions to be expressed regarding the ways and means of implementing those programmes. Seen in that light, the continuing exchanges between the opposition and the party in power, far from creating tension or putting a brake on progress, enabled the Government to understand the aspirations of citizens in all their complexity more clearly and to adapt the policy of development to the real needs of the country.

165. Several participants advanced suggestions on the precise means of reconciling the requirements of development with the safeguarding of personal freedom in Africa. Generally speaking, they accepted the fact that the traditional multi-party system, as it existed in the advanced European countries, was perhaps only applicable in the African countries at the present time at the price of serious difficulties.

166. Some of these speakers considered that the single party would be in conformity with democratic principles if it accorded with popular desires, clearly and unanimously expressed, and if the citizens were free at any time to reverse that choice and found a number of parties. Another speaker thought that the single party would not prompt further objections if all citizens without exception joined it voluntarily and if it allowed the free expression of all constructive opinions within its ranks. The single party would, in those circumstances, constitute a kind of parliament under another name. Nevertheless, the speakers were themselves of the opinion that situations such as that would be exceptional, if not impossible to achieve.

167. Some other participants quoted the example of an African country where the Government was in the hand of a very solidly established majority party, which, however, accepted the existence of other parties.

168. Several participants recommended that the various political parties should be encouraged to regroup or to form coalitions based on a joint programme to ensure national development. That solution had prevailed, without any coercion, in some African countries, and it appeared to be bearing fruit. Nevertheless, it was acknowledged that such solutions were not always practicable in view of the acuteness of the tensions between some parties and their mutual distrust.

169. At the close of these discussions on the right to participate in political activities, it was apparent that the speakers, while maintaining the essential

argument in their theses, were agreed in recognizing that personal freedom must be safeguarded, without, however, being allowed to degenerate into licence and irresponsible opposition to development efforts. Nobody defended coercion, but it was recognized that the State could legitimately - and sometimes should - use persuasion in order to achieve popular unity. That was a very complex problem that involved reconciling personal interests with the basic requirements of society. Faced by that problem, each African country should take its own special situation fully into account; it should also avoid setting itself up as a model and condemning the institutions of other countries.

170. With regard to trade-union rights, numerous participants stressed the major importance of those rights as well as the complexity of the trade-union position in Africa today. It was stated, in particular, that the right to form trade unions in order to protect the interests of the different branches was essential in order to ensure the workers' dignity. Indeed, the basic difference between the slave and the free man was that the latter could perform his work freely. Nevertheless, that freedom was illusory if the worker was not supported by his trade union in negotiating contracts of employment and conditions of work. The freedom of trade unionism was guaranteed to employers and workers by many African constitutions and laws.

171. Several participants attempted to single out the main characteristics of problems relating to trade unionism in Africa. They recalled that, during the colonial period, the trade unions had supported the claims of the African workers against capitalist employers, and had powerfully contributed to the struggle for national independence, after forging very close links with the political parties. After independence, the trade unions had adopted varying attitudes. Some continued to direct their efforts mainly to the field of workers' claims, and that policy - perfectly legitimate in itself - had sometimes had the effect of impeding the Government's efforts to promote economic development. Those trade unions tended to lose sight of the fact that, after independence, the main objective was no longer to combat the colonialist exploiters, but to support collective efforts towards increased well-being. Sometimes, too, the trade unions, which had preserved their close links with the parties, engaged in politics and thus exacerbated quarrels that were prejudicial to the national interest.

172. There was agreement in recognizing that trade unionism was a very powerful movement, whose energies should be channelled into activities that were constructive for the country.

173. In that connexion, some observers from Non-Governmental Organizations declared that virtually the entire African trade-union movement recognized the need for a change-over in trade-union activities, in the sense that, in the newly independent and developing countries, the unions should help in the solution of economic problems with a view to promoting higher standards of living for the working masses, while seeing to it that the great social goal of development was never obstructed.

174. Those observers stressed the view that the trade-union movement, which had played an important if not preponderant part in the fight for political independence, could and should, a fortiori, play an essential role in the struggle for economic independence.

175. Various ways had been found of achieving that end. In some countries, there was a conflict between the Government and the trade unions. Trade unionists whose activities in furthering claims and whose meddling in political life were considered contrary to the national interest were harried and sometimes even arrested. In other countries, which had opted politically for the single party, there now existed only one central trade union organization, linked with that party, whose essential aim it was to provide leadership for the workers in support of the State's development efforts.

176. In a third group of countries, freedom to found trade unions and to join them continued to subsist in its entirety, and there were several unions. It was said that, in some of those countries, the trade unions themselves had realized the necessity of moderating their activities in support of claims, and of reforming themselves in order to contribute to development policy. In one of those countries, the trade unions were closely associated with the preparation of the Plan, although their autonomy was fully respected. They were represented on the various competent bodies, and in particular on the Economic and Social Council.

177. In the course of discussions concerning the means of reconciling trade-union freedom with the over-riding needs of development, speakers in general advanced arguments similar to those that they had employed during the debate on the single party. Whereas a number of participants deemed it necessary to regroup the trade unions in a single central organization, linked with the single party, several other speakers considered that respect for freedom of trade-union organization and action could alone enable the authorities to discover the true aspirations of the workers.

178. In view of that complex situation and the variety of choices open, several speakers considered that it was essential to re-examine the problem of the part played by the trade unions in the nation. That study should be undertaken by the Organization of African Unity. These speakers set great hopes on a forthcoming conference on trade-union problems which was to be held under the auspices of OAU. They also announced that the establishment of a Pan-African economic and social council had been proposed to the OAU.

