

(c) Reporting on the substantive provisions

ARTICLE 1

-Text of article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

-Text of general comment 12 (21)

(General comments of the Committee are numbered chronologically by their order of adoption -- in the above case, "12". The second number (in parentheses) indicates the Committee session at which the general comment was adopted.)

1. In accordance with the purposes and principles of the Charter of the United Nations, article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as article 1 apart from and before all of the other rights in the two Covenants.

2. Article 1 enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.

3. Although the reporting obligations of all States parties include article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of article 1.

4. With regard to paragraph 1 of article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.

5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence". This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having

responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and co-operation between States and to strengthening international peace and understanding.

Reporting officers should bear in mind that the right to self-determination is protected by an identical article 1 in the ICESCR.

ARTICLE 2

-Text of article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

-Text of general comment 3 (13)

1. The Committee notes that article 2 of the Covenant generally leaves it to the States parties concerned to choose their method of implementation in their territories within the framework set out in that article. It recognizes, in particular, that the implementation does not depend solely on constitutional or legislative enactments, which in themselves are often not per se sufficient. The Committee considers it necessary to draw the attention of States parties to the fact that the obligation under the Covenant is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all the individuals under their jurisdiction. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights. This is obvious in a number of articles (e.g. article 3 which is dealt with in general comment 4 (13)), but in principle this undertaking relates to all rights set forth in the Covenant.

2. In this connection, it is very important that individuals should know what their rights under the Covenant (and the Optional Protocol, as the case may be) are and also that all administrative and judicial authorities should be aware of the obligations which the State party has assumed under the Covenant. To this end, the Covenant should be publicized in all official languages of the State and steps should be taken to familiarize the authorities concerned with its contents as part of their training. It is desirable also to give publicity to the State party's co-operation with the Committee.

-Text of general comment 15 (27)

The position of aliens under the Covenant

1. Reports from States parties have often failed to take into account that each State party must ensure the rights in the Covenant to "all individuals within its territory and subject to its jurisdiction" (article 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.

2. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided in article 2 thereof. This guarantee applies to aliens and citizens alike. Exceptionally, some of the rights recognized in the Covenant are expressly applicable only to citizens (article 25), while article 13 applies only to aliens. However, the Committee's experience in examining reports shows that in a number of countries other rights that aliens should enjoy under the Covenant are denied to them or are subject to limitations that cannot always be justified under the Covenant.

3. A few constitutions provide for equality of aliens with citizens. Some constitutions adopted more recently carefully distinguish fundamental rights that apply to all and those granted to citizens only, and deal with each in detail. In many States, however, the constitutions are drafted in terms of citizens only when granting relevant rights. Legislation and case law may also play an important part in providing for the rights of aliens. The Committee has been informed that in some States fundamental rights, though not guaranteed to aliens by the Constitution or other legislation, will also be extended to them as required by the Covenant. In certain cases, however, there has clearly been a failure to implement Covenant rights without discrimination in respect of aliens.

4. The Committee considers that in their reports States parties should give attention to the position of aliens, both under their law and in actual practice. The Covenant gives aliens all the protection regarding rights guaranteed therein, and its requirements should be observed by States parties in their legislation and in practice as appropriate. The position of aliens would thus be considerably improved. States parties should ensure that the provisions of the Covenant and the rights under it are made known to aliens within their jurisdiction.

5. The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.

6. Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the Covenant.

7. Aliens thus have an inherent right to life, protected by law, and may not be arbitrarily deprived of life. They must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; nor may they be held in slavery or servitude. Aliens have the full right to liberty and security of the person. If lawfully deprived of their liberty, they shall be treated with humanity and with respect for the inherent dignity of their person. Aliens may not be imprisoned for failure to fulfil a contractual obligation. They have the right to liberty of movement and free choice of residence; they shall be free to leave the country. Aliens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law. Aliens shall not be subjected to retrospective

penal legislation, and are entitled to recognition before the law. They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. They have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association. They may marry when at a marriageable age. Their children are entitled to those measures of protection required by their status as minors. In those cases where aliens constitute a minority within the meaning of article 27, they shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language. Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant.

-Commentary

Article 2 concerns the implementation of the Covenant at the national level. It contains a general obligation for States parties to respect and to ensure the rights recognized in the Covenant without any distinctions on the grounds enumerated in article 2.

The scope of the non-discrimination clause contained in this article, and of similar clauses in some other articles of the Covenant, is comprehensively discussed in general comment 18 (37), which accordingly should be taken into account when reporting on any of the provisions of the Covenant. (For the text of general comment 18 (37) see below under article 26.) Furthermore, in its general comment 15 (27) the Committee has pointed out that almost all the rights and freedoms contained in the Covenant must be granted both to nationals and to aliens. As a consequence, States parties should expressly report how the question of nationality is being dealt with when describing the measures they have adopted to ensure that the enjoyment of the rights enshrined in the Covenant takes place without any discrimination prohibited by article 2.

The choice of steps that have to be taken to implement the Covenant at the national level is left to each State party to decide according to its constitutional system. Such steps may consist of legislative or other measures. When describing such steps in their reports, States parties should bear in mind that the obligation set forth in article 2 is of both a negative and a positive nature: on the one hand, article 2 contains the obligation to respect the free exercise of the rights and freedoms set forth in the Covenant; on the other hand, article 2 contains the obligation to ensure the exercise of these rights and freedoms through the creation of favourable conditions for their full enjoyment by all individuals under the jurisdiction of the State party.

Paragraph 3 of article 2 deserves special attention. This paragraph concerns the development of special remedies, especially judicial remedies, for situations in which a right or freedom recognized in the Covenant is being violated. Reports should comprehensively describe the remedies that are available to victims, their practical application and the results of their application during the reporting period. Since a person's awareness of his/her rights, and of the remedies against violations, is a prerequisite for their effective protection, reporting States should provide information on the measures taken to promote such awareness, including the training of public authorities or the dissemination of information on the Covenant and on any remedies, either directly by the government or through special agencies or bodies.

Other international instruments deal in related articles with non-discrimination, equality before the law, and the pursuit of general policies in these areas. Therefore, when assembling information in accordance with articles 2(1), 3, and 26 of the Covenant, reporting officers should assess the usefulness of any existing information on articles 2(2) and 3 of ICESCR, 2(1) of ICERD, and 2 and 15(1) of CEDAW for purposes of reporting under the ICCPR.

ARTICLE 3

-Text of article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

-Text of general comment 4 (13)

1. Article 3 of the Covenant requiring, as it does, States parties to ensure the equal right of men and women to the enjoyment of all civil and political rights provided for in the Covenant,

has been insufficiently dealt with in a considerable number of States reports and has raised a number of concerns, two of which may be highlighted.

2. Firstly, article 3, as articles 2(1) and 26 in so far as those articles primarily deal with the prevention of discrimination on a number of grounds, among which sex is one, requires not only measures of protection but also affirmative action designed to ensure the positive enjoyment of rights. This cannot be done simply by enacting laws. Hence, more information has generally been required regarding the role of women in practice with a view to ascertaining what measures, in addition to purely legislative measures of protection, have been or are being taken to give effect to the precise and positive obligations under article 3 and to ascertain what progress is being made or what factors or difficulties are being met in this regard.

3. Secondly, the positive obligation undertaken by States parties under that article may itself have an inevitable impact on legislation or administrative measures specifically designed to regulate matters other than those dealt with in the Covenant but which may adversely affect rights recognized in the Covenant. One example, among others, is the degree to which immigration laws which distinguish between a male and a female citizen may or may not adversely affect the scope of the right of the woman to marriage to non-citizens or to hold public office.

4. The Committee, therefore, considers that it might assist States parties if special attention were given to a review by specially appointed bodies or institutions of laws or measures which inherently draw a distinction between men and women in so far as those laws or measures adversely affect the rights provided for in the Covenant and, secondly, that States parties should give specific information in their reports about all measures, legislative or otherwise, designed to implement their undertaking under this article.

