REPORT

OF THE

HUMAN RIGHTS COMMITTEE

GENERAL ASSEMBLY

OFFICIAL RECORDS: THIRTY-EIGHTH SESSION

SUPPLEMENT No. 40 (A/38/40)

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NOTE

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

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I. INTRODUCTION

A. States parties to the Covenant

1. On 29 July 1983, the closing date of the nineteenth session of the Human Rights Committee, there were 75 States parties to the International Covenant on Civil and Political Rights and 29 States parties to the Optional Protocol to the Covenant which were adopted by the General Assembly in resolution 2200 A (XXI) of 16 December 1966 and opened for signature and ratification in New York on 19 December 1966. Both instruments entered into force on 23 March 1976 in accordance with the provisions of their articles 49 and 9 respectively.

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

3. Reservations and other declarations have been made by a number of States parties in respect of the Covenant or the Optional Protocol. These reservations and other declarations are set out verbatim in the documents of the Committee (CCPR/C/2 and Add. 1-6).

B. Sessions

4. The Human Rights Committee has held three sessions since the adoption of its last annual report: the seventeenth session (383rd to 409th meetings) was held at the United Nations Office at Geneva from 11 to 29 October 1982; the eighteenth session (410th to 436th meetings) was held at United Nations Headquarters, New York, from 21 March to 8 April 1983; and the nineteenth session (437th to 464th meetings) was held at the United Nations Office at Geneva from 11 to 29 July 1983.

C. Membership and attendance

5. At the fourth meeting of States parties held at United Nations Headquarters, New York, on 17 September 1982, in accordance with articles 28 to 32 of the Covenant, nine members of the Committee were elected to replace those whose terms of office were to expire on 31 December 1982. The following three members were elected for the first time: Mr. Joseph Cooray, Mr. Vojin Dimitrijevic and Mr. Roger Errera. Messrs. Bouziri, Dièye, Graefrath, Opsahl, Prado Vallejo and Tomuschat, whose terms of office were to expire on 31 December 1982, were re-elected.

6. At the opening meeting of the eighteenth session, held on 21 March 1983, the temporary Chairman informed the Committee of the death of Committee member Mr. Abdoulaye Dièye. Members of the Committee, who expressed their sorrow at the untimely death of Mr. Dièye, also paid tribute to his contribution to the work of the Committee, in particular, and to the promotion of human rights, in general.

7. At the fifth meeting of States parties held at United Nations Headquarters, New York, on 21 July 1983, in accordance with articles 28 to 34 of the Covenant, Mr. Birame Ndiaye (Senegal) was elected to fill the vacancy created by the death of Mr. Abdoulaye Dièye (Senegal). A list of the members of the Committee is given in annex II below.

8. All the members, except Mr. Dièye, attended the seventeenth session of the Committee. All other members, except Mr. Movehan, attended the eighteenth session. The nineteenth session was attended by all the members. At this session, the Committee was informed by its Chairman, that, to his great regret, he had to announce the resignation of Committee member, Mr. Walter Tarnopolsky (Canada), due to his recent appointment as a judge of the Ontario Court of Appeal. The resignation was to be effective as from 1 August 1983. Members of the Committee shared with the Chairman his regret at the resignation of Mr. Tarnopolsky who had served on the Committee since its inception and paid tribute to his contribution to the achievements of the Committee and to his dedication to the cause of human rights.

D. Solemn declarations

9. At the opening meeting of the eighteenth session, before assuming their functions, those members of the Committee who were elected or re-elected by the fourth meeting of the States parties to the Covenant made a solemn declaration in accordance with article 38 of the Covenant.

E. Election of officers

10. At its 411th meeting, held on 21 March 1983, the Committee elected the following officers for a term of two years in accordance with article 39, paragraph 1, of the Covenant.

Chairman:	Mr. Andreas V. Mavrommatis
Vice-Chairmen:	Mr. Nejib Bouziri Mr. Bernhard Graefrath Mr. Julio Prado Vallejo
Rapporteur:	Mr. Walter Tarnopolsky

F. Working groups

11. In accordance with rule 89 of its provisional rules of procedure, the Committee established working groups to meet before its seventeenth, eighteenth and nineteenth sessions in order to make recommendations to the Committee regarding communications under the Optional Protocol.

12. The Working Group of the seventeenth session was composed of Messrs. Ermacora, Hanga, Mavrommatis and Prado Vallejo. It met at the United Nations Office at Geneva from 4 to 8 October 1982 and elected Mr. Hanga as its Chairman/Rapporteur. The Working Group of the eighteenth session was composed of Messrs. Herdocia Ortega, Prado Vallejo and Sir Vincent Evans. It met at United Nations

Headquarters, New York, from 14 to 18 March 1983. Sir Vincent Evans was elected Chairman/Rapporteur. The Working Group of the nineteenth session was composed of Messrs. Al Douri, Hanga, Prado Vallejo and Sir Vincent Evans. It met at the United Nations Office at Geneva from 4 to 8 July 1983 and elected Sir Vincent Evans as its Chairman/Rapporteur.

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

14. The Working Group of the eighteenth session was composed of Messrs. Bouziri, Graefrath and Tomuschat. It met at United Nations Headquarters, New York, from 14 to 18 March 1983 and elected Mr. Bouziri as its Chairman/Rapporteur.

15. The Working Group of the nineteenth session was composed of Messrs. Bouziri, Graefrath, Herdocia Ortega, Movchan and Tarnopolsky. It met at the United Nations Office at Geneva from 4 to 8 July 1983 and elected Mr. Bouziri as its Chairman/Rapporteur.

G. Agenda

Seventeenth session

16. At its 383rd meeting, held on 11 October 1982, the Committee adopted the following provisional agenda, submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its seventeenth session:

1. Adoption of the agenda.

2. Organizational and other matters.

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

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

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

Eighteenth session

17. At its 411th meeting, held on 21 March 1983, the Committee adopted the following provisional agenda, submitted by the Secretary-General in accordance with rule 6 of the provisional rules of procedure, as the agenda of its eighteenth session:

1. Opening of the session by the representative of the Secretary-General.

2. Solemn declarations by the newly elected members of the Committee in accordance with article 38 of the Covenant.

3. Election of the Chairman and other officers of the Committee.

4. Adoption of the agenda.

5. Organizational and other matters.

6. Action by the General Assembly on the annual report submitted by the Human Rights Committee under article 45 of the Covenant.

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

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

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

Nineteenth session

18. At its 437th meeting, held on 11 July 1983, the Committee adopted the following provisional agenda, submitted by the Secretary-General, in accordance with rule 6 of the provisional rules of procedure, as the agenda of its nineteenth session:

1. Adoption of the agenda.

2. Organizational and other matters.

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

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

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

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

II. ORGANIZATIONAL AND OTHER MATTERS

A. Question of publicity for the work of the Committee

19. At its seventeenth session, the Committee resumed consideration of its proposed annual publication in bound volumes of its documents as well as the question of publication of selected decisions adopted by it under the Optional Protocol, in the light of the report of the Secretary-General to the General Assembly on publicity for the work of the Human Rights Committee (A/37/490) and the working paper on the publication of decisions under the Optional Protocol as prepared by the secretariat in consultation with Committee member, Sir Vincent Evans.

20. Noting that the question of annual publication in bound volumes of the Committee's documents was of some urgency since it was shortly to be taken up by the Third Committee of the General Assembly, the Committee approved the text of a letter to be addressed by its Chairman to the Secretary-General (see annex IV below).

21. Members of the Committee exchanged their views on the working paper containing selected decisions under the Optional Protocol as submitted by the secretariat. They agreed that efforts should continue to finalize the text of the publication and authorized the secretariat with the help of Sir Vincent Evans and, if necessary, other members of the Committee, to revise the existing text in the light of the exchange of views which had taken place in the Committee 1/ and that, assuming that the revision exercise could be completed before the next session, an open-ended editorial group might meet early on in the session for the purpose of going through the revised document.

22. At its eighteenth session, the Committee was informed of General Assembly resolution 37/191, which took note, with appreciation, of the request of the Human Rights Committee that its official records should be made available annually in bound volumes, and that the Secretary-General would give careful consideration to the possibility of publishing the annual bound volumes of the documents of the Committee within available resources during the current biennial; that should funds not be available during the current biennium, they should be requested as from the biennium 1983-1985; that, if approved, the publication of the volumes would then commence from 1984; and that it was the intention of the Secretary-General, subject to the availability of funds, to publish the volumes initially in English and French only, as a measure of economy.

23. The Committee took note with appreciation of the General Assembly resolution on the subject and requested the secretariat to pursue with due urgency its efforts to have those volumes published as soon as possible.

24. The Committee exchanged views on the revised text of the working paper containing selected decisions under the Optional Protocol and decided to authorize by consensus the publication of the revised text in its present format.

25. At its nineteenth session, the Assistant-Secretary-General, Centre for Human Rights, informed the Committee that regrettably there were no resources within the present biennium. However, resources had been requested for the biennium 1984-1985 to produce two bound volumes per year. That arrangement would be continued in

subsequent programme budgets. He added that continued efforts would be made to cover the outstanding years, having regard to the availability of resources. Members of the Committee expressed their dissatisfaction at the delay in the publication of the annual bound volumes, as the publication was an extremely important means in the Committee's efforts to promote the cause of human rights through the most effective exercise of its functions under the Covenant. Members also indicated that the volumes should commence from the first year of the Committee.

B. Action by the General Assembly on the annual report submitted by the Committee under article 45 of the Covenant

26. At its 414th meeting held on 23 March 1983, 2/ the Committee considered this item which was placed on the agenda of the Committee's spring session, in accordance with its decision adopted at the fifteenth session, 3/ in the light of the relevant paragraphs of the summary records of the Third Committee as indicated in a note prepared by the secretariat of the Human Rights Committee.

27. Members of the Committee expressed their satisfaction at the interest shown in the Third Committee in the work of the Committee and for the considerable amount of attention which the Third Committee had given to the consideration of the annual report. The draft resolution adopted by the Third Committee at the end of its consideration of the Committee's annual report clearly reflected that interest as well as the appreciation of the Third Committee for the serious and constructive manner in which the Committee was continuing to perform its functions. Members of the Committee also noted with satisfaction that, in its draft resolution, the Third Committee expressed its appreciation of the request of the Committee that its official records be made available annually in bound volumes and requested the Secretary-General to make the necessary arrangements for that purpose within the existing resources.

28. It was noted that various individual opinions and suggestions were expressed or made in the Third Committee concerning several issues relating to the work of the Committee and to the obligations of States parties under the Covenant and its Optional Protocol. Those opinions and suggestions covered, inter alia, the powers of the Committee and its functions, its rules of procedure and guidelines for the preparation of initial and periodic reports; steps that could be taken by States parties in response to the Committee's views under the Optional Protocol and its general comments under article 40 of the Covenant; reporting obligations of States parties under article 40 of the Covenant and whether such obligations should extend to the submission of special reports on the human rights situation in a state of emergency when invoked under article 4 of the Covenant; and the desirability for the Committee to hold meetings in places other than Geneva and New York.

29. Members of the Committee commented on the various opinions and suggestions made in the Third Committee relevant to its work. It was pointed out that the Committee was not powerless; that it could draw on the powerful force of international public opinion and on the moral and political support of the General Assembly; that it was to be hoped that in the future Governments would provide the Committee and the General Assembly with information regarding steps taken in response to the views and observations made by the Committee; that further consideration should be given to the course of action to be taken by the Committee once it had adopted final views on individual communications and, in that

connection, that it was quite appropriate to ask representatives of the States parties concerned what their reaction was to the views expressed by the Committee in respect of communications submitted against them and considered by the Committee; that the Committee should not overlook the fact that the Third Committee had emphasized the legal basis of the Committee's work and had reminded it of its mandate; that the concept of gross violations of human rights did not as such appear in the Covenant but that states of emergency did; and that while delegations in the Third Committee had expressed new ideas and suggestions to expand the functions of the Committee, such decisions would have to be taken by the States parties and not by the Committee itself. In response to certain comments made in the Third Committee, it was suggested that a small group should be set up in the Committee in order to study ways of improving the rules of procedure governing communications under the Optional Protocol; that the Committee should endeavour to revise the guidelines recommended by it for the preparation of reports under the Covenant with a view to ensuring their precision and, accordingly, the effective monitoring of compliance with the Covenant by States parties; and that it was for the Centre for Human Rights to explore ways to make the holding of Committee meetings in places other than Geneva and New York practicable and that the Committee should pursue the matter so that the people in countries served by the Committee could be directly aware of its work.

30. Members noted that concern had been voiced in the Third Committee with regard to the difficulties encountered by certain States parties in submitting reports in view of the lack of resources and the proliferation of reporting procedures under various human rights instruments. They emphasized the importance of co-ordination among United Nations organs and considered that the best way to achieve it was for the Centre for Human Rights to bring together representatives of those organs for short meetings, with a view to considering this matter in the light of the respective experience of their organs.

31. Members of the Committee agreed that it would be useful if the Secretariat would prepare a document summarizing suggestions made in the Third Committee.

32. At its nineteenth session, the Assistant-Secretary-General, Centre for Human Rights, informed the Committee that steps were being taken to explore the means by which co-ordination could be enhanced, that consultations would be undertaken with the chairpersons of the relevant organs and that, financial resources permitting, the possibility would be examined of holding a consultative meeting of these chairpersons.

C. Decision recommending the inclusion of Arabic among the official and working languages of the Human Rights Committee

33. At the eighteenth session, the Committee resumed consideraion of the proposed introduction of Arabic as an official and working language of the Human Rights Committee.

34. The Committee, after further discussion, adopted a decision recommending the inclusion of Arabic among its official and working languages and requesting the Secretary-General to take the appropriate steps to that end and, in that connection, the Committee was apprised of the financial implications by the Assistant-Secretary-General, Centre for Human Rights (for the text of the decision, see annex V below).

D. Participation at a world congress of human rights in Costa Rica and at an international seminar held at Geneva

35. At its seventeenth session, the Committee was informed by its Chairman of the content of a letter which he had received from the Chairman of the Organizing Committee of the World Congress of Human Rights to be held in Costa Rica from 6 to 12 December 1982, in order to celebrate several Costa Rican events of historic value for the development of institutional democracy. The letter stated that the presence of a delegation from the Committee to illustrate the theme of human rights in the International Covenant on Civil and Political Rights would be a noteworthy contribution to the success of the Congress.

36. The Committee agreed to authorize its Chairman to represent it at the Congress in Costa Rica and, if need be, to arrange for another member of the Committee to join him or replace him in that mission, after consultation with the secretariat.

37. At its eighteenth session, the Committee was informed of the text of a letter addressed to its Chairman from the Assistant-Secretary-General, Centre for Human Rights, inviting him to send a representative to a special international seminar to be held at Geneva from 20 June to 1 July 1983 to discuss the experience of different countries in the implementation of international standards on human rights. The seminar was being organized as one of the suggested measures for the celebration of the thirty-fifth anniversary of the Universal Declaration of Human Rights.

38. The Committee decided, at the recommendation of its Bureau, to designate former member and Rapporteur of the Committee, Mr. Rajsoomer Lallah, to represent it at the seminar.

39. At its nineteenth session, both the Chairman of the Committee, Mr. Mavrommatis, and ex-member and Rapporteur, Mr. Lallah, reported to the Committee on their participation, on its behalf, at the World Congress of Human Rights held in Costa Rica, and at the International Seminar on the Experience of Different Countries in the Implementation of International Standards on Human Rights, held at Geneva. The Chairman informed the Committee that he had received an invitation addressed to him by the Secretary-General of the Second World Conference to Combat Racism and Racial Discrimination and that he would attend this Conference to be held in Geneva.

E. Other matters

40. At its seventeenth session, the Committee accepted a scheme on medical insurance for its members as an interim measure, as proposed by the secretariat, which would enter into force from the eighteenth session.

41. The Committee also decided that arrangements should be made to make available to it a complete collection of copies of the International Covenant on Civil and Political Rights and of the Optional Protocol thereto in all the languages in which they had been published in various parts of the world.

42. At its eighteenth session, the Committee considered the question of technical assistance in the legal profession that may be requested from or rendered to States parties where the lack of such expertise had posed certain difficulties in the implementation of their obligations under the Covenant.

43. After a brief exchange of views, the Committee requested the Secretary-General to find out how technical assistance could be provided to States parties which requested it and decided to continue its discussion of that matter at future sessions.

44. The Committee decided to consider, under this item at its nineteenth session, the procedure for considering second periodic reports, as well as the proposed draft amendments to its provisional rules of procedure.

45. At its nineteenth session, the Committee, after a brief discussion, decided to defer consideration of the procedure for considering second periodic reports and the proposed draft amendments to its provisional rules of procedure until its twentieth session and requested its working group on general comments to discuss those matters and to report to the Committee thereon.

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

A. Submission of reports

46. States parties have undertaken to submit reports in accordance with article 40 of the Covenant within one year of the entry into force of the Covenant for the States parties concerned and thereafter whenever the Committee so requests. In order to assist States parties in submitting the reports required under article 40 of the Covenant, the Committee, at its second session, approved general guidelines regarding the form and content of reports, the text of which appeared in annex IV to its first annual report submitted to the General Assembly at its thirty-second session. 4/

47. In accordance with article 40, paragraph 1 (b), of the Covenant, the Human Rights Committee adopted a decision on periodicity under which States parties would be required to submit subsequent reports to the Committee every five years. The text of the decision on periodicity, as amended, appears in annex V of its fifth annual report 5/ submitted to the General Assembly at its thirty-sixth sesion, and the guidelines regarding the form and content of reports from States parties under article 40, paragraph 1 (b), of the Covenant appear in annex VI of the same report. 6/

48. At its seventeenth session, the Committee was informed of the status of submission of reports (see annex III below) and it was requested for guidance on how the rule concerning the periodicity of reports should be applied in the case of certain States parties which had not yet submitted their initial reports but whose second periodic reports were already due.

49. At its 384th meeting held on 12 October 1982, the Committee decided to invite the Director of the Centre for Human Rights to contact the representatives of Zaire and the Dominican Republic and urge them to respect the commitments they had entered into by becoming parties to the Covenant. The Committee further decided to send reminders to India, Gambia, Trinidad and Tobago, El Salvador and Sri Lanka, as well as a letter to the permanent representative of Lebanon in Geneva emphasizing the need for Lebanon to submit a report as soon as possible and to include therein information about the recent events pertaining to human rights in that country. It was also decided that a copy of the summary record covering the discussion of Lebanon's delayed report be sent to the permanent representative of that country in Geneva. The Committee also decided that notes verbales should be sent to the States parties, including Chile, that were required to submit subsequent reports in 1984.

50. At its 393rd meeting, held on 19 October 1982, the Committee was informed by the Director of the Centre for Human Rights that, in response to its request of 12 October 1982, he had met in New York with the Minister for Foreign Affairs of Zaire and its Permanent Representative to the United Batuibs and with the Permanent Representative of the Dominican Republic to the United Nations; that the Minister for Foreign Affairs of Zaire had informed him that he would personally see to it that the report of his country was finalized and submitted to the Committee without further delay; and that the Permanent Representative of the Dominican Republic had promised to remind his Foreign Minister of the matter immediately, but had expressed regret that he was not in a position to give any further information as

to the date of the submission of its report. The Committee decided to request the Director of the Centre to remain in contact with the Minister for Foreign Affairs and the Permanent Representative of Zaire during the remainder of the current session of the General Assembly so as to inform the Committee at its next session of the date on which the report of Zaire would be ready.

51. The Committee was informed by its Chairman that it was not possible for its member, Mr. Dièye, to make the visit to Guinea in connection with that country's report, as decided at the sixteenth session, and he expressed the hope that Mr. Dièye would be able to make that visit in time to inform the Committee of the results before its next session. However, the illness and the untimely death of Mr. Dièye just before the eighteenth session, prevented any visit from taking place.

52. At its eighteenth session, the Committee was informed of the status of submission of reports (see annex III below) and that, following further contacts by the Director of the Centre with the representatives of Zaire and the Dominican Republic, they stated that the message of the Committee had been relayed to their Governments; and that the report of Lebanon was submitted in the course of this session.

53. The Committee decided that invitations should be sent to Zaire, the Dominican Republic, India, Gambia, Trinidad and Tobago and El Salvador to send representatives to meet informally with the Committee at its nineteenth session in connection with their reporting obligations under the Covenant. The Committee also approved the publication of a document (CCPR/C/28) containing the list of States parties whose second periodic reports would be due in 1983.

54. The Committee agreed to postpone the consideration of the report of Panama until its twentieth session, at the request of the Permanent Representative of that country, since it wished to submit an updated re[illegible].

55. At its nineteenth session, the Committee was informed that, since the eighteenth session, reports had been received from India, Gambia and El Salvador. In the case of Trinidad and Tobago, a representative from the Permanent Mission to the United Nations of that country in Geneva met with the Committee during the session and promised to contact her Government with a view to responding as quickly as possible to the Committee's requests for fulfilling their reporting obligations. With respect to the Dominican Republic and Zaire, no responses to the requests of the Committee had been received and no success was achieved in attempts to make personal contact with representatives.* In the case of Chile, the Chairman reported that informal contacts with representatives of Chile made it clear that the Chilean Government was not prepared to respond to the Committee's request for a

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* On 29 July 1983, after the adoption of the annual report and before the closure of the nineteenth session, a member of the Permanent Mission of Zaire to the United Nations at Geneva appeared before the Committe and explained the reasons for the delay in the submission of her country's report under article 40 of the Covenant. Members of the Committee expressed the urgent need for that country to submit the overdue initial report in view of the fact that the second periodic report was already due in 1983 and to provide precise information, before the twentieth session, of the date on which the report is to be submitted.

supplementary report, but was prepared to submit its second periodic report in 1984. The Committee decided to send reminders again to Chile, the Dominican Republic and Zaire to express its concern over the long delays and to consider again at the twentieth session whether other measures should be taken if no responses were forthcoming.

56. In the case of Lebanon, whose second periodic report was due on 21 March 1983, the Committee decided that, in the particular circumstances of this State party, and considering that its initial report was considered at this session, its next periodic report would be postponed until 21 March 1986.

57. At its 438th meeting, on 11 July 1983, the Committee noted that consideration of the report of Guinea had so far been postponed four times in the hope that the Government of Guinea would respond to the Committee's desire to consider the report in the presence of the representatives of the Government of Guinea with a view to conducting a fruitful and constructive dialogue on the promotion and implementation of the human rights embodied in the Covenant.

58. The Committee decided, due to the failure of the Government of Guinea to respond to its previous communications, to postpone for the last time, the consideration of the report of Guinea until its twentieth session to be held in Geneva, even if no representatives of the Government of Guinea were to be present, and expressed the hope that it would not have to consider this report at that session in such absence.

B. Consideration of reports

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

Mexico

60. The Committee considered the initial report of Mexico (CCPR/C/22/Add.1) at its 386th, 387th and 404th meetings, held on 13 and 26 October 1982 (CCPR/C/SR.386, 397 and 404).

61. The report was introduced by the representative of the State party who indicated that lengthy and meticulous comparative studies had shown that Mexico's laws were in perfect harmony with the international legal instruments for the protection of the most important human rights, that the rights proclaimed in the Covenant were consonant with the personal and social guarantees embodied in Mexico's political Constitution and laws and that the philosophical foundations of the Covenant and of his country's laws completely coincided.

62. Members of the Committee welcomed the co-operation the Government of Mexico had shown in submitting, in time, a report drawn up in accordance with the Committee's guidelines and in agreeing, at short notice, to send a delegation for the consideration of that report earlier than the date initially intended. In this respect, it was asked whether it was known in Mexico that the Government was to

submit a report to the Committee and whether the provisions of the Covenant had been widely publicized, particularly, among lawyers and members of the judiciary, the police and other authorities, both at the federal and state level. Noting that practices, customs and traditions were more important than the written law and considering the current economic crisis in Mexico, members requested information on any factors and difficulties affecting the implementation of the Covenant, as well as statistical data to illustrate the progress achieved in the enjoyment of the rights and freedoms enshrined in the Covenant.

63. With regard to article 1 of the Covenant, it was observed that it was the first time that a report submitted to the Committee had placed such emphasis on the control of natural resources as an element in the right of peoples to self-determination and that Mexico's experience showed that the more a country was master of its own economy, the better it was able to combat foreign intervention, preserve its national cultures and defend human rights, and it was asked what impact such economic measures had on the enjoyment of human rights in Mexico. In this connection, it was asked whether Mexico interpreted the right of peoples to self-determination as applying to the federal structure of the Mexican State and what Mexico's attitude was towards the peoples struggling for their self-determination in Africa and the Middle East, particularly the Palestinian people.

64. In connection with article 2 of the Covenant, it was noted that, according to the Mexican Constitution, in the event of a conflict, the provisions of the Federal Constitution, the federal laws and the Covenant would prevail over any contradictory provisions in the laws of the individual states comprising the Mexican Federation, and it was asked which would prevail if there were a conflict between the Covenant and the Federal Constitution or some federal law, whether there was any Mexican jurisprudence on that point and whether the Covenant was in fact ever invoked and, if so, whether any judicial decisions had been taken in this respect. Considering that it was at the state or municiapl level that violations of human rights were most likely to occur, it was asked what means of control were exercised by the Federal Government in order to ensure respect for human rights by the state authorities. In this connection, several members requested more information on the amparo procedure, particularly on how wide its sphere of application was, how effective it was in practice, what it could means in practice to a Mexican peasant and whether he could exercise that remedy himself or would require the assistance of a lawyer and, if so, how costly that procedure was. It was also asked whether the amparo procedure was applicable to any action by the police as well as in the case of disappeared persons, whether it could be resorted to by persons wishing to assert their rights under the Covenant, what organ existed to enforce judicial decisions and whether there were in Mexico any private or public institutions responsible for the promotion and defence of human rights

65. Commenting on article 3 of the Covenant, members of the Committee observed that the report was very brief and limited to the reference to the relevant article of the Constitution consecrating the principle of equality before the law. This principle, it was pointed out, was only one aspect of equality between the sexes and its inscription in the Constitution was not enough to convert it into actual equality. Referring to another article in the Constitution stipulating that the President of Mexico must be, inter alia, the son of Mexican parents by birth, one member wondered whether that was compatible with the principle of equality enshrined in the Covenant. Information was requested on the respective percentages of both sexes in educational institutions, in the executive, legislative and

judicial branches of the Government as well as in the liberal professions, and on the measures taken to secure actual equality between men and women and particularly to inform the latter of their rights under the Covenant.

66. With respect to article 4 of the Covenant, several members sought clarification as to whether article 29 of the Constitution was fully in accord with it and whether any emergencies had been declared in Mexico in recent years.

67. As regards article 6 of the Covenant, members noted the lack of information in the report on several aspects of the right to life such as measures required to reduce the currently high infant mortality and to combat criminality. It was asked why abortion was not considered as one measure of family planning which was recognized in the Constitution; what effective measures were taken to limit the use of arms by the security forces or to deal with private security forces or armies or gangs of hooligans; whether it was appropriate to guarantee the right of every inhabitant to possess firearms; and what effective steps were taken to investigate alleged disappearances and deaths at the hands of the security forces, to bring those responsible to justice and to prevent any recurrence of such incidents. Members sought clarification of the information in the report stating, on the one hand, that the death penalty was abolished in Mexico and, on the other, listing the crimes punishable by that penalty as provided for in the laws. In particular, it was asked what exactly were the grave military offences and highway robberies for which the death penalty could be imposed and whether that penalty could be imposed against guerrilla fighters or people active in a civil insurrection.

68. Commenting on article 7 of the Covenant, members praised the express prohibition of any kind of torture in the Mexican Constitution and requested information on any mechanisms that may have been established under Mexican legislation to ensure actual respect for the constitutional prohibitions of ill-treatment. They also asked whether there had been any cases of torture or maltreatment in Mexico of which police or security officers had been found guilty and for which they had been punished and what the penalties provided for in such cases were. Noting that the Mexican Criminal Code referred to corporal punishment as a normal penalty, some members asked which offences this punishment was prescribed for, and what made the Mexican authorities think that corporal punishment was compatible with article 7 of the Covenant. Maintaining that the non-refoulement of refugees was now, in his opinion, a general principle of international law, and probably constituted an implied duty under this article, one member asked whether Mexico subscribed to the same view and, if so, whether some explanations could be made of the circumstances surrounding the reports to the effect that groups of persons crossing the southern borders were returned to their country of origin. With reference to some articles of the Mexican Health Code, it was asked whether it was to be concluded that medical experiments which did not endanger the life of the subject could be carried out even without his consent.

69. In relation to article 8 of the Covenant, clarification was requested of article 5 of the Constitution, which provided for exceptions to one's right to engage in the occupation of his choice and made obligatory "the performance of municipal office and of an office held through ... popular election" and it was asked whether a Mexican citizen who had been elected to a civil office, but refused to accept it, could be compelled to do so against his will and, if so, whether that was compatible with the Covenant.

70. In connection with article 9 of the Covenant, it was asked whether administrative authorities were empowered to take measures involving deprivation of liberty; whether there were sufficient guarantees in Mexican law to prevent the arbitrary commital of mentally disturbed persons to psychiatric institutions; whether a "charge, accusation or complaint" supported "by a person of good faith or by some other evidence" indicating "the probable guilt of the accused" as indicated in the report, was sufficient to order remand in custody and, if not, what conditions there were for such an order to be issued; whether a detainee had the right to see his lawyer immediately upon arrest or whether he could be held incommunicado and what the "urgent cases" were in which the Public Prosecutor was authorized to keep the arrested person at his disposal, as mentioned in the report, and whether such a provision could not lead to cases where arbitrary orders were given for immediate arrest. It was also asked whether a person could be kept in prison for up to a year if the penalty for the alleged offence exceeded two years' imprisonment, as implied in the Constitution and, if so, whether that was compatible with the Covenant.

71. Commenting on article 10 of the Covenant, members requested information on the protection of persons detained in places other than prisons. Noting that the Constitution penalized "any molesting without legal justification", one member asked whether there were any legal grounds for molesting a prisoner under the Mexican judicial system. It was also asked what authority was responsible for supervising detention centres for minors and what powers inspectors possessed.

72. In connection with article 13 of the Covenant, members of the Committee wondered, without contesting Mexico's sovereign right to enter a reservation in respect of this article, whether there was any real need to deprive aliens of the safeguards afforded by the Covenant and whether considering the current work of the Third Committee of the General Assembly on the right of aliens, the Mexican Government was giving thought to the possibility of amending the Constitution so as to provide those safeguards and to enable the reservations to this article to be withdrawn.

73. As regards article 14 of the Covenant, more information was requested on the composition of the judiciary, the social origin of judges, the conditions for their appointment and removal, and on the access the man in the street had to the administration of justice. Noting that, according to the Criminal Code of Mexico, "criminal intent" is presumed, members sought explanation of that provision, which appeared to be in contradiction with the principle of presumption of innocence enshrined in the Covenant. It was also asked whether the right of everyone covicted of a crime, including vagrancy, to appeal to a higher court was available in practice.

74. Commenting on article 18 in conjunction with articles 2 (1), 19, 22, 25 and 26 of the Covenant, members wondered why acts of public worship should be performed inside places of public worship and whether the Mexican authorities had encountered any difficulty as a result of religious practices followed by adherents of certain religions but not necessarily performed inside specific places of worship; why religious schools were banned and why courses of study pursued in seminaries were not recognized in the same way as courses in other educational institutions; why the law recognized no juridical personality in churches; why the state legislatures should solely be empowered to determine the maximum number of ministers of religious creeds, according to the needs of each locality; why ministers of any religious cult should be debarred from becoming deputies; why ministers of

religious creeds could not criticize the fundamental laws of the country, the authorities in particular, or the Government in general; and whether a minister of religion would be prevented from expressing his views in a case of abuse by the police, for example.

75. With regard to article 19 of the Covenant, more information was requested on the existing legal régime with respect to Mexican radio and television, on the provisions ensuring that there was no domination by a single political movement, and concerning control over the provision of newsprint by a body known as PIPSA.

76. As regards article 22 of the Covenant, it was asked whether it was true that there was in Mexico a prohibition with respect to the election of trade union officers as well as to the setting up of a trade union in a public establishment if the majority of employees already belonged to any trade union and, if so, what justification could be given for such interference with freedom of association. It was also asked whether foreign residents were entitled to join trade unions in Mexico.

77. In relation to articles 23 and 24 of the Covenant, more information was requested on the rights and responsibilities of spouses, particularly in such areas as property rights, divorce and inheritance; on the attitude of judges to adultery and on whether children born out of wedlock had the same rights as those born in wedlock.

78. As to article 25 of the Covenant, information was sought on the conduct of elections and on any restrictions that may exist on the functioning of political parties. Did all people have the right to vote and to exercise that right freely? How were candidates for election chosen? Did electors have a choice of candidates? Noting that, according to a number of provisions, only Mexican nationals by birth might hold certain public offices, one member asked whether that was compatible with the Covenant.

79. Commenting on article 26 of the Covenant and with reference to article 1 of the Mexican Constitution, one member asked whether there were other laws or provisions affording special protection against the types of discrimination referred to in article 2 of the Covenant and whether any positive measures had been taken to remedy discriminatory situations.

80. In connection with article 27 of the Covenant, more information was requested on ethnic minorities and their legal status and on the official policy towards them; whether they received education in their mother tongues; what practical opportunities were available to enable the Indian communities to maintain their native languages and cultures and to use their own resources and land for their own development; whether national minorities were adequately represented in Parliament by their own members and whether there were any seats reserved for them and how many ministers, ambassadors and leaders were of Indian origin.

81. Before replying to questions raised by members of the Committee, the representative of the State party stated that the limited time available had allowed him to have only brief consultations with his Government, that his comments should, therefore, be viewed merely as part of an informal dialogue and not as his Government's official or definitive position on the issues raised and that his replies should be understood in the spirit of his country's dedication to human rights and its recognition that much remained to be done, both within and outside the country, to ensure their full promotion and protection.

82. With respect to the publicity given to the Covenant in Mexico, he explained that there had been insufficient time, since its accession thereto, for the text to be made known throughout the country, considering the geographic isolation of some communities and the economic and social circumstances of certain sectors of the population. However, following the decree of accession on 20 May 1981, the decree of promulgation, containing the full text of the Covenant, together with the interpretative statements and reservations made, had been published and had received considerable coverage in the mass media. Administrative authorities as well as judges at all levels were informed of the provisions of the Covenant which was published in the Diario Official de la Federación which was required reading for all Government officials. The Covenant would certainly become better known as citizens began to invoke its provisions in defence of their rights. He also stated that no publicity had been given in Mexico to the fact that the Committee was to consider the Mexican report.

83. Replying to comments made under article 1 of the Covenant, he pointed out that the prospects for the implementation of the Covenant had actually been improved, at least as far as article 22 was concerned, due to the nationalization on 1 September 1982 of private banks, whereby bank employees had obtained the labour and trade union rights previously denied them. However, there had been insufficient time for any practical difficulties in the application of the Covenant to come to light but that his Government would be in a better position to give information on that point in its next report. He also stated that his country had made self-determination of peoples one of the central principles of its foreign policy and had constantly advocated the application of that principle in all parts of the world, to all peoples, Palestinian, Nicaraguan or Cuban and that Mexico's active participation as a member of the United Nations Council for Namibia was the best possible illustration of that policy.

84. As to questions raised under article 2 of the Covenant, the representative stated that the Constitution gave that instrument supremacy over international treaties binding on Mexico, that this provision should be considered in the light of the fact that his country was a party to the Vienna Convention on the Law of Treaties, which governed Mexico's capacity to invoke its domestic law in relation to an international treaty to which it was a party; that there was no Supreme Court jurisprudence relevant to the matter of procedence, and the fact that Mexico had only recently acceded to the Covenant had thus far precluded the courts from receiving or settling any case based specifically on the rights set forth in the Covenant. He indicated, however, that according to the Constitution, the judges of every state of the Union must apply the Federal Constitution, and laws and treaties, notwithstanding any contradictory provisions that might appear in the Constitution or laws of the individual states and that the remedy of amparo also afforded a means of exercising control over the implementation of human rights since it could be invoked by the federal authorities against laws or acts of the state authorities. He also pointed out that under a recent Act on responsibilities of federal and state officials and employees, systematic violations by such officials of individual and collective guarantees were classified as offences liable to severe punishment. He explained that an action for amparo could be brought against any legislative, administrative or judicial authority as well as in respect of any acts, laws or decisions of such authorities, and that this remedy could be invoked in the case of a violation of any of the rights provided for in the Covenant in so far as those rights were embodied in the Constitution. He also clarified the distinction between direct and indirect amparo and the cases in which one or the other could be invoked. The remedy of amparo was recognized as being

available to all individuals in the Republic. In the case of the rural population, there was a special procedure in the Amparo Act designed to safeguard their rights and which would enable cases to go forward even when there were defects in the manner of their presentation in the courts. Assistance of a lawyer was not mandatory for amparo proceedings but permissible, particularly for those sectors of the population which had absolutely no knowledge of the law. Although proceedings were free of charge, persons requiring legal assistance would, however, have to incur costs that they would not always be able to afford. There could be no appeal against an amparo verdict but, according to the Amparo Act, review and complaint remedies existed. He referred, further, to a number of institutions engaged in the protection of human rights in Mexico, including the National Committee for Human Rights and the Group on Disappeared Persons.

85. Replying to questions raised under article 3 of the Covenant, the representative stated that not only had legislation been enacted to ensure equality of the sexes but progress had been made towards such equality in the economic, political and social life of the country. He gave a number of examples and statistics to that effect and stressed, in particular, the progress made in the area of education. He pointed out that the use of the masculine gender in the reference in the Constitution to the qualifications required to be President of the Republic was merely a grammatical matter and that the relevant article could only be interpreted as meaning that it was legally possible for a woman to hold that office. However, there were cases in the legislation in force in which it would probably be necessary in the future to eliminate distinctions based on sex, as, for example, in cases of rape, in which connection the Penal Code for the Federal District indicated that the injured party was necessarily a woman.

86. As regards questions raised under article 6 of the Covenant, the representative stated that it was difficult for his delegation to interpret the right to family planning as a right to abort children already conceived, since a couple that did not wish to have children might have recourse to numerous other methods that were readily accessible to the entire population; that the use of firearms by the police was regulated, inter alia, by the Federal Firearm and Explosives Act, which also restricted the possession and carrying of weapons, that all the pertinent legislation had been strictly applied and that there was a clear trend towards making the possession or carrying of weapons more difficult; and that evidence as to the Mexican Government's attitude to disappeared persons could be found in its co-operation with the Working Group on Enforced or Involuntary Disappearances which had visited Mexico and received the full assistance of the authorities. He stated that the death penalty had last been applied in Mexico in 1929 but conceded that the retention in the Constitution of that penalty for various offences, while abolishing it in the Federal and State Penal Codes could give rise to certain interpretations. He explained the offences punishable by the death penalty under military law, but stated that he would inform his Government of comments made in the Committee to the effect that there was an inconsistency between the Covenant and the Constitution, in so far as the former allowed the death penalty only for the most serious crimes, while the latter made provision for it, inter alia, in the case of offences of doubtful gravity such as highway robbery. Replying to a question concerning guerrilla fighters, he pointed out that the Penal Code described the crime of those who disturbed the public peace by acts of violence or sought to diminish the authority of the State or to bring pressure on the authorities in their decisions, as the crime of terrorism.

87. In connection with questions posed under article 7 of the Covenant, the representative stated that there was no specific mechanism for preventing and punishing torture or cruel, inhuman and degrading treatment; that any violence exercised by a public official against a person without legitimate cause, or any harassment or insult, as well as any other act prejudicial to individual guarantees, was classified in the Penal Code as an abuse of authority, an offence punishable by a maximum of six years' imprisonment, a fine and removal from office; and that corporal punishment could only be taken to be the penalties and security measures stipulated in the Penal Code. His Government had scrupulously respected the principle of non-refoulement of refugees, although there might have been isolated cases in which local authorities had infringed it. As to medical experimentation, he pointed out that the Health Code required the written consent of the individual, or his legal representative in the case of the mentally sick or other incapacitated persons, whether or not there was any risk to his life.

88. Replying to questions raised under article 9 of the Covenant, the representative pointed out that, as an exception to the general rule, the Public Prosecutor or the judicial police could detain a person without a warrant of the court but only in cases of flagrante delicto or extreme urgency; that "urgent cases" were the ones in which there was a justified fear that the suspect might try to hide or escape from justice when there was no judicial authority on the spot; that the Public Prosecutor could release a person whose detention he considered unjustified under the Federal Code of Penal Procedure; that in the jurisprudence of the Supreme Court of Justice the words "other evidence indicating the probable guilt of the accused", stated in the Constitution, meant evidence of the commission of an offence and evidence of circumstances creating a presumption of the probable guilt of the person arrested, even though he might be cleared of responsibility during the trial; that an official who, after making an arrest, failed to bring the arrested person before a judge within 24 hours would himself be turned over and that the right to defence counsel was guaranteed from the very moment of arrest.

89. As regards article 10 of the Covenant, the representative stated that the Federal District Prison Regulations of 1979 prohibited any form of physical or moral violence and acts or procedures which impaired the dignity of prisoners. Apart from the Tutelary Council mentioned in the report, there were other institutions, such as the Minors' Association, whose purpose was to provide moral and material assistance to those who had committed offences, who were socially abandoned or who were perverted or in danger of becoming so.

90. Replying to comments made under article 13 of the Covenant, he pointed out that restrictions on the enjoyment by aliens of certain rights provided for in the Covenant, for which reservations were entered by his country, had emanated from his Government's discretionary right to determine the undesirability of an alien who engaged in illicit or dishonest activities, interfered in the political affairs of the country or entered the country illegally. He also stated that the current state of consideration at the General Assembly of the United Nations of the human rights of individuals, who were not citizens of the country in which they live, did not seem to call for any review of Mexican legislation applicable to foreigners.

91. In connection with questions raised under article 14 of the Covenant, the representative referred to the provisions relevant to the qualifications required for the appointment of judges as well as to the conditions and procedures for their removal. He pointed out that the professional qualifications required of a judge operated in favour of persons coming from sections of society which had greater

possibilities of meeting them, especially through access to higher education. He maintained that the report was incomplete in its references to the presumption of innocence which every indificual ought to enjoy. There was no question of a presumption of guilt or innocence of an accused but rather whether an act or omission which was classed as an offence and whose commission had been proved was intentional or unintentional. He maintained that, since neither the Constitution nor the Amparo Act made exceptions in respect of the right of appeal to vagrants, and since the Constitution took precedence over the Code of Penal Procedure for the Federal District, it would, in his view, be for the competent legal authorities to determine whether or not the application of the relevant article of that Code would be consistent with the Constitution.

92. Replying to questions raised and comments made under article 18 of the Covenant, the representative stated that his delegation had informed the Mexican Government that, in the view of some members of the Committee, there was an inconsistency between the Covenant and the provisions of the Constitution and other Mexican laws which restricted the rights of ministers of religion and some aspects of religious freedom, those provisions being distinct from the ones expressly mentioned by Mexico in its reservation to article 25 (b) of the Covenant and from those covered by its interpretative statement on article 18 of the Covenant. He could not agree that legal limitations in Mexico on the exercise of the freedom of religion and on the civil and political rights of ministers of religion constituted discrimination on the ground of religion, since the provisions in question applied to all religions, not just to any particular one. He stressed that Mexican legislation sought to avoid the formation of any kind of political group, the name of which contained any word or indication whatsoever linking it to any religious denomination, and stated that anyone familiar with the history of Mexico should see in such a legislative policy nothing more than the desire to maintain the lay character of the State, in total separation from the churches.

93. Responding to questions raised under article 19 of the Covenant, he stated that, according to the Federal Act on Political Organizations and Electoral Processes, all political parties had access to the communication media, equally and on a monthly basis, as well as at the time of elections, and that each party was free to decide on the content of the broadcasts during the time allowed it.

94. The representative informed the Committee that he would convey to his Government the concern expressed by several members in respect of the implementation in Mexico of the provisions of article 22 of the Covenant concerning freedom of association. He also stated that foreigners might belong to trade unions but could not be on their governing body.

95. Replying to a question under article 24 of the Covenant, he stated that, according to the Civil Code, a child born out of wedlock who was recognized by one or both of his parents was entitled to inherit as much as any other child.

96. Commenting on questions raised under article 25 of the Covenant, he pointed out that the Federal Act on Political and Electoral Processes regulated the constitution of political parties and required that they should be registered in order to enjoy juridical personality for all legal purposes and also provided rules to guarantee legal freedom and security during elections; that the Constitution laid down the sort of requirements for such elective posts as those of President of the Republic, deputies and senators, as those normally expected in any country, and that in the presidential and parliamentary elections held earlier in the year, the

people of Mexico had had the widest choice between candidates in its history, due mainly to the participation in the electoral process of various political parties.

97. Replying to a question under article 26 of the Covenant, the representative referred to relevant provisions in the Constitution, the Penal Code, the Press Act, the Radio and Television Act as well as to a number of international conventions, such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Prevention and Punishment of the Crime of Genocide, to which Mexico was a party and which formed part of its national law.

98. In connection with many questions raised under article 27 of the Covenant, the representative indicated that in 1978 the indigenous population of Mexico had been estimated at 6 million, or approximately 9 per cent of the population calculated for that year, and had been divided up into more than 55 ethnic groups. According to the Federal Education Act, the teaching of the national language, as the common language for all Mexicans, should not be to the detriment of the use of indigenous languages and that one of the objectives of the Instituto Nacional Indigenista was to promote respect for and the dissemination of the indigenous languages of Mexico. For further information he referred members of the Committee to reports submitted by his Government to the Committee on the Elimination of Racial Discrimination (CERD).

Iceland

99. The Committee considered the initial report of Iceland (CCPR/C/10/Add.4) at its 391st, 392nd and 395th meetings held on 18 and 20 October 1982 (CCPR/C/SR.391, 392 and 395).

100. The report was briefly introduced by the representative of the State party who stated that the analysis to be made of the report by the Committee would not only make it possible to improve the next report but would also review any shortcomings and even lead to amending Icelandic legislation along lines more in keeping with the provisions of the Covenant.

101. Members of the Committee, who praised the long-standing democratic traditions of Iceland, noted that the report was too concise inasmuch as it did not reflect the human rights situation in the country and was lacking in references to the relevant statutes, court decisions and administrative practices. They welcomed the fact that Iceland was also party to the Optional Protocol and one of the few States parties which had made the declaration under article 41 of the Covenant. They wondered, however, whether the Covenant had been officially published and available to the public in Icelandic and whether officials of the administrative bodies concerned were aware of their obligations thereunder; whether the public was aware of the fact that this report was currently being considered by the Committee; whether copies of the report were available to the public in the Icelandic language, and whether the representative intended to make a statement on the subject on his return home. Information was requested on the human rights not provided for under the Covenant but safeguarded in Icelandic legislation, to which reference was made in the report; on whether the Icelandic Government was considering the possibility of withdrawing its reservations to articles 8 and 13; and on any public or private organization that existed in Iceland for the promotion and protection of human rights.

102. In relation to article 1 of the Covenant, reference was made to a statement in the report to the effect that Icelandic practice had always been in conformity with the principle set out in this article; more information was requested on Icelandic practice in this respect, particularly for the benefit of people struggling for their independence and self-determination such as the Namibian and Palestinian peoples.

103. In connection with article 2 of the Covenant, reference was made to the mere enumeration in the report of the rights guaranteed to individuals by law and to a statement that individuals could apply to the courts for remedy if they felt that their rights had been violated, and it was pointed out that this presupposed that everyone had the same opportunity of exercising his rights and the ability to do so. It was maintained that such presuppositions could not be taken for granted and that it was, therefore, useful to know what the State was doing to ensure that the rights recognized by both the Constitution and the Covenant were protected and enjoyed by all the inhabitants of Iceland, without discrimination, particularly in respect of politicial and other opinions. Noting that the Covenant had not been incorporated into Icelandic legislation and that the latter did not cover some of the provisions of the Covenant, as indicated in the report, members of the Committee asked whether there were any plans for constitutional reform, particularly with regard to human rights; whether the Covenant could be invoked in Icelandic Courts and what guarantees there were that Parliament would not enact laws that ran counter to the provisions of the Covenant; whether there was a constitutional court; whether the judges had authority to review ordinary laws for the purpose of ascertaining their conformity with the Constitution and whether the courts had had occasion to interpret Icelandic law in the light of the Covenant. Members sought information regarding whom individuals could appeal to if their rights were violated by the administration; whether the institution of Ombudsman existed in Iceland and, if so, how it operated, and whether there had been any examples of persons bringing an action to the courts for remedy and the kind of compensation paid.

104. As regard article 3 of the Covenant, members requested more information on the practical measures taken in Iceland to ensure that equality between the sexes existed in fact; on the proportion of women in public life; on details of the "minor exceptions" to equality of rights that existed, according to the report and on the operation of the Equal Rights Council and its powers of enforcement.

105. In connection with article 4 of the Covenant, reference was made to a statement in the report that the defence of necessity could justify departures even from constitutional provisions and it was asked whether it could be concluded that, in time of emergency, Iceland could make derogations from certain rights which under no circumstance could be derogated from according to the provisions of article 4 of the Covenant; whether the "defence of necessity" was the same as an "event of extreme urgency" mentioned in the Constitution and whether the powers for dealing with such events had ever been invoked in peacetime.

106. Commenting on article 6 of the Covenant, information was requested on the meaning of the statement in the report that the taking of a person's life could be justified by necessity, whether that might include euthanasia and abortion, and on the "very strict conditions" to which the taking of a person's life was subject.

107. In relation to articles 7 and 10 of the Covenant, information was requested on the legal provisions prohibiting and penalizing torture or cruel, inhuman or

degrading treatment or punishment and on the provision making subject to criminal responsibility anyone who put another person "into a situation of danger where he is helpless" or who refrained from saving "a person in need when it is possible to do so without endangering oneself or others"; whether the "work centre" referred to in the report was a kind of penal institution and on the measures of supervision that had been adopted to investigate complaints to ensure compliance with the laws and regulations concerning the treatment of persons who had been deprived of their liberty.

108. Regarding article 9 of the Covenant, clarification was requested of the provision of the Constitution that "no person may be taken into custody for an offence merely punishable by fine or jail" and it was asked whether there were cases of deprivation of liberty other than those for criminal offences, such as mental illness and, if so, how the guarantees referred to in this article were applied; how article 9, paragraph 2, was applied in Iceland; whether it was customary to grant bail to a person awaiting trial in Iceland and, if so, what factors were considered; what the legal situation was in respect of article 9, paragraph 4, in the absence of any reference to habeas corpus in the Constitution; and whether compensation within the meaning of article 9, paragraph 5, of the Covenant existed in Iceland.

109. In respect of article 13 of the Covenant, it was asked what difference there was between the "interest of the State" and that of the public and what "other reasons" would make the presence of an alien undesirable. Noting that a minister was the authority issuing the expulsion order of an alien, one member asked whether such an alien could appeal against his expulsion and thus have his case heard and, if so, who was competent to overrule a ministerial order in this respect. In this connection, it was asked what rules governed the residence of aliens in Iceland, whether an alien could apply to the courts for an extension of his residence permit for reasons relating to the rights of the family and whether aliens who were nationals of the Nordic countries enjoyed a privileged status.

110. With regard to article 14 of the Covenant, considering that serious social, cultural, financial and linquistic barriers could make access to courts extremely unequal, it was asked what Iceland had done to ensure that equality before the courts really meant equal access to those courts and to the legal profession in general. Noting the possible existence of an overlapping of judicial and administrative functions in the case of some judges and that judges who held administrative office could be discharged from them, members asked who elected judges, whether the same person could act as a local judge and as a local representative of the executive or as a prosecutor and, if so, how that could affect the conduct of trials or pre-trial investigations and how the independence of judges could be ensured in these circumstances. More information was requested on the implementation of the guarantees provided for in this article.

111. In connection with article 15 of the Covenant, it was asked whether the Criminal Code of Iceland prohibited retroactive punishment so that a person could not be punished unless he had been found guilty of an act punishable by law at the time it was committed. Reference was made to a statement in the report that if the criminal law were to be changed since an act was committed, that act would be judged under the new law but that no heavier punishment could be imposed than under the old law. In the light of this, it was asked whether that provision covered only persons who had not been convicted when the lighter punishment was enacted or whether the lighter penalty had any effect on the penalty already imposed on those convicted under the old law.

112. With reference to article 17 of the Covenant it was noted that, according to the report, the Althing was now considering a Government proposal on the storage of information in computers and it was asked what kind of information was going to be stored and whether such an operation was not contrary to the principle of the inviolability of the person.

113. As regards article 18 of the Covenant, an explanation was requested of the philosophy behind the Constitutional rule that a person who was not a member of the State Church of Iceland nor of any other recognized religious group should pay to the University of Iceland, or to a designated scholarship fund of that University, dues otherwise payable to the Church, and it was asked why a person of another recognized religion should be expected to contribute to the State Church. Noting that there was no provision in Icelandic law for conscientious objection, one member asked why it was necessary to require everyone to bear arms; and whether the Constitution gave protection to such groups as agnostics, atheists and humanists. Information was sought on the legal provision relating to the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions.

114. Commenting on article 19 of the Covenant, members noted that the relevant article of the Constitution was more restrictive, and they requested information on the affirmative action that had been taken to ensure enjoyment of the rights embodied in this article and on any limitations that existed to the freedom of all forms of expression and as to what restrictive laws, such as those on sedition and defamation, there were.

115. With reference to article 20, in conjunction with article 19 of the Covenant, it was asked how it was possible to justify an article of the Constitution which was more restrictive of freedom of expression than article 19 of the Covenant, while invoking freedom of expression in support of the reservation made by Iceland concerning the prohibition of propaganda for war. Some members considered the argument for tolerance with regard to that sort of propaganda to be invalid from the legal standpoint and incompatible with the Covenant and modern international law. Noting that, according to the report, advertisements for alcoholic beverages and tobacco had been banned for reasons of public interest, one member stated that it was regrettable that there was no similar ban on war propaganda or on advertisements for the recruitment of mercenaries. Requests were made for an explanation of why Iceland had entered a reservation in respect of this article.

116. In connection with articles 21 and 22 of the Covenant, it was asked what remedies were available to organizers of an open-air meeting, which was banned as unlawful, if they thought that the authorities had misjudged the facts; what were regarded as unlawful purposes that could restrict the formation of societies; who had the authority to judge the lawfulness of the purpose and to decide on suspension or to bring action for dissolution of a society and on what legal grounds; and how the provisions in question were reconciled with the special protection afforded to trade unions by article 22 of the Covenant.

117. In respect of articles 23 and 24 of the Covenant, more information was requested on family life in Iceland, particularly on whether there was a recognized head of the family, whether there was a family magistrate, whether women had the right to abortion and on the legal effects of forms of cohabitation other than marriage, particularly with regard to the legal status of children born out of wedlock and their right of inheritance.

118. As regards article 25 of the Covenant, many members expressed concern about the conditions placed in the Constitution on the exercise of the right to vote and they wondered whether it was easy to find persons of totally "unblemished character" so as to be eligible to vote and who was eligible and had the authority to judge on this extremely subjective matter; whether this provision had resulted in the disenfranchizing of many Icelandic citizens; whether another condition really required eligible voters to be "financially responsible"; and, if so whether these conditions could be characterized as reasonable restrictions within the meaning of article 25 of the Covenant. Did individual voters have the same influence, in mathematical terms, according to their place of residence? Was there a trend to ensure a minimum representation of large rural areas in Parliament? Did the Government believe that the present system had affected the implementation of the principles embodied in article 25 of the Covenant? Was the question of constitutional reform under consideration?

119. Replying to questions raised by members of the Committee, the representative of the State party informed the Committee that the Covenant had been published in the Law Bulletin of Iceland in the Icelandic language, with a parallel text in English, which made the Covenant accessible to the members of the legal profession and the various other readers of the Bulletin; that it was very unlikely, however, that the public at large would be greatly interested in international instruments, even if they were given wide publicity in the press, which was also very unlikely so long as there were no specific conflicts in that field; that Iceland's report to the Committee was most unlikely to be published, for the interest of the public in such theoretical discussions as it contained was virtually nil. He also informed the Committee that the question of withdrawal of reservations made by Iceland was under study and he hoped that all of them would be withdrawn in due course.

120. In connection with questions raised under article 2 of the Covenant, he stated that the Constitutional provisions concerning fundamental human rights had remained unchanged since 1874, but that a Constitutional Committee had been at work for some six years on a revision of the 1944 Constitution which should be completed by the end of 1982; that although the provisions of the Covenant had not been incorporated into domestic legislation, they were respected in practice; that the successive Heads of the State of Iceland had never contested the democratic decisions of the Althing; and that there was no Ombudsman in Iceland. He also stated that the Covenant could be a useful source of reference in courts, but that it was national law which prevailed; that there was in Iceland no constitutional court nor an administrative court and that judicial organization in the country consisted only of lower courts and a supreme court.

121. As to article 3 of the Covenant, the representative stated that, generally speaking, the functions of the Equal Rights Council were comparable with those of a parliamentary Ombudsman, operating in that specific field; that a "women's strike", which had taken place some time ago, had been primarily a protest against the status of women in society rather than one against their legal status and that a change of tradition in the daily lives of men and women required much time and effort.

122. In relation to questions raised under article 4, he stated that it was inevitable that a State which was in an emergency situation would derogate from some of its obligations under the Covenant, but that it was very unlikely that such a situation would arise in a State which had never had an army, such as Iceland.

123. In connection with article 6, he stated that the taking of a person's life was justified only in the case of self-defence, that euthanasia was prohibited and that abortion was not regarded in Icelandic legislation as the taking of a person's life.

124. Replying to a question raised under article 9, the representative pointed out that the revision of a law concerning the procedures under which mentally ill persons were interned was under way.

125. As regards article 13, he recognized that the law on aliens contained provisions that ought perhaps to be amended in order to reflect more accurately the human rights situation in the country. However, an alien who had been settled in Iceland for a long period, particularly if he was head of a family, ran no risk of being expelled unless he committed a crime in another country, in which case extradition action could be taken against him.

126. With respect to article 14, he informed the Committee that Iceland was endeavouring gradually to abandon the present judicial system, but that the reorganization of that system was rather costly and not without problems.

127. With reference to a question raised under article 17, he agreed that there was a danger in the Government's proposal concerning the storage of information in computers, which he informed the Committee had already become law, that all that could be done was to try to ensure that the apparently inevitable increase in their use would be in keeping with certain moral principles and that that task was being undertaken by the Council which had been set up for that purpose.

128. As to article 18, the representative referred to the law on believers' associations which recognized, inter alia, the freedom of parents to ensure the religious education of their children under the age of 16 years in conformity with their own convictions, while providing that children over 12 years of age should be consulted.

129. With regard to article 19, he stated that he had no knowledge of any exceptions to the relevant provisions of the Constitution that censorship and other restrictions on the freedom of the press must never be enacted.

130. In connection with article 20, he maintained that to prohibit propaganda for war would be regarded in Iceland as an infringement of the freedom of expression; that his country had no army and did not intend to have one and that, in becoming associated with the North Atlantic Treaty Organization (NATO), it had made it quite clear that it would in no event take part in a war.

131. Commenting on the freedom of association under article 22, he stated that the relevant constitutional provision was 100 years old but that that freedom was fully respected; that trade union legislation in no way hindered the establishment of associations and that no association had ever been suspended under that provision.

132. As to articles 23 and 24, the representative informed the Committee that the Icelandic Family Law Committee was working on a proposal for a law on the legal problems arising from cohabitation outside the institution of marriage; that a children's law, which entered into force on 1 January 1982, and a law amending the law on Icelandic nationality, which had been enacted in May 1982, contained provisions in favour of children.

133. Replying to questions under article 25, the representative pointed out that the reference to "unblemished character" as a condition of the right to vote was contained in a provision dating from the past century, which the Constitutional Committee at present working in camera would undoubtedly abolish. He confirmed that the electoral system in Iceland was a burning issue in connection with the revision of the Constitution and stated that in 50 years the Constitution had been revised three times with the sole intent of changing the electoral system, and each time it had brought about the downfall of the Government.

134. The representative apologized for not replying to all the questions raised, but assured the Committee that Iceland's next report would answer them in full.

Australia

135. The Committee considered the initial report of Australia (CCPR/C/14/Add.1) at its 401st, 402nd, 403rd, 407th and 408th meetings, held on 25 and 26 October and on 2 November 1982 (CCPR/C/SR.401, 402, 403, 407 and 408).

136. The report was introduced by the representative of the State party who informed the Committee that since the submission of Australia's initial report there had been a number of developments, the most significant of which had been the establishment of the Australian Human Rights Commission, which had commenced operation in December 1981 and which was a unique blend of conciliatory machinery and of research, educational, promotional and advisory functions. He also reported that Aboriginals currently had the means of exercising real influence in matters affecting them, since they had a greater awareness of the political process and were now involved in decision-making; and that his Government had recently announced that it was to draft a law to protect its employees from discrimination on the grounds of sex and marital status. He also pointed out that although many Australians had only a vague conception of the rights embodied in the Covenant, there was a widespread awareness that the United Nations had established protective machinery and that in codifying human rights principles, the United Nations was helping to bring about changes in community attitudes.

137. Members of the Committee commended the excellence of the Australian report, its exhaustive character and frankness and the fact that it had been drafted on the basis of the Committee's guidelines and noted with appreciation the size and quality of the delegation, which attested to the Australian Government's intention to co-operate with the Committee in ensuring compliance with the provisions of the Covenant in Australia. In this connection, it was asked how much publicity had been given to the Covenant in Australia, whether it had been translated into languages other than English, particularly languages spoken by the Aboriginals. Questions were also asked concerning the principal factors and difficulties which had affected the implementation of the Covenant.

138. Referring to the many reservations entered by Australia upon ratification of the Covenant, several members wondered whether some of those reservations were compatible with Australia's commitments under the Covenant. They were particularly concerned with regard to the reservations relating to articles 2 and 50 of the Covenant. Noting that article 2 (2) required each State party to implement the Covenant "in accordance with its constitutional processes", that article 51, paragraphs XXIX and XXXIX, of the Australian Constitution conferred on Parliament the necessary power in that respect and that, according to the Vienna Convention on the Law of Treaties, a State could not formulate a reservation if it was

incompatible with the object and purpose of the treaty nor could it invoke the provisions of its internal law as justification for its failure to perform a treaty, members wondered what exactly were the nature and effect of these reservations, whether they purported to divest the Commonwealth Government of responsibility for implementing the Covenant in so far as it impinged on matters within the competence of the constituent states of the Federation and, if not, whether the courts in Australia would be bound by an official statement made by the representative of the Australian Government before the Human Rights Committee. They asked further, how the Commonwealth Government could ensure that the constituent states discharged the international commitments undertaken by Australia, particularly in respect of the Covenant and whether there was any procedure under which control could be exercised by the Federal Government.

139. As regards article 1 of the Covenant, mention was made of a statement in the report to the effect that the people of Australia had exercised their right to self-determination by uniting as one people in a Federal Commonwealth and information was requested on the manner in which the Aboriginals "who were already present when the first European settlers arrived in 1788" had participated in that exercise. Noting, according to the report, that Australia had traditionally been a strong supporter of the right to self-determination, it was asked whether that included recognition of the right to self-determination of the Palestinian people and the peoples of southern Africa and whether Australia had taken legislative and administrative action to prevent Australian corporations, companies and banks from assisting the apartheid régime in South Africa. In this connection, it was asked whether the Government's policy of self-management for the Australian Territories was considered a first stage on the road to self-determination.

140. In relation to article 2 of the Covenant, it was pointed out that, in countries such as Australia, in which the Covenant was not embodied in internal legislation, which did not have a comparable bill of rights and in which the legal system was based on the concept of the rule of law, where "the rights of individuals are guaranteed by ordinary legal remedies without the need for formal constitutional guarantees", as mentioned in the report, it was more difficult to prove that the Covenant was effectively implemented and that particular importance should, therefore, be attached to the commitment undertaken in this article not only to "respect" but also to "ensure" the rights recognized in the Covenant. Noting also that the rules derived from decisions of courts formed part of the law of the land, members asked how the Covenant was made accessible to judges, what arrangements had been made to ensure that judges would act in accordance with the obligations which Australia had assumed under international law and whether Australia was considering the incorporation of the provisions of the Covenant in domestic law or, failing that, the adoption of a Federal Bill of Rights or a Bill of Rights for each of the constituent states.

141. Noting the existence in Australia of many bodies and authorities competent to deal with human rights and referring to the various writs mentioned in the report, members wondered whether a common law system, such as that of Australia, provided any genuine or effective remedies to ensure the enjoyment of all the rights enunciated in the Covenant and suggested that an unwritten presumption of freedom was not sufficient. More information was needed, particularly on whether the Australian Human Rights Commission was competent to receive complaints from individuals whose rights had allegedly been violated and, if so, how many complaints it had received and what the nature of its arbitration function was; what recommendations had been made by that Commission with a view to the amendment

of Commonwealth legislation and practices thereunder; whether there was any organ with competence to decide whether laws and administrative acts or decisions were consistent with the Covenant; whether any executive infringements of human rights had been brought to the attention of Parliament by the Meeting of Ministers of Human Rights; and what types of complaints had been investigated by the Commonwealth Ombudsmen and how effective their reports were.

142. Noting that article 3 of the Covenant provided for the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant and that, in the report, it was admitted that certain problems were being experienced in securing equality between the sexes, members sought more factual information on those problems and on the effect of the measures taken to implement this article, and requested some statistics in this respect.

143. With regard to article 6 of the Covenant, reference was made to the fact that the life expectancy of the aboriginal population was 20 years less than that of the white population and that their infant mortality rate was three times higher, and it was asked how that situation could be reconciled with the principle of equal enjoyment of the right to life and what action was being taken to remedy it. A question was posed on the legislative provisions relating to abortion and on the severity of penalties inflicted in case of abortion. Noting that since use of firearms could result in violations of the right to life, one member asked in what circumstances the police and the armed forces were permitted to use their weapons. One member was surprised to read in the report that the states did not have the legislative capacity to abolish certain statutes providing for the death penalty, which remained within the sole jurisdiction of the Parliament at Westminster, and it was asked whether it was possible to review that situation and what the prospects were for capital punishment to be abolished in all federal states. Noting that in those states that had abolished the death penalty it had, theoretically, still been retained for the capital offences of burglary or arson in the Queen's dockyards, one member asked whether the gravity of the punishment matched the crime and whether the repeal of the laws that perpetuated that abnormal state of affairs was being blocked by obstacles of a political or a constitutional kind. In this connection, it was pointed out that the possible imposition of the death sentence in respect of persons under 18 years of age, as indicated in the report, was contrary to the provisions of the Covenant and that domestic law should therefore be brought into line with its provisions.

144. Commenting on article 7 of the Covenant, members noted that it was still possible to resort to whipping in Australia. They considered that to be an inappropriate form of punishment and wondered how this inhuman practice could be reconciled with the Covenant. They also noted that there were no special penal law provisions against torture and that only common law remedies were available in the event of a complaint against the police, and it was asked whether any cases of alleged ill-treatment or brutality on the part of a police officer ever resulted in charges being brought so as to be able to determine the effectiveness of such remedies.

145. In connection with article 8 of the Covenant, it was noted that, under the legislation in some states, the authorities in the reserves seemed to have the power to order Aboriginals to carry out particular tasks, which was incompatible with the Covenant. It was asked whether account was taken, in imposing a sentence of hard labour, of age, physical ability and education and whether the fact that only adult males were affected by such a sentence was not contrary to the principle

of equality between men and women embodied in the Covenant. In this respect, one member thought that, if the law could take account of physical differences between men and women, it could also make provision for different types of hard labour for the two sexes.

146. With reference to article 9 of the Covenant, it was noted that, a court was required to decide "without delay" on the lawfulness of a detention and not "as soon as practicable" or "as soon as convenient", as stated in the report. Information was requested about the authority of certain designated medical officers to detain addicted persons; on whether a detention order could be made otherwise than in judicial proceedings; and how effective the remedy was in the event of unlawful arrest. In this connection, it was pointed out that the Covenent permitted the initiation of legal action not against an official who might have abused his powers but against the State itself, which was held responsible if the victim had been unjustifiably arrested or detained.

147. As regards article 12 of the Covenant, more information was requested on control of residence, entry into and departure from Aboriginal reserves; on control of entry at the residents' insistence to the Cocos (Keeling) Islands and Norfolk Islands; on the restrictions concerning the issue of passports and on the authorities competent to decide that a person could not leave the country. Referring also to article 27 of the Covenant, one member expressed his doubts as to whether, despite the amendments that had been made in recent years to the legislation of the State of Queensland, which provided for the possible expulsion of an Aboriginal from a reserve, which was an extremely severe penalty because it might entail the loss of his language and culture, was compatible with the Covenant.