179. The representative of the ILO said that his Organisation attached basic importance to the right of association, by reason of the tripartite structure of all its bodies, and of the fact that the right was a "key" right, at the same time individual and collective. Encroachments upon it led to the whittling away of other rights. He considered that the discussion had centred on two themes: national unity, and economic and social development. For some participants, national unity justified restrictions on the right of association, in particular as far as "tribalism" was concerned. Nevertheless, only socio-economic and cultural analyses would have made it possible to find ways of integrating rather than assimilating traditional communities in the nation as a whole. Trade unionism, which was a modern form of social organization, could play a unifying part. Everybody was agreed in recognizing that, in order to promote economic and social development, it was necessary to obtain co-operation from all forces within the nation, and therefore of the trade unions at the respective levels of the factory, the industry as a whole, and the nation. To achieve that, was it necessary to have a single trade union? The ILO did not think so: a strong and responsible trade union was of course preferable, but unity of the trade unions should only result from the wishes of its members. That unity should neither be established nor maintained by law. Some legal systems appeared very liberal, but analysis of

the laws was not always enough; it was also necessary to know what the true situation was. The trade unions must have the right to organize themselves and to operate freely - which included the right to choose their political allies - without intervention by the State. They should nevertheless act with sufficient circumspection to avoid the possibility of ultimately compromising their independence. If the State wished to obtain a genuine response from the workers, it was clear that it must not dominate their organizations and dictate that response.

## 6. The right to education

180. This item of the agenda was examined at the 14th and 15th meetings of the Seminar, on 16 and 17 February 1966. The discussion leader was Mr. Kisanga (Tanzania).

181. The Seminar was unanimous in recognizing the great importance that the developing countries should give to this right. It was emphatically stated that the right to education was fundamental, that it was essential to the exercise of the other rights, and that in countries of the Third World it played an essential part in development and social progress. Several participants stressed the social value of the right, pointing out that education alone could enable the individual to make an effective contribution to the solution of the various problems facing his country. One speaker observed that the strength of a nation bore a direct relationship to the intellectual level of its people. A further speaker expressed the view that in the African countries the right to education should be regarded as a national concern and not merely as a problem of the Government in power. The general consensus was that everyone should be guaranteed the right to education. Certain speakers stated that the right to education was particularly important for young people, in whose hands the country's future lay.

182. Several participants attempted to define the expression "right to education". Some thought that to educate was to instill in the individual the intellectual, moral and spiritual knowledge that would enable him to face the problems of life. Others defined education as the sum of all the means used to train and develop a human being. A few participants suggested a much narrower definition: they considered that the term "education", as used in article 26 of the Universal Declaration of Human Rights, meant rather the minimum degree of instruction required by every individual in order to meet his basic needs. One speaker considered that "education" had two sides: on the one hand, purely literary education; and, on the other, general education, which made the individual aware of what was going on around him. In his view, the State should assume responsibility for both those aspects.

183. The question of the content and scope of the right to education gave rise to a long discussion. Some speakers felt that the right could be interpreted in two ways: in the first place, it could mean the obligation placed on the State to satisfy that right or, in the second place, it could simply be an expression of the idea that no one might be deprived of it. The same speakers considered that the second interpretation seemed to be more compatible with the means of the developing countries. One participant, after recalling the provisions of article 26 of the Universal Declaration, pointed out that the text gave rise to confusion since the issue should have been stated in terms of an "obligation" and not of a "right". Another speaker condemned the view of certain economists who linked together the

two notions of education and profitability. According to them, the individual in Africa should receive education only to the extent that he was able to contribute to increasing the national income.

184. All participants were of the opinion that application of the "right to education" in their countries came up against difficulties, and even insurmountable obstacles. Some speakers stated that Africa's backwardness in that sphere was due to the discriminatory policies carried out during the colonial period and to the fact that the main purpose of education under colonial rule had been to serve the interests of the colonialists. Most participants emphasized the shortcomings of their national education systems and stated that lack of financial resources was the chief obstacle to the full realization of the right to education. One speaker pointed out that in some countries the demographic explosion had to be taken into account alongside the lack of resources. The weaknesses apparent to varying degrees in almost all the African countries were listed: shortage of schools and teachers, overcrowded classes, low enrolment rates, and the difficulty of recruiting teachers because of the low salaries offered to them. One speaker said that the enrolment rate in his country, which at present ranged between 34 and 62.5 per cent, would reach 100 per cent by 1980.

185. Mention was made of the special problems of certain African countries. One speaker stated that the presence of thousands of refugees on the territory of his country involved serious problems for his Government. Through lack of financial resources, the State was finding it difficult to respect the provisions of the 1951 Geneva Convention, which recommended that the "right to education" should be applied to refugees. He therefore suggested that that Convention be reviewed. The problem of the language of instruction was also raised. One speaker pointed out that the population of certain countries included large ethnic minorities, and he wondered whether the State had the right to force them to be educated in a language not their own.

186. There was a short exchange of views on the question of fellowship-holders who refused to return to their own countries upon completion of their studies. Various opinions were expressed as to the legal and diplomatic means of making them return. After pointing out that the award of fellowships involved considerable expenditure, a few participants said that the African States could not stand such losses for very long. One speaker maintained, however, that in some cases the conduct of fellowship-holders could be explained by the failure of their Governments to find them employment commensurate with their university qualifications and to offer them salaries comparable with those usually given to foreign technical assistants. The Seminar paid special attention to the question of the education of women in Africa. Most speakers acknowledged that in the field of education African women were much less favoured than men, and that at every level of education the number of men was much higher than the number of women. One speaker explained that situation by the fact that the son traditionally inherited his father's position, with the result that the tendency had always been to give a better education to the son, one of whose responsibilities was to look after his unmarried sisters. Another speaker said that until recently tribes had stood in the way of education for women. In many countries, women were generally regarded as less well fitted. Some speakers maintained, however, that in their countries education for women was no longer neglected and that special curricula had been drawn up in order to increase the enrolment of women.

187. The observer for a non-governmental organization said that discrimination between men and women in Africa was apparent both in the quality of education provided and in the enrolment rate. She pointed out that the family was reluctant to make the necessary sacrifices for women, while the State, pleading lack of resources, placed greater emphasis on education for men. A further factor in discrimination was said to be the unfavourable attitude of the boards that awarded scholarships.