5. The Committee considers that it might help the States parties in implementing this obligation, if more use could be made of existing means of international co-operation with a view to exchanging experience and organizing assistance in solving the practical problems connected with the ensurance of equal rights for men and women.

-Commentary

The provision of this article of the Covenant, in addressing one of the grounds for discrimination identified in article 2(1), is intended to stress the need for the protection of women in society in order to enable them to enjoy civil and political rights on an equal footing with men. The article, by referring to "equality" instead of mere "non-discrimination", also intends to indicate that substantive affirmative action may be especially necessary in the area covered by article 3. Therefore, States parties should report in particular on the legislative, administrative or other measures they have taken to implement in concrete terms the principle of equality of men and women in the enjoyment of the rights set forth in the Covenant. In this context, reports should provide details about the activities of bodies established in various countries at governmental or quasi-governmental levels to undertake the review of legislation and practice affecting the enjoyment of rights by women. In order to allow the Committee fully to appreciate the role of such bodies and, in general, the impact of actions taken by the State in this respect, detailed information should be provided about the participation of women in the political and economic life of the country. Available statistics showing the ratio between men and women elected to parliamentary bodies and appointed to public service, or engaged in the professions, i.e. lawyers, physicians, engineers, architects, etc., are very desirable. Numbers of male and female students enrolled in secondary and higher education are also important indicators under this article. Similarly, a thorough account would be required of the continuing existence of any laws discriminating against women in the reporting State, and of steps taken to bring such laws in line with the principle of equality regarding both the professional and private lives of women. Concerning the latter, reports should give due consideration to family matters and especially to equal rights between spouses, and between spouses and children. Related areas, such as the impact of marriage on women's and children's nationality, also should be addressed in States parties' reports.

See also articles 2(1) and 26 as well as article 23 of this Covenant and the relevant cross references under article 2, in particular articles 2 and 15(1) of CEDAW.

ARTICLE 4

-Text of article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

-Text of general comment 5 (13)

1. Article 4 of the Covenant has posed a number of problems for the Committee when considering reports from some States parties. When a public emergency which threatens the life of a nation arises and it is officially proclaimed, a State party may derogate from a number of rights to the extent strictly required by the situation. The State party, however, may not derogate from certain specific rights and may not take discriminatory measures on a number of grounds. The State party is also under an obligation to inform the other States parties immediately, through the Secretary-General, of the derogations it has made including the reasons therefor and the date on which the derogations are terminated.

2. States parties have generally indicated the mechanism provided in their legal systems for the declaration of a state of emergency and the applicable provisions of the law governing derogations. However, in the case of a few States which had apparently derogated from Covenant rights, it was unclear not only whether a state of emergency had been officially declared but also whether rights from which the Covenant allows no derogation had in fact not been derogated from and further whether the other States parties had been informed of the derogations and of the reasons for the derogations.

3. The Committee holds the view that measures taken under article 4 are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and that, in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which no derogations can be made. The Committee also considers that it is equally important for States parties, in times of public emergency, to inform the other States parties of the nature and extent of the derogations they have made and of the reasons therefor and, further, to fulfil their reporting obligations under article 40 of the Covenant by indicating the nature and extent of each right derogated from together with the relevant documentation.

-Commentary

According to the Covenant's provision and its analysis by the Committee, a report should give two kinds of information.

First, the constitutional mechanism by which a state of emergency can be declared in the country has to be described, indicating the powers the executive branch will have under such circumstances. The report should address the role of State authorities, such as military and police, during the period of emergency. In addition, the report should specify what mechanisms are available to review the correct exercise of extraordinary powers of such authorities during a period of emergency.

Secondly, a report has to indicate whether any state of emergency has been declared during the time span it covers. It has to describe the precise content of the official act of declaration and, as the case may be, the act of termination of the state of emergency -- bearing in mind that the Secretary-General of the United Nations already ought to have been notified of such acts.

The report also needs to specify the measures adopted regarding any particular right enshrined in the Covenant, taking into account that certain rights cannot be derogated from. Regarding each

derogable right, the report should indicate the scope of the derogation from it and should clarify the reasons why such a derogation, and the extent thereof, was or is necessary to face the situation of emergency in the country. In this context, attention must be paid to the practical impact a derogation has on the exercise of each right, on the remedies available to the individual to obtain redress in case of abuse, and on any other consequence such derogations have during the existence and after the formal termination of the state of emergency.

States parties to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, should note that in accordance with article 6 of the Protocol the list of non-derogable rights is to include the right not to be executed. (As of this writing, the Protocol had not yet entered into force. See also under article 6 of the Covenant.)

Situations of public emergencies, the limitation of rights and the derogation from rights are dealt with in related articles of other international instruments as well. They therefore may be of relevance for reporting under this Covenant. These articles are: articles 4 and 5 of ICESCR, and articles 2(2) and (3) of CAT. See also article 5 below.

ARTICLE 5

-Text of article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

-Commentary

This article is of a general nature and has a general scope. Paragraph 1 is aimed at preventing any misinterpretations of any of the articles of the Covenant which might cause the destruction or limitation of the rights and freedoms to an extent greater than allowed by the Covenant itself. Paragraph 2 deals with possible conflicts that may arise between the Covenant and other rules applicable in the State party, whether such rules have been adopted directly by the State party or are the result of other international agreements. The Covenant recognizes the priority of those provisions which provide the greatest amount of protection.

To the extent that this article contains criteria for the interpretation of the provisions of the Covenant, it does not require specific and separate implementation at the national level, except for the fact that the criteria themselves must be valid under domestic law regarding the application of any rule related to the scope of the Covenant.

Reports should therefore indicate how in general these criteria for interpretation become applicable in the reporting State. Moreover, reports should refer to these criteria under any article whose application may in practice lead to a misinterpretation of the article itself, or to a conflict with domestic law in the sense indicated above.

See also article 4 above.

ARTICLE 6

-Text of article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

The Committee, at different sessions, has adopted two general comments on this article.

-Text of general comment 6 (16)

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

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

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

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

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

6. While it follows from article 6(2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes". The article also refers generally to abolition in terms which strongly suggest (para.s 2(2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the Committee. The

Committee notes that a number of States have already abolished the death penalty or suspended its application. Nevertheless, States' reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.

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

-Text of general comment 14 (23)

1. In its general comment 6 (16) adopted at its 378th meeting on 27 July 1982, the Human Rights Committee observed that the right to life enunciated in the first paragraph of article 6 of the International Covenant on Civil and Political Rights is the supreme right from which no derogation is permitted even in time of public emergency. The same right to life is enshrined in article 3 of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948. It is basic to all human rights.

2. In its previous general comment, the Committee also observed that it is the supreme duty of States to prevent wars. War and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year.

3. While remaining deeply concerned by the toll of human life taken by conventional weapons in armed conflicts, the Committee has noted that, during successive sessions of the General Assembly, representatives from all geographical regions have expressed their growing concern at the development and proliferation of increasingly awesome weapons of mass destruction, which not only threaten human life but also absorb resources that could otherwise be used for vital economic and social purposes, particularly for the benefit of developing countries, and thereby for promoting and securing the enjoyment of human rights for all.

4. The Committee associates itself with this concern. It is evident that the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today. This threat is compounded by the danger that the actual use of such weapons may be brought about, not only in the event of war, but even through human or mechanical error or failure.

5. Furthermore, the very existence and gravity of this threat generates a climate of suspicion and fear between States, which is in itself antagonistic to the promotion of universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and the International Covenants on Human Rights.

6. The production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity.

7. The Committee accordingly, in the interest of mankind, calls upon all States, whether Parties to the Covenant or not, to take urgent steps, unilaterally and by agreement, to rid the world of this menace.

-Commentary

As the right to life is of paramount importance, the individual provisions of article 6 deserve the utmost attention by States parties when they report to the Committee.