148. Commenting on article 14 of the Covenant, members requested more information on the conditions for appointment of judges; whether costly training was needed for admission to the legal profession; what the percentage was of women and Aboriginals in the higher echelons of the judiciary; whether any magistrate had ever been dismissed by the Governor-General or Governor for bad behaviour and about the status and competence of juries in Australian courts and their role in the country's judicial life. In this connection, reference was made to the decision of the European Court of Human Rights in the Sunday Times case and it was asked how a conflict involving the delicate relationship between freedom of expression and the need to ensure the independence of the judiciary would be resolved in Australia. With regard to a possible shift under statutory provisions in the burden of proof, referred to in the report, some examples were requested of cases in which the accused had managed to establish his innocence. It was pointed out that it was for the State, and not for the accused, as implied in the report, to make the necessary arrangements for the services of an interpreter if he had difficulties with the English language and it was asked how language difficulties could present a barrier to commencement of proceedings in the more remote and sparsely populated areas of Australia, as indicated in the report, and whether it would not be possible to provide itinerant interpreters to accompany the courts. Questions were asked as to what circumstances the right of an accused to communicate with counsel while in custody would be regarded as creating "unreasonable delay" or hindering "the processes of the investigation or the administration of justice" and whether the police were not thereby given a wide measure of discretion which they might be tempted to abuse; whether it had happened that persons held in custody had been released because they had not been brought to trial within a certain time; and whether evidence obtained under duress was admissible and, if so whether it was possible to speak of effective remedies and whether there were any cases in point.

Noting that in Australia, criminal law existed side by side with Aboriginal customary law, members asked whether this situation was compatible with the principle of equality before the law and without discrimination to the equal protection of the law; whether it could happen that a person was brought before both state and aboriginal courts and hence tried twice and, if so, how that could be justified in the light of article 14 (7) of the Covenant.

149. In relation to article 15 of the Covenant, it was asked whether there had been retrospective criminal legislation and, if so, whether there was any authoritative decision as to the constitutional validity of such legislation; whether, where a penalty was reduced, the lighter penalty was to apply to an offence committed before the reduction but not to an offender who had already been convicted for that offence.

150. In connection with article 18 of the Covenant, more information was requested on existing guarantees for the right of everyone, not only every citizen, to freedom of thought, conscience and religion and on existing restrictions of this freedom; whether atheists had the right to make known their point of view; on whether a person could claim the status of conscientious objector on purely political grounds and, if so, whether applicants had to appear before a tribunal or administrative board.

151. As regards article 19 of the Covenant, more information was requested about the de facto and de jure freedom of the media, the laws restricting the freedom of expression and the sphere of competence of the Australian Broadcasting Tribunal referred to in the report; whether there were any legislative provisions or regulations to prevent the establishment of monopolies and what guarantees there were to ensure that the Australian Broadcasting Commission, appointed by the Governor-General, would not simply be an instrument in the hands of the majority in power.

152. Noting that the prohibition of propaganda for war and advocacy of racial hatred was mandatory under article 20 of the Covenant and that such prohibition might be necessary for the protection of the rights enunciated in articles 19, 21 and 22, some members wondered why no such prohibition was made, whereas different kinds of prohibitions had been deemed necessary to ensure respect for those other articles; how that requirement was complied with in Australian case law and how sedition was interpreted in Australia in terms of the immediacy of the advocacy and the promotion of "ill will and hostility between different classes of Her Majesty's subjects".

153. Commenting on articles 21 and 22 of the Covenant, members asked what criterion applied in deciding whether or not to grant permits for assemblies or processions on public roads and which authority was competent to take such decisions; whether Australia had ever applied the provisions of the Crimes Act relating to associations that could be declared unlawful and membership of which generally constituted a criminal offence and, if so, against which association and whether there was at the Commonwealth level a general prohibition of discrimination of any kind in respect of registered clubs. In this connection, one member pointed out that the closed shop system, referred to in the report, resulting in the compulsory affiliation of workers to a particular union not of their own choosing was prejudicial to their rights and asked for further information concerning that system and the justification therefor.

154. As regards article 25 of the Covenant, it was asked whether it was correctly concluded from the report that Aboriginals had no vote unless they left their reserves or otherwise became enfranchised and that the enrolment of Aboriginals on electoral lists was not yet compulsory. It was maintained that while the authorities might regard that as a privilege granted to Aboriginals, such a privilege could also constitute a possible source of discrimination. Had legislation been adopted to make enrolment for Commonwealth elections compulsory for all Aboriginals, as mentioned in the report? What was the situation with regard to the enrolment of Aboriginals for state elections? Was there a significant difference in any of the states between the number of Aboriginals enrolled for Commonwealth elections and those enrolled for state elections? If so, how could those differences be explained? Noting that, according to the report, British subjects were entitled to enrol for Commonwealth and state elections and to have access to public service employment in Australia, one member sought more information on the matter that seemed to indicate a preference in regard to British subjects which might be considered to be a contravention of articles 2 (1) and 25 of the Covenant. Another member contested this view and maintained that the Covenant merely prohibited discrimination and stipulated the minimum rules to be observed by States but in no way prohibited such preferential treatment to certain aliens. More information was requested about the categories of citizens who were disqualified from voting in federal elections, and it was asked whether the functions of a municipal councillor were compatible with the office of member of the House of Representatives or senator and what real opportunities were provided for Aboriginals to have access to public service.

155. With reference to the statement lodged with Australia's instrument of ratification indicating its interpretation of article 26 of the Covenant, it was pointed out that if it was designed simply to ensure and protect "affirmative action" programmes, as mentioned in the report, then there was no need for it and that acceptance by Australia of article 26 "on the basis that the object of the provision is to confirm the right of each person to equal treatment in the application of the law" did not seem to be consistent with that article which provided not only for equality of all before the law, but also for equal protection of all by the law against any discrimination and which also stipulated that the law must not institutionalize discrimination. One member could not agree with that interpretation and maintained that Australia's statement was in accord with the meaning that the authors of the Covenant had thought to give to that article; that article 26 did not require that States should combat all types of discrimination, and that the Covenant was concerned only with the civil and political rights that States must guarantee. It was also noted that insufficient precautions were being taken against discriminatory practices by individuals, firms or organizations; that the annual report of the Commission on Community Relations showed that Aboriginals had been discriminated against and it was asked what was being done to remedy that situation and, in general, to widen the range of prohibited discriminatory practices.

156. Commenting on article 27 of the Covenant, many members noted that the report contained little information about the Aboriginals and, therefore, requested detailed information about their status and their rights in law as well as in practice. Noting that the Aboriginals were the first inhabitants of the country and that the Australian Government seemed to draw a distinction between them and other Australians, members asked whether the Government considered them to be a group coming under the protection of article 27 of the Covenant or a people coming under the protection of article 1; what percentage of Australia's total population

they represented; whether an assimilation policy was applied; whether autonomy was anticipated for their areas or whether the matter of integration was left entirely in the hands of the Aboriginals themselves and, if so, what their political aspirations were and whether they had the means to freely express them; whether Aboriginals wishing to preserve their ethnic characteristics were free to do so; and why it was that the Australian Constitution appeared to contain no provision relating specifically to Aboriginals. Noting also that, in his introductory statement, the representative of Australia had indicated that his Government was displaying great concern for the Aboriginal population but that much remained to be done, members asked why little was being done to improve their lot two centuries after the arrival of the first settlers; how could a declaration by the Government of Queensland turning an area into a national park overrule an earlier decision of the High Court concerning the transfer of that area for the benefit of the Aboriginals; what was the division of responsibility between the Commonwealth and the constituent states in respect of the treatment of Aboriginals and immigrants; what measures were being taken to protect the rights of linquistic, ethnic and religious minorities and to enable them to enjoy their own cultures and what machinery the federal and state Governments had established in that respect.

157. Some members raised questions concerning the Australian policy towards immigration and refugees. Was Australia still pursuing a policy of white immigration? What progress had been made in that respect and what criteria were now being applied in the selection of immigrants? What problems might Vietnamese refugees have faced in the exercise of their human rights within the Australian community? Could such refugees acquire Australian citizenship and, if so, how?

158. Replying to questions raised by members of the Committee, the Representative of the State party pointed out that the provisions of the Covenant had been the subject of extensive parliamentary debate during the passage of the Human Rights Commission Act; that one of the functions of the Commission was to promote understanding and public discussion of the rights and freedoms recognized in the Covenant; that it had already published a pamphlet explaining its work and outlining important rights in the Covenant and that he would pass on to the Commission the suggestions that this pamphlet be translated into Aboriginal languages, but that it would not be easy to carry out because there were so many Aboriginal languages and the majority of them were exclusively oral. The Commission was currently engaged in developing projects for the teaching of human rights in schools and had recently begun issuing bi-monthly newsletters.

159. He stated that Australia's declarations and reservations, which accompanied its ratification of the Covenant, were made after a thorough and careful analysis of the laws and practices in all the country's jurisdictions; that certain statements had been prompted by caution when the Government had been in doubt, but that all articles on the subject of which no reservation had been entered were considered fully compatible with Australia's domestic legislation. As regards the reservation made with regard to articles 2 and 50 of the Covenant, he pointed out that careful reading of the reservation would indicate that Australia intended to apply certain parts of the Covenant consistently with other parts which seemed unexceptionable; that although international obligations to implement the Covenant naturally rested with the Australian Government, the Government had deemed it desirable to draw international attention to its domestic co-operative arrangements to ensure the implementation of the Covenant; that Australia was not seeking justification for its failure to fulfil its obligations and did not consider its statement in respect of those two articles to be in any way contrary to the object

of the Covenant, nor did it accept that the statement was in breach of the Vienna Convention on the Law of Treaties.

160. In connection with article 1 of the Covenant, the representative stated that his country supported the right of the Palestinians to a homeland; that it had worked consistently towards securing for the Namibian People the full exercise of their right to self-determination and that it had condemned human rights violations in southern Africa and was committed to the eradication of apartheid.

161. Responding to comments made under article 2 of the Covenant, he stated that the adoption of federal legislation was not necessary for Australia to carry out its obligations under international treaties and that the Australian authorities had virtually always pursued a policy of consulting the various states on the implementation of treaties in areas within their traditional responsibilities. His Government decided against the adoption of a "bill of rights" in legislative or constitutional form because that would have meant the incorporation in the legislation of a broad statement of human rights and that it would have been left to the courts to try to interpret those rights, which was not the procedure Australia normally adopted in the drafting of legislation. Australia had eventually decided in favour of federal legislative texts on specific issues (e.g., racial discrimination). He pointed out that some countries without a bill of rights incorporated in their legislation, nevertheless consistently observed a certain code of conduct which was based on the good conscience of their people. He maintained that the co-operative arrangements between the Commonwealth and State Governments for ensuring implementation of the Covenant were designed to ensure that the problem of inconsistency between a federal and a state law did not arise and were predicated on the fact that, in any federation, the central and provincial Governments had to co-exist. The fact that all the Governments of the Australian federation had reached agreement on the terms of Australia's ratification of the Covenant gave the Federal Government the confidence that all the international obligations it had undertaken could and would be fulfilled.

162. Commenting on a suggestion made in the Committee that the common law system offered only narrow remedies, he stated that this problem had been largely overcome by the reforms, both parliamentary and judicial, of the past 100 years. He also explained that the Australian Human Rights Commission could receive complaints from members of the public and was required to try to settle the matter and, failing that, to submit a report to the Attorney-General who was required to take that report before both Houses of the Federal Parliament. Referring to a question on the large number of bodies working in the human rights field in Australia, he pointed out that each of those bodies had specialist functions requiring different powers and procedures but that all of them contributed, each in its own way, to the protection of human rights.

163. As regards article 3 of the Covenant, the representative stated that exceptions to state legislation proscribing discrimination on the grounds of sex resulted from the fact that it was often impossible to apply such legislation to small businesses because they did not employ a sufficiently large number of persons; that it was usually felt in Australia that legislation should not intrude too far into private affairs except in cases closely related to the use of public funds and that legislation against discrimination normally left matters in the field of industrial relations to be worked out in accordance with specific industrial relations law. He also provided some statistics illustrating improvements in the status of women in the areas of political participation, education, employment and community activities.

164. In connection with questions raised under article 6 of the Covenant, he pointed out that although the infant mortality rate among Aboriginals was higher than that of the Australian community generally, it should be noted that there had been a steady improvement over recent years, to the extent that in the Northern Territory, where there was a high concentration of Aboriginals, the mortality rate had dropped from 142 per thousand in 1971 to 30 per thousand in 1981; that the Government had given financial support to independent Aboriginal medical services and assigned special allocations to health and environmental health programmes for Aboriginal communities. As to questions relating to capital punishment, he informed the Committee that the last instance of the implementation of the death penalty in Australia had been in 1967, just six years before its abolishment in all areas of Commonwealth jurisdiction, including the Northern Territory; that although there was still a theoretical possibility of its being imposed in some states for some crimes, which was a survival of the colonial régime, the possibility was purely theoretical and that legislation was now to be prepared to provide for the severing of most of Australia's remaining links with its colonial past.

165. Replying to questions raised under article 7 of the Covenant, the representative referred to the emphasis placed in the report on community attitudes in connection with corporal punishment but pointed out that the abolition of the punishment of whipping was currently under consideration in one of the two jurisdictions in Australia where it remained theoretically possible. He also indicated that there were ample instances of action being taken against police officers for misuse of authority.

166. In relation to article 8 of the Covenant, he stated that hard labour was subject in principle to the parliamentary and ministerial control exercised over any public servant, such as the Controller-General of Prisons and his staff. As to the possible imposition of the sentence of hard labour to convicted males only, he could not regard that as conflicting with article 3 of the Covenant, since it could hardly be argued that the ability of a State party to impose a sentence of that kind, was a civil or political right to be enjoyed equally by men and women in accordance with the Covenant.

167. As regards article 9 of the Covenant, the representative pointed out that in the case of undue delay in deciding on the lawfulness of the detention, the possibility was always there for obtaining a writ of habeas corpus. He reiterated the information in the report concerning the different approaches of the different Australian jurisdictions to the question of confinement of mentally-ill persons. All jurisdictions had, however, instituted stringent review mechanisms in order to ensure that only those genuinely suffering from mental illness were detained.

168. Replying to questions raised under article 12 of the Covenant, he stated that the persons at present entitled to reside on reserves were Aboriginals permitted to do so by the Director of Aboriginal and Islander Advancement and the Community Council who decided whether that was in the best interest of the applicant and was not detrimental to the best interests of other inhabitants or the reserve itself, and persons whose presence was required for the fulfilment of certain duties. Permits to visit a reserve were issued by the relevant community council. He also stated that all Australian jurisdictions recognized that the relationship between Aboriginals and the land was communal and not individual and, accordingly, if an individual breached the communal norm, the community had the right to expel him in accordance with existing legal procedures. Consultations were taking place between the Queensland Government and the Aboriginal and Islander communities on new

legislation under which Aboriginal Community Councils would have enhanced rights to exercise control over freedom of movement to and from reserves and, in particular, over community members who offended community standards. He also informed the Committee that restrictions on entry to the Cocos and Norfolk Islands were necessary in order to protect the rights of small and isolated communities in accordance with paragraph 3 of article 12 of the Covenant.

169. With regard to article 14 of the Covenant, the representative stated that there had not been any case of the removal of a judge in the present century; that the function of juries was to be judges of fact in all criminal trials in superior courts; that they were composed of laymen selected from the general community and that they played a fundamental role in the Australian judicial system. On the question of reversal of the onus of proof, he stated that, given the act that the whole of Australian political and legal tradition was against it, a government would seek to introduce legislation in that sense only in very exceptional cases and that, nevertheless, he would draw the attention of the Ministerial Meeting on Human Rights to the Committee's concern about the matter. As to the question of interpretation, he explained that it was a potential problem only at the time of arrest since the diversity of languages spoken in Australia, the size of the country and the sparseness of the population in remote areas meant that the availability of an interpreter at the time of arrest could not be guaranteed; that interpreters travelled on circuit with a court when necessary, but the matter was not a simple one because material often had to be relayed through several interpreters before an accused person or a witness could be properly understood but that he would, however, bring the Committee's comments to the attention of his Government. Replying to other questions, he pointed out that, in most Australian jurisdictions, if a trial was not initiated, at least by the presentation of an indictment before the court to which the person had been committed for trial, the accused could apply for the striking out of the committal or for the entry of a verdict of not guilty; that in common law, evidence obtained by unlawful means could be admissible in a court but that what mattered was the weight attached to such evidence, which was entirely dependent on the exercise of judicial discretion. He also stated that penalties applicable under Aboriginal customary law, which themselves constituted criminal offences, were clearly unlawful, that there were not two criminal law systems but that other types of tribal punishment which formed part of Aboriginal customary law could be applied and it was those punishments which were usually at issue in questions of double jeopardy and that this was a matter of balancing conflicting interpretations of individual rights.

170. In relation to article 15 of the Covenant, the representative indicated that, to his knowledge, there was no retrospective legislation in Australia which could properly be labelled criminal, that if a penalty were reduced after conviction and sentence, the sentence imposed was expected to stand.

171. Replying to questions raised under article 18 of the Covenant, he stated that, throughout Australia, the right of a person to adopt and practise a religion of his choice or to adopt no religion was respected; that no restriction was imposed on the propagation or practice of atheistic or agnostic views and that exemption from military duties of all kinds could be granted to a person who had conscientious beliefs which did not allow him to engage in such services.

172. As regards article 19 of the Covenant, the representative explained that the Australian Broadcasting Tribunal had the functions of granting licences to commercial broadcasting and television stations and of determining standards to be

observed and the conditions on which advertising might be shown and that before granting a licence, the Tribunal had to hold a public inquiry into the grant; that the Broadcasting and Television Act contained stringent provisions with regard to the ownership of the information media and that the number of radio and television stations in which a person or company might have an interest was strictly limited, but that there were no equivalent laws with regard to the press; that appointments to the membership of the Australian Broadcasting Commission were closely scrutinized by interested members of the public and that there would be widespread and vocal criticism of appointments thought to be politically motivated.

173. Replying to questions raised under articles 20, 21 and 22 of the Covenant, the representative indicated that he had noted the comments of some members of the Committee on Australia's reservation to article 20 and would draw those comments to the attention of relevant authorities. He stated that the criteria used in granting or refusing permission to hold public assemblies varied from jurisdiction to jurisdiction. He gave information on the relevant applicable provisions in some states as well as on the competent authorities to decide on the matter and stated that Commonwealth legislation did not deal with meetings in public places. He explained that "registered" clubs were accessible to all and that the word "registered" related to clubs which provided extensive entertainment and other facilities based on legalized gambling, which was subject to state registration and control; that Commonwealth and State Ministers in the Meeting on Human Rights were giving active consideration to questions of discrimination against women in relation to club membership. He had noted the views of Committee members on the question of the "closed shop" in industry and would draw those views to the attention of authorities in Australia.

174. Commenting on questions raised under article 25 of the Covenant, the representative stated that it had not so far been compulsory for Aboriginals to enrol under the Commonwealth Electoral Act, under the Western Australian electoral laws or in South Australia where it was not compulsory for any person to enrol for state elections; that once enrolled, every person was required to vote at the Commonwealth and state elections; that an Aboriginal advisory body had recommended that the law should be changed to make enrolment compulsory; that the Commonwealth Government had committed itself to removing the optional enrolment provisions for Aboriginals, thus making it compulsory for Aboriginals to vote in Federal elections. He also informed the Committee that the Commonwealth and State Governments had agreed that Australian citizenship should in future be the appropriate nationality requirement for the franchise and that uniform legislation to give effect to that decision should be enacted by the Commonwealth and the states, but that no person currently enrolled as an elector should be disenfranchised. He indicated that the reason for the rule that civil servants should resign their offices if they wished to stand for election to the Commonwealth Parliament was the strict separation of the legislative and executive functions in the Australian system. He informed the Committee that the participation of Aboriginals in public life was facilitated by the National Aboriginal Conference; that the Aboriginal Development Commission was controlled soley by Aboriginals and that there were Aboriginal members of the various legislative bodies at the Commonwealth and state levels and that they were also represented on a variety of public bodies in Australia.

175. In connection with article 26 of the Covenant, the representative stated that while recognizing the force of the alternative view expressed in the Committee, Australia believed that its interpretation of the second sentence of the article

was more in keeping with the original intention of the framers of that provision. He also pointed out that Aboriginal Australians enjoyed the same civil and political rights as all other Australian citizens and, like them, Aboriginals could invoke the Commonwealth's Racial Discrimination Act if they considered themselves the victims of discriminatory treatment and that, in fact, they took advantage of the machinery for investigation and recourse provided by the Act.

176. As regards questions raised under article 27 of the Covenant, particularly those relating to the aboriginals, the representative referred to his replies under various articles of the Covenant and pointed out, from the outset, that his Government had taken a very active part in international fora dealing with the question of indigenous populations. He stated that the Australian Government realized that there were still a number of problems to be overcome and it acknowledged the generally disadvantaged position of Aboriginal Australians and that it had, therefore, embarked on a series of special programmes designed to remedy particular disadvantages. Those programmes were formulated and put into effect only after consultations with Aboriginals, whose participation in the life of the country had significantly increased in recent years. Over the last decade, Aboriginals had been given the means of exercising real power in all matters affecting their lives. The programmes designed for Aboriginals were based on a number of key principles: Aboriginals must, for example, have the means of perserving their traditions, languages and customs, inter alia, through bi-cultural education, but were free, if they so wished, to integrate themselves into Australian society or to adopt whatever aspects of a western life style they pleased. The Australian Government recognized the Aboriginals' fundamental affinity with their land and consequently guaranteed them enjoyment of their rights to traditional lands, control of all mineral prospecting and development in a manner which protected sacred sites and encouraged states to make land available to Aboriginals, the essential principle of all plans in respect of Aboriginals being that of self-management. He than gave detailed information about the above-mentioned programmes as well as on the application of the key principles on which those programmes were based explaining the role and competence, inter alia, of the National Aboriginal Conference, the Aboriginal Development Commission and the National Aboriginal Education Committee, all of which were composed of Aboriginals, in promoting the needs and wishes of Aboriginals and in expressing Aboriginal opinions or deciding on appropriate policies to satisfy those needs and wishes. Referring to the special affinity which Aboriginals had with the land, which was an important factor underlying the Governments' land rights policies, he stated that whilst rights recognized in that connection differed from state to state the result was that Aboriginals, representing a little over 1 per cent of the total Australian population, now had various forms of legal title to some 10 per cent of the land mass of Australia. In his detailed account on the land rights of Aboriginals and the Governements' developing policy in that respect, he stated that after a prolonged period of consultation with various Aboriginal and Islander groups, the Queensland Government has decided to amend the Queensland Land Act and to establish what was known as a "deed of grant-in-trust", under which the land currently comprising Aboriginal and Islander reserves would henceforth be placed under the control of the elected Aboriginal and Islander Councils and that those Councils would have to be consulted before any mining right could be granted by the Queensland Government. Replying, finally, on the rights of minorities in general, he stressed the question of multi-culturalism and the policy adopted by the Australian Government over the past decade in encouraging ethnic communities to participate fully in the mainstream of Australian life. In this respect, he explained the role of the Institute of Multi-Cultural Affairs and the facilities

made available to the various ethnic groups to preserve their cultural heritage and in developing, in the Australian community, an appreciation of the contributions of various cultures to the enrichment of the community and in promoting tolerance and understanding between different cultural groups and ethnic communities.

177. Responding to comments made with regard to Australia's criteria for selection of migrants and admission of refugees, he stated that the "white Australia policy" had died a natural death many years earlier; that Australia's current policy for migrant selection placed emphasis on criteria of two kinds: family migration and skills in demand in Australia and that applicants were not excluded on discriminatory grounds such as religion, colour, race or nationality. The admission of refugees on the other hand was based on a different set of criteria and depended principally on an application of the definition of "refugee" contained in the 1951 Convention relating to the Status of Refugees, as well as on other specific criteria, especially that of family reunion. He also informed the Committee that special programmes were in operation in Australia to ensure that migrants and refugees were encouraged and had the means to participate fully in the mainstream of Australian life.

Austria

178. The Committee considered the initial report (CCPR/C/6/Add.7) submitted by the Government of Austria at its 412th, 413th, 416th and 417th meetings held on 22 and 24 March 1983 (CCPR/C/SR.412, 413, 416 and 417).

179. The report was introduced by the representative of the State party who indicated that his Government's intention had been to give an overall view of the legal position of the Covenant in the context of the Austrian legal system and that many specific questions which had not been dealt with in the report would be considered in future reports.

180. Members of the Committee praised the high quality of the report which they thought was well organized and comprehensive and which had clearly stated the legal position of Austria with regard to the implementation of civil and political rights. Nevertheless, it was felt that the frequent quotations of provisions of the European Convention on Human Rights in a way forced some members to consider a report based on a different legal instrument and lacking in sufficient and factual information on the factors and difficulties affecting the implementation of the Covenant, or the relevant provisions of the Constitution, and other legal instruments. It was asked whether the text of the Covenant had been disseminated in Austria and whether the report had been published and the public made aware of the fact that it was submitted for consideration by the Committee.

181. Commenting on article 1 of the Covenant, members requested further clarification of Austria's position on this article as well as details on the action taken to promote the realization of the right of self-determination of the Palestinian and South African people and to ensure that Austrian industry and banking were not collaborating with the apartheid régime of South Africa. One member wished to have more information on Austria's unique post-war experience in protecting and exercising its right to self-determination in the light of the Declaration of Independence of Austria, the State Treaty and the Declaration of Neutrality.

182. As regards article 2 of the Covenant, it was asked whether the legislative and executive authorities were required to refrain from any discrimination based on religion or political or other opinion as stated in this article. Some members expressed surprise at the fact that, whereas the European Convention on Human Rights, a regional instrument, had been integrated into Austrian constitutional law, the Covenant, a universal instrument, was not. One member, while admitting this weakness in Austrian law, thought that the proliferation of similar but not identical texts in the same legal system was not always desirable and could give rise to confusion. Noting that one reason why the Covenant had not been incorporated into Austrian legislation was that, upon approving the Covenant, the Austrian Parliament had decided not to add another source of special law to the many existing sources of Austrian law, in order to avoid "impairment of clarity and legal security and prevent any possible conflicts"; members asked what those conflicts might be; what positive effects the Covenant had on domestic law and whether an attempt had been made to determine in what respect the Covenant went further than the provisions of Austrian domestic laws including the European Convention on Human Rights; what measures had been taken to adapt the Austrian legal order to the provisions of the Covenant, as suggested in 1978 by the Foreign Relations Committee to the Austrian Parliament; whether the recodification of civil and political rights, referred to in the report, would be completed in the near future and whether the rights embodied in the Covenant would be incorporated and not simply "duly taken into consideration" in this work, as mentioned in the report; whether the Austrian Government felt that the Covenant was being implemented in substance or whether full implementation of its provisions was possible and, if so, what methods had been used to make sure that Austrian law and practice truly conformed to the provisions of the Covenant.

183. Members asked whether the remedies provided for under article 2, paragraph 3, of the Covenant would be available to anyone as soon as he merely claimed his rights had been violated. Additional information was requested on they way in which Administrative Court fitted into the Austrian legal system and on its functions and relations with the Constitutional Court. Noting the existence of a distinction between appeals to the Constitutional Court and appeals to the Administrative Court, members asked whether, if a case was brought before a court which was not competent to deal with the matter, it could be referred to the court which was competent without causing any disadvantage to the plaintiff; whether it was possible to appeal a judgement made by the Administrative Court to the Constitutional Court, and whether it was true that the possibility of lodging an appeal depended on the form of the act contested by the injured party and that the latter could appeal only against acts which were formally qualified as decisions. Referring to the establishment in Austria in 1977 of the institution of Volksanwaltschaft (mediator), some members wondered why it had been considered necessary to establish this institution since there appeared to be a variety of judicial and administrative remedies against infringements of fundamental rights. Other members asked whether that institution offered additional remedies, what the advantage was of applying to it rather than to the courts, what the composition of that institution was and how its independence was assured, what procedures the "mediators" used and to whom they were responsible, whether any report they might produce was duly publicized, whether their decisions were implemented automatically, whether that institution had any functions in respect of human rights in addition to receiving complaints from individuals and whether there was any analogy between that institution and the role of Ombudsmen or special national institutions to protect and promote human rights.

184. In connection with article 3 of the Covenant, members requested further information on how men and women were guaranteed equal rights in Austria, particularly on whether there had ever been a woman candidate for a judgeship of the State Supreme Court; on the number of women serving as ministers, judges and ambassadors and on the relative proportions of males and females in the civil service as well as at all levels of education.

185. As regards article 6 of the Covenant, it was asked whether there were specific provisions in Austrian legislation protecting the rights of fetuses and what provisions were applicable in relation to voluntary abortion.

186. Commenting on articles 7 and 10 of the Covenant, members asked what remedies were available to an individual deprived of his liberty who complained about treatment contrary to the provisions of those articles; whether places of imprisonment were inspected regularly by bodies composed of independent persons responsible for examining the conditions of imprisonment and receiving and rectifying the complaints of prisoners; whether there had been complaints among the public or in the press concerning the situation in prisons; whether Parliament had taken an interest in the treatment of detained persons whether there was a difference in status and treatment between persons who had been deprived of their liberty because they were suspected of having committed an offence and those who had already been convicted; whether judges were authorized to take into account testimony obtained illegally by the use of methods of interrogation forbidden by law and whether there could be exceptions to that rule. Information was requested on who determined the cases in which there was no fear of a "harmful influence" on minor prisioners and, accordingly, no separation between minors and adults was warranted; and on whether educational courses offered to prisoners were aimed specifically at the rehabilitation of prisoners and crime prevention.

187. With reference to article 9 of the Covenant, it was noted from the report that the Constitutional Court had deliberately given a sufficiently broad intepretation to the legal term "arrest" for it to cover other forms of direct restraint of liberty and it was asked what those other forms were that were not formal arrests. Noting that, according to the report, an individual could be arrested if there was a danger that he might repeat the offence, members pointed out that that rule might run counter to the rule of "presumed innocence" established in the Covenant and asked how it could be determined with any degree of certainty that such a risk existed, who was empowered to decide in this respect, what the maximum period was for such an arrest and what means of appeal were available to a person deprived of his liberty through a decision taken by an administrative authority. In this connection, it was also asked whether, in determining compensation for the victim of unlawful arrest or detention, Austrian case law generally took account of the reasons which led the authorities to make such an arrest or, conversely, the fact that the accused person had been innocent and whether the amount of compensation depended on the degree of suffering of the victim or on other criteria.

188. In relation to article 12 of the Covenant, information was requested on the Austrian legislation which provided for the possibility of withdrawing the nationality of certain Austrian nationals and on the available means of protection against what was described as a very serious penalty and on the effects of such withdrawal of nationality on the legal status and residence of the persons concerned.

189. Commenting on article 13 of the Covenant, some members pointed out that the provision that the Austrian authorities could override the suspensive effect of an appeal in cases where the public interest made early expulsion of aliens urgently necessary, was not in keeping with the safeguards stipulated in the Covenant. It was asked whether there were any safeguards under Austrian law to ensure that explusion was only the denial of residence and that it could not be used as a pretext to extradite persons to other countries or to expose them to persecution.

190. As regards article 14 of the Covenant, it was asked whether criminal proceedings could take place in absentia, particularly if the accused person has fled to another country; whether there was any possibility of appeal in cases where the court ruled that the defendant was not entitled to free legal assistance and what would happen if the accused did not specifically request legal counsel and whether there were statistics indicating the normal duration of a criminal case.

191. Referring to an Austrian reservation upon ratification of the Covenant concerning articles 9 and 14 of the Covenant, one member wondered whether it was compatible with the purposes of the Covenant and whether it signified that the entire body of administrative penal sanctions was outside the provisions of the Covenant. Another member suggested that reservations made concerning article 14, paragraphs 5 and 7, should be reconsidered because they undermined very important principles of criminal law, namely the right of the convicted person to have his conviction and sentence reviewed by a higher tribunal and the principle of non bis in idem, respectively.

192. In relation to article 15 of the Covenant, it was asked whether, subsequent to the enactment of a law providing for the imposition of the lighter penalty, courts were required to apply the lighter penalty in all cases or only those in which a decision has not yet been taken.

193. In connection with article 17 of the Covenant, more information was requested on the rules relating to the seizure and opening of letters and other correspondence, whether there were provisions prohibiting searches at night and on whether forms of surveillance of citizens were subject to any restrictions.

194. With reference to article 18 of the Covenant, it was asked whether, in Austrian public schools, compulsory religious instruction in their faith for all pupils who were members of a church or religious community recognized by the law was compatible with freedom of religion; what forms of religious practice might be contrary to public order or morality and what body was responsible for establishment that they were and what forms of recourse were available to individuals and religious institutions in that respect.

195. In respect of article 19 of the Covenant, fuller information was requested on the way in which the right of reply was ensured in the Austrian media, the conditions under which financial assistance was granted to daily and weekly news publications, the provisions relating to censorship, referred to in the report, and on whether the penal provisions relating to the seizure of publications and the prosecution of the author applied only to safeguarding of public morals or the interests of young people, as implied in the report. With reference to the penal provisions applicable to the offence of publically insulting the Federal Army, or an authority, or the vilification of the State or its symbols, it was pointed out that those provisions could be interpreted and applied in a repressive manner and it was asked to what extent they could be applied to prohibit any criticism of

public authorities, how the scope of the provisions in question could be delimited in order to prevent arbitrary action and to protect the right of dissent and what the case law on the subject was. Referring to the relevant provisions of the 1955 State Treaty for the Re-Establishment of an Independent and Democratic Austria, in particular articles 4, 9 and 10, one member asked if any court decisions had specifically prohibited Fascist and neo-Fascist propaganda and newspapers. Another member wondered how the "national socialist" ideas could be combated, since they would not disappear as the result of censorship.

196. As regards article 20 of the Covenant, it was pointed out that the relevant Austrian legislation did not really correspond to this article especially with regard to war propaganda or incitement to commit hostile acts. It was asked whether action had been taken to prevent activities or tendencies which were in violation of articles 5 and 20 of the Covenant, with regard to both Austrian citizens and foreigners and how many persons had been punished under the Prohibition Act, mentioned in the report, in the past three years and to what extent it was applied.

197. With reference to article 22 of the Covenant, it was asked in what circumstances an association was considered dangerous, how many associations or organizations had been prohibited in accordance with the relevant legislation, particularly under the provisions of the 1955 State Treaty and whether there had been any problem with the Committee on Freedom of Association of the International Labour Organisation.

198. Commenting on article 24 of the Covenant, members asked what measures were taken in Austria to enable working mothers to protect the interests of their young children without making undue economic sacrifices; whether it was correct to conclude from the report that legal guardianship was given precedence over the parental relationship in connection with children born out of wedlock and, if so, whether that was compatible with the Covenant and what inheritance rights natural and adulturine children enjoyed under Austrian law.

199. In connection with article 25 of the Covenant, information was sought on the law concerning political parties and whether funds received by them from the State in order to carry out their constitutional mandates were distributed automatically or whether they were subject to certain conditions; whether Fascist and neo-Fascist candidates were prevented from standing for election, and whether a person who professed, without putting it into action, an ideology banned in Austria, such as national socialism, had equal access to posts in the civil service.

200. In relation to article 27 of the Covenant, members asked whether there were any other ethnic minorities in Austria in addition to those mentioned in the report and, if there were, what their legal status was, whether minorities had access to the conduct of public affairs and enjoyed the right to be represented in Parliament by their own candidates and whether they could use their national tongue. More information was requested on the situation of the Slovene and Croat minorities and on their position with regard to the Ethnic Minorities Act. A question was raised as to why the report referred only to paragraphs 3 and 4 of article 7 of the State Treaty, but avoided mentioning paragraphs 1, 2 and 5 of that article all of them relevant to the protection of minorities. Referring to the aforementioned paragraph 5, it was asked whether the new street signs which were posted to replace those in Slovene that had been destroyed, were written in Slovene or in German. Noting that, without the basic right to use and teach their languages, ethnic

groups as such were doomed to extinction, members emphasized the need for more information on the positive action taken in accordance with his article to safeguard and ensure the rights of minorities, on the actual human rights situation of ethnic groups, on the relevant case law and on administrative memoranda or instructions on the subject as addressed to law enforcement officials.

201. Responding to comments made by members of the Committee, the representative of the State party informed the Committee that the Covenant had been published in the Federal Gazette and in private publications of the Constitution and that it had been discussed at a seminar on human rights held in 1981, but he thought that dissemination and distribution of international instruments on human rights were matters for the non-governmental organizations rather than for the States themselves.

202. Commenting on the questions raised by members concerning the measures adopted by Austria to give effect to the rights recognized in the Covenant, the representative stated that constitutional laws, ordinary laws and statutes were methods that had been used to meet Austria's obligations under the Covenant; that the few legislative gaps referred to in Parliament during the ratification of the Covenant would be dealt with in detail in Austria's following report; that some laws had been enacted in order to implement the Covenant; and that the work carried out in the area of recodification of legislation dealing with fundamental rights would hopefully yield results in the long-term, despite the problems emanating from new developments since 1964, including the ratification of the Covenant.

203. The representative also stated that in criminal, civil and administrative law, civil and political rights were protected by effective remedies; that any alleged violation of those rights could be the subject of an appeal, that any court decision of a final nature could, in principle, be appealed; that, in criminal law, all decisions and measures taken at the pre-trial stage could be the subject of appeal to the higher instance; that extraordinary appeals at the pre-trial stage could be taken to the Administrative Court and the Constitutional Court; and that ex officio reviews of cases were also made on a periodic basis. Replying to other questions, he indicated that cases relating to the duties and obligations between individuals fell within the sphere of judicial procedure; that there is a field of administrative law including the prohibition of offences with a view to maintaining public order which fell within the competence of the administrative authorities; that the Constitutional Court could hear appeals against decisions of the administrative authorities which allegedly violated any right guaranteed by Constitutional law and that if the Constitutional Court found that no constitutional rights had been violated in a case, that case could be referred to the Administrative Court if it was alleged that other rights had been violated. As to the Volksanwaltschaft (mediator), he stated that that institution had been set up as a last resort to be used after all other remedies had been exhausted; that mediators had nearly unlimited powers to deal with alleged cases of mismanagement or misbehaviour in, and to investigate complaints against, both national and local administrative authorities; to recommend solutions to those authorities which were then obliged to comply with such recommendations or state in writing why they could not; and that they could lodge appeals before the Constitutional Court against administrative decrees which they considered unlawful; that mediators were elected by Parliament for a four-year term; that there were currently three mediators in office and they were obliged to report their findings to Parliament annually.

204. With regard to article 3 of the Covenant, the representative informed the Committee that the role of women in public life had undergone significant changes in recent years, when a number of them occupied ministerial posts; that women had been active in provincial governments for several years; that the number of women in public life was still lower than that of men; that as at 1 January 1983, 15 per cent of the total number of judges and prosecutors in Austria were women and that 50 per cent of new appointments were women, which meant that the situation would change still further.

205. In response to questions raised under article 6 of the Covenant, he stated that the Constitutional Court had decided that, in principle, fetuses were not protected under that article, that the emphasis in Austria had recently shifted from a criminal to a non-criminal approach to the reduction of abortion and infant mortality and that although the Criminal Code had in 1975 decriminalized abortion in specific cases, abortion had not increased and that it was generally considered to be an undesirable means of birth control in Austria.

206. Replying to questions raised under articles 7 and 10 of the Covenant, the representative, who stated that the Standard Minimum Rules of the Treatment of Prisoners were fully applied in Austria, explained the complaint procedures under the Prison System Act whereby complaints could be channelled, inter alia, through the presiding judge of the relevant court or through the "mediators", depending on the type of prison. He also explained the prison inspection system whereby, inter alia, independent prison commissions, set up on a regional basis, visited all prisons at least once a year without notice and had direct access to the detainees and the prison files and reported each year to the Ministry of Justice. He explained the difference in treatment between accused persons and convicted offenders, the restrictions imposed on the former being generally limited to the measures necesary for their detention. He pointed out that juvenile prisoners could be detained with adults under 25 years of age, subject to the decision of either the Court, and Ministry of Justice or the prison director; that in some cases, other juvenile offenders could have a more detrimental influence on a young person than some adult detainees and that, considering that there were only 80 convicted juveniles in all Austrian prisons, segregation could, in respect of many of them, be tantamount to placement in solitary confinment. Concerning rehabilitation policy, he stated that it was the view in Austria that convicted offenders could best be rehabilitated without serving prison terms; that, as a result, prison sentences had been considerably reduced since the early 1970s and only 40 per cent of convicted offenders were given unconditional prison sentences, as compared to 1970; that emphasis had also been placed on release and post-release measures and that a successful network of release assistance centres had been set up.

207. As regards article 9 of the Covenant, he stated that mental health and juvenile delinquency were non-criminal grounds for the deprivation of liberty and that there were also cases where persons were deprived of liberty on grounds of health or violation of civil law, but that those were not significant. He also pointed out that detention pending trial was, in principle, never mandatory, but that for the most serious crimes, the court was obliged to order detention unless the defence was able to meet certain conditions and that the period of pre-trial detention was generally limited to six months but ranged from two months, in cases of collusion, to up to two years in very serious criminal cases. He indicated that it was the Court which handed down ex officio decisions on compensation for unlawful arrest; that if the detention was considered unlawful, compensation was

always given, but if it was considered lawful but not justified in cases where there was no conviction, compensation was given when cause for suspicion could not be substantiated; and that compensation was, inter alia, based on suffering caused to individuals.

208. In response to questions raised under article 12 of the Covenant, he stated that under the Nationality Act, nationality could be revoked if a citizen entered into the service of a foreign State and, in that capacity, carried out acts detrimental to the interests and good name of the Republic, but that a naturalized citizen could be deprived of Austrian nationality if he had not renounced his former nationality, had not been granted dual nationality and was not a refugee. The citizen in question had to be informed of the decision to revoke his nationality at least six months before the expiration of a period of two years after the initiation of legal proceedings.

209. In respect of article 13 of the Covenant, the representative pointed out that the suspensive effect of the appeal against the expulsion order could be annulled only for reasons of national security; that an alien could lodge an appeal even against an expulsion order handed down for reasons of national security and that the authorities were obliged to respect the will of the person concerned and not transfer him to the border of a State in which he could be legally prosecuted.

210. Replying to questions raised under article 14 of the Covenant, he stated that, according to Austrian law, an accused person could be tried in absentia provided that the offence was not regarded as a serious one, that the accused had been heard by the Court before the trial, that the warrant of arrest had been delivered to the accused in person and that the court believed that it would be possible to shed full light on the case despite the absence of the accused, but that it was very rare for all four conditions to be met. He also informed the Committee that legal aid was available in all civil and criminal cases for persons with inadequate means to provide for their own defence; that it was provided when defence was mandatory, namely, in all major criminal cases, with possible sanctions of more than three years, and when the court decided that it was needed to serve the interests of justice and to assist persons who required professional assistance.

211. Responding to comments made by members in respect of Austria's reservations on article 14, the representative explained those reservations in terms of the existing legal system and indicated that convenience and other good reasons convinced his Government to retain the relevant existing provisions.

212. With reference to article 15 of the Covenant, he stated that if the law providing for the lighter penalty came into force between the time when an offence was committed and the time when the case came to trial, the lighter penalty would apply; that if the law was changed when the case had already been tried, commutation of the sentence ought to be possible, but not automatic and that that should not become a general rule since there could be good reasons for upholding the original sentence.

213. As regards article 17 of the Covenant, the representative stressed that telephone tapping and seizure of private correspondence were legal only if ordered by the judiciary and that a private home could be searched only when absolutely necessary and when all necessary precautions were taken to protect the legitimate interests of the individual concerned.

214. In connection with article 18 of the Covenant, he stressed that the Basic Law, which granted the State the leading role in the field of education, was in no way designed to regulate religious instruction and that the State was empowered only to protect that freedom as outlined in the Constitution in the interests of public policy and morals.

215. Replying to questions raised under article 19 of the Covenant, the representative pointed out that the right of reply was ensured when incorrect information had been published in the press or broadcast on the radio or television and that broadcasting companies could be required through a court decision to correct false information; that the Press Promotion Act provided for the granting of State subsidies to newspaper companies in order to ensure a wide spectrum of opinions and to facilitate the publication of newspapers for minority groups; that no publication, theatrical play, film etc, could be subject to prior censorship, but that the law provided for certain measures in order to protect minors, safeguard public morality and prevent racist or war propaganda; that a citizen could demand seizure of a publication, for libel for example, but that in that event, the court, in reaching its decision, had to balance the interests of the appellant and those of the public, with the latter taking precedence; and that the inclusion of a notice of proceedings in the defendant's publication, a widely used practice, had rendered recourse to seizure virtually pointless. He also pointed out that a statement directed against the State, in order to be considered defamatory, and thus give rise to legal proceedings, must among other conditions have been made in public with malicious intent and must have been widely circulated; that those with the best legal protection with regard to defamation were individuals, followed by civil servants, legal entities and the State.

216. As regards article 20 of the Covenant, he submitted that this article referred to a purely theoretical obligation and that propaganda for war in itself did not constitute a threat of war. He also pointed out that the Penal Code provided for guarantees concerning not only acts proscribed under the Covenant, such as hostile acts against ethnic groups, but also incitement to hostile acts.

217. Replying to questions relating to article 24 of the Covenant, the representative stated that as illegitimate children needed more protection, being deprived of the initial advantages of legitimate children, legal guardianship by means of social assistance had been retained in principle, but that mothers were entitled to apply for exclusive legal custody of their children. Those provisions could possibly be revised if social conditions changed, as currently seemed to be the case, since there was an increase in the number of children being born out of wedlock.

218. In response to questions raised under article 27 of the Covenant, he informed the Committee that, in Austria, there were four ethnic and linguistic minority groups, namely, the Slovene, Croat, Hungarian and Czechoslovak minorities, each living in different parts of the country and that the percentage of the general population they represented was not very high. There was no specific provision regarding the representation of minorities in Parliament, but the fact that two major parties dominate political life in the country did not make it easy for other parties to obtain sufficient votes to be represented in Parliament, hence the failure of the candidates of the Slovene minority in elections in Carinthia to obtain a sufficient number of votes to be elected. As regards the right of minorities to use their own languages, the representative stated that there were norms for each of the minorities, whereby the Slovene minority could be provided

with bilingual teaching in the primary schools at the parents' request. Moreoever, there was a secondary school which used Slovene as the language of instruction. Efforts were being made to set up courses in Hungarian but there were some problems, since few persons were concerned. The Czechoslovakian minority of Vienna had its own school where Czechoslovak was taught and used, whereas the teaching of Croat depended on the percentage of Croats in the schools.

219. Recognizing that it had not been possible to answer all the questions asked, the representative of Austria promised to supplement the initial report with answers to the remaining questions within one year.

Nicaragua

220. The Committee considered the initial report (CCPR/C/14/Add.2 and 3) submitted by the Government of Nicaragua at its 420th, 421st, 422nd, 428th and 429th meetings, held on 28 and 29 March and on 4 April 1983 (CCPR/C/SR.420, 421, 422, 428 and 429).

221. The report was introduced by the representative of the State party, who gave a detailed account of the historical and geographical factors which had shaped the development of Nicaragua since the time of the Spanish Conquest, and stated that following the triumph of the revolution in 1979, his Government had set national reconstruction and the liberation of man as its main goals; that it was the belief of the Government Junta that human rights and individual liberties were indivisible and that the full realization of civil and political rights was impossible without the full enjoyment of economic, social and cultural rights; that the acts of aggression and the repeated attempts to destabilize the country, which were financed by the United States Government, impeded efforts to achieve the goals set by the Government, constituted the main obstacle to the free exercise of human rights in the country and obliged the Government to declare a state of national emergency, as provided for in the Statute on the Rights and Guarantees of Nicaraguans and in article 4 of the Covenant, in order to safeguard the rights and guarantees of its people and the country's self-defence.

222. He also pointed out that his Government recognized the existence of socio-economic and cultural discrepancies between the population of the Pacific region and the ethnic groups of the Atlantic coast and was endeavouring to serve the interests of the disadvantaged population of the latter region; that, in January 1981, the Government had been forced to transfer 39 primarily Miskito communities to an area where they would be protected from the immediate danger of military aggression and that the Government had been helping people in the new settlements to meet their most urgent needs in various fields of life. His Government assured the Committee that it would end or restrict the state of emergency as soon as the problem of external aggression was resolved.

223. Members of the Committee praised the Government of Nicaragua for sending a high level delegation to represent it before the Committee and for submitting, in time, a full report that provided a comprehensive and informative picture of both the legal and factual economic, social and political context of human rights in the country. They noted with appreciation that soon after overthrowing the dictatorship, the Sandinista revolution had enacted the Statute on the Rights and Guarantees of Nicaraguans, ratified or acceded to several instruments designed to ensure and protect human rights, including the Covenant and the Optional Protocol and had shown great willingness and determination in fulfilling its commitments for

the overall reconstruction of the country on the basis of social justice and democracy, despite the great external economic and military pressures and threats aimed at destabilizing the Government and undermining its achievement. In this connection, it was pointed out that the impact of destabilization on the enjoyment of human rights was bound to be negative, resulting as it had in the declaration of a state of emergency in Nicaragua; that it was the right of every people to manage its internal affairs without external interference; that the continuing outside interference in Nicaragua's affairs violated that right; that international law did not recognize spheres of influence and that its strict observance was fundamental to the internal order of countries. It was obvious that it could only be imagined what favourable results could have been achieved if Nicaragua would not have been forced to protect itself against subversive operations financed and organized from abroad.

224. Noting that although Nicaragua was party to the Optional Protocol, no communications had been submitted to the Committee, one member hoped to receive an assurance that the Government would co-operate with the Committee in dealing with communications as conscientiously as it carried out its reporting obligations under article 40 of the Covenant. It that connection, it was asked what measures had been taken by the Government to make judicial and law enforcement officers aware of the content of the Covenant and to inform the population of the ratification by Nicaragua of the International Covenants on Human Rights and the Optional Protocol. Information was also requested on the National Commission for the Promotion and the Protection of Human Rights, its specific functions, competence and activities and on any independent human rights commissions that were active in the country, such as the Permanent Commission on Human Rights.

225. In relation to article 1 of the Covenant, members requested information on the position of Nicaragua regarding the right of peoples to self-determination and asked why the Government had found it necessary to derogate from this article during the state of emergency and whether there was a basis for thinking that the decision to derogate from the right to self-determination had been taken with particular persons or groups of persons in mind. Information was also requested on whether there were foreign companies still exploiting Nicaragua's resources; on the legal consequences; on the implementation of the Covenant of some of the trials which had taken place, in particular following the nationalization that had been carried out, the agrarian reform and the creation of a mixed economy in the country.

226. As regards article 2 of the Covenant, it was asked whether the provisions of the Covenant had been incorporated into the Nicaraguan legal system; whether the Covenant could be directly invoked in the courts; what the exact meaning was of the provision referred to in the report that the "full applicability" of human rights was guaranteed and what measures had been taken to give it legal effect and also to ensure respect of human rights. Information was also sought on the remedies available, under those circumstances, to all those who believed that their rights under the Covenant had been violated; and on the general provisions with regard to amparo, whether that remedy was available during periods of emergency and what the competent authority was in that respect. Noting that there existed in Nicaragua a strong concentration of executive and legislative powers in the hands of the Government and that the Sandinista Police enjoyed "jurisdictional powers", members asked what the highest authority of Nicaragua was; which laws could be passed independently by the Junta and what happened if the Junta did not accept bills submitted to it by the Council of State; whether the judiciary could decide that a decree was illegal and whether the Junta could override the objections of the judiciary.

227. In respect of article 3 of the Covenant, it was asked how the principle of equality between men and women was put into practice; how many women had positions in the Government, in the Council of State, in the judiciary and in the diplomatic service and what measures the Government had taken to increase awareness among women of their rights. Information was also requested on the integration of women in development activities and technical co-operation as both participants and beneficiaries on equal terms with men.

228. Members noted with appreciation that, in proclaiming a public emergency, the Government of Nicaragua had complied with the requirements of article 4 of the Covenant, provided assurances that the measures had been implemented "with extreme caution" in an attempt to restrict the fundamental rights of Nicaraguans as litte as possible and to guarantee their freedoms. While one member stressed that the Government had thereby fulfilled its obligations under article 4 of the Covenant and did not have to account for its decision to the Committee, another member stated that, in submitting additional information on the subject without being requested to do so, that Government seemed to agree that when a State party invoked its right under article 4 of the Covenant to derogate from certain provisions, its reporting obligations under article 40 of the Covenant were not suspended. Members asked for more information on the actual difficulties encountered by the Government in implementing the Covenant in view of the state of emergency and on the extent of the derogations in respect of each of the articles affected; whether it could be assumed that the implementation of articles 26 and 27 of the Covenant had been suspended and, if so, what reasons had led the Government to take that decision; to what extent the rights which had not been suspended as well as those which could not be suspended according to article 4, paragraph 2, particularly the right to life, were themselves endangered by the circumstances which had led the Government to take the emergency measures; which articles of the Covenant Nicaragua had most difficulty in implementing and why and what the Committee could do to assist Nicaragua to protect human rights in its territory under those circumstances. In this connection, it was suggested that the Committee should consider adopting a general comment regarding the difficulties facing States parties in the implementation of the Covenant because of external economic and military pressure and interference.

229. Commenting on article 6 of the Covenant, members expressed their satisfaction at the abolition of the death penalty in Nicaragua. They noted that deaths had nevertheless occurred and that they were attributed to Government forces and they asked whether the Government had initiated inquiries on those cases and what the results were; what steps it had taken to protect those who might be vulnerable to such abuse by the authorities or to attack by counter-revolutionaries and what measures had been adopted to train the police and security forces with a view to minimizing such risks. Information was also requested on any involuntary disappearances that may have taken place in the country and on the events which had occurred at Leymus in December 1981 which had led to the death of Miskito Indians.

230. With reference to articles 7, 8 and 10 of the Covenant, it was asked whether penalties were made proportionate to offences and what the maximum period was for putting an individual on parole; what the Government's position was in respect of forced labour; what procedures there were for supervising places of detention and for receiving and investigating complaints filed by detainees; what remedies were available to deal with violations of those articles of the Covenant; what the conditions were at the special detention centres for former members of the National Guard and what the legal status was for counter-revolutionary prisoners in general

and, in particular, whether they were considered to be political prisoners and, if so, how many they were, whether their families and lawyers had access to them and in what way their treatment differed from "ordinary prisoners" referred to in the report. It was also asked whether those who, after the revolution, abused their powers and took the law into their own hands had been prosecuted; whether the Government had taken measures to institute an inquiry following the events which had taken place at Puerto Cabezas and whether the relocation of Miskito prisoners had been intended as a penalty or a rehabilitative measure and what safeguards were applicable to those prisoners in the areas to which they had been transferred.

231. As regards article 9 of the Covenant, it was asked whether the Maintenance of Order and Public Security Act was still in force or whether its application had been suspended during the state of emergency; what measures had been taken to avoid harassment of certain individuals or arbitrarily depriving them of their liberty; how long a person could be detained without trial or held incommunicado and whether the situation was different during the state of emergency; to what extent the right of habeas corpus had been suspended during the state of emergency and whether the Government had used its emergency powers to detain people without trial.

232. In connection with article 12, in conjunction with article 27 of the Covenant, members asked what justification there was for the transfer and relocation of several thousand Miskito Indians; why it had been necessary to move them in such haste; under what conditions the transfer had taken place; in what circumstances they were allowed to leave the camps where they have been resettled and whether any of them had taken that option; whether measures were envisaged to compensate them and reunite families; whether it was the future policy of the Government to authorize them to return to their homes after the state of emergency or whether it would settle them elsewhere.

233. Commenting on article 14 of the Covenant, members asked how the Government guaranteed the impartiality and independence of the judiciary; what had been done to establish the legal profession on a sound basis and what conditions there were for the appointment and dismissal of judges; whether the Special Courts referred to in the report had been established under the state of emergency and, if so, for what purpose and with what powers; whether the military courts which acted by authority of the governing Junta were thus becoming regular courts; whether police magistrates functioned as courts and, if so, what avenues of appeal existed against their decisions and why offenders could not be brought before the ordinary courts; and to what extent the requirements laid down in article 14 of the Covenant were being met by the procedures any such courts might follow. Clarification was requested of a statement in the report that administration of justice in Nicaragua was now based on historical truth rather than on the truth of the evidence; and of the review of penal procedure which had been carried out following proceedings brought by the revolutionaries against members of the National Guard of the Somoza era. Information was also requested on the maximum time that might be taken by administrative and judicial appeal proceedings; on whether the procedural time-limits provided for by the Maintenance of Order and Public Security Act still applied and whether they would continue to apply after the state of emergency; on the date on which the Supreme Court would issue its verdict in the case of the Puerto Cabezas Indians and on the number of trials which were under way in accordance with the law on military criminal procedures and on the nature of offences against public order and the law governing them in general.

234. In relation to article 18 of the Covenant, one member, referring to a quotation in the report, wondered whether it was the business of any Government to draw a distinction between true and sham Christians and to set itself up as preserver of the true thought of Christ. It was also asked whether it was true that religious figures had been arrested or ordered to reside elsewhere in the country; that some of them had been subjected to physical attacks in the streets and the police had failed to intervene; that religion was systematically exposed to ridicule in Nicaragua; that the educational system in Nicaragua was being restructured in such a way as to prejudice the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions; whether the building housing the synagogue in Managua had been taken away from the Jewish community and why all efforts to recover it had been to no avail. In this connection information was requested on the effects the closing of the Moravian Bible Institute in 1982 had on the Miskitos sense of identity and on the cohesion of their group.

235. Commenting on article 19 of the Covenant, members wondered what the Nicaraguan revolution philosophy was with regard to fundamental freedoms and to what extent those freedoms could be guaranteed when the state of emergency was in force or when national security was threatened. They asked, in particular, whether the formalities, conditions and restrictions which could be imposed on the freedom of expression, as stated in the Fundamental Statute of Nicaragua, had been reviewed in the light of paragraph 3 of article 19 of the Covenant; why prior censorship was imposed on the press; what the number of newspapers in the country was and who owned them; what measures were taken to permit political parties to have access to State television and to express their view-points. Clarification was requested of statements in the report to the effect that freedom of expression could be restricted in the interests of "the national economy", that freedom of information could not be subjected "to the economic power of any group" and that information that might affect, inter alia, "production" was censored. Noting that article 5 of the Covenant recognized that there were limits to political freedoms, one member pointed out that those limits, however, were not intended to be such as to prohibit peaceful expression of views and public debate on public issues and he asked whether the definition of the role of political parties, as appeared in a draft statute, namely that of making constructive criticism and submitting proposals to the public administration, represented a deliberate exclusion of political parties from any real political role.

236. In respect of articles 21, 22 and 25 of the Covenant, it was asked whether opposition parties had found it difficult to hold meetings; which political parties and trade unions had been banned and for what reasons; whether the restrictions envisaged in the Labour Code were compatible with ILO Conventions; why it was found necessary that only one trade union was permitted to function in a given enterprise; whether the social and peoples' organizations which, since the revolution, had been active in politics could participate in the conduct of public affairs, in particular in the law-making process, for example, by initiating the preparation for new laws; what the criteria were for selecting certain groups for representation on the Council of State; whether any member of the Council was arrested and, if so, whether the organization he represented had ceased to have any legal existence; what the relationship was between the Council and the Government Junta; what the Government's general concept was of political pluralism and what the main aspects of the bill on the political parties referred to in the report were; to what extent the restrictions imposed by the state of emergency had affected political rights in Nicaragua, including access to public office, as well

as the functioning of Municipal Reconstruction Boards and the elections thereto by popular vote; whether the Government still intended to hold elections in 1985 and, if so, what measures had been taken in that connection; whether a new constitution would be introduced at that stage and whether that Constitution would be subject to democratic approval.

237. Commenting on article 23 of the Covenant, members asked whether there was true equality between men and women, since it was indicated in the report that only the father exercised patria potestas over children and that there appeared to be a difference in treatment between men and women in respect of divorce. It was also asked what the legal matrimonial régime was in Nicaragua.

238. As regards articles 26 and 27 of the Covenant, it was asked what specific measures had been taken by the Government to put an end to discrimination in a multi-racial, multi-ethnic and multi-lingual society like Nicaragua; and what the de facto situation was concerning discrimination against the Miskitos and whether there had been any discrimination against them in the past. Noting that, throughout the report, the expression "ethnic group" was used rather than the words "indigenous population", one member asked what distinction was made between those two expressions and whether it was the Government's policy to keep the indigenous population on their territory or to assimilate them. Referring to the forcible displacement of several thousand Miskito Indians from their territory and their homes, members asked what chance they had, deprived of their lands, homes and culture, of overcoming the linguistic problems which must have arisen and re-establishing the self-governing institutions which seemed to mean so much to them; what was being done to improve their situation and resettle them, and whether that group had the right to a special status relating to self-determination.

239. Before giving the floor to the representative of Nicaragua, the Chairman wished to state for the record that, by considering reports submitted by States parties, the Committee promoted a fruitful and necessary dialogue with the delegations of those States that presented their country's reports in person; that such a dialogue afforded it a better insight into the implementation of the Covenant in the country concerned; that it was neither the purpose nor the function of the Committee, or of its members, to level accusations at States parties and that any such interpretation would be contrary to the spirit in which the Committee and its members worked; and that statements or comments made by members of the Committee on the occasion of the Nicaraguan delegation's presentation of their country's report must be viewed in that light and that light alone. In endorsing the comments made by the Chairman, members of the Committee expressed their indigation at an article published in a New York newspaper on 31 March 1983 depicting the Committee as a tribunal and Nicaragua as the accused; stressed that the Committee had simply requested further information from the representatives of Nicaragua while recognizing the current uncertainty created in that country by the threat of foreign intervention; regretted the fact that, in the six years of the Committee's existence, that was the first time a New York newspaper had seen fit to report on the Committee's work and that, in so doing, it had published incorrect statements and grossly misinterpreted the Committee's intentions and procedures.

240. The representative of Nicaragua welcomed the statements made by the Chairman and members of the Committee regarding The New York Times article and wished to place on record that his Government had chosen to be present at the current meeting in exercise of its sovereign right to respond to questions and comments raised in regard to its report (CCPR/C/14/Add.2); that that report had been voluntarily

updated by his Government (CCPR/C/14/Add.3), in order to explain situations which might be regarded as deviating from those described in the earlier report; that his Government had, in both cases, supplied the Committee with legal, economic, social and cultural background data on the human rights situation in his country; that his delegation's presence at the current session of the Committee had been agreed to months previously as a means of establishing a frank dialogue with the Committee; that his country remained ready to co-operate with the Committee whose valuable views would be used to help enhance the legal and other instruments existing for the promotion of human rights in Nicaragua.

241. Responding to questions raised and comments made by members of the Committee, the representative stated that his Government had taken many steps to familiarize people with the international instruments relating to human rights, in particular the Covenant and its Optional Protocol whose published texts were distributed to military and police personnel, teachers, students and others. He explained the role of the National Commission for the Promotion and Protection of Human Rights, the National Autonomous University of Nicaragua and the Supreme Court of Justice in disseminating, teaching and explaining the provisions of those instruments. In this connection, he pointed out that the National Commission on Human Rights had been established by Decree in 1980 in compliance with the resolutions of the United Nations Commission on Human Rights and of the General Assembly; that it was competent to receive complaints, hear witnesses, investigate arbitrary or illegal acts allegedly committed by civil servants, visit detention centres and report to the Junta regarding any necessary measures to be taken. In addition to other related activities, the National Commission had been involved in the organization, at the regional level under United Nations auspices, of the third United Nations Seminar on recourse procedures and other forms of protection available to victims of racial discrimination. Members of the Commission were appointed for two-year periods, received no remuneration and could not be dismissed during their term of office. He also pointed out that there were also private committees on human rights that freely exercised their activities in the main cities of the country; that one of them had sent representatives to the World Congress on Human Rights held in Costa Rica in 1982.

242. Replying to questions raised under article 2 of the Covenant, the representative stated that the Covenant had been incorporated into Nicaragua's domestic laws and could be invoked directly in administrative and judicial disputes and that, in practice, it was frequently invoked by litigants. He referred to the report under consideration regarding the domestic remedies provided for in Nicaraguan legislation and explained the distinction that existed in his country between violations of the liberty and security of individuals on the one hand, and guarantees and rights of persons against any provision and against any act or omission on the part of a civil servant or authority infringing their rights on the other. He indicated that the Amparo Act stipulated the legal means by which the right to amparo (the right to court protection) was exercised in accordance with the provisions of the Fundamental Statute and the Statute on the Rights and Guarantees of Nicaraguans; that appeals were to be brought before the criminal or civil division, as the case may be, of the Court of Appeals in the relevant jurisdiction of the citizen concerned and that anyone could seek recourse to amparo either orally or in writing. He also stated that for the duration of the state of emergency, the Governing Junta, which was responsible politically to the revolutionary movement that had brought it to power, was performing executive and administrative functions and that, during the transitional period, it could enact decrees which enjoyed the force of law; that at no time had it exercised judicial

functions; that the Council of State had co-legislative functions with the Junta; that the substance of bills drafted by the Junta and submitted to the Council differed from that of laws enacted by the Council itself; that the special functions of the Council included the drafting of an electoral bill and a preliminary draft Constitution; that the Junta had always accepted the comments made by the Council on decrees which it had drafted; and that the Junta could make its own authentic interpretation of the law, but in no case could it annul, revoke or amend judicial decisions.

243. As regards article 3 of the Covenant, the representative stated that equality between men and women in all areas was, in fact, the chief aim of the body of legislation passed by the Government of Nicaragua; that the active participation of women in the political life of the country was an objective to which the Government attached great importance; that women held high posts and that one of them held the rank of minister; that despite the difficulties encountered whenever traditions were changed, great progress had already been made and would continue to be made in that respect in all areas, economic, social or cultural.

244. Replying to questions raised under article 4 of the Covenant, he pointed out that the attacks of counter-revolutionary bands and the foreign aggression to which Nicaragua was being subjected, constituted the sole obstacle to the full exercise of civil and political rights in his country, since it was those attacks which had forced his Government to declare the state of emergency; that instead of listing the rights and guarantees that had been suspended because of the state of emergency, his Government, due to lack of experience, had included in the relevant decree all the provisions of the Covenant except those relating to guarantees which were not subject to suspension; that despite the seriousness of the situation, the guarantees referred to in article 4, paragraph 2, of the Covenant, remained intact and that many civilians, particularly women and children, had been deprived of their right to life due to the attacks of the counter-revolutionaries.

245. With respect to article 6 of the Covenant, the representative admitted that a number of deaths had occurred immediately after the end of the war of liberation which the Government had been unable to investigate fully; that in cases affecting the right to life, the victim's family had been able to obtain compensation through the courts without affecting the punishment imposed on the guilty persons; that although the steps taken to prevent abuses by the military and police personnel had been successful, the Government continued to maintain a vigilant watch and punished all offenders; that there were no cases of arbitrary deprivation of life in which the guilty persons had not been punished; that extreme care was exercised in security operations to avoid endangering human life and that, to that end, all military and police personnel were instructed with regard to the provisions guaranteeing respect for life.

246. Responding to questions posed under articles 7, 8 and 10 of the Covenant, he indicated that sentences of up to 30 years' imprisonment were imposed in cases of murder, homicide with aggravated criminal responsibility or for repeated offences and that such sentences could not, under the circumstances, be characterized as cruel; that domestic legislation fully accorded with the Covenant regarding forced labour; that involving prisoners in productive activities was a penal measure based on a belief in the ennobling character of work for all people; that complaints involving mistreatment could be lodged with the prison authorities, the higher authorities of the penitentiary system, the People's Claims Office of the Ministry of the Interior or the Government Junta and that severe sentences had been passed

against a number of military personnel for various offences, including atrocities. He also pointed out that former members of the Somoza National Guard were imprisoned in the Jorge Navarro Rehabilitation Centre and were accorded the same treatment as prisoners in any other penitentiary; that they were separated from other criminals in view of the widespread hatred brought about by the atrocities which they had committed against the general population; that "counter-revolutionary crimes" were clearly defined by the law and that decisions as to the status of those accused of acts of genocide could be reached only on a case-by-case basis; that due to the lack of space and supply difficulties at Puerto Cabezas, his Government had been confronted with insurmountable problems; that some of the prisoners who had been flown to Managua and against whom no cause for action had been found had subsequently been returned to Puerto Cabezas; and that the Miskito Indians, who had been sentenced had been transferred to a farm near the Capital, where they had been joined by their families and where they could engage in agricultural work and practice their religion and that, once they had completed their sentence, those who wished to do so would be able to return with their families to their homes.

247. In connection with questions raised under article 9 of the Covenant, the representative stated that martial law had not been declared in Nicaragua; that the state of emergency had not resulted in periods of detention that were prolonged or without trial and that there was no repression nor any suspension of legal procedures, particularly as concerned persons held in custody; and that, in order to forestall abuses, the Supreme Court of Justice had issued circulars with a view to ensuring that, as of the date of arrest, the time limits prescribed for judicial procedures were respected. He also explained the machinery for the application of both habeas corpus and amparo against detention and arrest warrants, including the appeal procedure in case of court decisions rejecting the release of the persons concerned.