188. There was some discussion of discrimination in the education systems of Africa. It was recalled that the educational discrimination practised during the colonial period was one of the causes of Africa's backwardness. One participant said that, before independence, discrimination in primary and secondary education had taken three forms: racial discrimination, religious discrimination, and discrimination within each school on the basis of social status, since only the sons of notables were admitted. Since independence, various reforms had eliminated racial and religious discrimination. Nevertheless, discrimination based on class distinctions still existed to some extent, despite severe measures to combat it. Several speakers vigorously denounced the discriminatory measures taken against the African population in some States.

189. The observer for a non-governmental organization pointed out that educational discrimination gave rise to serious problems even in the rich countries. He thought that in view of the possibility of conflict between different ethnic groups in the countries of the Third World, the African States had an obligation to ensure that education was a factor of international co-operation. He recalled the provisions of the UNESCO Convention against Discrimination and suggested that the Seminar invite the African Governments to ratify it. In addition, he recommended that large-scale international aid should be made available, so that the African States might be enabled to guarantee and fully implement the right to education for all.

190. Many participants stressed the necessity of dealing with the problem of education within the context of development plans, and raised the question whether the individual in the African countries should be entirely free to choose his career. The Seminar recognized unanimously that in Africa programmes of vocational guidance were extremely urgently required, and several participants mentioned various measures taken to that end in their countries. Some speakers, however, said that in their countries the State took indirect action in that connexion. In one country, in order to achieve mobility of labour, the number of fellowships in some fields had been increased and the conditions in which such fellowships were awarded had also been made more favourable. In another country, it had so far not been possible to plan higher education owing to the obvious lack of staff qualified to prepare accurate projections. In still another country, neither the father of a child nor the child himself was permitted to choose his profession. Pupils received guidance according to their skills and capacities for work, and in case of refusal on the part of the parents, the State suspended all assistance towards the child's education. One participant stated that in his country the predominant idea regarding vocational guidance was the "mystique of technology", in order - as he said - to meet the requirements of development. Nevertheless, although he stressed the necessity of devoting special attention to technical training, one speaker pointed out that a mainly technological education would involve risks and might, in some cases, lead to genocide, as education, although centred on technology, must also aim to achieve man's full development.

191. The Seminar devoted lengthy discussions to the part played by the State in education. One speaker emphasized that in many countries it was impossible to guarantee the right to education owing to its economic and financial implications. The participants were, however, unanimous in recognizing that in Africa the State was called upon to play a vital part in the sphere of education. It was pointed out that, as the State had the duty of ensuring the material, moral and spiritual development of all citizens, it was incumbent upon it to spare no effort in making the universal right to education a reality. Opinions were, however, divided as to whether the obligation to provide education in the African countries should fall exclusively on the State.

192. According to some speakers, the State alone should assume that responsibility, and the prohibition of private education would in no way constitute a violation of basic rights. One speaker said that in his country the secularization of education was an unchallengeable principle. Other speakers reported that, in their countries, the State tolerated the establishment of private schools in view of the imbalance between the resources available and the immensity of the task to be accomplished. In the view of one speaker, diversity in education and the existence of private schools would be necessary to bring African youth to its full flowering. In the opinion of the majority of speakers, private schools should be subject to control by the State, not only in respect of the curricula adopted but also in respect of the manner in which instruction was given, as it was needful to ensure that that instruction did not conflict with the aims of the State or with the fundamental choices made by the country. One participant pointed out that in his country the State extended full guarantees to private schools and even subsidized some of them. Varying opinions were voiced on the question of religious education in State schools. One speaker, after noting that the Universal Declaration omitted all reference to religious education, suggested that the State should remain neutral on the subject. Other speakers invoked the principle of freedom of conscience, and considered that religious instruction should be optional.

193. The political aims of Governments in the preparation of educational programmes were referred to. One speaker declared that in his country it was considered necessary to revise the concept of education, as during the colonial period the matter taught tended to destroy the African personality. A second aim of the programme was mass education - to educate the maximum numbers, in the minimum space of time. Another speaker stated that in his country a desperate struggle had begun to put an end to mystification and obscurantism.

194. The majority of speakers mentioned the principal measures taken by their respective countries to make the right to education a reality. Some speakers stressed the increasingly important place given to education in development programmes, and the extremely large sums appropriated for educational purposes. In two countries, the appropriations for education were 21 per cent and 24 per cent of the budget respectively. In that connexion, a speaker observed that many African nations would be well advised to reduce their military budget considerably in favour of education. One participant stressed the fact that education was provided entirely free of charge at all levels in his country. The majority of participants referred to the problems of building schools, of compulsory school attendance at the primary level, of awarding fellowships and of the intensive use of radio. One speaker said that his country was considering measures to encourage nationals who had not obtained the certificate of matriculation to enter a university, so that



they might be enabled to continue advanced studies after passing a "social development" examination. It was also mentioned that a programme of decentralization had been drawn up to facilitate education of the entire population.

195. Some speakers emphasized the importance of the international assistance made available to their respective countries in the educational sphere. One speaker advocated a programme of cultural exchanges between the African countries in order to awaken African awareness. He said that his country was glad to welcome foreign teachers and students. Another speaker launched an appeal for African unity and suggested to the Seminar that the Organization of African Unity be invited to implement the Leopoldville resolution, whereby the African countries would work out a joint policy for education. One participant advocated strengthening the student union movement.

196. The representative of UNESCO dwelt upon the importance attached by that Organization to implementation of the principles formulated in the Universal Declaration of Human Rights. She pointed out that UNESCO was concerned both with the problem of illiteracy and with that of adult education, and that at present it was laying particular stress on the need to guarantee the right to education to all women. A survey was currently being conducted into the possibility of providing women with the means to continue their studies after marriage and to enrol for technological studies. She mentioned the existence of a programme based on the principle that illiteracy could be eradicated during the present generation. She likewise recalled the UNESCO Convention against Discrimination, and stressed the importance of education as a factor in international co-operation and in the maintenance of peace.