Whereas many of the provisions of article 6 expressly refer to the death penalty, paragraph 1 has a more general scope and covers any action States parties might take to create conditions guaranteeing to all human beings under their jurisdiction the enjoyment of the right to life, as well as to protect them against arbitrary deprivation of life.

Paragraph 1 is drafted in general terms. This explains the emphasis put by the Committee in its general comments on the need to avert the danger of war and in particular, of nuclear war, including the danger inherent in the production and possession of nuclear weapons. States parties should therefore describe in their reports the measures they have adopted, or are adopting, to reduce the threat of war, which is in itself contradictory to the enjoyment of the right to life, as well as of any other human right.

In order to allow the Committee fully to appreciate the efforts undertaken to create favourable conditions for the enjoyment of the right to life, States parties should describe any positive action they are taking to increase life expectancy through reduction of infant mortality or elimination of malnutrition and epidemics, as well as to prevent nuclear disasters and environmental pollution.

Paragraph 1 refers to the protection of life by law and it obligates States to prevent the arbitrary deprivation of life. Reporting States are therefore required to give full information about measures available to prevent any arbitrary deprivation of life and to punish those responsible in case it does occur. Reports should cover both ordinary laws and special laws that regulate particular acts (e.g. terrorist activities) as well as existing provisions to compensate all victims of such wrongful activities, be they committed by public servants or by private individuals. Furthermore, since it can occur that public authorities or officials commit arbitrary killings, States parties' reports shall explain in detail the rules and regulations governing the use of firearms by the police and security forces. Reports should also indicate whether any violations of these rules and regulations occurred and, if so, whether any lives were lost as a result of the excessive use of force by the military, the police, or other law enforcement agencies. Consequently, the Committee seeks information on any investigations that have been carried out to establish the responsibility of, and to punish those found responsible for such acts. The Committee further seeks information on measures that have been taken to prevent the recurrence of further abuses.

The phenomenon of the disappearance of persons, which often results in the arbitrary deprivation of life, deserves special consideration. Reports shall provide detailed accounts of actions taken to prevent disappearances and of procedures established and, as the case may be, followed to investigate effectively complaints regarding missing persons, especially when such complaints allegedly involve security forces or other public authorities.

Regarding the death penalty, it must be recalled that, although the Covenant does not prescribe the abolition of capital punishment, it imposes a set of obligations on States parties still using it. Article 6(2) indicates that the use of the death penalty must be restricted as far as possible, and draws the attention of States parties to the desirability of abolishing it. In general terms, States are therefore required to provide information on their current domestic situation and on any initiatives and plans aiming at further reducing or totally abolishing capital punishment. In addition, and since according to article 6 this type of penalty cannot be imposed except for the "most serious crimes" and may be imposed only in accordance with the law in force at the time of the commission of the crime, reporting States shall clearly indicate the crimes punishable by the death penalty and whether its application in such cases is mandatory or not. Furthermore, information must be provided as to which courts are competent to impose capital punishment and as to the procedures observed, in particular taking into account all the guarantees set forth in article 14 of the Covenant as minimum requirements for a fair trial. Consideration must also be given to the right to appeal a death sentence and to the additional right to seek pardon or commutation of the sentence, both of which have to be provided for under the domestic legal order. The State must also grant special protection to persons who commit a crime carrying the death penalty when they are under eighteen years of age. Such persons cannot be sentenced to death; nor can a death sentence be carried out on pregnant women. Reports are required to provide specific information on these points.

Reports must discuss the actual application of the death penalty by providing information on how many death sentences have been pronounced and for what crimes, and on how many sentences have been carried out and for what crimes, during the time period covered by the report. Reports also must indicate how many individuals remain on death row, and how many, if any, sentences have been commuted.

Finally it shall be mentioned that with resolution 44/128, the General Assembly of the United Nations at its forty-fourth session adopted and opened for signature, ratification and accession the Second Optional Protocol to the Covenant on Civil and Political Rights, aimed at the abolition of the death penalty. Ten States have ratified or acceded to the Protocol for it to enter into force (article 8). As of this writing, four States had done so.

Text of article 1 of the Second Optional Protocol

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.
2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Text of article 2 of the Second Optional Protocol

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.

3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

According to its article 3, States parties to the Second Optional Protocol shall include in their reports to the Committee information on the measures that they have adopted to give effect to the Second Optional Protocol. The information thus provided shall include in particular a description of the steps taken to abolish the death penalty in domestic law, of the changes in the procedures that used to allow for the death penalty to be imposed before the entry into force of the Second Optional Protocol, and of the steps taken to commute the sentences of convicted persons on death row.

Reporting officers should bear in mind that article 12 of ICESCR, and article 12 of CEDAW deal with the right to enjoy the highest standard of physical and mental health. Information gathered for reporting on those provisions may be of relevance also for the right to life of article 6 of this Covenant.

ARTICLE 7

-Text of article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

-Text of general comment 7 (16)

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

2. As appears from the terms of this article, the scope of protection required goes far beyond torture as normally understood. It may not be necessary to draw sharp distinctions between the various prohibited forms of treatment or punishment. These distinctions depend on the kind, purpose and severity of the particular treatment. In the view of the Committee the prohibition must extend to corporal punishment, including excessive chastisement as an educational or disciplinary measure. Even such a measure as solitary confinement may, according to the circumstances, and especially when the person is kept *incommunicado*, be contrary to this article. Moreover, the article clearly protects not only persons arrested or imprisoned, but also

pupils and patients in educational and medical institutions. Finally, it is also the duty of public authorities to ensure protection by the law against such treatment even when committed by persons acting outside or without any official authority. For all persons deprived of their liberty, the prohibition of treatment contrary to article 7 is supplemented by the positive requirement of article 10(1) of the Covenant that they shall be treated with humanity and with respect for the inherent dignity of the human person.

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

-Commentary

According to this article, as the Committee has commented, a report should first describe the place accorded to the prohibition of torture and inhuman treatment in the domestic legal structure. The Committee seeks in particular information on how torture is defined, whether and to what extent it constitutes a crime, what sanctions are provided by penal and administrative laws in case of its commission, whether the law voids any declaration or confession obtained through torture, and what kind of compensation the law provides for the victims of such acts. Since the Covenant also prohibits cruel or inhuman punishment, a reference to existing laws in this area is also required. States parties that still use the death penalty must include information on regulations concerning the treatment of persons on death row.

The Committee noted that cases of torture occur notwithstanding the existence of penal laws prohibiting torture or similar practices. This makes it of utmost importance for the Committee to receive detailed reports on the practice followed in the treatment of detainees, including measures taken to train law enforcement officials. Reports should be very specific regarding time limits prison authorities must abide by when resorting to special security measures or to solitary confinement of prisoners in special security cells. Information is required on safeguards against detention *incommunicado* and against abuses of such practices by prison governors, and on measures adopted to ensure the right of detainees to receive visits and to maintain contacts with the outside world. Since an effective protection largely depends on the existence of a machinery of control, reports should also give a full account of such machinery. For that purpose, States parties' reports should specify on the one hand what control mechanisms have been instituted to ensure that persons arrested or detained are not subjected to torture or other ill-treatment, and the procedures -- which should be independent and impartial -- under which complaints about ill-treatment of individuals by the police, the security forces, or prison officials can be filed and are investigated. On the other hand, reports should specify whether any complaints regarding torture or ill-treatment have been made during the reporting period. If so, reports should indicate how such allegations have been investigated by the authorities and with what results. In this context, the issue of expulsion of persons to countries where the expelled might be expected to be subjected to torture should also be addressed.

The Committee has pointed out that article 7 protects not only detainees from ill-treatment by public authorities or by persons acting outside or without any official authority, but also in general any person. This point is of particular relevance in situations concerning pupils and patients in educational and medical institutions, whether public or private. Therefore, reporting States should address the issue of correctional methods in schools and other educational institutions, including the use of corporal punishment. They should further address the conditions and procedures for providing medical and particularly psychiatric care. Information should be provided on detention in psychiatric hospitals, on measures taken to prevent abuses in this field, on appeals available to persons interned in a psychiatric institution and on any complaints registered during the reporting period.