248. As regards article 12, in conjunction with article 27 of the Covenant, the representative stated that the transfer of about 8,500 Nicaraguan citizens of Miskito origin was in compliance with Nicaragua's obligations under article 6 of the Covenant, since it had been a matter of life or death because of the constant incursions of armed bands which had produced many casualties; that his Government had committed itself in writing to guaranteeing and facilitating the voluntary return of those citizens to the banks of the river CoCo by making arrangements for housing, subsistence and the resumption of their production activities; that his Government had undertaken to repair the damage caused to buildings and to re-establish the necessary structures for health, teaching and food, notably by providing agricultural subsidies and machinery, while ensuring the respect for the way of life of its citizens and encouraging the reunification of families with the assistance of the United Nations High Commissioner for Refugees.

249. Commenting on questions posed under article 14 of the Covenant, the representative stated that, given the immediate importance of the judiciary in correcting and preventing injustices, it had been decided to preserve unchanged the traditional structure and functioning of the judiciary; that under the traditional system, the executive, in the present case the Junta, appointed and could dismiss the members of the Supreme Court and of courts of second instances; that the Supreme Court appointed the district and local judges; that all judicial functions were exercised by the judiciary, without prejudice to the jurisdictional powers of administrative organs in contentious cases or cases involving public morality; that since members of the judiciary had been appointed following the triumph of the

revolution, only two changes had been made in the membership of the Supreme Court; that were any member of the Junta to dare to ignore a decision of the judiciary, he would be subject to administrative and criminal penalties; that judicial impartiality was achieved by monitoring the legality and correctness of judges' decisions and actions, a task performed by the higher courts, headed by the Supreme Court; that the Supreme Court enjoyed total independence and its decisions were respected by the Government; and that, in order to facilitate access to judicial positions, law students were employed in the administration of justice and, depending on the experience gained, gradually given greater responsibility. He also informed the Committee that the Police Jurisdictional Functions Act was of a transitional nature; that in cases brought before the Military Courts the accused could choose either military or civilian defence lawyers; that the Special Courts had been dissolved and the ordinary courts were empowered to try cases which had previously fallen within the jurisdiction of the Special Courts; that the Procedural Act of December 1981 had introduced procedures for holding trials in full accordance with the principle of due process; and that the phrase in the report concerning the "truth of the evidence" referred to the mechanical manner in which evidence had been assessed under the former legal system, but that the new system did not allow the personal belief or whim of the examining magistrate to influence that process. He also stated that the decision to revise judgements handed down by the Special Courts fell within the jurisdiction of the Council of State in co-operation with the National Committee for the Promotion and Protection of Human Rights.

250. In connection with comments made under article 18 of the Covenant, the representative explained the development of relations, since the triumph of the revolution, between the Sandinista Government and the clergy of Nicaragua, particularly the Episcopal Conference and the Moravian Bishops and stressed the adherence of his Government to the principles of freedom of conscience and religion manifest in the paper entitled "The Position of the Frente Sandinista de Liberación Nacional with respect to Religion". He informed the Committee that currently, in Nicaragua, a large number of churches and religious groups were operating with full religious freedoms; tht the freedom to conduct religious education was also guaranteed; that there were 396 centres of pre-school, primary and secondary education belonging to various religious groups out of a total of 511 private schools; that the Association of Clergy of Nicaragua participated in the Council of State; that several religious bodies were involved in the implementation of plans drawn up by the Government to improve the quality of life of the people; that there existed a Catholic radio station and weekly and monthly publications. He also indicated that the Government endeavoured to solve the problems with the Moravian Church generated primarily by some persons of the Moravian faith who were openly engaged in subversive activities; that the Government realized that membership in that Church was a characteristic of some of the ethnic groups of the Atlantic region of the country and that it had maintained an ongoing dialogue with the Moravian Bishops; that the building housing the synagogue of Managua had been abandoned before assigning it temporarily for social purposes, but that should the owners of the building request that it should again be a place for worship, the Government Junta would evaluate the request in the context of religious freedom.

251. With respect to article 19 of the Covenant, the representative explained the principles of the respect for freedom of expression in the light of the provisions of the General Act on Social Communications Media. He admitted, however, that the circumstances that had resulted in the declaration of the state of emergency had affected the exercise of that freedom and led the Government to take restrictive

measures relating to the information and communications media; that censorship was being applied only to information liable to jeopardize domestic security, defence and production and, in any case, it was not applied to all publications or to information broadcast by radio or television; that the freedom to criticize Government actions had barely been affected, that the Government considered it necessary to correct the errors and possible abuses in which high officials had been involved and that such criticism was encouraged on a weekly television programme and also in the daily press; that sanctions imposed on newspapers could be appealed by publishers to either the office of the Ministry of the Interior responsible for the media or the Supreme Court. In this connection, he stated that, given the complex nature of news and the overriding influence of the market place, those responsible for the dissemination of information must bear in mind the socio-economic conditions in the country and the continent, the interests of the disadvantaged groups and the true enjoyment of freedom of expression; and that because of the economic aggression which the country was currently subjected to, it was also necessary to regulate any information which might affect production or generate panic and shortage of supplies. He also pointed out that there were three daily newspapers owned respectively by the Frente Sandinista de Liberación Nacional, a worker's co-operative and private citizens; that of 48 radio stations, 31 were private; of the 48 news services, 44 were private; that both television stations were State-owned and that in order to guarantee the participation of the public in the media, debates were aired in which civil servants and opposition leaders participated and that plans existed to give air space to political parties, without exception, as part of the process leading to the elections in 1985.

252. Replying to questions raised under articles 21, 22 and 25 of the Covenant, the representative stated that the state of emergency had neither restricted the right of political parties freely to hold their regular meetings nor the freedom of association in any way; that 32 organizations, among them employers' associations and professional and religious organizations, had been granted legal status; that all Nicaraguans whose rights had not been suspended by law, and all political parties and organizations, participated in the country's administration and political management, and that access to public office would continue to be open to all citizens on an equal basis; and that the Council of State was currently debating the system governing political parties, with the full participation of such parties. He pointed out that the Council of State consisted of 51 members, appointed by political, popular, trade union, social and religious organizations; that the procedures for electing members of the Council were determined purely by the organizations which they represented; that the members of the Council enjoyed immunities which they could renounce or which the Council could withdraw and that they were answerable politically only to their peers and organizations during the period of their immunity and to the courts when their immunity was withdrawn or renounced. Nicaragua's municipal authorities continued to be elected at public meetings, in which all the inhabitants of the munincipality concerned participated. Preparations were under way for opening the election campaign in 1984 and for holding the elections, as pledged, in 1985 on the basis of political reconstruction and pluralism, but that there was as yet no constitutional provision on the system of government and there were no electoral laws or electoral rolls.

253. In connection with questions posed under article 23 of the Covenant, the representative stated that parents had equal rights in all that concerned their children; that the provisions stipulating that the consequences of the commission of adultery, one of the causes of divorce, should differ, depending on whether the husband or the wife was involved, were no longer applied, now that the Covenant had

been incorporated into domestic law and the Statute on the Rights and Guarantees of Nicaraguans had been enacted and that discriminatory treatment had therefore been abolished. He also explained the legal matrimonial régime and pointed out that each spouse was the owner of his or her personal property and could freely dispose of it, whether it had been acquired before or after marriage, that joint ownership did not exist, nor did the system whereby the property of the woman was administered by the husband.

254. Commenting on questions raised under articles 26 and 27 of the Covenant, the representative stated that a major document on the history of the different ethnic groups during the colonial and neo-colonial periods would be translated into the working languages of the United Nations and could serve as a basis for an in-depth examination of the issue and that, to a large extent, the document provided answers to the questions raised by members of the Committee concerning the Miskito Indians.

Peru

255. The Committee considered the initial report (CCPR/C/6/Add.9) submitted by the Government of Peru at its 430th, 431th and 435th meetings, held on 5 and 7 April 1983 (CCPR/C/SR.430, 431 and 435).

256. The report was introduced by the representative of the State party, who explained the situation of human rights and the achievements of his country since the last presidential elections, held in 1980, and the introduction of the new Constitution including, inter alia, the consolidation of the mechanisms for protecting human rights through the remedies of habeas corpus and amparo, the restoration to the mass media of unrestricted freedom of expression and the introduction of several reforms in criminal law and criminal procedure, with a view to protecting human beings from repression and intimidation. In this respect he emphasized the role of both the Court of Constitutional Guarantees and the Office of the Government Attorney-General in safeguarding individual rights and added that citizens retained the right of recourse to the Attorney-General, even when a state of emergency or state of siege had been declared. Detention centres were being built to overcome the deplorable overcrowded conditions and promiscuity of prisons and important work had been undertaken in the training of prison staff, resulting in a more humane penitentiary system, based on rehabilitation rather than the imposition of severe punishment.

257. The representative indicated that one of the problems confronting Peru was the terrorist offensive in a specific area of the country; that terrorism had taken advantage of the fact that certain regions of the country were depressed in order to launch a campaign of destruction and death; that the Government had given orders to the police to deal with such acts with all necessary energy but to avoid any infringement of the human rights of the citizenry; that prisoners detained under the anti-terrorist laws were brought to justice in the regular courts and tried exclusively for the personal and material damage that they had caused and not for their ideological views; and that, because of that serious situation, the Government had been obliged to apply the relevant article of the Constitution relating to states of emergency or siege, but that it had always respected the limitations contained in article 4 (2) of the Covenant. The legal existence and personality of rural and indigenous communities had been accorded a number of guarantees under the Constitution ensuring a measure of autonomy.

258. Members of the Committee welcomed the restoration of democratic rule in Peru after years of military dictatorship, praised the progressive nature of the new Constitution, its comprehensiveness and the fact that it made it mandatory to include lessons on the Constitution and human rights in the curricula of all civilian and military education centres and at all levels. It would have been interesting to them, however, to have more information on the implementation of the new Constitution, to know the context to which Peruvian legislation was applied and to be apprised of all the difficulties encountered by the Government in the implementation of the Covenant. In this connection, it was asked whether the text of the Covenant and the Optional Protocol had been published in Peru; whether the general public in Peru had known that a high-level delegation was coming to the Committee to present its Government's report; and whether any private human rights committees or international human rights organizations operated in Peru.

259. Noting that what could be called "terrorists" in one country could be called "left-wing rebels", "guerrilla fighters" or "counter-revolutionaries" in another country, that the way in which a Government dealt with dissidents or responded to terrorism was a crucial test of its will to preserve fundamental freedoms and of its respect for legality, and that a Government which went so far as to violate the rights established by both regional and international conventions could properly be said to be acting on terrorist lines, members wondered whether there was a guerrilla movement in Peru and, if so, what its goal was and whether there was a link between its demands and the principle referred to in article 1 of the Covenant; whether all those who had taken up arms in Ayacucho could really be termed "terrorists", considering the statement made by the representative of Peru to the effect that terrorist acts had occurred where the standard of living was lowest, and what the limits of the Government's activities were in combating those acts.

260. With reference to article 1 of the Covenant, it was asked how the natural resources of Peru were developed, whether they were exploited by foreign corporations and in what way the people made use of the national patrimony; what the position of the Peruvian Government was with regard to the right of self-determination of the peoples of southern Africa and Palestine and how it was helping those peoples to achieve their rights.

261. As regards article 2 of the Covenant, it was noted that the distinctions listed in the Constitution in respect of which discrimination was prohibited did not include other distinctions mentioned in this article, namely political or other opinion, national or social origin, property, birth or other status and it was asked whether that omission was deliberate and whether Peruvian laws provided for the equal protection of the law without discrimination. Impressed by the legal framework established to protect human rights, including a Court of Constitutional Guarantees, by the incorporation of the Covenant in domestic law and by the fact that, in the event of conflict, the provisions of the Covenant would prevail over domestic laws, members asked whether non-legislative measures to safeguard human rights were also available; whether Peruvian citizens could invoke specific rights provided for in the Covenant directly, without having to refer to national laws; whether the Court of Constitutional Guarantees was already functioning and, if so, what decisions it had adopted; whether a claim that a legal enactment was contrary to the Covenant would come under the jurisdiction of the Constitutional Court; which legal organs filed appeals with that Court, whether those organs were independent and whether it was possible for an individual to file complaints with the Constitutional Court; whether such an individual could institute proceedings if

he believed that not only his rights, but also the rights of a third party or the public interest, had been infringed; what recourse was available to a person who believed that he had been wronged by the administration and whether individuals could challenge the constitutionality of administrative Acts. Noting from the report that legislation on "habeas corpus, amparo and public actions" was under consideration in Parliament, members wondered whether the object of that consideration was to amplify or modify the existing system of remedies; which competent tribunals, other than the Consitutional Court, could grant the remedies of habeas corpus and amparo; whether possibilities of access to justice existed in remote areas; whether individuals could themselves institute actions of habeas ccrpus and amparo or would need a lawyer to do so, and whether such actions would have suspensive effect. Reference was made to three organs mentioned in the report as being responsible for protecting human rights in Peru, namely, the Human Rights Committee in the House of Deputies, the Ministerio Publico and the Ministry of Justice, and precise information was requested on the powers of each of those organs and on whether the above-mentioned remedies were affected during the state of emergency. In this connection, it was asked whether abuses committed in the application of states of emergency had been investigated; what penalties had been imposed on the military or civilian personnel responsible for the violation of human rights and what procedures had been followed in that respect.

262. Noting that the report had made no mention of article 3 of the Covenant and that the commitment undertaken by States to ensure full equality between men and women required more than a passing reference to the equality of citizens before the law without distinction as to sex, members sought information on the role of women in public organs; on their representation in decision-making functions; on the measures that had been taken by the Government to attain the objectives of the United Nations Decade for Women and on the extent to which women were integrated into rural development.

263. Referring to the state of emergency as proclaimed under article 4 of the Covenant and notified, through the Secretary-General, to the States parties, members asked when it had been proclaimed for the first time in Peru; why the Government had extended it after 25 February 1982; whether the extension related to its territorial scope or its temporal duration; how the Peruvian Government justified the suspension of political rights in the case of natural disaster and what exactly the Government meant by "perverse delinquency" as justification for the proclamation of one of the states of emergency.

264. With regard to article 6 of the Covenant, it was asked what steps had been taken to reduce the infant mortality rate and to meet the food needs of the population, to protect adult life and, in general, to improve public health and to raise the standard of living. Members also asked what measures had been taken to ensure that "no one shall be arbitrarily deprived of his life"; whether there were any provisions governing the use of weapons by the police and armed forces; what acts justified such use of weapons and whether there were any safeguards against abuses; whether an inquiry was made when such use of weapons resulted in the death of an individual; whether it was true that killings had taken place in Lurigancho and Ayacucho prisons in 1982 and, if so, whether an inquiry had been conducted and what were the findings; and what the investigation had revealed in the killing of a number of journalists in the Ayacucho province. Noting that the death penalty could not be applied in Peru except for "treason in a foreign war", members asked whether the citizens in question came under the jurisdiction of civilian courts or military tribunals and whether it was true that a proposed legislative amendment was designed to extend the scope of the death penalty.

265. In connection with articles 7 and 10 of the Covenant, appreciation was expressed of an article in the Constitution providing that "anyone can petition a judge that he order the immediate medical examination of a confined individual if he believes that the latter is the victim of ill-treatment" and members wondered, however, who called on States parties to adopt a similar provision, to what extent such a measure was actually enforced and whether it applied to persons in institutions other than prisons; whether cases of torture had occurred of people accused of terrorism as well as of peasants in Ayacucho and, if so, whether there had been any official investigation of such cases; whether any offenders were discovered and punished; whether there were any regulations governing solitary confinement; how the fact of holding an individual incommunicado facilitated an investigation into a crime; whether prisoners had remedies against the prison administration; and whether prisoners were allowed to talk directly with prison visitors unattended by prison authorities; who inspected conditions of confinement, listened to any complaints and then ensured that they were looked into. Information was also requested on the exact situation in overcrowded Peruvian prisons in the light of the standards prescribed in the Constitution and on the steps taken to improve that situation.

266. Commenting on article 9 of the Covenant, members asked whether the law provided for deprivation of liberty for reasons other than a criminal offence and, if so, what protective measures were provided for; whether provisions existed which restricted the possibility of the renewal or extension of the maximum period prescribed for preventive detention and whether a person so detained enjoyed the right "to communicate with, and be advised by, counsel of his own choosing" mentioned in the report on article 9 of the Covenant; what the maximum duration of pre-trial detention was and whether it could exceed three to six months and, if so, what provision Peruvian law made for preventing abuse in this respect and whether the individual's right to be informed immediately and in writing of the grounds or reasons for his arrest was suspended during the state of emergency. Noting that, according to Peruvian law, when the armed forces took control of emergency situations they had the power to detain "political terrorists" and hand them over to the legal authorities when an examining magistrate so required it, one member asked what happened if an examining magistrate did not require that and whether, in such a case, detention ceased automatically. It was also asked whether a person who had been unlawfully arrested or detained but not tried was entitled to compensation.

267. In connection with article 13 of the Covenant, information was requested about the status of and guarantees available to aliens in Peru, particularly about remedies available to aliens legally residing in Peru who had not been found guilty of offences, in the event that they were faced with expulsion or summoned before a court.

268. As regards article 14 of the Covenant, it was asked whether in Peruvian law the idea of equality before the law also implied equality in the administration of justice; how the independence of the judiciary and the proper administration of justice were ensured if they were to be overseen by the Office of the Government Attorney-General and whether that could not be interpreted as a mingling of the functions vested in the executive and the judiciary; whether the independence of the judiciary was always respected; whether a certain criterion, particularly of a political nature, might be invoked in the appointment of judges; how many judges there were on the Supreme Court and how they were appointed; and whether it was true that a Peruvian judge had been removed from office for applying the Penal Code

and not the law on terrorism. Information was requested on the appointment of associate magistrates to the "hierarchically integrated" tribunals referred to in the Constitution, the system of promotion and dismissal governing them, their salaries and the age at which they retired; whether the "justices of the peace" were trained jurists or magistrates having no formal legal qualifications and, if so, what qualifications they had to have for their posts and how they were appointed; whether there were courts competent to deal with labour disputes; whether exceptional courts and special procedures had been established under the state of emergency and, if so, to what extent such courts offered guarantees of a trial under the prescribed rules. It was also asked how much freedom lawyers were allowed to practice and whether it was true that at least four lawyers representing persons accused of terrorist activities were were recently imprisoned. While commending the articles of the Constitution dealing with judicial guarantees, members wondered whether those provisions were always properly implemented and asked whether accused prsons were ensured the right to communicate with their counsels; whether express provisions had existed to ensure that everyone was entitled "to be tried without undue delay"; whether free legal assistance was provided in cases where the accused could not afford to provide his own and to what extent the provision for proportional remissions for illiterate offenders who acquired some education was applied in practice.

269. Commenting on article 18 in conjunction with article 2 (1) of the Covenant, one member wondered whether the special treatment accorded to the Catholic Church in the Peruvian Constitution could imply discrimination with regard to other religions. It was also asked what the position was with respect to conscientious objection and whether it was recognized as part of freedom of religion.

270. With respect to article 19 of the Covenant, information was requested on the legal provisions governing the freedoms guaranteed in this article in addition to the relevant articles in the Constitution and the Penal Code; on whether "the return of communications media to their rightful owners" was in itself sufficient to establish freedom of expression as the report seemed to imply; on whom "the rightful owners" were; on the role of public information organs at election time and on whether the press had, in practice, become the instrument of the authorities. Reference was made in particular to measures recently decreed in Peru, including Decree Law No. 46 on terrorism, which seemed to have limited freedom of expression and increased the risks and penalties facing journalists in the exercise of their profession and it was asked to what extent greater penalties and reduced protection for journalists had created difficult situations as far as freedom of expression was concerned, how the Peruvian authorities were using the powers over the information media available to them under current legislation and whether the Peruvian Government would consider rescinding Decree Law No. 46 once the state of emergency which had justified it was lifted.

271. In connection with articles 21 and 22 of the Covenant, it was asked whether it could ever be correct to classify anything so small as a meeting of three people as a political terrorist organization as stipulated under Peru's Decree Law No. 46; whether Peru had any problems with the ILO Committee on Freedom of Association and whether a judge could, in his personal capacity, engage in activities - social, political, scholarly, humanitarian and so on - unrelated to his functions.

272. With reference to articles 23 and 24 of the Covenant, it was noted that, according to the Constitution, mothers were entitled to protection and assistance from the State in case of need and it was asked what the situation of fathers was;

whether family assets could be divided upon transmission through inheritance; whether a foreign-born daughter could, on reaching the age of majority, opt for Peruvian nationality; whether children were protected against all forms of neglect, cruelty and exploitation; whether there were children's courts; what percentage of children attended schools; what percentage of children were born out of wedlock and whether house-care services were provided.

273. Commenting on article 25 of the Covenant, members pointed out that the deprivation of members of the Police and the armed forces of the right to vote and the pronouncement by a judge of a sentence which had the effect of depriving a person of his political rights seemed to be incompatible with the provisions of this article; whether illiterate citizens had the right to vote in elections other than municipal elections and whether all political parties had equal access to the media. Noting that the Congress had delegated its powers to the Executive branch, one member asked whether the Congress maintained effective supervision over the use made of the legislative powers it had delegated and how the institutional machinery between the Ministry of the Interior and the Congress functioned during the state of emergency.

274. As regards article 27 of the Covenant, members noted that little information was provided in the report about the status and treatment of ethnic and linguistic minorities in Peru. They requested more information on the legal regulation and measures adopted to protect the country's minorities and particularly on aboriginal groups and the percentage of the population they represented, their land rights, the religions they practised, the number of schools providing instruction in their languages; on whether teachers were members of the groups concerned and on whether their representatives could sit in Parliament.

275. Replying to questions raised by members of the Committee, the representative of the State party indicated that his Government was making every effort to extend the educational system and social services further to cover the smallest minority groups in isolated areas, but that the country's very diversified and often rough terrain, as well as the co-existence of many and varied ethnic groups posed an immense obstacle. He also pointed out that awareness of the international instruments signed and ratified by Peru was still rather limited, but that the provisions of the Covenant were widely known in practice since they had been incorporated into the new Constitution and hence were reflected in the very organization of the State; that human rights were also covered in the teaching of Constitutional law and public international law and that the submission of Peru's report to the Committee had been announced in the Official Journal and various press organs read nation-wide.

276. As regards questions posed under article 1 of the Covenant, he explained that Peru was a country with vast natural resources, that plans for economic expansion and exploitation of home resources required investment on a level exceeding its own means and that, consequently, his Government was seeking assistance from abroad on forming joint ventures with private companies, some of which were foreign. He also explained his country's firm position in defending and supporting the inalienable rights of the Palestinian people and the right to self-determination of the Namibian people.

277. In connection with questions posed under article 2 of the Covenant, the representative stated that although the Peruvian Constitution did not state specifically that all persons were equal before the law without any distinction on

grounds of social or economic origin, birth or other status, Peruvian legislation and the Peruvian courts made no distinction of that kind and he drew attention to article 105 of the Constitution, which provided that principles stipulated in treaties relative to human rights to which Peru had acceded, had constitutional priority. He also stressed that the concept of equality before the law, which had as its corrollary equal protection before the law, had its practical and effective counterpart in the remedies of amparo and habeas corpus, as well as in citizen actions and recourse to the Court of Constitutional Guarantees and to international tribunals. In this connection, he pointed out that bills on the remedies of habeas corpus and amparo had been enacted since the submission of the report to the Committee; that those two remedies were available in cases of actual or potential infringement of rights guaranteed by the Constitution; that proceedings could be initiated either by the injured party or a third party and that no special requirements had to be met; that habeas corpus proceedings were within the sphere of criminal law while amparo was a proceeding before the civil courts and that if the complaint was declared inadmissible, the complainant could appeal to the Court of Constitutional Guarantees. He informed the Committee that this Court, which was established in December 1982, also monitored the constitutionality of laws with regard to both their substance and their form; that members of the Court were appointed in equal numbers by Congress, the Executive and the Supreme Court; that a matter could be brought before the Court by the President of the Republic, the Supreme Court, the Chief State Counsel, a group of 60 deputies or 20 senators, or a group of 50,000 petitioning citizens; that in each of the 1,600 districts in Peru there was at least one justice of the peace and non-career judge; that in each of the 25 departments there was a higher jurisdiction and that the Supreme Court had its seat at Lima; that while the coverage of the judicial system was not yet as extensive as it ought to be, there was virtually no part of the country which did not have a judge and that any administrative dispute could be submitted to the courts and the law specified clearly which courts were competent in such cases. Replying to other questions, he pointed out that the remedies of habeas corpus and amparo were suspended under the state of emergency only in the case of those rights which it restricted and that any excesses committed during the state of emergency were the subject of a judicial inquiry and the guilty parties were punished; that the forces of law and order were instructed to avoid any abuse of authority. He explained that the Office of the Chief State Counsel (Ministerio Público) was in reality more like the institution of Ombudsman; that it was autonomous and completely independent of the executive and legislative branches and that it saw to it that the judicial institutions remained independent, protected the rights of citizens and ensured that justice was properly administered; that the Human Rights Committee was a committee of inquiry set up by the House of Deputies; that it had the same powers as any parliamentary committee; that a summons to appear before it had the same force as a summons issued by a court and that human rights were also protected by private organizations such as the National Human Rights Commission, the Andes Commission of Jurists and human rights committees of the Lima Bar Association and the Bar Federation of Peru.

278. With respect to questions posed under article 3 of the Covenant, the representative stated that men and women had equal responsibilities and opportunities; that the rights of women were not inferior to those of men, and that women were playing a role in all spheres of national life and were increasingly rising to high-level posts.

279. As regards article 4 of the Covenant, he pointed out that the emergency measures which had been taken had always been kept within the time-limits

authorized by the Constitution and that they applied only in certain provinces; that they were usually prompted by terrorist activities but sometimes also, as had happened recently in Lima, by a natural disaster, in which case their purpose was to prevent any public disturbance which would make the situation even worse.

280. In connection with questions raised under article 6 of the Covenant, the representative stated that, in fact, mortality and morbidity rates had been declining for some years; that his Government was currently conducting a vast information campaign on health and hygiene for mothers; that the wrongful use of firearms by the forces of law and order was severely punished but that when police officers used their weapons in accordance with the regulations they were relieved of any civil or criminal responsibility; that the investigation in the murder of journalists had concluded that the Government had played no part in the incident and that the journalists had been murdered by the inhabitants of a remote village precisely because they had been taken for terrorists; that Parliament had not been presented with any draft legislation designed to increase the number of cases which would be subject to the death penalty and that the trial for treason during a foreign war was conducted under the Military Code of Justice.

281. In relation to questions raised under articles 7 and 10 of the Covenant, he informed the Committee that his Government had ordered a thorough inquiry into the Catholic Church's charges that prisoners had been subjected to torture and ill-treatment with the aim of determining where the responsibility lay and punishing the guilty party; that solitary confinement was an exceptional measure which could be imposed only for a period between one day and 15 days, according to the offence committed, and then only in the case of dangerous criminals; that the International Committee of the Red Cross was allowed to visit Peruvian prisons whenever it so requested, in accordance with the relevant provisions of the Geneva Conventions; that members of Parliament and of private associations for the protection of human rights also had access to prisons; that the Peruvian Government had recently adopted a new set of prison regulations, which indicated the legal remedies available to prisoners against the prison administration and which stipulated that they had the right to be heard and to seek the advice of persons of their own choice, including legal counsel. He also explained the problem of overcrowding in some prisons, which the Government was trying to solve with a view to improving the situation, despite obstacles and stressed that Peru, as a developing country, was paying for the negligence of previous Governments in that respect.

282. As regards article 9 of the Covenant, the representative stated that the period of 24 hours within which the police were required to bring an arrested person before a court could not be extended; that in cases of terrorism, espionage and trafficking in drugs, suspects could not be held in custody for more than 15 days; that every individual must be informed immediately of the reasons for his arrest and that there were no political prisoners in Peru.

282a. Responding to questions raised under article 13 of the Covenant, he stressed that aliens could only be deported on serious grounds, such as offences against public order or national security, illicit drug trafficking or prostitution, and that anyone ordered to be deported could appeal against the court order.

283. Commenting on questions posed under article 14 of the Covenant, the representative stated that the responsibility for ensuring the independence of the

judiciary rested not with the Ministry of Justice but with the Public Prosecutor's Office; that this Office was an autonomous body charged with defending legality, citizens' rights and the public interest and whose highest authority was the Public Prosecutor of the Republic; that justice was administered exclusively by the Courts and that no authority could interfere in the conduct of judicial proceedings; that judges could not be removed and they retained their functions until the age of 70; that judges of the Supreme Court and higher tribunals were nominated by the National Council of the Judiciary; that judges of first instance, examining magistrates and justices of the peace were nominated by the District Councils of the Judiciary; that justices of the peace almost always had legal training; that the Code of Penal Procedure clearly stipulated the obligation of courts to appoint defence counsel proprio motu, that such counsel acted at all stages of preliminary proceedings, took part in trials and presented their cases and that his delegation was not aware of the reported cases of certain judges being removed from their posts and of certain lawyers being arrested.

284. With respect to article 18 of the Covenant, the representative stated that recognition of the historical role of the Catholic Church was not surprising in a country where 90 per cent of the population professed catholicism; that the State was prepared to establish forms of co-operation with other faiths; and that the Constitution made no provision concerning conscientious objection and refusal to perform military service, but that so far as was known there had never been any problem in that respect.

285. In connection with questions raised under article 19 of the Covenant, he stated that, in Peru, freedom of expression was a reality, as evidenced by the many newspapers published in Lima and throughout the country; that amendments to the Penal Code relating to the offence of libel and to abuse of authority had made it punishable either to insult officials through the press or to interfere with freedom of the press and that every citizen had the right to request publication of a reply to an article about him.

286. In relation to questions posed under article 22 of the Covenant, the representative mentioned the ILO Conventions entered into by Peru and indicated that the functions of judges were incompatible with any public or private activity.

287. Replying to questions raised under articles 23 and 24, he indicated that the State, which protected responsible parenthood, took particular care of the rights of mothers, children, adolescents, the disabled and the aged; that family inheritances were divisible; that the term "hijo" mentioned in the Constitution in relation to nationality was a generic term covering both sexes; that 91 per cent of the child population attended schools, and that the legal distinction between legitimate and illegitimate children had been abolished under Peruvian law.

288. Commenting on questions posed under article 25 of the Covenant, he pointed out that the deprivation of members of the police and the armed forces of the right to vote reflected the concern to keep the armed forces out of politics and to reduce, as far as possible, the part they could play in Government to the detriment of constitutional order and the law; that citizens of both sexes over the age of 18, including illiterates, had the right to vote at the periodic presidential, legislative and municipal elections; that, at election time, candidates and political parties had access on an equal footing to those communications media owned by the State and that their expenses were reimbursed in proportion to the votes cast for each party. He also indicated that the delegation by the

legislature of its powers to the Executive was exceptional and did not in any way foreshadow the future; that it had arisen because the legislative bodies had been overwhelmed with work when they had had to revise all the legislation issued over a period of 12 years by a de facto Government; and that, however, the delegation of powers was provided for in the Constitution, which restricted it to such matters and such duration as were specified by law.

289. Replying to questions raised under article 27 of the Covenant, the representative stated that the Constitution guaranteed the legal personality of peasant and indigenous communities and the inviolability, imprescriptibility and inalienability of their lands and provided for the preservation and stimulation of the manifestation of native cultures, required the State to promote the study and knowledge of aboriginal languages, and guaranteed the right of the Quechua, Aymara and other native communities to receive primary education in their own dialect or language. The State respected and protected the traditions of those communities, promoted their development, encouraged community co-operative enterprises and fostered pluralism and linguistic integration. Citizens belonging to an ethnic minority could be elected to Parliament or any other public office, but that for many reasons, particularly the country's geography, sections of the Peruvian population were still not being integrated into national life.

290. The representative of the State party recognized that it had not been possible to reply exhaustively to all the questions asked and stated that his delegation would endeavour to fill in the gaps as soon as possible.

France

291. The Committee considered the initial report of France (CCPR/C/22/Add.2) at its 439th, 440th, 441st and 445th meetings, held on 12, 13 and 15 July 1983 (CCPR/C/SR.439, 440, 441 and 445).

292. The report was introduced by the representative of the State party, who explained at length the system of public liberties in France, as reflected in the organization of the State, and informed the Committee that steps were now being taken whereby his country would make the declaration under article 41 of the Covenant and would ratify the Optional Protocol. He also gave detailed additional information on various legislations that had been adopted or under consideration, since the submission of the report, relating to the rights and freedoms enbodied in the Covenant, particularly the prohibition of all discrimination based on sex, inside and outside the civil service; the abolition of capital punishment; new provisions on preventive detention and the penitentiary system; expulsion of aliens; the abolition of military tribunals and "La cour de sureté de l'état"; extension of the provisions of the Penal Code and the Code of Penal Procedures to overseas territories; conscientious objection; the abolition of monopoly of programmes in the broadcast media and the right of individuals to access thereto, and administrative decentralization in Metropolitan France and its overseas Territories.

293. Members of the Committee praised the quality and comprehensiveness of the report, particularly as complemented and made up-to-date by the representative in his introduction, which contained information on new reforms in the area of human rights and fundmanetal freedoms. They also noted that France had been one of the pioneering nations in the field of human rights and recalled that the French Declaration of the Rights of Man and of Citizens of 1789 had been a source of

inspiration in the drafting of many constitutions all over the world. Although the system for protecting human rights seemed to be effective and extensive, Committee members referred to the fact that some 4 million foreigners lived in France at a time of high unemployment and world economic crisis; that new conceptions on family life and marriage seemed to be evolving in French society; and would, therefore, have required some information about the factors and difficulties that may be affecting the full implementation of the Covenant. In this connection, it was asked whether the peoples of overseas territories really enjoyed the same guarantees concerning human rights as the population in Metropolitan France and whether there existed any central organ in charge of ensuring the respect of the Covenant in those territories.

294. Commenting on articles 1, paragraph 1, and 22 of the Covenant, one member noted that the provision of the French Constitution that "the republican form of Government shall not be subject to amendment" appeared to constitute an unjustified limitation on political rights of the French people and was contrary to the letter and spirit of the Covenant. Another member wondered, in view of references in the French Constitution to the "indivisible Republic" and the "integrity of the territory", how it was possible for anyone in any French territory to advocate independence or secession. It was also noted that the option made for independence by an overseas territory could not amount to the right to self-determination if such option was to be subject to approval by a majority vote of the National Assembly. Noting that the Covenant imposed on States parties the obligation to promote the realization of the right to self-determination, members asked how France helped the peoples of its overseas territories, particularly that of Guiana, as well as the peoples of Palestine and Namibia to achieve their rights to self-determination; what steps it had taken to prevent French citizens and corporations from co-operating with the apartheid régime of South Africa and why France had not applied United Nations sanctions against that régime for its policy of racial discrimination. Noting with appreciation that France had associated the right to self-determination with the right to development, one member recalled that the right of peoples freely to dispose of their natural resources implied the right to protect the latter from pollution and asked how France reconciled the right of the peoples of its territories in the South Pacific to protect themselves from atmospheric pollution with the carrying out of atomic weapon tests in the Murunoa Atoll.

295. As regards article 2 of the Covenant, it was noted that the French Constitution provided for the equality of rights to all "citizens", while the Covenant referred in this and most articles to "everyone" or "all individuals" and that the report dealt thereby with prohibition against discrimination while article 2 provided for the undertaking by States parties to respect and ensure the rights recognized in the Covenant. Considering the large migrant population in France, one member pointed out that if, in fact, equality before the law and civil rights and rights to fundamental freedoms were provided only for French citizens, then the protection of migrant workers became very important and he asked what rights they had to protection until and unless they became French citizens. Noting that, in addition to the migrant population, ethnic and other minorities, residents of Dom Tom (Guadeloupe; Polynesie), clandestine seasonal workers, gypsies and other people living on the margin, could be subject to racial or other forms of discrimination, and referring to article 2, in conjunction with article 26 of the Covenant, members wondered what effective measures the French Government had taken to ensure the rights of members of these groups and to prevent discrimination against them, particularly with regard to employment and lodging, and what measures

it had taken to instruct the immigration service, the border police and other authorities concerned about their duties in this respect.

296. Commenting on the status of the Covenant in the French judicial system, members noted that, according to the Constitution, treaties had an authority superior to that of laws, subject, for each treaty, to its application by the other party and that, according to the French reservation upon ratification of the Covenant, articles 19, 21 and 22 of the Covenant would be applied in conformity with articles 10, 11 and 16 of the European Convention on Human Rights, and they asked whether treaties were really superior to laws, considering the different position taken in this respect by the French Council of State; whether the principle of reciprocity had any role in the implementation of the Covenant by the Courts and administrative authorities, particularly in relation to foreigners residing in France or in its overseas territories; whether any French judge considered that it was his duty to apply the Covenant in case of conflict with domestic laws; whether the Covenant was now considered part of domestic law; how much authority the Covenant had in relation to the Constitution and the Declaration of Human Rights of 1789; what juridical significance there was in the frequent reference in the report to the preamble of the Constitution of 1946; whether there could be any conflict between the Constitution, the Declaration or the European Convention and some provisions of the Covenant and, if so, which instrument prevailed; how the representative could explain the fact that, according to his introduction, the Covenant had so far been invoked in one case only; whether the Covenant had been made known to all the administrative and judicial authorities and whether it was possible to declare a law unconstitutional in specific cases in France.

297. It was noted with satification that, in France, no one could renounce in advance the right to bring an appeal on the grounds of action ultra vires; that the right of petition to one of the supreme authorities of the State alleging an infringement of human rights was open to all and that anyone may challenge an act committed by the administrative authority, even though he may have only a moral interest in its annulment; whether, in the latter case, the challenge constituted a kind of actio popularis, which an individual could resort to if he considered that a certain law was not in conformity with the Covenant; whether he had a direct interest in that law or not; what recourse the citizens of overseas territories possessed in case of abuse of authority by the representative of the French Government or the senior administrators; what the functions of the "mediator" were and what the net result of his work was.

298. With regard to article 3 of the Covenant, members expressed satisfaction at the reforms achieved with respect to equal rights of men and women and at the fact that 50 per cent of civil servants in France were now women and they asked whether that percentage was valid at all levels; whether equal pay for equal work was ensured, particularly in the private sector; whether there were any affirmative action programmes to raise the position of women not only in public service but in all professions and occupations; why such reforms failed to amend the law of 1964, which left the husband as the administrator of common property and to what extent tradition was responsible for the inequality that remained between the two sexes in certain domains.

299. In relation to article 4 of the Covenant, reference was made to the French reservation relating to this article and it was asked whether that reservation meant that the Covenant would apply only to the extent that it was possible under

the Constitution, or that the Constitution could normally be applied only to the extent permitted by article 4 of the Covenant. Noting that the reservation concerning article 4 of the Covenant which provided that the President of the Republic should decide the measures to be taken in case of emergency situations, one member stated that this was more of a correct interpretation of the Covenant than a reservation inasmuch as it rejected any possible foreign control on that decision. Another member wondered whether there was any control over the President's decisions during a public emergency.

300. As regards article 6 of the Covenant, members of the Committee expressed satisfaction at the abolition of capital punishment in France. It was noted, however, that the report had not covered all aspects of applications of this article and it was asked whether individuals had been really protected from criminality; what had been done to check the rise of delinquency and to reduce unemployment, considered the fact that such phenomena threatened the life of individuals and their families; what measures had been taken to reduce infant mortality, particularly in overseas territories; whether comparative figures could be given on infant mortality in Metropolitan France and the Territories. Information was also requested on laws and regulations relating to the use of fire-arms by Police and security forces in France.

301. Commenting on articles 7 and 10 of the Covenant, members asked whether a punishment could be challenged as being so out of proportion to the offence that it constituted a cruel punishment; what the French law and practice were concerning the right of individuals to protection from being subjected to medical experimentation; whether keeping accused persons in prison alone, day and night, as stipulated in the Code of Penal Procedure amounted to keeping them incommunicado; whether an open or a semi-open prison system existed in France; whether prisoners had a close and fairly regular contact with their families directly or by correspondence; whether further progress had been made towards reducing overcrowding in prisons and recruiting more competent staff for their administration; whether accused persons or offending juveniles were always separated from adults, and whether marriages could be allowed between prisoners.

302. With reference to article 8 of the Covenant, clarification was requested of a statement in the preamble of the Constitution that "everyone has the duty to work" and it was asked whether, in theory at least, such a provision could allow the adoption of a law on forced labour and whether that statement had ever been given juridical application.

303. In connection with article 9 of the Covenant, questions were asked as to what guarantees existed in France against arbitrary detention of individuals in psychiatric hospitals; how long detention on remand might be in practice and whether provisional detention could exceed a period of six months where the punishment of the offence exceeded five years. Noting that the Covenant had provided for the right of compensation to the victim of unlawful arrest or detention or miscarriage of justice (art. 9, para. 5, and art. 14, para. 6) and that, according to the Travaux preparatoire of the Covenant, those provisions were meant for protecting the victim and not for punishing the faulty official, one member asked whether the victim of unlawful arrest or detention had the right to compensation only when agents of the executive or judicial power had committed personal faults or whether he had the right of recourse against the State on the grounds of its objective responsibility.

304. As regards article 12 of the Covenant, it was asked whether restrictions on the free movement of aliens in the country could be applied and, if so, in which cases; whether the practice of considering nomads not of French nationality as belonging to a commune for administrative purposes might restrict their movement; whether any measures had recently been adopted to abolish the instructions given to the border police to the effect that they could refuse entry into France to certain foreigners even if they held valid visas and other essential documents; whether the residents of Dom Tom could freely enter and reside in France without special authorization and whether the passports given to them were exactly the same as those given to the metropolitan French. One member asked whether refusal of passports, though exceptional, did amount to a restriction on the freedom of movement. Another member pointed out that the withdrawal of French nationality from a naturalized person after being convicted of certain crimes was not in conformity with the principle of equality if the same provisions did not apply to other French citizens convicted for the same crimes.

305. In relation to article 13 of the Covenant, it was asked what remedies were available to aliens against their expulsion from the country; how many aliens had recently been expelled from France and what their countries of origin were. It was also asked what remedy an expelled alien in the overseas territories had if he considered that he was a victim of an abuse of power.

306. As regards article 14 of the Covenant, it was asked whether members designated by the State to the High Judicial Council were selected from a list supplied by professional associations of lawyers and judges; how the social balance of jurors was ensured and whether or not they were drawn by lot; what was the tenure for the judges of the various courts and the rules for their removal; what control the judiciary had over their requirements in order to be able to expedite trials without undue delay; what the rules were concerning presence in a public hearing and whether there was any provision to prevent the courtroom from simply being filled by government officials; what conditions there were for legal assistance following the recent reforms in France; at what stage the defence lawyer first contacted the accused; whether the penalty was suspended pending a decision on an appeal; whether a conviction could be based only on a confession and whether proof could be obtained by means that constituted a violation to the right of privacy provided for in article 17 of the Covenant; whether free assistance of an interpreter was provided to an accused who did not understand or speak the language used in court; whether the requirement that the public prosecutor make available, only 24 hours before a hearing, a list of witnesses he intended to call was a reasonable time for the preparation of one's defence; whether the State paid the expenses of his witnesses when the accused was too poor to do so; whether there was a financial compensation in addition to moral compensation in case of judicial error and whether it was possible for a judge who sentenced an offender to modify the sentence in the light of new circumstances.

307. In connection with article 15 of the Covenant, clarification was requested of a statement in the report to the effect that a new penal law could be applied, even if it was more severe, if it was an interpretive law.

308. As regards article 17 of the Covenant, it was asked whether it was always necessary to have search warrants or whether there were laws permitting immediate entry and seizure in the case, for example, of narcotic drugs or contraband material; whether measures had been taken in France to allow people to have access to information about them kept in secret Government files; what recommendations the government Commission on telephone tapping, established in 1981, had made.

309. In relation to article 19 of the Covenant, it was asked whether France still felt it necessary to retain its reservation in view of the recent reforms in that area; what methods were used to ensure the "equal access to broadcasting", mentioned in the report; what was meant by "insult to the President of the Republic" and to "certain categories of public officials" and what laws there were on sedition in France.

310. Commenting on article 20 of the Covenant, one member referred to a statement in the report to the effect that French law in regard to propaganda for war was adequate and wondered why France would not then finalize the juridical formalities by adopting a law prohibiting such propaganda and, by doing so, meeting the requirement of the Covenant and heeding the call of the General Assembly to the United Nations. It was also asked whether any provisions existed in France prohibiting national or religious hatred and how "anarchist propaganda", provided for in a law issued in 1894, but still in force, would be interpreted at the present time.

311. As regards article 22 of the Covenant, it was asked what categories of association could be subject to a "less liberal régime" and what the Government policy was in regard to associations which were established in France but whose aim was to be active in the political life of another country or to incite racial hatred in another country.

312. With reference to articles 23 and 24 of the Covenant, it was asked whether a marriage in France could be declared null and void for reasons other than absence of consent; whether a married woman could dispose of her property in France without authorization from her husband; what the legal effects were of children of de facto unions; and whether children born out of wedlock had the same rights as legitimate children, especially with respect to inheritance.

313. In connection with article 25 of the Covenant, more information was requested on the participation of the residents of Dom Tom in the political life of the country and on their participation in the elections to the central institutions and to local administration on equal terms with the residents of the departments of Metropolitan France.

314. In relation to article 26 of the Covenant, information was requested on the measures adopted to protect individuals against discrimination; on how the legislation penalizing discrimination worked in practice and on its actual implementation in view of the large number of migrant workers and foreigners who were living in France.

315. As to article 27 of the Covenant, members of the Committee referred to the French reservation on this article and to the statement in the report, as confirmed by the representative of France in his introduction of the report, to the effect that there were no minorities in France and that, accordingly, this article was not applicable as far as France was concerned. They wondered how that position could be justified in view of the existence in France of several French and foreign communities of various ethnic, religious and linguistic origins, which were entitled to have their right to enjoy their own culture and to use their own language respected and ensured by law and practice. It was also pointed out that the reference in the French reservation to the provisions of article 2 of the Constitution signified that the reservation applied only to questions previously envisaged in that article and that the reference in the Constitution to the

"Republic" could be interpreted to refer only to Metropolitan France and it was asked whether France did not recognize the existence of minorities in its overseas territories as well and, if so, whether all residents of those territories enjoyed equal rights as the residents of the metropole and whether that included their right to be ensured enjoyment of their own cultures and use of their own languages.

316. Replying to questions raised under article 1 of the Covenant, the representative of the State party pointed out that according to a 1936 law, the President of the Republic was empowered to dissolve by decree any association the aim of which was to overthrow the republican form of government in France because the people's right to freely determine their political status did not cover the use of force and that he felt that if one day the French people decided to reinstitute the monarchy, they were more likely to draft a new constitution than to change the existing one; that although the Constitution proclaimed that the Republic was one and indivisible, the right of peoples to self-determination was also proclaimed in that Constitution and the machinery to ensure its realization existed, was implemented and resulted in the attainment of independence of former departments and territories such as Algeria and Djibouti; that the existing overseas departments and territories had freely adopted their status and that it was incorrect to say that there was a general desire for independence therein; that France had submitted a draft resolution to the Security Council in 1982 reaffirming the legitimate national rights of the Palestinian people, including their right to self-determination; that France's position with regard to Namibia was based on a Security Council resolution of 1978 which called for the withdrawal of the illegal South African Administration in Namibia and the transfer of power to the Namibian people; and that although France was required under the Covenant to react to racial discrimination outside the country, France, as a matter of principle, condemned racial discrimination wherever it existed and had condemned apartheid in many different forms.

317. Replying to questions posed under article 2 of the Covenant, he stated that the 1958 Constitution, the 1789 Declaration of Rights, the Preamble to the 1946 Constitution and the decision of the Constitutional Council of 1971, recalling the Preamble to the 1946 Constitution, were all texts superior to other rules of law and constituted the first level; that the second level embodied duly ratified treaties which, according to the Constitution, had an authority higher than that of laws; and that the third level was constituted of laws, while the fourth level consisted of provisions which emanated from the executive power; that at each level, the authority must respect the principle of a higher level but that did not mean that it was not necessary to formulate legislation for the implementation of treaties, particularly when treaties were, such as the Covenant, so general in their wording that it was difficult to implement them without specific legislation; that many provisions of the Covenant were included in French law; that individuals could invoke the protection of the Covenant before the courts; and that the fact that this action had not occurred very often was due to the fairly recent ratification by France of the Covenant and because French lawyers preferred to invoke the European Convention on Human Rights where they had the possibility of recourse to the European Court of Human Rights. No conflict between a treaty and the French Constitution was likely to take place because a treaty which came into force contrary to the Constitution would imply prior revision of the Constitution, and where agreement of Parliament was needed for the ratification of a treaty, the latter would be checked first by the Constitutional Council for verification of its conformity with the Constitution. As regards the question concerning conflict between a treaty and French law, he pointed out that difficulties could arise

regarding a treaty which predated a law, but that the matter could be referred to the Council of State which, in 20 years, had had only two such cases to deal with and that, in reality, where the protection of liberties was concerned, it was the judge who was competent.

318. The representative also indicated that an administrative act could be challenged on the grounds of abuse of power or violation of a law or a treaty, but that such a challenge did not constitute a kind of actio popularis; and that decisions of Government representatives in overseas departments and territories could be referred, as the case was in the metropolis, to the administrative judges who could annul them if they deemed appropriate. He explained that the "mediator" dealt with complaints relating to administrative failures which were not necessarily illegal, but which concerned inequitable or abusive application of administrative regulations; that the "mediator" was not competent to deal with questions of law; that since 1976 he had been able to propose reforms, 220 of which had been implemented, but that he had never had, and could never have, very great importance in France because the essential control of the administration was in the hands of the judges.

319. Responding to questions raised under article 3 of the Covenant, the representative stated that men were more numerous than women in executive jobs and that the latter were poorly represented in highly responsible posts, but that recent appointments tended to rectify the situation in favour of women; that programmes existed to promote the equality of women in a wider range of professions and occupations; that equal pay for equal work in the private sector was almost achieved with the gap between salaries of men and women reduced to 2.8 per cent; that although the position of women had improved, efforts had not yet succeeded in abolishing all manifestations of inequality between men and women; that the obstacles facing women in their professional life should be attributed more to the traditional image of women as housewives, which still persisted; and that France had therefore recently undertaken studies on how that image should be presented to children in school-books, games and to adults, through the mass media.

320. As regards article 4 of the Covenant, the representative pointed out that France's reservation applied to paragraph 1 only of that article, which was quite legitimate under the Vienna Convention, but that it appeared to him that the question of whether reservations could be made to the other paragraphs of the article was one for the Committee to decide. He also stated that the President of the Republic was entitled, in time of public emergency, to take both legal and administrative decisions, but that they were subject to review by the Council of State which could annul them.

321. In connection with questions raised under article 6 of the Covenant, he pointed out that the number of crimes involving bloodshed had remained stable in France over the last 10 years; that Police could only use firearms on their own initiative in self-defence, which they must subsequently justify and that it was too soon to evaluate what effect the abolition of the death penalty had had on criminality in France.

322. As regards article 8 of the Covenant, he indicated that the French word "devoir" had only a moral connotation and was not used in legal texts, whereas "obligation" had legal force, but that the "duty to work" remained, nevertheless, a principle of the French Constitution.

323. Commenting on questions posed under articles 7 and 10 of the Covenant, he explained that medical experiments were carefully controlled and were always subject to the consent of the patient; that a distinction had to be made between imprisonment in a cell (régime cellulaire), where a detained person was placed in a cell with one or two other prisoners and was able to correspond with his family and lawyer, and solitary confinement (isolement); that, in France, the overcrowding of prisons presented a problem, but that it was nearly always possible to separate minors from adult prisoners, and that prisoners were allowed to marry.

324. Replying to questions raised under article 9 of the Covenant, the representative indicated that the great majority of those admitted to psychiatric hospitals entered of their own free will and that such persons could discharge themselves at their own request; that it was possible for persons to be admitted at the request of family or friends or at the request of the local mayor in urgent cases, but that, in the latter two cases, the parquet must be informed and the person concerned could appeal at once to a high court judge who could immediately release him. He explained that a person could be arrested only by order of the judicial police and only in the most serious cases; that persons so arrested were held on police premises for investigation purposes for 24 hours which could be extended by the Government attorney for a period of time, which was normally 24 hours but which could, in cases of drug trafficking or offences against the security of State, be for a further 48 hours, subject to annulment, in the latter case, by the State Security Court. In this connection, he pointed out that in France there had always been procedures for avoiding the preliminary investigation when the case was relatively simple, when the offence was not too serious, and when the slow proceedings of the preliminary investigation were not really required; that the problem had been to institute a summary procedure which did not undermine individual freedoms. He explained at length the provisions of a 1983 law concerning "immediate appearance", which represented the best compromise between the need for justice to be quickly administered and the need to provide serious guarantees of individual freedoms. He also stated that preventive detention, in theory, was possible for all serious offences and for certain ordinary offences but never for minor offences; that in the case of ordinary offences several conditions had to be satisfied: such offence had to be punishable by a term of imprisonment of more than two years; the order should be issued by the examining magistrate as part of the pre-trial proceedings or by order of the court of summary jurisdiction under an accelerated procedure; that this order must substantiate very precisely the reason why preventive detention was necessary, which reasons included preserving evidence, preventing pressure from being exerted on witnesses or victims, preventing fraudulent conspiracy between suspects preserving public order, protecting the accused, putting an end to the offence or preventing it from recurring, and ensuring that the accused remained at the disposal of the courts; and that preventive detention in those cases was in principle limited to four months but that it could be extended, under certain conditions, to another four months, but that accused persons who were first offenders could not be kept in preventive detention for more than six months. As to preventive detention for serious offences, he stated that that was of unlimited duration.

325. Responding to questions raised under article 12 of the Covenant, the representative stated that freedom of movement was guaranteed to foreigners by law when they possessed a valid "carte de séjour"; that when, because of his previous behaviour, the foreigner had to be subjected to special supervision, the Ministry of the Interior might forbid him from residing in certain departments or allow him to reside only in one department and that such decision was taken by a decree valid

for one year; that any person entering the country in order to exercise an occupation was obliged to present at the frontier either a contract stamped by the administrative authority or an authorization to work. The department (or departments) where his right to exercise his professional activity was granted was specified in his working permit. There were no restrictions on the freedom of movement between metropolitan France and the overseas territories as far as French citizens were concerned, but foreigners were subject to special arrangements because it was necessary to prevent too many foreigners from settling in particular areas and thereby upsetting the demographic balance; nomads were not obliged to reside in a particular commune; and passports issued in the overseas territories were the same as those issued in metropolitan France.

326. In connection with questions raised under article 13 of the Covenant, he pointed out that there had been no expulsion of migrant workers; that in 1981 and 1982 the position of many clandestine immigrants had been regularized, it being considered that the work they had done accorded them rights. A foreigner on whom an expulsion order had been served could always apply to a judge, who could rule that the expulsion order should be stayed or annulled. French frontier police were not empowered to refuse entry to anyone possessing the documents required by the regulations in force.

327. As regards questions raised under article 14 of the Covenant, the representative pointed out that the practice of preventing the public from attendance at a public hearing by filling the courtroom with Government officials was not known in France; that above a certain level of income no legal aid was allowed, that below a certain level, full costs were granted and that in the intermediate category, part of the legal costs were allowed. He informed the Committee that because matters dealt with by the members under this article were very complicated, his replies would be made in writing.

328. As regards the questions relating to article 15 of the Covenant, he pointed out that the misunderstanding was due to an error in the report; that an interpretive law was not a more severe law but merely a law which interpreted a former law and did not modify it and that a law altering the effects of a penal conviction did not modify the penalty but merely stipulated that the penalty would be served in different circumstances.

329. Commenting on questions raised under article 17 of the Covenant, the representative stated that searches could be made only by an order of the judicial police, who did not need an authorization from the Government attorney for that purpose, but that such searches were subject to a series of conditions, otherwise the police could not make a search unless the examining magistrates had requested it for the purpose of the preliminary investigation; and that the rules governing searches were the same for all offences, including drug trafficking. There was a law on access to administrative documents and in a recent decision, the State Council had ruled that the Data Processing and Freedom Act also applied to manual files. Telephone tapping could be done only by a decision of a judge under the Penal Code and the report prepared by a special commission set up to consider the preparation of appropriate legislation with regard to administrative telephone tapping was now being considered by the Government.

330. Replying to questions posed under article 19 of the Covenant, he indicated that the concept of an "insult to the Head of State" had been applied with great moderation and that there had been almost no case for the past nine years.

331. As to article 20 of the Covenant, he stated that France reiterated its reservation in respect of this article; that the Charter of the United Nations created obligations with regard to legitimate self-defence and the implementation of Security Council resolutions and that the Charter took precedence over the Covenant.

332. In relation to questions raised under articles 23 and 24 of the Covenant, he indicated that while each of the spouses could administer his or her own wealth, in principle, the husband controlled common possessions. However, the consent of the wife was essential for any important decision about their common possessions and wealth acquired by the wife through her own business or professional activity was administered by her with the same proviso about important decisions. In case one of the partners was unable to control his or her own share of the possessions, a decision giving sole control could be decided by the courts.

333. As regards questions posed under article 26 of the Covenant, he informed the Committee that punishment for offences of racial discrimination varied from two months to one year imprisonment and fines of up to 300,000 francs and that, in 1981, 28 sentences for racial discrimination had been pronounced in French courts.

334. In connection with article 27 of the Covenant, he stated that in France there were different religious communities; there were also persons of different origins; there were also cultural differences among the different regions of the country. All French citizens had the right to have their individual characteristics respected. Regional languages such as Basque, Breton, Catalan, Corsican and Provencal were taught at the secondary level, and Arabic and Hebrew were also widely studied. In Alsace-Lorraine, German occupied a privileged place in the curriculum. However, Frenchmen enjoyed all those rights in their capacity as citizens and not as members of a legally protected minority. The concept of a "minority" had come from central Europe, where the interplay of languages, racial groups and cultures had caused it to be developed in certain well-defined geographical and historical conditions. However, the concept had always seemed dangerous, since the legal organization of a minority could lead to isolation, to the establishment of ghettoes, and to persecution. There was no Jewish minority in France, although there were French citizens who belonged to a given cultural community and faith, which they were free to practise and develop in their capacity as French citizens. The Republic guaranteed to all French citizens all the rights and freedoms necessary for the flowering of their personality. Article 27 of the Covenant runs counter to the provisions of article 26, since the concept of a "minority" led directly to the concept of "discrimination". France was opposed to all forms of discrimination and therefore could not accept the concept of a legal "minority". France intended to grant everyone the same degree of freedom in conditions of equality and fraternity. Liberty and equality did not imply uniformity, and it was by means of those concepts, and not of the concept of legally organized minorities, that the right of citizens to live in their different ways was recognized. France therefore considered that article 27 of the Covenant was not applicable to it because it was contrary to a fundamental principle of French law.

335. The representative finally stated that in view of the large number of questions which had been asked, making it impossible to reply to all of them in the time available, and of the many changes in French law over the past two years, his delegation would submit a consolidated report in the next few weeks.

Lebanon

336. The Committee considered the initial report (CCPR/C/1/Add.60) submitted by Lebanon at its 442nd, 443rd, 444th and 446th meetings, held on 14, 15 and 18 July 1983 (CCPR/C/SR.442, 443, 444 and 446).

337. The report was introduced by the representative of the State party, who expressed his Government's regret for the delay in submitting the report and for certain discrepancies in its text. He explained that that could be attributed to the difficulties created in Lebanon by the terrible events which had occurred since 1975, and which had led to the death of about 100,000 persons and the destruction of thousands of homes. The representative distinguished between three phases in the situation of civil and political rights in his country. The first phase had existed before 1975 and during which the basic legal texts had been adopted. The second phase had begun in 1975 and was characterized by the attempts to destabilize Lebanon through military interventions which resulted in the military occupation of the country and the violation of fundemental human rights. The third phase, the present one, was that of renewal, during which the Lebanese Government was trying to reaffirm its authority over the country, as was manifested in Greater Beirut, which had become an island of peace under the authority of the legitimate Government. He drew the Committee's attention to certain errors in the report and gave it some additional information, particularly with regard to the matters dealt with by several laws and decrees referred to in the report.

338. Members of the Committee commended the Government of Lebanon for submitting its report despite the tragic human situation which Lebanon had been undergoing since 1975, expressed their sympathy for the Lebanese people, recalled that Lebanon had been a haven for all who cherished democratic life and a meeting place for all defenders of human rights, and they expressed the hope that it would soon regain its full sovereignty, unity and territorial integrity. The hope was also expressed that this would not be to the detriment of the Palestinians who had lived in Lebanon since 1948 nor of any segment of the Lebanese population. They noted, however, that the report did not reflect the present state of affairs in the country nor did it indicate the factors and difficulties affecting the implementation of the Covenant as required under article 40 of the Covenant. Many members found it difficult to decide on an appropriate approach to the consideration of the report since the Committee's normal procedure rested on the presumption that a State was in control of all its territory, which was not so in the case of Lebanon. It, therefore, had to be recognized that the Lebanese Government could not at present assume responsibility in areas of its territory under alien control. It was important for the Committee, in order to carry out its tasks, to have had information on the real situation of human rights in the country and to know to what extend the legal system described in the report was actually operating at the present time.

339. Noting that in the concluding remarks of its report, the Lebanese Government had admitted in good faith that human rights had been violated in its country and recalling that many of those violations had been caused by the Israeli military operations against it, which culminated in the invasion of Lebanon in 1982 and the occupation of its territory, but that violations had also occurred during the internal communal war which erupted in 1975, with the "vendetta" both in spirit and in action playing an important role, some members asked what measures the re-established Lebanese authority had taken to punish those responsible for the violation of human rights and to ensure the enjoyment and protection thereof for

all. One member recalled the principal stages of the Lebanese crisis since 1969 and the multiplicity of foreign military intervention. Another member pointed out that Israel was not waging war against terrorism, as it claimed, but was pursuing a policy of genocide. The whole international community condemned the Israeli aggression and held Israel responsible for the tragic situation in Lebanon; that at present the very existence of the Lebanese people was put at risk and that there were scarcely any rights to defend in Lebanon. Other members also spoke on the policy of genocide against the Palestinian and Lebanese people. One member pointed out, however, that although the responsibility of the Lebanese drama fell on all countries and religions and that no one could plead innocence or that he played no part in it, the task before the Committee was to assess what the Lebanese Government had done effectively to establish a national police force and army, to disarm private groups whose rivalry had led to bloodshed and to ensure human rights for all those residing under its authority.

340. Commenting on article 1 of the Covenant, one member noted that this article, which provided for the right of peoples to self-determination and to freely dispose of themselves, should be of great importance for a people which had been under occupation like the Lebanese people, and he wondered why the Lebanese Government did not deem it necessary to comment on it in the report, not only in relation to Lebanon itself, but also in relation to the Palestinian people towards whom Lebanon had never failed to meet its duty.

341. With reference to article 2 of the Covenant, it was noted that, according to the report, Lebanese positive law made special provision for the civil and political rights of Lebanese citizens, and it was stressed that each State party had undertaken to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant. Questions were asked as to how far the jurisdiction of the Lebanese Government extended outside Greater Beirut; what effects any co-ordination that may exist between the Lebanese army and the Israeli forces of occupation had on the equal enjoyment of all individuals of their rights; and to what extend the Lebanese Government had succeeded in protecting and ensuring human rights for all individuals in Greater Beirut. In that connection, one member raised the general question, earlier put by him to another State party having forces in Lebanon, but so far unanswered, of the responsibility under the Convenant of States parties in regard to acts committed by their military forces while in control of foreign territories.

342. Questions were asked regarding the status of international agreements, particularly of the Covenant, in the Lebanese legal system; whether the Covenant had been incorporated in the constitutional or domestic law; whether it could be directly invoked before the courts and, if so, whether any cases could be mentioned in this respect; whether any steps had been taken to inform the public of the provisions of the Covenant and of Lebanon's ratification thereof. Attention was drawn to statements in the report to the effect that Parliament had delegated to the Executive Power the authority to enact legislative decrees, that courts had no power to rule on the constitutionality of laws and the governmental acts were not subject to control, and clarification was requested on those points since such a situation would constitute a dictatorship institutionalized by law. With respect to the power of the Executive to legislate through decrees, following authorization by the Parliament, it was asked to what extent this power was limited; which authority supervised the acts of the Executive in that case, whether the validity of legislative decrees was limited to the time for which they were issued; how the constitutionality of laws was actually reviewed and whether the Council of State

was entitled to so do; and what recourse procedures were available for persons whose constitutional rights had been violated.

343. Noting that, according to the report, the executive power could not in certain cases be held responsible for its acts, it was asked whether recourse to the courts for remedy was precluded by law with regard to any of the rights protected by the Covenant, and, if so, what instances there were and what justification there was for them; whether, apart from the courts, there was any other relevant institution, such as a mediator or an Ombudsman; how often the right of petition was used in practice and how often it was used effectively; finally, whether there was any provision for individuals to have recourse against the unlawful use of their power by public officials.

344. Commenting on article 3 of the Covenant, members requested more information on the situation of women in Lebanon and, in particular, on the actual degree of equality enjoyed by them in view of the important role played by religion and religious communities in determining the personal and family status of Lebanese citizens; on their participation in parliament, in Government, the diplomatic corps, the judiciary and other professional groups. It was pointed out that the statement in the report that under Moslem law a man inherited a double portion to that of a woman should have been accompanied by an explanation of the reason of that apparent inequality.

345. With respect to article 4 of the Covenant, it was noted that Lebanon had never given notice of a state of emergency, although certain derogations from the Covenant seemed to have taken place. It was perfectly understandable that, in the present circumstances, notification might have been overlooked. However, one member suggested that it could be better to proclaim a state of emergency, which had a limited duration, in order to take certain measures, rather than to adopt restrictions in the absence of such declaration and thereby have them continue indefinitely. Had the state of emergency been declared in Lebanon, and, if so, was it still in force? Did the Lebanese Constitution provide for such an eventuality? And, if no state of emergency was in force, how could the law promulgated on 4 November 1982, delegating exceptional powers to the executive authority and making it unanswerable to Parliament, be considered? While expressing concern at the wide powers given to the armed forces in a state of emergency, a member asked whether these powers could be used against civilians and, if so, what protection they had in the military court and what remedies were available to detainees under a state of emergency if they had been denied contact with their families and a lawyer.

346. As to the right to life provided for in article 6 of the Covenant, it was pointed out by several members that it had been the one most gravely violated since 1975 and, particularly, since the Israeli invasion which culminated in the horrifying massacres at the Palestinian refugee camps of Sabra and Shatila in Beirut. It was noted that the reference in the report to this article had related only to capital punishment which, under the circumstances, was by far less important than the killings, assassinations and kidnappings that had claimed the lives of thousands of innocent people. It was pointed out by several members that although Israel was legally responsible for the massacres at the Sabra and Shatila refugee camps, the fact that Lebanese nationals had participated in those massacres made it incumbent on the Lebanese Government to hold a public inquiry to find out the responsible perpetrators and punish them. In that connection, one member pointed out that a public inquiry concerning these massacres had been held in

Israel, and that the word "genocide" should be employed with parsimony and prudence. It was asked whether any inquiry had been held in Lebanon and, if so, what the conclusions were and whether anybody had been found guilty of those crimes and punished accordingly; how the Lebanese Government regarded those massacres in the light of paragraph 3 of this article and considering that Lebanon was a party to the Convention on the Prevention and Punishment of the Crime of Genocide; what measures the Lebanese Government had taken to protect the Palestinian population in Lebanon from similar violations of their basic right to life, particularly as may be perpetrated by armed groups and militias; what action had been taken to save the life of Lebanese and Palestinians who had disappeared or been kidnapped by certain militias and to stop recurrence of such crimes not only in Greater Beirut but also in the Lebanese territory occupied by Israel; and what limitations had been imposed on the use of firearms by the police and other security forces. As to the question of capital punishment, it was recalled that the tradition of the vendetta still existed in Lebanon, often involving murders for reason of family honour and it was asked how such crimes were judged in a penal court.