197. The representative of the ILO stated that implementation of the right to education was a very long process, even in the advanced countries. He recalled that the ILO had launched a programme of co-operation and assistance, beginning in 1952, in order to further the training of trade-union officials at the national and regional levels. He remarked that the UNESCO literacy programme had evolved, and that the present concept of "functional literacy training" had emerged at the 1965 Teheran Conference. He referred to the work of the ILO in the programmes of vocational guidance and in the establishment of training centres for co-operative officials, social security workers and labour inspectors. Lastly, he stressed that in numerous countries vocational training and in-service training were ill-adapted to industrial development, and that consequently the countries should set about establishing a policy for the assessment and planning of manpower and supervisory staff requirements.

II. Institutions and procedures for ensuring the promotion of and respect for human rights in developing countries. The role of judicial authorities, of parliamentary institutions, and of any other body responsible for encouraging and controlling the implementation of human rights

198. This item of the agenda was examined from the 15th to the 18th meetings of the Seminar, on 17 and 18 February 1966. The discussion leader was Mr. Wade (Senegal).

199. During this debate, some speakers made general statements on the problems relating to human rights in developing countries. Others gave explanations or expressed views concerning agenda items that had already been considered by the Seminar.

200. All speakers recognized the crucial importance of institutions and procedures in connexion with the promotion and protection of human rights. It would be completely idle to proclaim rights unless bodies existed that could make sure they were respected and put into practice. The rule of law was inconceivable without the proper institutions and procedures.

201. The speakers considered in turn the institutions and procedures for the promotion and protection of human rights at the national level, and those which existed or were under consideration at the international level.

1. Institutions and procedures for ensuring the promotion of and respect for human rights at the national level

202. All speakers recognized that authority should belong to the people, and that the establishment of institutions ensuring the implementation of the principle in question was a fundamental condition for the respect of human rights and freedoms. It was essential that the people should be able to choose its rulers periodically at free and honest elections.

203. Under the multi-party system, the purpose of such elections was not only to bring the best candidates to power, but also to allow the people to choose between the programmes of the different parties. Under the single-party system, within which there was general agreement on basic aims, the party leaders were periodically elected by active party members, subjected to criticism, and replaced if the party so desired. It was emphasized that in at least some of the countries which now had a single party, the system was not enshrined in the constitution, and the people still retained every right to create other parties if they considered it necessary in the interests of society.

204. A few speakers thought it essential that human rights should be recognized and guaranteed by a constitution that had been adopted by the people or their elected representatives. In their view, these Bills of Rights should not be capable of modification except by special procedures, that were more elaborate and solemn than those employed for the adoption or amendment of ordinary laws. These speakers also drew attention to the need to formulate in most precise terms the constitutional clauses authorizing limitations on human rights. Any provision which stated that human rights could be exercised "in accordance with the law" in fact gave the ordinary legislator full powers, and completely nullified the special protection of human rights by the Constitution. A precise text, such as the provisions contained in article 29, paragraph 2, of the Universal Declaration, was preferable.

205. In accordance with the constitution, the legislature and the executive - each in its own sphere - promulgated regulations governing the economic, social and political life of the nation. One speaker considered that, while the demands of development in Africa might justify an extension of the scope of regulatory powers, the legislative bodies must not be stripped of all their authority since - it was thought - they maintained the closest contact with the people.

206. It was generally acknowledged to be indispensable that the exercise of the State's power, or its various powers, should be subject to permanent checks in order to ensure respect for human rights.

207. In that connexion, several speakers drew attention to the Supreme Courts which, in many African countries, were responsible for ensuring that the laws were constitutional, for supervising the actions of the executive and regulatory powers, and for examining the legality of judicial decisions. Africa seemed to have introduced an innovation by adapting the functions of that institution, which played the rôle of Constitutional Council, Council of State, Court of Appeal and Audit Office, and also acted as adviser to the Government and the legislative body on proposed new laws and bills. It was pointed out that that institution existed under both multi-party and single-party systems.

208. Within a certain time-limit, the Supreme Court could declare unconstitutional any law that the President of the Republic submitted to it, and that law might not then be promulgated. Whereas in several countries the right to place a matter before the Supreme Court belonged solely to the President of the Republic and in some cases also to the President of the Legislative Assembly, in at least one country - which, incidentally, had a single party system - the Court was officially entitled to pronounce on the constitutionality of the laws, taking into account the appeals made by citizens whose interests might be prejudiced by the law in question.

209. Supervision of the executive and of regulatory powers was carried out not only by the Supreme Court and, under its authority, by the courts of law, but also by other bodies. Several speakers referred to the supervision exercised by legislative bodies. In particular, mention was made of the right of members of certain parliaments to challenge and criticize the Government in connexion with its general policy and its specific decisions. The Government was then obliged to reply to these questions within a certain time-limit.

210. One speaker considered that parliamentary control was particularly vital when a state of emergency existed, involving the suspension of various human rights and the extension of police powers. He said that in his country the Government's authority to proclaim a state of emergency was limited, since such a state might not exceed a maximum length of time laid down by the Constitution, while the Legislative Assembly had to meet immediately, of its own authority.

211. Another participant said that his country, in addition to having the usual constitutional institutions, provided that every citizen or inhabitant could appeal against administrative abuses to an Office of Appeals and Orientation, which came under the authority of the Head of State. That Office undertook inquiries and transmitted the complaints it considered well-founded to the Office of the Public Prosecutor. The Public Prosecutor had to report back to the Office within a month and, when necessary, place the matter before the competent legal authority.

212. Several speakers drew attention to the institution of the Ombudsman which, originating in Sweden, had now spread to a few non-African States and would possibly be adopted by an increasing number of countries. Briefly stated, it consisted of an individual, appointed by Parliament but acting independently, to whom any citizen might address complaints or information concerning administrative abuses. On the basis of those complaints, or on his own initiative, the Ombudsman could undertake the most wide-ranging inquiries, inspect the offices of the administration, and call for any documents he required. He could not himself nullify or punish decisions, but made suggestions and recommendations, which were generally followed, to the responsible officials. In fact, the Ombudsman, if abuses were not rectified, was empowered to report the offending official to his Minister, recommend disciplinary measures and, when necessary, call upon the courts

to institute legal proceedings. He could recommend to Parliament the adoption of those reforms which he considered necessary, and he sent it an annual report on his work. Several speakers considered that the Ombudsman had proved his worth in those countries where the institution existed, and did not duplicate the work of other supervisory bodies. The result of his efforts was not only to safeguard human rights, but also to combat administrative inefficiency. Some participants thought that the adoption of that institution might be envisaged in the African countries, and one of them suggested that the Ombudsman could be elected by universal suffrage. Another participant, however, thought that the effect of the institution might be to concentrate too much power in the hands of a single person.