Finally, the second part of article 7 prohibits medical or scientific experimentation upon people without the free consent of the person who is the subject. In this regard, reports should contain a detailed description of the laws and practices governing experimentation on human beings. In particular, reports should describe existing control mechanisms (1) to verify that the individual's consent has been given freely, and (2) to ensure that experimentation on individuals not capable of expressing such consent is made impossible.

ARTICLE 8

-Text of article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
(b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - (iv) Any work or service which forms part of normal civil obligations.

-Commentary

Since slavery has been abolished and the slave-trade is forbidden worldwide, this provision is meant to combat any resurgent form of slavery and especially to prohibit any form of servitude in which a person may be held in modern society. This provision covers any situation in which a person is compelled to depend on another person, as it may happen in particular in situations such as prostitution, drug trafficking, or some forms of psychiatric abuse. Consequently, a report should address these issues and provide information on any legal or practical measures taken to prevent and to combat such and similar forms of servitude and the exploitation they represent. Such measures should cover situations involving public authorities, as well as situations involving relationships only between private individuals.

Article 8 goes into more detail in the provision concerning forced or compulsory labour. After stating its prohibition in principle, paragraph 3 goes on to state that such a prohibition does not preclude the existence of hard labour as a measure of punishment, provided that its imposition is based on a sentence pronounced by a competent court. Reports should indicate whether such forms of punishment may be imposed under domestic law and what the actual practice is. The performance of hard labour must always be consistent with other provisions of the Covenant, and in particular with articles 7 and 10. Therefore, reports should also analyse the conditions under which hard labour is performed, and discuss the administration of institutions established for this purpose, such as colony-settlements, corrective labour colonies, training-labour colonies, etc. It should be kept in mind that the administration of such colonies must be in compliance with United Nations Standard Minimum Rules for the Treatment of Prisoners.

Reports should further provide information about the existence of services listed in paragraph 3(c) which may be required from individuals without resulting in forced or compulsory labour within the meaning of this provision. Thus, in addition to describing the existence of forced labour as a punishment for crime, reports should describe any kind of work or service that may be imposed as an ordinary consequence of a court order on persons under detention and on persons on conditional release. Furthermore, reports should discuss compulsory military service and, if applicable, national civil service for conscientious objectors; services required in cases of emergency or calamity threatening the life of the community; and works or services which are part of normal civil obligations.

Although these services are not prohibited under the provision contained in paragraph 3, the fact that they constitute exceptions to the general rule implies that they shall be interpreted narrowly, and that in any case they shall be applied without discrimination and in a manner consistent with other provisions of the Covenant. Their detailed description enables the Committee to comment on the use of such practices and their conformity with the Covenant in the reporting State.

When preparing information for articles 6, 7, and 8 of this Covenant, reporting officers should evaluate existing information on related rights in other instruments. Of particular interest are: article 6 of CEDAW (on traffic in women), and articles 1 and 16 of CAT (on torture and other cruel, inhuman or degrading treatment or punishment).

ARTICLE 9

-Text of article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.

-Text of general comment 8 (16)

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

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

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

4. Also if so-called preventive detention is used, for reasons of public security, it must be controlled by these same provisions, i.e. it must not be arbitrary, and must be based on grounds and procedures established by law (para. 1), information of the reasons must be given (para. 2) and court control of the detention must be available (para. 4) as well as compensation

in the case of a breach (para. 5). And if, in addition, criminal charges are brought in such cases, the full protection of article 9(2) and (3), as well as article 14, must also be granted.

-Commentary

According to the wording of paragraph 1 and the Committee's comment thereon, this provision refers to all cases of deprivation of liberty, whether in a criminal or any other case. Therefore, reports should first describe the circumstances under which a person may be deprived of his liberty. Such circumstances must be established by law and in any case must not be arbitrary, i.e. inconsistent with the provisions of the Covenant, or unreasonable. In this context, any kind of deprivation of liberty provided for by law and as occurring in practice has to be addressed. To this end, reports should indicate the procedures that ensure the respect for the guarantees set forth in the provisions of the Covenant in cases of deprivation of liberty. The Committee has stressed that some of these guarantees apply to any kind of deprivation of liberty, whereas others specifically apply to persons against whom criminal charges are being brought.

Regarding the guarantees required for any kind of deprivation of liberty, reports have to describe how soon and under what conditions a person deprived of his liberty is informed of the reasons of his arrest, how soon that person can contact a lawyer, and if his family is notified. These guarantees have the double purpose of averting the danger of disappearances and of enabling the detained person to exercise a remedy against his detention. Paragraph 4 of article 9 stresses the importance of such a remedy and specifies that it has to consist of a prompt and effective judicial proceeding, leading to the release of the detained person in case of unlawful detention. In addition, reports should describe (1) the law that in such cases regulates proceedings before the courts, and (2) any complaints that actually have occurred, including their eventual resolution.

Regarding the guarantees to which persons against whom criminal charges are being brought are entitled, two time limits come into consideration and should be referenced in reports. The first is the time frame within which an arrested person must be brought before a judge, and the second, the length of time for which the same person may be detained while awaiting trial. In the first case, action must occur promptly and not be delayed by more than a few days. Pre-trial detention must be reasonable and shall not be the rule. Reports should therefore describe procedures and remedies (such as *habeas corpus*, *amparo*, and similar appeals) established to ensure that a person is promptly brought before a judge, as well as measures taken to reduce as far as possible the length of pre-trial detention, including a description of existing remedies available during such a detention, and of measures for a release dependent upon certain guarantees, in which case the need for equality in application (especially on financial grounds) may not be overlooked.

Finally, victims of unlawful arrest or detention shall have an enforceable right to compensation. Reports should therefore indicate the compensation mechanism established by law and provide details on its practical application in cases involving criminal charges and in cases regarding other forms of detention.

ARTICLE 10

-Text of article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

-Text of general comment 9 (16)

1. Article 10, paragraph 1 of the Covenant provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. However, by no means all the reports submitted by States parties have contained information on the way in which this paragraph of the article is being implemented. The Committee is of the

opinion that it would be desirable for the reports of the States parties to contain specific information on the legal measures designed to protect that right. The Committee also considers that reports should indicate the concrete measures being taken by the competent State organs to monitor the mandatory implementation of national legislation concerning the humane treatment and respect for the human dignity of all persons deprived of their liberty that paragraph 1 requires.

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

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

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

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

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

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

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

-Commentary

As the Committee has pointed out in its general comment, the first paragraph of this article supplements to a certain extent the provisions contained in articles 7 and 9, and applies to any person deprived of his/her liberty. States parties' reports should therefore provide information on detention in prisons as well as in other institutions for reasons unconnected with the commission of a crime (e.g.

psychiatric institutions). In this context, due attention should be given to existing arrangements for the operation of such places of detention and their supervision by public authorities. Procedures for receiving and investigating complaints should be duly reflected in reports.

The Committee has underlined the links between the general provision of paragraph 1 and the requirements of the subsequent paragraphs concerning accused persons (para. 2) and convicted persons (para. 3). Therefore, reports should show how the segregation of accused persons from convicted offenders is ensured, and note any difference in treatment accorded in practice to accused as compared to convicted persons. Moreover, reports should indicate the measures taken to accelerate the consideration of charges against juvenile persons.

The treatment of convicted persons implies further the monitoring of the main aspects of the law and practice of the State's penitentiary system in order to test whether the principles of reformation and social rehabilitation of prisoners are respected and promoted. To this effect, particular attention has to be paid to the compliance with the United Nations Minimum Standard Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials, and the Principles of Medical Ethics relevant for prison doctors. In order to enable the Committee to know that these bodies of rules are respected, reports should provide information as to whether such regulations and directives form part of the training of prison staff and whether they are known and accessible to prisoners. Reports should also describe any other practice followed during detention (such as the grouping of prisoners according to social, cultural, or other characteristics, resorting to special security cells and solitary confinement, applying work programmes within or outside the prison as a means of rehabilitation, etc.). The description of such practices should also show to what extent juvenile offenders receive special treatment aiming at their reformation and social rehabilitation.