347. As regards articles 7, 8 and 10 of the Covenant, it was noted that, according to the report, the absence of specific legal provision forbidding torture and other inhuman treatment in Lebanon was due to the fact that individual liberty was guaranteed in the Constitution and it was pointed out that States parties were required to take affirmative action, including the establishment of supervision machinery and control to protect individuals from such treatment. The Lebanese Government was requested to reassure the Committee that all measures will be taken to protect the Palestinian population from being subjected to inhuman treatment. Questions were asked as to whether there was any control of interrogating officials; what the procedures were for investigating ill-treatment and disciplining those found to be responsible; what protection had been provided against ill-treatment inside as well as outside prisons; whether there existed in Lebanon a system of supervision of prisons and other detention centres, including arrangements for independent persons to visit those establishments to ensure that the standards laid down were observed and that remedial measures were taken whenever necessary; whether any of the international organizations concerned had been allowed to visit detention centres in territories under the Lebanese authority; what the crimes were for which a life-time imprisonment with hard labour could be imposed; whether such punishment could not be considered cruel and inhuman and who decided if the strenuous work given to persons under sentence of hard labour was consistent with their sex and age.

348. As regards article 9 of the Covenant, it was asked whether there were any persons deprived of their liberty for political or security reasons and not for the purpose of bringing them to trial and, if so, how many such persons there were, under what authority they were held, and what procedures existed for reviewing their cases and assuring their release as soon as possible; what were the precise conditions in which a person could be held incommunicado and what was the maximum period for which that was allowed; and, if a person was detained incommunicado, whether his family was informed promptly that he was held in custody. How strictly were the time-limits for holding a person in preventive custody applied in the present circumstances? Was there a procedure comparable to habeas corpus which would allow a detainee himself to initiate the procedure for his liberation? What was the normal or average length of time for detention pending trial? Did any maximum time-limits exist and what controls were there? Information was also requested as to whether the police force was able effectively to prevent arrests of people by private groups; whether there were "private" detention camps, how many people were held there and whether there had been any progress in that respect.

349. Regarding article 11 of the Covenant, it was pointed out that the possibility of imprisonment for debt, referred to in the report, could be contrary to the provisions of this article.

350. With regard to articles 12 and 13 of the Covenant, it was noted that freedom of movement had been limited for certain categories of persons and it was asked what those categories were and how that could be reconciled with provisions of the Covenant. In that connection, it was noted that Palestinians legally residing in Lebanon since 1948 had been refused renewal of their residence documents while abroad, or re-entry at the Lebanese borders, and it was asked whether the Lebanese Government intended to expel all Palestinians from the country and, if not, what justification there could be for that limitation on their right of movement; whether a Lebanese national who had his passport withdrawn by a Lebanese diplomatic mission abroad has any legal recourse at his disposal; whether the Palestinians residing in Lebanon had been considered as political refugees and, if not, what their status was; whether the principle of non-refoulement was applicable in the case of political refugees in Lebanon; what competence or discretion the General Director of Security had in this respect and whether foreigners expelled from that country had the right to appeal against the expulsion order.

351. Turning to article 14 of the Covenant, information was requested on the application of the principle of equality before the courts and on whether it also applied to foreigners, such as the Palestinians; on the laws guaranteeing the independence of the judiciary; on the rules governing the appointment and dismissal of judges at all levels; on whether the civil courts in the parts of the country under Lebanese control were actually functioning and to what extent the legal profession was operating normally in present circumstances. Which were the competent authorities to judge the acts committed by the foreign troops stationed in Lebanon? It was also asked whether the presumption of innocence was provided for in the Lebanese legal system. Information was requested regarding the requirements of due process of law in criminal cases as specified in this article and on whether a person was entitled to the right to compensation in a case of a judicial error in a judgement pronounced against him.

352. In connection with article 19 of the Covenant, and freedom of the press in particular, members expressed their concern over the fact that the silence of the Administration was sufficient for the rejection of a recourse taken against the suspension of a publication. In that connection, clarification was requested of the meaning of the offences of "false news" and "simple false news", the definitions of which seemed important for the delimitation of the freedom of expression. More information was requested regarding the unusual powers exercised by the Minister of Information over freedom of information and expression, including control over theatrical plays. It was also asked whether there was any censorship in effect at present; whether the broadcasting system was a government agency and whether various political groups were represented on the executive board of such agency; and whether there was any governmental control over newspapers in Lebanon which were edited or financially supported from abroad.

353. Commenting on article 22 of the Covenant, members expressed their concern over the provisions which forbade civil servants to join professional organizations and to resort to strikes. In that connection, it was asked whether the right to strike was generally subject to prior authorization. One member inquired whether Lebanese law recognized the political rights of trade unions and inquired whether courts dealt with labour disputes between employers and employees. Because the

report did not mention political parties, information was requested on any laws governing their establishment and functioning.

354. As regards articles 23 and 24 of the Covenant, it was pointed out that married men and women were not treated equally in certain areas, such as the punishment for adultery or the right to inherit. It was asked whether civil marriage existed in Lebanon and whether Lebanese nationality was given to children of a Lebanese mother married to a foreigner. How was equality actually implemented within the family? Was there any implicit discrimination against women in divorce? Did the right to divorce exist for Lebanese of all religions? Clarification was requested at the age classification applicable to minor delinquents and the criteria used for such classification. It was asked whether only the church issued birth certificates or whether there was also a State registry to that effect, and whether there were supplementary provisions for the protection of minors in employment.

355. As to article 25 of the Covenant, clarification was requested of the criteria applied for the confessional distribution of seats in Parliament, when the proportional distribution of seats had been established, and whether that proportion was changed after each population census. It was also asked whether it was true that atheists or persons not belonging to any monotheistic religion could not be nominated or elected to Parliament and, if so, whether that conformed with the provisions of the Covenant.

356. In connection with article 26 of the Covenant, reference was made to statements in the report that a foreigner may inherit Lebanese property on condition of reciprocity, and that the existence of privileges for individuals or groups of individuals were prohibited "as a matter of principle" and clarification was requested of those statements in the light of the provisions of this article.

357. With regard to article 27 of the Covenant, one member asked what the position of the Government was regarding ethnic and linguistic minorities and whether there had been any demographic changes affecting the situation since 1975.

358. Responding to comments made under article 1 of the Covenant, the representative stated that the main concern for his Government now was to ensure the respect of civil and political rights on its territory, to guarantee the life and liberty of the Lebanese people by way of protecting the existence of Lebanon itself and by first exercising its right to self-determination. To that end his Government first called on the United Nations Interim Force in Lebanon (UNIFIL) and the multinational forces; introduced military service and embarked on the reorganization and rearming of its military forces and negotiated with Israel and the other Powers concerned with a view to achieving the evacuation of all foreign forces from its territory. His Government's priority was to ensure the evacuation of the Israeli army and, for that end, to make certain minimal concessions so as not to give Israel a chance to apply its usual policy of occupation, which would be followed by the establishment of colonies and annexation. As to Lebanon's position concerning the right of the Palestinian people to self-determination, he recalled the role played by his country since the arrival of the Palestinian refugees in 1948, asserted that Lebanese leaders had been advocates of the Palestinian cause, a fact well known to international bodies and Palestinian leaders, and drew attention to the sacrifices made by Lebanon in support of the armed struggle of the Palestinian people against Israel, pursuant to the agreements of Cairo and Mecca.

359. Replying to questions raised under article 2 of the Covenant, the representative stated that it was impossible, under the circumstances, to define the territory over which his Government was now exercising its authority, that although the Lebanese Administration had diminished in certain areas of the country, regional offices of various ministries still existed and that only in Beirut could he indicate for sure that almost all governmental functions were performed normally. He also explained that the Covenant was ratified by law adopted by Parliament and published in both Arabic and French in the Official Gazette; that, upon ratification, it entered into force without the need for further legislation; that precise provisions of the Covenant could be invoked before and directly applied by the courts; and that, in case of contradiction between the general principles of the Covenant and an internal law, it was up to the judge to interpret and reconcile the two texts, in the light of an assumption that the legislation had never been deliberately aimed at infringing human rights. A commission was currently carrying out studies with a view to amending outdated laws. He pointed out that, according to the Constitution, the Government could be delegated the power to legislate by one of two means. It could either submit "urgent bills" to Parliament and, unless Parliament decided otherwise within 40 days, put them into force by means of decrees, the silence of Parliament being interpreted as implicit approval; or it could, through enabling laws which had specified the duration of the delegated power and its objectives, issue decree laws, which remained valid after the expiry of the time specified in the enabling law, subject to the control of the Council of State and Parliament for eventual annulment or amendment. He indicated further that the courts had no power to consider the constitutionality of laws, but that Government acts were, with few exceptions, such as conduct of foreign affairs, subject to the control of the Council of State. The representative also pointed out that everyone had the right of recourse for abuse of power; that such recourse had been excluded in a few cases involving dismissal of civil servants for various reasons including administrative incompetence, but never on political grounds; that all questions of abuse of power relating to personal status, individual liberties or right to private property fell within the competence of the judiciary, which could annul illegal administrative decisions and order compensation.

360. Replying to questions raised under article 3 of the Covenant, the representative indicated that equality of rights between men and women including access to the civil service was assured by law; that although Lebanon was not a pioneer in this field of women's rights, women occupied posts at universities, the diplomatic corps, the courts and other areas.

361. As to article 4 of the Covenant, the representative stated that a state of emergency had not been declared in Lebanon; that the army maintained order and security in areas under its control according to decree law No. 10 of 14 February 1983 and subject to the conditions laid therein; that that control covered, inter alia, the ports, the territorial waters, the entry and departure of foreigners and meetings organized against the security of the State; and that civilian administration continued to operate in a satisfactory manner in the areas under governmental control.

362. Commenting on questions raised under article 6 of the Covenant, the representative stated that his Government was trying by all means to protect the right to life and had relative success in that respect in the areas under its control and that, in certain cases, such as kidnapping, the Government tried to prevent violation of human rights through high-level political contacts with all

concerned. As to the massacres at the Sabra and Shatila refugee camps, he stressed that they constituted one of the most serious violations of human rights; that although Israel would obviously wish to see less Palestinians in the world, he was not sure whether the term "genocide" could be applied to these massacres, considering the numbers of victims and that the massacres had been preceded by other killings involving Lebanese and foreigners since 1975; that the problem was one of finding the perpetrators and of bringing them to justice, of making the distinction between acts of war and of common law; that the massacres had not taken place in areas under Government authority; that, although his Government had spared no effort to save human life when the Israeli army was at the gates of Beirut, it had no power to prevent destruction nor the loss of human life; that Israel was responsible for the arrests in southern Lebanon; that no disappearances, summary executions or kidnappings were taking place in areas under his Government's authority and that his Government took responsibility for respect of the provisions of this article in areas under its control.

363. With respect to questions raised under artciles 7, 8 and 10 of the Covenant, the representative stated that the provisions of those articles were respected, at least in the areas controlled by his Government; that the Lebanese Penal Law prohibited torture by protecting the physical integrity of individuals, even when in prison; that punishment to forced labour for life was imposed for every serious crimes, including crimes against the security of the State and manslaughter against a person under the age of 15, but that hard labour meant in effect working in industrial or artisanal activities and not anymore in road building; that the law allowed for a considerable number of visits to penitentiary establishments by medical inspectors, the Public Prosecutor, the Presidents of the Courts, representatives of the World Health Organization (WHO) and the International Red Cross and by women's associations; that family visits were also allowed regularly and that there were no limits to visits made by the lawyers concerned.

364. Replying to questions under article 9 of the Covenant, the representative pointed out that no one, including Palestinian refugees and other foreigners, was imprisoned for his political or other opinion in territories under his Government's control; that while the police could not prevent arbitrary arrests by other groups, contacts of a political nature took place to solve such problems and that persons detained for crimes against the security of the State had to be brought before a judge within five days; that, according to the military legal code, legal assistance was allowed before the military procuror general, but required before the military judge and that, if need be, legal assistance was provided by law.

365. In connection with questions posed under articles 12 and 13 of the Covenant, the representative explained that Palestinians who had taken refuge in Lebanon in 1948 enjoyed the right of non-refoulement, but not to definite integration in Lebanese society, since official overall Arab policy had rightly been based on their right to return one day to their home country; that Palestinians arriving in Lebanon from other Arab countries, where they had first taken refuge, were given one month's renewable stay, but that they had to return to their first country of refuge; that armed Palestinians who had pledged to leave Beirut were considered as belligerents and thus were not allowed back in Lebanon and that that explained the verification of identity of Palestinians trying to reenter Lebanon and the measures of refoulement to which they were subjected.

366. Replying to questions raised under article 14 of the Covenant, he explained that the independence of judges was ensured by the High Judicial Council; that

judges could not be transferred or dismissed without their consent or without a decision of that Council; that the Courts in areas under his Government's authority were functioning normally; that all the requirements of due process of law existed in Lebanon as provided for in the Covenant; and that bilateral accords had been made with the United Kingdom and France concerning the status of British and French soldiers stationed in Lebanon, which was similar to that of administrative personnel at consular and diplomatic missions.

367. In reply to questions raised under article 19 of the Covenant, the representative pointed out that Lebanese jurisprudence made a distinction between words necessary to express an opinion and words intended to offend; that any publication containing articles considered to be offensive towards one of the religious communities or likely to provoke communal conflicts could be suspended; that there was at present no censorship in Lebanon and that freedom of information was total; that the Minister of Information did not possess discretionary powers, since the possibility of recourse had always existed, particularly for abuse of power; that silence of the administration was interpreted as implicit rejection of the recourse, which would justify submission of the case to the Council of State; that civil servants were expected to show a certain amount of discreetness and neutrality and to keep professional secrecy, and that although they were free to declare their opinions, they were required to obtain prior authorization before publishing any articles or making any speeches.

368. As regards article 22 of the Covenant, the representative informed the Committee that political parties of all tendencies existed in Lebanon and enjoyed full freedom as well as protection of the law; that trade unions in Lebanon enjoyed the right to strike once the mediation procedure conducted under the aegis of the Ministry of Labour had failed; that civil servants were not allowed to strike but that this prohibition did not affect those working in municipalities.

369. In respect of articles 23 and 24, the representative informed the Committee that no procedure for civil marriage had existed in Lebanon but that Lebanon's private international law recognized marriages so concluded abroad; that the difference between men and women as to inheritance rights had to be viewed, not in isolation, but within the general framework of Muslim Law which constituted a balanced whole in that, in this case, men would be responsible for meeting the needs of women who, consequently, should not be entitled to the same share of inheritance as men, but who nevertheless enjoyed financial independence within the Muslim régime of separation of property rights, thus resulting in cohesion within the Muslim family. As to the registration of births, church certificates of births were not valid before the administrative authorities, which required that all births should be declared in the State registry. The representative explained that the distinctions established in the Penal Code between the different categories of minors had been based to a great extent on human evolution from childhood to adulthood and that they were designed to reduce the risk of injustice.

370. In connection with questions posed under article 25 of the Covenant, the representative explained that an atheist could not take part in the conduct of public affairs, including membership of Parliament, unless he made a declaration of affiliation to one of the religious communities recognized in Lebanon.

371. With reference to questions raised under article 26 of the Covenant, he referred to the condition of reciprocity attached to the right of foreigners to inherit in Lebanon and explained, that for that condition to be met, it was

sufficient that the national legislation of the foreigner did not prohibit foreigners, including Lebanese, to inherit from citizens of that State. Explaining the statement in the report that equality before the law prohibited, in principle, the existence of privileges, he indicated that the expression "in principle" had been used to cover certain marginal cases, such as that of the employees of the Electricity Service who benefited from preferential tariffs.

372. Some members pointed out that the interpretation of genocide, referred to in article 6 of the Covenant and mentioned by them in connection with the massacre perpetrated at the Sabra and Shatila refugee camps in Beirut, did not correspond with the definition given in the Genocide Convention under which it was necessary that, for the crime of genocide to be committed, there should exist an intent to destroy a whole people but that the crime would be committed even if the intent existed to destroy part of a national group, as happened at those camps, and that it was the duty of the Lebanese Government to punish those who were responsible for it wherever they were to be found under its authority.

373. The representative stated that his interpretation of "genocide" was dictated by consideration of terminology and did nothing to remove the horror of the Sabra and Shatila massacres.

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

374. At its seventeenth session, the Committee resumed briefly the consideration of the general problem of derogation and notification under article 4 of the Covenant and its relation to the reporting system and the obligation of both the States parties and the Committee under the Covenant, particularly article 40 which it had begun at its sixteenth session. 7/ A draft proposal in connection with article 40 (1) (b) of the Covenant was submitted for the Committee's consideration at a later stage (see CCPR/C/SR.404, para. 95).

375. At its eighteenth session, the Committee exchanged views on draft general comments relating to articles 14 and 20, as prepared before and during that session by its working group (see CCPR/C/SR.425 and 429).

376. At its nineteenth session, the Committee considered the draft general comments as prepared before and during the nineteenth session by its working group and adopted the general comments relating to articles 19 and 20 of the Covenant (see CCPR/C/SR.447-451, 454, 457, 461 and 464 and annex VI to this report). Consideration of the draft relating to article 14 had to be adjourned.

377. An amended draft proposal in connection with article 40 (1) (b) of the Covenant referring, inter alia, to article 4 was introduced, but due to lack of time further discussion was deferred until the next session (see CCPR/C/SR.463).

IV. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

Introduction

378. Under the Optional Protocol to the International Covenant on Civil and Political Rights, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit written communications to the Human Rights Committee for consideration. Twenty-nine of the 75 States which have acceded to or ratified the Covenant have accepted the competence of the Committee to deal with individual complaints by ratifying or acceding to the Optional Protocol. These States are Barbados, Bolivia, Canada, the Central African Republic, Colombia, Costa Rica, Denmark, the Dominican Republic, Ecuador, Finland, Iceland, Italy, Jamaica, Madagascar, Mauritius, the Netherlands, Nicaragua, Norway, Panama, Peru, Portugal, Saint Vincent and the Grenadines, Senegal, Suriname, Sweden, Trinidad and Tobago, Uruguay, Venezuela and Zaire. No communication can be received by the Committee if it concerns a State party to the Covenant which is not also a party to the Optional Protocol.

Procedure

379. Consideration of communications under the Optional Protocol takes place in closed meetings (art. 5 (3) of the Optional Protocol). All documents pertaining to the work of the Committee under the Optional Protocol (submissions from the parties and other working documents of the Committee) are confidential. The texts of final decisions of the Committee, consisting of views adopted under article 5 (4) of the Optional Protocol, are however made public. As regards decisions declaring a communication inadmissible, the Committee has decided that henceforth it will normally make these decisions public, substituting initials for the names of the alleged victim(s) and the author(s).

380. In carrying out its work under the Optional Protocol, the Committee is assisted by Working Groups on Communications, consisting of not more than five of its members, which submit recommendations to the Committee on the action to be taken at the various stages in the consideration of each case. The Committee has also designated individual members to act as Special Rapporteurs in a number of cases. The Special Rapporteurs place their recommendations before the Committee for consideration.

381. The procedure for the consideration of communications received under the Optional Protocol consists of several main stages.

(a) Registration of the communication

Communications are received by the Secretariat and are registered in accordance with the Committee's provisional rules of procedure. They are numbered consecutively, indicating the year of registration (e.g. No. 1/1976).** For each session of the Committee the Secretariat prepares a

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** The numbering system was changed at the eighteenth session of the Committee. Previously, the reference number of each case referred, in addition to the serial number of the case in the register, to the number of the list of communications in which it was summarized (e.g. R.1/1) and not to the year of registration.

list of communications registered since the last session, which contains summaries of new cases brought to the attention of the Committee. An annex to the list contains summaries of communications which, although they relate to alleged violations of human rights by States parties to the Optional Protocol, have not yet been registered as cases by the Secretariat, but which are brought to the attention of the Committee as borderline cases. The Secretariat may also, when necessry, request clarification from the author concerning the applicability of the Protocol to his communication.

(b) Admissibility of the communication

Once a communication has been registered, the Committee must decide whether it is admissible under the Optional Protocol. The requirements for admissibility, which are contained in articles 1, 2, 3 and 5 (2) of the Optional Protocol, are listed in rule 90 of the Committee's provisional rules of procedure. Under rule 91, the Committee or a Working Group (see para. 3) may request the State party concerned or the author of the communication to submit, within a time-limit which is indicated in each such decision, additional written information or observations relevant to the question of admissibility of the communication. The decision to declare a communication admissible or inadmissible rests with the Committee. The Committee may also decide to terminate or suspend consideration of a communication if its author indicates that he wants to withdraw the case or if the Secretariat has lost touch with the author. A decision to declare a communication inadmissible or otherwise to terminate or suspend consideration of it may, in a clear case, be taken without referring the case to the State party for its observations.

(c) Consideration on the merits

If a communication is declared admissible, the Committee proceeds to consider the substance of the complaint. In accordance with article 4 (2) of the Optional Protocol, it requests the State party concerned to submit to the Committee explanations or statements clarifying the matter. Under article 4 (2), the State party has a time-limit of six months in which to submit its observations. When they are received, the author is given an opportunity to comment on the observations of the State party. The Committee then normally formulates its views and forwards them to the State party and to the author of the communication, in accordance with article 5 (4) of the Optional Protocol. In exceptional cases, further information may be sought from the State party or the author by means of an interim decision before the Committee finally adopts its views.

Progress of work

382. Since the Committee started its work under the Optional Protocol at its second session in 1977, 147 communications have been placed before it for consideration (124 of these were placed before the Committee from its second to its sixteenth session: 23 further communications have been placed before the Committee since then, i.e. at its seventeenth, eighteenth and nineteenth sessions, covered by the present report). During these seven years, some 305 formal decisions have been adopted. A publication containing a selection of decisions from the first to the sixteenth session, will be published in the near future.

383. The status of the 147 communications placed before the Human Rights Committee for consideration, so far, is as follows:

(a) Concluded by views under article 5 (4) of the Optional Protocol: 49

(b) Concluded in another manner (inadmissible, discontinued, suspended or withdrawn): 64

(c) Declared admissible, not yet concluded: 12

(d) Pending at pre-admissibility stage (19 thereof transmitted to the State party under rule 91 of the Committee's provisional rules of procedure): 22

384. At its seventeenth session, held from 11 to 29 October 1982, the Human Rights Committee, or its Working Group on Communications, examined 31 communications submitted to the Committee under the Optional Protocol. The Committee concluded consideration of three cases by adopting its views thereon. These are cases Nos. 55/1979 (Alexander MacIsaac v. Canada), 66/1980 (David Alberto Cámpora Schweizer v. Uruguay) and 84/1981 (Guillermo Ignacio Dermit Barbato and Hugo Haroldo Dermit Barbato v. Uruguay). In one case an interim decision was taken. Five communications were declared admissible and one inadmissible. Decisions were taken in four cases under rule 91 of the Committee's provisional rules of procedure, requesting information on questions of admissibility from one or both of the parties. Consideration of four cases was suspended. Secretariat action was requested in the remaining 13 cases, mainly for the purpose of obtaining additional information from the authors to allow further consideration by the Committee.

385. At its eighteenth session, held from 21 March to 8 April 1983, the Human Rights Committee, or its Working Group on Communications, examined 38 communications submitted to the Committee under the Optional Protocol. The Committee concluded consideration of eight cases by adopting its views thereon. These are cases Nos. 16/1977 (Daniel Monguya Mbenge et al v. Zaire); 49/1979 (Dave Marais, Jr. v. Madagascar); 74/1980 (Miguel Angel Estrella v. Uruguay); 75/1980 (Duilio Fanali v. Italy); 77/1980 (Samuel Lichtensztejn v. Uruguay); 80/1980 (Elena Beatriz Vasilskis v. Uruguay); 88/1981 (Gustavo Raúl Larrosa Bequio v. Uruguay) and 106/1981 (Mabel Pereira Montero v. Uruguay). Four communications were declared admissible and five inadmissible. Decisions were taken in six cases under rule 91 of the Committee's provisional rules of procedure requesting information on questions of admissibility from one or both of the parties. Consideration of one case was discontinued. Secretariat action was requested in the remaining 14 cases, mainly for the purpose of obtaining additional information from the authors to allow further consideration by the Committee.

386. At its nineteenth session, held from 11 to 29 July 1983, the Human Rights Committee, or its Working Group on Communications, examined 48 communications submitted to the Committee under the Optional Protocol. The Committee concluded consideration of six cases by adopting its views thereon. These are cases Nos. 43/1979 (Adolfo Drescher Caldas v. Uruguay); 90/1981 (Luyeye Magana ex-Philibert v. Zaire); 92/1981 (Juan Almirati Nieto v. Uruguay); 105/1981 (Luis Alberto Estradet Cabreira v. Uruguay); 107/1981 (Elena Quinteros Almeida and Maria del Carmen Almeida de Quinteros v. Uruguay) and 108/1981 (Carlos Varela Nuñez v. Uruguay). Four communications were declared admissible and two inadmissible.

Decisions were taken in seven cases under rule 91 of the Committee's rules of procedure, requesting information on questions of admissibility from one or both of the parties. Consideration of two cases was suspended. Consideration of nine cases was discontinued (some of which concern in substance the same matter, submitted individually by several alleged victims). Secretariat action was requested in the remaining 18 cases, mainly for the collection of further information.

387. The texts of the views adopted by the Committee at its seventeenth, eighteenth and nineteenth sessions are reproduced in annexes VII to XXIII of the present report. The texts of seven decisions on inadmissibility, adopted at the Committee's eighteenth and nineteenth sessions (Nos. 104/1981, J.R.T. and W.G. Party v. Canada; 127/1982, C.A. v. Italy; 128/1982, L.A. on behalf of U.R. v. Uruguay; 129/1982, I.M. v. Norway; 130/1982, J.S. v. Canada; 136/1983, X. (a non-governmental organization) on behalf of S.G.F. v. Uruguay and 137/1983, X. (a non-governmental organization) on behalf of J.F. v. Uruguay), are reproduced in annexes XXIV to XXX.

Issues arising

388. A number of issues pertaining to questions relating to the admissibility of communications have been dealt with in the Committee's earlier reports to the General Assembly or in the Committee's decisions on particular communications. These issues concerned, in particular, (a) the standing of the author; (b) the relevance of the date on which the Covenant and the Optional Protocol have entered into force for the State party concerned and events alleged to have taken place prior to that date; (c) the question when the alleged victim is "subject to the jurisdiction" of the State party for the purposes of article 1 of the Optional Protocol (e.g., No. 52/1959); (d) the application of article 5 (2) (a) of the Optional Protocol which precludes consideration by the Committee if the same matter is being examined under another procedure of international investigation or settlement and (e) the application of article 5 (2) (b) of the Optional Protocol concerning the exhaustion of domestic remedies. The conditions of admissibility set out in article 3 of the Optional Protocol (relating to anonymous communications, abuse of the right of submission and inadmissibility of communications which are considered incompatible with the provisions of the Covenant) have also been relevant to the examination of a number of communications. Furthermore, the Committee has taken into account reservations made by States parties precluding consideration of communications if the same matter has been considered under another procedure of international investigation or settlement. In that connection, the Committee has recognized that consideration by the European Commission of Human Rights constitutes another procedure of international investigation within the meaning of article 5 (2) (a) of the Optional Protocol.

389. Among the substantive issues that have been examined by the Committee are the right to life (art. 6 of the Covenant); e.g., No. 45/1979), the right not to be subjected to torture or to cruel, inhuman or degrading treatment (art. 7 of the Covenant, e.g., No. 63/1979), the right to be treated humanely during imprisonment (art. 10 of the Covenant; e.g., No. 49/1979), the right to access to counsel and to a fair trial without undue delay (arts. 9 and 14 of the Covenant; e.g., No. 28/1978), the right of an alien not to be unlawfully expelled (art. 13 of the Covenant; e.g., No. 58/1979), the right to freedom of expression (art. 19 of the Covenant; e.g. nos. 44/1979, 61/1979), the right to engage in political activity

(art. 25 of the Covenant; e.g., No. 34/1978), the right not to be subjected to discrimination on the ground of sex (art. 26 of the Covenant; e.g., No. 35/1978), and the rights of minorities (art. 27 of the Covenant; e.g., No. 24/1977). The Committee has also examined communications involving derogation from provisions of the Covenant by States parties pursuant to article 4 of the Covenant (e.g., No. 46/1979).

390. With respect to the question of burden of proof, the Committee has held that this "cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information" (No. 30/1978). Furthermore, the Committee has held that the State party is under an obligation to investigate the authors' allegations and that "a refutation of these allegations in general terms is not sufficient" (No. 11/1977).

Question of action subsequent to the adoption of the Committee's views under the Optional Protocol or to a decision declaring a communication to be inadmissible

391. At the seventeenth session, the Chairman of the Committee invited the members to express their views on the question raised by the Chairman of the Working Group on Communications, namely, the reconsideration of the Committee's decisions, at the request either of the authors of communications or of the States parties concerned and the "follow-up" action which the Committee could take to ensure that its views were respected by States parties.

392. Some members were of the opinion that nothing in the Covenant and the Optional Protocol, which were the legal basis for the Committee's functions and limits, empowered the Committee to reconsider its views on communications or to ensure their implementation; that the Committee could have no inherent powers that had not been given to it explicitly by States parties and that it therefore had no competence to initiate the review of a case already concluded; that there was nothing in the Optional Protocol to prevent an individual from submitting a further communication if he was not satisfied with the Committee's views, or if he considered that there were facts or evidence to which attention should be drawn, and the question would then become one of admissibility of the new communication; that the Committee was a sui generis body, with no judicial powers and that the implementation of its views was left to the good-will of the State party concerned; that the question of the monitoring of the implementation of those views in the absence of a clear legal mandate to that effect, might even be contrary to Article 2, paragraph 7, of the Charter of the United Nations relating to non-interference by the United Nations in the internal affairs of States; that States parties could, if they so wish, use the amendment procedure under article 11 of the Protocol, an easy matter at the current stage, when there were only 28 States parties to the Protocol; that if the Committee took it upon itself to change procedures for which explicit ratification was required, its action could be taken as a warning to States to think twice before ratifying the Optional Protocol, since there was no prediction what additional obligations and procedures the Committee would attach to that instrument; and that no useful progress could be made in trying to press States to do what they were not obliged to do.

393. The majority of members, however, pointed out that the Committee could not let its work under the Optional Protocol degenerate into an exercise of futility; that due consideration had to be paid to both the letter and spirit of the Covenant, and that where the Committee believed that certain appropriate action was reasonably

open to it, or was not expressly prohibited, the Committee should take it and that the Optional Protocol allowed considerable latitude for interpretation since many issues were not specifically covered by its provisions. Several such issues were cited, as well as decisions and steps taken previously by the Committee, but which could not be traced back directly to the Covenant or the Optional Protocol. Considering that the Optional Protocol did not provide for the principle of res judicata as far as the Committee's decisions were concerned, and that the Committee's rules of procedure allowed for a review of a decision on admissibility, reconsideration of a communication should be possible, but only as an exception, not as a rule; that it should primarily be based on new facts, although legal arguments adduced at a later stage could not be entirely excluded; that a new rule to that effect may not be desirable at the present stage, but that if one was ultimately to be drawn it should be an enabling rule whose effect would be to impose limitations and to discourage abuses. As to the question of whether the Committee was entitled to monitor the implementation of its decisions under the Optional Protocol, it was pointed out that, whereas the Committee had no executive powers enabling it to enforce its views, it could nevertheless do something to bring redress, or end continued violations, of the victim's rights after transmission of its views to the State party concerned. Moreover, it was clear from the preamble of the Protocol and article 2 (3) of the Covenant that the States parties intended the Covenant to be implemented. When a victim was clearly within the jurisdiction of a State and not in direct communication with the Committee, the Committee should indicate in its views that he might avail himself of certain remedies and the Committee should request the State party to communicate the entire decision to the victim and should also be requested to inform the Committee of any developments.

394. It was recalled that at the fifteenth session, the Committee decided that in the letter of transmittal accompanying the Committee's views, the State party would be requested to inform the Committee of the action it had taken on the particular case and it was pointed out that the decision had been taken to the satisfaction of all members and that it could be assumed that the decision had been implemented and applied to all views adopted by the Committee.

395. At its nineteenth session, the Committee resumed consideration of these questions in relation to particular cases in closed meetings. It noted that in three cases the author of the communication has requested reconsideration of the Committee's decision to declare the communication inadmissible, but the Committee found no reason to justify the action requested.

396. In three other cases the Committee has been informed by the State party of legislative or other measures that have been or are being taken in response to the Committee's views. The States parties concerned are Canada, Finland and Mauritius and the texts of their notes conveying this information are reproduced in annexes XXXI to XXXIII to this report. The Committee welcomes the co-operation of these States and their positive response to the views which it has expressed.

V. FUTURE MEETINGS OF THE COMMITTEE

397. At its eighteenth session, the Committee was informed of Economic and Social Council decision 1983/101, of 4 February 1983, in which the Council had invited it to consider the possibility of rescheduling its meetings so that, starting in 1984, its report could be submitted to the General Assembly through the Economic and Social Council at its first regular session. Pursuant to that decision, consideration of the report of the Human Rights Committee was already scheduled for the Council's first regular session of 1984 (1-25 May 1984). Attention of the Committee was drawn to the fact that if that request was acceded to, the Committee's report for the current year might be adopted at the October session (24 October-11 November 1983) and submitted to the Economic and Social Council at its first regular session in 1984; that the activities of the Committee for the period from October 1982 to October 1983 would therefore not be reviewed by the General Assembly until its thirty-ninth session to be held in late 1984; and that, unless the Committee rescheduled its sessions, its future reports would not be considered by the General Assembly until one year after their adoption.

398. Members of the Committee agreed that the current practice in which the Committee adopted its annual report at the end of its summer session and transmitted it through the Economic and Social Council to the General Assembly was extremely useful and desirable because it enabled the General Assembly to consider as complete and up-to-date a report as possible on the work of the Committee, and that the Committee could rely on the Council's understanding and co-operation.

399. The representative of the Secretary-General stated that he would undertake further consultations with the Council's secretariat and bring the views of the Committee to the attention of the Council at its first regular session, 1984.

VI. ADOPTION OF THE REPORT

400. At its 463rd and 464th meetings held on 28 and 29 July 1983, the Committee considered the draft of its seventh annual report covering the activities of the Committee at its seventeenth, eighteenth and nineteenth sessions, held in 1982 and 1983. The report, as amended in the course of the discussions, was adopted by the Committee unanimously.

Notes

1/ For details, see CCPR/C/SR.393 and 406.

2/ For the views exchanged by the members of the Committee, see CCPR/C/SR.414.

3/ For details, see Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), paras. 26 and 27.

4/ Official Records of the General Assembly, Thirty-second Session, Supplement No. 44 (A/32/44 and Corr.1), annex IV.

5/ Ibid., Thirty-sixth Session, Supplement No. 40 (A/36/40), annex V.

6/ Ibid., annex VI.

7/ Ibid., Thirty-seventh Session, Supplement No. 40 (A/37/40), paras. 340-344.

ANNEX I

States parties to the International Covenant on Civil and Political Rights and to the Optional Protocol and States which have made the declaration under article 41 of the Covenant, as at 31 July 1983

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

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Afghanistan	23 January 1983 (a)	23 April 1983
Australia	13 August 1980	13 November 1980
Austria	10 September 1978	10 December 1978
Barbados	5 January 1973 (a)	23 March 1976
Belgium	21 April 1983	21 July 1983
Bolivia	12 August 1982 (a)	12 November 1982
Bulgaria	21 September 1970	23 March 1976
Byelorussian Soviet Socialist Republic	12 November 1973	23 March 1976
Canada	19 May 1976 (a)	19 August 1976
Central African Republic	8 May 1981 (a)	8 August 1981
Chile	10 February 1972	23 March 1976
Colombia	29 October 1969	23 March 1976
Costa Rica	29 November 1968	23 March 1976
Cyprus	2 April 1969	23 March 1976
Czechoslovakia	23 December 1975	23 March 1976
Democratic People's Republic of Korea	14 September 1981 (a)	14 December 1981
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 (a)	4 April 1978
Ecuador	6 March 1969	23 March 1976
Egypt	14 January 1982	14 April 1982

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
El Salvador	30 November 1979	29 February 1980
Finland	19 August 1975	23 March 1976
France	4 November 1980 (a)	4 February 1981
Gabon	21 January 1983 (a)	21 April 1983
Gambia	22 March 1979 (a)	22 June 1979
German Democratic Republic	8 November 1973	23 March 1976
Germany, Federal Republic of	17 December 1973	23 March 1976
Guinea	24 January 1978	24 April 1978
Guyana	15 February 1977	15 May 1977
Hungary	17 January 1974	23 March 1976
Iceland	22 August 1979	22 November 1979
India	10 April 1979 (a)	10 July 1979
Iran (Islamic Republic of)	24 June 1975	23 March 1976
Iraq	25 January 1971	23 March 1976
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Japan	21 June 1979	21 September 1979
Jordan	28 May 1975	23 March 1976
Kenya	1 May 1972 (a)	23 March 1976
Lebanon	3 November 1972 (a)	23 March 1976
Libyan Arab Jamahiriya	15 May 1970 (a)	23 March 1976
Madagascar	21 June 1971	23 March 1976
Mali	16 July 1974 (a)	23 March 1976
Mauritius	12 December 1973 (a)	23 March 1976

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Mexico	23 March 1981 (a)	23 June 1981
Mongolia	18 November 1974	23 March 1976
Morocco	3 May 1979	3 August 1976
Netherlands	11 December 1978	11 March 1979
New Zealand	28 December 1978	28 March 1979
Nicaragua	12 March 1980 (a)	12 June 1980
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	28 April 1978	28 July 1978
Poland	18 March 1977	18 June 1977
Portugal	15 June 1978	15 September 1978
Romania	9 December 1974	23 March 1976
Rwanda	16 April 1975 (a)	23 March 1978
Saint Vincent and the Grenadines	9 November 1981 (a)	9 February 1982
Senegal	13 February 1978	13 May 1978
Spain	27 April 1977	27 July 1977
Sri Lanka	11 June 1980 (a)	11 September 1980
Suriname	28 December 1976 (a)	28 March 1977
Sweden	6 December 1971	23 March 1976
Syrian Arab Republic	21 April 1969 (a)	23 March 1976
Trinidad and Tobago	21 December 1978 (a)	21 March 1979
Tunisia	18 March 1969	23 March 1976
Ukrainian Soviet Socialist Republic	12 November 1973	23 March 1976

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Union of Soviet Socialist Republics	16 October 1973	23 March 1976
United Kingdom of Great Britain and Northern Ireland	20 May 1976	20 August 1976
United Republic of Tanzania	11 June 1976 (a)	11 September 1976
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Viet Nam	24 September 1982 (a)	24 December 1982
Yugoslavia	2 June 1971	23 March 1976
Zaire	1 November 1976 (a)	1 February 1977

B. States parties to the Optional Protocol

Barbados	5 January 1973 (a)	23 March 1976
Bolivia	12 August 1982 (a)	12 November 1982
Canada	19 May 1976 (a)	19 August 1976
Central African Republic	8 May 1981 (a)	8 August 1981
Colombia	29 October 1969	23 March 1976
Costa Rica	29 November 1968	23 March 1976
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 (a)	4 April 1978
Ecuador	6 March 1969	23 March 1976
Finland	19 August 1975	23 March 1976
Iceland	22 August 1979 (a)	22 November 1979
Italy	15 September 1978	15 December 1978

State party	Date of receipt of the instrument of ratification or accession (a)	Date of entry into force
Jamaica	3 October 1975	23 March 1976
Madagascar	21 June 1971	23 March 1976
Mauritius	12 December 1973 (a)	23 March 1976
Netherlands	11 December 1978	11 March 1979
Nicaragua	12 March 1980 (a)	12 June 1980
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	3 October 1980	3 January 1981
Portugal	3 May 1983	3 August 1983
Saint Vincent and the Grenadines	9 November 1981 (a)	9 February 1982
Senegal	13 February 1978	15 May 1978
Suriname	28 December 1976 (a)	28 March 1977
Sweden	6 December 1971	23 March 1976
Trinidad and Tobago	14 November 1980 (a)	14 February 1981
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Zaire	1 November 1976 (a)	1 February 1977

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

State party	Valid from	Valid until
Austria	10 September 1978	Indefinitely
Canada	29 October 1979	Indefinitely
Denmark	23 March 1976	Indefinitely
Finland	19 August 1975	Indefinitely

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

ANNEX II

Membership of the Human Rights Committee

Name of member	Country of nationality
Mr. Andrés AGUILAR *	Venezuela
Mr. Mohammed AL DOURI *	Iraq
Mr. Néjib BOUZIRI **	Tunisia
Mr. Joseph A. L. COORAY **	Sri Lanka
Mr. Vojin DIMITRIJEVIC **	Yugoslavia
Mr. Felix ERMACORA *	Austria
Mr. Roger ERRERA **	France
Sir Vincent EVANS *	United Kingdom of Great Britain and Northern Ireland
Mr. Bernhard GRAEFRATH **	German Democratic Republic
Mr. Vladimir HANGA *	Romania
Mr. Leonte HERDOCIA ORTEGA *	Nicaragua
Mr. Andreas V. MAVROMMATIS *	Cyprus
Mr. Anatoly Petrovich MOVCHAN *	Union of Soviet Socialist Republics
Mr. Birame NDIAYE **	Senegal
Mr. Torkel OPSAHL **	Norway
Mr. Julio PRADO VALLEJO **	Ecuador
Mr. Walter TARNOPOLSKY *	Canada
Mr. Christian TOMUSCHAT **	Germany, Federal Republic of

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* Term expires on 31 December 1984.

** Term expires on 31 December 1986.

ANNEX III

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

A. Initial reports

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Central African Republic	7 June 1982	NOT YET RECEIVED	-
Democratic People's Republic of Korea	13 December 1982	NOT YET RECEIVED	-
Dominican Republic	3 April 1979	NOT YET RECEIVED	(1) 25 April 1980 (2) 27 August 1980 (3) 27 November 1981
Egypt	13 April 1983	NOT YET RECEIVED	-
El Salvador	28 February 1981	2 June 1983	
Gambia	21 June 1980	25 April 1983	
India	9 July 1980	4 July 1983	
Lebanon	22 March 1977	6 April 1983	
Saint Vincent and the Grenadines	8 February 1983	NOT YET RECEIVED	
Sri Lanka	10 September 1981	23 March 1983	
Trinidad and Tobago	20 March 1980	NOT YET RECEIVED	(1) 7 December 1981 (2) 2 December 1982
Zaire	31 January 1978	NOT YET SUBMITTED	(1) 14 May 1979 (2) 23 April 1980 (3) 29 August 1980 (4) 31 March 1982 (5) 1 December 1982

* From 31 July 1982 to 29 July 1983 (end of sixteenth session to end of nineteenth session).

B. Second periodic reports of States parties due in 1983**

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Zaire	30 January 1983	NOT YET RECEIVED	-
Czechoslovakia	4 February 1983	NOT YET RECEIVED	-
German Democratic Republic	4 February 1983	NOT YET RECEIVED	-
Libyan Arab Jamahiriya	4 February 1983	NOT YET RECEIVED	-
Tunisia	4 February 1983	NOT YET RECEIVED	-
Iran (Islamic Republic of)	21 March 1983	NOT YET RECEIVED	-
Lebanon	21 March 1983	NOT YET RECEIVED	-
Uruguay	21 March 1983	NOT YET RECEIVED	-
Panama	6 June 1983	NOT YET RECEIVED	-

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

State party	Date of submission
Tunisia	28 June 1983

** For a complete list of States parties whose second periodic reports are due in 1983, see CCPR/C/28.

ANNEX IV

Letter dated 25 October 1982, concerning publicity for the work of the Human Rights Committee, from the Chairman of the Human Rights Committee addressed to the Secretary-General

1. The Human Rights Committee, of which I have the honour to be the Chairman, has this week been shown the report of the Secretary-General on publicity for the work of the Committee, a/ the purpose of which is to inform the General Assembly of the financial implications of making available annually the official records of the Committee in two bound volumes: one volume to contain the summary records of public meetings of the Committee and a second volume to contain other public documents of the Committee.

2. The Committee observes that the Secretary-General's report deals exclusively with the financial aspects of the proposed publication, and does not explain the reasons why the Committee considers that the availability of its public documents in annual bound volumes is necessary to ensure the maximum effectiveness of its work in promoting human rights in accordance with the Covenant. It is clearly important that the General Assembly, when examining the matter, should be aware of the Committee's reasons.

3. One of the main functions of the Committee is to examine reports from States parties to the Covenant on the measures taken by them to give effect to the rights recognized in the Covenant, on the progress made in the enjoyment of those rights and on any factors and difficulties affecting the implementation of the Covenant. The Committee examines these reports in public meetings in the presence of representatives of the reporting States. The reports themselves, together with the proceedings at which they are examined, constitute a unique record and source of information on the measures taken under different legal, political and social systems to implement the rights set forth in the Covenant, and on difficulties encountered and means of dealing with them. The summary records also cover the Committee's discussions of numerous other important questions that arise in the course of its work.

4. Since the Committee itself is engaged in a continuing dialogue with States parties to the Covenant, it is essential for its purposes alone that the records and documents in question should always be available in a convenient and durable form. But the information contained therein is also believed to be of exceptional interest and value to national authorities, non-governmental organizations, teachers, researchers and others concerned with the promotion of human rights throughout the world.

5. It is, therefore, in order that the maximum use can be made of this information with a view to furthering the objectives of the Covenant, that the Committee attaches such importance to its request for the annual bound volumes. If the documentation in question remains in fascicule form only, it will inevitably be far less easily accessible, and a great deal of the value of the work of the Committee will be lost.

6. The Committee also notes that the Secretary-General's report takes no account of probable sales of the annual bound volumes. The Committee believes that there would be a considerable market for them, which should enable much of the initial financial outlay to be recouped.

7. Finally, the Committee would urge that the General Assembly should endorse the proposals in paragraphs 12 and 13 of the report of the Secretary-General, a/ whereby the volumes would be produced in four languages (the records and documents already being available in these four languages). For the reasons already given above, this would clearly be preferable to the admittedly less expensive alternative of only two languages, as offered in paragraph 9.

8. I am to request, on behalf of the Committee, that this letter should be laid before the General Assembly for consideration with the Secretary-General's report under reference.

(Signed) Andreas V. MAVROMMATIS

Notes

a/ A/37/490 of 4 October 1982.

ANNEX V

Decision recommending the inclusion of Arabic among the official and working languages of the Human Rights Committee a/ b/

The Human Rights Committee,

Aware of the need to achieve greater international co-operation and to promote harmonization of activities in the field of human rights,

Aware of the need for the promotion of civil and political rights in the Arab countries and of the interest of these countries in ensuring the full effectiveness of the work of the Human Rights Committee,

Bearing in mind General Assembly resolution 3190 (XXVIII) of 18 December 1973, 34/226 of 20 December 1979 and 35/219 of 17 December 1980 relating to the introduction of Arabic as an official and working language in the General Assembly and its main committees,

1. Recommends the inclusion of Arabic among its official and working languages, and requests the Secretary-General to take the appropriate steps to that end;

2. Requests the Secretary-General to ensure the publication of an official translation into Arabic of the text of the Bill of Rights containing the Universal Declaration of Human Rights, the International Covenant of Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocal thereto.

Notes

a/ Adopted by the Committee at its 436th meeting (eighteenth session) on 8 April 1983.

b/ For the discussion in the Committee, see CCPR/C/SR.424 and 436.

ANNEX VI

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

General comment 10 (19) e/ (article 19)

1. Paragraph 1 requires protection of "the right to hold opinions without interference". This is a right to which the Covenant permits no exception or restriction. The Committee would welcome information from States parties concerning paragraph 1.

2. Paragraph 2 requires protection of the right to freedom of expression, which includes not only freedom to "impart information and ideas of all kinds", but also freedom to "seek" and "receive" them "regardless of frontiers" and in whatever medium, "either orally, in writing or in print, in the form of art, or through any other media" of one's choice. Not all States parties have provided information concerning all aspects of the freedom of expression. For instance, little attention has so far been given to the fact that, because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for in paragraph 3.

3. Many reports of States parties confine themselves to mentioning that freedom of expression is guaranteed under the Constitution or the law. However, in order to know the precise régime of freedom of expression, in law and in practice, the Committee needs in addition pertinent information about the rules which either define the scope of freedom of expression or which set forth certain restrictions, as well as any other conditions which in practice affect the exercise of this right. It is the interplay between the principle of freedom of expression and such limitations and restrictions which determines the actual scope of the individual's right.

4. Paragraph 3 expressly stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and, for this reason, certain restrictions on that right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Paragraph 3 lays down conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be "provided by law"; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of paragraph 3; and they must be justified as being "necessary" for that State party for one of those purposes.

General comment 11 (19) (article 20)

1. Not all reports submitted by States parties have provided sufficient information as to the implementation of article 20 of the Covenant. In view of the nature of article 20, States parties are obliged to adopt the necessary legislative measures prohibiting the actions referred to therein. However, the reports have shown that in some States such actions are neither prohibited by law nor are appropriate efforts intended or made to prohibit them. Furthermore, many reports

failed to give sufficient information concerning the relevant national legislation and practice.

2. Article 20 of the Covenant states that any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. In the opinion of the Committee, these required prohibitions are fully compatible with the right of freedom of expression as contained in article 19, the exercise of which carries with it special duties and responsibilities. The prohibition under paragraph 1 extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations, while paragraph 2 is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned. The provisions of article 20, paragraph 1, do not prohibit advocacy of the sovereign right of self-defence or the right of peoples to self-determination and independence in accordance with the Charter. For article 20 to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation. The Committee, therefore, believes that States parties which have not yet done so should take the measures necessary to fulfil the obligations contained in article 20, and should themselves refrain from any such propaganda or advocacy.

Notes

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

b/ For the text of the General Comments already adopted by the Committee, see Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40) annex VII and ibid., Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V. Also issued separately in documents CCPR/C/21 and CCPR/C/21/Add.1.

c/ Adopted by the Committee at its 461st and 464th meetings (nineteenth session), held on 27 and 29 July 1983.

d/ Also issued separately in document CCPR/C/21/Add.2.

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

ANNEX VII

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

concerning

Communication No. 55/1979

Submitted by: Alexander MacIsaac (represented by Etel Swedahl)

Alleged victim: Alexander MacIsaac

State Party concerned: Canada

Date of communication: 3 July 1979

Date of decision on admissibility: 25 July 1980

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

Meeting on 14 October 1982,

Having concluded its consideration of communication No. 55/1979 submitted to the Committee by Alexander MacIsaac under the Optional Protocol to the International Covenant on Human Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of this communication (initial letter dated 3 July 1979 and a further letter dated 21 April 1980) is Alexander MacIsaac, a Canadian citizen, residing in Kingston, Ontario, Canada. He is represented by Etel Swedahl.

2.1 The author alleges that he is a victim of a a breach by Canada of article 15 (1) of the International Covenant on Civil and Political Rights. The relevant facts which are not in dispute, are as follows:

2.2 On 26 November 1968, the author was sentenced to a term of eight years imprisonment on counts of armed robbery. On 21 March 1972, after serving circa three years and four months, the author was released on parole from a federal penitentiary in Campbellford, Ontario. On 27 June 1975, he was convicted of a criminal offence while still being on parole and, on 25 July 1975, he was sentenced to a term of 14 months imprisonment. Pursuant to the conviction, by operation of the Parole Act 1970, the time which the author had spent on parole from 21 March 1972 to 27 June 1975 (three years, three months and six days) was automatically forfeited and he was required to re-serve that time. The author was

again released on 7 May 1979, to serve the remaining part of his sentence under mandatory supervision.

2.3 On 15 October 1977, the Criminal Law Amendment Act 1977 was proclaimed in force. The new law, inter alia, repealed certain provisions of the Parole Act 1970 and, in effect, abolished automatic forfeiture of time spent on parole (forfeiture of parole) upon subsequent conviction for an indictable offence committed while still on parole. The Criminal Law Amendment Act 1977 now stipulates that only the sanction of revocation of parole is presently applicable to persons on parole, which sanction is invoked at the discretion of the National Parole Board rather than automatically by law upon conviction of an indictable offence. Section 31 (2) (a) of the Criminal Law Amendment Act 1977 provides further that, upon revocation of parole, any time that a person had spent on parole after the coming into force of this provision, that is after 15 October 1977, is credited against his/her sentence. Consequently, a person presently in the position in which the author found himself on 27 June 1975 would not necessarily attract any sanction concerning revocation of parole and, even if such a sanction were to be invoked, would not be required to re-serve the period of time spent on parole after 15 October 1977.

2.4 The author claims that, by specifying that section 31 (2) (a) of the Criminal Law Amendment Act 1977 shall not be retroactive, the Government of Canada has contravened article 15 (1) of the Covenant. He submits that section 31 (2) (a), in providing that time spent on parole after 15 October 1977 is not to be re-served in prison upon revocation of that parole, constitutes a lighter penalty within the meaning of article 15 of the Covenant. He further submits that, contrary to article 2 (2) of the Covenant, the Government of Canada has failed to enact legislation to give effect to article 15.

2.5 The author submits that in the present state of the law in Canada, any recourse to domestic courts, for the purpose of obtaining the remedy he seeks, would be futile. He therefore endeavoured to seek relief by applying, on 5 September 1978, for the Royal Prerogative of Mercy. This recourse was unsuccessful and the author claims that the rejection by the Government of Canada of the application for an executive remedy, that is to say the exercise of the Royal Prerogative of Mercy, constitutes a violation of article 2 (3) (a) of the Covenant.

2.6 The author maintains that there are no further domestic remedies to exhaust, and states that the same matter has not been submitted to any other international procedure of investigation. The author, in conclusion, states that the object of his submission is to seek redress of the alleged violation by the State party of article 15 of the Covenant and, specifically, to obtain an amendment of section 31 (2) (a) of the Criminal Law Amendment Act 1977, so as to make that section compatible with article 15 of the Covenant.

3. By its decision of 10 October 1979, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

4. By a note dated 24 March 1980, the State party objected to the admissibility of the communication on the ground that the communication was incompatible with the provisions of the International Covenant on Civil and Political Rights and as such

was inadmissible under article 3 of the Optional Protocol to the Covenant. The State party contested in particular that Canada was in breach of article 15 of the Covenant by not making retroactive section 31 of the Criminal Law Amendment Act 1977. In support of these arguments, it was submitted that the word "penalty" in article 15 of the Covenant referred to the punishment or sanction decreed by law for a particular offence at the time of its commission. Therefore, in respect of a particular criminal act, a breach of the right to a lesser penalty can only occur when there is a reduction of the punishment which can be imposed by a court; parole was the authority granted by law to a person to be at large during his term of imprisonment; it did not reduce the punishment which, according to law, could be imposed for a given offence, but rather dealt with the way a sentence would be served. The State party further maintained that the relevant provisions of the Criminal Law Amendment Act 1977 did not reduce the penalty which the law decrees for any given criminal offence and that, therefore, the new provisions did not result in a "lighter penalty" within the meaning of article 15 of the Covenant.

5. On 21 April 1980, comments on behalf of the author of the communication were submitted in reply to the State party's submission of 24 March 1980, disputing in particular the State party's contention that the granting of parole did not come within the legal term "penalty". In substantiation, the author referred to legal practice in Canada, according to which two meanings of "penalty" exist: a narrower meaning of being a pecuniary punishment and a general or primary meaning of being "the consequences visited by law upon the heads of those who violate the laws".

6. By its decision of 25 July 1980, the Committee, after finding, inter alia, that the communication was not incompatible with the provisions of the Covenant, declared the communication admissible.

7.1 In its submission under article 4 (2) of the Optional Protocol, dated 18 February 1981, the State party sets out, inter alia, the law relating to the Canadian parole system and asserts that it is not in breach of its obligations under the International Covenant on Civil and Political Rights. It contends:

(a) That article 15 of the International Covenant on Civil and Political Rights deals only with criminal penalties imposed by a criminal court for a particular criminal offence, pursuant to criminal proceedings;

(b) That the forfeiture of parole is not a criminal penalty within the meaning of article 15 of the Covenant;

(c) That by replacing forfeiture of parole by revocation of parole it did not substitute a "lighter penalty" for the "commission of an indictable offence while on parole".

7.2 The State party further elaborates on the definition of the word "penalty" as used in article 15 (a) of the Covenant.

7.3 The State party submits that there are various kinds of penalties: these may be criminal, civil or administrative. This distinction between criminal penalties and administrative or disciplinary ones, the State party argues, is generally accepted. Criminal penalties, it further submits, are sometimes referred to as "formal punishment" while the administrative penalties are referred to as "informal punishment".

7.4 The State party contends that in Canada the grant of parole is an administrative matter left entirely to the discretion of the National Parole Board (Ex parte McCaud (1965) 1 C.C.C. 168 at 169, Supreme Court of Canada). Therefore parole established under the Parole Act is a privilege accorded to certain prisoners at the discretion of the Parole Board and not a right to which all prison inmates are entitled (Mitchell v. The Queen (1976) 2 S.C.R. 589 at 593, per Mr. Justice Ritchie speaking for the majority of the Supreme Court of Canada). A grant of parole does not have the effect of altering the length of a sentence imposed by a court upon an offender (Regina v. Wilmott, (1966) 2 O.R. 654 at 662, Ontario Court of Appeal) or of making changes in sentences (Marcotte v. Deputy Attorney General of Canada (1975) 1 S.C.R. 108 at 113, Supreme Court of Canada). Rather parole provides that the offender serves his sentence outside the prison, not as a free man, but under supervision and subject to terms and conditions imposed. Because the essence of parole is release on conditions (Howarth v. National Parole Board (1976) 1 S.C.R. 453 at 468 per Dicson dissenting on another point, Supreme Court of Canada), a person on parole is not a free man (Regina v. Wilmott (1966) 2 O.R. 257 at 662, Ontario Court of Appeal); and because a person on parole is not a free man, his parole may be suspended or revoked at the discretion of the National Parole Board. Revocation of a parole is an administrative decision and is not part of the criminal prosecution (Howarth v. National Parole Board (1976) 1 S.C.R. 453 at 474, 475 and 461).

7.5 The State party adds that the setting or context of article 15 of the Covenant is criminal law. The words "guilty", "criminal offence" and "offender" are evidence that when the word "penalty" is used in the context of article 15, what is meant is "criminal penalty". The State party finds unacceptable Mr. MacIsaac's proposition that the word "penalty" in article 15 of the Covenant must be given a wide construction, which would mean that article 15 would apply to administrative or disciplinary sanctions imposed by law as a consequence of criminal convictions.

7.6 The State party furthermore refers to a series of Canadian court decisions on the nature and effects of parole, its suspension or revocation. It also argues, quoting various authorities, that the Canadian process of sentencing permits flexibility with respect to forfeiture of parole. It points out that "in sentencing Mr. MacIsaac, the judge did mention explicitly the fact that Mr. MacIsaac's parole had been forfeited. Although, in the judge's view, Mr. MacIsaac's criminal record was 'serious', he sentenced him to a term of imprisonment of 14 months for an offence carrying a statutory maximum of 14 years." Finally, the role of the National Parole Board is discussed in this context.

7.7 In the light of the above, the State party submits that the Human Rights Committee ought to dismiss Mr. MacIsaac's communication. Article 15, it submits, deals with criminal penalties, while the process of parole is purely administrative, and therefore the Criminal Law Amendment Act 1977 cannot be regarded as providing a ligher penalty within the ambit of article 15.

8. No further information or observations have been submitted on behalf of Mr. MacIsaac.

9.1 The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol.

9.2 The Committee notes that the facts of the present case are not substantially in dispute. It recalls that the Canadian Criminal Law Amendment Act, 1977, removed the automatic forfeiture of parole for offences committed while on parole. This Act was made effective from 15 October 1977, at a time when the alleged victim was serving the sentences imposed on him under the earlier legislation, namely in 1968 (8 years) and 1975 (14 months). By the terms of section 31 (2) (a) of the Act, the deduction of time spent on parole from the unexpired term of imprisonment was, however, only applicable to offenders whose penalties were imposed after the coming into force of the new provisions. The author alleges that by not making the Act retroactive, Canada contravened the last sentence of article 15 (1) of the Covenant;

> "... If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby."

The Government disputes this allegation.

9.3 The Committee notes that the provision just quoted refers to two points of time: the "commission of the offence" and the "imposition" of a penalty. If the provision applies only at the time when the offender is sentenced by the court, then it would not be applicable to the present case. It would in fact be inadmissible ratione temporis, since all relevant facts took place before the entry into force of the Covenant for Canada on 19 August 1976. If, on the other hand, the provision applies as long as the sentence is not fully served, the situation would be different. When declaring this case (and similarly R.12/50) admissible, the Committee left this point of interpretation open, because it had to consider the effect of the Act of 1977 on the position of Mr. MacIsaac.

10. The author states that the object of his submission is to obtain an amendment of section 31 (2) (a) of the Canadian Criminal Law Amendment Act, 1977, so as to make that section compatible with article 15 of the Covenant. It appears from the submissions of the parties and documents presented by them in this case, as well as in a similar case (R.12/50; views on 7 April 1982), that this matter is one considered to be of general interest as affecting hundreds of inmates in Canadian prisons. However, this fact alone is not a reason for the Committee to consider the general issue. The Committee notes in this respect that it is not its task to decide in the abstract whether or not a provision of national law is compatible with the Covenant, but only to consider whether there is or has been a violation of the Covenant in the particular case submitted to it. In the other case, the Committee expressed the view, without prejudice to the general legal issues, that the information submitted on behalf of the alleged victim did not clearly establish that his position in the end was substantially affected by the applicability or non-applicability of the new provision, and that therefore there was no violation of the Covenant.

11. In the absence of more precise submissions from the author in the present case, the Committee has attempted to examine in what way, if any, the position of the alleged victim was affected by the situation of which he basically complains. It notes that the system for dealing with recidivists was changed by the 1977 Act, to make it more flexible. The Act as amended provides, instead of the automatic forfeiture of parole, for a system of revocation at the discretion of the National Parole Board and sentencing for the recidivist offence at the discretion of the judge. However, the recidivist cannot be made to re-serve the full time spent on parole. Apparently, the author's claim in the present case is that he would have been released earlier on the hypothesis that the new provisions had been applied to

him retroactively. The Committee notes that it is not clear how this should have been done. However, here a comparison with the system existing before 1977 is necessary. Under the old system, the judge exercised his discretion in deciding the length of a penalty to be imposed. In the case of Mr. MacIsaac, whose second sentence was rendered in 1975, the recidivist offence carried a possible sentence of up to 14 years. While noting that Mr. MacIsaac's criminal record was "serious" and explicitly mentioning the fact that Mr. MacIsaac's parole had been forfeited, the judge in 1975 sentenced him to 14 months. The Committee notes that one cannot focus only on the favourable aspects of a hypothetical situation and fail to take into account that the imposition of the 14-month sentence on Mr. MacIsaac for a recidivist offence was explicitly linked with the forfeiture of parole. In Canadian law there is no single fixed penalty for a recidivist offence. The law allows a scale of penalties for such offences and full judicial discretion to set the term of imprisonment (e.g. up to 14 years for the offence of breaking and entering and theft as in Mr. MacIsaac's case). It follows that Mr. MacIsaac has not established the hypothesis that if parole had not been forfeited, the judge would have imposed the same sentence of 14 months and that he would therefore have been actually released prior to May of 1979. The Committee is not in a position to know, nor is it called upon to speculate, how the fact that his earlier parole was forfeited may have influenced the penalty meted out for the offence committed while on parole. The burden of proving that in 1977 he has been denied an advantage under the new law and that he is therefore a "victim" lies with the author. It is not the Committee's function to make a hypothetical assessment of what would have happened if the new Act had been applicable to him.

12. The Canadian Criminal Law Amendment Act 1977 in this light, and as explained by the State party, only entails a modification in the system of dealing with recidivist cases and leaves the question as to whether the total effect in the individual case will be a "lighter penalty" to the judge who sentences the recidivist offender. The new law does not necessarily result automatically, for those to whom it is applied, in a lighter penalty compared to that under the earlier legislation. The judge entrusted with sentencing the recidivist - now as before - is bound to take into account the facts of every case, including, of course, the revocation or forfeiture of parole, and exercise his discretion in sentencing within the prescribed scale of statutory minimum and maximum penalties.

13. These considerations lead to the conclusion that it cannot be established that in fact or law the alleged victim was denied the benefit of a "lighter" penalty to which he would have been entitled under the Covenant.

14. For these reasons the Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights is of the view that the facts of the present case do not disclose any violation of article 15 (1) of the Covenant.

ANNEX VIII

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

concerning

Communication No. 66/1980

Submitted by: Initially submitted by Olga Machado de Cámpora on behalf of her husband, David Alberto Cámpora Schweizer, who later joined as submitting party

Alleged victim: David Alberto Cámpora Schweizer

State party concerned: Uruguay

Date of communication: 15 March 1980 (date of initial letter)

Date of decision on admissibility: 28 July 1981

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

Meeting on 12 October 1982,

Having concluded its consideration of communication No. 66/1980, initially submitted by Olga Machado de Cámpora under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The initial author of this communication, Olga Machado de Cámpora (initial letter dated 15 March 1980) is a Uruguayan national, residing in the Federal Republic of Germany. She submitted the communication on behalf of her husband, David Alberto Cámpora Schweizer, alleging that he was arbitrarily imprisoned in Uruguay and that he is a victim of a violation by Uruguay of his rights under the International Covenant on Civil and Political Rights.

2.1 The author described the relevant facts as follows:

2.2 David Alberto Cámpora Schweizer, a Uruguayan national (45 years old at the time of the submission of the communication), was arrested in March 1971 on grounds of "association to break the law" (article 150 of the Penal Code). In September 1971 he escaped from prison together with other political detainees, but in April 1972 he was re-arrested and detained incommunicado for several weeks. On 15 June 1972, he was transferred to the Batallón de Infantería No. 1 by the military authorities and allegedly subjected to severe torture.

2.3 The author further stated that a judge ordered her husband's release in May 1974 and that his request to leave the country was officially approved in November 1974. He was, however, kept imprisoned without charges at the disposal of the Executive authorities under the "prompt security measures" until August 1977. She stressed that, during this time, there were no legal remedies available to her husband. She adds that from March 1975 to August 1977 he was subjected to mistreatment at the barracks of Trinidad.

2.4 In August 1977, the trial (procesamiento) was continued before a military court after law No. 14.493 of December 1975 had retroactively placed all political crimes (chapter VI of the Military Penal Code) under military jurisdiction, including proceedings against civilians. In addition to being charged with the offences which had been investigated between 1971 and 1974, at this new stage of the proceedings her husband was also prosecuted on the charge of "use of a false document" (article 237 of the Penal Code) which had not been included in the proceedings before the ordinary judge. His new place of detention was Libertad prison.

3.1 In a further letter dated 11 June 1980, replying to the secretariat's request for clarification as to whether the same matter had been submitted to the Inter-American Commission on Human Rights, the author stated that, at her request, IACHR had discontinued consideration of her husband's case.

3.2 She also informed the Committee that the indictment against her husband was issued on 15 March 1980, and that his lawyer, Dr. Juan P. Labat, presented his defence at the beginning of April 1980.

3.3 She enclosed in this connection a copy of a memorandum dated 24 March 1980 containing the indictment of her husband of 12 March 1980. The charges brought against him were: "association in order to commit criminal offences" (asociación para delinquir), "attack on the Constitution at the stage of conspiracy followed by preparatory acts" (atentado a la Constitución en el grado de conspiración seguida de actos preparatorios), "falsification of public documents" and "escape from prison" (autoevasión). The legal bases of these charges were the following articles of the Ordinary Penal Code: 150, 54, 56, 132 paragraphs 6, 137, 237 and 184. The sentence asked for was eight years of imprisonment, taking into account his previous detention, and that David Alberto Cámpora Schweizer be declared a "habitual criminal" with a consequence of three to four years' precautionary detention (medidas de seguridad eliminativas; article 92 (4) of the Penal Code).

3.4 The author also enclosed with her letter of 11 June 1980, two testimonies, one from Dr. Alejandro Artucio dated 22 March 1978 and one from Julio César Modernell dated 13 September 1977.

3.5 Dr. Artucio states that he had been the lawyer of persons who had been imprisoned together with the alleged victim and that for this reason he knew his case very well. The writer gives in particular a detailed legal background on David Cámpora's situation. He mentions that the judicial decision of 23 May 1974 providing for the provisional release of David Cámpora was based on the consideration that the deprivation of liberty already suffered by him was sufficient and that the punishment liable to be imposed on him would not exceed that period of three years. He also quotes the reasons given for the executive decision to keep David Cámpora in detention under "Prompt Security Measures": "Taking into account the background of the case, the fact that Cámpora is very

dangerous and his recidivism, the Executive orders his detention ..." Commenting on the continuation of the criminal proceedings against David Cámpora by military tribunals, he explains that, in December 1975, new legislation (Law No. 14.493) came into force in Uruguay, which retroactively established the jurisdiction of the military courts in all cases of so-called political offences (lesa nación). This law was also applicable in the case of the alleged victim. Dr. Artucio further mentions that he himself was detained in Uruguay in connection with his activities as a defence lawyer and that he met David Cámpora in a Montevideo prison (building of the Batallón de Infantería No. 1, Florida) in 1972, where he claims to have witnessed the mistreatment and torture to which the alleged victim was subjected (giving details).