213. Several participants drew attention to what they considered to be the essential features in the administration of justice, if human rights were to be respected as fully as possible.

214. In several African countries efforts had been made to bring justice within the reach of the citizen by increasing the number of courts and by obliging the judges to take justice to the litigant rather than making him come to the court.

215. Mention was also made of the far-reaching measures adopted in certain countries to make justice simpler and less expensive - even free of charge - for the parties. For instance, auxiliary functions regarded as inessential, such as those of court ushers and notaries, had been eliminated, while legal expenses had been reduced, and in some cases completely abolished.

216. Many participants addressed themselves to the problems relating to the legal profession and in particular to legal aid. It was emphasized that the existence of a competent and courageous Bar was a most important factor in the protection of human rights. Some speakers, however, thought that the Bar, as an institution, should be reorganized to meet African needs. In view of the poverty of most ordinary citizens, the granting of free legal aid in Africa was both an acute need and a difficult objective to attain. State budgets and those of public collective bodies were quite inadequate to finance a wide programme of legal aid. In many countries the legal profession could, of course, play a valuable rôle by encouraging its members to offer their services free of charge to indigent persons. Nevertheless, a very great deal had still to be done in that field in Africa.

217. Several participants indicated or recalled (see item II above) the basic guarantees which should be included in all legal procedures. For instance, reference was made to the principle of presumption of innocence; the rule that the burden of proof, except in rare exceptions, should lie with the prosecution; the rules governing the admissibility of evidence, and in particular the exclusion in several countries of confessions made by the accused under pressure, or without having been duly informed of his right not to make a statement; and the need to limit police powers during custody, since the authority to interrogate on the substance of an issue should be vested exclusively in the judge. Emphasis was placed on the importance of habeas corpus, applicable in certain countries, in putting an end to illegal arrest and detention. In other countries, provisional release was the rough equivalent of that practice. One speaker said that an effort was being made in his country to forestall possible abuses of police custody by making a medical examination of the detainee compulsory, if requested by the person concerned, a relative, or his lawyer. In connexion with arbitrary detention, an explanation was given of the work of an international non-governmental organization

which attempted to prevent imprisonment solely for the non-violent expression of political opinions. In order to avoid certain abuses and to help rehabilitate convicted persons, one participant thought that the judge who had pronounced sentence should himself supervise its application. Many participants believed it was a fundamental right of the accused to have the assistance of a lawyer both during the judicial enquiry and the trial. Unfortunately, difficulties arose in that connexion over the granting of legal aid (see preceding paragraph).

218. A number of speakers drew attention to the important rôle played by various non-governmental organizations in the African countries. Those organizations helped to promote human rights by informing people of those rights and by teaching them, through joint endeavour, to respect other people and the supremacy of the law. Special mention was made of women's organizations, voluntary workers' organizations established under UNESCO auspices, and co-operatives, including in some countries the new institution of school co-operatives. The latter consisted of voluntary groups of school children, within which the pupils learned in practice the rules of conduct of a democratic society.

219. One speaker thought that a free Press had a vital part to play in disseminating the truth and informing the public of human rights.

220. In the view of several participants, high priority should be given to the various educational efforts made in that field since, in the last analysis, the best guarantee of freedom was the individual's awareness of his rights.

221. While all speakers acknowledged the need for institutions and procedures to safeguard human rights, and while no one objected to the principles and opinions set forth in the preceding paragraphs, different views were expressed as to the significance and scope that should be accorded to certain institutions in Africa to-day. The debate focussed on two institutions: the separation of powers, and the independence of the judicial authorities.

222. Several participants attached importance to the principle of the separation of legislative, executive and judicial powers. That principle had to be applied so that power might counterbalance power. They stressed the fact that, in their view, that separation should be real and not merely formal. Bodies could exist that were officially separate, but whose powers were in fact concentrated in the same hands. That was the case - according to some speakers - under the single-party system. It was also stated that the separation of powers should not lead to excessive complication in the way they worked. One speaker said he preferred a presidential regime with a two-party system, and he criticized the underlying faults of an apparently democratic constitution in which the executive was divided into two equally important functions, whose holders were both elected by universal suffrage. The result had been a state of acute conflict, reflecting deep tribal and regional rivalries. That conflict had unhappily been settled by a military coup d'état.

223. Several speakers regarded the independence of the judiciary as most important, perhaps the most basic guarantee of human rights. It was essential that the persons responsible for applying and interpreting human rights, and for supervising other authorities, should be protected from pressures and approaches from all other authorities, groups or individuals. To maintain the independence of the judiciary necessarily implied certain legal guarantees. Judges should be appointed by a procedure which excluded all partisan influence. In several countries, for

instance, they were appointed by the Head of State after consultation with or on the proposal of the Conseil supérieur de la Magistrature, which was mainly composed of senior judges, both elected and appointed. It was essential that judges should be appointed for life, i.e. subject to dismissal only by the Conseil supérieur de la Magistrature, the Supreme Court, or by other special procedures, and then only in exceptional cases. The remuneration and advancement of judges should also be regulated in such a way as to exclude any political interference. Furthermore, in order to maintain his full independence and impartiality, the judge should cultivate in himself certain moral and intellectual qualities. While it was desirable that he should be fully aware of the general interests, he should not espouse partisan political causes, even in his own mind. Some speakers even thought that he should perhaps avoid having too close or too intimate social contacts with the people among whom he dispensed justice, as this might make it difficult for him to remain sufficiently impartial.

224. Some speakers voiced their apprehension about the special courts set up in several African countries to judge political crimes. In their view, the activities of those courts might encroach upon human rights if they were composed of members of the ruling party and did not allow the accused to defend himself effectively.