Reporting officers should bear in mind that article 5(b) of ICERD protects the right to liberty and security of the person on a racially non-discriminatory basis. Information assembled in that regard might be useful under articles 9 and 10 of this Covenant as well.

ARTICLE 11

-Text of article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

-Commentary

This article underlines that deprivation of liberty may only follow the violation of a criminal or, exceptionally, a civil law, but not the mere inability to fulfil a contractual obligation. The purpose of this article is to stress that poverty and the lack of financial means cannot justify the putting of a person in jail. The general terms in which the article is drafted suggest that no reference whatsoever, not even an indirect one, shall be allowed regarding the inability to fulfil a contract as a ground for imprisonment. Consequently, a report should give an account of the legal situation in the reporting State, and include a description of any cases in which the non-compliance with a court order to fulfil a contractual obligation resulted in a deprivation of liberty.

ARTICLE 12

-Text of article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which 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 present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

(To date, no general comment has been adopted on this article; however, paragraph 8 of general comment 15 (27) refers to the position of aliens under this article.)

-Text of general comment 15 (27), paragraph 8

8. Once an alien is lawfully within a territory, his freedom of movement and his right to leave that territory may only be restricted in accordance with article 12, para. 3. Differences in treatment in this regard between aliens and nationals, or between different categories of aliens, need to be justified under article 12, para. 3. Since such restrictions must, *inter alia*, be consistent with the other rights recognized in the Covenant, a State party cannot, by restraining an alien or by deporting him to a third country, arbitrarily prevent his return to his own country (article 12, para. 4).

-Commentary

Article 12 recognizes the freedom of movement of individuals with regard to both the freedom of movement within the territory of the State in which they find themselves, and with regard to the freedom to cross the borders of this State.

Since the right to freedom of movement within the territory of a State refers not only to travelling but also to movement for the purpose of establishing oneself at a certain place, i.e. the choosing and the changing of one's residence, reports should contain information on the laws and practice regarding both of these situations. Reports should therefore describe any requirements for the registration of persons in a particular district and the formalities and/or conditions that govern the registration of a person as a resident in a different district. Reports should describe what kind of information has to be provided to public authorities in case of temporary displacement of a person; the controls that authorities impose upon travelling persons; any restrictions that are in place regarding the access to, or leaving of, certain areas; and any other conditions or limitations determining the movement of persons within the country.

Regarding the right to freedom of movement as the right to leave a country, reports should provide information on the conditions for the issuance of travel documents, on the conditions allowing for a person's passport to be withdrawn, on the procedures that have to be followed in such instances, and on the authorities that are responsible for making decisions in this regard. Reports should discuss the remedies available in the event of an unfavourable decision. In order to illustrate the practice in the reporting State it is useful to provide figures that show the overall number of applications submitted for travel documents, the percentage of applications that were turned down, and the reasons for the refusal of documents during the reporting period.

The information provided should enable the Committee to consider whether any existing restrictions are in compliance with paragraph 3 of article 12. A first prerequisite of compliance is the formal requirement that any restriction must be based upon a law. The substantive requirements of compliance demand that such restrictions must be necessary to reach certain purposes set forth in paragraph 3 and that they must be consistent with other rights protected by the Covenant.

In the context of article 12, special attention has to be paid to restrictions concerning certain categories of persons, among whom aliens occupy a particular place. As the Committee has pointed out in its general comment 15 (27) on the position of aliens under the Covenant, the rights enshrined in paragraphs 1 and 2 of article 12 are conferred not only upon nationals, but to foreigners as well on the condition that they are lawfully within the territory of the State. Reports should indicate the requirements for the admission of aliens to the territory of the reporting State; they should further indicate how the freedom of movement of aliens is regulated. Note that in this regard any discrimination in the treatment of aliens as opposed to nationals, or any discrimination regarding the treatment of aliens from different countries, has to be justified under article 12, paragraph 3.

Lastly, by virtue of paragraph 4 of article 12 everybody is entitled to enter his own country and nobody should be deprived arbitrarily of this right. Accordingly, reports should describe any measures of banishment of citizens that may exist under the law, and whether such measures have been applied and under what circumstances, during the reporting period. With regard to aliens, the Committee has also stressed the relationship that exists between the right to enter one's own country and the freedom of movement.

With regard to the freedom of movement, reporting officers may find relevant certain information assembled for reporting on article 5(d)(i) and (ii) of ICERD, and on article 15(4) of CEDAW. See also article 5(f) of ICERD.

ARTICLE 13

-Text of article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

-Text of general comment 15 (27), paragraphs 9 and 10

(Note that general comment 15 (27) applies not only to article 13, but refers in general to the position of aliens under the Covenant. See in this regard article 2 for paragraphs 1 to 7, and article 12 for paragraph 8 of general comment 15 (27).)

9. Many reports have given insufficient information on matters relevant to article 13. The article is applicable to all procedures aimed at the obligatory departure of an alien, whether described in national law as expulsion or otherwise. If such procedures entail arrest, the safeguards of the Covenant relating to deprivation of liberty (articles 9 and 10) may also be applicable. If the arrest is for the particular purpose of extradition, other provisions of national and international law may apply. Normally an alien who is expelled must be allowed to leave for any country that agrees to take him. The particular rights of article 13 only protect those aliens who are lawfully in the territory of a State party. This means that national law concerning the requirements for entry and stay must be taken into account in determining the scope of that protection, and that illegal entrants and aliens who have stayed longer than the law or their permits allow, in particular, are not covered by its provisions. However, if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13. It is for the competent authorities of the State party, in good faith and in the exercise of their powers, to apply and to interpret the domestic law, observing, however, such requirements under the Covenant as equality before the law (article 26).

10. Article 13 directly regulates only the procedure and not the substantive grounds for expulsion. However, by allowing only those carried out "in pursuance of a decision reached in accordance with law", its purpose is clearly to prevent arbitrary expulsions. On the other hand, it entitles each alien to a decision in his own case and, hence, article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions. This understanding, in the opinion of the Committee, is confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by and to be represented before the competent authority or someone designated by it. An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one. The principles of article 13 relating to appeal against expulsion and the entitlement to review by a competent authority may only be departed from when "compelling reasons of national security" so require. Discrimination may not be made between different categories of aliens in the application of article 13.

-Commentary

According to article 13 -- the only article of the Covenant applicable only to aliens -- and the interpretation thereof by the Committee in its general comment, reports should describe the laws and the practice concerning the mandated departure of aliens from the territory of the State, and should illustrate the grounds for expulsion and the procedures leading to it. If applicable, reports should provide the exact number of expulsions that occurred during the reporting period, and the reasons for such expulsions. It is of utmost importance to provide a detailed description of the procedures followed for that purpose because article 13 contains certain safeguards that have to be respected both in a judicial and in an administrative procedure. In this context, remedies against an expulsion order play a special role. Although article 13 does not say that such remedies must be available before the expulsion takes place and that in effect they must suspend the expulsion order, the appeal must nevertheless be an effective appeal. The practice in the reporting State should allow to test the effectiveness of the available remedy in the particular circumstances of each case.

Although the guarantees of article 13 protect only aliens who are lawfully within the territory of a State, reports should also describe the procedures leading to the expulsion of illegal entrants. In particular, reports should describe the procedures for reaching the decision on the legality or illegality of

a person's entry or stay in the country. The Committee has pointed out that such a decision must comply with the requirements of article 13.

To the extent that article 13 (and, in a limited way, article 12) deals with expulsion and extradition, reporting officers should consult article 3 of CAT for existing relevant information. See also article 5(d)(i) and (ii) and 5(f) of ICERD.