3.6 Julio César Modernell states in his testimony that he was imprisoned together with the alleged victim for two years in the buildings of the Artillería de Trinidad until his release in October 1976. He describes the general conditions of their imprisonment (extremely poor hygiene) and mentions, inter alia, that the treatment to which the prisoners were subjected worsened with the arrival of new military officials in February 1976. It was the systematic policy to provoke the prisoners, followed by new interrogations and mistreatment (plantones). The writer states in this context that David Cámpora was one night attacked and badly beaten by an official named Alférez Queirolo, who was briefly arrested upon the complaint by relatives of the prisoners, but then was allowed to continue with his mistreatment of prisoners. According to a carefully developed plan, a period of extremely harsh treatment would be followed by one of relative ease during which the prisoner was told that his release was imminent, thus creating false hope for him and his family. This treatment was aimed to "break" the prisoner psychologically.

4. By its decision of 21 July 1980, the Working Group of the Human Rights Committee, having decided that the author of the communication was justified in acting on behalf of the alleged victim, transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

5. In a further letter dated 8 October 1980, the author stated that the military tribunal of first instance had sentenced her husband to nine years of imprisonment and one or two years of precautionary detention (medidas de seguridad eliminativas). She informed the Committee that her husband's lawyer had already appealed against the judgement rendered against her husband, to the Supreme Military Tribunal.

6. By a note dated 14 November 1980, the State party objected to the admissibility of the communication on the ground that domestic remedies had not been exhausted. In support of that objection, the State party confirmed that on 10 September 1980 the court of first instance had pronounced a sentence of nine years' rigorous imprisonment plus two years' precautionary detention (medidas eliminativas) in the case. The State party further added that under the provisions of article 489 of the Code of Military Penal Procedure, appeal is automaic for every final judgement imposing a prison sentence of more than three years and, when the judgement in the second instance has been pronounced, there is still the possibility of applying for the remedies of annulment and review which are also provided for in the Code of Military Penal Procedure.

7. The author in a further letter of 7 December 1980 stated that she had learned from her husband's lawyer that his trial before the Supreme Military Tribunal had taken place on 13 November 1980, that the court had ordered his immediate release, considering that he had served his sentence, without ordering any precautionary detention (medida de seguridad).

8. In an additional letter dated 12 January 1981, the author informed the Committee that her husband had arrived in Cologne, Federal Republic of Germany, on 14 December 1980. She stated that, on 12 December, at 5 p.m., her husband was taken out of Libertad prison and brought to the police headquarters in Montevideo, where the Ambassador of the Federal Republic of Germany in Uruguay, Mr. Marré, issued him a fremdenpass (travel document) of the Federal Republic of Germany with which he travelled on 13 December 1980 to the Federal Republic of Germany. The author added that, upon arrival in that country, her husband was brought to a Sanatorium for two weeks because of his precarious state of health.

9. In an interim decision of 31 March 1981, the Human Rights Committee asked David Alberto Cámpora Schweizer whether he wished the Committee to pursue the matter. In the affirmative, the alleged victim was requested to acquaint himself with the contents of the submissions previously made on his behalf and the submissions made by the State party, with a view to: (a) correcting any inaccuracies which he might find in the submissions made on his behalf; (b) commenting as he deemed relevant on the submissions of the State party; (c) adding any further information which he might wish to place before the Human Rights Committee for consideration in his case.

10. In a reply dated 28 May 1981, David Cámpora informed the Committee that he wished to corroborate explicitly and entirely all the facts reported by his wife, the author of the communication, and to confirm the existence of the violations of rights recognized in the International Covenant on Civil and Political Rights, referred to by her. He further stated that the Committee should continue to consider his case until it reaches a decision on the substance of the matter.

11. In a further letter dated 1 July 1981, David Cámpora gives a description of the treatment to which prisoners were subjected in Military Detention Establishment No. 1 (Libertad prison) where he was held from August 1977 until his release in December 1980. He described the daily life of the prisoners, including their constant harassment and persecution by the guards; the régime of arbitrary prohibitions and unnecessary torments; the combination of solitude and isolation on the one hand and the fact of being constantly watched, listened to and followed by microphones and through peepholes on the other hand; the lack of contact with their families, aggravated by worries about the difficulties experienced and pressures exerted on their families; the cruel conditions in the punishment wing in which a prisoner might be confined for up to 90 days at a time; the breakdown of physical and mental health through malnutrition, lack of sunshine and exercise, as well as nervous problems created by tension and ill-treatment. In sum, he asserts that the Libertad prison is "an institution designed, established and operated with the exclusive objective of totally destroying the individual personality of everyone of the prisoners confined in it".

12. On 20 July 1981, the Committee decided:

(a) That the communication was admissible in so far as it related to events said to have occurred on or after 23 March 1976 (the date of the entry into force of the Covenant and the Optional Protocol for Uruguay);

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

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

13. On 18 February 1982, the time-limit for observations requested from the State party under article 4 (2) of the Optional Protocol expired. However, no submission has yet been received from the State party, in addition to that received by the Committee prior to the decision on the admissibility of the communication. The Committee notes with concern the State party's failure to respond and its failure to furnish the Committee with relevant court orders and decisions.

14. The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol.

15. The Committee decides to base its views on the following facts which are not in dispute or which are unrepudiated or uncontested by the State party except for denials of a general character offering no particular information or explanation.

Events prior to the entry into force of the Covenant:

16.1 David Alberto Cámpora Schweizer was arrested in Uruguay in March 1971 on grounds of "association to break the law". In September 1971 he escaped from prison, but was re-arrested in April 1972.

16.2 In May 1974, a judge ordered David Cámpora's provisional release; his request to leave the country was approved in November 1974. At the same time, however, an order of detention under the rules of "Prompt Security Measures" was issued against him so that he was kept imprisoned without any charges. There were no remedies available to him to challenge his prolonged detention. While he was kept at Trinidad barracks (since November 1974) he suffered mistreatment.

Events subsequent to the coming into force of the Covenant:

17.1 The detention under the régime of "prompt security measures" lasted until August 1977, when at that time the trial (procesamiento) was continued before a military tribunal in accordance with Law No. 14.493 of December 1975, David Alberto Cámpora Schweizer was transferred from Trinidad barracks to Libertad prison.

17.2 David Cámpora was charged anew before the competent military tribunal for the same acts which had already been investigated by an ordinary judge between 1971 and 1974, including, however, this time the charge of "use of false document" (article 237 of the Penal Code) which had not been the object of the prior

proceedings. In March 1980, the formal indictment against David Cámpora contained the following charges: "association in order to commit criminal offences" (asociación para delinquir), "attack on the Constitution at the stage of conspiracy followed by preparatory acts" (atentado a la Constitución en el grado de conspiración seguida de actos preparatorios), "falsification of public documents" and "escape from prison" (autoevasión).

17.3 On 10 September 1980, a military court of first instance pronounced a sentence of nine years' rigorous imprisonment plus two years precautionary detention (medidas eliminativas). On 13 November 1980, the Supreme Military Tribunal ordered David Alberto Cámpora Schweizer's release, considering that he had served his sentence without ordering any precautionary detention (medida de seguridad).

17.4 On 12 December 1980, he was taken out of Libertad prison and brought to the police headquarters in Montevideo. On 13 December 1980 he travelled to the Federal Republic of Germany where he joined his family.

17.5 On the basis of the information submitted by the initial author and later confirmed by David Alberto Cámpora Schweizer himself, it cannot be established whether the mistreatment complained of continued or occurred on or after 23 March 1976, the date on which the Covenant entered into force for Uruguay. As far as the period after the coming into force of the Covenant is concerned, both authors refer only in general terms to mistreatment without mentioning any specific incident. In his testimony of 13 September 1977, Julio César Modernell, who was imprisoned together with David Cámpora for two years until October 1976, describes an attack by a prison official which took place in February 1976 or later. It cannot be seen whether this incident took place before, on or after 23 March 1976. In the circumstances, the Committee cannot base a finding on the allegations of mistreatment. The Committee is, however, in a position to conclude that the conditions of imprisonment to which David Cámpora was subjected at Libertad prison were inhuman (see, in particular, para. 11 above).

18.1 On the basis of the facts of the present case, the Human Rights Committee does not feel that it is in a position to pronounce itself on the general compatibility of the régime of "prompt security measures" under Uruguayan law with the Covenant. According to article 9 (1) of the Covenant, no one shall be subjected to arbitrary arrest or detention. Although administrative detention may not be objectionable in circumstances where the person concerned constitutes a clear and serious threat to society which cannot be contained in any other manner, the Committee emphasizes that the guarantees enshrined in the following paragraphs of article 9 fully apply in such instances. In this respect, it appears that the modalities under which "prompt security measures" are ordered, maintained and enforced do not comply with the requirements of article 9.

18.2 Concerning the allegation that article 14 (7) of the Covenant has been violated by the State party, the Committee observes that, based on the authors' submission, the criminal proceedings initiated against David Cámpora in 1971 were not formally concluded at first instance until the military tribunal pronounced its judgement on 10 September 1980. Article 14 (7), however, is only violated if a person is tried again for an offence for which he has already been finally convicted or acquitted. This does not appear to have been so in the present case. Nevertheless, the fact that the Uruguayan authorities took almost a decade until the judgement of first instance was handed down indicates a serious malfunctioning of the judicial system contrary to article 14 (3) (c) of the Covenant.

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

of article 9 (3) and (4) because during the time spent in detention under the régime of "prompt security measures", David Alberto Cámpora Schweizer was not brought before a judge and could not take proceedings to challenge his arrest and detention;

of article 10 (1) because he was detained under inhuman prison conditions;

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

20. The Committee, accordingly, is of the opinion that the State party is under an obligation to provide the victim with effective remedies, including compensation, for the violations he has suffered.

ANNEX IX

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

concerning

Communication No. 84/1981

Submitted by: Hugo Gilmet Dermit, on behalf of his cousins, Guillermo Ignacio Dermit Barbato and Hugo Haroldo Dermit Barbato

Alleged victims: Guillermo Ignacio Dermit Barbato and Hugo Haroldo Dermit Barbato

State party concerned: Uruguay

Date of communication: 27 February 1981 (date of initial letter)

Date of decision on admissibility: 28 October 1981

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

Meeting on 21 October 1982,

Having concluded its consideration of cuommunication No. 84/1981 submitted to the Committee by Hugo Gilmet Dermit under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The author of the communication (initial letter dated 27 February 1981 and further letters dated 30 September 1981 and 28 July 1982) is a Uruguyan citizen at present living in Sweden. He submitted the communication on behalf of his cousins, Hugo Haroldo Dermit Barbato and Guillermo Ignacio Dermit Barbato, alleging that Hugo Dermit died in detention in Uruguay between 24 and 28 December 1980 and that Guillermo Dermit is at present imprisoned in Uruguay.

1.2 The author states that his cousin, Guillermo Dermit, a 30-year old Uruguayan medical doctor disappeared on 2 December 1980. His abandoned car was found in a street, with wide open doors. All attempts to find out his whereabouts were in vain for 17 days; in particular, no confirmation could be obtained from the authorities as to whether he was detained. On 19 December 1980, an official communiqué was published in Montevideo announcing Guillermo Dermit's detention.

He was described as belonging to a group of relatives of prisoners who had carried out "agitation and propaganda activities". The alleged victim's place of detention was not disclosed in the communiqué and he continued to be detained incommunicado. For some time his closest relatives did not know where he was being detained. The author claims that the real motive for Guillermo Dermit's arrest was the fact that he was the brother of a political prisoner, Hugo Dermit, and that no illegal activities could be imputed to him.

1.3 The author claims that Guillermo Dermit is a victim of violations of a number of provisions of the International Covenant on Civil and Political Rights, including article 9 (1), because he was arbitrarily arrested; article 9 (2), because he was not promptly informed of the reasons for his arrest; article 9 (3), because he was not brought promptly before a judge, within the period of 10 days laid down in Uruguayan law; article 9 (4), because he was kept incommunicado and was thus unable to take his case before any judicial authority and because his family could not make use of the recourse of habeas corpus; article 10, because the treatment of detainees in Uruguay did not conform to this provision of the Covenant, more detailed information not being available because of Guillermo Dermit's being incommunicado; article 14, because he was not brought before a court, and that if and when this happened, it would be before a military tribunal lacking in procedural guarantees and impartiality.

1.4 As to Hugo Dermit, a 32-year old Uruguayan student of medicine at the time of his death, the author states that he was arrested in 1972, that he came under the jurisidiction of the military courts and that, after lengthy proceedings, he was sentenced to eight years' imprisonment. He had served his sentence in July 1980 but was not released. Instead, he was informed that he would be released only if he left the country, a condition which, according to the author, was not mentioned in the judgement, nor was it based on any rule of law. After he had obtained an entry visa from the Swedish Government, the authorities informed him that he was due to be released on 11 December 1980. In September 1980, Hugo Dermit was transferred from the Establecimiento Militar de Reclusión No. 1 (Libertad prison, Department of San José) to the barracks of the Fourth Mechanized Cavalry Regiment situated in Montevideo (Camino Mendoza and Avenida de las Instrucciones). On 13 November 1980, he signed the option to leave the country for Sweden. At the end of that month, he was transferred to the Montevideo Police Headquarters. On 9 December 1980, the police authorities made it known that he would not be granted permission to leave the country. His whereabouts were unknown to his relatives until 28 December 1980. The author alleges that, during the period in question, Hugo Dermit was once more transferred to the quarters of the Fourth Mechanized Cavalry Regiment, where he was seen by other prisoners and was reported to have been in good spirits, in spite of the interruption of the preparations for his release and departure from Uruguay. He was last seen alive on 24 December 1980. On 28 December 1980, his mother was called to the Military Hospital without any explanation. There she was shown the dead body of her son for identification purposes. The death certificate stated as cause of death "acute haemorrhage resulting from a cut of the carotid artery" and his mother was told that he had committed suicide with a razor blade. The writer claims that this explanation is false and that Hugo Dermit died as a consequence of the mistreatment and torture to which he had allegedly been subjected.

1.5 The author claims that Hugo Dermit was a victim of violations of articles 6, 7, 9, 10, 12, 14 and 17 of the International Covenant on Civil and Political Rights.

1.6 With regard to the question of admissibility, the author stated that he had not submitted either case to another procedure of international investigation or settlement. He alleged there were no further domestic remedies which could be invoked. In the case of Hugo Dermit, the remedies through proceedings before the Military Tribunals had been exhausted. The eight years' sentence imposed on him resulted from a decision of the Supreme Military Tribunal. His continued detention after completion of his sentence was based on "prompt security measures". The author claims that the only remedy available in that situation was the option to leave the country. He alleges that no procedural possibilities existed to oblige the authorities to respect this constitutional option. The author further claims that although the alleged violations of human rights in the case of Hugo Dermit commenced before 23 March 1976, they continued to occur after that date.

2. By its decision of 18 March 1981, the Working Group of the Human Rights Committee transmitted the communication, under rule 91 of the provisional rules of procedure, to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. It also requested the State party to provide the Committee with (a) copies of any court orders or decisions relevant to the case, and (b) copies of the death certificate and medical report and of the report of whatever inquiry had been held in connection with the death of Hugo Dermit.

3. In a note dated 24 August 1981, the State party disputed the admissibility of the communication on the grounds that: (a) concerning Hugo Dermit, the same matter had been submitted to the Inter-American Commission on Human Rights as case No. 7710, and (b) with regard to Guillermo Dermit, the remedies available under domestic law had not yet been exhausted, and the State party had repeatedly informed the Committee of all the remedies available to everyone in Uruguayan territory. The Government did not furnish the Committee with copies of any court orders or decisions relevant to the case of Guillermo Dermit nor did it mention any proceedings pending against the alleged victim, any specific remedies available to him, or refer to any other facts concerning his case.

4. In his letter of 30 September 1981, the author informed the Committee that the case of Hugo Dermit had been submitted to the Inter-American Commission on Human Rights by a third party. He attached a copy of a letter dated 25 September 1981, sent by the person responsible for submitting case No. 7710 to the Inter-American Commission requesting its withdrawal. With regard to the case of Guillermo Dermit, the author asserted once again the lack of any domestic remedies that could have been exhausted. He informed the Committee that Guillermo has been subjected to military judicial proceedings. He again claimed that Guillermo is a victim of violations of article 14 of the Covenant and alleged that the military judges are neither independent nor impartial.

5.1 With regard to article 5, paragraph 2 (a), the Human Rights Committee noted that case No. 7710, concerning Hugo Dermit, had been withdrawn from the Inter-American Commission on Human Rights (IACHR). This had been confirmed by the secretariat of IACHR. The Committee also notes that, with regard to Guillermo Dermit, the State party has not disputed the author's contention that the case has not been submitted to any other procedure of international investigation or settlement.

5.2 With regard to article 5, paragraph 2 (b), the Human Rights Committee took note of the State Party's assertion that Guillermo Dermit had not yet exhausted the

domestic remedies available to him. However, the State party did not give details of the remedies which may be invoked in the particular circumstances of this case; nor did it specify which of the alleged violations could have been effectively remedied within the established military judicial process. On the basis of the information before it, the Committee was unable to conclude that there were remedies available to Guillermo Dermit which he should have pursued.

5.3 On 28 October 1981, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) of the Optional Protocol, the State party should be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and to enclose copies of any court orders or decisions of relevance to the matter under consideration, and, in the case of Hugo Dermit, to enclose copies of the death certificate and medical report and of the reports on whatever enquiries were held into the circumstances surrounding his death.

6.1 In its submission under article 4 (2) of the Optional Protocol, dated 1 June 1982, the State party fowarded a transcript of the autopsy report concerning Hugo Dermit which reads as follows:

"Death certified on 28 December 1980. Cause: suicide. Result of the autopsy: on 28 December 1980, an autopsy was carried out on the body of Hugo Dermit Barbato, white, male, 32 years old, general health good, thin. Blood on the face, neck, front of the thorax and upper limbs, mainly on the left side. On the left-hand side of the neck, a clean cut 40 mm long with sanguineous infiltration at the edges. The wound runs obliquely from the thyroid cartilage outwards and downwards to the middle of the external cleidomastoid muscle. Immediately above it, another clean cut 10 mm long with sanguineous infiltration at the edges. On the right forearm, 4 cm from the wrist joint, a 30 mm oblique cut running from the outer edge to the middle of the forearm (and being, at this point, 6 cm from the wrist). On the left forearm, a similar, but shorter (20 mm) wound. The remainder of the external examination showed no special peculiarities.

"Internal examination: neck - dissection of the areas corresponding to the wound in the left side of the neck showed that the internal jugular vein was completely severed, with a wound 1 mm in diameter in the left common carotid artery. Recent sanguineous infiltration in adjacent areas. The upper wound showed that the middle thyroid artery had been severed. Thorax and abdomen - pleura and lungs: lungs normal, with collapsed alveoli. Abdomen: normal. General paleness of the viscera. Upper limbs: the wounds in both forearms show that the middle veins had been partly severed. Summary: from the preceding study, it is evident that the cause of death was anaemia as a result of acute haemorrhage caused by the severing of the left carotid vessels. By the pathological anatomy service, Haydee Klempert First Lieutenant, Medical Corps."

6.2 With respect to Guillermo Dermit, the State party asserts that he was brought to trial because "it was proved that he had been involved in the offences of conspiracy to subvert and action to upset the Constitution in the degree of

conspiracy, followed by criminal preparations on 23 March 1981. The aforementioned person was one of the subversive members of the so-called 'seispuntista' movement, which tried to reactivate the subversive 'Tupamaros' movement from within the prison, with the help of elements outside it." The Government reiterated its rejection of the admissibility of this case on the grounds of non-exhaustion of internal remedies available under criminal military law. These remedies are: "appeal against the decision to refuse to allow a trial, application to set aside the ordinary appeal for review, remedy of appeal, complaint for refusal of leave to appeal, appeal for annulment and the special remedies of appeal to vacate a judgement and appeal for review."

7.1 In a further letter dated 28 July 1982, the author refers to the State party's submission under article 4 (2) and claims that it does not answer the specific complaints of violations raised in his communication.

7.2 With respect to Hugo Dermit, the author states in particular:

"In its submission, the Government of Uruguay gives no explanations concerning the complaints I made in my communication of 27 February 1981 to the effect that my cousin was arbitrarily deprived of his right to life; was treated not with humanity and respect for his dignity, but, rather, subjected to torture and cruel, inhuman and degrading treatment; was, without any doubt, unlawfully deprived of his liberty after he had served his sentence and was denied the constitutional right to choose to leave the national territory; was subjected to criminal proceedings riddled with procedural errors constituting violations of article 14 of the Covenant, to arbitrary interference with his family and to unlawful attacks on his honour and reputation.

"With regard to the merits of the case, the Government of Uruguay merely states that it is 'transmitting the report on the autopsy carried out on the body of the victim on 28 December 1980 ...' The results of the autopsy in no way indicate beyond any doubt that the cause of my cousin's death was 'suicide', as the Government of Uruguay claims. The autopsy was carried out by military medical personnel before the victim's relatives were informed of his death and they had no opportunity to have the autopsy carried out by doctors of their own choice. The victim's body, which was handed over to his relatives in the afternoon of 28 December 1980, showed signs of having undergone a tracheotomy, as well as signs that it has been kept refrigerated, since it was initially bloated and then deflated, with a substantial loss of water during the period preceding burial.

"The Government of Uruguay states that the victim's death was certified on 28 December 1980. It provides no explanation of the circumstances in which the death was certified (place, hour, who found the body, whether or not the sharp object or objects with which the victim supposedly committed suicide were found in the same place). The Government of Uruguay has not provided the Committee with any information concerning any investigation into the circumstances of the death. In view of this and the fact that the victim was seen alive as late as 24 December, in circumstances which in no way indicated that he had even the slightest intention of committing suicide, particulary since he should have been happy and optimistic about his situation and the prospect of his forthcoming release, the official explanation is implausible and unacceptable. The complete absence of any investigation into the responsibility of the officials who held him in their custody, of any

reference to possible penalties resulting therefrom and of any inquiry into the circumstances and the way in which the death occurred show that, instead of seeking clarification and justice, the authorities are trying to cover up the violent acts committed in their name. I must repeat that, even if the victim did actually commit suicide, the most serious responsiblity would have been incurred: the only possible reason why he might have decided to commit suicide is that he was forced to do so by threats or violence, with the result that he found any thought of the future unbearable, when, in fact, he had every reason to be optimistic about it. And the fact that he might actually have committed suicide while under arrest would have called for an investigation and the punishment of those who were responsible, except that it is the authorities themselves who are responsible."

7.3 With respect to Guillermo Dermit, the author states in particular:

"The Government of Uruguay has given no explanation concerning the complaints made in the first communication of 27 February 1981 to the effect that the violations which occurred included the following: the victim's arrest was arbitrary; he was not allowed to take legal action or proceedings; he was not promptly informed of the charges against him; he was not brought promptly before a judge within the maximum time-limit of 10 days: he was held incommunicado with no possibility of appealing to any judicial authority on his own initiative; he was not treated with due respect for the inherent dignity of the human person; and he was denied the constitutional rights to choose to leave the national territory. With regard to the merits of the case, the Government of Uruguay merely reports that the victim 'was brought to trial because it was proved that he had been involved in the offences of conspiracy to subvert, and action to upset, the Constitution in the degree of conspiracy, followed by criminal preparations on 23 March 1981'. It is also claimed that the victim was 'one of the subversive members of the so-called '<u>Seispuntista</u>' movement, which tried to reactivate the subversive '<u>Tupamaros</u>' movement from within the prison, with the help of elements outside it'.

"The Government attaches no copies of the court orders and decisions relating to the case under consideration. Since the Government has failed to provide any evidence to the contrary, I wish to repeat my assertion that the real motive for the arrest of Guillermo Ignacio Dermit Barbato is that he is the brother of a political prisoner, Hugo Haraldo Dermit Barbato, and that there are no grounds for the proceedings against him.

"The fact that the military courts have been involved makes it necessary to state again that this procedure is still in violation of article 14 of the Covenant because these courts do not provide the guarantees stipulated in that article, since they lack independence and impartiality, and also because of the shortcomings in the procedure which they apply."

7.4 With respect to the admissibility of the communication relative to Guillermo Dermit, the author disputes the State party's assertion that the defendant did not exhaust the internal remedies purportedly available under criminal military law and examines said remedies as follows:

"'<u>Appeal against a decision to refuse to allow a trial</u>'. Like all other remedies in question, this one is totally inapplicable to the victim's case. Article 178 of the Code of Organization of the Military Courts (COTM) provides

that an appeal may be lodged against a decision to refuse to allow a trial. It will, however, be quite clear to the Committee that this has nothing to do with my cousin's case, in which there was no refusal to allow a trial. As shown in the report itself, he was actually brought to trial. There is, moreover, no point in referring to this possible remedy. It is the public prosecutor's department that can, as stated in article 178, lodge such an appeal, whose object is to bring a person to trial when a military court has refused to do so and has released the person.

"In any event, it is not this remedy, but, rather, the remedy of appeal against the indictment, to which the Government might justifiably have referred. The Government report does not mention the latter remedy, which is entirely theoretical and has proven to be totally ineffective because it has never, since it was provided for by law, been used in any case; and because the proceedings never take less than one year and often quite a bit more and, during that time, it is, in practice, impossible to obtain a decision on any application for pre-trial release.

"'Application to set aside and ordinary appeal for review'. These are remedies against specific court decisions, as clearly stated in COTM, article 475. The Government does not say which decisions were not appealed in the victim's case and, in fact, there were no such decisions: the only decision in his case was the one ordering him to be brought to trial, in accordance with the special régime provided for in article 178.

"The 'remedy of appeal' is inappropriate in this case because it applies only to final decisions (COTM, article 481). There has been no decision even in first instance, in the victim's case, as shown in the report.

"'Complaint for refusal of leave to appeal'. ... This remedy is, as its name indicates, one that is available in the particular situation when a decision has been appealed and the court which made it considers that it cannot be appealed. Its object is to obtain a decision from a higher court concerning the admissibility of the appeal (COTM, article 492). Since there has been no decision in my cousin's case, he could hardly have appealed against it. Consequently, there could have been no 'complaint' for refusal of leave to appeal when no appeal could be lodged.

"The 'appeal for annulment' is not applicable in my cousin's case because it also assumes that a decision has been made (article 503); it must be lodged together with the appeal - somethig that is, as has been seen, quite impossible.

"'Special remedies of appeal to vacate a judgement and appeal for review'. ... These are remedies against decisions by a court of second instance (article 507) and, in the victim's case, there still has been no decision by the court of first instance. According to article 460, these remedies still do not prevent the decision that is being contested from becoming a final decision: 'Decisions are final and enforceable: 1. When the law allows no other instance or ordinary appeal in the case'.

"It may be said that, although these remedies are totally inapplicable at this time and at this stage in the proceedings, they might be applicable later on and that they may therefore be regarded as 'remedies that have not been exhausted'.

"This view does not apply to the first of the above-mentioned remedies since there has never been a decision 'to refuse to allow a trial'. The other remedies on the list, which are not applicable now, may, however, be used in future.

"It is, therefore, essential to look at the entire procecure and to see whether, for the Committee's purposes, it will be necessary to wait until the proceedings have been completed. Since the remedies in question are available only in respect of the final decision or the decision of second instance, it would be essential to await the outcome of the proceedings if they had to be exhausted before the Committee could act. In fact, there was a four-month delay before the victim's case was brought before a 'judicial authority'. He has been detained for 20 months and it will be a long time before a decision is made by the court of first instance. There are prisoners in Uruguay who have neen waiting for as long as eight years for their decisions of second instance.

"Accordingly, to claim that the proceedings must be comleted in order to apply for - and exhaust - the remedies that are theoretically available would mean postponing action by the Committee for an unacceptable amount of time, particularly since failure to make a decision within a reasonable time is one of the violations that has been reported and one of the most obvious causes of what has happened. In other words, the possibility of instituting unacceptably lengthy proceedings, which is in itself a violation of the Covenant, would make the Government think that it was not subject to the Committee's jurisdiction. This can hardly be the intention of the Covenant."

8.1 The Human Rights Committee has the obligation under article 5 (1) of the Optional Protocol to consider this communication in the light of all written information made available to it by the author and the State party. It therefore bases its views on the following facts, which have not been contradicted by the State party.

8.2 Hugo Haraldo Dermit Barbato was arrested in 1972 and subsequently sentenced to eight years' imprisonment. He completed serving his sentence in July 1980 and thereafter was kept in detention pursuant to the "prompt security measures". He was informed that he would be released only if he left the country, a condition which was not mentioned in the judgement against him. After he had obtained an entry visa from the Swedish Government, the Uruguayan authorities informed him that he was to be released on 11 December 1980. Yet, on 9 December 1980, he was told that he would not be granted permission to leave the country. His whereabouts were unknown to his relatives until 28 December 1980, when his mother was called to the Military Hospital to identify his body. His mother was told that he had committed suicide.

8.3 Guillermo Ignacio Dermit Barbato, Hugo's younger brother, disappeared on 2 December 1980. His detention was officially acknowledged on 19 December 1980, but he continued to be held incommunicado. He was not brought before a judicial authority until 23 March 1981 when he was brought before a military tribunal. After some 20 months, there does not appear to have been any decision taken and the State party gives no evidence of any such decision.

9.1 In formulating its views, the Human Rights Committee also takes into account the following considerations, which reflect a failure by the State party to furnish

the information and clarifications necessary for the Committee to formulate final views on a number of important issues.

9.2 In operative paragraph 2 of its decision of 28 October 1981, the Committee requested the State party to enclose copies of the death certificate and medical report and of the reports on whatever inquiries were held into the circumstances surrounding the death of Hugo Dermit. Only a transcript of the autopsy report has been submitted. The State party has not submitted any report on the circumssances in which Hugo Dermit died or any information as to what inquiries have been made or the outcome of such inquiries. Consequently, the Committee cannot help but give approriate weight to the information submitted by the author, indicating that a few days before Hugo's death he had been seen by other prisoners and was reported to have been in good spirits, in spite of the interruption of the preparations for his release and departure from Uruguay. While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by artcile 6 (1) of the Covenant.

9.3 In the same operative paragraph, the Committee requested the State party to furnish copies of any relevant court orders or decisions. The Committee is seriously concerned by the fact that, in this case and in a number of other cases, the State party has failed to furnish the texts of court decisions.

9.4 As to the question of exhaustion of domestic remedies in the case of Guillermo Dermit, the Committee also takes into account the following considerations: the remedies listed by the State party as unexhausted, cannot be considered available to the alleged victim in the circumstances of his case. They are either inapplicable de jure or de facto and do not constitute an effective remedy, within the meaning of article 2 (3) of the Covenant, for the matters complained of. There are therefore no grounds to alter the conclusion reached in the Committee's decision of 28 October 1981, that the communication is not inadmissible under article 5 (2) (b) of the Optional Protocol.

9.5 No attempt has been made by the State party to show that the delay in trying Guillermo Dermit could be justified by the difficulties of the case.

9.6 With regard to the burden of proof, the Committee has already established in its views in other cases (e.g., R.7/30) that said burden cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights is of the view that the communication discloses violations of the Covenant, in particular:

(a) With respect to Hugo Haroldo Dermit Barbato:

of article 6, because the Uruguayan authorities failed to take appropriate measures to protect his life while he was in custody;

(b) With respect to Guillermo Ignacio Dermit Barbato:

of article 9 (3), because he was not promptly brought before a judge;

of article 9 (4), because he was held incommunicado and effectively barred from challenging his arrest and detention;

of article 14 (3) (c), because he has not been tried without undue delay.

11. The Committee, accordingly, is of the view that the State party is under an obligtion to take effective steps (a) to establish the facts of Hugo Dermit's death, to bring to justice any persons found to be responsible for his death and to pay appropriate compensation to his family; (b) with respect to Guillermo Dermit, to ensure strict observance of all the procedural guarantees prescribed by article 14 of the Covenant as well as of the rights of detained persons set forth in artciles 7, 9 and 10 of the Covenant; (c) to transmit a copy of these views to Guillermo Dermit; and (d) to take steps to ensure that similar violations do not occur in the future.

ANNEX X

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

concerning

Communication No. 16/1977

Submitted by: Daniel Monguya Mbenge

Alleged victims: The author of the communication, members of his family and persons in their employ

State party concerned: Zaire

Date of registered communication: 8 September 1977 (date of first letter)

Date of decision on admissibility: 24 April 1979

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

Meeting on 25 March 1983,

Having concluded its consideration of communication No. 16/1977, submitted to the Committee by Daniel Monguya Mbenge under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The author of this communication, Daniel Monguya Mbenge, is a Zairian citizen now residing in Belgium as a political refugee. He has submitted the communication on his own behalf and on behalf of the following relatives and business connections: Ibale Simon Biyanga, his brother; Abraham Oyabi, his younger brother; Emmanuel Ngombe, his father-in-law; the family driver, whose name is not given; and a pharmacist named Mozola.

1.2 The author has approached the Committee to complain of what he considers to be systematic persecution of his family by the Government of Zaire. He alleges that this persecution has continued against his family since the time of his sentence to death in September 1977 for supposedly having participated in the invasion of the province of Shaba. In March 1978, he was again sentenced to death as the alleged instigator of a plot against the régime. A petition for clemency filed on behalf of the author and other co-defendants was rejected by the President of Zaire the same month. The movable and immovable property of the author has been transferred to the State.

2.1 Until 1972, Daniel Monguya Mbenge was Governor of the Shaba region (formerly Katanga). In 1972, he was sentenced to a year's imprisonment for offences against a foreign head of State. Subsequent to this sentence he was stripped of his functions as Governor. In February 1974, he left Zaire for what he called reasons of health. Later, he established residence in Brussels, where the Belgian authorities in due course granted him the status of political refugee.

2.2 With reference to the two death sentences passed against him, the author claims that he learned of them through the press, and that the judicial authorities of his country neither summoned him to appear nor allowed him to defend himself or have a lawyer to defend him. Furthermore, he says he was not notified of the sentences. He therefore claims that he has been the victim of convictions and sentences at variance with the provisions of the Covenant. In support of his complaint he cites article 6, paragraphs 1, 2 and 4; article 12, paragraph 2; article 14, paragraph 2 and paragraph 3 (a), (b), (d), (e) and (g), and article 19, paragraphs 1 and 2 of the Covenant, which he considers have been violated by the Government of his country.

2.3 He claims that the President of Zaire sought in vain to have him extradited from Belgium and practically took hostage several members of his family by arresting them and imprisoning them one after the other.

3. Asked by the Committee why he was acting on behalf of the above-mentioned persons, he said that they were relatives or persons with whom he had business contacts and that they had been persecuted as follows:

(a) Simon Ibale Biyanga, the author's brother and a former Deputy Chief of Division in the Department of the Interior, was arrested arbitrarily by the security services of Zaire and held without charge for 21 days. He apparently left Zaire secretly and is now in Belgium;

(b) Abraham Oyabi, the author's younger brother, was allegedly arrested on 1 September 1977 and held hostage during the course of a search for his older brother, Simon. According to the latest reports he was freed early in 1979 or late in 1978 (25 December 1978). He was sent to Miadembelo, his parents' home village, although he himself was born at Kinshasa and had never lived in that village. It should be noted that there is no documentary evidence of any sentence having been passed against this person;

(c) Emmanuel Ngombe, the author's father-in-law, was arrested on 1 September 1977 and freed in July 1978 as the result of the amnesty declared by the President of Zaire;

(d) The pharmacist Mozola and the family driver were arrested on 1 September 1977 and freed as the result of an amnesty in July 1978. No conviction appears to have been given against them.

4. On 24 January 1978, the Human Rights Committee decided to transmit the communication to the State party concerned under rule 91 of the provisional rules of procedure and to request it to submit information and observations on the question of the admissiblity of the communication. No reply has been received from the State party.

5. On 24 April 1979, on the basis of the information before it, the Human Rights Committee concluded:

(a) That, in addition to himself, the author was justified in acting on behalf of his brothers and his father-in-law by reason of close family connection;

(b) That the facts of the claim, as presented by the author, merited that the communication be declared admissible, in so far as it related to himself and his younger brother, Abraham Oyabi, with regard to the events alleged to have occurred on or after 1 February 1977;

(c) That further information was needed with regard to the situation of the author's brother, Simon Biyanga, and his father-in-law, before the Committee could decide on the admissibility of the communication in so far as it related to them;

(d) That the author had not established any grounds justifying his authority to act on behalf of the pharmacist, Mozola, and the unnamed family driver.

The Committee therefore decided:

(i) That, in addition to himself, the author was justified by reason of close family connection in acting on behalf of his brothers, Simon Biyanga and Abraham Oyabi, and his father-in-law, Emmanuel Ngombe;

(ii) That the communication was admissible, in so far as it related to events alleged to have occurred on or after 1 February 1977, in respect of the author and his brother, Abraham Oyabi;

(iii) That the author be requested to furnish, within six weeks of the transmittal of the decision to him, detailed information on the facts of the claim in so far as it related to his brother, Simon Biyanga, and his father-in-law, Emmanuel Ngombe, including precise information on their present situation and whereabouts, and why they could not act for themselves;

(iv) that the communication was inadmissible in so far as it related to the other alleged victims, the pharmacist, Mozola, and the family driver;

(v) That any reply received from the author pursuant to paragraph 3 of the decision should be transmitted to the State party to enable it to comment thereon within four weeks of the date of the transmittal;

(vi) That, in accordance with article 4 (2) of the Optional Protocol, the State party should be requested to submit to the Committee, within six months of the date of the transmittal to it of the decision, written explanations or statements clarifying the matter in so far as the communication related to Daniel Mbenge and Abraham Oyabi, and the remedy, if any, that might have been taken by it;

(vii) That the State party should be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must primarily relate to the substance of the matter under consideration, and in particular the specific violations alleged to have occurred. The State party was requested, in this connection, to enclose copies of any court orders or decisions of relevance to the matter under consideration.

6. In reply to its request for further information concerning the alleged victims Simon Biyanga and Emmanuel Ngombe, the author informed the Committee by letter dated 7 June 1979 that his brother, Simon Biyanga, and his brother's family had left Zaire and that they were then living in Belgium, and that his father-in-law, Emmanuel Ngombe, had been released and has rejoined his family. The author further informed the Committee that his brother, Abraham Oyabi, had been released from detention towards the end of 1978 or early in 1979.

7. In the light of this information, the Committee decided, on 21 July 1980, to discontinue consideration of the communication in so far as it related to Simon Biyanga and Emmanuel Ngombe, since it appeared that these alleged victims would now be in a position to act on their own behalf, if they so wished.

8. In its explanations of 3 June 1980, communicated pursuant to article 4 (2) of the Optional Protocol, the State party declared that Daniel M. Mbenge and Abraham Oyabi had benefited from the amnesty laws in Zaire and were therefore free to return to the country; adding, with regard to Daniel M. Mbenge, that although he "is a former criminal sentenced for embezzlement" he had been granted a presidential pardon.

9. On 15 June 1980, the author submitted his comments in response to the explanations furnished by the State party, describing the latter as false and defamatory. He asserted that, contrary to the provisions of the amnesty laws and the favourable effect they were meant to produce, his possessions, which had been seized by the State when he was sentenced, were still being sold by auction in Kinshasa. In particular, he rejected the assertion by the State party that he had been convicted for embezzlement. He reiterated that he had been sentenced for political reasons. He added that, despite the fact that the amnesty measure of 1978 had also applied to his brother Oyabi, the latter had had to take refuge in the Congo in November 1979 to avoid arbitrary arrest by the security forces of Zaire for a second time. He therefore concluded that to return to Zaire as required under the amnesty laws would not be without risk for him.

10. By its decision of 21 July 1980, the Committee invited the Government of Zaire to provide it with further particulars of the legal effects of the amnesty laws, in so far as they related to the persons and property of M. Mbenge and A. Oyabi and, in particular, to confirm in this connection the Committee's interpretation; namely, that the convictions and two sentences delivered against Daniel M. Mbenge, as well as all the consequences of these convictions in criminal and civil law, were expunged by the amnesty.

11. In its reply the State party, under cover of its note of 6 October 1980, forwarded to the Committee the texts of the amnesty laws and of the judicial decisions by which D. M. Mbenge was sentenced in 1972, 1977 and 1978. The State party added that "if a Zairian citizen decided to return to the country, even after the expiry of the time-limit (for the amnesty), the President of the Republic was quite ready to grant him a new amnesty which might affect his person and his property." The Government of Zaire has not provided other details in response to the Committee's request.

12. The Human Rights Committee, considering the present communication in the light of all information made available to it by the parties as provided for in article 5 (1) of the Optional Protocol, decides to base its views on the undisputed submissions of the author of the communication and on the documents transmitted by the State party, in particular the judgements of 17 August 1977 and 16 March 1978.

13. Daniel Monguya Mbenge, a Zairian citizen and former Governor of the province of Shaba, who had left Zaire in 1974 and is at present living in Brussels, was twice sentenced to capital punishment by Zairian tribunals. The first death sentence was pronounced against him by judgement of 17 August 1977, in particular for his alleged involvement in the invasion of the province of Shaba by the so-called Katangan gendarmes in March 1977. The second judgement is dated 16 March 1978. It pronounces the death sentence for "treason" and "conspiracy" without providing facts to establish these charges. Daniel Monguya Mbenge, learned about the trials through the press. He had not been duly summoned at his residence in Belgium to appear before the tribunals. An amnesty decree of 28 June 1978 (Act 78-023 of 29 December 1978) covering offences "against the external or internal security of the State or any other offence against the laws and regulations of the Republic of Zaire", committed by Zairians having sought refuge abroad, was restricted to persons returning to Zaire before 30 June 1979.

14.1 In the first place, the Human Rights Committee has to examine whether the proceedings on the basis of which the author of the communication has been twice sentenced to death disclose any breach of rights protected under the International Covenant on Civil and Political Rights. According to article 14 (3) of the Covenant, everyone is entitled to be tried in his presence and to defend himself in person or through legal assistance. This provision and other requirements of due process enshrined in article 14 cannot be construed as invariably rendering proceedings in absentia inadmissible irrespective of the reasons for the accused person's absence. Indeed, proceedings in absentia are in some circumstances (for instance, when the accused person, although informed of the proceedings sufficiently in advance, declines to exercise his right to be present) permissible in the interest of the proper administration of justice. Nevertheless, the effective exercise of the rights under article 14 presupposes that the necessary steps should be taken to inform the accused beforehand about the proceedings against him (art. 14 (3) (a)). Judgement in absentia requires that, notwithstanding the absence of the accused, all due notification has been made to inform him of the date and place of his trial and to request his attendance. Otherwise, the accused, in particular, is not given adequate time and facilities for the preparation of his defence (art. 14 (3) (b)), cannot defend himself through legal assistance of his own choosing (art. 14 (3) (d)) nor does he have the opportunity to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf (art. 14 (3) (e)).

14.2 The Committee acknowledges that there must be certain limits to the efforts which can duly be expected of the responsible authorities of establishing contact with the accused. With regard to the present communication, however, those limits need not be specified. The State party has not challenged the author's contention that he had known of the trials only through press reports after they had taken place. It is true that both judgements state explicitly that summonses to appear had been issued by the clerk of the court. However, no indication is given of any steps actually taken by the State party in order to transmit the summonses to the author, whose address in Belgium is correctly reproduced in the judgement of 17 August 1977 and which was therefore known to the judicial authorities. The fact that, according to the judgement in the second trial of March 1978, the summons had been issued only three days before the beginning of the hearings before the court, confirms the Committee in its conclusion that the State party failed to make sufficient efforts with a view to informing the author about the impending court proceedings, thus enabling him to prepare his defence. In the view of the Committee, therefore, the State party has not respected D. Monguya Mbenge's rights under article 14 (3) (a), (b), (d) and (e) of the Covenant.

15. With reference to the claim that the death sentences were pronounced for political reasons on trumped-up charges, the Committee observes that it does not come within its general mandate to review judicial decisions of national courts of States parties and that it may not reject as false the facts mentioned therein unless there is clear evidence that the trial in question was affected by serious irregularities in violation of the Covenant. Due in particular to a lack of information from the Government of Zaire, there may be some reason to question the correctness of the charges brought against D. Monguya Mbenge, especially with regard to the judgement of 16 March 1978. While the earlier judgement of 17 August 1977 contains a rather elaborate statement of facts and expressly refers to witnesses having testified under oath, the judgement of 16 March 1978 does not even specify the charges brought forward against the accused and thus leaves open the question why the author of the communication was convicted of treason and conspiracy. Nevertheless, the Committee considers that it does not have sufficient information in order to arrive at the conclusion that Daniel Monguya Mbenge has been the victim of purely politically motivated and subtantially unfounded charges.

16. In view of the findings of violations of article 14 (3) of the Covenant, the Committee does not consider it necessary in the circumstances of the present case to examine further the question whether article 14 (2) was also violated.

17. Daniel Monguya Mbenge also alleges a breach of article 6 of the Covenant. Paragraph 2 of that article provides that sentence of death may be imposed only "in accordance with the law [of the State party] in force at the time of the commission of the crime and not contrary to the provisions of the Covenant". This requires that both the substantive and the procedural law in the application of which the death penalty was imposed was not contrary to the provisions of the Covenant and also that the death penalty was imposed in accordance with that law and therefore in accordance with the provisions of the Covenant. Consequently, the failure of the State party to respect the relevant requirements of article 14 (3) leads to the conclusion that the death sentences pronounced against the author of the communication were imposed contrary to the provisions of the Covenant, and therefore in violation of article 6 (2).

18. The Committee has next to examine whether any measure taken by the State party subsequent to the pronouncement of the death penalties and, in particular, the amnesty to which the Committee's attention has been drawn, provided Daniel Monguya Mbenge with an effective remedy for the violation of his rights, in accordance with article 2 (3) of the Covenant. The adverse effects of the two judgements cannot be deemed to have ceased by reason of the amnesty put into force by Act No. 78-012 of 28 June 1978 and extended until 30 June 1979 by Act No. 78-023 of 29 December 1978. It appears that the author of the communication could have enjoyed this amnesty only if he had returned to Zaire before the expiration date. It is, however, understandable that he hesitated to take advantage of the amnesty decree, since the second trial in which he had again been sentenced to death took place only about three months before the coming into force of the amnesty. In fact he submits that, notwithstanding the amnesty measure, his brother Oyabi had been persecuted in November 1979. The submission of the State party to the effect that the President of the Republic would be entirely prepared to grant a new amnesty to citizens re-entering Zaire even after the expiration of the amnesty decree does not offer a secure legal basis upon which the author could firmly have relied. The Committee notes further that no valid reasons have been put forward by the State party which would explain why a person, in order to benefit from the amnesty, should have been required to return to the territory of Zaire.

19. In his communication, the author also referred to articles 12 (2) and 19 (1) and (2) of the Covenant as being relevant in his case. As regards article 12 (2), the Committee recalls that the author had already left his country before 1 February 1977, the date of entry into force of the Optional Protocol in respect of Zaire, and has not returned there since. As regards article 19 (1) and (2), the author, who has been living outside Zaire since 1974, has not furnished the Committee with any relevant facts as to the measures taken against him by the Government of Zaire on or after 1 February 1977. The events predating 1 February 1977, which are described by the author at some length, cannot be taken into account by the Committee.

20. Concerning Abraham Oyabi, the Human Rights Committee bases its assessment on the undisputed fact that he was arrested on 1 September 1977 in order to force him to disclose the whereabouts of Simon Biyanga and that he was not released from detention until late in 1978 or early in 1979. The State party has not claimed that there was any criminal charge against him. In the view of the Committee, therefore, he was subject to arbitrary arrest and detention contrary to article 9 of the Covenant.

21. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts set out in paragraphs 13 to 20 above, in so far as they have occurred on or after 1 February 1977, disclose violations of the International Covenant on Civil and Political Rights, in particular:

(a) With respect to Daniel Monguya Mbenge:

of article 6 (2), because Daniel Monguya Mbenge was twice sentenced to death in circumstances contrary to the provisions of the Covenant;

of article 14 (3) (a), (b), (d) and (e), because he was charged, tried and convicted in circumstances in which he could not effectively enjoy the safeguards of due process, enshrined in these provisions;

(b) With respect to Abraham Oyabi:

of article 9, because he was subjected to arbitrary arrest and detention.

22. The Committee, accordingly, is of the view that the State party is under an obligation to provide the victims with effective remedies, including compensation for the violations they have suffered, and to take steps to ensure that similar violations do not occur in the future.

ANNEX XI

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

concerning

Communication No. 49/1979

Submitted by: Mr. and Mrs. Dave Marais, Sr., on behalf of their son, Dave Marais, Jr., later represented by Maître Eric Hamel

Alleged victim: Dave Marais, Jr.

State party concerned: Madagascar

Date of communication: 19 April 1979 (date of initial letter)

Date of decision on admissibility: 28 October 1981

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

Meeting on 24 March 1983,

Having concluded its consideration of Communication No. 49/1979 submitted to the Committee by Dave Marais under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The communication (initial letter dated 19 April 1979 and several subsequent letters) was initially submitted by Mr. and Mrs. Dave Marais, Sr., South African nationals living in South Africa, on behalf of their son, Dave Marais, Jr., a South African national detained in Madagascar. The alleged victim is also represented before the Committee by Maître Eric Hamel, who was an attorney at Antananarivo, Madagascar, until his expulsion by the Malagasy authorities on 11 February 1982, and is at present in France.

1.2 The initial authors claim that their son is unable to submit a communication himself, as he is allegedly not permitted to engage in correspondence from the prison where he is held in Madagascar.

1.3 The initial authors state that their son was a passenger on a chartered aircraft, which, on the route to Mauritius, was forced to make an emergency landing in Madagascar on 18 January 1977 because of lack of fuel. Dave Marais, Jr. and the

pilot of the aeroplane, John Wight, were arrested at that time, and, it appears, subsequently tried for overflying Malagasy territory, convicted and sentenced to five-year prison terms. Another passenger, Ed Lappeman, a United States citizen, was also tried and convicted on the same charges. The authors allege that their son's right to a fair trial and the guarantees necessary for his defence were continuously violated. The alleged victim's first attorney, Jean-Jacques Natai, left Madagascar and was refused re-entry into the country. It appears that Dave Marais, Jr., was subsequently represented by two other lawyers before his defence before the domestic courts was undertaken by Maître Eric Hamel.

1.4 Regarding domestic remedies, the initial authors state that letters have been sent to various authorities in Madagascar pleading for the release of Dave Marais, Jr., but that all such efforts have been in vain.

1.5 The initial authors do not specify the articles of the Covenant allegedly violated.

2. The mother of the alleged victim, Mrs. E. Marais, in a letter to the Committee dated 25 October 1979, stated that she had learned from an anonymous source that her son had been transferred to a gaol 60 km from Antananarivo and that he had been separated from John Wight, who was in a prison north of Antananarivo. She stated that she had not received any letters from her son and that she was not allowed to write to him. She had written many letters to President Ratsiraka, but had never received a reply. All her applications for a visa were refused. She had also telephoned one of her son's former lawyers in Antananarivo, who allegedly was intimidated and could give no information about her son.

3. By its decision of 7 August 1979, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

4.1 In its submission of 20 February 1980, the State party objected to the admissibility of the communication on the ground that the alleged victim had not exhausted domestic remedies.

4.2 The State party stated that Dave Marais, Jr. and two others had been accused of offences punishable under articles 82 (3) and 83 (2) of the Penal Code of Madagascar and Decree No. 75-112 MD of 11 April 1975, for espionage and overflying the territory "while the state of emergency was in force". They had been detained on 18 January 1977, remanded in custody on 4 February 1977, the order for their arrest was issued by the Criminal Proceedings Division on 24 February 1978 and referred on the same date to the competent military court. By Judgement No. 105 of 22 March 1978, the Military Court convicted Dave Marais, Jr. and the two others:

> "of having, on 18 January 1977, and in any event within the last three years, at Manakara and Mananjary and over Malagasy territory in general, flown over Malagasy territory in a foreign aircraft without being authorized to do so by any diplomatic convention and without permission from the Malagasy authorities, thereby endangering, in time of peace, the external security of the State of Madagascar".

They were sentenced to five years in prison and a fine of 500,000 francs, with confiscation of the articles seized.

4.3 While serving their sentence, Dave Marais and another person escaped from the Antananarivo Central Prison, where they were being held. They were apprehended and brought before the prosecuting authority. On 16 June 1979, the examining magistrate was requested by the prosecuting authority to bring an indictment against Dave Marais et al.

4.4 The State party further explained that if Dave Marais thought that his rights had been violated, he could, either on his own behalf or through his counsel, have referred the matter to the examining magistrate or invoked article 112 (2) of the Code of Criminal Procedure, which provides that "any violation of the measures for the protection of the freedom of the individual prescribed by the articles contained in this chapter shall be punishable under the provisions of articles 114 et seq. of the Penal Code".

5.1 By its decision of 25 July 1980 the Human Rights Committee, having taken note of the State party's submission of 20 February 1980 and noting, inter alia, that the State party referred in its submission to "the state of emergency" in force in the Democratic Republic of Madagascar on 18 January 1977, requested the State party in the light of the obligation imposed by article 4 (3) of the Covenant to clarify whether the right of derogation referred to therein had been applied and, if so, whether any derogation had in any way affected the alleged victim; it also requested the State party to furnish further information and clarifications as to the following points, in order to enable the Committee to ascertain whether domestic remedies had been exhausted by or on behalf of the alleged victim:

(a) Whether the alleged victim had been informed of and afforded an effective opportunity to invoke article 112 (2) of the Code of Criminal Procedure;

(b) Whether there were any other remedies that could be invoked by the alleged victim in the particular circumstances of his case and, if so, whether he had been informed about them and afforded an effective opportunity to resort to them;

(c) The results of the preliminary investigation carried out by the Third Department, Antananarivo, and the present stage of the proceedings that might have ensued;

(d) The means of communication between the alleged victim, his family and legal counsel, in particular his access to Maître Eric Hamel, who, according to information furnished by the mother of the alleged victim, had undertaken to represent Dave Marais in his defence before the domestic tribunals.

5.2 The Human Rights Committee further requested the State party (a) to furnish the Committee with copies of the judgement of the Military Court, No. 105 of 22 March 1978, and the judgement of the Supreme Court, rendered on 20 March 1979, both of which were referred to in the State party's submission of 20 February 1980; (b) to furnish information as to the whereabouts and the state of health of the alleged victim; (c) to submit the information and clarifications sought to the Human Rights Committee in care of the Division of Human Rights, United Nations Office at Geneva, within six weeks of the transmittal of this decision to it.

5.3 The Human Rights Committee at the same time decided to make known to Maître Eric Hamel the contents of the decision, with a view to obtaining from him any pertinent information about the situation of Dave Marais and the issues

complained of in the communication, and to furnish him at the same time, in his capacity as legal representative of the alleged victim, with copies of the submissions of the authors of the communication and the State party, as well as with the text of the Committee's decision of 7 August 1979.

6. By its decision of 24 October 1980, the Human Rights Committee, noting that no response had been received from the State party following the Committee's decision of 25 July 1980, decided to urge the State party, without further delay, to provide the Human Rights Committee with the information and clarifications sought in the Committee's decision of 25 July 1980, including the information requested concerning the whereabouts and the state of health of Dave Marais, Jr.

7. By its decision of 31 March 1981, the Human Rights Committee, noting with concern that no further information or clarifications had been received in response to its decisions of 25 July 1980 and 24 October 1980, and considering that the State party's failure to provide the Committee with the information and clarifications requested had hampered the Committee's consideration of the communication:

(a) Strongly urged the State party to provide the Committee without delay with the information and clarifications already requested, including, inter alia, the text of the judgement No. 105 of 22 March 1978 of the Military Court and the judgement of 20 March 1979 of the Supreme Court, as well as detailed information relating to the alleged victim's state of health and whereabouts and his access to his legal representative, Maître Eric Hamel;

(b) Requested the State party, should there hitherto have been any obstacles barring Maître Eric Hamel from access to his client, to take the necessary steps to remove such obstacles and to ensure that the lawyer and his client had the proper facilities for effective access to each other. The State party should inform the Committee of the steps taken by it in this connection;

(c) Expressed the hope that the State party would be in a position to provide the information sought pursuant to the instant decision and the Committee's earlier decisions of 25 July and 24 October 1980, by not later than 1 June 1981, so that further delays in the consideration of the communication could be avoided;

(d) Decided that any information or clarifications received from the State party pursuant to this decision should be transmitted to the authors of the communication and to Maître Eric Hamel, in his capacity as legal representative of Dave Marais, Jr., to enable them to comment thereon.

8.1 In a submission of 16 May 1981, Maître Eric Hamel stated that Dave Marais, Jr. and John Wight appeared before the Antananarivo Court of Summary Jurisdiction on 14 May 1981 on charges of prison-breaking and complicity in overflying the territory of Madagascar; by a judgement of 15 May 1981, the Antananarivo Court sentenced Dave Marais and John Wight to two years' imprisonment and a fine of 1 million francs; under this judgement they should be released from prison on 4 February 1984, but an appeal against the judgement was lodged on 15 May 1981 and the case was to be heard by the Summary Jurisdiction Chamber of the Appeals Court.

8.2 Maître Hamel further stated that he saw Dave Marais, Jr. on two days during the trial and that his client alleged that he had been detained since December 1979 in the basement of the Direction générale d'investigations et documentation (DGIB)

political police prison at Ambohibao near Antananarivo, in a cell measuring 2m by 1m and, apparently, without light.

8.3 Maître Hamel stated that at the time of writing (May 1981) his client had been held for over 18 months and was being held incommunicado; that he was forbidden to send or receive letters or papers of any description whatsoever.

8.4 In an annexed legal memorandum on the case of Dave Marais, Jr., his attorney acknowledged that the procedure followed at the trial of Dave Marais in May 1981 was regular from the legal point of view and the hearings were held correctly. He averred, however, that his client was not being held in a proper establishment of imprisonment together with other prisoners, but that he was kept in strict solitary confinement in the cellar of a political police prison and, that as a consequence, although he was attended by a Malagasy medical doctor and his state of health appeared to be satisfactory, he was suffering from depression after being held incommunicado for more than 18 months (by May 1981).

8.5 He stated that in letters of 27 December 1979 and 14 January 1980 he had drawn the attention of the Minister of Justice of Madagascar to his client's illegal detention, pointing out that under articles 550 and 551 of the Code of Penal Procedure, detainees who had already been sentenced or are awaiting sentence must be held in an establishment of the Penitentiary Department of the Ministry of Justice, and that the detention of a sentenced prisoner by a police department is thus strictly illegal. He further stated that he had reminded the Minister of Justice in several further letters without receiving any reply and without any action being taken to date. Copies of five such letters are annexed to Maître Hamel's submission.

8.6 With respect to the alleged victim's right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing, Maître Hamel stated that, with the exception of two days during the trial, he had been unable to communicate with his client.

8.7 As a consequence of his enquiry into his client's state of health through the examining magistrate, Maître Hamel was charged at the instance of the Attorney-General with spreading false rumours. He further stated that he had twice been questioned by the DGID political police.

8.8 With respect to the possibility of lodging a complaint on the grounds of infringement of liberty pursuant to articles 112 and 114 of the Malagasy Penal Code, Maître Hamel stated that these two provisions were purely of a token nature and have no practical significance. In substantiation of this allegation he stated that on the occasion of the internment of another client he also lodged a complaint under article 114 and that the Minister of Justice commandeered this file from the court, thus making it impossible for any action to be taken on the complaint.

8.9 In a letter dated 22 May 1981, Maître Hamel added that, after the hearing of 15 May, Dave Marais, Jr. remained for three days in Antananarivo Prison, where he had a long interview with him. On 18 May, Marais was again taken to the political police prison at Ambohibao in the same manner as before, i.e., a squad of political police officers came to Antananarivo Prison demanding, without any instructions or warrant, that the prisoner Dave Marais should be handed over. He was again in the basement of the prison at Ambohibao, in a cell measuring 2m by 1m. Any communication at the political police prison was forbidden and the detainees were kept completely incommunicado.

8.10 In a letter dated 14 June 1981, Maître Hamel stated that Messrs. Marais and Wight were brought to Antananarivo Prison for the preparatory formalities for a criminal court proceeding to be held on 31 July 1981. Maître Hamel indicated that Marais was well, as far as his health was concerned, but that he was suffering from psychological depression as a result of 20 months of unrelieved solitary confinement in a basement.

8.11 The Committee has also learned that the third person on the aircraft, Ed Lappeman, an American citizen, was released by Malagasy authorities in November 1980.

9. At its thirteenth session, the Human Rights Committee continued consideration of the Marais case in view of the latest submissions from Maître Hamel. It determined that a decision as to admissibility would be taken at the fourteenth session. The State party was so informed on 7 August 1981.

10. In a further letter dated 4 August 1981 Maître Hamel reported that Messrs. Marais and Wight appeared before the Criminal Court of Antananarivo from 31 July to 4 August 1981 to answer charges of conspiracy together with 14 Malagasy defendants; while most of the Malagasy defendants were sentenced to 5-10 years of imprisonment, the two South Africans were acquitted. Mr. Marais spent a week in Antananarivo Prison in order to appear before the Criminal Court and was then taken back to the basement of the political police prison at Ambohibao. The conditions of his detention remained unchanged.

11. At its fourteenth session in October 1981, the Human Rights Committee noted with concern that its decisions of 25 July 1980, 24 October 1980 and 31 March 1981, in which it requested the State party to provide information and clarifications, had gone unheeded and that thereby it had been seriously hampered in discharging its responsibilities under the Optional Protocol.

12. The Committee had not received any information that the matter had been submitted to another procedure of international investigation or settlement. It therefore found that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude, on the basis of the information before it, that there were remedies available to the alleged victim which he could pursue or should have pursued. The Committee noted that the State party had failed to respond to a specific request for information on domestic remedies, which the Committee addressed to the State party in its decision of 25 July 1980. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

13. On 28 October 1981, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

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

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

(d) To reiterate the request contained in its decision of 31 March 1981 that the State party should provide the Committee with detailed information about Mr. Marais' state of health and his access to his legal representative. Without prejudging the merits of the case, the Human Rights Committee stressed that the State party should ensure that Mr. Marais was held under humane conditions of imprisonment in accordance with the requirements set forth in article 10 of the Covenant and that he should have proper access to legal counsel.

14. In a letter dated 14 February 1982, Maître Hamel informed the Division of Human Rights that the Malagasy political police had arrested him in connection with the officers' plot of 16 January 1982, searched his home and seized part of his dossier on the Marais case; that he was subsequently detained in the basement of the political police prison at Ambohibao and finally expelled from Madagascar to France, a country of which he appears to be a citizen. In the same letter, Maître Hamel stated that Dave Marais was in good health. In a letter dated 22 May 1982, Maître Hamel asserted that he still represented Mr. Marais.

15.1 The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 8 June 1982. By a note dated 11 August 1982, the State party transmitted a copy of a letter dated 14 July 1982 signed by Dave Marais, Jr., and John Wight and addressed to the Director General of the Directorate-General of Investigations and Documentation of the Malagasy Republic, reading as follows:

> "We would like to thank you very much for the letters from our families, which were safely received yesterday. It is absolutely wonderful to have news of our wives after so many months.
>
> "In writing, I take the opportunity also to thank you for all the money which you have provided to buy cigarettes, soap and medicine. Also for the food, the room and particularly for the kindness shown to us. We remain in good spirits and, in view of the circumstances, want for almost nothing, except, of course, our freedom.
>
> "I would like to request your permission to write to President Ratsiraka to ask him if he might be so good as to consider a remission of sentence or an amnesty for us. I am extremely eager to return home so as to be able to participate in the struggle against apartheid ..."

15.2 The State party further informed the Committee that the relevant Malagasy High Authorities were studying the action to be taken on the requests made in the letter referred to above.

16.1 The Human Rights Committee further examined the communication of Dave Marais at its seventeenth session. In view of the information furnished by the State party, which the Committee welcomed, and in order to give time to the President of the Democratic Republic of Madagascar to respond to the appeal for clemency made to him by Messrs. Marais and Wight, the Committee decided to defer further consideraton of their cases until its eighteenth session. The State party was so informed on 25 November 1982 and was requested to inform the Committee not later than 31 January 1983 whether the appeal for clemency made by Messrs. Marais and Wight was granted.

16.2 The Human Rights Committee notes with regret that the State party has not responded to its request.

17.1 The Human Rights Committee has the obligation under article 5 (1) of the Optional Protocol to consider this communication in the light of all written information made available to it on behalf of Dave Marais, Jr., and by the State party. It, therefore, decides to base its views on the following facts, which have not been contradicted by the State party.

17.2 Dave Marais, Jr., a South African national, was a passenger on a chartered aircraft which, en route to Mauritius, made an emergency landing in Madagascar on 18 January 1977. The pilot of the plane, John Wight, a South African national, another passenger on the plane, Ed Lappeman, a national of the United States of America, and Dave Marais, Jr., were tried and sentenced to five years' imprisonment and a fine for overflying the country without authority and thereby endangering the external security of Madagascar. On 19 August 1978, while serving his sentence, Dave Marais escaped from the Antananarivo Central Prison, was subsequently apprehended, tried on charges of prison-breaking and sentenced to an additional two years' imprisonment; an appeal was lodged on 15 May 1981.

17.3 Dave Marais' first attorney, Jean-Jacques Natai, left Madagascar; he was subsequently refused re-entry into Madagascar. Later Maître Eric Hamel became the defence attorney for Dave Marais. Although Maître Hamel obtained a permit from the Examining Magistrate to see his client, he was repeatedly prevented from doing so. From December 1979 to May 1981, Dave Marais was unable to communicate with Maître Hamel and to prepare his defence, except for two days during the trial itself. On 11 February 1982, Malagasy political police authorities arrested Maître Hamel, detained him in the basement of the Ambohibao political police prison and, subsequently, expelled him from Madagascar, thereby further impairing his ability effectively to represent Dave Marais.

17.4 In December 1979, Dave Marais was transferred from the Antananarivo Prison to a cell measuring 1m by 2m in the basement of the political police prison at Ambohibao and has been held incommunicado ever since, except for two brief transfers to Antananarivo for trial proceedings.

18.1 In formulating its views, the Human Rights Committee also takes into account that, although the State party was requested to furnish the Committee with copies of any court orders or decisions of relevance to the case and with information with regard to Mr. Marais' access to his legal representative Maître Hamel, none has been received. The Committee further requested the State party to give detailed information relating to the alleged victim's state of health and whereabouts. No information has been received other than a copy of a letter purportedly written by Dave Marais and John Wight and transmitted by the State party by note of 11 August 1982.

18.2 With regard to the burden of proof, the Committee has already established in its views in other cases (e.g., R.7/30) that the said burden cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it.

18.3 In the circumstances, the Committee cannot but give appropriate weight to the information submitted on behalf of Dave Marais, including that submitted by his legal representative, Maître Hamel.

19. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, notes with serious concern that the State party has ignored its repeated requests for specific information and has thereby failed to comply with its obligations under article 4 (2) of the Optional Protocol. The Committee is of the view that the communication discloses violations of the Covenant, in particular,

> of articles 7 and 10 (1), because of the inhuman conditions in which Dave Marais, Jr., has been held in prison in Madagascar incommunicado since December 1979;
>
> of article 14 (3) (b) and (d), because he has been denied adequate opportunity to communicate with his counsel, Maître Hamel, and because his right to the assistance of his counsel to represent him and prepare his defence has been interfered with by Malagasy authorities.

20. The Committee, accordingly, is of the view that the State party is under an obligation to provide the victim with effective remedies for the violations which he has suffered and to take steps to ensure that similar violations do not occur in the future. The Committee would welcome a decision by the State party to release Mr. Marais, prior to completion of his sentence, in response to his petition for clemency.

ANNEX XII

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

concerning

Communication No. 74/1980

Submitted by: Miguel Angel Estrella

Alleged victim: Miguel Angel Estrella

State party concerned: Uruguay

Date of communication: 17 July 1980 (date of initial letter)

Date of decision on admissibility: 25 March 1982

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

Meeting on 29 March 1983,

Having concluded its consideration of communication No. 74/1980, submitted to the Committee by Miguel Angel Estrella under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The author of the communication (initial letter dated 17 July 1980 and further submissions dated 8 November 1980, 9 and 15 July 1981 and 1 October 1982) is an Argentine national, concert pianist by profession, at present living in France.

1.2 The author states that he became a member of the Movimiento Peronista in Argentina in 1966 because he wished to contribute to the wider dissemination of knowledge, in his case of music, among the deprived sectors of the population. His activities, which were unpaid, involved giving courses, lectures and public concerts. These activities were allegedly considered to be "subversive" by the new military Government which came to power in Argentina in 1976. In April 1977, the author found that his name was on a list of Argentine intellectuals who could not participate in activities under the bilateral agreements which his country had signed with other States and that he had been denounced as "a subversive member of the Montoneros Organization". a/ The author requested an investigation into these accusations and, on 7 December 1977, he was officially informed that no charges had been retained against him and that he could therefore exercise his profession freely and participate under bilateral agreements.