225. Other participants thought that institutions had no meaning or value unless they met the demands of society at a given stage in its evolution. In their opinion, there was a discrepancy at the present time in Africa between the institutions, often inherited from the colonial system, and the aspirations of the masses. Those institutions concealed internal contradictions between three factors: African traditions, the continuing influence of the colonial system, and the progressive tendency towards nation-building and national development. African traditions and the continuing influences of the colonial regime tended to maintain certain institutions. When put into effect, however, those institutions were often found to conflict with the essential needs of the young African countries.

226. According to those speakers, the system of separation of powers, as it had been conceived by European thinkers of the eighteenth century, could not be applied to contemporary Africa without some reservations. It was possible that under other social conditions, the separation of powers, in that particular form, might be a necessity. But in the African countries, or at least in several of them, the people's basic aspiration was for unity, which was indispensable for nation-building and development. The classical separation of powers often did no more than reflect racial or tribal antagonisms or the clash of selfish interests. The need for popular unity implied a need for fundamental unity of power, in the service of the people.

227. Those speakers also stated that the traditional principle of the independence of the judiciary, and the very notion of a "judiciary" strictly separated from all other political bodies and social forces, were no longer adapted to the requirements of the developing African countries.

228. Of course the judge had to be impartial in order to deserve the confidence of the people. It was also agreed that he could not be appointed or elected to political posts. But, according to the same group of speakers, he should remain in close contact with social realities and express popular aspirations in his work. He could and should be an active member of the single party, and participate in the

life of the party. The judge should never be separate from the people. His high vocation was to interpret the will of the people, and to instil into the masses a respect for the law in the light of development needs.

229. It was emphasized that in the countries which had adopted that point of view, the State made a very strong effort to bring justice closer to the citizen, to simplify the administration of justice, and to make it free or less expensive. Other measures had also been taken, such as the establishment in villages of bodies enjoying the confidence of the people and entrusted with the task of reconciling the parties to disputes, and thus preventing the courts from being flooded with relatively unimportant cases.

230. Some of the participants who defended that point of view also stated that their countries were opposed to the creation of special courts such as military tribunals. The legal privileges characteristic of the colonial system had been abolished. Nevertheless, the elected members of legislative bodies could be arrested and prosecuted only if they were caught flagrante delicto. Furthermore, certain public officials could be prosecuted only with the preliminary authorization of the Head of State.

231. The situation in certain countries with regard to economic criminal law, and particularly the suppression of the crime of embezzling public funds, was referred to as an example of the contradiction between the traditional concepts borrowed from Western Europe and African development needs. Suppression of that crime was of great importance in the developing countries of Africa, since it was particularly necessary to protect public funds from the depredations of corrupt individuals. However, some participants thought that those offences should be strictly defined, that proof of intent should be required, and that other legal guarantees of a liberal kind should be accorded to the accused. Other speakers believed that by keeping all those guarantees intact, it would be impossible to combat the embezzlement of public monies effectively. Certain individuals managed to commit actual robbery without overstepping the limits of the law. It had therefore been decided in certain countries to amend the law by increasing the severity of punishments, and by restricting in particular the judge's right to take extenuating circumstances into account.

232. Another speaker drew attention to the difficulties that arose through the strict application of regulations borrowed from certain Western systems of criminal procedure, particularly with regard to the admissibility of confessions as proof. Persons suspected of having committed a criminal offence were interrogated in the first place by the village chief. The information he transmitted often constituted the principal proof of the guilt of the accused. Such confessions were sometimes rejected by the courts on the grounds that the accused, who was technically under arrest, had not made them voluntarily, and had not been duly informed of his right not to make a statement or of the possibility that his statement would be used in evidence against him. Those excessively strict rules should be modified, or should be interpreted more flexibly, in the interests of the sound administration of justice.

233. Some speakers thought that institutions should not be adapted to African requirements, but that a courageous choice should be made between those institutions of the classical type and the demands of national development. Such a choice involved a certain degree of risk, but that risk should be run in order to avoid economic stagnation and to build up the nation.

234. Some speakers considered that, regardless of the political system, the legal institutions and procedures of the African countries should provide guarantees of equity and impartiality in order to attract the foreign investment that was so essential to economic development. It was emphasized that fair compensation should be paid when confiscation or expropriation was carried out in the public interest.

235. Some participants stressed the important part that trade unions, in some cases unified and linked to political groupings, should play in safeguarding the rights of workers and stimulating economic development. In some countries, the trade unions were closely associated with the task of drawing up development plans, and had representatives on all the main competent bodies (cf. the agenda item on the right to participate in political activities, particularly in relation to freedom of association, including trade-union rights).

2. Institutions and procedures for ensuring the promotion of and respect for human rights at the international level

236. A number of speakers considered that it was desirable to envisage the establishment of institutions and procedures for ensuring the promotion of and respect for human rights at the regional and international levels.

237. The exceptional importance and increasingly wide impact of the Universal Declaration of Human Rights were stressed. Some speakers said that, in their opinion, the principles formulated in that document were so widely accepted in laws and judicial decisions that they might be considered as being the standards of customary international law. Nevertheless, some participants considered that the Universal Declaration, which had been adopted in 1948 when the African peoples were not yet independent, did not fully reflect the standpoint of those countries. They stated that they supported the maintenance and ever wider application of the Declaration, but they considered that it required amendment in order to be truly universal.

238. Reference was made to the work of standardization carried out by the United Nations, the specialized agencies and the regional organizations, so that the principles of the Universal Declaration might find expression in legal instruments of a binding character. The preparation of draft international covenants on human rights was a task that was both necessary and difficult to accomplish. The United Nations had, in the meantime, adopted other conventions on particular rights or groups of rights, such as the Convention on the Elimination of all Forms of Racial Discrimination.

239. Several speakers drew attention to the necessity of not only defining human rights in international conventions, but also and above all of including in them measures ensuring their international implementation. Such measures could be contained both in conventions of world-wide application and in regional conventions.