ARTICLE 14

-Text of article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or 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. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or where the interest of the private lives of the Parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes of the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or to have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such a conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

-Text of general comment 13 (21)

1. The Committee notes that article 14 of the Covenant is of a complex nature and that different aspects of its provisions will need specific comments. All of these provisions are aimed at ensuring the proper administration of justice, and to this end uphold a series of

individual rights such as equality before the courts and tribunals and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. Not all reports provided details on the legislative or other measures adopted specifically to implement each of the provisions of article 14.

2. In general, the reports of States parties fail to recognize that article 14 applies not only to procedures for the determination of criminal charges against individuals but also to procedures to determine their rights and obligations in a suit at law. Laws and practices dealing with these matters vary widely from State to State. This diversity makes it all the more necessary for States parties to provide all relevant information and to explain in greater detail how the concepts of "criminal charge" and "rights and obligations in a suit at law" are interpreted in relation to their respective legal systems.

3. The Committee would find it useful if, in their future reports, States parties could provide more detailed information on the steps taken to ensure that equality before the courts, including equal access to courts, fair and public hearings and competence, impartiality and independence of the judiciary are established by law and guaranteed in practice. In particular, States parties should specify the relevant constitutional and legislative texts which provide for the establishment of the courts and ensure that they are independent, impartial and competent, in particular with regard to the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office; the condition governing promotion, transfer and cessation of their functions and the actual independence of the judiciary from the executive branch and the legislative.

4. The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized. The Committee notes the existence, in many countries, of military or special courts which try civilians. This could present serious problems as far as the equitable, impartial and independent administration of justice is concerned. Quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with the normal standards of justice. While the Covenant does not prohibit such categories of courts, nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in article 14. The Committee has noted a serious lack of information in this regard in the reports of some States parties whose judicial institutions include such courts for the trying of civilians. In some countries such military and special courts do not afford the strict guarantees of the proper administration of justice in accordance with the requirements of article 14 which are essential for the effective protection of human rights. If States parties decide in circumstances of a public emergency as contemplated by article 4 to derogate from normal procedures required under article 14, they should ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation, and respect the other conditions in paragraph 1 of article 14.

5. The second sentence of article 14, paragraph 1, provides that "everyone shall be entitled to a fair and public hearing". Paragraph 3 of the article elaborates on the requirements of a "fair hearing" in regard to the determination of criminal charges. However, the requirements of paragraph 3 are minimum guarantees, the observance of which is not always sufficient to ensure the fairness of a hearing as required by paragraph 1.

6. The publicity of hearings is an important safeguard in the interest of the individual and of society at large. At the same time article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public for reasons spelt out in that paragraph. It should be noted that, apart from such exceptional circumstances, the Committee considers that a hearing must be open to the public in general, including members of the press, and must not, for instance, be limited only to a particular category of persons. It should be noted that, even in cases in which the public is excluded from the trial, the judgement must, with certain strictly defined exceptions, be made public.

7. The Committee has noted a lack of information regarding article 14, paragraph 2 and, in some cases, has even observed that the presumption of innocence, which is fundamental to the protection of human rights, is expressed in very ambiguous terms or entails conditions which render it ineffective. By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption

of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.

8. Among the minimum guarantees in criminal proceedings prescribed by paragraph 3, the first concerns the right of everyone to be informed in a language which he understands of the charge against him (subparagraph (a)). The Committee notes that State reports often do not explain how this right is respected and ensured. Article 14(3)(a) applies to all cases of criminal charges, including those of persons not in detention. The Committee notes further that the right to be informed of the charge "promptly" requires that information is given in the manner described as soon as the charge is first made by a competent authority. In the opinion of the Committee this right must arise when in the course of an investigation a court or an authority of the prosecution decides to take procedural steps against a person suspected of a crime or publicly names him as such. The specific requirements of subparagraph 3(a) may be met by stating the charge either orally or in writing, provided that the information indicates both the law and the alleged facts on which it is based.

9. Subparagraph 3(b) provides that the accused must have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. What is "adequate time" depends on the circumstances of each case, but the facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel. When the accused does not want to defend himself in person or request a person or an association of his choice, he should be able to have recourse to a lawyer. Furthermore, this subparagraph requires counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communications. Lawyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgement without any restrictions, influences, pressures or undue interference from any quarter.

10. Subparagraph 3(c) provides that the accused shall be tried without undue delay. This guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgement be rendered; all stages must take place "without undue delay". To make this right effective, a procedure must be available in order to ensure that the trial will proceed "without undue delay", both in first instance and on appeal.

11. Not all reports have dealt with all aspects of the right of defence as defined in subparagraph 3(d). The Committee has not always received sufficient information concerning the protection of the right of the accused to be present during the determination of any charge against him or how the legal system assures his right either to defend himself in person or to be assisted by counsel of his own choosing, or what arrangements are made if a person does not have sufficient means to pay for legal assistance. The accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defences and the right to challenge the conduct of the case if they believe it to be unfair. When exceptionally for justified reasons trials in absentia are held, strict observance of the rights of the defence is all the more necessary.

12. Subparagraph 3(e) states that the accused shall be entitled to examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. This provision is designed to guarantee to the accused the same legal powers of compelling the attendance of witnesses and of examining or cross examining any witnesses as are available to the prosecution.

13. Subparagraph 3(f) provides that if the accused cannot understand or speak the language used in court he is entitled to the assistance of an interpreter free of any charge. This right is independent of the outcome of the proceedings and applies to aliens as well as to nationals. It is of basic importance in cases in which ignorance of the language used by a court or difficulty in understanding may constitute a major obstacle to the right of defence.

14. Subparagraph 3(g) provides that the accused may not be compelled to testify against himself or to confess guilt. In considering this safeguard the provisions of article 7 and article 10, paragraph 1, should be borne in mind. In order to compel the accused to confess or to testify against himself, frequently methods which violate these provisions are used. The law should require that evidence provided by means of such methods or any other form of compulsion is wholly unacceptable.

15. In order to safeguard the rights of the accused under paragraphs 1 and 3 of article 14, judges should have authority to consider any allegations made of violations of the rights of the accused during any stage of the prosecution.

16. Article 14, paragraph 4, provides that in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. Not many reports have furnished sufficient information concerning such relevant matters as the minimum age at which a juvenile may be charged with a criminal offence, the maximum age at which a person is still considered to be a juvenile, the existence of special courts and procedures, the laws governing procedures against juveniles and how all these special arrangements for juveniles take account of "the desirability of promoting their rehabilitation". Juveniles are to enjoy at least the same guarantees and protection as are accorded to adults under article 14.

17. Article 14, paragraph 5, provides that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. Particular attention is drawn to the other language versions of the word "crime" ("infraction", "delito", "prestuplenie") which show that the guarantee is not confined only to the most serious offences. In this connection, not enough information has been provided concerning the procedures of appeal, in particular the access to and the powers of reviewing tribunals, what requirements must be satisfied to appeal against a judgement, and the way in which the procedures before review tribunals take account of the fair and public hearing requirements of paragraph 1 of article 14.

18. Article 14, paragraph 6, provides for compensation according to law in certain cases of a miscarriage of justice as described therein. It seems from many State reports that this right is often not observed or insufficiently guaranteed by domestic legislation. States should, where necessary, supplement their legislation in this area in order to bring it into line with the provisions of the Covenant.

19. In considering States reports differing views have often been expressed as to the scope of paragraph 7 of article 14. Some States parties have even felt the need to make reservations in relation to procedures for the resumption of criminal cases. It seems to the Committee that most States parties make a clear distinction between a resumption of a trial justified by exceptional circumstances and a re-trial prohibited pursuant to the principle of ne bis in idem as contained in paragraph 7. This understanding of the meaning of ne bis in idem may encourage States parties to reconsider their reservations to article 14, paragraph 7.