1.3 The author explains that in 1977 he agreed to work in Montevideo, Uruguay, where he had been invited to give concerts and also refresher courses for Uruguayan pianists and that he lived there most of the time with his two sons and three Argentine friends, Raquel Odasso, Luisana Olivera and Luis Bracony, in a house that he had rented. His friends were also working in Montevideo. In May 1977, the author's engagements with the SODRE b/ Symphony Orchestra were suddenly cancelled and some weeks later he was officially informed by a Colonel (name is given) that he was under observation in Uruguay, that unfavourable reports had been received about him, that his position as a Peronist made it obvious that he was opposed to the Uruguayan Government, that however he had no recorded political activities in Uruguay and that so long as that situation did not change his safety was not in jeopardy. He was free to give private lessons to local pianists, but was told that he could not carry out any official concert or teaching activity. The author's concerts at the University were cancelled and a proposed professorship at the conservatory was withdrawn.

1.4 The author states that in November 1977 he toured Mexico and Panama. He then stayed in Buenos Aires from 5 to 10 December 1977 and on 10 December he went to Montevideo to bring his children back and to hand over the house he had rented. His intention was to move to Buenos Aires and spend some time in his country before travelling to Mexico and Canada on work assignments. He further states that when he reached Montevideo, on 10 December 1977, he found at his house an old friend, Carlos Valladares, allegedly a well-known Montonero leader. The author states in this connection:

> "My friendship with him was of very long standing because he had worked with my father selling books. I invited him to dinner with me and my family and he left my house at midnight. He was also present the following day at a farewell lunch that I held at my home. Valladares left the same evening and I never saw him again."

The author mentions that from 11 December 1977 he noticed that he was constantly followed. However, as he was preparing his departure, this fact did not greatly disturb him. On 15 December, he completed the necessary customs and banking procedures and purchased the tickets to travel to Buenos Aires.

1.5 The author claims that on the evening of 15 December 1977, Raquel Odasso and Luisana Olivera were abducted only a few yards from his home in Montevideo. He was told about this incident by his neighbours who, despite the fact that the house was surrounded by a growing number of vehicles with armed individuals, showed total solidarity with him and helped him to get in touch with diplomat friends and colleagues. The author further claims:

> "I was reassured by the fact that the people with whom I had managed to get into contact promised to ensure that these abnormal events were immediately made known abroad .... After 11 p.m., some 15 strongly armed individuals in civilian clothes broke in, threatening us with death if we did not surrender. Bracony and I had remained in the house. We came out with our hands up, trying to tell them that there was no need for any violence. They punched and kicked me and knocked me down, chaining my feet and hands, and then blindfolded me, pulled a hood over my head and pushed me towards a vehicle where they began to kick me all over."

The author alleges that they were brought to a place probably near the airport where he recognized the voices of Raquel Odasso and Luisana Olivera.

1.6 The author claims that in that place the four of them were subjected to torture:

> "The tortures consisted of electric shocks, beatings with rubber truncheons, punches and kicks, hanging us up with our hands tied behind our backs, pushing us into water until we were nearly asphyxiated, making us stand with legs apart and arms raised for up to 20 hours, and psychological torture. The latter consisted chiefly in threats of torture or violence to relatives or friends, or of dispatch to Argentina to be executed, in threats of making us witness the torture of friends, and in inducing in us a state of hallucination in which we thought we could see and hear things which were not real. In my own case, their point of concentration was my hands. For hours upon end, they put me through a mock amputation with an electric saw, telling me, 'we are going to do the same to you as Víctor Jara.' c/ Amongst the effects from which I suffered as a result were a loss of sensitivity in both arms and hands for eleven months, discomfort that still persists in the right thumb, and severe pain in the knees. I reported the fact to a number of military medical officers in the barracks and in the 'Libertad' prison."

The author alleges that he was interrogated for the purpose of forcing him to admit that he had been involved in plans to carry out armed operations in Uruguay and Argentina. He was repeatedly asked why he did not denounce Valladares and at one moment his interrogator allegedly said: "I keep telling you you are unlucky. We know that you were not involved in this matter, but you are going to pay dearly for the fact that you let Montoneros come into your house."

1.7 On 23 December 1977, the author was transferred to a military barracks, probably of Batallón 13, where he was kept blindfolded up to 20 January 1978 and subjected to ill-treatment during almost a month. The author mentions the following:

> "During my stay there, I suffered almost constantly from vomiting, diarrhoea and other digestive disorders, the result not merely of the state of insecurity I was in, but also the lack of hygiene and the food. I never received even the most rudimentary medical attention there. I was repeatedly threatened with death by an officer, who, on one occasion lifted my hood to hit me in the face; he was a lieutenant. He was beside himself with anger because I had been demanding insistently to be given a shower and to wash my clothes, which bore the marks of my intestinal problems and of torture. Other occasions on which I provoked his fury were when I asked the guards for medical attention, or to be allowed to write a letter to my family, to have news of what had happened to my children, for permission to attend Mass at Christmas or to see my family. ..."

On 20 January 1978, the author was taken to Libertad prison. He spent the first 10 days in solitary confinement in a cell which was a kind of cage in a section known as "La Isla". There he received visits from a military doctor. As he had lost 10 kilos, the doctor requested a special diet for him, which was refused. On 5 February his life as a prisoner became "normal". From that time he was kept in the cells (first floor A) and on that day he was able for the first time to walk in the open air for an hour and to have contact during that period with a fellow prisoner.

1.8 The author states that he was brought before a military court on three occasions (23 and 26 December 1977 and on 15 March 1978). On 23 December 1977, in the office where he was to see a court official, the author's hood was taken off and he recognized several of the individuals who had abducted him and taken part in the torture. That day also, he was given the possibility to choose an officially appointed lawyer, "who is really an officer of the armed forces or a civilian employed by them", either Mr. Severino Barbé or Colonel Alfredo Ramírez. The author opted for Mr. Barbé, whom he saw on that day and on 31 May 1978, 14 November 1978 and 12 February 1980. From the outset, Mr. Barbé allegedly adopted the attitude of a prosecutor in his relations with the author, who claims that, as a result, he was in fact denied the possibility of an effective defence. In particular, he states that on 31 May 1978, Mr. Barbé once again questioned the author's innocence, arguing that he had been accused by his friends and that he had not denounced Mr. Valladares. The author states that he asked to be confronted with his friends stressing that their reports had been made under torture. He further states that, although Mr. Barbé did nothing to arrange confrontations or to improve the conditions under which he was being held, his friends and colleagues outside Uruguay helped to speed up the processing of his case.

1.9 The author mentions that on 9 November 1978 he was confronted with Luis Bracony and Luisana Olivera and on 14 November 1978 with Raquel Odasso who, in particular, retracted what she had been forced to sign against him. He states that on 29 August 1979 he was told by an official whom he met at the prison that he had been sentenced to four and a half years of imprisonment at a trial that was held in camera. That day the military court's judgement was read out to him, the basis for the verdict being the charges of "conspiracy to subvert, action to upset the Constitution and criminal preparations". The author further states that, on the morning of 12 February 1980, he and five other detainees were taken to Montevideo, "in the silence that is characteristic of any departure from prison". At the moment he and his friend Luis Bracony were brought into the courtroom of the Military Supreme Tribunal, he learned that there was going to be a trial. He states that his relatives were not allowed to attend the trial. He recalls that the military judge, Mr. Silva Ledesma, said that the charge of attempt to upset the Constitution could not be confirmed, that therefore they had served their sentences and that they would be expelled from the country for having exposed Uruguay to a risk of war against another State. The author further states that the following day, on 13 February 1980, he was suddenly taken to a punishment cell in "La Isla", but that around 7 p.m. he was driven to the Montevideo Police Headquarters. On 15 February 1980, he was taken to the airport, where he boarded an airplane bound for France.

1.10 In the second part of his communication (under cover of letters dated 9 and 15 July 1981), the author gives a detailed description of prison conditions at Libertad. He states, in particular, that five floors of the prison are divided into very small cells; that two detainees share each cell (except on the second floor, which is reserved for detainees held in solitary confinement); that these cells are so small that "when one detainee walks, the other has to sit"; that detainees are usually kept in their cells 23 hours per day, that they are not allowed to lie on their beds from 6.30 a.m. to 9 p.m. or to do any exercise and that they are allowed to go into the open air for only one hour per day, provided that they have not been punished. He further states that from time to time detainees are allowed by the prison authorities to carry out some activities such as painting walls, cleaning, cooking, distributing food or books in the cells, etc. He maintains that most detainees wish to carry out such tasks despite the

fact that they are continuously subjected to harassment by the prison guards. The author adds that, when detainees are carrying out these activities, they have to be very careful because they work in precarious safety conditions and accidents occur frequently. He gives the names of five detainees who suffered accidents while doing some work.

1.11 The author states that the reasons for punishment at Libertad prison are endless (for example, for calling a detainee by his name instead of using the number assigned to each detainee when entering at Libertad prison; for walking without having their hands behind their back; for looking directly at a prison guard; for trying to share food or clothes with a detainee; for drawing, for writing music, for not executing an order quickly enough, for asking too much, etc.). He recalls that he was punished over and over again for saying "hello" with a smile to other detainees while distributing their breakfast. Punishments may consist of withholding permission to go into the open air for one or several weeks, or a ban on receiving correspondence or the suppression of visits. He further states that punishments could be entirely arbitrary. He mentions that once he had to remain in solitary confinement in a punishment cell for one month because "a group of European friends" had come to see him and the prison authorities had decided not to allow the visit. When the author had completed his 30 days' punishment, he was forced to sign a paper stating that the reason for his punishment was that he had tried to assault a guard.

1.12 The author maintains that in fact a policy of arbitrary sanctions is continually applied for the purpose of generating moments of hope followed by frustration. He alleges that the whole system at Libertad is aimed at destroying the detainees' physical and psychological balance, that detainees are continuously kept in a state of anxiety, uncertainty and tension and that they are not allowed to express any feeling of friendship or solidarity among themselves. He claims that many detainees are psychologically ill and that the present psychologist, Mr. Britos, is largely responsible for the policy of repression prevailing at Libertad prison. "They are professionals, like Mr. Britos, who use their skills in order to render thousands of individuals in this small country which is Uruguay unfit for reintegration into normal society". The author further claims that the state of anxiety prevailing among detainees is largely due to shooting exercises by the prison guards and alarm warnings. Up to three times a day during alarms, detainees have to lie down on the floor wherever they are, face downward, hands over their heads and any movement could mean being shot by a prison guard. Shooting exercises are carried out in the prison yard and the dummy targets wear exactly the same uniforms as the prisoners. The author also maintains that even Sunday masses were discontinued in 1975 for being moments shared by most detainees and he expresses the hope that, in the future, detainees will be allowed to go to mass and to receive spiritual assistance.

1.13 The author states that the detainees' correspondence is subjected to severe censorship, that they cannot write to their lawyers or to international organizations and that prison officials who act as "censors" arbitrarily delete sentences and even refuse to dispatch letters. He claims that during his entire detention he was given only 35 letters, though he certainly received hundreds. During a seven-month period he was given none. He states that Lieutenant Rodriguez and Lieutenant Curruchaga asked him to sign for the receipt of letters which he never saw.

1.14 The author mentions that detainees are in principle allowed two monthly visits of 45 minutes each. All visitors (including women) are thoroughly searched before the visits. During these visits the prisoner and the visitors are in different rooms and they may communicate through a window; all conversation is taped, no reference can be made to current news, and at any moment prison guards may arbitrarily put an end to any visit. A feeling of tension is, therefore, always present.

1.15 The author emphasizes that, thanks to the international solidarity campaign organized on his behalf, he was a privileged detainee. In particular, he had the privilege of receiving some "special visits". For instance, in February 1979, he was suddenly taken to the third floor of the prison and pushed into a very nice cell with radio, tape-recorder and pictures of women on the walls. A few minutes later, the Deputy Governor of Libertad prison, Colonel H. Nieves, came in with a French lawyer, François Chéron. The author did not pay "too much attention" to the presence of prison officials while talking with Maître Chéron. He was afterwards punished for seven months (no mail, continuous harassment and searches, no recreation, etc.).

1.16 In the author's opinion, the prisoners suffer most from the total impossibility of being tried or defended "normally". He further alleges that individual freedoms and guarantees have been disregarded in Uruguay since 1973, that lawyers have been persecuted and imprisoned for defending persons considered as "anti-social" elements and that a new terminology has been created in judicial practice, mentioning as an example the concept of "moral conviction". He recalls in this connection an incident when one of his torturers said to him: "We know that you are not a guerilla; even if you do not want to sign a declaration that you are one, you will remain imprisoned for several years because we have the 'moral conviction' that you are guilty of thinking as you think."

1.17 The author does not specify which provisions of the Covenant have allegedly been violated in his case.

2. By its decision of 24 October 1980, the Human Rights Committee decided that, when the second part of the author's communication had been received, the communication would be transmitted under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

3. By a note dated 29 April 1981, the State party objected to the admissibility of the communication for the following reasons:

> "The communication does not fulfil even the basic conditions for presentation to the Committee; in article 1 of the Optional Protocol, the competence of the Committee to receive and consider communications from individuals is recognized, provided that the communications fulfil the basic requirements of originating from individuals 'subject to [the] jurisdiction [of a State Party] who claim to be etc. ...'. In this connection it should be stated that, in the case referred to in this communication, the situation envisaged in the above-mentioned article does not arise. Once he had completed his sentence, Mr. Estrella was released and on 15 February 1980 left Uruguay for France, where he is now living; he is, therefore, outside the jurisdiction of the Uruguayan State. For these reasons, we consider that it is inappropriate for the Committee to deal with communications of this nature which run counter

to its terms of reference and violate provisions of international instruments. The Government of Uruguay will accordingly make no answer concerning the substance of the matter on the understanding that Mr. Estrella does not have the right of recourse to the mechanisms provided for in the International Covenant and the Optional Protocol."

By a further note dated 28 September 1981 the State party reiterated the position stated in its note of 29 April 1981.

4.1 When examining the question of admissibility of the communication, the Human Rights Committee observed that the author referred to events which allegedly took place in Uruguay from December 1977 to February 1980; that is, under the jurisdiction of Uruguay, and that the State party itself had admitted that Miguel Angel Estrella completed his sentence in Uruguay. The Committee recalled that by virtue of article 2 (1) of the Covenant, each State party undertakes to respect and to ensure to "all individuals within its territory and subject to its jurisdiction" the rights recognized in the Covenant. Article 1 of the Optional Protocol was clearly intended to apply to individuals subject to the jurisdiction of the State party concerned at the time of the alleged violation of the Covenant, irrespective of their nationality. This was manifestly the object and purpose of article 1. The Human Rights Committee further observed that the present communication fulfils the basic requirement of originating from an individual who claims that some of his rights have been violated by a State party to the Covenant and to the Optional Protocol and that, therefore, the alleged victim has the right of recourse to the mechanisms provided for in the International Covenant and the Optional Protocol.

4.2 With regard to article 5 (2) (a) of the Optional Protocol, the Human Rights Committee had the occasion in another case under the Optional Protocol, to ascertain that a case concerning Miguel Angel Estrella had been submitted to the Inter-American Commission on Human Rights (IACHR) as case No. 2570. By a further letter dated 8 November 1980, in reply to a request for clarification in this regard, Miguel Angel Estrella stated that he had no prior knowledge of case No. 2570 before the IACHR and, in spite of extensive inquiries on his part, he had been unable to find out who may have submitted that case to IACHR. He stated that he had, in this connection, contacted friends, relations and colleagues in several countries where committees had been formed with the aim of pleading for his release, but none of them could shed light on the matter. By letters dated 18 August and 18 November 1981, the secretariat of IACHR clarified that IACHR case No. 2570 concerning Miguel Angel Estrella was based on a complaint submitted by an unrelated third party on 21 December 1977 and that the case was still under consideration by IACHR.

4.3 The Committee observed that the provision of article 5 (2) (a) of the Optional Protocol, which lays down that the Committee cannot consider a communication under the Optional Protocol if the same matter is being examined under another procedure of international investigation or settlement, cannot be so interpreted as to imply that an unrelated third party, acting without the knowledge and consent of the alleged victim, can preclude the latter from having access to the Human Rights Committee. It therefore concluded that it was not prevented from considering the communication submitted to it by the alleged victim himself, by reason of a submission by an unrelated third party to IACHR. Such a submission did not constitute "the same matter", within the meaning of article 5 (2) (a).

4.4 With regard to article 5 (2) (b), on the basis of the information before it, the Committee was unable to conclude that in the circumstances of this case, there were effective remedies available to the alleged victim which he had failed to exhaust.

4.5 Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (a) or 5 (2) (b) of the Optional Protocol.

4.6 The Committee noted that the facts and allegations, as submitted by the author, appeared to raise issues under various provisions of the Covenant, including articles 7, 9, 10 and 14, the determination of which depended on an examination of the merits of the case.

5. On 25 March 1982, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

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

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

6. By a note dated 27 August 1982, the State party reiterated the position stated in its notes dated 29 April and 28 September 1981. No further explanations were received from the State party pursuant to the Committee's decision of 25 March 1982. The Committee is seriously concerned over the State party's failure to fulfil its obligations under article 4 (2) of the Optional Protocol.

7. In his comments, dated 1 October 1982, the author states that the events that he had reported: "job discrimination, persecution, kidnapping, torture, detention, irregular legal procedures", took place when he was residing legally in Uruguay and he was therefore subject to that country's jurisdiction.

8.1 The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties as provided in article 5 (1) of the Optional Protocol. The Committee bases its views on the following facts, which, in the absence of any substantive clarifications from the State party, are unrefuted.

8.2 Miguel Angel Estrella decided in 1977 to work in Montevideo, Uruguay, and he lived there with his two sons and three Argentine friends, Raquel Odasso, Luisana Olivera and Luis Bracony, in a house that he had rented.

8.3 On 15 December 1977, at a time when the author was about to leave Uruguay, he and his friend, Luis Bracony, were kidnapped at his home in Montevideo by some 15 strongly armed individuals in civilian clothes. They were brought blindfolded to a place where he recognized the voices of Raquel Odasso and Luisana Olivera. There the author was subjected to severe physical and psychological torture, including the threat that the author's hands would be cut off by an electric saw, in an effort to force him to admit subversive activities. This ill-treatment had lasting effects, particularly to his arms and hands.

8.4 On 23 December 1977, the author was transferred to a military barracks, probably of Batallón 13, where he continued to be subjected to ill-treatment. In particular, he was threatened with death and he was denied medical attention. On 20 January 1978 he was taken to Libertad prison. He spent the first 10 days in solitary confinement in a cell which was a kind of cage in a section known as "La Isla". He remained imprisoned at Libertad until 13 February 1980.

8.5 At Libertad prison the author was subjected to continued ill-treatment and to arbitrary punishments including 30 days in solitary confinement in a punishment cell and seven months without mail or recreation and subjected to harassment and searches. His correspondence was subjected to severe censorship (see para. 1.13 above).

8.6 The author was brought before a military court on three occasions (23 and 26 December 1977 and 15 March 1978). On 23 December 1977, he recognized several of the individuals who had abducted him and who took part in the torture. That day also, he was given the possibility to choose an officially appointed lawyer, either Mr. Severino Barbé or Colonel Alfredo Ramírez. He opted for Mr. Barbé whom he saw that day and on 31 May 1978, 14 November 1978 and 12 February 1980. On 29 August 1979, the author was told by an official at Libertad prison that he had been sentenced to four and a half years of imprisonment at a trial that was held in camera on grounds of "conspiracy to subvert, action to upset the Constitution and criminal preparations". On 12 February 1980, he was brought before the Military Supreme Tribunal where he was informed by the military judge that the charge of attempt to upset the Constitution could not be confirmed, that he had served his sentence and that he would be expelled from Uruguay. On 15 February 1980, Miguel Angel Estrella was taken to the airport and he left Uruguay.

9.1 On the basis of the detailed information submitted by the author (see in particular paras. 1.10 to 1.16 above), the Committee is in a position to conclude that the conditions of imprisonment to which Miguel Angel Estrella was subjected at Libertad prison were inhuman. In this connection, the Committee recalls its consideration of other communications (see for instance its views on R.16/56 adopted at its seventh session) which confirm the existence of a practice of inhuman treatment at Libertad.

9.2 With regard to the censorship of Miguel Angel Estrella's correspondence, the Committee accepts that it is normal for prison authorities to exercise measures of control and censorship over prisoners' correspondence. Nevertheless, article 17 of the Covenant provides that "no one shall be subjected to arbitrary or unlawful interference with his correspondence". This requires that any such measures of control or censorship shall be subject to satisfactory legal safeguards against arbitrary application (see para. 21 of the Committee's views of 29 October 1981 on communication No. R.14/63). Furthermore, the degree of restriction must be consistent with the standard of humane treatment of detained persons required by

article 10 (1) of the Covenant. In particular, prisoners should be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, by correspondence as well as by receiving visits. On the basis of the information before it, the Committee finds that Miguel Angel Estrella's correspondence was censored and restricted at Libertad prison to an extent which the State party has not justified as compatible with article 17 read in conjunction with article 10 (1) of the Covenant.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts, as found by the Committee, disclose the following violations of the International Covenant on Civil and Political Rights, in particular

of article 7, because Miguel Angel Estrella was subjected to torture during the first days of his detention (15-23 December 1977);

of article 10 (1), because he was detained under inhuman prison conditions;

of article 14 (1), because he was tried without a public hearing and no reason has been given by the State party to justify this in accordance with the Covenant;

of article 14 (3) (b) and (d), because he was unable to have the assistance of counsel of his own choosing to represent him and to prepare and present his defence;

of article 14 (3) (g), because of the attempts made to compel him to testify against himself and to confess guilt;

of article 17 read in conjunction with article 10 (1), because of the extent to which his correspondence was censored and restricted at Libertad prison.

11. The Committee, accordingly, is of the opinion that the State party is under an obligation to provide the victim with effective remedies, including compensation, for the violations he has suffered and to take steps to ensure that similar violations do not occur in the future.

Notes

a/ An opposition movement which engaged in armed activities.

b/ According to the author, the official Uruguayan radio station.

c/ A well-known Chilean singer and guitarist who was found dead, with his hands completely smashed, at the end of September 1973 in a stadium in Santiago, Chile.

ANNEX XIII

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

concerning

Communication No. 75/1980

Submitted by: Duilio Fanali

Alleged victim: The author

State party concerned: Italy

Date of communication: July 1980 (date of initial letter)

Date of decision of admissibility: 28 July 1981

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

Meeting on 31 March 1983,

Having concluded its consideration of communication No. 75/1980 submitted by Duilio Fanali under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of the communication (initial letter dated July 1980) is Duilio Fanali, an Italian citizen residing in Rome, Italy. He submits the communication on his own behalf.

2. The author alleges that he is a victim of a breach by the Government of Italy of article 14 (5) of the International Covenant on Civil and Political Rights and requests the Human Rights Committee to examine his case.

3.1 The author, a retired Air Force General, states that having been sentenced by the Constitutional Court on 1 March 1979 to one year and nine months' imprisonment and to a fine of 200,000 Lire, conditionally suspended, on the charge of corruption through actions contrary to the duties of office, he was denied the right to appeal against the allegedly unsubstantiated charges and related conviction. The criminal proceedings had taken place before the Constitutional Court, as part of a larger criminal suit involving also members of the Government for whom the Constitutional Court was the only competent tribunal. While the Italian Constitution provides that no appeal is allowed against decisions of the Constitutional Court in as far

as they concern the President of the Republic and the Ministers, the "ordinary" law No. 20 of 25 January 1962 extends the above constitutional provisions of "no appeal" to "other individuals" sentenced by the Constitutional Court for crimes related to those committed by the President of the Republic or Ministers. The author claims that because law No. 20 is not a constitutional law it should be rescinded and therefore is not applicable in his case.

3.2 Mr. Fanali submits that the Italian reservation with regard to the applicability of article 14 (5) of the International Covenant on Civil and Political Rights could not be regarded as valid because of defective Italian domestic procedures used in promulgating it. He further argues that, even if valid, the reservation did not apply in his case because it excludes Italy's obligation under the Covenant to grant the right to appeal only as far as the President of the Republic and Ministers are concerned.

3.3 The author states that the preliminary investigations and trial proceedings related to several politicians and some "laymen", such as the author himself, and were based on charges of corruption and abuse of public office in connection with the purchase by the Italian Government of military planes of the type Hercules C130 from the United States of America company, Lockheed.

3.4 The author claims that during the preliminary investigations and trial proceedings due process was not always observed. Most of these events took place before 15 December 1978, the date of entry into force for Italy of the Covenant and the Optional Protocol. However, the judgement by the Constitutional Court which the author claims has caused him severe material and moral damage and from which he had, contrary to article 14 (5) of the Covenant, no right to appeal, was rendered on 1 March 1979, as mentioned above.

3.5 The author finally states that the matter has not been submitted under any other procedure of international investigation or settlement.

4. By its decision of 24 October 1980, the Human Rights Committee transmitted the communication under rule 91 of its provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

5.1 In its submission dated 12 January 1981, the State party objected to the admissibility of the communication invoking (a) the specific reservation made by the Italian Government upon the deposit of the instrument of ratification of the Optional Protocol to the International Covenant on Civil and Political Rights, with respect to article 5 (2), that the Committee ... "shall not consider any communication from an individual unless it has ascertained that the same matter is not being and has not been examined under another procedure of international investigation or settlement" and (b) the Italian declaration made upon deposit of the instrument of ratification of the Covenant on Civil and Political Rights with regard to article 14 (5) of the Covenant intended to protect the legality of the conduct, "at one level only, of proceedings before the Constitutional Court".

5.2 The State party submitted with regard to the condition stipulated in article 5 (2) (a) of the Optional Protocol, that verification of the statement of the author that he has not already submitted the "matter" to another international tribunal should not be restricted to the affirmation of this fact, "but must rather have the objective of ascertaining that the '<u>same matter</u>', as prescribed by

article 5, paragraph 2, is not already being examined by another international body to which it might have been submitted by an individual other than the author of the communication addressed to this Committee". The State party then concluded that ... "the determining element is the 'matter' submitted to the international body and not the individual author of the communication or of the application ...".

5.3 The State party, then referring to the specific case of Duilio Fanali before the Human Rights Committee, pointed out that the former co-defendants of Mr. Fanali in the proceedings before the Constitutional Court had submitted "the same matter" to the European Commission of Human Rights, concerning several of the same alleged violations related to the procedure, competence and judgement of the Constitutional Court that have been put forward by Mr. Fanali.

5.4 In its note the Italian Government then referred to the Italian declaration with regard to article 14 (5) which ... "clearly precludes the applicability of the principle of review by a higher court, contained in article 14, paragraph 5, to the above-mentioned proceedings, which took place before the Constitutional Court in accordance with the Italian legislation in force".

6.1 On 13 March 1981, the author of the communication forwarded his comments in reply to the State party's submission of 12 January 1981. He objected to the State party's contention of inadmissibility made with respect to the provisions of article 5 (2) (a) of the Optional Protocol and with regard to article 14 (5) of the Covenant. With regard to the first the author contested, inter alia, the argument of the Italian Government "that other individuals have filed an appeal before another international tribunal in connection with the same sentence and that this (cases-pendency) constitutes the preclusion contemplated by article 5 (2) of the Protocol". He argued that "cases-pendency" only exists when two or more distinct actions have been brought by the same individual before different tribunals.

6.2 Referring to the second contention of inadmissibility by the Italian Government on the grounds of the Italian declaration made with regard to the applicability of article 14 (5) of the Covenant to Italy, the author pointed out that the reservation regarding article 14, paragraph 5, of the Covenant did not apply to his status as a 'layman' and 'non-politician'. He drew the attention of the Committee to the full text of the said reservation which reads as follows: "Article 14, paragraph 5, shall be without prejudice to the application of existing Italian provisions which, in accordance with the Constitution of the Italian Republic, govern the conduct, at one level only, of proceedings instituted before the Constitutional Court in respect of charges brought against the President of the Republic and its Ministers".

6.3 The author further argued that his right to appeal was not only confirmed by the inapplicability of the Italian reservation, but also by the provisions of article 2 (3) of the Covenant. He therefore could not be deprived of the right to appeal provided for in article 2 (3) of the Covenant even if the Italian reservation to article 14 (5) were applicable. The author stressed that no reservation was made by Italy with regard to article 2 (3) of the Covenant.

7.1 Having examined the information before it, the Committee concluded that it could not at that stage reject the communication as inadmissible on the basis of the Italian reservation to article 14 (5) of the Covenant, since the text of the reservation only referred to the President of the Republic and the Ministers and that, therefore, the communication was not, within the meaning of article 3 of the

Optional Protocol, incompatible with the provisions of the Covenant read in conjunction with this reservation.

7.2 With regard to article 5 (2) (a) of the Optional Protocol, the Committee did not agree with the State party's contention that "the same matter" had been brought before the European Commission of Human Rights since other individuals had brought their own cases before that body concerning claims which appeared to arise from the same incident. The Committee held that the concept of "the same matter" within the meaning of article 5 (2) (a) of the Optional Protocol had to be understood as including the same claim concerning the same individual, submitted by him or someone else who has the standing to act on his behalf before the other international body. Since the State party itself recognized that the author of the present communication had not submitted his specific case to the European Commission of Human Rights, the Human Rights Committee concluded that the communication was not inadmissible under article 5 (2) (a) of the Optional Protocol.

8. On 28 July 1981 the Human Rights Committee therefore decided that the communication was admissible.

9.1 In its submission under article 4 (2) of the Optional Protocol, dated 15 February 1982, the State party reiterates its earlier contention that the communication is inadmissible, citing in support the decision of the European Commission of Human Rights in the "Lockheed Affair", on 18 December 1980, declaring inadmissible the case against Italy brought by Messrs. Crociani, Lefebvre, Palmiotti and Tanassi (former co-defendants of Mr. Fanali before the Constitutional Court).

9.2 The State party further points out that the purpose of Italy's reservation to article 14 (5) of the International Covenant on Civil and Political Rights was to safeguard existing provisions in Italian law such as article 49 of the Code of Criminal Procedure and law No. 20 of 25 June 1962 which allow for the conduct of proceedings before the Constitutional Court, at one level only. Article 49 of the Code of Criminal Procedure provides for a common trial for persons accused of the same crime; law No. 20 of 25 June 1962 extends in specific cases the competence of the Constitutional Court to persons other than the President of the Republic and Ministers.

9.3 Finally, the State party refutes the author's contention that law No. 20 of 25 June 1962 is unconstitutional, citing a judgement of the Constitutional Court on 2 July 1977 specifically upholding the constitutionality of the said law.

10.1 In his response dated 29 June 1982, commenting on the State party's submission under article 4 (2) of the Optional Protocol, Mr. Fanali maintains, inter alia, that the "one level only" proceedings before the Constitutional Court in the "Lockheed Affair" are widely recognized as having been unjust and that there are several draft bills and reports before the houses of the Italian Parliament proposing changes in the present juridical régime.

10.2 The author also rejects the interpretation placed by the State party upon its reservation to article 14 (5) of the International Covenant, holding it to be "extensive" and thus contrary to the generally accepted legal principle of "restrictive" interpretation of reservations.

11.1 The Human Rights Committee notes the decision of the European Commission on Human Rights of 18 December 1980 declaring inadmissible the cases of Messrs. Crociani, Lefebvre, Palmiotti and Tanassi. These applications concerned different allegations. Furthermore, the right of appeal is not granted under the European Convention of Human Rights. For the reasons stated in paragraph 7.2 above, the Human Rights Committee reaffirms its earlier decision that the communication brought by Duilio Fanali was admissible. It therefore has to examine the merits of the dispute which relates mainly to the effect of the Italian reservation.

11.2 As regards the merits of the present case, the Committee has examined the communication in the light of all information made available to it by the parties as provided for in article 5 (1) of the Optional Protocol.

11.3 The author of the communication alleges that the Italian juridical system which prevented him from appealing the judgement rendered by the Constitutional Court on 1 March 1979, is in violation of the provisions of article 14 (5) of the International Covenant on Civil and Political Rights. Article 14 (5) of the Covenant reads as follows:

> "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

11.4 The State party upon ratification of the Covenant has made a reservation with regard to article 14 (5) which it has now invoked. The Committee, therefore, has to decide whether this reservation applies to the present case. The Italian reservation reads as follows:

> "Article 14, paragraph 5, shall be without prejudice to the application of existing Italian provisions which, in accordance with the Constitution of the Italian Republic, govern the conduct, at one level only, of proceedings instituted before the Constitutional Court in respect of charges brought against the President of the Republic and its Ministers."

11.5 The author contests the applicability of the reservation in his case. He objects to its validity and furthermore argues, inter alia, that he cannot be classified under either of the two categories referred to in the reservation.

11.6 In the Committee's view, there is no doubt about the international validity of the reservation, despite the alleged irregularity at the domestic level. On the other hand, its applicability to the present case depends on the wording of the reservation in its context, where regard must be had to its object and purpose. Since the two parties read it differently, it is for the Committee to decide this dispute.

11.7 The State party, in its submission under article 4 (2) of the Optional Protocol of 15 February 1982, asserts that the reservation is applicable in the present case, adducing the following grounds: The reference in the reservation to the "one-level only" proceedings before the Constitutional Court with respect to charges brought against the President of the Republic and the Ministers was a reflection of the provisions of article 134 of the Italian Constitution. Article 49 of the Code of Criminal Procedure established the rule of a common trial for persons accused of the same crime. Law No. 20 of 25 June 1962 provided for the application of this rule to the special proceedings instituted before the

Constitutional Court in accordance with article 134 of the Constitution, thereby extending the proceedings to persons other than the President of the Republic and its Ministers, if they are charged with the same offences. The constitutionality of this law was upheld by a decision of the Constitutional Court of 2 July 1977.

11.8 The Committee observes that it is outside its competence to pronounce itself on the constitutionality of domestic law. Furthermore, the Committee notes that the reservation only partly excludes article 14 (5) from the obligations undertaken by Italy. The question is whether it is applicable only to the two categories mentioned, and not to the "layman", Mr. Fanali. A close reading of the text shows that a narrow construction of the reservation would be contrary both to its wording and its purpose. The reservation refers not only to the relevant rules of the Constitution itself, but to "existing Italian provisions ... in accordance with the Constitution", thus clearly extending its scope to the implementing laws enacted by the ordinary legislator. As shown by the Government in its submission, it was also the purpose of the reservation to exclude proceedings before the Constitutional Court instituted in connection with criminal charges against the President of the Republic and its Ministers from Italy's acceptance of article 14 (5). Even when proceedings are brought against "laymen", as they were in the present case, they must therefore be described in the terms of the reservation as "proceedings before the Constitutional Court in respect of charges brought against ... Ministers". This follows from the connection between the cases: the charges against the Ministers were the cause and the conditio sine qua non for the other charges and for instituting proceedings against all defendants. It must follow that all of the proceedings were in this sense brought "in respect of charges" against Ministers, because they related to the same matter, which under Italian law only, that Court was competent to consider. On the background of the applicable Italian law this is not only a possible reading, but in the Committee's view the correct reading of the reservation.

12. For these reasons the Human Rights Committee concludes that Italy's reservation regarding article 14 (5) of the Covenant is applicable in the specific circumstances of the case.

13. The author also argues, however, that his right to appeal is confirmed in article 2 (3) of the Covenant to which Italy has made no reservation. The Committee is unable to share this view which seems to overlook the nature of the provisions concerned. It is true that article 2 (3) provides generally that persons whose rights and freedoms, as recognized in the Covenant, are violated "shall have an effective remedy". But this general right to a remedy is an accessory one, and cannot be invoked when the purported right to which it is linked is excluded by a reservation, as in the present case. Even had this not been so, the purported right, in the case of article 14 (5), consists itself of a remedy (appeal). Thus it is a form of lex specialis besides which it would have no meaning to apply the general right in article 2 (3).

14. Accordingly, the Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the present case does not disclose any violation of the Covenant.

ANNEX XIV

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

concerning

Communication No. 77/1980

Submitted by: Samuel Lichtensztejn

Alleged victim: The author of the communication

State party concerned: Uruguay

Date of communication: 30 September 1980 (date of initial letter)

Date of decision on admissibility: 25 March 1982

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

Meeting on 31 March 1983,

Having concluded its consideration of communication No. 77/1980 submitted to the Committee by Samuel Lichtensztejn under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The author of the communication (initial letter dated 30 September 1980 and further letter of 6 July 1981) is Samuel Lichtensztejn, a Uruguayan citizen at present residing in Mexico. The author, former director and Dean of the Faculty of Economic Sciences and Administration and Rector of the University of the Republic of Uruguay submitted the communication on his own behalf, alleging that he is a victim of a breach by Uruguay of articles 12 and 19 of the International Covenant on Civil and Political Rights. He stressed the fact that, with regard to his specific complaint, he comes within the jurisdiction of Uruguay.

1.2 The author claims that a valid Uruguayan passport has been denied him by the Uruguayan authorities without any explanation, allegedly to punish him for the opinions which he holds and which he has expressed concerning human rights violations in Uruguay, and to prevent him from continuing to exercise his freedom of expression.

2.1 The author states that, in the years before he left Uruguay, he was closely connected with university affairs. From 1970 to 1971, he was director of the Institute of Economics in the Faculty of Economic Sciences and Administration. For the greater part of 1972, he was Dean of the Faculty and in October of that year he was elected Rector of the University of the Republic of Uruguay. He was Rector until October 1973, when the Government interfered with the University and military forces took over its premises. He alleges that because he was restricted in the exercise of his rights, both as Rector and as a private citizen, he left the country in January 1974. He has been living in Mexico since February 1974.

2.2 The author states that while in Mexico, he took an active part in campaigns for the respect of human rights in Uruguay through national and international organizations, and that he denounced the alleged violation in Uruguay of university autonomy and the persecution of professors and students for ideological reasons. He assumes that his spoken and written opinions on these matters have been the cause of the Uruguayan Government's decision to refuse him a passport.

2.3 He describes the facts of his case as follows:

"(a) On 23 October 1968, I was granted passport No. 112-641 by the Uruguayan Ministry of Foreign Relations. On 27 December 1973, such passport was renewed by the Montevideo Police Headquarters for five years, finally expiring on 23 October 1978. In order to obtain a new passport, I went, on 16 October 1978 to the Consular Section of the Uruguayan Embassy in Mexico, and I completed the appropriate form of application. On 28 November 1978 I asked, in writing, for information on my application. On the same date the person in charge of the Consular Section of the Uruguayan Embassy in Mexico, Mr. Juan D. Oddone, replied, in writing, that by 'express order from the Chancellery, the granting of the passport was not authorized'. On 12 December 1978 and through the Uruguayan Embassy in Mexico, I sent a letter to the Uruguayan Minister of the Interior, General Linares Brum, asking him to reconsider the refusal to grant me a passport. Finally, on 30 March 1979, the Consular Section of the Uruguayan Embassy in Mexico informed me, in writing, that I 'should rely on the refusal'.

"(b) I asked Mr. Oddone how I could appeal against these decisions, but I was told that there was no other way to do so. No domestic remedy is available for this injury. It must be pointed out that, the Uruguay Government has, since 1973, practised legislation by decree immune for constitutional review and has arrested Uruguayan lawyers who bring cases against the Government. The inability of the courts in some cases to enforce their orders against other departments of the Government, and the use of the doctrine of State security to remove questions from the competence of these courts or to allow the introduction of evidence, which is not disclosed to the opposing party, lead inevitably to the conclusion that any attempt to resolve this problem within the domestic judicial system would be futile and a waste of time.

"(c) On 15 December 1978, I received an identity and travel document from the Government of Mexico. Therefore, inasmuch as Uruguay's denial of a passport constitutes a denial of my rights under article 12 (2), the violation may be considered to have ended on that date. However, the violation did occur after the Covenant came into effect and there is no requirement that communications under the Optional Protocol set forth continuing violations.

It must be noted that the violation of my right to be free to leave any country did not cease as a result of any change in position on the part of Uruguay, but as the result of a humanitarian act on the part of Mexico."

2.4 The author further maintains that the punitive effect of the denial of a passport did not cease with the acquisition of a substitute document from the Government of Mexico, but constitutes a continuing violation of article 19 of the Covenant.

2.5 Finally, the author states that he has not submitted the same matter to another procedure of international investigation or settlement.

3. By its decision of 24 October 1980, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

4.1 By a note dated 5 June 1981, the State party objected to the competence of the Human Rights Committee to consider the communication, stating that "the communication does not fulfil even the basic requirements for submission to the Committee", ... as "article 1 of the Optional Protocol only recognizes the competence of the Committee to receive and consider communications from individuals provided that these individuals fulfil the minimum requirement of being 'subject to its [the State Party's] jurisdiction' and this condition is not met by the present communication because Mr. Samuel Lichtensztejn was outside the jurisdiction of the Uruguayan State when his petition was submitted." The State party concludes that "it is therefore inadmissible that the Committee should deal with communications of this kind, which run counter to its terms of reference and violate provisions of international instruments".

4.2 However, the State party, while stressing its formal rejection of the admissibility of the communication before the Committee, then replies to the communication's content "strictly with a view to maintaining its continuing co-operation with the Committee in the promotion and defence of human rights ..." and submits that the allegations of violations of articles 12 and 19 of the Covenant by Uruguay are totally unfounded. In substantiation of this submission, the State party draws the Committee's attention to the author's actual enjoyment of the right to freedom of movement and to his activities abroad, mentioning as an example his appearance on Cuban television on 12 May 1979, which in the State party's opinion negates the author's argument that he is prevented from travelling freely abroad. Reference is also made by the State party to the fact that the author freely left his country, Uruguay, through "normal channels" in January 1974, and that he has the constitutionally guaranteed right, as every Uruguayan citizen, to return to his country, with or without a passport. It is further pointed out in the State party's submission that the charges made by the author of the communication, namely, that he has been denied the right to express his opinions while in Uruguay and that the Government of Uruguay has therefore violated article 19 of the Covenant are based "exclusively on strictly personal judgements" and that ... "not the slightest evidence to prove and justify (the author's) allegations ..." are provided in the text of the communication.

5.1 On 6 July 1981, the author of the communication forwarded his comments in reply to the State party's submission of 5 June 1981.

5.2 He rejects the State party's formal contention that the communication is incompatible with and therefore inadmissible under the provisions of article 1 of the Optional Protocol because he did not come within its jurisdiction in the matter concerned. He argues that the views expressed by the Government of Uruguay are not only in contradiction with international law and common international practice, but also in contradiction with existing Uruguayan law. On this last point the author refers (a) to Decree No. 614/967 of 12 September 1967, articles 1 and 6 (b), which provide that every citizen by birth has the right to a passport and that all the formalities required to obtain a passport can be completed outside Uruguay, and (b) to Decree No. 363/77 of 28 June 1977, article 1, which provides for the issue and renewal of passports for persons who "have permanent residence abroad". The author points out that the foregoing legal provisions make it clear that jurisdiction of the Uruguayan State, in the matter of issuing passports, does extend beyond its territory through its accredited consular offices abroad. He adds in this connection that it is the status of citizenship, and not that of residence, that is identified by a passport.

5.3 The author further states that he has never, through action or omission, raised any doubts with the Uruguayan authorities about his maintenance of Uruguayan citizenship. He furnishes copies of documents as proof that he fulfils whatever obligations concern him as a Uruguayan citizen abroad: one document, dated 30 November 1980, stating that he presented himself at the Uruguayan Consulate in Mexico to register legally his residence in Mexico, and the other document, dated 2 December 1980, to put on record his legitimate reason for not participating in the vote concerning the referendum held by the Government of Uruguay.

5.4 To complete his arguments, the author refers to the case of Guillermo Waksman (before the Human Rights Committee under case No. R.7/31) which, similar to his own, concerned the renewal of a passport of a Uruguayan citizen living abroad and which after being declared admissible by the Human Rights Committee led to the issuance of a new passport to Mr. Waksman by the appropriate Uruguayan consular authorities. The author points out that the foregoing constitutes a conclusive precedent that, in a situation similar to his own, it has already been recognized by the Uruguayan authorities that Uruguayan citizens abroad are under the jurisdiction of their State as far as passports are concerned.

5.5 In his response to the State party's submission regarding the contents of his communication, the author does not refute the State party's contention that he has been in a position to travel abroad on a number of occasions. He asserts, however, that this is due only to the issuance by the Mexican authorities, for humanitarian reasons, of an identity and travel document which cannot be regarded as an adequate substitute for a Uruguayan passport since it is subject to conditions and requirements which by no means remove the difficulties caused by the lack of a Uruguayan passport. He points out, for instance, that the Mexican document, which is issued to him as a foreigner at the discretion of the Mexican authorities, has only a short period of validity with no guarantee of renewal on its expiry and that he has had difficulties in obtaining a visa for some other countries on the basis of it.

5.6 The author adds that the example of his appearance on Cuban television quoted by the State party in its submission in support of its assertion that he does undertake activities abroad and is in a position to travel freely, is not correct as he has never travelled to Cuba, his Mexican travel documents being available as

a proof that he was in Mexico on the date indicated by the State party in its submission.

5.7 In commenting on the State party's assertion that he freely and through normal channels left his country in 1974, the author claims that although he left through normal channels he did not leave Uruguay "freely", but that he was driven to do so by the lack of guarantees in Uruguay for his rights as a citizen and Rector of the University and, by way of illustration, he refers to his detention in Uruguay for two months, without trial, and to the refusal of the Uruguayan authorities to re-instate him as Rector or Professor at the University and to allow him to publish articles in the press of his country.

5.8 The author further dismisses as irrelevant to his case the State party's contention that every Uruguayan citizen has the constitutional right to return to his country, because this does not address the point at issue in his communication, namely the right to enter and leave any country, including his own, with a valid Uruguayan passport.

5.9 The author also repeats the assumption, made in his initial communication, that the refusal by the Uruguayan authorities, without giving any reasons, to grant him a passport is motivated by his critical political attitude towards the Uruguayan Government and he maintains, therefore, that in addition to a breach of article 12, there has also been a breach of article 19 of the Covenant in his case.

6.1 When considering the admissibility of the communication, the Human Rights Committee did not accept the State party's contention that it was not competent to deal with the communication because the author did not fulfil the requirements of article 1 of the Optional Protocol. In that connection, the Committee made the following observations: article 1 applies to individuals subject to the jurisdiction of the State concerned who claim to be victims of a violation by that State of any of the Covenant rights. The issue of a passport to a Uruguayan citizen is clearly a matter within the jurisdiction of the Uruguayan authorities and he is "subject to the jurisdiction" of Uruguay for that purpose. Moreover, a passport is a means of enabling him "to leave any country, including his own", as required by article 12 (2) of the Covenant. Consequently, the Committee found that it followed from the very nature of that right that, in the case of a citizen resident abroad, article 12 (2) imposed obligations both on the State of residence and on the State of nationality and that, therefore, article 2 (1) of the Covenant could not be interpreted as limiting the obligations of Uruguay under article 12 (2) to citizens within its own territory.

6.2 The Committee found, on the basis of the information before it, that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that, in the circumstances of this case, there were effective domestic remedies available to the alleged victim which he had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

6.3 On 25 March 1982, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) of the Protocol, the State party should be requested to submit to the Committee, within six months of the date of

the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

(c) That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Protocol must primarily relate to the substance of the matter under consideration, and in particular the specific violations of the Covenant alleged to have occurred.

7. On 2 December 1982, the time-limit for the observations requested from the State party under article 4 (2) of the Optional Protocol expired. No further submission has been received from the State party.

8.1 The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol.

8.2 The Committee decides to base its views on the following facts which appear to be uncontested: Samuel Lichtensztejn, a Uruguayan citizen residing in Mexico since 1974, was refused issuance of a new passport by the Uruguayan authorities when his passport expired on 23 October 1978. His application for a new passport at the Uruguayan Consulate in Mexico was rejected without any substantive reasons being given, it being merely stated that by "express order from the Chancellery, the granting of the passport was not authorized". He then requested reconsideration of this decision from the Uruguayan Minister of the Interior. He was subsequently informed by the Uruguayan Consulate in Mexico that he "should rely on the (earlier) refusal". In December 1978, the author was issued an identity and travel document by the Mexican authorities which, however, could not be regarded as a sufficient substitute for a valid Uruguayan passport (see para. 5.5 above).

8.3 As to the alleged violation of article 12 (2) of the Covenant, the Committee observed in its decision of 25 March 1982 (see para. 6.1 above) that a passport is a means of enabling an individual "to leave any country, including his own" as required by that provision: consequently, it follows from the very nature of that right that, in the case of a citizen resident abroad, article 12 (2) imposes obligations on the State of nationality as well as on the State of residence and therefore article 2 (1) of the Covenant cannot be interpreted as limiting the obligations of Uruguay under article 12 (2) to citizens within its own territory. On the other hand, article 12 does not guarantee an unrestricted right to travel from one country to another. In particular, it confers no right for a person to enter a country other than his own. Moreover, the right recognized by article 12 (2) may, in accordance with article 12 (3), be subject to such restrictions as are "provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the Covenant". There are, therefore, circumstances in which a State, if its law so provides, may refuse passport facilities to one of its citizens. However, in the present case, the State party has not put forward any such justification for refusing to issue a passport to Samuel Lichtensztejn. The facilities afforded by Mexico do not in the opinion of the Committee relieve Uruguay of its obligations in this regard.

8.4 As to the allegations made by the author with regard to a breach of article 19 of the Covenant, which were refuted by the State party, the Committee observes that these allegations are couched in such general terms that it makes no findings in regard to them.

9. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts found by it disclose a violation of article 12 of the Covenant, because Samuel Lichtensztejn was refused the issuance of a passport without any justification, thus preventing him from fully enjoying the rights under article 12 of the Covenant.

10. Accordingly, the Committee is of the view that the State party is under an obligation to provide Samuel Lichtensztejn with effective remedies pursuant to article 2 (3) of the Covenant.

ANNEX XV

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

concerning

Communication No. 80/1980

Submitted by: Sergio Vasilskis, on behalf of his sister, Elena Beatriz Vasilskis

Alleged victim: Elena Beatriz Vasilskis

State party concerned: Uruguay

Date of communication: 3 November 1980 (date of initial letter)

Date of decision on admissibility: 25 March 1982

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

Meeting on 31 March 1983,

Having concluded its consideration of communication No. 80/1980, initially submitted by Sergio Vasilskis under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5, PARAGRAPH 4 OF THE OPTIONAL PROTOCOL

1. The author of the communication (initial letter dated 3 November 1980 and further submissions dated 25 February and 28 November 1981 and 21 January 1983) is a Uruguayan national, residing at present in France. He submitted the communication on behalf of his sister, Elena Beatriz Vasilskis, a 29-year-old Uruguayan student at present imprisoned in Uruguay.

2.1 The author states that Elena Beatriz Vasilskis was arrested on 4 June 1972, on the charge of being a member of a clandestine group which was engaging in armed struggle as a form of political action (the Tupamaros National Liberation Movement). At this time she was allegedly tortured and forced to sign a confession which led to her conviction by a military tribunal of the first instance. The author claims that, in so far as the confession was illegally obtained and she is still suffering imprisonment, this violation of her rights has continued after 23 March 1976, the date of the entry into force of the Optional Protocol for Uruguay.

2.2 Elena Beatriz Vasilskis was allegedly held incommunicado for three months, whereas Uruguayan law only permits detention for 24 hours prior to being brought

before a judge. Her case was not submitted to the military courts until September 1972, whereas the Constitution and the Code of Military Criminal Procedure prescribe a maximum intervening period of 48 hours. In the first months after her arrest she had no legal assistance.

2.3 The author bases his statements on the testimony of ex-prisoners who were in the same prison as his sister, who are now in Europe as refugees, and who allegedly witnessed the torture and maltreatment in prison at first hand and are prepared to testify to it, if necessary, before the Human Rights Committee. Furthermore, the author states that throughout the three months when she was held incommunicado, their father went without fail once a week to bring clean clothing and collect her laundry; this was done at a centralized military office, since his sister's exact whereabouts were not known. During that time their father was given parcels of clothing stained with blood, excrement and hanks of hair.

2.4 Judgement was pronounced by the court of first instance on 14 December 1977. She was sentenced to 28 years of rigorous imprisonment and 9 to 12 years of precautionary detention, to be added to her sentence and served in the same prison, for offences against the Constitution, robbery, kidnapping, complicity in murder and criminal conspiracy. The trial, on appeal, which took place in May 1980 allegedly violated Uruguayan law by raising the sentence from the 18 years demanded by the prosecutor to 30 years and 5 to 10 additional years of precautionary detention (medidas eliminativas de seguridad).

2.5 At neither trial, the author claims, did his sister enjoy an adequate defence. Her first attorney, Dr. Carlos Martínez Moreno, allegedly had to flee the country to avoid his own arrest; her second attorney, Dr. Adela Reta, was a law professor who, in view of the political climate, was allegedly forced to abandon all defence work in political matters. Subsequently, the Military Court appointed Colonel Otto Gilomen as defence counsel, although he was not a lawyer, owing to the fact that lawyers for the defence can hardly be found in political cases in Uruguay. The colonel remained on the case until the final judgement. The trial took place in secrecy and not even the closest relatives of the accused were present.

2.6 With respect to the conditions of her imprisonment, the author states that his sister is interned at the EMR No. 2 (Penal Punta de Rieles), which is used exclusively for the detention of women political prisoners and is not administered by special personnel instructed in the treatment of women prisoners, but by military personnel on short assignment. She occupies a cell with 14 other women prisoners. If she fails to perform her tasks she is allegedly punished by solitary confinement for up to three months and by prohibition of visits, denial of cigarettes, etc. Visits may occur every 15 days and last only half an hour. The only persons authorized to visit her are close relatives, but no unrelated friends are allowed. The author claims that the worst part of his sister's imprisonment is the arbitrariness of the guards and the severity of the punishment for, inter alia, reporting to her relatives on prison conditions or speaking with other inmates at certain times. The inmates allegedly live in a state of constant fear of being again submitted to military interrogation in connection with their prior convictions or with alleged political activities in the prison. The author alleges that the penitentiary system is not aimed at reformation and social rehabilitation of prisoners but at the destruction of their will to resist. They are given a number and are never called by their name. Elena Beatriz Vasilskis is No. 433 of Sector B. Psychological pressures on the inmates are allegedly designed to lead them to denounce other inmates.

2.7 With respect to the state of health of his sister, the author states that she was in excellent physical health at the time of her arrest. He claims that as a direct consequence of torture and eight years' imprisonment (at the time of writing on 7 November 1980) she had diminished vision in both eyes and has lost 40 per cent of the hearing in her left ear. He states that she also suffers from Raynaud's disease, which may have been brought about by prolonged detention in a cold cell and by emotional pressure. Medicines sent to her for the relief of her condition were allegedly never delivered. The loss of hearing was established by a doctor at the Military Hospital between October and November 1979. Raynaud's disease was diagnosed by the cardio-vascular specialist at the military hospital in October 1979. Moreover, the food provided and the conditions of imprisonment are such that his sister has become extremely thin, has retracted gums and many cavities in her teeth. This is allegedly due to an unbalanced diet, deficient in protein and vitamins, and to the almost complete lack of exercise throughout the day, the intense cold (prisoners are forced to take cold baths in the dead of winter) and the total absence of natural light in the cells.

2.8 The author states that the same matter has not been submitted to any other international body.

2.9 The author alleges that the following articles of the Covenant have been violated: articles 2, 7, 10 and 14.

3. By its decision of 19 March 1981, the Working Group of the Human Rights Committee decided that the author was justified in acting on behalf of the alleged victim and transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

4. In its submission of 6 October 1981, the State party objected to the admissibility of the communication on the following grounds:

> "The situation described in the communication does not constitute a violation occurring before the date on which the Covenant and the Optional Protocol entered into force and continuing after that date or having effects which in themselves constitute a violation. Miss Vasilskis was convicted of serious offences under Uruguayan criminal law. She is not a political prisoner, as is incorrectly stated in the communication, nor was she in any way induced to confess her guilt. The living conditions in Military Detention Establishment (EMR) No. 2 are those normally prevailing for all female prisoners, that is to say, she is not subject to the slightest discriminatory treatment and it is completely untrue to state that she receives unsufficient food or is subject to ill-treatment. With regard to her state of health, she suffers from Raynaud's disease and is receiving the necessary medical treatment; her present condition can be described as compensated. The Government of Uruguay therefore rejects the assertions in the communication, which refer to non-existent violations of human rights."

5.1 On 28 November 1981, the author forwarded his comments in reply to the State party's submission of 6 October 1981. He reiterates the allegations made in his previous communications with respect to violations of articles 7 and 10 of the Covenant emphasizing that his sister has been imprisoned for nine and a half years, alleging that she is still subjected to cruel and degrading treatment such as endangers her life. He states further that during an inspection of her cell in

October 1981, all reading material was taken away from her as well as all materials for manual labour which she had hitherto had. Since September 1981, family photographs sent to her by her parents allegedly have not been delivered to her. He rejects the State party's contention that his sister's situation does not constitute a violation of her rights subsequent to the entry into force of the Covenant and the Optional Protocol.

5.2 With respect to his allegation of discrimination, he indicates that he means discrimination with regard to politicial prisoners vis-à-vis common criminals, commenting that the former are subjected to worse treatment than the latter, and alleging in this connection violations of articles 2 and 26 of the Covenant.

5.3 With respect to his sister's state of health, the author deplores that the State party has not submitted any medical report.

6.1 With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Human Rights Committee noted that the author's assertion that the same matter was not being examined under another procedure of investigation or settlement had not been contested by the State party.

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

6.3 On 25 March 1982, the Committee decided:

(a) That the communication was admissible in so far as it related to events said to have occurred on or after 23 March 1976 (the date of the entry into force of the Covenant and the Optional Protocol for Uruguay);

(b) That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party should be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter; that the State party be requested in this connection to enclose: (i) copies of any court orders or decisions relevant to this case, including the decision of the Supreme Military Tribunal, referred to in the communication; and (ii) further information concerning the state of health of Elena Beatriz Vasilskis, including copies of the existing medical reports referred to in the communication.

7.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 27 October 1982, the State party rejected the author's allegations that his sister was subjected to torture and ill-treatment and that her conviction was based on a forced confession, asserting that her confession was obtained without coercion and that her conviction rested on other evidence duly confirmed by means of proper procedures which according to Uruguayan law do not entail public trial by jury. With respect to the delay in commencing her trial, the State party referred to the extraordinary load placed on the Uruguayan judicial system by the numerous proceedings during the period of high seditious activity. Defence lawyers were not persecuted and those who left the country frequently did so because of their links with subversive groups. The increase of Miss Vasilskis' sentences was attributable to the emergence of fresh evidence which made the type of offence more serious.

7.2 The State party also rejects the author's description of Miss Vasilskis as a "political prisoner", emphasizing that she was involved in crimes such as murder, kidnapping and robbery.

7.3 With regard to her state of health, the State party indicates that she is submitted to periodical medical and dental examinations and that she receives special medical care where necessary, including treatment for Raynaud's disease.

7.4 Prison conditions are responsive to sociological and psychological studies intended to facilitate the rehabilitation of the prisoners, who are not subjected to a climate of arbitrariness or to forced labour.

8.1 In a further letter dated 21 January 1983, the author refers to the State party's submission under article 4, paragraph 2, and claims that it does not adequately answer the specific complaints of violations raised in his communication, which the State party simply rejects without giving any explanation. He reiterates that his sister was tortured, forced to confess, kept incommunicado, that her trial was unduly delayed, that defence attorneys have been so intimated by the Uruguayan authorities that they are no longer willing to defend persons like Miss Vasilskis.

8.2 With respect to her state of health, the author indicated that the State party has failed to idenfity the medication given to Miss Vasilskis and complains that medication prescribed for her by French doctors and forwarded to her were not allowed by prison authorities. In substantiation of his allegations that prison conditions are such as to cause a worsening of her state of health, the author quotes a long statement by Renata Gil, a former cell-mate of Miss Vasilskis, according to which the prisoners are deprived of natural light and fresh air except during one hour per day, and all windows have been covered with plastic sheets.

8.3 With respect to the treatment of prisoners at Punta de Rieles, the author refers to the sanctions imposed on some of them following the visit there in January 1982 of Mr. Rivas Posada, Special Representative of the Secretary-General of the United Nations. According to Mrs. Zdenka Starke, the mother of one of the prisoners there, many of the prisoners were beaten up with clubs, items of their personal property were confiscated, and their food was thrown on the floor of the cells. Such punishment was inflicted because the prisoners had made declarations to Mr. Rivas Posada.

9.1 The Human Rights Committee, having examined the present communication in the light of all the information made available to it by the parties as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts, which have not been contradicted by the State party.

9.2 Events prior to the entry into force of the Covenant: Elena Beatriz Vasilskis was arrested on 4 June 1972 on the charge of being a member of the Tupamaros National Liberation Movement. She was held incommunicado for three months and her case was not submitted to the military courts until September 1972.

9.3 Events subsequent to the entry into force of the Covenant: Judgement was pronounced by the court of first instance on 14 December 1977. She was sentenced to 28 years of rigorous imprisonment and 9 to 12 years of precautionary detention. The trial on appeal took place in May 1980 and the sentence was raised to 30 years

and 5 to 10 additional years of precautionary detention (medidas eliminatives de seguridad). The Military Court appointed Colonel Otto Gilomen as defence counsel, although he was not a lawyer. The trial took place in secrecy and not even the closest relatives of the accused were present.

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

10.2 In operative paragraph 2 of its decision of 25 March 1982, the Committee requested the State party to enclose: (a) copies of any court orders or decisions relevant to the case, and (b) further information concerning the state of health of Elena Beatriz Vasilskis, including copies of the existing medical reports. The Committee notes with regret that it has not received any of these documents.

10.3 With respect to the state of health of the alleged victim, the Committee finds that the author's precise allegations, which include allegations that her treatment in prison has contributed to her ill-health, called for more detailed submissions from the State party. With regard to general prison conditions, the State party has made no attempt to give a detailed description of what it believes the real situation to be. Similarly, with respect to general prison conditions and the serious allegations of ill-treatment made by the author, the State party has adduced no evidence that these allegations have been adequately investigated. A refutation of these allegations in general terms, as contained in the State party's submissions, is not sufficient.

10.4 With regard to the burden of proof, the Committee has already established in its views in other cases (e.g., R.7/30) that said burden cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is explicitly stated in article 4, paragraph 2, of the Optional Protocol that the State party concerned has the duty to contribute to clarification of the matter. In the circumstances, the appropriate evidence for the State party to furnish to the Committee would have been the medical reports on the state of health of Elena Beatriz Vasilskis specifically requested by the Committee in its decision of 25 March 1982. Since the State party has deliberately refrained from providing such expert information, in spite of the Committee's request, the Committee cannot but draw conclusions from such failure.

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

articles 7 and 10, paragraph 1, because Elena Beatriz Vasilskis has not been treated in prison with humanity and with respect for the inherent dignity of the human person;

article 14, paragraph 1, because there was no public hearing of her case;

article 14, paragraph 3 (b) and (d), because she did not have adequate legal assistance for the preparation of her defence;

article 14, paragraph 3 (c), because she was not tried without undue delay.

12. The Committee, accordingly, is of the view that the State party is under an obligation to take immediate steps (a) to ensure strict observance of the provisions of the Covenant and to provide effective remedies to the victim, and, in particular, to extend to Elena Beatriz Vasilskis treatment as laid down for detained persons in article 10 of the Covenant; (b) to ensure that she receives all necessary medical care; (c) to transmit a copy of these views to her; (d) to ensure that similar violations do not occur in the future.

ANNEX XVI

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

concerning

Communication No. 88/1981

Submitted by: Daniel Larrosa on behalf of his brother Gustavo Raúl Larrosa Bequio

Alleged victim: Gustavo Raúl Larrosa Bequio

State party concerned: Uruguay

Date of communication: 14 March 1981

Date of decision on admissibility: 2 April 1982

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

Meeting on 29 March 1983,

Having concluded its consideration of communication No. 88/1981 submitted to the Committee by Daniel Larrosa under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of the communication (initial letter dated 14 March 1981 and further submissions dated 25 March, 21 July, 29 August and 15 December 1981 and 16 November 1982) is a Uruguayan national, residing at present in France. He submitted the communication on behalf of his brother, Gustavo Raúl Larrosa Bequio, a 38-year-old Uruguayan national at present imprisoned in Uruguay.

2.1 The author states that his brother, who had been an active member of the political organization Frente Amplio, was arrested in Uruguay on 30 May 1972 because he was suspected of being a member of the Movimiento de Liberación Nacional (Tupamaros). The author further alleges that his brother was kept incommunicado for a long period of time, that he has been held in several military prisons, that he is at present detained at the Penal de Libertad and that he has been subjected to torture and inhuman prison conditions. The author mentions that his brother has lost his hearing in one ear because of the beatings inflicted upon him, that his sight has diminished to an extent that he now needs glasses and that owing to the insufficient food he has lost much weight during his imprisonment. The author also mentioned that his brother is not allowed to do any exercise, to read or to write and that his mental health has suffered accordingly.

2.2 With respect to the judicial proceedings against his brother, the author states that he was charged by the Military Criminal Investigation Court of First Instance (file No. 2216, vol. 4, p. 75) with the offences of conspiracy to upset the Constitution, aiding and abetting the escape of prisoners, manufacturing or being in possession of explosive substances and kidnapping. After the pre-trial proceedings, he was prosecuted by the Military Prosecutor of First Instance, Captain (R) Roberto A. Reinoso (Navy), and convicted of the offences of kidnapping, attempts to upset the Constitution, both as an accessory and in conspiracy with others, and criminal conspiracy (under articles 61 and 281, 62 and 132, 137 and 150 of the Penal Code).

2.3 The First Military Judge of First Instance rejected the 12-year sentence requested by the Military Prosecutor on the grounds that it had been miscalculated and reduced it to a 9-year sentence.

2.4 The sentence was appealed and the case went to the Supreme Court of Military Justice, which upheld the decision of the Court of First Instance on 11 September 1979 but increased the prison term to 10 years and imposed security measures for one to five years. The judgement by the Supreme Military Court can be considered final since no further remedies at law are available to modify it. Moreover, because security measures have been imposed, it is impossible to obtain release from custody or release on parole, since the security measures have to be served, once the main term is completed, and these can last for up to five years.

2.5 With respect to the conditions of his imprisonment, the author alleges that his brother has been removed from prison on several occasions in order to be tortured, that he is often punished by the prison authorities and not allowed to receive visits or parcels. He adds that his brother was punished in mid-October 1980 for unknown reasons and that since then, up to March 1981, he has been allowed to receive only one visit on 21 February 1981. He has also been held in what is called "La Isla", a prison wing of small cells without windows, where the artificial light is left on 24 hours a day and there is a cement bed and a hole in the floor for a WC; the prisoner was kept in solitary confinement there for more than one month; there are cases of people who have spent more than 90 days in "La Isla".

2.6 By letter of 21 July 1981, the author informed the Committee that he had withdrawn his complaint to the Inter-American Commission on Human Rights and enclosed a copy of his withdrawal.

2.7 The author claims that his brother is a victim of violations of articles 2 (1) and (3), 6, 7, 10 and 14 of the International Covenant on Civil and Political Rights.

3. By its decision of 13 October 1981, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. The Working Group also requested the State party to give the Committee information on the state of health of Gustavo Raúl Larrosa Bequio.

4. By a further letter of 15 December 1981, the author requested that his brother be furnished with copies of the material pertaining to the proceedings in the case.

5. The Human Rights Committee took note that no submission had been received from the State party concerning the question of the admissibility of the communication. On the basis of the information before it, the Committee found that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that, in the circumstances of this case, there were effective remedies available to the alleged victim which he had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

6. On 2 April 1982, the Human Rights Committee therefore decided:

(a) That the Communication was admissible in so far as it related to events said to have occurred on or after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay;

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

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

(d) That the State party should be requested to furnish the Committee with information on the present state of health of Gustavo Larrosa and the medical treatment given to him;

(e) That the State party should be requested to transmit copies of the material pertaining to the case of Gustavo Larrosa and to grant him the opportunity to communicate directly with the Committee.

7.1 On 18 June 1982, 17 days after the transmittal to the State party of the decision on admissibility, the State party submitted a note which appears to be a late submission under rule 91, asserting, inter alia, that the communication contains serious errors:

> "First, it is stated that Mr. Larrosa was tried in September 1979, i.e., seven years after his arrest. This is completely untrue. The actual date of the proceedings against Mr. Larrosa was 4 September 1972. The date mentioned by the complainant is the one on which the judgement of second instance was rendered. At that time the sentence was increased from 9 to 10 years as a result of the appearance of fresh evidence of the offences provided for in articles 150 and 132 (6) of the Ordinary Penal Code: criminal conspiracy and action to upset the Constitution. In other words, the increased sentence was not arbitrary but was based on new and duly substantiated facts. ... With regard to the allegations of ill-treatment, the Government of Uruguay rejects the assertions made in this communication."