240. In that connexion, reference was made to the European Convention on Human Rights, and the system of implementation provided for under that Convention was described in detail. The Convention allowed States that were parties to it to lodge complaints against other contracting parties regarding any violation of the rights that were covered and guaranteed by its terms. Furthermore, the Convention contained two optional clauses of considerable significance in the protection of human rights. One clause afforded individuals who considered they had suffered



injury the right to bring the matter before an international body, the European Commission on Human Rights. That body had wide powers of investigation and conciliation. In cases where attempts at conciliation were unsuccessful, the Commission or the country concerned could refer the issue to the European Court of Human Rights, whose decisions were binding on States parties to the Convention. The optional clauses had entered into force, and the bodies provided for under the European Convention had already performed a useful task.

241. Some speakers wondered whether it was not desirable to establish similar institutions in Africa, for example within the framework of the Organization of African Unity. Some participants declared themselves in favour of that idea. Others, although they were not opposed to such efforts, emphasized that the underdeveloped African countries, so recently freed from the colonial yoke, were particularly jealous of their sovereignty. It would thus perhaps be difficult for them to accept the limitations of sovereignty that accession to institutions such as the European Convention on Human Rights would entail. Some speakers maintained, furthermore, that it was appropriate to ensure effective protection of human rights in each individual African country before proceeding towards regional or international institutions. It was expedient to move slowly but surely towards establishment of those regional institutions designed to protect human rights. Meanwhile, certain achievements on a more modest scale, such as bilateral or multilateral conventions on establishment, would ensure protection of human rights within restricted fields. Some speakers considered that, in any event, any international or regional institution designed to implement the protection of human rights would only be acceptable to the African countries if the standards applicable by such institutions were to some extent defined anew. Thus, reservations were expressed regarding the Statute of the International Court of Justice, whereby that Court applied, more particularly, the general principles of law recognized by the "civilized nations". According to those speakers, what was in fact involved was a set of principles defined by the only countries - mainly the advanced Western countries - that had been independent at the time when the Statute had been adopted. Those limitations probably explained the relative ineffectiveness of the International Court of Justice.

242. Several speakers mentioned the plan, which was currently under consideration by the United Nations, to appoint a United Nations High Commissioner for Human Rights. That plan was in no way intended to authorize interference by an international or supranational body in the domestic affairs of States. It was, on the contrary, designed to provide States with the assistance of an eminent independent personage, with a view to solving the various problems connected with human rights that might exist in those countries, amicably and without friction. The institution of a High Commissioner, unlike other forms of international implementation, would have the advantage of providing very flexible procedures, designed to encourage the settlement of problems relating to human rights before they degenerated into acute conflicts. Governments of good will, assured that the High Commissioner would use the greatest discretion in exercising his powers, need have no fears of inopportune publicity. Some speakers expressed their deep conviction of the effectiveness of the proposed institution, and urged the countries whose nationals were participating in the Seminar to recommend their respective Governments to examine the plan attentively. However, some speakers thought that the institution of a United Nations Commissioner for Human Rights might lead to interference in the domestic affairs of States.

243. Some speakers drew the attention of the Seminar to the recent decisions by the United Nations to designate 1968 as International Year for Human Rights. The General Assembly had invited States, as well as all the organizations and groupings concerned, to intensify their efforts to ensure the furtherance and protection of human rights on that auspicious occasion. The Assembly had, in particular, recommended that each State should review its domestic institutions and procedures, ratify a number of international Conventions and endeavour to work out regional systems for protecting human rights.

244. The observer for the Union of Soviet Socialist Republics began by stressing the important role played by the African countries, together with socialist countries and other States, in strengthening the protection of human rights throughout the world. In particular, they had played a vital part in the adoption of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, the Declaration on the Elimination of All Forms of Racial Discrimination, and the International Convention on the same subject. Regrettably, it had to be recorded that in some parts of Africa, Governments were pursuing policies of oppression, hatred, racial discrimination and apartheid. It was fitting to recall that international law currently in force, and particularly the Charter and Judgement of the International Tribunal of Nürnberg, condemned those practices as crimes against humanity, and provided for the punishment of their authors and accomplices. The international community must take energetic measures to apply those principles to the criminal Governments concerned.

245. According to the USSR observer, it had become apparent during the course of discussions at the Seminar that the most important problems relating to human rights in Africa were the consequences of colonial domination, and of economic and social under-development. Already half a century ago, the Soviet Union had embarked on radical social and economic development in order to create a socialist society. Despite certain difficulties, those efforts had been crowned with success. In the Soviet Union, political power rested completely with the masses of working people and the State institutions and administrative apparatus were the expression of that fundamental choice. Within the framework of the socialist economy, the main objective was to develop the culture and well-being of the people. The concept of human rights was considerably broadened and enriched. The aim was to further the freedom of the majority of the population, not the privileges of minorities, and strong emphasis was placed on guarantees permitting the concrete achievement of human rights, rather than on formal declarations. Under the Constitution, the organs of the State were obliged to take measures implementing the rights of citizens - for instance, the right to work, the right to rest and leisure, the right to social security and the right to education. Public property was protected, as being the source of well-being for the citizens.

246. The Soviet State was particularly concerned with ensuring the accelerated economic, social and cultural development of those areas in the Soviet Union that had previously been the most under-privileged.

247. The USSR observer particularly emphasized the importance of the right to education. The implementation of that right was assured in the Soviet Union by systems providing education free of charge, scholarships, instruction in national languages, the establishment of vocational and technical training centres in the factories and State farms, and the founding of numerous universities. The USSR opened its doors to young people from the under-developed countries, who were enabled to pursue their studies in its territory.

248. Turning to the international protection of human rights, the USSR observer expressed the opinion that the idea of national sovereignty still subsisted in international law. Protection of human rights should thus be implemented first and foremost within each State. The Charter of the United Nations was not designed to infringe sovereignty, but to organize co-operation among free peoples. States could, of course, become parties to international conventions for the protection of human rights. No international institution or procedure for purposes of implementation could be established outside the framework of the conventions. For that reason, a number of countries opposed the setting up of a United Nations High Commissioner for Human Rights, who might intrude upon internal affairs and violate the sovereignty of States. Instead, various forms of international assistance for the promotion of human rights should be further strengthened by the most appropriate means.