-Commentary

Judicial remedies play a central role in the protection of human rights, and article 14 spells out a series of rights relating to a fair administration of justice, both in criminal cases and in suits at law. It indicates in particular the minimum guarantees to which any accused person is entitled in the determination of a criminal charge against him/her. The scope of the protected rights and the information States parties are required to submit to the Committee are thoroughly dealt with in the extensive general comment adopted by the Committee. The general comment should therefore be taken duly into account in the preparation of reports by States parties.

For details on the reporting requirements under article 14, reporting officers should refer to the general comment. In general, it should be stressed here that reports should describe the organization of the judiciary in the reporting State. Reports should mention the guarantees protecting the independence of the judiciary from the executive power. They should provide information on the procedures for the appointment and the advancement of judges, on the existence of extraordinary courts alongside the regular courts, such as special or military courts, and their competences. Moreover, reports should deal with the guarantees that exist in the law and in practice with regard to the right of all persons to a fair and public hearing, including the relevant rules for and practices concerning the publicity of trials and the public pronouncement of judgements. This has to include information on the specific rules that govern the admission of the interested public and the access to court hearings of representatives of the local and foreign press and of the mass media in general. Detailed information should also be provided about the organization and functioning of the bar and about the guarantees that allow lawyers freely to assist their clients, as well as about the availability of free legal assistance to criminal defendants without means.

It has to be kept in mind that the guarantees set forth in article 14 are minimum guarantees. Therefore, States parties must strictly comply with the provisions of article 14. This strict compliance has to be reflected in the report by providing a detailed account of the legislative or other measures taken to ensure the full implementation of all the provisions of article 14.

When assembling information for article 14 (and for articles 15 and 16 below), reporting officers should be aware that related articles in other international instruments also contain rights to procedural guarantees, in particular articles 5(a) of ICERD, 15(2) and (3) of CEDAW, and 12 to 15 of CAT.

ARTICLE 15

-Text of article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. 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.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

-Commentary

Article 15 prohibits the retroactive application of criminal laws, and covers both the criminalization of certain acts and the severity of the punishment that may be imposed for criminal offences.

States parties' reports should state in particular whether the principle of non-retroactivity of criminal laws is contained in domestic legislation, and they should provide the Committee with its exact formulation. The existence of such a provision in domestic law is of special importance since article 15 does not allow for any exception to the principle. Moreover, article 15 is one of the provisions of the Covenant which, according to article 4, cannot be derogated from, not even in case of a public emergency. Reports should therefore show that the principle of non-retroactivity exists and is actually applied not only in ordinary criminal law, but also in military criminal codes both in peace and in time of war.

With regard to the principle that an offender shall benefit from laws that are passed after the commission of the crime and that impose lesser penalties than the law applicable at the time of the commission of the crime, reports should describe the actual application of such laws. They should therefore address situations in which the change in the law occurs during the trial, and the application of the new law to situations in which an offender has already been convicted and is serving a sentence based on an older, less favourable law.

ARTICLE 16

-Text of article 16

Everyone shall have the right to recognition everywhere as a person before the law.

-Commentary

The purpose of this article is to ensure that everyone is the subject, and not the object, of the law. However, it does not deal with the question of the legal capacity to act, which may be restricted for such reasons as minority age or insanity.

Information should be provided on the moment, which may be even before birth, at which legal personality is acquired under the law, and at which an individual becomes a subject before the law. According to article 4, not even in case of a public emergency can article 16 be derogated from since the recognition as a person before the law is a prerequisite to be entitled to any other right. The recognition as a person has to be ensured everywhere, i.e. also in situations where an individual is not within the territory of the State but where the law nevertheless reaches him.

ARTICLE 17

-Text of article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

-Text of general comment 16 (32)

1. Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation. In the view of the Committee, this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons. The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.

2. In this connection, the Committee wishes to point out that in the reports of States parties to the Covenant the necessary attention is not being given to information concerning the manner in which respect for this right is guaranteed by legislative, administrative or judicial authorities, and in general by the competent organs established in the State. In particular, insufficient attention is paid to the fact that article 17 of the Covenant deals with protection against both unlawful and arbitrary interference. That means that it is precisely in State legislation above all that provision must be made for the protection of the right set forth in that article. At present the reports either say nothing about such legislation or provide insufficient information on the subject.

3. The term "unlawful" means that no interference can take place except in cases envisaged by the law. Interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant.

4. The expression "arbitrary interference" is also relevant to the protection of the right provided for in article 17. In the Committee's view, the expression "arbitrary interference" can also extend to interference provided for under the law. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.

5. Regarding the term "family", the objectives of the Covenant require that for the purposes of article 17 this term be given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned. The term "home" in English, "manzel" in Arabic, "zhùzhái" in Chinese, "domicile" in French, "zhilische" in Russian and "domicilio" in Spanish, as used in article 17 of the Covenant, is to be understood to indicate the place where a person resides or carries out his usual occupation. In this connection, the Committee invites States to indicate in their reports the meaning given in their society to the terms "family" and "home".

6. The Committee considers that the reports should include information on the authorities and organs set up within the legal system of the State which are competent to authorize interference allowed by the law. It is also indispensable to have information on the authorities which are entitled to exercise control over such interference with strict regard for the law, and to know in what manner and through which organs persons concerned may complain of a violation of the right provided for in article 17 of the Covenant. States should in their reports make clear the extent to which actual practice conforms to the law. State party reports should also contain information on complaints lodged in respect of arbitrary or unlawful interference, and the number of any findings in that regard, as well as the remedies provided in such cases.

7. As all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual's private life the knowledge of which is essential in the interests of society as understood under the Covenant. Accordingly, the Committee recommends that States should indicate in their reports the laws and regulations that govern authorized interferences with private life.

8. Even with regard to interferences that conform to the Covenant, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. A decision to make use of such authorized interference must be made only by the authority designated under the law, and on a case-by-case basis. Compliance with article 17 requires that the integrity and confidentiality of correspondence should be guaranteed de jure and de facto. Correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment. So far as personal and body searches are concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex.

9. States parties are under a duty themselves not to engage in interferences inconsistent with article 17 of the Covenant and to provide the legislative framework prohibiting such acts by natural or legal persons.

10. The gathering and holding of personal information on computers, databanks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant. In order to have the most effective protection of his private life, every individual should have the right to ascertain, in an intelligible form, whether, and if so, what personal data is stored in automatic data files and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.

11. Article 17 affords protection to personal honour and reputation and States are under an obligation to provide adequate legislation to that end. Provisions must also be made to protect himself against any unlawful attacks that do occur and to have an effective remedy against those responsible. States parties should indicate in their reports to what extent the honour or reputation of individuals is protected by law and how this protection is achieved according to their legal system.

-Commentary

General comment 16 (32) provides detailed guidance regarding both the scope of the protected rights contained in article 17, and the information required from States parties in their reports, especially with regard to protective legislation against arbitrary or unlawful interference with privacy, family and home. However, it may be useful to draw the attention of reporting States to the need for a detailed description of the practice that exists in the application of these protective laws and to refer especially to any violations of such laws and any complaints brought under these laws. States should report on the use alleged victims made (or make) of existing remedies, and the eventual results of such cases. Reports should provide information on any practical steps taken -- such as instructions given to police or other authorities -- to prevent future violations, in particular those that resulted from arbitrary behaviour of public officials.

ARTICLE 18

-Text of article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

-Commentary

Article 18, which protects the freedom of thought, religion and conscience, has two aspects: it protects the freedom to have a religion, and it protects the freedom to manifest such a religion or belief either in private or in public, individually or in community with others, and to observe or not certain practices. The first right is an absolute right that cannot be restricted in any way, not even during a state of emergency. The right to manifest a religion or a belief, on the other hand, may be subject to certain limitations, provided that such limitations are contained in a law and that they are necessary for certain purposes.