7.2 By a note of 24 June 1982, the State party supplemented its earlier submission without, however, referring to the Committee's decision on admissibility. It stated, inter alia, that:

> "as a member of the subversive organization Movimiento de Liberación Nacional, (National Liberation Movement) enrolled in Column 15, services sector, this person set up a mechanic's workshop for the purpose of concealing certain of that organization's activities. What is known in subversive jargon as a "berretín" was constructed on the premises, i.e. an underground hiding place for weapons or persons. A photographer from Police Headquarters in Montevideo was abducted and held prisoner there by the subversives."

7.3 By a note of 23 August 1982, the State party referred to its previous submission of 24 June 1982 as a response to the Committee's decision on admissibility.

8.1 In his submission under rule 93 (3), dated 16 November 1982, the author states that his brother was retried on 2 June 1982 without, however, appearing before a judge; that the tribunal was neither competent nor independent and that he had no opportunity to prepare his defence properly, to communicate with counsel of his own choosing, or to present witnesses on his behalf.

8.2 With respect to his brother's state of health, the author deplores that the State party has not complied with the Committee's specific request for information.

8.3 With respect to the current treatment of his brother at Libertad Prison, the author indicates that the State party has not commented on his initial allegation, in particular, that the Uruguayan Government has not explained why Gustavo Larrosa has been subjected to frequent punishment, nor indicated when his visiting rights were suspended and the reason for taking that step.

8.4 The author also deplores that, according to the information available to him, the State party has not complied with the Committee's request that copies of the material pertaining to this case should be transmitted to Gustavo Larrosa and that he should be granted the opportunity to communicate directly with the Committee.

9. The Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol.

10.1 The Committee decides to base its views on the following facts which have either been essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation.

10.2 Events prior to the entry into force of the Covenant:
Gustavo Raúl Larrosa Bequio was arrested on 30 May 1972 as a suspected member of the Movimiento de Liberación Nacional (Tupamaros). Criminal proceedings were instituted against him on 4 September 1972.

10.3 Events subsequent to the entry into force of the Covenant: On 11 September 1979, the Supreme Court of Military Justice upheld the decision of the Court of First Instance, but increased the prison term to 10 years and imposed security measures from one to five years. Gustavo Larrosa has been frequently punished at prison, and from October 1980 to March 1981 he was allowed to receive

only one visit. He has also been held in what is called "La Isla", a prison wing of small cells without windows, where the artificial light is left on 24 hours a day and the prisoner was kept in solitary confinement for over a month.

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

11.2 In operative paragraphs 3, 4 and 5 of its decision on admissibility of 2 April 1982, the State party was requested to enclose copies of any court orders or decisions relating to this case, to furnish information on the present state of health of Gustavo Larrosa, to transmit copies of the Committee's case file to Gustavo Larrosa and to grant him the opportunity to communicate directly with the Committee. The Committee notes with regret that it has not received the information requested nor any confirmation that Gustavo Larrosa has been informed of the proceedings before the Committee and given the possibility of communicating directly with the Committee.

11.3 With respect to the state of health of the alleged victim, the Committee finds that the author's allegations as to his brother's loss of hearing in one ear, loss of weight and impaired vision called for more precise information from the State party. Similarly, with respect to general prison conditions and the allegations of ill-treatment made by the author, the State party has adduced no evidence that these allegations have been adequately investigated. A refutation of these allegations in general terms, as contained in the State party's submissions, is not sufficient.

11.4 With respect to the author's allegations that his brother has been retried, the Committee does not have sufficient information from the author or from the State party to make a finding on this point. The Committee notes, however, that if Gustavo Larrosa was retried on 2 June 1982, this fact should have been mentioned in the State party's subsequent submissions.

11.5 With regard to the burden of proof, the Committee has already established in its views in other cases (e.g., R.7/30) that said burden cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities.

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

> of articles 7 and 10 (1), because Gustavo Raúl Larrosa Bequio has not been treated in prison with humanity and with respect for the inherent dignity of the human person.

13. The Committee, accordingly, is of the view that the State party is under an obligation to take immediate steps (a) to ensure strict observance of the provisions of the Covenant and provide effective remedies to the victim, in particular, to extend to Gustavo Larrosa treatment as laid down for detained persons in article 10 of the Covenant; (b) to ensure that he receives all necessary medical care; (c) to transmit a copy of these views to him; and (d) to take steps to ensure that similar violations do not occur in the future.

ANNEX XVII

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

concerning

Communication No. 106/1981

Submitted by: Mabel Pereira Montero

Alleged victim: The author of the communication

State party concerned: Uruguay

Date of communication: 29 August 1981

Date of decision on admissibility: 25 March 1982

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

Meeting on 31 March 1983,

Having concluded its consideration of communication No. 106/1981 submitted to the Committee by Mabel Pereira Montero under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The author of the communication dated 29 August 1981, is Mabel Pereira Montero, a Uruguayan citizen residing at present in Berlin (West). The author, a student in chemical engineering at the Technical University of Berlin, submitted the communication on her own behalf, alleging that she is a victim of a breach by Uruguay of article 12 (2) of the International Covenant on Civil and Political Rights.

1.2 The author claims that the Uruguayan authorities have refused, without further explanation, to renew her passport.

2.1 She describes the relevant facts as follows.

2.2 In 1972, owing to financial difficulties, she decided to leave Uruguay and to pursue her studies in Chile. In September of the same year, she left Montevideo by boat "through normal channels". After the "coup d'état" in Chile, in September 1973, she sought refuge at the Embassy of Mexico in Chile. Mabel Pereira Montero claims that she did not seek refuge for political reasons,

but that she did so because, at the time, a feeling of insecurity prevailed in that country, particularly among foreigners.

2.3 In November 1973, the Uruguayan Consulate in Mexico issued the author with a new Uruguayan passport (No. 015374), with an expiration date of 22 November 1983, but subject to renewal in November 1978. In January 1974 she left Mexico for the Federal Republic of Germany. She obtained a scholarship and was admitted to the University in Berlin (West).

2.4 As her passport was due to expire on 22 November 1978 unless it was renewed, Mabel Pereira Montero applied in writing for its renewal at the Embassy of Uruguay in Bonn on 3 July 1978. She was told to address herself to the Consulate of Uruguay in Hamburg which she did by a letter dated 26 July 1978.

2.5 In December of that year, the author inquired at the Consulate of Hamburg about the position with regard to her passport renewal. She was told by telephone that the renewal of her passport had been refused. No reason was given by the consular officer. It followed from the author's telephone conversation and from inquiries undertaken on her behalf by her scholarship-sponsoring organization that the decision not to renew her passport was taken by the competent authorities in Montevideo and that she had the possibility to request, either through the Uruguayan Consulate in Hamburg or directly at the Ministry for Foreign Affairs in Montevideo, to be informed of the reasons why the renewal of her passport had been refused.

2.6 Mabel Pereira Montero claims that in February 1979 she addressed herself to the Uruguayan Consulate in Berlin (German Democratic Republic) requesting the renewal of her passport and that this request was also refused, again without any explanation. The author states that, during the year 1979, she also tried, without success, to contact a lawyer in Montevideo who could take up her case with the Uruguayan authorities there.

2.7 Consequently, the author sent a letter dated 27 November 1979 to the Uruguayan Consulate in Hamburg requesting that the Uruguayan authorities reconsider their negative decision, or that she be informed by the Uruguayan authorities about the reasons for this decision. She did not receive any reply to this letter till May 1980. Mabel Pereira Montero then telephoned the Consulate in Hamburg to inquire about her case. A consular officer told her that the Uruguayan authorities had upheld their decision to refuse renewal of her passport. He suggested that she repeat in writing her request of 27 November 1979, indicating in addition that she had no family members in Montevideo who could pursue her case there. The author did so.

2.8 The author states that she also contacted the Uruguayan Embassy and the Uruguayan Consulate in Bonn regarding her case, but that she received there the same reply as in Hamburg.

2.9 At one time it was indicated to her that there was a recourse by way of appeal against the Government decision, but that this had to be done in Uruguay. She replied that she had no relatives in Montevideo who could represent her.

2.10 In December 1980, she was offered by the Uruguayan authorities a safe-conduct to travel to Uruguay in order to resolve her problem there. The author felt that she could not accept this offer, because she did not have the financial means to undertake the journey and because her studies would be unduly interrupted.

2.11 The author claims that, owing to the increasing instability of her situation caused by the refusal of the Uruguayan authorities to renew her passport, she approached the Ambassador of the Federal Republic of Germany in Uruguay, in August 1980, asking for his good offices in her case. The Embassy's efforts were also without success. There were, however, according to the Embassy of the Federal Republic of Germany, certain indications that the refusal to renew the author's passport stemmed, inter alia, from the belief that Mabel Pereira Montero was married to a "Tupamaro" who figured on the list of "wanted persons" in Uruguay. In a letter to the Foreign Ministry in Bonn, dated 9 March 1981, the author rejected this allegation as totally unfounded. She stated that she had never married, that the person in question was a friend from childhood because they both came from the same village, and that she never was active in politics or had had any contacts with the Tupamaros.

2.12 On 18 March 1981, the author was requested orally by the Uruguayan Consul in Hamburg to provide, for the use of the authorities in Montevideo, a written description of her life since she left Uruguay in 1972 and of the reasons why she left the country. She did so.

2.13 On 10 July 1981, the Uruguayan Consulate in Hamburg received by telegram final instructions from the authorities in Montevideo not to renew the author's passport. No reasons were given. The author states that a copy of this telegram is the only written notice she possesses with regard to the refusal of the Uruguayan authorities to renew her passport.

2.14 The author concludes that she has exhausted all domestic remedies available to her in the case.

3. There is no indication in the communication that the same matter has been submitted to another procedure of international investigation or settlement.

4. By its decision of 14 October 1981, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication not later than two months from the date of the transmittal of the decision. This time-limit expired on 26 January 1982. No reply had been received from the State party at that time.

5. Before taking its decision on the admissibility of the communication, the Human Rights Committee examined, ex officio, whether the fact that Mabel Pereira Montero resides abroad affects the competence of the Committee to receive and consider the communication under article 1 of the Optional Protocol, taking into account the provisions of article 2 (1) of the Covenant. In that context, the Committee made the following observations: article 1 of the Optional Protocol applies to individuals subject to the jurisdiction of the State concerned who claim to be victims of a violation by that State of any of the Covenant rights. The issue of a passport to a Uruguayan citizen is clearly a matter within the jurisdiction of the Uruguayan authorities and he is "subject to the jurisdiction" of Uruguay for that purpose. Moreover, a passport is a means of enabling him "to leave any country including his own", as required by article 12 (2) of the Covenant. Consequently, the Committee found that it followed from the very nature of that right that, in the case of a citizen resident abroad, it imposed obligations both on the State of residence and on the State of nationality and that, therefore, article 2 (1) of the Covenant could not be interpreted as

limiting the obligations of Uruguay under article 12 (2) to citizens within its own territory.

6.1 The Committee found, on the basis of the information before it, that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that, in the circumstances of the case, there were effective domestic remedies available to the alleged victim which she failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

6.2 On 25 March 1982, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

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

(c) That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Protocol must primarily relate to the substance of the matter under consideration and, in particular, the specific violations of the Covenant alleged to have occurred.

7.1 In a note, dated 14 July 1982, which appears to be a late submission under rule 91, the State party rejects the competence of the Committee to consider the communication on the grounds that the requirements for submission of a communication to the Committee under article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights are not met. Article 1 of the Optional Protocol recognizes the competence of the Committee to receive and consider communications from individuals "subject to its jurisdiction". The State party argues that "at the time of the submission of her request (to have her passport renewed), Miss Mabel Pereira Montero was not subject to the jurisdiction of the Uruguayan State" and that "... it is consequently inappropriate for the Committee to deal with communications of this kind which are outside its terms of reference and violate international provisions". It is further submitted that "Miss Pereira Montero can return to her country at any time and in any circumstances", even without a valid passport, to clear up her situation personally. In conclusion, the State party asserts that "in Uruguay the right to freedom of residence and movement is protected, subject only to domestic legal provisions, and constitutionally recognized".

7.2 In a further note, dated 13 August 1982, the State party, in response to the request for a submission under article 4 (2), refers to the contents of its earlier note.

8.1 On 7 January 1983, the author of the communication forwarded her comments in reply to the State party's submissions of 14 July and 13 August 1982.

8.2 She rejects the State party's formal contention that in the present case she does not come within the jurisdiction of Uruguay. She claims that her sojourn in a foreign country is subject to her possessing a valid Uruguayan passport and that, consequently, she does come within the jurisdiction of the State of Uruguay in the matter under consideration.

8.3 The author of the communication further points out that it is the normal procedure for Uruguayan citizens residing abroad to have their passport renewed by Uruguayan consulates. She adds that she applied to all appropriate consular posts and that nowhere were any reasons given to her as to why the renewal of her passport was constantly refused.

8.4 Miss Pereira Montero also states that she regards it as abnormal that the Uruguayan authorities suggested that she travel to Uruguay in order to have her passport renewed when consular authorities fully deal with such matters.

9.1 The Human Rights Committee has considered the present communication in the light of all information made available to it, as provided in article 5 (1) of the Optional Protocol.

9.2 The Committee decides to base its views on the following facts which seem to be uncontested: Mabel Pereira Montero, a Uruguayan citizen residing at present in Berlin (West), and holder of a Uruguayan passport issued in 1973 in Mexico with a 10-year's validity upon condition that the passport be renewed after 5 years, was refused such renewal by the Uruguayan authorities, without explanation, several times between 1978 and 1981. In December 1980, she was offered a safe-conduct which would have entitled her to travel to Uruguay. The author declined this offer, because she did not have the financial means to undertake the travel and because her studies would have been unduly interrupted.

9.3 The Committee does not accept the State party's contention that the Committee is not competent to deal with the communication because the author does not fulfil the requirements of article 1 of the Optional Protocol. It refers, in that respect, to the reasons stated in paragraph 5 above.

9.4 As to the alleged violation of article 12 (2) of the Covenant, the Committee has observed (see para. 5 above) that a passport is a means of enabling an individual "to leave any country, including his own" as required by that provision: consequently, it follows from the very nature of that right that, in the case of a citizen resident abroad, article 12 (2) imposes obligations on the State of nationality as well as on the State of residence and, therefore, article 2 (1) of the Covenant cannot be interpreted as limiting the obligations of Uruguay under article 12 (2) to citizens within its own territory. The right recognized by article 12 (2) may, in accordance with article 12 (3), be subject to such restrictions as are "provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the Covenant". There are, therefore, circumstances in which a State, if its law so provides, may refuse passport facilities to one of its citizens. However, in the present case, the State party has not, in its submissions to the Committee, put forward any such justification for refusing to renew the passport of Mabel Pereira Montero.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is therefore of the view that the facts as found by it disclose a violation of article 12 (2) of the Covenant, because Mabel Pereira Montero was refused the renewal of her passport without any justification therefor, thereby preventing her from leaving any country, including her own.

11. Accordingly, the Committee is of the view that the State party is under an obligation to provide Mabel Pereira Montero with effective remedies pursuant to article 2 (3) of the Covenant.

ANNEX XVIII

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

concerning

Communication No. 43/1979

Submitted by: Ivonne Ibarburu de Drescher, on behalf of her husband, Adolfo Drescher Caldas

Alleged victim: Adolfo Drescher Caldas

State party concerned: Uruguay

Date of communication: 11 January 1979

Date of decision on admissibility: 24 October 1979

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

Meeting on 21 July 1983,

Having concluded its consideration of communication No. 43/1979 submitted to the Committee by Ivonne Ibarburu de Drescher under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of the communication (initial letter dated 11 January 1979 and further submissions dated 19 September 1979 and 3 May 1983) is a Uruguayan national, residing at present in Mexico. She submitted the communication on behalf of her husband, Adolfo Drescher Caldas, a 44-year-old Uruguayan national at present imprisoned in Uruguay.

2.1 The author states that her husband, who has been an official of the trade union corresponding to his occupation (the Bank Employees' Association of Uruguay), was arrested in Montevideo, Uruguay, on 3 October 1978 by officials who did not identify themselves or produce any judicial warrant and who apparently belonged to the Navy. She adds that the reasons for his arrest were not stated and are still unknown to his family. The author believes that her husband was arrested because

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* Mr. Walter Surma Tarnopolsky did not participate in the adoption of the views of the Committee under article 5 (4) of the Optional Protocol in this matter.

of his trade-union activities. She alleges that he was held for two months incommunicado and his whereabouts were not revealed to his relatives. In the beginning of December 1978, he was transferred to Libertad prison, where his father was allowed to visit him. In the beginning of January 1979, however, he was removed from that prison and the family was again unable to find out his whereabouts.

2.2 The author claims that there were no local remedies to be exhausted, habeas corpus being inoperative under the régime of prompt security measures.

2.3 By her initial communication of 11 January 1979, the author requests that a medical examination should be permitted by doctors indicated by her husband's family.

2.4 In her initial communication of 11 January 1979, the author claims that her husband is a victim of violations of articles 2 (3) (a) and (b); 3; 9 (1), (2), (3) and (4); 10 (3); 12 (1), (2) and (3); 15 (1); 17; 18 (1); 19 (1) and (2); 22; 25; 26 and possibly of articles 6, 7 and 14 of the International Covenant on Civil and Political Rights.

3. By its decision of 23 April 1979, the Human Rights Committee held that the author of the communication was justified by reason of close family connection in acting on behalf of the alleged victim. By that same decision the Human Rights Committee tranmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned requesting information and observations relevant to the question of admissibility of the communication. The Committee further drew the State party's attention to the concern expressed by the author with regard to the state of health and whereabouts of her husband; and it requested the State party to furnish information to the Committee thereon.

4. In its submission under rule 91 of the provisional rules of procedure dated 13 July 1979, the State party states that Adolfo Drescher Caldas was arrested on 28 September 1978 in conformity with the prompt security measures for his alleged involvement in subversive activities. He was charged on 7 November 1978 before a Military Examining Judge with violations of article 60 (V) of the Military Criminal Code and articles 340 (theft), 237 (forgery or alteration of an official document by a private individual) and 54 (accumulation of offences) of the Ordinary Criminal Code. He had a defending counsel appointed by the court, a colonel of the army. The State party argues that domestic remedies have not been exhausted as no complaint or petition whatsoever was submitted to any Uruguayan authorities. The State party further

(a) rejects the contention that Adolfo Drescher Caldas was illegally held incommunicado, since the state of incommunicado was terminated by the Military Examining Judge in the warrant for commitment;

(b) denies that his whereabouts were not revealed to his relatives;

(c) asserts that at the time of his arrest he was informed that he was being arrested in conformity with the prompt security measures.

The State party informs the Committee that Adolfo Drescher Caldas is being held in Military Detention Establishment No. 1 which has its own permanent and emergency medical service and that medical inspections are carried out daily.

5. In a further letter of 19 September 1979, the author commented on the State party's submission under rule 91 of the Committee's provisional rules of procedure.

5.1 With respect to the State party's argument that domestic remedies had not been exhausted in the case of Adolfo Drescher Caldas, the author argues that the State party completely ignored the Committee's request for information as to any specific remedy that might have been available in this particular case.

5.2 The author further contests the State party's submission as to the substance of her allegations. She maintains her allegation that her husband was held incommunicado at the beginning of his detention and that his relatives did not know his whereabouts. She argues that the State party admitted this fact when it declared that the state of incommunicado was lifted by the Military Examining Judge in the warrant of commitment after it had stated that he was charged on 7 November 1978 before the Military Examining Judge. The author concludes that the State party admits that Adolfo Drescher Caldas was held incommunicado from his arrest until 7 November 1978, i.e., for about six weeks. The author further contests the State party's affirmation that her husband was informed of the reason for his arrest at the time of his arrest, because he was told that he had been arrested under the prompt security measures. The author argues that this explanation amounted exactly to the same thing as giving no reason at all, for the power of arrest was said to be entirely discretionary under this "régime". The author also claims that her husband had no counsel of his own choosing because he only could choose between two court-appointed defending counsels. She alleges that he was "tried by a Colonel and defended by a Colonel and charged with theft and forgery in a clumsy attempt to disguise political persecution".

6. The Human Rights Committee, after having considered the State party's as well as the author's submissions with regard to the question of exhaustion of domestic remedies and on the basis of the information before it, found that it was not precluded by article 5 (2) (b) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that, in the circumstances of this case, the communication was inadmissible under article 5 (2) (a) of the Optional Protocol.

7. On 24 October 1979, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

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

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

8. In its submission under article 4 (2) of the Optional Protocol dated 16 June 1980, the State party stated that the case of Mr. Drescher Caldas had been before the Inter-American Commission on Human Rights (case No. 3439) since 25 October 1978, i.e., before Mrs. de Drescher made her submission to the Committee.

9. By a letter of 18 August 1981, the secretariat of the Human Rights Committee was informed by the secretariat of the Inter-American Commission on Human Rights that case No. 3439 was submitted by a letter of 25 October 1978 by a close family member of Adolfo Drescher Caldas, but that the complaint had been withdrawn from IACHR by a letter sent to the Commission in September 1979.

10. In her submission of 3 May 1983, under rule 93 (3) of the provisional rules of procedure, the author confirms that she withdrew the case of her husband from IACHR. She alleges that he continues to be imprisoned under the same conditions as previously denounced.

11. The Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol.

12. The Committee decides to base its views on the following facts which have either been essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation.

12.1 Adolfo Drescher Caldas, a former trade-union official, was arrested in Montevideo, Uruguay, on 28 September 1978, by officials who did not identify themselves or produce any judicial warrant and who apparently belonged to the Navy. He was informed that he was arrested under the prompt security measures, but not, it appears, more specifically of the reasons for his arrest. During the first six weeks of his detention he was kept incommunicado and his relatives did not know his whereabouts. Recourse to habeas corpus was not available to him. On 7 November 1978, he was charged before the Military Examining Judge with violations of article 60 (V) of the Military Criminal Code and article 340 (theft), 237 (forgery or alteration of an official document by a private individual) and 54 (accumulation of offences) of the Ordinary Criminal Code. He had a defending counsel appointed by the court, Colonel Alfredo Ramírez, and in July 1979 his case was before the Military Court of the fourth sitting. In December 1978, he was brought to Libertad prison, the Military Detention Establishment No. 1, where he continues to be detained.

13.1 In formulating its views, the Human Rights Committee also takes into account the following considerations.

13.2 With regard to the author's contention that her husband was not duly informed of the reasons for his arrest, the Committee is of the opinion that article 9 (2) of the Covenant requires that anyone who is arrested shall be informed sufficiently of the reasons for his arrest to enable him to take immediate steps to secure his release if he believes that the reasons given are invalid or unfounded. It is the view of the Committee that it was not sufficient simply to inform Adolfo Drescher Caldas that he was being arrested under the prompt security measures without any indication of the substance of the complaint against him.

13.3 The Committee observes that the holding of a detaineee incommunicado for six weeks after his arrest is not only incompatible with the standard of humane

treatment required by article 10 (1) of the Covenant, but it also deprives him, at a critical stage, of the possibility of communicating with counsel of his own choosing as required by article 14 (3) (b) and, therefore, of one of the most important facilities for the preparation of his defence.

13.4 In operative paragraph 3 of its decision of 24 October 1979, the Committee requested the State party to submit copies of any court orders or decisions of relevance to the matter under consideration. The Committee notes with regret that it has not been furnished with any of the relevant documents or with any information about the outcome of the criminal proceedings commenced against Adolfo Drescher Caldas in 1978. It must be concluded that he has not been tried without undue delay as required by article 14 (3) (c) of the Covenant.

14. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee disclose violations of the International Covenant on Civil and Political Rights, particularly:

of article 9 (2), because, at the time of his arrest, Adolfo Drescher Caldas was not sufficiently informed of the reasons for his arrest;

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

of article 10 (1), becuase he was kept incommunicado for six weeks after his arrest;

of article 14 (3) (b), because he was unable, particularly while kept incommunicado, to communicate with counsel of his own choosing;

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

15. The Committee, accordingly, is of the view that the State party is under an obligation to take immediate steps (a) to ensure strict observance of the provisions of the Covenant and provide effective remedies to the victim; (b) to transmit a copy of these views to Adolfo Drescher Caldas; (c) to take steps to ensure that similar violations do not occur in the future.

ANNEX XIX

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

concerning

Communication No. 90/1981

Submitted by: Luyeye Magana ex-Philibert (represented by Michael P. D. Ellman)

Alleged victim: The author of the communication

State party concerned: Zaire

Date of communication: 30 March 1981 (date of first letter)

Date of decision on admissibility: 21 October 1982

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

Meeting on 21 July 1983,

Having concluded its consideration of communication No. 90/1981 submitted to the Committee by Luyeye Magana ex-Philibert, through his legal representative, Michael P. D. Ellman, under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The communication, initial letter dated 30 March 1981 and further letter dated 15 February 1982, is submitted by Luyeye Magana ex-Philibert through his legal representative, Michael P. D. Ellman. The alleged victim, a civil servant born on 22 February 1929, is a citizen of Zaire domiciled in that country. It is claimed that Mr. Luyeye is a victim of breaches by Zaire of articles 2 (3), 9, 10 and 17 of the International Covenant on Civil and Political Rights.

2.1 It is alleged that, on 3 June 1967, Mr. Luyeye was arrested by the Sûreté Nationale, deported to the island of Mbula-Mbemba in Lower Zaire and then transferred to the prison Osio in Upper Zaire where he was detained until 30 August 1968 without ever being charged or informed of the reason for his

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* Mr. Walter Suma Tarnopolsky did not participate in the adoption of the views of the Committee under article 5 (4) of the Optional Protocol in this matter.

detention. He was rearrested on 24 March 1977 when, at 4.30 a.m., three agents of the Centre Nationale de Documentation, furnished with a search warrant, came to his house to carry out a search for no apparent reason. They seized documents written by the alleged victim, cinematographic films and magnetic tapes. Following the search, though without any warrant of arrest or summons, they requested him to accompany them to the Centre Nationale de Documentation to provide further information. Once there, he was introduced to Citizen Kisangani, one of the directors who, without any further proceedings, simply ordered him to be kept in detention. While in detention, he was kept in a cell, locked in from morning to night, sleeping on the ground; he was deprived of all contact with his family and provided with only 200 g of rice and/or 100 g of chikwangue and a ladle of beans from midday to midday; he was refused all medical attention. On 6 April 1977, without his knowledge or that of his family, the Centre National de Documentation sent three agents to the village of his birth, Kintambu in Lower Zaire, to search his country house where they removed his Scout's Certificate. His detention continued until 9 January 1978 when he was released following an amnesty pronounced by the President of the Republic, without ever having been interrogated or given any document relating to the detention, though a decree of 22 April 1961 (l'arrêté ministériel No. 05/22) provided that the agents of the Sûreté Nationale can detain people for inquiry for five days only, after which they must be served with an internment order. It is further alleged that during his detention, five members of his immediate family died and were buried without his having been able to be present at the funeral. His children were expelled from school because of the lack of finance while he was detained.

2.2 It is maintained that by the aforesaid, the alleged victim's rights to liberty and security of person, to freedom from arbitrary arrest or detention, to be informed at the time of arrest of the reasons for his arrest and of any charges against him and to be brought promptly before a judge or other officer authorized by law to exercise judicial power and to compensation for unlawful arrest or detention (art. 9 of the Covenant) have been infringed; that his rights not to be subjected to arbitrary or unlawful interference with his privacy, home or correspondence nor to unlawful attacks on his honour and reputation but to have the right of protection of the law against such interference or attacks (art. 17 of the Covenant) have been infringed and that he was not treated with humanity while in detention (art. 10).

2.3 As to the exhaustion of domestic remedies, it is claimed that Mr. Luyeye has brought an appeal against his detention by writing to the Administrateur général who interviewed him on 20 September 1979, i.e., after his release. His appeal during detention had been without result. It is alleged that there is no other provision of any appeal in the law of Zaire, though Mr. Luyeye did in fact write to the Head of State by letter of 9 January 1978 (to which he did not receive a reply), as the only extrajudicial remedy open to him. He has therefore attempted to bring his complaint before the domestic tribunals of Zaire without success and claims that, accordingly, the Republic of Zaire is in breach of its obligations under article 2 (3) of the Covenant, namely to ensure that if any person's rights or freedom as therein recognized are violated, he shall have an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity.

2.4 It is further stated that the same matter has not been submitted for examination under another procedure of international investigation or settlement.

3. By its decision of 7 April 1982, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. The State party was in particular requested, if it contended that domestic remedies had not been exhausted, to give details of the effective remedies available to the alleged victim in the particular circumstances of his case and, if it objected that the same matter is being examined under another procedure of international investigation or settlement, to give details including information on the stage reached in such proceedings. The State party was also requested to provide the Committee with copies of any court orders or decisions relevant to the case. The State party was informed that its reply should be furnished to the Committee not later than 18 July 1982. No reply was received from the State party.

4. The Human Rights Committee took note that no submission had been received from the State party concerning the question of the admissibility of the communication. On the basis of the information before it, the Committee found that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that, in the circumstances of this case, there were effective remedies available to the alleged victim which he had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

5. On 21 October 1982, the Human Rights Committee therefore decided:

(a) That the communication was admissible in so far as it related to events said to have occurred on or after 1 February 1977, the date on which the Covenant and the Optional Protocol entered into force for Zaire;

(b) That, in accordance with article 4 (2) of the Optional Protocol, the State party should be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and to enclose copies of any court orders or decisions relevant to the case.

6. On 22 May 1983, the time-limit for the observations requested under article 4 (2) of the Optional Protocol expired. No submission has been received from the State party. The Committee observes that, in accordance with article 4 (2), the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities and then to submit its explanations and statements to the Committee. In operative paragraph 2 of the Committee's decision on admissibility of 21 October 1982, the State party was also requested to furnish to the Committee copies of any court orders or decisions relevant to the case. The Committee notes with regret that it has not received the information requested. In the absence of any submission from the State party, the Committee cannot but draw its conclusions on the basis of information before it from other sources.

7.1 The Human Rights Committee, having examined the present communication in the light of all the information made available to it as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts, which, in the absence of any observations by the State party, are uncontradicted by it.

7.2 Luyeye Magana ex-Philibert was arrested on 24 March 1977 when three agents of the Centre Nationale de Documentation furnished with a search warrant, came to his house to carry out a search for no apparent reason. They seized documents written by the alleged victim, cinematographic films and magnetic tapes. Following the search, though without any warrant of arrest or summons, they requested him to accompany them to the Centre Nationale de Documentation to provide further information. Once there, he was introduced to Citizen Kisangani, one of the directors who, without any further proceedings, simply ordered him to be kept in detention. While in detention, he was kept in a cell, locked in from morning to night, sleeping on the ground; he was deprived of all contact with his family and he was refused all medical attention. On 6 April 1977, without his knowledge or that of his family, the Centre Nationale de Documentation sent three agents to the village of his birth, Kintambu in Lower Zaire, to search his country house where they removed his Scout's Certificate. His detention continued until 9 January 1978 when he was released following an amnesty pronounced by the President of the Republic, without ever having been interrogated or given any document relating to the detention, though a decree of 22 April 1961 (l'arrêté ministériel No. 05/22) provided that the agents of the Sûreté Nationale can detain people for inquiry for five days only, after which they must be served with an internment order. During his detention he appealed without result to the Administrateur général and, by letter, to the Head of State. No other remedy was available to him. It is further alleged that during his detention, five members of his immediate family died and were buried without his having been able to be present at the funeral. His children were expelled from school because of the lack of finance while he was detained.

8. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee, in so far as they continued or occurred after 1 February 1977 (the date on which the Covenant and the Optional Protocol entered into force for Zaire), disclose violations of the International Covenant on Civil and Political Rights, particularly:

of article 9 (1), because Luyeye Magana ex-Philibert has been subjected to arbitrary arrest and detention;

of article 9 (2), because he was not informed, at the time of his arrest, of the reasons for his arrest and of any charges against him;

of article 9 (3) and (4), because he was not brought promptly before a judge and no court decided within a reasonable time on the lawfulness of his detention;

of article 10 (1), because, while in detention, he was not treated with humanity;

of article 2 (3), because there was no effective remedy under the domestic law of Zaire against the violations of the Covenant complained of.

9. The Committee, accordingly, is of the opinion that the State party is under an obligation (a) to investigate the complaints made and to provide Luyeye Magana ex-Philibert with effective remedies for the violations he has suffered, including compensation and the return of his property to him, and (b) to take steps to ensure that similar violations do not occur in the future.

ANNEX XX

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

concerning

Communication No. 92/1981

Submitted by: Laura Almirati García on behalf of her father, Juan Almirati Nieto

Alleged victim: Juan Almirati Nieto

State party concerned: Uruguay

Date of communication: 5 June 1981

Date of decision on admissibility: 25 March 1982

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

Meeting on 25 July 1983,

Having concluded its consideration of communication No. 92/1981 submitted to the Committee by Laura Almirati García under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The author of the communication (initial letter dated 5 June 1981 and further submissions dated 22 October 1981 and 11 May 1982) is a Uruguayan national, residing at present in Belgium. She submitted the communication on behalf of her father, Juan Almirati Nieto.

1.2 The author states that her father, a Uruguayan Civil Engineer (born on 23 June 1932), was arrested in 1970 because he was alleged to be a member of the Movimiento de Liberación Nacional. Criminal proceedings were then initiated against him for the following offences: association to break the law, conspiracy to overthrow the Constitution, use of false identity papers, robbery and other lesser offences such as resistance to authority. In May 1971, he escaped from prison but on 14 April 1972 he was rearrested, kept incommunicado and allegedly

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* Mr. Walter Surma Tarnopolsky did not participate in the adoption of the views of the Committee under article 5 (4) of the Optional Protocol in this matter.

subjected to severe torture. He was then brought before the same judge who had been conducting his trial; after examining the situation this judge added to the list of offences already mentioned that of collaborating in a mass escape of political prisoners (women) which had occurred a few months before. The author adds that her father was held for short periods of time at several detention places and then transferred to the Penal de Libertad, where he is detained at present.

1.3 The author mentions that, on the night of 14 April 1972, the same day that her father was rearrested, the Executive authorities declared the "internal state of war" and, as a consequence thereof, martial law became applicable to all political offences. The author describes the general situation as follows:

> "In July 1972, the Parliament, subjected to strong pressures and faced with open threats of dissolution by force, agreed to approve law No. 14,068 concerning 'Security of the State and the Internal Order' which increased the authority of the military judges by converting the political offences referred to in the Ordinary Penal Code into military offences and incorporating them in th Military Penal Code, regardless of whether those committing such offences were military personnel or civilians, thereby violating the Constitution which did not allow civilians to be judged by military judges. ... On 29 December 1975, the Council of State (appointed by the Executive and claiming to take the place of the Parliament elected by the people, which was dissolved at the time of the coup d'état of June 1973) approved law No. 14,493. That law broadened the sphere of action of the military judges, granting them retroactive competence to deal with political offences committed even before 14 April 1972 and entrusting to them the responsibility for dealing with all cases in progress before the ordinary courts in which a definite and final decision had not yet been reached. ...
>
> "When martial law was applied throughout the country, all kinds of defects and irregularities became evident in the procedures of the military courts, which made a mockery of the right to a fair and equitable trial and the right of defence in criminal proceedings."

The author claims that all these developments adversely affected her father's situation.

1.4 She states that her father continued to be under the authority of the civil judges for a long time, because he had been arrested one day before the military judges were empowered to try those suspected of political offences. She further submits that her father was sentenced by the civil judiciary, after an irregular trial marked by the restriction of procedural rights and guarantees, to a 10-year term of imprisonment. She informs the Committee that although her father finished serving his sentence in March 1981 (in a further submission of 11 May 1982 she mentions 14 April 1982 as the date for this)** he is still in prison. The author then relates the events leading to her father's continuing imprisonment: "Suddenly, in December 1980, new criminal proceedings were started against Almirati, this time by the military judiciary and based on the same facts as those

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** The discrepancy in the dates appears to be due to the fact that the author either counted from her father's first arrest in 1970 or from his rearrest on 14 April 1972.

for which he had already been tried and sentenced. There were no new elements or new offences other than those which had already been investigated; some of the new accusations had already been made in the past by the police and the security services of the armed forces and had been rejected by the civil judiciary. Thus the sacred principles of res judicata and non bis in idem have been violated, for my father is being tried a second time for the same acts, and all this started 10 years later, when the prisoner had three months to go to finish serving his entire sentence. The military prosecutor is now asking that Juan Almirati should be sentenced to 22 years' imprisonment. I must inform the Committee that, given the situation prevailing in Uruguay, I have not been able to obtain more information, nor, of course, a copy of the military prosecutor's indictment, and I would therefore suggest that the Committee should ask the Uruguayan Government to provide it and to inform it exactly what Almirati's legal situation is, what stage this second trial has reached and by virtue of what legal rules it is being conducted."

1.5 The author maintains that the military judiciary lacks certain essential attributes, that it is not independent since it depends on the Executive, that it is not impartial since the judges are military officials who are acting temporarily in this capacity, and that it is not competent since the judges and prosecutors are not required to be lawyers or practitioners of the law but merely military officers of a certain rank, according to the importance of the court. She further maintains that the domestic remedies which are provided for the Uruguayan legislation cannot protect her father, because none of them is allegedly applicable in practice if the human rights violation has been committed by military personnel or by members of the police in connection with State security as interpreted by the military forces.

1.6 The author alleges that her father has been arrested, tortured, ill-treated, tried, sentenced and kept in detention only because of his political ideas and that, under the conditions in which political prisoners like her father are detained, he has no possibility of recourse either to domestic remedies or to an international body to seek redress for the violation of his rights.

1.7 The author alleges that at the Penal de Libertad her father is subjected to inhuman prison conditions. She stresses in this connection, the following points: "My father shares a cell measuring 2 by 3.50 m with another detainee, and they are kept in it continuously for 23 hours a day; if the weather is good and they are not being punished, they are taken out for one hour in the open air. Since he is being held in the part of the prison set aside for those the military have classified as 'dangerous', my father is never taken out of his cell to work, to eat or for anything other than exercise and visits. It should be pointed out that the qualification 'dangerous', is the result of an evaluation, not by the judge but by the prison commandant. The conditions applied in this sector (the second floor of the prison) are much harsher even than those applied to other detainees located in other sectors (the prison population amounts at present to some 1,100 political prisoners), which are already harsh enough. My father can study or read books only if the commandant on duty feels like allowing it, and books are frequently confiscated without any explanation. In any case he can read only those books which pass the military censorship. ... My father is not allowed to read newspapers because they are all prohibited, whether national or foreign; he cannot listen to the radio, because it, too, is prohibited; all of which naturally means that he is cut off from the world at large, thus aggravating the tensions which are natural in a prison and forcing him to live disconnected from the outside world." The author further alleges that detainees live under constant fear and are subject

to harrassment by the guards who are at liberty to impose sanctions on prisoners for petty contraventions (such as speaking with other inmates at certain times); that from time to time a prisoner is taken out of prison and brought to military quarters in order to be interrogated and tortured again, either in connection with his prior conviction or with alleged political activities in prison, and that because of this situation the physical and mental health of detainees is seriously endangered. The author also alleges that, because of insufficient food, her father has lost more than 15 kilos during his imprisonment. She claims that the treatment inflicted upon her father amounts to mental torture.

1.8 The author states that the same matter has not been submitted to another procedure of investigation or settlement.

1.9 The author claims that her father is a victim of violations of articles 2 (1) and (3), 7, 10 (1) and (3), 14 (1), (2), (3) and (7) and 26 of the International Covenant on Civil and Political Rights.

2. By its decision of 23 July 1981, the Human Rights Committee, having decided that the author of the communication was justified in acting on behalf of the alleged victim, transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. The Human Rights Committee also requested the author of the communication to explain in detail which of the alleged events had taken place after 23 March 1976 (the date of the entry into force of the Covenant and Protocol for Uruguay), including the treatment and conditions of imprisonment of her father after that date and his access to legal counsel in connection with the charges brought against him in the new proceedings initiated in December 1980.

3. In a further letter, dated 22 October 1981, submitted by the author in reply to the Committee's request for additional information, she repeated that the conditions in which her father was serving his term of imprisonment constituted a deliberate form of cruel, inhuman and degrading treatment and that although this treatment began before, it had continued after March 1976 and was still continuing. She also repeated that the new criminal proceedings conducted against him violate the principles of res judicata and non bis in idem. The author further stated that, when the second proceedings were begun in December 1980, her father's defence lawyer was not informed, that he was later presented with faits accomplis and that, in August 1981, when her father was taken before the First Military Court to be interrogated for the purposes of the second trial, everything was done without the knowledge of his defence lawyer and consequently without any possibility of his participating and defending her father's interest.

4. The Human Rights Committee, taking note that no submission has been received from the State party concerning the question of the admissibility of the communication, on the basis of the information before it, found that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that in the circumstances of this case there were effective remedies available to the alleged victim which he had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

5. On 25 March 1982, the Human Rights Committee therefore decided:

(a) That the communication was admissible in so far as it related to events said to have occurred on or after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay) or which, although occurring before that date, continued or had effects alleged to constitute a violation after that date;

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

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

6. In a further letter, dated 11 May 1982, the author stressed that, as a result of the treatment inflicted upon her father at Libertad, his health had been declining continuously and that he was in a state of chronic malnutrition and had serious eye problems. She further stated that:

> "After ten years of imprisonment, fresh inquiry proceedings have been initiated against him; this is the third time that his trial has been started anew. They want to accuse him of new offences and for this the military need witnesses to accuse him. We all know that the passage of time is not sufficient to protect prisoners from new offences; when a prisoner is of interest to the military intelligence services, particularly when they have not managed to cow him, as is the case with my father, completion of sentence does not lead to release, because under this infernal machine, in which the prisoner is at the mercy of his tormentors, he may be taken out of the prison to torture and interrogation centres and then returned to Military Detention Establishment No. 1 with offences on his file that equal the number of years the régime wishes to keep him in prison."

7. In its submission under article 4 (2) of the Optional Protocol, dated 13 August 1982, the State party referred to the contents of an earlier note, dated 1 July 1982, which appeared to be a late submission under rule 91 of the provisional rules of procedure. The text of this note reads as follows:
"... the Government of Uruguay wishes to stress that this communication is based on an unacceptable premise in describing the person with whose situation it is concerned as a 'political prisoner'. Mr. Almirati was a member of the MLN subversive group and participated actively in it, serving as co-ordinator of one of the sections into which this organization was divided, known as the 'North column'. He directed the construction of 'berretines' - hiding-places for the concealment of weapons or persons and premises for the movement. He was responsible for the operation in which Paysandú airport was attacked and surrounded. He took part in the raid on an important local enterprise, subduing the caretakers under threat of firearms. He took part in the operation for the escape of prisoners from the women's prison. On that occasion, he assaulted and

forcibly subdued one of the police officers on guard. It is obvious that acts of this kind cannot be considered to constitute 'political activities', nor can their perpetrator be regarded as a victim of persecution. Further proceedings were taken against Mr. Almirati on 8 October 1981 for the offences of 'robbery' and 'assault on the safety of transport'. In this communication, it is asserted that the principles of res judicata and of non bis in idem have been violated. This is untrue, since the proceedings concerned were brought because of the emergence of fresh evidence regarding the commission of the above offences. The fact that these offences had been investigated by the police authorities in no way signifies that there was any repetition of proceedings; no proceedings had been instituted on that account, since the authorities did not possess the evidence now available. The Government of Uruguay also wishes to stress that this communication contains completely unfounded and meaningless statements; for example, the assertion that martial law was introduced in Uruguay or that the Uruguayan Parliament acted under threats. Despite the information supplied, this Government maintains that with reference to the second proceedings, use has not been made of the domestic remedies available to the accused such as appeal and review."

8. In a further submission under article 4 (2) of the Optional Protocol, dated 11 October 1982, the State party ... "categorically rejects the term 'concentration camp' used to describe Detention Establishment No. 1. In fact, far from having such an evil status, the standard in this establishment is above the international average for detention establishments. The system is the normal one, and every prisoner, without exception, is given the necessary food and attention to keep him in good physical and mental condition. Secondly, it is emphasized that the terms 'terrible harrassment' and 'taken away and tortured', used to describe alleged treatment to which Mr. Almirati had been or was about to be subjected, are untrue and malicious. It must be stated categorically that no type of physical or mental coercion is used in Uruguay on persons under detention and that Mr. Almirati is in prison and is unable to enjoy normal relations with his family, not because the Government of Uruguay so wishes, but because, as a member of the subversive Tupamaros NLM, he committed numerous offences classified by the Uruguayan legal system and he was duly tried and sentenced for them. It should be emphasized, however, that the relatives of every prisoner are permitted to make fortnightly visits, and the visiting hours are even adjusted for those who, for employment reasons, are unable to attend on working days. With respect to Mr. Almirati's present state of 'chronic malnutrition', we wish to state that the diets in Uruguayan detention establishments are prepared by professional dietitians on the staff of such establishments. It is further pointed out that the prisoners themselves participate in the tasks of preparing their food, on a group rota system. Mr. Almirati is in good health and he has recently had a number of clinical examinations and blood pressure tests."

9.1 The Committee decides to base its views on the following facts which have been either essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation.

9.2 Events prior to the entry into force of the Covenant

Juan Almirati Nieto was arrested in Uruguay in 1970. Criminal proceedings were then initiated against him for the following offences: association to break the law, conspiracy to overthrow the Constitution, use of false identity papers, robbery and other lessor offences such as resistance to authority. In May 1971, he escaped from prison. On 14 April 1972, he was rearrested. The judge added to the

list of offences already mentioned that of collaborating in a mass escape of women detainees. He was held for short periods of time at several detention places and he was then transferred to Libertad. He was sentenced by the civil judiciary to 10 years of imprisonment.

9.3 Events subsequent to the entry into force of the Covenant

Towards the end of 1980, shortly before he was due for release upon the completion of his term of imprisonment, new criminal proceedings were started against Juan Almirati Nieto by the military judiciary without the knowledge of his defence lawyer for offences alleged to have been committed prior to his imprisonment and in respect of which new evidence was alleged to have emerged. The military prosecutor has asked that Juan Almirati Nieto should be sentenced to 22 years' imprisonment. The Committee has received no information as to the outcome of these proceedings or that they have been concluded.

10.1 In formulating its views, the Human Rights Committee also takes into account the following considerations.

10.2 In its decision of 25 March 1982, the Committee requested the State party to submit copies of any relevant court orders or decisions. The Committee notes with regret the failure of the State party to respond to this request.

10.3 The Committee notes that it has been informed by the State party, in submissions of 1 July and 13 August 1982, that with reference to "the second proceedings, use has not been made of the domestic remedies available to the accused such as appeal and review". The Committee is unable to conclude, however, that these remedies are available in respect of the particular violations of the Covenant which it finds in the present case.

10.4. The Committee observes that the State party, in its submission of 11 October 1982, refuted only in general terms the author's detailed allegations that her father is held under inhuman prison conditions at Libertad (see para. 1.7 above). The submissions of the State party in this respect are an insufficient answer to the allegations made. The Committee recalls its findings in other cases a/ that a practice of inhuman treatment existed at Libertad prison during the period to which the present communication relates and that it has come to this conclusion on the basis of specific accounts by former detainees themselves. The Committee concludes that in the present case also Juan Almirati Nieto has not been treated with humanity and with respect for the inherent dignity of the human person as requried by article 10 (1) of the Covenant.

10.5 Concerning the allegation of the authors that article 14 (7) of the Covenant has been violated by the State party because the new criminal proceedings, started by the military judiciary against her father in December 1980, were based on the same facts as those for which he had been tried and sentenced to 10 years of imprisonment by the civil judiciary, the State party in its submissions dated 1 July and 13 August 1982 refuted this allegation on the ground that "the proceedings concerned were brought because of the emergence of fresh evidence regarding the commission of the offences of "robbery" and "assault on the safety of transport". The Committee observes, in this connection, that the State party has not specified what the new evidence was which prompted the Uruguayan authorities to initiate new proceedings. In the absence of information, as to the outcome of those proceedings, the Committee makes no finding on the question of a violation of

article 14 (7), but it is of the view that the facts indicate a failure to comply with the requirement of article 14 (3) (c) of the Covenant that an accused person should be tried "without undue delay".

10.6 As to the allegations made by the author with regard to breaches of articles 2 (1) and 26 of the Covenant, they are in such general terms that the Committee makes no finding with regard to them.

11. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee, in so far as they continued or occurred after 26 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay), disclose violations of the International Covenant on Civil and Political Rights, particularly:

of article 10 (1), because Juan Almirati Nieto has not been treated in prison with humanity and with respect for the inherent dignity of the human person;

of article 14 (3) (b) and (d), because he has not had adequate facilities for the preparation of his defence and he has been unable to defend himself through legal assistance;

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

12. The Committee, accordingly, is of the view that the State party is under an obligation to take immediate steps to ensure strict observance of the provisions of the Covenant and in particular (a) that Juan Almirati Nieto is treated with humanity as required by article 10 of the Covenant, and (b) that the guarantees prescribed by article 14 are fully respected and, in so far as this has not been done in any proceedings already taken, an effective remedy will be applied.

Notes

a/ For the review of the Committee, see annex VIII to the present report concering communication No. 66/1980 (Cámpora Schweizer V. Uruguay), adoptd on 12 October 1982, and annex XII to the present report, concerning communication 74/1980 (Miguel Angel Estrella V. Uruguay), adopted on 29 March 1983.

ANNEX XXI

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

concerning

Communication No. 105/1981

Submitted by: María A. Cabreira de Estradet, on behalf of her son, Luis Alberto Estradet Cabreira

Alleged victim: Luis Alberto Estradet Cabreira

State party concerned: Uruguay

Date of communication: 7 August 1981 (date of initial letter)

Date of decision on admissibility: 22 October 1982

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

Meeting on 21 July 1983,

Having concluded its consideration of communication No. 105/1981 submitted to the Committee by María A. Cabreira de Estradet under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of the communication (initial letter dated 7 August 1931 and further submissions dated 5 June and 3 September and one postmarked 23 September 1982) is a Brazilian national, residing at present in the Netherlands. She submitted the communication on behalf of her son, Luis Alberto Estradet Cabreira.

2.1 The author states that her son (born on 14 August 1947) was arrested in Uruguay on 13 July 1972. During the first six months he was allegedly kept incommunicado and subjected to torture ("picana eléctrica", "submarino", "platones", beatings and lack of food).

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* Mr. Walter Surma Tarnopolsky did not participate in the adoption of the views of the Committee under article 5 (4) of the Optional Protocol in this matter.

2.2 The author further states that, from January 1973 to the present, her son has been detained at the Penal de Libertad, a prison which is allegedly only for political detainees and which is run by army personnel. The author describes her son's present conditions of imprisonment as follows: he shares a cell measuring 2 by 13.50 m with another detainee; he is kept in his cell 23 hours each day; he is allowed to go into the open air only one hour per day, provided that he is not being punished. He is not allowed to work, to read newspapers or to listen to the radio. The author further states that visits may take place every 15 days and last only for 20 minutes. The only persons authorized to visit him are close relatives. The visitors and the alleged victim are separated by a thick window and the conversations are conducted by telephone and can be followed by the prison guards. The author claims that the worst part of her son's imprisonment is the continuous harassment by the guards and the severe punishment for such actions as reporting to relatives on prison conditions or speaking with other inmates without authorization. Punishments may amount to detainees being held at "La Isla", a punishment cell, in solitary confinement as long as 90 days. The author alleges that the penitentiary system is not aimed at the reformation of prisoners but at the destruction of their resistance. As soon as they enter at Libertad, their heads are shaved, they are given a number and they are never called by their names. The author further alleges that detainees are continuously kept in a state of anxiety and tension because they live in constant fear of being again interrogated in connection with their prior convictions or with purported political activities in prison. Because of this situation, the physical and mental health of detainees is seriously endangered and the author gives the names of three detainees who were going to be re-tried and recently died, and of five other detainees in poor health, who also died. She refers also to the case of Rafael Wins who tried to commit suicide in the beginning of 1982.

2.3 With respect to the judicial proceedings against her son, the author states that on 24 January 1973 her son was charged on grounds of offences against the security of the State (arts. 281, 324, 244, 132 (6), 137 and 60 (v) of the Military Panel Code) for being a member of a clandestine political organization, the Movimiento de Liberación Nacional-Tupamaros (MLN-T). She further states that her son was sentenced to nine years of imprisonment and in addition to six months to three years of precautionary detention (medidas de seguridad eliminativas) by a military tribunal of first instance. On appeal, the Supreme Military Tribunal increased the prison term to 12 years and imposed the same security measures. The author alleges that the judgement of the Supreme Military Tribunal (of 15 February 1977) contained grave technical defects (e.g. with regard to offences which could not be proven, offences not mentioned in the indictment and acts for which her son was allegedly punished twice). Because of this, the defence lawyer submitted an appeal (recurso de casación) which, however, was dismissed. The author further alleges that her son's conviction was based on confessions that were extracted from him under torture. She claims that, although the torture took place before 23 March 1976 (the date on which the Covenant entered into force for Uruguay), it has had effects up to date, because it was on the basis of the confessions made under torture that her son was sentenced to 12 years of imprisonment which he continues to serve at present. She emphasizes that all charges against her son stem from his political activities and that he is therefore a political prisoner. In particular she states that article 2 (1) and article 26 of the Covenant have been violated "since he has been made a victim of discrimination on the ground of his political opinions, having been treated far worse than the perpetrator of an ordinary offence".

2.4 The author claims that domestic remedies have been exhausted. She maintains that the domestic remedies which are provided for in the Uruguayan legislation cannot protect her son, because none of them is allegedly applicable in practice, if the human rights violation has been committed by military personnel or by members of the police in connection with State security as interpreted by the military forces. She further alleges that military judges are not impartial and in particular that they conceal continuous illegal acts to which political detainees are subjected.

2.5 The author expresses deep concern about her son's state of health. She mentions that he suffers from a heart disease, that he has been operated on twice, that he urgently needs a third operation and that he is denied proper medical attention.

2.6 The author states that the same matter is not being examined under another procedure of international investigation or settlement since she has expressly withdrawn her complaint to the Inter-American Commission on Human Rights.

2.7 The author claims that her son is a victim of violations of articles 2 (1) and (3), 7, 10 (1) and (3), 14 (1) and 26 of the International Covenant on Civil and Political Rights.

3. By its decision of 14 October 1981, the Working Group of the Human Rights Committee decided that the author was justified in acting on behalf of the alleged victim and transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. The Working Group also requested the State party to provide the Committee with information on the state of health of Luis Alberto Estradet Cabreira.

4. By a note dated 25 June 1982, the State party informed the Committee that Luis Alberto Estradet was arrested on 13 July 1972 and that, contrary to the author's statement, he is not a political prisoner. It stated that in 1969 Luis Estradet became a member of the Movimiento de Liberación Nacional and he had taken part in terrorist activities. On 24 January 1973, he was charged by a military judge on grounds of offences contained in articles 281, 324, 344, 132 (6) of the Ordinary Penal Code and article 60 (v) of the Military Penal Code (i.e. mainly on grounds of: use of fire-arms, subversive association and attempt against the Constitution). The State party further stated that Luis Estradet was sentenced by a tribunal of first instance to nine years and six months of imprisonment and in addition to six months to three years of precautionary detention (medidas de seguridad eliminativas). On 15 February 1977, on appeal, the Supreme Military Tribunal sentenced him to 12 years of imprisonment and in addition to one to three years of "security measures" basically for the same offences with aggravating circumstances. It further informed the Committee that Luis Estradet is presently detained at the Establecimiento Militar de Reclusión No. 1. In a further submission, dated 20 October 1982, the State party contests the author's description of the prison conditions and states that detainees in military prisons are not isolated from the outside world, that they enjoy periodical visits in accordance with the regulations for military prisons, that they can listen to radio programmes transmitted by loud speakers, that they may see films and read books which are either available in the prison library or are brought by their relatives and are handed to the prisoners after a normal inspection for security reasons. The State party further denies in general terms the author's allegations of

mistreatment, psychological tension and arbitrary punishment at the Establecimiento de Reclusión No. 1. The State party also points out that some paragraphs of the author's submissic of 5 June 1982 are identical to paragraphs of another communication before the Committee and that this proves that tne author has merely signed her communication and that there is an organized campaign aimed at preparing complaints for submission to international organizations. The State party further states that Luis Estradet's sentence was increased due to the discovery of new facts which amount to aggravating circumstances. As far as Luis Estradet's health is concerned, the State party informs the Committee that he is given regular medical examinations and that there is no reason to be concerned about his physical state of health.

5. Commenting on the State party's submission, the author maintains, in her letter dated 3 September 1982, that her son is not a terrorist, that he was arrested for the first time in 1969 for having distributed some pamphlets to the workers of a tire factory (FUNSA) in Montevideo and that he was released five months later, in February 1970, without any charges of "terrorism" having been retained against him. She reiterates that he was re-arrested on 13 July 1972 and that he was sentenced on the basis of confessions extracted from him under torture. She also reiterates that her son suffers from a heart disease and that his state of health is extremely poor and is aggravated by inhuman conditions of imprisonment. The author, in her further comments postmarked 23 September 1982, alleges that the Supreme Military Tribunal which on appeal on 15 February 1977 increased the sentence imposed on her son by the military tribunal of first instance, has transgressed Uruguayan law and jurisprudence of several decades, because the offences were the same. She further alleges that the imposition of precautionary detention measures (medidas de seguridad eliminativas) is illegal and that such measures merely serve the purpose of preventing any proceedings aimed at obtaining a release on parole. She adds that military justice has often imposed such measures when dealing with political offences. The author reiterates that article 14 of the Covenant has been violated in particular because her son only received a final sentence four years and seven months after his arrest.

6. The author's assertion that the same matter was not being examined by another international body had not been contested by the State party. As to the question of exhaustion of domestic remedies, the Committee was unable to conclude that, in the circumstances of this case, there were effective remedies which Luis Estradet had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (a) and (b) of the Optional Protocol.

7. On 22 October 1982, the Human Rights Committee therefore decided:

(a) That the communication was admissible in so far as it relates to events said to have occurred on or after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay;

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

(c) That the State party should be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must relate

primarily to the substance of the matter under consideration. The Committee stressed that, in order to perform its responsibilities, it required specific responses to the allegations which had been made by the author of the communication, and the State party's explanations of the actions taken by it. The State party was requested, in this connection, (i) to enclose copies of any court orders or decisions of relevance to the matter under consideration, (ii) to submit its observations concerning the author's allegations that the judgement of the Supreme Military Tribunal on 15 February 1977, contained "grave technical defects" and that "because of this the defence lawyer submitted an appeal (recurso de casación)" and (iii) to inform the Committee on what legal grounds such appeal (recurso de casación) was dismissed;

(d) That the State party be requested to inform the Committee whether Luis Alberto Estradet suffered from a heart disease and, if so, whether he was being given appropriate medical treatment.

8.1 By a note dated 27 May 1983, the State party submitted further information on the state of health of Luis Alberto Estradet, as follows;

"Record prior to his detention: in 1971 he was operated on for a stab wound in the right ventricle. Since being imprisoned in Military Detention Establishment No. 1, he has been given regular check-ups by a cardiologist. He occasionally suffers from atypical precordial pains. Electrocardiograms are made every month. Special examinations of the heart vessels, coronary arteries, etc., reveal the following: myocardial bridge in one third of the front descendens; moderate prolapse of the valve behind the mitral valve; moderate hypertrophy of the left ventricle; coronaries normal; fibrosis in parts of the front surface of the left ventricle. An ergometer examination produced negative results, with excellent tolerance of the test. He has been given the following medication as required: Difixil, Opranol, Adalat, Bromzepan, Nitrazepan, Acamipan and Nitrangor. He continues to undergo examinations at the medical and cardiological polyclinic for persistent precordialgia, but does not have dyspnea or palpitations and has good tolerance for sports. Periodic electrocardiagrams. No notable irregularities.

"Present examination: good general condition, skin and mucosa normal colour, no notable lesions. Buccopharyngeal region: no special features; lymphatic vessels and lymph nodes: no special features; bones and joints: no special features. Auscultation: steady rhythm of 72 pulsations per minute, firm beats, no murmur, blood pressure 120/70, full peripheral pulses. Pleuropulmonary region: MAV in good overall condition, no wheezing. Abdomen: no special features. Genitals and perineum: no special features. Lower limbs: no edemas."

8.2 The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 22 May 1983. No submissions other than those of 25 June and 20 October 1982 and 27 May 1983 have been received. The Committee notes with appreciation the information furnished by the State party concerning the state of health of Luis Alberto Estradet. It regrets, however, the failure of the State party to respond to the specific requests for information, and copies of court orders or decisions, made in paragraph 3 of the Committee's decision of 22 October 1982.

9.1 The Committee decides to base its views on the following facts which have been either essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation.

9.2 Events prior to the entry into force of the Covenant:

Luis Alberto Estradet Cabreira was arrested on 13 July 1972. During the first six months he was kept incommunicado and subjected to ill-treatment. On 24 January 1973 he was tried by the Court of first instance and sentenced to nine years and six months of imprisonment and in addition to six months to three years of precautionary detention (medidas de seguridad eliminativas). In January 1973, he was transferred to Libertad prison.

9.3 Events subsequent to the entry into force of the Covenant:

On 15 February 1977, the Supreme Military Tribunal increased the sentence imposed on Luis Alberto Estradet Cabreira to 12 years of imprisonment and in addition to one to three years of precautionary detention. The defence lawyer lodged an appeal (recurso de casación) for reasons of technical defects in the judgement of the Supreme Military Tribunal. This appeal was rejected.

10.1 In formulating its views, the Human Rights Committee takes into account the following considerations.

10.2 The Committee notes that the State party in its submission of 20 October 1982 has, apart from denials in general terms, replied only to certain of the author's allegations that her son has been ill-treated and held under inhuman prison conditions at Libertad and, in particular, the State party has not satisfied the Committee that living conditions and the treatment received by Luis Alberto Estradet at Libertad have met the requirements of article 10 (1) of the Covenant. In this connection, the Committee recalls its findings in other cases a/ that a practice of inhuman treatment existed at Libertad prison during the period to which the present communication relates and that it has come to this conclusion on the basis of specific accounts by former detainees themselves. The Committee concludes that, in the present case also, Luis Alberto Estradet has not been treated with humanity and with respect for the inherent dignity of the human person as required by article 10 (1) of the Covenant.

10.3 As to the alleged technical defects in the judgement at second instance, the Committee considers that due to the lack of specific information provided by the author it cannot make a finding on the question of the alleged violations of articles 2 (3) and 14 of the Covenant.

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

of article 10 (1) because Luis Alberto Estradet has not been treated in prison with humanity and with respect for the inherent dignity of the human person.

12. The Committee, accordingly, is of the view that the State party is under an obligation to take immediate steps to ensure strict observance of the provisions of the Covenant and, in particular, to extend to Luis Alberto Estradet treatment as laid down for detained persons in article 10 of the Covenant.

Notes

a/ For the views of the Committee, see annex VIII to the present report concerning communication no. 66/1980 (Cámpora Schweizer v. Uruguay), adopted on 12 October 1982, and annex XIII to the present report, concerning communication 74/1980 (Miguel Angel Estrella v. Uruguay), adopted on 29 March 1983.

ANNEX XXII

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

concerning

Communication No. 107/1981

Submitted by: María del Carmen Almeida de Quinteros, on behalf of her daughter, Elena Quinteros Almeida, and on her own behalf

Alleged victims: Elena Quinteros Almeida and the author of the communication

State party concerned: Uruguay

Date of communication: 17 September 1981 (date of initial letter)

Date of decision on admissibility: 25 March 1982

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

Meeting on 21 July 1983,

Having concluded its consideration of communication No. 107/1981 submitted to the Committee by María del Carmen Almeida de Quinteros under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The author of the communication (initial letter dated 17 September 1981 and further letters postmarked 30 September 1981 and dated 28 September 1982 and 2 May 1983) is a Uruguayan national, residing at present in Sweden. She submitted the communication on behalf of her daughter, Elena Quinteros Almeida, and on her own behalf.

1.2 The author describes the relevant facts as follows:

> "My daughter (born on 9 September 1945) was arrested at her home in the city of Montevideo on 24 June 1976. Four days later, while she was being held completely incommunicado, she was taken by military personnel to a particular

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* Mr. Walter Surma Tarnopolsky did not participate in the adoption of the views of the Committee under article 5 (4) of the Optional Protocol in this matter.

spot in the city near the Embassy of Venezuela. My daughter would appear to have told her captors that she had a rendezvous at that place with another person whom they wished to arrest. Once she was in front of a house adjoining the Embassy of Venezuela, my daughter succeeded in getting away from the persons accompanying her, jumped over a wall and landed inside the Embassy grounds. At the same time, she shouted out her name so as to alert passers-by to what was happening in case she was recaptured. The military personnel accompanying her then entered the diplomatic mission and, after striking the Secretary of the Embassy and other members of its staff, dragged my daughter off the premises."

1.3 The author alleges that, due to this event, Venezuela suspended its diplomatic relations with Uruguay.

1.4 The author claims that since that day (28 June 1976) she could never obtain from the authorities any official information about her daughter's whereabouts, nor was her detention officially admitted. She further claims that this denial of official information by the authorities of Uruguay was incompatible with the testimony of other persons (the author encloses two testimonies) and also numerous statements made privately by authorities and diplomatic representatives of Uruguay to the author herself and to others. The author, in addition, encloses an extract from a booklet entitled Mujeres y niños Uruguayos desaparecidos ("Missing Uruguayan Women and Children") concerning the case of her daughter, in which it is mentioned in particular that on 2 March 1979, the Ambassador and Representative of Uruguay to the United Nations Commission on Human Rights at Geneva, who was at that time Director of Foreign Policy of the Ministry of Foreign Affairs, told the author that her daughter was alive, that she had been taken from the Venezuelan Embassy by members of the Uruguayan police and army, that she was being kept a prisoner and that efforts were being made to clarify responsibilities.

1.5 The first testimony enclosed by the author, dated January 1981, is from Cristina Marquet Navarro, who states that she personally knew Elena Quinteros. Cristina Marquet Navarro states that she was arrested on 29 July 1976 in Montevideo, that on 8 August 1976 she was taken to a military unit, that there all detainees were kept blindfolded and with their hands tied and that they were systematically subjected to torture. She adds that all detainees received an identification number upon arrival, by which they were addressed, and that her number was 2572. Cristina Marquet further states that during her first night there, she heard "the despairing cries of a woman who kept saying 'why didn't they kill me, why didn't they kill me?' It was definitely the voice of Elena Quinteros. It was clear from the desperation of her cries that she was being brutally tortured". Cristina Marquet alleges that later she was able to establish that Elena Quinteros had been given number 2537. She further alleges that once, her eye-bandage being loose, she could see Elena Quinteros who was lying on a mattress. Elena Quinteros' state of health was extremely poor "as a result of the brutal torture to which she had been and was being subjected daily". Cristina Marquet mentions the names of two male officers and of two female soldiers who were dealing with Elena Quinteros. In October 1976, Cristina Marquet was transferred to another detention place and she was released on 7 December 1978. She adds that after October 1976 she never heard about Elena Quinteros again.

1.6 The second testimony is from Alberto Grille Motta. a/ He states that he and other Uruguayans, among them Enrique Baroni, who had taken refuge at the Embassy of Venezuela in Montevideo, saw a number of Embassy employees running out of the

building on the morning of 28 June 1976; that Enrique Baroni, who had gone up to the first floor, saw a young woman being dragged away by a man whom he recognized as a policeman whom he had known, under a nickname which is given by the author, in Department No. 5 for Intelligence and Information of the Montevideo Police Headquarters when they were held there. Mr. Grille adds that the following day, on 29 June 1976, the parents-in-law of Elena Quinteros came to the Embassy with a picture of their daughter-in-law and her identity was confirmed, in particular, by the Secretary of the Embassy. He further claims that the Ambassador told him some months later that he was in possession of information pointing to a policeman known under the same nickname as the one mentioned by Enrique Baroni and whose real name was ..., who, together with other police personnel, had taken part in the abduction of Elena Quinteros.

1.7 The author, María del Carmen Almeida de Quinteros, states that she has withdrawn her daughter's case from the Inter-American Commission on Human Rights. By a further letter, postmarked 30 September 1981, she enclosed a copy of her withdrawal letter, dated 17 November 1980, addressed to the Inter-American Commission, and the text of a request for confirmation of the withdrawal, dated 28 September 1981.

1.8 The author further states that there are no domestic remedies that could be invoked and have not been exhausted, since her daughter's arrest has always been denied by the Uruguayan authorities and the remedy of habeas corpus is only applicable in the case of detained persons.

1.9 The author claims that the following articles of the Covenant have been violated with respect to her daughter: 7, 9, 10, 12, 14, 17 and 19. She adds that she is herself a victim of violations of article 7 (psychological torture because she does not know where her daughter is) and of article 17 of the Covenant, because of interference with her private and family life.