249. Lastly, the USSR observer expressed the opinion that there already existed, within the framework of the United Nations, adequate machinery to ensure the prevention and punishment of the criminal activities of certain Governments that practised racial discrimination and apartheid. Such activities constituted threats to international peace, and were in themselves international crimes. It was imperative to apply sanctions to those criminal Governments.

250. The observer for the International Labour Organisation emphasized that articles 22 and 28 of the Universal Declaration of Human Rights proclaimed the need for national effort and social order on the one hand, and for international co-operation and an adequate international order, on the other hand. Thus, in addition to technical assistance within the framework of international co-operation, machinery for implementation and for reciprocal surveillance at the international level was also necessary.

251. To that end, the International Labour Organisation had laid down four types of procedure.

252. The actual Constitution of the ILO provided for procedures to deal with complaints and appeals. Those complaints and appeals could be submitted to the competent bodies of the ILO not only by member States, but also by the representatives of employers' and workers' organizations at the International Labour Conference. Those procedures had seldom been employed. One of the matters recently investigated had been in connexion with the complaint lodged by Ghana against Portugal, on the subject of the situation in certain African territories. Within the context of those procedures, the competent bodies of the ILO had set up commissions of inquiry, which had submitted very concrete and detailed conclusions.

253. Moreover, any State that had ratified an international labour convention was required to transmit an annual report to the ILO on the measures it had taken in implementation of the convention. Furthermore, when those conventions were drafted, the circumstances peculiar to each member country were taken into account to a large extent. The member countries had an obligation to submit the conventions adopted by the ILO to the legislative bodies in their countries, which sometimes permitted the members of the legislature to initiate ratification of those instruments, whereas the Government itself might perhaps have hesitated to propose that course. A Committee of Experts of the ILO for the application of international labour standards considered those reports very closely. It raised precise questions with Governments, and made concrete observations to which

Governments replied at the Conference before a tripartite commission. In 72 per cent of cases, the Committee of Experts had not had cause to make observations. In most of the remaining cases, the Government had followed all or part of the recommendations of the ILO; in only 10 per cent of cases had the Government concerned stated that it was unable to do so.

254. The ILO had thus, in conjunction with the United Nations, established special machinery for watching over the freedom of the trade unions. Allegations relating to infringements of trade-union rights, submitted by Governments or by trade organizations of employers and workers, were subject to investigation and conciliation procedures. The Committee on Freedom of Association of the ILO Governing Body had acted energetically and achieved very positive results, especially in obtaining the commutation of death sentences pronounced against trade unionists accused of subversive activities.

255. The ILO observer also mentioned ad hoc procedures that had been established from time to time by the ILO, for example the study of forced labour which had been conducted jointly by the United Nations and the ILO.

256. The ILO observer indicated the practical obstacles to the application of economic and social rights; for example, the complex mass of labour laws and regulations should be compiled in collections which would be easy to consult, so that the workers would be in a position to understand what their rights were.

257. The ILO observer said in conclusion that, in his opinion, the normative and operational activities of his Organisation had provided proof that economic and social rights could be the subject of useful measures of international aid and supervision. There was surely no need to be caught in a dilemma between coercion and laissez-faire.

258. The observer for the World Health Organization emphasized that, in the course of discussion, the Seminar had dealt directly or indirectly with one of the most sacred of human rights, namely the right to health. He quoted the text of article 25 of the Universal Declaration, and article 13 of the draft International Covenant on Economic, Social and Cultural Rights, which in their detailed formulation enshrined a very broad conception of the right to health.

259. The WHO observer then recalled a number of contributions to the debate which had directly or indirectly referred to the right to health in its relationship with other human rights and the actions of public authorities. In particular, there had been allusions to scientific methods of torture, in which the use of truth drugs and electroencephalograms had been included. Without denying the encroachment on the moral integrity of the person which these methods implied, the WHO observer pointed out that they did not occasion suffering comparable with that caused by outright brutalities. As far as the right to work and fair working conditions were concerned, whatever policy - coercion or persuasion - were adopted in those matters, all measures aimed at fostering economic development remained ineffective if there was a failure in the first place to ensure that the health of the workers was good. The relationship between the right to health and freedom in religious matters sometimes presented the practitioner with distressing cases: some customs conflicted with the introduction of scientific practices. It was necessary to increase efforts in health education, so as to bring enlightenment to the individual African, over whom the domination of such backward customs was still

powerful. Nevertheless, it was necessary to avoid occasioning an upheaval in ways of life that were centred upon such customs. A social change was required, but WHO had no jurisdiction in that field, although its programmes exercised an appreciable influence in the socio-cultural sphere.

260. Turning to the problems connected with fellowship-holders who studied abroad, the WHO observer stated that under the WHO fellowship programme the beneficiary was given a guarantee that his absence abroad would not prejudice either his position or such other advantages as a career in his own country offered. These agreements on WHO fellowships also contained a clause whereby the fellowship-holder undertook to return to his own country and to enter the service of the national health administration for a certain period.

261. WHO rendered large-scale assistance to the developing countries in various forms. In particular, it helped Governments to work out and implement plans for health improvement, and to integrate them into the framework of the general development plan. It was desirable that an increased proportion of national income should be earmarked for the promotion of public health in the developing countries. The health of individuals was one of the conditions vital to the full fruition and economic prosperity of the developing countries. WHO, moreover, co-operated with the United Nations and the specialized agencies in the furtherance of human rights.

262. At the close of the discussion on agenda item II, it became apparent that, whatever their regime might be, all States were agreed in recognizing the necessity of establishing institutions for ensuring the promotion of and respect for human rights. The paths chosen might be different, but they all converged upon the goal of African progress and thereby held out promise of universality.

263. At the conclusion of the debate on the agenda, one speaker proposed that the Seminar should request the Secretary-General of the United Nations to bring the report on its work to the notice of the Secretary-General of the Organization of African Unity.

#### C. ADOPTION OF THE REPORT

264. At its closing meeting, the Seminar adopted its report unanimously.