2. The Human Rights Committee noted, in this connection, that the allegations of violations made by the author on her own behalf raised the question whether she was subject to the jurisdiction of Uruguay, within the meaning of article 1 of the Optional Protocol, at the time of the alleged violations in question. The Committee agreed that this issue would be reviewed, if necessary, in the light of any submission which the State party might make under article 4 (2) of the Optional Protocol.

3. By its decision of 14 October 1981, the Working Group of the Human Rights Committee, having decided that the author of the communication was justified in acting on behalf of the alleged victim, transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication and, the whereabouts of the alleged victim being unknown since 1976, further requesting the State party to confirm that Elena Quinteros was in detention and to make known the place of her detention. No reply was received from the State party to these requests.

4. On the basis of the information before it, the Committee found that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that, in the circumstances of this case, there were effective remedies available to the alleged victim which she had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

5. On 25 March 1982, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

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

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

6. In its submission under article 4 (2) of the Optional Protocol, dated 13 August 1982, the State party referred to the contents of an earlier note, dated 14 June 1982, which appeared to be a late submission under rule 91 of the provisional rules of procedure. The text of this earlier note read as follows:

> "The Uruguayan Government wishes to inform that the person in question (Elena Quinteros) has been sought throughout Uruguay since 8 May 1975. The assertions contained in this communication are therefore rejected as unfounded, since the Government had no part in the episode described."

7.1 In her comments, dated 28 September 1982, the author draws the attention of the Human Rights Committee to the fact that the Government of Uruguay has failed to provide any specific or detailed answers regarding the substance of her daughter's case, despite the express request by the Committee. The author states that:

> "The Government simply rejected my assertions as 'unfounded' in purely general terms and, indeed, on the sole ground that it had had no part in the episode which I described. I consider it to be of the utmost importance to point out, in this connection, that the Government does not specifically deny that my daughter was arrested in June 1976 by Government forces, that she was detained by the army in 1976, or that an incident took place at the Venezuelan Embassy on 28 June 1976, in the course of which my daughter was taken from the Embassy grounds. Above all, the Government of Uruguay does not deny that it is holding my daughter. In short, apart from the very general assertion referred to above, the Government has not denied, or even questioned the truth of a single one of the serious events described by me in my communication to the Committee. It is surprising that, despite the gravity of these events, the Government has quite clearly failed to order an investigation into the matter."

7.2 The author urges the Committee to call on the Government of Uruguay to order an investigation. She suggests that specific questions should be put to the State party and that it would be very helpful if the Committee could obtain further details from the Government of Venezuela regarding the incident which took place on 28 June 1976 in the grounds of their Embassy in Montevideo.

7.3 Addressing the question raised by the Committee whether she comes within the jurisdiction of Uruguay as to the violations alleged in her own behalf, the author states that she was in Uruguay at the time of her daughter's arrest in 1976.

> "Consequently, both my daughter and I were at the time under Uruguayan jurisdiction. Quite clearly, my daughter remains under Uruguayan jurisdiction and her rights continue to be violated daily by the Government of Uruguay. Since the continued violation of my daughter's human rights constitutes the crucial factor of the violation of my own rights, the Government cannot, in my view, in any way evade its responsibility towards me. I continue to suffer day and night because of the lack of information on my dear daughter, and I therefore believe that, from the moment when my daughter was arrested, I was, and I continue to be, the victim of a violation of articles 7 and 17 of the Covenant."

8. On 15 October 1982, before formulating its views in the light of the information made available to it by the author of the communication and by the State party concerning the alleged arrest, detention and mistreatment of Elena Quinteros, the Human Rights Committee decided to adopt the following interim decision:

> "The Human Rights Committee,
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> Noting that the author of the communication has submitted detailed information, including eyewitness testimonies, concerning the detention of her daughter, Elena Quinteros,
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> Taking note also of the brief information submitted by the State party on 14 June and 13 August 1982, to the effect that Elena Quinteros had been sought throughout Uruguay since 8 May 1975 and that the Government of Uruguay had no part in the events described by the author of the communication,
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> Concerned, however, that the State party has made no attempt to address in substance the serious and corroborated allegations made against it, but merely denies any knowledge thereof,
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> Concluding, that the information furnished by the State party, so far, is insufficient to comply with the requirements of article 4 (2) of the Optional Protocol,
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> 1. Urges the State party, without further delay and with a view to clarifying the matters complained of, to conduct a thorough inquiry into the allegations made and to inform the Human Rights Committee of the outcome of such inquiry not later than by 1 February 1983."

9. In a note dated 12 January 1983, in response to the Human Rights Committee's interim decision, the State party stated the following:

> "The Government of Uruguay wishes to reiterate what it said to the Committee in its reply to the note of 4 December 1981 on this case" (see para. 6 above).

10.1 In her comments of 2 May 1983, the author recalls that her daughter was officially arrested at her home in Montevideo, on 24 June 1976, because of her

political opinions, by members of Department No. 5 of the National Directorate for Information and Intelligence of the Montevideo Police Headquarters. She states that her daughter was kept incommunicado on the premises of the police department for four days until the morning of 28 June, although under the Constitution and laws of Uruguay the maximum period during which a person may be held incommunicado is 48 hours.

10.2 The author claims that "there is no possible doubt regarding the central fact which prompted my communication, namely that my daughter Elena was abducted on 28 June 1976 from within the Embassy of the Republic of Venezuela at Montevideo and that this abduction (or arrest carried out in the form of an abduction) was the work and responsibility of Uruguayan official authorities, and since that day Elena has been in the custody of the Uruguayan official military authorities."

10.3 Concerning her daughter's arrest inside the Venezuelan Embassy grounds on 28 June 1976, the author gives the following details:

> "Believing that Elena was going to denounce someone, her captors brought her near to the Embassy, allowing her freedom of movement so that she could go to the supposed rendezvous. Elena, who had already given thought to the possibility, went into the house next to the Embassy. From there she managed to jump over the dividing wall, thus landing in Venezuelan territory. She shouted 'Asylum!' and stated her name and occupation. When they realized what was happening, the policemen escorting her came through the gate giving access to the gardens of the Embassy, without being stopped by the four policemen on guard. When they heard Elena shouting, the Ambassador and his secretary, as well as other officials, ran towards her and were able to see her being beaten and dragged by the hair by the policemen who were trying to remove her by force from Venezuelan territory. The Counsellor of the Embassy, Mr. Frank Becerra, and the Secretary, Baptista Olivares, tried to prevent the woman seeking refuge from being removed from the Embassy garden before she could enter the residence itself. While Elena was being dragged outside, the two diplomats were grappling with the police, grabbing hold of Elena's legs. One of the policemen struck Mr. Becerra who fell, thus enabling them to take Elena away and put her in a greenish Volkswagen whose registration number, as was seen by a large number of residents who had observed each stage of the police raid, ended in 714 and which a Police Headquarters communiqué identified on 2 July as the 'car with unidentified suspects who abducted a woman'. In their anger, the police even went to the inhuman lengths of slamming the car door hard against Elena's legs while she was being bundled into the car, certainly causing a fracture. The car then moved off at high speed, with its doors still open, against the oncoming vehicles and despite the heavy traffic to be found at that hour, about 10.30 a.m., in the Bulevar Artigas, where the Embassy is situated, at number 1257, in the 'Pocitos' district, 5 km from the centre of Montevideo."

10.4 The author further states that, according to eyewitness accounts received by the Ambassador of Venezuela, her daughter was transferred from the green Volkswagen to an official Uruguayan army truck. She claims that another significant detail is that when her daugher entered the garden of the Embassy she ran towards the residence crying "Asylum, asylum!", stated her name and occupation and managed to shout "this is '...' from the Department No. 5". The author further submits that "from refugees (five in all) who were in the Embassy awaiting a safe conduct in order to leave Uruguay, and from her (daughter's) statements, it was possible to

ascertain that three of the plain-clothes police officers who entered the Embassy were ..." (names are given).

10.5 Concerning the suspension of diplomatic relations between Venezuela and Uruguay, the author stresses that "as a result of these events of June 1976, Venezuela broke off diplomatic relations with the Government of Uruguay and they have not been restored until this day. The Government of Venezuela has made it absolutely clear that these relations will remain severed until such time as Elena Quinteros is set free and handed over to the Venezuelan authorities and it is given a full explanation of the facts". She adds that "it would not seem logical to think even for a moment that the authorities and various groups in Venezuela would have taken such a serious step as the breaking of diplomatic relations if they had not been convinced that Uruguayan public officials had directly participated in the violation of the Venezuelan Embassy in Uruguay and in the abduction of Elena Quinteros".

10.6 The author refers to the position the Committee has taken, in previous cases, that in the face of specific and detailed complaints, it was not sufficient for the State party to refute these allegations in general terms but that "it should have investigated the allegations". In case R.7/30 Eduardo Bleier v. Uruguay, for example, the Committee came to the conclusion that the person concerned had been "arrested and detained" by the Uruguayan authorities, although officially he had "disappeared", on the basis of statements by witnesses that they had seen him held prisoner in official detention centres.

10.7 To corroborate her allegations concerning the responsibility of the Uruguayan authorities in her dauther's case, the author recalls the testimonies referred to in paragraphs 1.5 and 1.6 above and adds new substantial evidence as follows:

(i) A letter sent to the author in January 1977 by the Secretary-General of the Office of the Presidency of the Republic of Venezuela, in which he stated that the Government "will continue to press for the release of your daughter, Elena Quinteros Almeida" and expressed the hope that "in the end justice will be done and this wrong will be redressed";

(ii) A Declaration adopted by the Chamber of Deputies of Venezuela on 26 April 1978, in which it is stated "on 28 June 1976 last, the Uruguayan citizen, Elena Quinteros, was arrested by the Uruguayan police authorities when she was seeking diplomatic asylum in the Venezuelan Embassy at Montevideo", "... not only does this action constitute a flagrant violation of the right of asylum but, in addition, the Uruguayan police authorities assaulted two diplomatic representatives of our country, thus violating the most elementary rules of diplomatic immunity and international courtesy";

(iii) Statements made to the Working Group on Enforced or Involuntary Disappearances by the representative of Uruguay to the Commission on Human Rights on 1 December 1981. The representative then said: "The disappearance of Elena Quinteros has caused us considerable problems. It led to the severing of our relations with Venezuela. It gave rise to a controversy in the Uruguayan newspapers, some of which asked whether or not the Uruguayan authorities were implicated ... . Miss Quinteros went into the Embassy of Venezuela. Before she was able to go inside and before she could initiate the procedure for applying for asylum, two

persons removed her forcibly from the entrance to the Embassy of Venezuela, put her in a car and took her away. ..." b/

10.8 The author reiterates that "there can be no doubt as to the applicability of the Covenant in my particular case ...". She states that, when her daughter was arrested in June 1976, "she and I were living in Montevideo, that is to say, within the jurisdiction of the Uruguayan authorities. As stated in my original communication, I was and continue to be victim of the violation of articles 7 and 17 of the Covenant".

11. In accordance with its mandate under article 5 (1) of the Optional Protocol, the Committee has considered the communication in the light of the information made available to it by the author of the communication and by the State party concerned. In this connection, the Committee has adhered strictly to the principle audiatur et altera pars and has given the State party every opportunity to furnish information to refute the evidence presented by the author. The State party appears to have ignored the Committee's request for a thorough inquiry into the author's allegations. The Committee reiterates that it is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, especially when such allegations are corroborated by evidence submitted by the author of the communication, and to furnish to the Committee the information available to it. In cases where the author has submitted to the Committee allegations supported by substantial witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

12.1 With regard to the identity of the alleged victim, the Committee on the basis of (a) the detailed information submitted by the author, including an eyewitness testimony, and (b) the statement made to the Working Group on Enforced or Involuntary Disappearance by the representative of Uruguay to the Commission on Human Rights, on 1 December 1981, has no doubt that the woman who was able to go inside the Embassy of Venezuela at Montevideo, on 28 June 1976, requesting asylum and who was forcibly removed from the Embassy grounds, put in a car and taken away, was Elena Quinteros.

12.2 In addition, the Committee cannot but give appropriate weight to the following information:

(i) Mr. Grille Motta in his testimony states that, during the incident of 28 June 1976, Enrique Baroni could identify one of Elena Quinteros' captors as being a policeman, nicknamed ..."; c/

(ii) Mrs. Marquet Navarro in her testimony asserts that she saw Elena Quinteros in August 1976 in the detention place where she herself was being held and that she could observe that Elena Quinteros had been subjected to severe ill-treatment. Mrs. Marquet also gives the names of two male officers and two female soldiers who were "dealing" with Elena Quinteros.

12.3 The Human Rights Committee, accordingly, finds that, on 28 June 1976, Elena Quinteros was arrested on the grounds of the Embassy of Venezuela at

Montevideo by at least one member of the Uruguayan police force and that in August 1976 she was held in a military detention centre in Uruguay where she was subjected to torture.

13. It is, therefore, the Committee's view that the information before it reveals breaches of articles 7, 9 and 10 (1) of the International covenant on Civil and Political Rights.

14. With regard to the violations alleged by the author on her own behalf, the Committee notes that, the statement of the author that she was in Uruguay at the time of the incident regarding her daughter, was not contradicted by the State party. The Committee understands the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts. The author has the right to know what has happened to her daughter. In these respects, she too is a victim of the violations of the Covenant suffered by her daughter in particular, of article 7.

15. The Human Rights Committee reiterates that the Government of Uruguay has a duty to conduct a full investigation into the matter. There is no evidence that this has been done.

16. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, therefore concludes that responsibility for the disappearance of Elena Quinteros falls on the authorities of Uruguay and that, consequently, the Government of Uruguay should take immediate and effective steps (a) to establish what has happened to Elena Quinteros since 28 June 1976, and secure her release; (b) to bring to justice any persons found to be responsible for her disappearance and ill-treatment; (c) to pay compensation for the wrongs suffered; and (d) to ensure that similar violations do not occur in the future.

Notes

a/ On 29 July 1980, the Committee adopted views in case No. R.2/11 (11/1977) concerning Alberto Grille Motta v. Uruguay.

b/ See E/CN.4/1492, annex XVI.

c/ Same nickname and name as referred to in paras. 1.6 and 10.4 above.

ANNEX XXIII

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

concerning

Communication No. 108/1981

Submitted by: Carlos Varela Nuñez

Alleged victim: The author

State party concerned: Uruguay

Date of communication: 27 October 1981 (date of initial letter)

Date of decision on admissibility: 27 October 1982

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

Meeting on 22 July 1983,

Having concluded its consideration of communication No. 108/1981 submitted to the Committee by Carlos Varela Nuñez under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The author of the communication, dated 27 October 1981, is Carlos Varela Nuñez, a Uruguayan journalist, living at present in New York City, United States of America. (The communication is submitted by the author with the assistance of the International League for Human Rights.) Mr. Varela Nuñez alleges that he is a victim of a breach by Uruguay of articles 12 (2) and 19 of the Covenant on Civil and Political Rights.

1.2 The author claims that his Uruguayan passport has been revoked by the Uruguayan authorities, without official notice or explanation, to punish him for the opinions which he holds and which he has expressed and still expresses in press articles critical of the policies of the Uruguayan Government and to prevent him from continuing to exercise fully his freedom of expression as a journalist. He

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* Mr. Walter Surma Tarnopolsky did not participate in the adoption of the views of the Committee under article 5 (4) of the Optional Protocol in this matter.

claims that for the purpose of his complaint he comes within the jurisdiction of Uruguay.

2.1 The author states that he is a Uruguayan citizen born in Montevideo, Uruguay, on 25 May 1942. In the early 1960s, he was an active member of the Uruguayan Socialist Party, which then was a legally functioning party. At the same time, he was also working as a journalist for the Uruguayan newspapers "Epoca" and "Marcha". (Both newspapers and the Socialist Party were proscribed after the author left Uruguay.) The author affirms that throughout his career as a journalist in Uruguay and abroad, he has written press articles which have critically discussed Uruguay's human rights policies and practices.

2.2 On 11 March 1966, the author left Uruguay legally, in possession of a valid Uruguayan passport. In July 1970, Mr. Varela started to work for the Italian news agency, ANSA, and has been ANSA's correspondent at United Nations Headquarters in New York since 1973. When his passport expired in 1971, the Uruguayan consulate in Rome, Italy, issued to him a new passport (No. 151-922), with the expiration date of November 1981, provided that renewal of the passport be obtained in November 1976.

2.3 The author states that when he applied for the renewal of his passport at the Uruguayan consulate in New York in 1976, he was informed by the consular officer that there would probably be a long delay in the processing of his application. The author claims that after 1973 it had become the practice of the Uruguayan authorities, under the pretext of long delays, to deny the renewal of passports to certain persons. The author submits that, based upon personal knowledge of several such cases where Uruguayans had been waiting for the renewal of their passport for many years, without positive result, he informed the Uruguayan Ambassador to the United Nations that he intended to publicize his case. Subsequently, he obtained the renewal of his passport, valid then till November 1981.

2.4 The author states that, since the time of the "passport renewal incident", he has been afraid to return to Uruguay, for fear of reprisals because of his opinions and writings which have been critical of the Uruguayan Government's human rights record and other matters. The author adds that he is convinced that returning to Uruguay would place him in grave physical danger.

2.5 Mr. Varela claims that, in July 1980, he learned through foreign diplomats that the Uruguayan Government had notified foreign Governments in June of 1980 that his passport had been revoked. He himself, however, did not receive any written notice of the revocation, nor any statement of the reasons for that decision from the Uruguayan Government. His written inquiry regarding his passport, sent by registered mail to the Uruguayan consulate in New York on 5 May 1981, remained unanswered.

2.6 In March 1981, he was issued with a travel document by the Italian Government, based on humanitarian grounds, which enbles him for the time being to continue his work as ANSA correspondent at the United Nations in New York. The author states, however, that this travel document cannot be regarded as an adequate substitute for a Uruguayan passport, as it is issued to him at the discretion of the Italian Government, on an ad hoc basis, subject to revocation at any time and valid for travel only in a limited number of countries. He maintains, therefore, that his rights under article 12 (2), which allegedly have been and still are violated by the Uruguayan Government by revoking his passport, are not fully and permanently restored by the Italian travel document and continue to be severely curtailed.

2.7 The author also maintains that he continues to be a victim of a breach by Uruguay of article 19 of the Covenant, on the following grounds: his passport was revoked by the Uruguayan authorities allegedly in retaliation for his public criticism of the Government. The revocation of his passport by Uruguay entails serious consequences for his future work as a journalist, restricting his ability to cross frontiers freely in order to seek, receive and impart information.

2.8 The author indicates that no further domestic remedies are available in his case. He also states that the same matter has not been submitted to another procedure of international investigation and settlement.

2.9 The author points out that no derogation from the obligations under articles 12 and 19 can possibly be claimed by Uruguay in the circumstances of his case, because the specific conditions for derogation set out in article 4 (1) and (3) of the Covenant do not apply.

3. By its decision of 16 March 1982, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

4.1 By a note dated 14 July 1982, the State party objected to the competence of the Human Rights Committee on the ground that the communication did not meet the requirements for admissibility laid down in article 1 of the Optional Protocol "... in other words, Mr. Varela, on the date of submission of his petition, is outside the jurisdiction of the Uruguayan State ...".

4.2 The State party concludes that "it is therefore inappropriate for the Committee to deal with communications of this type, which detract it from its tasks and breach provisions of international norms".

4.3 The State party emphasizes that it has replied to the communication "simply out of its desire to carry on its unfailing co-operation with the Committee in promoting and protecting human rights".

4.4 As regards the contents of the communication, the State party in its submission dismisses the allegations of violations of articles 12 (2) and 19 of the Covenant by Uruguay as unfounded.

4.5 In substantiation of its rebuttal, the State party draws the Committee's attention to Mr. Varela's activities abroad, as journalist for the Italian news agency, ANSA, and to his actual enjoyment of the right to move demonstrated by his "free" departure from Uruguay and his visits to Czechoslovakia and Cuba in 1967-1968. The State party further points out that Mr. Varela, like all Uruguayan citizens, has the constitutional right to return to his country at any time, even if his passport has expired. The State party further asserts that it never prevented or tired to prevent the author of the communication from freely expressing his opinions, citing Mr. Varela's activities in Uruguay as a member of and a spokesman for the Movimiento Popular Unitario.

5.1 On 21 September 1982, the author of the communication forwarded his comments in reply to the State party's submission of 14 July 1982.

5.2 He rejects the State party's contention that the communication is inadmissible under the provisions of article 1 of the Optional Protocol because he does not come within its jurisdiction in the matter concerned. Mr. Varela maintains that he is a Uruguayan citizen who is subject to the jurisdiction of the State party with respect to the granting of a passport. Should Uruguay's statement that it has no jurisdiction in the casse imply that his citizenship has been revoked, Mr. Varela contends that he has never received a notice of withdrawal of citizenship, an act which would be arbitrary and in violation of international norms.

5.3 The author refers, in this connection, to the case of Guillermo Waksman (R.7/31)** which, similar to his own, concerned the denial of a passport, in violation of articles 12 (2) and 19 of the Covenant, by Uruguay to a Uruguayan citizen living abroad and which after being declared admissible by the Human Rights Committee led to the issuance of a new passport to Mr. Waksman by the appropriate Uruguayan consular authorities.

5.4 The author also rejects the State party's contention that his rights under article 12 have not been violated. Mr. Varela points out that article 12 does not merely protect the right to leave one's country and to return to it for the purpose of a single journey, but that it protects a more far-reaching right to travel, namely to be free to leave any country, including one's own. As to the State party's further contention that he travelled to Czechoslovakia and Cuba in 1967-1968, the author stresses the fact that at that time he was still in possession of a valid Uruguayan passport. He further maintains that the Italian travel document which he has been able to acquire permits only limited travel and is valid only till July 1983. The author reaffirms that he is a victim of a breach by Uruguay of article 19, firstly because he must assume, in the absence of clarifications to this point from the State party, that reporting critically on human rights developments in Uruguay, as part of his work as a United Nations journalist, led to the difficulties concerning his passport, and secondly because, by the lack of a passport, he is restricted in his work as a journalist which would require him to cross frontiers freely to seek information.

5.5 He finally dismisses as inaccurate the State party's reference to his political activities in Uruguay as member and spokesman of the Movimiento Popular Unitario, declaring that he never was a member or spokesman for that political group or any other group or political party affiliated to the Frente Izquierdo de Liberación.

6.1 When considering the admissibility of the communication, the Human Rights Committee did not accept the State party's contention that it was not competent to deal with the communication because the author did not fulfil the requirements of article 1 of the Optional Protocol. In that connection, the Committee made the following observations: article 1 applies to individuals subject to the jurisdiction of the State concerned who claim to be victims of a violation by that State of any of the Covenant rights. The issue of a passport to a Uruguayan citizen is clearly a matter within the jurisdiction of the Uruguayan authorities and he is "subject to the jurisdiction" of Uruguay for that purpose. Moreover, a passport is a means of enabling him "to leave any country, including his own", as

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** The Human Rights Committee decided to discontinue case No. R.7/31 (31/1978) on 28 March 1980.

required by article 12 (2) of the Covenant. Consequently, the Committee found that it followed from the very nature of that right that, in the case of a citizen resident abroad, article 12 (2) imposed obligations both on the State of residence and on the State of nationality, and that therefore article 2 (1) of the Covenant could not be interpreted as limiting the obligations of Uruguay under article 12 (2) to citizens within its own territory.

6.2 The Committee found, on the basis of the information before it, that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that, in the circumstances of this case, there were effective domestic remedies available to the alleged victim which he had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissable under article 5 (2) (b) of the Optional Protocol.

6.3 On 27 October 1982, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

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

(c) That the State party should be informed that the written explanations or statements submitted by it under article 4 (2) of the Protocol must primarily relate to the substance of the matter under consideration and, in particular, the specific violations of the Covenant alleged to have occurred.

7. By a note dated 20 April 1983, the State party reiterated the opinion put forward in its earlier submission of 14 July 1982 on the question of the admissibility of the communication, namely "that the Committee has no competence to deal with this case".

8. On 30 May 1983, in reply to the State party's submission of 20 April 1983, the author informed the Committee that his passport continued to be withheld by the Government of Uruguay, in violation of his rights under articles 12 and 19 of the Covenant. Referring to the State party's failure to respond to the merits of his case, the author concluded that the State party thereby "appears to acknowledge the indefensibility of its actions against Mr. Varela".

9.1 The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol.

9.2 The Committee decides to base its views on the following facts which appear to be uncontested: Carlos Varela Nuñez is a Uruguayan citizen living in New York City since 1973 where he is working as a correspondent for the Italian news agency "ANSA". In 1980 his passport (valid then till November 1981) was revoked by the Uruguayan Government which so notified foreign Governments in June 1980. Mr. Varela himself never received any written notice of the revocation, nor any statement of the reason for that decision, from the Uruguayan Government. His written inquiry, regarding his passport, sent by registered mail to the Uruguayan consulate in New York, remained unanswered. In March 1981, he was issued with a

travel document by the Italian Government which, however, could not be regarded as an adequate substitute for a Uruguayan passport (see para. 2.6 above).

9.3 As to the alleged violation of article 12 (2) of the Covenant, the Committee reiterates that article 2 (1) of the Covenant cannot be interpreted as limiting the obligations of Uruguay under article 12 (2) to citizens within its own territory. On the other hand, article 12 does not guarantee an unrestricted right to travel from one country to another. In particular, it confers no right for a person to enter a country other than his own. Moreover, the right recognized by article 12 (2) may, in accordance with article 12 (3), be subject to such restrictions as are "provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the Covenant". There are, therefore, circumstances in which a State, if its law so provides, may refuse passport facilities to one of its citizens. However, in the present case, the State party has not put forward any such justification for revoking Mr. Varela's passport. The facilities afforded by Italy do not, in the opinion of the Committee, relieve Uruguay of its obligations in this regard.

9.4 As to the allegations made by the author with regard to a breach of article 19 of the Covenant, which were refuted by the State party, the Committee observes that these allegations are in such general terms that it makes no findings in regard to them.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts found by it disclose a violation of article 12 of the Covenant, because the passport of Carlos Varela Nuñez was revoked without any justification, thus preventing him from fully enjoying the rights under article 12 of the Covenant.

11. Accordingly, the Committee is of the view that the State party is under an obligation to provide Carlos Varela Nuñez with effective remedies pursuant to article 2 (3) of the Covenant.

ANNEX XXIV

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights*

concerning

Communication No. 104/1981

Submitted by: J. R. T. and the W.G. Party (represented by R. B.) [names deleted]

Alleged victim: J. R. T. and the W.G. Party

State party concerned: Canada

Date of communication: 18 July 1981 (date of initial letter)

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

Meeting on 6 April 1983,

adopts the following:

Decision on admissibility

1. The communication (initial letter dated 18 July 1981 and further submissions dated 22 September 1981 and 4 August 1982) is submitted by J. R. T., a 69-year-old Canadian citizen, residing in Canada, and by the W.G. Party, an unincorporated political party under the leadership of J. R. T. since 1976. It is claimed that J. R. T. and the W.G. Party are victims of infringements by the Canadian authorities of the right to hold and maintain their opinions without interference, in violation of article 19 (1) of the International Covenant on Civil and Political Rights, and the right to freedom of expression and of the right to seek, receive and impart information and ideas of all kinds through the media of their choice, in violation of article 19 (2) of the Covenant.

2.1 The W.G. Party was founded as a political party in Toronto, Ontario, Canada, in February 1972. The Party and Mr. T. attempted over several years to attract membership and promote the Party's policies through the use of tape-recorded messages, which were recorded by Mr. T. and linked up to the Bell Telephone System in Toronto, Ontario, Canada. Any member of the public could listen to the messages by dialling the relevant telephone number. The messages were changed from time to time but the contents were basically the same, namely to warn the callers "of the

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* Mr. Walter Surma Tarnopolsky, pursuant to rule 85 of the provisional rules of procedure, did not participate in the consideration of this communication or in the adoption of the Committee's present decision.

dangers of international finance and international Jewry leading the world into wars, unemployment and inflation and the collapse of world values and principles".

2.2 The Canadian Human Rights Act was promulgated on 1 March 1978. Section 13 (1) of the Act reads as follows:

> "It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of fact that the person or those persons are identifiable on the basis of a prohibited ground of discrimination."

2.3 By application of this provision in conjunction with section 3 of the Act, which enumerates "race, national or ethnic origin, colour, religion, age, sex, marital status, conviction for which a pardon has been granted and physical handicap" as "prohibited grounds of discrimination", the telephone service of the W.G. Party and Mr. T. was curtailed. It is alleged that section 13 (1) of the Human Rights Act is clearly in violation of the Canadian Bill of Rights. Section 1 (d) of the Bill of Rights guarantees freedom of speech, and section 2 states that it shall not be abrogated, abridged or infringed unless expressly authorized by Act of Parliament. It is claimed that the Canadian Human Rights Act contains no provision authorizing such restrictions.

2.4 Section 32 of the Human Rights Act enables any individual having reasonable grounds for believing that a person is engaging in a "discriminatory practice" to file a complaint before the Canadian Human Rights Commission. Under this provision, a number of Jewish groups and individual Jews filed letters complaining about Mr. T.'s messages. In consequence, the Canadian Human Rights Commission initiated complaint proceedings against Mr. T. and the W.G. Party on 16 January 1979 for messages recorded on 6 July, 27 September, 17 November, 14 and 19 December 1978 and 9 January 1979, and decided to appoint a Human Rights Tribunal to inquire into the complaints and to determine whether the matters communicated telephonically by the W.G. Party and Mr. T. would be likely to expose persons identifiable by race and religion to hatred and contempt. The hearings of the Tribunal were carried out on 12, 13, 14 and 15 June 1979 and a decision was made on 20 July 1979. The Tribunal found that "although some of the messages are somewhat innocuous, the matter for the most part that they have communicated is likely to expose a person or persons to hatred or contempt by reason of the fact that the person is identifiable by race or religion and in particular, the messages identify specific individuals by name". It held, therefore, that the complaints were substantiated and ordered the W.G. Party and Mr. T. to cease using the telephone to communicate the subject-matter which had formed the contents of the tape-recorded messages referred to in the complaints.

2.5 The Canadian Human Rights Commission sent the decision of the Tribunal to the Federal Court for the purpose of enforcement on 22 August 1979, pursuant to section 43 of the Canadian Human Rights Act, and it was filed pursuant to Federal Court Rule 201 (1a) (a); the decision thereupon became enforceable in the same manner as an order of that Court. Section 28 (2) of the Federal Court Act requires that parties seeking judicial review of a Tribunal order initiate proceedings within 10 days of the date the decision is communicated to them. The Canadian Human Rights Act, however, provides that "an appeal lies to a Review Tribunal from

a decision of a Tribunal on any question of law or fact or mixed law and fact", and section 42 (1) of the Act lays down a time-limit of 30 days for such appeal. Mr. T. was, therefore, convinced that he would have 30 days to launch an appeal and, in consequence, failed to appeal within the 10 days set out in section 28 (2) of the Federal Court Act. In these circumstances Mr. T.'s only redress was to bring a Notice of Motion under Federal Court Rule 324 to extend the time for such appeal. He did so on 14 September 1979, but extension of time was refused on 17 October 1979, on the grounds that: "the material filed in support of the application did not disclose any serious grounds for challenging the validity of the Decision which the applicants wished to attack".

2.6 On 31 August 1979, before the appeal proceedings mentioned above took place, the Canadian Human Rights Commission recorded a new message from the telephone service of the W.G. Party, complaining that "we are now denied the right to expose the race and religion of certain people, regardless of their guilt in the destruction of Canada" and adding "those who do not believe there is a preponderance of certain racial and religious minorities involved in the corruption of our Christian way of life will never understand the simple basis of our way of life - the common denominator". In this connection the Canadian Human Rights Commission instructed its Legal Counsel to write to Mr. T. He warned Mr. T. on 2 October 1979, that if these particular passages were not deleted from the recordings by 10 October 1979, he would make an application to the Federal Court to enforce the Tribunal order. Mr. T. responded by letter dated 10 October 1979 that, although he did not agree that the passages were in contravention of the order of the Tribunal, he would change the messages.

2.7 Subsequent to Mr. T.'s letter of reply, Mr. T. and the W.G. Party continued to use messages that were deemed to be in contravention of the Tribunal order, and therefore an ex parte application was made to the Federal Court, Trial Division, by the Canadian Human Rights Commission to the effect that acts had been committed by Mr. T. contrary to the order of a Human Rights Tribunal. A transcript of the allegedly offensive messages dated 12 October 1979, 27 November 1979, 7 and 31 August 1979 was placed before the Federal Court. Mr. T. and the W.G. Party were ordered to appear before the Federal Court on 19 February 1980 to hear proof that they had disobeyed the order and to submit a defence.

2.8 The contempt of court proceedings took place before the Federal Court. After hearing the Legal Counsel for the Canadian Human Rights Commission and Mr. T., it concluded that the Commission had established beyond any doubt that Mr. T. and the W.G. Party had disobeyed the order made by the Human Rights Tribunal and had made use of the telephone services to convey the type of messages which they were prohibited from disseminating, namely, that "some corrupt Jewish international conspiracy is depriving the callers of their birthright and that the white race should stand up and fight back". The Court decided on 21 February 1980 that Mr. T. was guilty of contempt of court and sentenced him to one year imprisonment and the W.G. Party to pay a fine of $5,000. The sentences were to be suspended as long as Mr. T. and the W.G. Party did not use telephone communications for the dissemination of hate messages.

2.9 Mr. T. and the W.G. Party appealed against this decision within the required period of 30 days. The suspension of sentences was lifted on 11 June 1980 on the grounds of the nature of an additional message of 3 June 1980, and Mr. T. was committed to the Toronto jail on 17 June 1980. Early in June 1980, Mr. T. hired legal counsel, Mr. R. B., to represent him and the W.G. Party and to continue with

the appeal to the Federal Court of Appeal. On 24 June 1980, the Federal Court of Appeal ordered that the execution of sentences be stayed pending the disposition of the appeal. On 27 February 1981, the Court dismissed the appeal. The author of the communication alleges that the Court did so without written or oral reasons, and without deciding upon any of the issues raised. An application for leave to appeal to the Supreme Court of Canada was denied by the presiding judge of the Court of Appeal. An application for suspension of the operation of the sentence imposed upon Mr. T. was granted by the Federal Court of first instance on 13 April 1981. Another application by Mr. B. on behalf of Mr. T. and the W.G. Party was brought by way of Notice of Motion for leave to appeal before the Supreme Court of Canada, but was denied on 22 June 1981.

3. The author of the communication states from the foregoing that all domestic remedies have been exhausted and that the same matter has not been submitted for examination under another procedure for international investigation or settlement.

4. In a further letter, dated 22 September 1981, Mr. B. added that, following the denial of Mr. T.'s appeal by the Supreme Court of Canada, he again surrendered to the Sheriff of the Judicial District of York, Province of Ontario, on 27 July 1981, and had been serving his sentence since then. The following claim was also made: pursuant to the provisions of section 7 of the Post Office Act (Canada), which forbids the transmission of "scurrilous material", Mr. T. had, since May 1965, been proscribed from receiving or sending any mail in Canada. The author maintains that there are no domestic recourses to exhaust in this regard under Canadian legislation, and requests that the said proscription be considered by the Human Rights Committee, together with the other claims, as a possible further violation of article 19 of the Covenant. (The author's initial submission of 18 July 1981 indicates that the proscription has also applied to the W.G. Party since 1980.)

5. By its decision of 24 October 1980, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

6.1 In its submission dated 10 May 1982, the State party objected to the admissibility of the communication on various grounds.

6.2 As regards the allegation that prosecution under section 13 of the Canadian Human Rights Act resulted in a breach of article 19 and, by inference, articles 2 and 26 of the Covenant, the State party submits that no breach of the Covenant occurred. It states that the impugned provision of the Canadian Human Rights Act does not contravene these provisions of the Covenant, but in fact gives effect to article 20 (2) of the Covenant. Thus, not only is the author's "right" to communicate racist ideas not protected by the Covenant, it is in fact incompatible with its provisions, and therefore this part of the communication is in this respect inadmissible under articles 1, 2 and 3 of the Optional Protocol. The State party further contends that, as regards the same allegation, the communication should be declared inadmissible because the W.G. Party and Mr. T. failed to exhaust domestic remedies. The State party, in this respect, notes that Mr. T. and the Party, by their own inaction and negligence, failed to file their application for judicial review within the time-limits prescribed by law, to seek review of the order of the Tribunal within the time frame provided by law, or to succeed in convincing the Federal Court of Appeal to extend this time by showing that their appeal had some merit; that they could have challenged the validity of the

legislation which they were found to have contravened; consequently, that that negligence, as well as failure to invoke convincing grounds to justify an extension of the time for review, resulted in the loss of these remedies.

6.3 As regards the allegation that the application of section 7 of the Post Office Act resulted in an arbitrary interference with their correspondence contrary to the provisions of article 19 of the Covenant, the State party contends that the evidence shows that there occurred in this respect no breach of this article or, for that matter, of article 17, but that the impugned provision of the Post Office Act gives effect to article 20 of the Covenant, and, therefore, that this part of the communication is inadmissible under article 3 of the Optional Protocol. As regards the question of exhaustion of domestic remedies, the State party submits that Mr. T. and the W.G. Party had failed, at the time the communication was made, to challenge the validity and legality of the Minister's prohibitory order, or its extension, in judicial proceedings before the courts. The State party further states that a prohibitory order may be revoked by the Postmaster-General under certain conditions: "Formerly, section 7 of the Post Office Act and, currently, section 41 of the Canada Post Corporation Act allow for revocation of a prohibitory order if a person ceases to use the mail for a prohibited purpose. Should Mr. T. cease to distribute, personally or through the W.G. Party, scurrilous material, he could apply for the revocation of the 1965 Order."

6.4 The State party furthermore argues, on the question of admissibility, that the complaint of the W.G. Party should be declared inadmissible since under the preamble and articles 1, 2, 3 and 5 of the Optional Protocol only "individuals" may submit a written communication to the Committee for consideration, but not entities such as the W.G. Party.

7.1 Mr. B. submitted further comments, dated 4 August 1982, together with supplementary exhibits on the State party's submission of 10 May 1982. Mr. B. alleges that a prohibitory order which was made under section 7 of the Post Office Act in 1965, specifically forbidding Mr. T. and his Party (his Party was then called the "N.O.") to use the Canadian mail, is so broad that mail sent to Mr. T. or the W.G. Party (for the W.G. Party since 9 July 1980) is always returned to the sender and there has been continuous interference for 17 years. Mr. B. also states that this discriminatory policy continued even during the period of Mr. T.'s imprisonment, specifically denying him all mail privileges afforded to other prisoners. The author submits that this practice was in violation of "the Standard Minimum Rules for Treatment of Offenders". It is further alleged that Mr. T. is now disputing this matter further, but his legal counsel was personally inconvenienced thereby in his duty to represent Mr. T. at all times, since correspondence with him was rendered impossible, and that this is clearly a violation of the right to hold opinions without interference.

7.2 Mr. B. further states that, although the State party makes the points that under section 28 (2) of the Federal Court Act parties seeking a review of an order must initiate proceedings within 10 days of the date of the communication of the order to them, "or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 10 days, fix or allow", and that Mr. T. was late in filing his application for a review of the order, the visit to the Federal Court Office in Toronto in connection with his affidavit supporting the application for an order extending the time-limit, was made 9 hours after the lapse of the prescribed 10 days. It is, therefore, claimed that the refusal to extend the time was in these circumstances harsh, arbitrary and a misuse

of discretionary power. If the application had been granted, it might have been unnecessary to refer the present communication to the Human Rights Committee.

8. On the basis of the information before it the Human Rights Committee, after careful examination, concludes:

(a) The W.G. Party is an association and not an individual, and as such cannot submit a communication to the Committee under the Optional Protocol. Therefore, the communication is inadmissible under article 1 of the Optional Protocol in so far as it concerns the W.G. Party;

(b) As to the author's claim that section 13 (1) of the Canadian Human Rights Act, under which his use of the telephone service has been curtailed, has been applied against him in violation of article 19 of the Covenant, the Committee notes that he failed to file his application for judicial review within the time-limits prescribed by law. It appears, however, in view of the ambiguity ensuing from the conflicting time-limits laid down in the laws in question, that a reasonable effort was indeed made to exhaust domestic remedies in this respect and, therefore, the Committee does not consider that, as to this claim, the communication should be declared inadmissible under article 5 (2) (b) of the Optional Protocol. However, the opinions which Mr. T. seeks to disseminate through the telephone system clearly constitute the advocacy of racial or religious hatred which Canada has an obligation under article 20 (2) of the Covenant to prohibit. In the Committee's opinion, therefore, the communication is, in respect of this claim, incompatible with the provisions of the Covenant, within the meaning of article 3 of the Optional Protocol;

(c) As to the author's claim that the application of section 7 of the Post Office Act resulted in arbitrary interference with his correspondence, contrary to the provisions of articles 17 and 19 of the Covenant, the Committee accepts that the broad scope of the prohibitory order, extending as it does to all mail, whether sent or received, raises a question of compatibility with articles 17 and 19 of the Covenant. However, this claim is inadmissible under article 5 (2) (b) of the Optional Protocol. Mr. T. did not challenge the validity and legality of the Minister's prohibitory order, or its extension, before the competent Canadian courts. Moreover, a prohibitory order may be revoked under certain conditions and Mr. T. has not applied for such revocation. He has therefore failed to exhaust domestic remedies.

The Human Rights Committee therefore decides:

That the communication is inadmissible.

ANNEX XXV

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. 127/1982

Submitted by: C. A. [name deleted]

Alleged victim: The author

State party concerned: Italy

Date of communication: 26 June 1982

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

Meeting on 31 March 1983,

adopts the following:

Decision on admissibility

1. The author of the communication, dated 26 June 1982, is C. A., an Italian citizen living in Italy.

2. The author complains of a violation of article 14 (1) of the Covenant which reads, in part, as follows:

> "1. ... In the determination of ... his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law ..."

3.1 The author has a university degree in "naval mechanical engineering". In 1972-1973, he took a special course to qualify as a teacher in a number of fields relating to his academic qualifications. He was successful in the final examinations. However, he received from the Interregional Education Office for Lazio and Umbria a certificate, dated 16 November 1973, authorizing him to teach "mechanical technology" only. The author felt that the certificate, as formulated, unduly restricted his professional activities and that this caused him considerable prejudice.

3.2 On 20 May 1976, he appealed to the Interregional Education Office in order to have his certificate changed, but his appeal was rejected by an administrative decision in accordance with Presidential Decree No. 1199 of 24 November 1971. A second appeal made through official channels on 9 June 1976 remained unanswered.

3.3 On 9 September 1976, he appealed to the President of the Republic through an exceptional (administrative) recourse procedure. By Presidential Decree of 26 January 1979 the appeal was rejected.

3.4 On 20 July 1979, he appealed again to the President of the Republic, through the Ministry of Public Education, in order to obtain the repeal of the Presidential Decree of 26 January 1979. By Presidential Decree of 8 July 1981, this second appeal was rejected and the Ministry of Public Education provided the author with a copy of the Decree on 1 March 1982.

3.5 The author submits that domestic remedies have thus been exhausted. There is no indication that the same matter has been submitted to another procedure of international investigation or settlement.

4.1 The author states that the objective of his communication is not to seek a remedy for the prejudice caused to him by the decisions of the administrative authorities to limit the scope of his professional activities. On the other hand he requests the Committee to consider first the claim that Presidential Decree No. 1199 of 24 November 1971 is not in conformity with article 14 (1) of the Covenant and also violates article 113 of the Italian Constitution. This Decree establishes recourse procedures in administrative matters, including the exceptional procedure by way of appeal to the President of the Republic. The author claims that the Decree excludes the possibility for those who choose to appeal through the exceptional procedure to have their rights determined in a suit at law before a judicial tribunal. (Article 8 of Presidential Decree No. 1199 lays down that when an appeal is made against an administrative decision through a jurisdictional procedure ("ricorso giurisdizionale") the same appeal cannot be dealt with under the exceptional procedure.)

4.2 Secondly, the author claims that Decree No. 1199 does not guarantee the competence, the independence and the impartiality of the organ called upon to decide on the legitimacy of an administrative decision which, in the case of the exceptional procedure, is the Council of State. (The Council of State is, according to article 100 of the Italian Constitution, "an advisory organ on judicial-administrative matters and ensures the legality of public administration".)

4.3 Thirdly, the author claims that the exceptional procedure to appeal to the President of the Republic does not respect the right of everyone to be entitled to a fair and public hearing.

4.4 Finally, the author claims that, in general, legal provisions dealing with exceptional recourse procedures in the field of administration are not in conformity with the provisions of the Covenant.

5. Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6. The Human Rights Committee observes that, according to the author's own submission, it was open to him to pursue his case by means of proceedings before domestic courts. Instead, he chose to avail himself of the procedure by way of appeal to the President of the Republic. In these circumstances, the author cannot validly claim to have been deprived of the right guaranteed under article 14 (1) of the Covenant to have the determination of "rights ... in a suit at law" made by a competent, independent and impartial tribunal. Without having to determine whether article 14 (1) is at all applicable to a dispute of the present nature, the Human Rights Committee therefore decides:

That the communication is inadmissible.

ANNEX XXVI

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. 128/1982

Submitted by: L. A., on behalf of U. R. [names deleted]

Alleged victim: U. R.

State party concerned: Uruguay

Date of communication: 7 October 1982

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

Meeting on 6 April 1983,

adopts the following:

Decision on admissibility

1. The author of the communication, dated 7 October 1982, is L. A., a Swedish medical doctor residing in Sweden. He submits the communication to the Human Rights Committee, on behalf of U. R., a Uruguayan medical student, who is presently detained in Libertad prison, Uruguay, and is unable to present the communication on his own behalf.

2. The author alleges that U. R. is a victim of a breach by Uruguay of articles 9, 10 and 14 of the International Covenant on Civil and Political Rights. L. A. indicates that, as a member of a Swedish branch of Amnesty International, he has been working on the case, without avail, since 27 March 1980. He claims to have the authority to act on behalf of U. R. because he believes "that every prisoner treated unjustly would appreciate further investigation of his case by the Human Rights Committee".

3. Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4. Articles 1 and 2 of the Optional Protocol to the International Covenant on Civil and Political Rights provide that individuals who themselves claim to be victims of violations of any of the rights set forth in the Covenant may submit communications to the Human Rights Committee. The Human Rights Committee has established through a number of decisions on admissibility that a communication submitted by a third party on behalf of an alleged victim can only be considered if the author justifies his authority to submit the communication. With regard to the

present communication, the Committee cannot accept on the basis of the information before it that the author has any authority to submit the communication on behalf of the alleged victim.

The Human Rights Committee therefore decides:

That the communication is inadmissible.

ANNEX XXVII

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. 129/1982

Submitted by: I. M. [name deleted]

Alleged victim: The author

State party concerned: Norway

Date of communication: 25 October 1982

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

Meeting on 6 April 1983,

adopts the following:

Decision on admissibility

1. The author of the communication, dated 25 October 1982, is I. M. a naturalized Norwegian citizen, born in South Africa on 6 July 1934, and at present living in Moss, Norway. The author is a medical doctor who claims that the town of Oslo, and particularly its tax office, has perpetrated against him various acts and omissions which allegedly were based on racial discrimination and which all led to his being overtaxed in the years 1974 to 1979. He states that all his efforts before the Oslo tax authorities to have the alleged excess taxes rescinded or reduced have remained without avail and that he, therefore, requests the Human Rights Committee to consider the matter, in order to obtain for him the relief sought.

2. The author complains that, owing to the failure of the tax authorities to assist him in completing his tax forms for income tax, these forms were incomplete and, as a consequence, his tax deductible income was not adequately taken into account. He specifies that too little tax deduction was accorded for car expenses in connection with house calls. He claims that his Norwegian-born colleagues received more assistance than he did and that they had to complete their forms each year by 15 February, whereas he was requested to complete his forms by 31 January each year. He maintains that this put him at a serious disadvantage, because he did not have the additional two weeks to fill out the complex tax forms. The author also complains that the town of Oslo did not provide him with low-rent housing when he applied for it in 1974-1975 and that he was only offered such housing in 1979. The author claims that the failure of the Oslo authorities to provide him with low-rent accommodations contributed to his paying high taxes. There is no explanation as to how the author arrives at that conclusion.

3. The author does not specify the provisions of the Covenant alleged to have been violated. He claims that domestic remedies have been exhausted and states that the same matter has not been submitted to another procedure of international investigation or settlement.

4. Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5. The Human Rights Committee, after careful examination of the communication, is of the opinion that the communication does not reveal any evidence of violation of any of the civil and political rights referred to in the Covenant. In particular, the Committee would point out that the assessment of taxable income and allocation of houses are not in themselves matters to which the Covenant applies; nor is there any evidence in substantiation of the author's claim to be a victim of racial discrimination.

In the light of the above, the Human Rights Committee concludes that the communication is incompatible with the provisions of the Covenant and, in accordance with article 3 of the Optional Protocol, decides:

That the communication is inadmissible.

ANNEX XXVIII

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. 130/1982

Submitted by: J. S. [name deleted]

Alleged victim: The author

State party concerned: Canada

Date of communication: 14 December 1982

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

Meeting on 6 April 1983,

adopts the following:

Decision on admissibility

1. The communication, dated 14 December 1982, is submitted by J. S., a resident of Canada, through her legal representative, C. R. It is alleged that J. S. has been denied the right to have legal assistance without payment, in violation of article 14 (3) (d) of the International Covenant on Civil and Political Rights.

2. On 17 June 1980, J. S. was sentenced to life imprisonment for second degree murder in British Columbia. Pending her appeal to the British Columbia Court of Appeal, Ms. S. was incarcerated in Vancouver, British Columbia. Her appeal was dismissed in August 1981 and she was transferred to the Prison for Women in Kingston, Ontario. She had not lived in Ontario before. Ms. S. retained C. R. of Toronto, Ontario, to act as her counsel before the Supreme Court of Canada. The appeal was heard in the Supreme Court of Canada in November 1982, with Mr. R. acting as counsel for Ms. S.

3. The claim concerning the alleged breach of article 14 (3) (d) of the Covenant relates to J. S.'s efforts to obtain legal aid for the purpose of her appeal to the Supreme Court of Canada. In August 1981, she applied for a legal aid certificate from the legal aid authority in Ontario (Ontario Legal Aid Plan). The application was rejected, as Ms. S. was not considered to be "a person ordinarily resident" in Ontario and also because the legal aid authority in British Columbia (Legal Services Society of British Columbia) had already offered to pay Mr. C. R., as legal counsel for Ms. S. before the Supreme Court of Canada. Mr. R. maintains that, notwithstanding the offer of the legal aid authority in British Columbia, it would, in his opinion, both be illegal for the Legal Services Society of British Columbia to offer him payment and for him to accept, as he is not entitled to practise law in British Columbia.

4. J. S. then applied to the Supreme Court of Ontario for judicial review of the decision of the Ontario Legal Aid Plan to refuse to issue a certificate for legal aid to her. The application was heard in September 1982 and was successful. The Supreme Court of Ontario set aside the decision of the Ontario Legal Aid Plan and ordered that Ms. S.'s application for a legal aid certificate be reconsidered. However, the author of the communication indicates that the present status of this matter is that the Ontario Legal Aid Plan "is applying for leave to appeal to the Court of Appeal".

5. Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6. As to the question whether legal aid should have been granted by the Ontario Legal Aid Plan, the Human Rights Committee notes that the matter is still, according to the information before it, sub judice. Domestic remedies have therefore not yet been exhausted as required by article 5 (2) (b) of the Optional Protocol. The Human Rights Committee further notes that Ms. S. was in fact represented by legal counsel of her own choosing in the proceedings before the Supreme Court of Canada and that the legal aid authority in British Columbia had offered to pay the counsel chosen by her. Consequently, the Committee is unable, in any event, to find that there are grounds substantiating the allegation of violation of article 14 (3) (d) of the Covenant.

The Human Rights Committee therefore decides:

That the communication is inadmissible.

ANNEX XXIX

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. 136/1983

Submitted by: X. (a non-governmental organization) on behalf of S. G. F. [names deleted]

Alleged victim: S. G. F.

State party concerned: Uruguay

Date of communication: 5 February 1983 (date of initial letter)

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

Meeting on 25 July 1983,

adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 5 February 1983 and further submission dated 16 June 1983) is X (a non-governmental organization). It submits the communication on behalf of S. G. F., a Uruguayan national presently living in Sweden. The organization states that the request of S. G. F. for it to act on her behalf was made through close friends living in France whose identity, however, it felt unable to disclose. No written evidence with regard to the authority of the organization to act on behalf of the alleged victim has been provided. The author alleges that S. G. F. is a victim of a breach by Uruguay of articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights.

2. Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

3. Articles 1 and 2 of the Optional Protocol to the International Covenant on Civil and Political Rights provide that individuals who themselves claim to be victims of violations of any of the rights set forth in the Covenant may submit communications to the Human Rights Committee. The Human Rights Committee has established through a number of decisions on admissibility that a communication submitted by a third party on behalf of an alleged victim can only be considered if the author justifies his authority to submit the communication. With regard to the present communication, the Committee cannot accept on the basis of the information

before it that the author has the necessary authority to submit the communication on behalf of the alleged victim.

The Human Rights Committee therefore decides:

That the communication is inadmissible.

ANNEX XXX

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights

concerning

Communication No. 137/1983

Submitted by: X. (a non-governmental organization) on behalf of J. F. [names deleted]

Alleged victim: J. F.

State party concerned: Uruguay

Date of communication: 5 February 1983 (date of initial letter)

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

Meeting on 25 July 1983,

adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 5 February 1983 and further submission dated 16 June 1983) is X (a non-governmental organization). It submits the communication on behalf of J. F., a Uruguayan national at present detained at Libertad prison in Uruguay. The organization states that the communication is submitted at the request of J. F.'s wife, S. G. F., a Uruguayan national living at present in Sweden, and that this request has been made through close friends whose names it is unable to reveal. No written evidence with regard to the authority of the organization to act at the request of S. G. F. on behalf of J. F. has been provided. The author alleges that J. F. is a victim of a breach by Uruguay of articles 7, 9, 10, 14 and 15.

2. Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

3. Articles 1 and 2 of the Optional Protocol to the International Covenant on Civil and Political Rights provide that individuals who themselves claim to be victims of violations of any of the rights set forth in the Covenant may submit communications to the Human Rights Committee. The Human Rights Committee has established through a number of decisions on admissibility that a communication submitted by a third party on behalf of an alleged victim can only be considered if the author justifies his authority to submit the communication. With regard to the present communication, the Committee cannot accept on the basis of the information

before it that the author has the necessary authority to submit the communication on behalf of the alleged victim.

The Human Rights Committee therefore decides:

That the communication is inadmissible.

ANNEX XXXI

Response, dated 6 June 1983, of the Government of Canada to the views adopted by the Human Rights Committee on 30 July 1981

concerning

Communication No. 24/1977* Sandra Lovelace

1. On 19 November 1982, the Secretary-General of the United Nations, in accordance with the request of the Human Rights Committee, at its seventeenth session, informed Canada of the Committee's wish to receive any pertinent infomration on measures taken by Canada in respect of the views adopted by the Human Rights Committee, on 30 July 1981, in regard to communication No. R. 6/24. a/ In resonse to this request, Canada provides the following information:

Information on measures taken with respect to communication No. R.6/24

Introduction

2. In her communication to the Human Rights Committee on 29 December 1977, pursuant to the Optional Protocol to the International Covenant on Civil and Political Rights, Sandra Lovelace indicated that on 23 May 1970 she lost her Indian status upon marrying a non-Indian, as a result of the operation of s.12(1)(b) of the Indian Act, R.S.C. 1970 c. I-6. Section 12(1)(b) reads as follows:

> 12.(1) The following persons are not entitled to be registered [as Indians], namely ...
>
> (b) a woman who has married a person who is not an Indian ...

Sandra Lovelace therefore claimed to be a victim of a violation of the rights set forth in articles 2(1), 3, 23(1) and (4), 26 and 27 of the International Covenant on Civil and Political Rights.

3. However, because she had lost her Indian status before the Covenant and Optional Protocol came into effect in Canada on 19 August 1976, the Committee declined to consider whether article 26 of the Covenant, which guarantees the right to equality before the law and the equal protection of the law, had been violated (see para. 18 of the views it adopted in regard to communication No. R. 6/24). a/ Also, it held that the rights aimed at protecting family life and children were only indirectly at stake and, therefore, it did not find there to have been a

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* The numbering system was changed at the eighteenth session of the Committee. Previously, the reference number of each case referred, in addition to the serial number of the case in the register, to the number of the list of communications in which it was summarized (e.g., R. 6/24) and not to the year of registration.

contravention of article 23 (idem.). However, it concluded that the effects of her loss of status occurring after the Covenant came into force on her right to live on the reserve, a right which she desired to exercise because of the dissolution of her marriage, resulted in the particular circumstances of her case in a contravention of article 27 of the Covenant (see para. 17 of its views). a/ In particular, it held that the author of the communication had been denied the right, guaranteed by article 27, to persons belonging to minorities to enjoy her own culture and to use her own language in community with other members of her group.

Response of Canada to the views of the Human Rights Committee

(a) Amendment of the Indian Act

4. Although Canada was not found to be in contravention of article 26 of the Covenant by the Human Rigths Committee, it nevertheless appreciates the concern of Indian women, and, indeed, of many other persons in Canada and elsewhere in the international community, that s.12(1)(b) of the Indian Act may constitute discrimination on the basis of sex. It notes that, in a recent communication to the Human Rights Committee brought by Paula Sappier Sisson, the issue has again been raised of whether s.12(1)(b) of the Indian Act contravenes article 26 of the Covenant, in this case by a woman who married a non-Indian after the coming into force of the Covenant. Also, as a result of the decision of the Human Rights Committee in regard to communication No. R. 6/24 a/ brought by Sandra Lovelace, Canada is anxious to amend the Indian Act so as to render itself in fuller compliance with its international obligations pursuant to article 27 of the International Covenant on Civil and Political Rights.

5. Canada is committed to the removal from the Indian Act of any provisions which discriminate on the basis of sex or in some other way offend against human rights; it is also desirous that the Indian community have a significant role to play in determining what new provisions on Indian status the Indian Act should contain.

6. The issue of how Indian status should be defined in the Indian Act is, however, a matter of considerable controversy amongst Indian people. In order to expedite the amendment of the Indian Act, a Parliamentary Sub-Committee on Indian Women and the Indian Act was formed on 4 August 1982. This Sub-Committee conducted five days of hearings, in which it heard the testimonry of 41 witnesses, most of whom were Indian persons. The Sub-Committee was addressed on 8 September 1982 by the Honourable John C. Munro, Minister of Indian Affairs and Northern Development, who made at that time the following statement:

> "The Federal Government's position on the issue is perfectly clear. We are committed to bring in amendments to the [Indian] Act that will end discrimination based on sex. An integral part of that commitment is to proceed to the drafting of amendments only after full and open consultation with the Indian people."

7. On 21 September 1982, the Sub-Committee tabled its report, a copy of which is appended to the present document for the consideration of the Human Rights Committee. b/ It recommended among other things that the Indian Act should be amended, so that Indian women no longer lose their Indian status upon marrying non-Indians (p. 39 of the report), and that Indian women who had previously lost their status should upon application, be entitled to regain it (pp. 40-41 of the

report). Moreover, it recommended that persons who regain their Indian status also be entitled to regain their band membership (pp. 40-41 of the report), in which case they will be entitled to live on the reserve and participate in the life of the Indian community. The Sub-Committee also recommended that Parliament provide sufficient funds to make these measures of reinstatement feasible (pp. 41-42 of the report).

8. The report was greeted favourably by the Minister of Indian Affairs and Northern Development, although he expressed some concern that many interested Indian people had not had a chance to appear before the Sub-Committee. He reiterated, however, the view of Canda that the amendment of the Indian Act so as to remove any provisions discriminating on the basis of sex is a matter of urgency. The necessary steps are now being taken to develop legislation to amend the Indian Act.

(b) Enactment of the Canadian Charter of Rights and Freedoms

9. In April 1982, the Canadian Charter of Rights and Freedoms came into effect as part of the constitution of Canada. A copy of the Charter is appended to this document for the consideration of the Human Rights Committee. b/ Section 15(1) of the charter, which comes into effect in April 1985, reads as follows:

> "15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

Thus, as of April 1985, there will be an available domestic remedy in Canada for persons who feel they have been discriminated against on the basis of sex by federal laws. The enactment of the charter is an indication of the reality of Canada's respect for human rights, and provides an additional reason for Canada to be anxious to amend any laws which offend against human rights. The Federal Government is at present undertaking a review of all its legislation to ensure that any laws which are inconsistent with the charter are amended or repealed.

10. Sections 27 and 28 of the charter, already in effect, are also of relevance to any claim by an Indian woman that her human rights have been violated by s.12(1)(b) of the Indian Act. Section 27 is a constitutional recognition of the value of the diverse cultural heritages of Canadians, and s.28 espouses the principle of equality between men and women. These sections read as follows:

> "27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.
>
> "28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons."

11. There are also provisions of the Constitution Act, 1982 (of which the charter comprises Part I) which indicate Canada's respect for the integrity of its native peoples. Thus, s.25 of the charter reads as follows:

> "25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

"(a) Any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763;

"(b) Any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claim settlement."

Part II of the Constitution Act, 1982 is entitled "Rights of the Aboriginal Peoples of Canada", and is comprised by s.35, which reads as follows:

"35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

"(2) In this Act, 'aboriginal peoples of Canada' includes the Indian, Inuit and Métis peoples of Canada."

And Part IV of the Act, entitled "Constitutional Conference", requires Canada to convene a constitutional conference on matters affecting native peoples. This conference was held on 15 and 16 March 1983. At this conference, the Minister of Indian and Northern Affairs confirmed his intention to move forward as quickly as possibly with the process to amend the Indian Act and eliminate offensive sections. Furthermore, a Constitutional Accord on Aboriginal Rights was signed by the federal and provinicial governments with the participation of aboriginal groups. In the Accord it was agreed to hold a further conference on aboriginal matters within the year. It was also agreed to take the necessary step to amend section 35 of the Constitution Act, 1982, set out above, so as to include the principle of equality between men and women in regard to aboriginal and treaty matters in the following terms:

35.(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

12. Article 2 (3)(a) of the Covenant requires that States parties ensure that there are effective remedies for any persons whose rights or freedoms, as recognized in the Covenant, have been violated, notwithstanding that the violation has been committeed by persons acting in an official capacity. Sections 24(1) and 32(1) of the Canadian Charter of Rights and Freedoms bring Canada into compliance with this aspect of the Covenant. They read as follows:

"24.(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

"32.(1) This Charter applies

"(a) to the Parliament and Government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories;

"(b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province."

13. Thus, the Constitutional Act, 1982 is a legal expression, in an effective manner, of the aims of Canada to end discrimination and to respect aboriginal rights and freedoms. These are the same aims expressed by the Minister of Indian Affairs and Northern Development in the passage quoted above in regard to the amendment of the Indian Act.

Conclusion

14. Canada has responded, in a constructive and responsible manner, to the views communicated to it by the Human Rights Committee in regard to communication No. R. 6/24. a/ It has taken substantial steps towards amending s.12(1)(b) of the Indian Act and, indeed, other sections of the Indian Act which may discriminate on the basis of sex or otherwise offend against human rights, and remains committed to the amendment of these sections in the near future.

15. Also, in April 1982, the Canadian Charter of Rights and Freedoms came into effect and it contains important guarantees of fundamental rights and freedoms in Canada. In particular, s.15, when it comes into effect in April 1985, will provide an effective remedy for anyone who alleges that his or her rights to equality before the law and the equal protection of the law have been violated by federal legislation, and other sections of the charter reflect Canada's respect for ethnic and aboriginal rights.

Notes

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

b/ The text of the enclosure is kept in the Secretariat files.

ANNEX XXXII

Response, dated 15 June 1983, of the Government of Mauritius to the views adopted by the Human Rights Committee on 9 April 1981

concerning

Communication No. 35/1978* S. Aumeeruddy-Cziffra et al.

1. The Ministry of External Affairs, Tourism and Emigration ... has the honour to refer to the views expressed by the Human Rights Committee under article 5 (4) of the Optional Protocol to the Covenant on Civil and Political Rights with regard to Communication R. 9/35 a/.

2. It will be recalled that, in the light of the facts found by the Human Rights Committee as a result of Communication R. 9/35, the Committee held the view that the Immigration (Amendment) Act of 1977 and the Deportation (Amendment) Act of 1977 were discriminatory in their effects against those three of the nineteen co-authors of the communication who were married to foreign nationals and that the provisions of the two Acts consequently resulted in violations of articles 2 (1), 3 and 26 of the Covenant in relation to its articles 17 (1) and 23 (1).

3. It will also be recalled that the Committee expressed the view that Mauritius, as a State party to the Covenant, should adjust the provisions of those laws so as to remedy the situation.

4. The Ministry of External Affairs, Tourism and Emigration has the honour to request the Secretary-General to inform the Human Rights Committee that the two impugned Acts have now been amended by the Immigration (Amendment) Act of 1983 (Act. No. 5 of 1983) and the Deportation (Amendment) Act of 1983 (Act. No. 6 of 1983) which were passed by Parliament on Women's Day, 8 March 1983, so as to remove the discriminatory effects of those laws on grounds of sex.

Notes

* The numbering system was changed at the eighteenth session of the Committee. Previously, the reference number of each case referred, in addition to the serial number of the case in the register, to the number of the list of communications in which it was summarized (e.g., R. 9/33) and not to the year of registration.

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

ANNEX XXXIII

Response, dated 20 June 1983, of the Government of Finland to the views adopted by the Human Rights Committee on 9 April 1981

concerning

Communication No. 40/1978* E. J. Hartikainen and other members of the Union of Free Thinkers

1. With regard to questions relevant to the views of the Human Rights Committee concerning communication No. R. 9/40, a/ the Ministry of Education has given the following report:

2. On the basis of the report of the working group established by the National Board of Education mentioned in paragraph 9.3 of the decision of the Committee, a/ the Board confirmed on 17 June 1981 the contents of the instruction of ethics and the history of religions for comprehensive schools. The working group had consulted the Union of Free Thinkers in Finland in a letter on 27 October 1980.

3. Paragraph 16 (3) of the Comprehensive School Statute (No. 443 of 26 June 1970) to which reference was made in paragraph 10.4 of the decision of the Committee, a/ was revised on 16 April 1982 (No. 296, see annex) to correspond to the formulation of paragraph 6 of the School System Act (No. 467 of 26 July 1968). The amended text is as follows:

> "Instruction on ethics and the history of religions referred to in paragraph 6 (2) of the School System Act shall be given for a period equivalent of at least one weekly lesson to five or more pupils who have been exempted from the general instruction of religion in the school and who are unable to show that they are receiving comparable instruction outside the school."

4. The National Board of Education has taken the following further measures to solve the problems cited in paragraph 10.5 a/ of the decision of the Committee:

> (1) The Board of Education has made an allocation as of 3 March 1981 allowing a senior official to be specially employed for 40 days a year to inspect the instruction of ethics and the history of religions.
>
> (2) On 4 March 1981, the Board of Education charged the working group on ethics and the history of religions, established on 16 January 1979, with a further assignment to draw up a teachers' guide and to present proposals and make studies with a view to develop the instruction of ethics and the history of religions.

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* The numbering system was changed at the eighteenth session of the Committee. Previously, the reference number of each case referred, in addition to the serial number of the case in the register, to the number of the list of communications in which it was summarized (e.g., R. 9/40) and not to the year of registration.

(3) In an effort to intensify the training of teachers of the subject, the Board of Education organized in November-December 1982 a workshop on how to improve teaching of ethics and the history of religions.

Notes

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

ANNEX XXXIV

List of Committee documents issued

A. Seventeenth session

Documents issued in the general series

CCPR/C/27	Provisional agenda and annotations - seventeenth session
CCPR/C/SR.383-409 and corrigendum	Summary records of the seventeenth session

B. Eighteenth session

Documents issued in the general series

CCPR/C/6/Add.9	Initial report of Peru
CCPR/C/14/Add.3	Supplementary report of Nicaragua
CCPR/C/2/Add.6	Reservations, declarations, notifications and communications relating to the International Covenant on Civil and Political Rights and the Optional Protocol thereto
CCPR/C/26	Consideration of reports submitted by States parties under article 40 of the Covenant - Initial reports of States parties due in 1983: Note by the Secretary-General
CCPR/C/25	Provisional agenda and annotations - eighteenth session
CCPR/C/SR.410-436 and corrigendum	Summary records of the eighteenth session

C. Nineteenth session

CCPR/C/1/Add.60	Initial report of Lebanon
CCPR/C/28	Consideration of reports submitted by States parties under article 40 of the Covenant - Second periodic reports of States parties due in 1983: Note by the Secretary-General
CCPR/C/29	Provisional agenda and annotations - nineteenth session
CCPR/C/SR.437-464 and corrigendum	Summary records of the nineteenth session

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