Reports should therefore provide sufficient information to allow the Committee to consider how the absolute character of the first right is safeguarded and whether any restrictions that may be imposed on the second right are compatible with paragraph 3 of article 18. To that effect, the Committee seeks detailed information about the existence of different religions in the reporting State, the use of places of worship, the publication and circulation of religious material and the measures taken to prevent and to punish offences against the free exercise of one's religion. In cases where a State religion exists, reports should show how a person's freedom not to have a religion is guaranteed and how the application of the principle of non-discrimination on religious grounds is ensured. Moreover, reports should describe any procedures that have to be followed for the legal recognition, authorization or toleration of various religious denominations in the country. Information should be provided on the practical application of such procedures with special reference to any possible refusals of recognition that might have occurred during the reporting period, and in particular when such refusal was due to the incompatibility of a religion with another dominant religion in the reporting State. The role and powers of State authorities in deciding about such incompatibilities need to be explained. In cases where a dominant religion exists, reports should outline the main status differences between the dominant religion and other denominations, in particular with regard to the need for equal treatment of all of them.

Paragraph 2 of article 18 states that no coercion may be used that would impair a person's freedom to have a religion or belief. Reports should therefore describe any form of control or supervision that may be imposed upon persons having a certain religion or belief, and any privilege that may be granted to individuals belonging to one religious group but denied to others.

The status and position of conscientious objectors should also be discussed under this article, and statistical information should be provided regarding the number of persons that applied for the status of, and the number of those that were actually recognized as, conscientious objectors, the reasons given to justify conscientious objection and the rights and duties of conscientious objectors as compared to those persons who serve in the regular military service.

A specific provision in article 18(4) concerns the right of parents to ensure the religious education of their children in conformity with their own convictions. Consequently, specific information is required on the legal regulation and the practice of religious education, in particular where religion is taught in public schools. In this regard, special attention needs to be paid as to how the above-mentioned rights of parents are safeguarded.

Note that article 5(d)(vii) of ICERD protects the right to freedom of thought, conscience and opinion for the purposes of that Convention.

ARTICLE 19

-Text of article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

-Text of general comment 10 (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 his 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 State reports 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 the 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 the 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.

-Commentary

Like article 18 on the freedom of religion and belief, article 19 has two aspects: on the one hand, it guarantees a right with an absolute nature, namely the right to hold opinions without interference, and on the other hand, it protects the right to freedom of expression, which may be subject to certain restrictions under the law. Such a law, however, must abide by the conditions set forth in the same article 19.

As far as the right to hold opinions is concerned, reports should indicate the measures adopted by the State party to ensure that no interference takes place, and that in particular the holding of political opinions is not used by public authorities as a reason to discriminate against a person, or even as a ground to restrict a person's freedom.

The Committee has pointed out that the freedom of expression has a broad scope that includes all aspects relating to the circulation of information in any form and through any media. A comprehensive State party report should therefore address all these issues and should provide complete information not only on the controls exercised with regard to the freedom of expression in general and on any cases of persons arrested or detained because of the expression of political views, but also on the legal régime that regulates the ownership and licensing of the press and the broadcast media. States parties should include the reasons for granting or for refusing a media licence, and they should discuss any controls imposed upon the press and other mass media and on the activities of journalists by public authorities. Reports should provide information on the conditions under which a journalist can exercise

his profession, and on any measures taken to ensure that all political opinions are reflected in the media.

The access of foreign journalists to information and the circulation of foreign print media within the country deserve attention in reports. Detailed information should be provided on the number of foreign newspapers and periodicals that are imported to and distributed in the reporting State, and the reasons why their circulation may be restricted or prohibited.

It is of utmost importance for the Committee to receive detailed information regarding each of the issues mentioned above because of the special duties and responsibilities connected with the exercise of one's freedom of expression, and because of the restrictions to which its exercise may be subjected according to paragraph 3 of article 19.

The right to freedom of opinion and expression is protected by article 5(d)(viii) of ICERD for the purposes of that Convention. See also article 4(a) and (c) of ICERD, and article 20 of the Covenant, below.

ARTICLE 20

-Text of article 20

1. Any propaganda of war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

-Text of general comment 11 (19)

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 of 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 of the United Nations. 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.

ARTICLE 21

-Text of article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

-Commentary

Article 21 recognizes the right to assemble peacefully in private or in public, for political or for other purposes.

States parties' reports should describe how the law regulates this right and the protection persons enjoy who hold assemblies or who meet to demonstrate or to discuss in public their views or to manifest any opinion. The right to peaceful assembly creates a positive obligation for the State to ensure the exercise of the right, and a negative obligation for public authorities not to interfere to restrict the right beyond the limits set by the Covenant. In this regard, article 21 allows restrictions only if they are established by law. The law itself must not go beyond the need to protect certain public interests and must be compatible with a democratic society. On the basis of these requirements, reports should provide information about any cases where the holding of a peaceful assembly was prohibited. Reports should discuss whether it is necessary to obtain the authorization of public authorities to hold an assembly, the procedures to be followed and the conditions to be fulfilled to obtain such an authorization, and the restrictions placed upon people taking part in the assembly. As usual, the information should cover both the law and the practice, and should describe the instructions given to public officials, in particular police officials, and their attitudes towards public assemblies. In this context, reports should contain statistics regarding any registered allegations that violence was used against peaceful and unarmed demonstrators. Reports should specify whether such allegations were investigated, and the eventual results of such investigations.

Since public demonstrations may constitute a means of expressing political or other opinions, the right protected in article 21 is also linked to the right of freedom of expression protected in article 19. Therefore, reports should carefully explain any existing connections in the law and in practice between the restrictions that may be placed on these two rights.

ARTICLE 22

-Text of article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

-Commentary

Article 22 guarantees a person's freedom to form associations with other persons for political or for other purposes. This article thus spells out a right which to a certain degree is complementary to the right of peaceful assembly recognized in article 21. As a consequence, the restrictions that may be placed upon the exercise of the right of freedom of association must abide by the same requirements as the restrictions that may be placed upon the exercise of the right of peaceful assembly, namely they must be prescribed by the law and they must be necessary in a democratic society for the protection of public interests as indicated in the Covenant.

States parties' reports should therefore describe the procedures that regulate the formation of associations, whether and in what instances an authorization or a registration have to be obtained, and the controls exercised by public authorities over the lives and activities of associations.

The right to freedom of association is of particular importance and must be protected particularly with regard to the free formation of political associations, and especially of political parties. In this context, reports should provide full information about the relevant laws and the practice regarding the establishment of political parties. Reports should indicate whether more than one political party takes part in the political life of the reporting State, what may be the reasons for prohibiting the establishment of a particular political party, or of political parties in general. Reports should further indicate whether there have been cases of appeals against rejected applications, and the eventual results of such

appeals. The Committee also seeks information on any controls imposed upon the activities of political parties.

Under the Covenant, States parties undertake the general obligation to ensure the protection of human rights. It is therefore of particular interest to the Committee to obtain information with regard to the right to form associations and groups working for the promotion of human rights. The establishment and the activities of such groups or associations should not only be tolerated by the public authorities, but they should be encouraged. Reports on the implementation of article 22 should describe the measures taken to ensure that such groups can act freely and play a role in the defence of human rights.

A special provision of article 22 guarantees a person's right to form and to join trade unions for the protection of his interests. Reports should specifically address this issue and should describe the laws and the practice that apply to trade unions in the reporting State. Reports should describe the organizational structure of trade unions, the size of their membership also broken down by industry sector, and the percentage of the total work force belonging to trade unions. The Committee seeks information on any legislative restrictions concerning trade union rights both in general and with regard to specific categories of workers. Reports should indicate whether trade union rights include the right to strike and the regulation of this right, and any practical measures adopted to ensure the free exercise of trade union rights. Reporting States must keep in mind that according to article 22(3) neither the law nor the practice may prejudice the guarantees contained in the ILO Convention of 1948. Reports should thus show how domestic legislation conforms with this Convention.

The rights to peaceful assembly and association (articles 21 and 22 of the Covenant) are protected by article 5(d)(ix) of ICERD for the purposes of that Convention. See also article 4(b) of ICERD. With regard to trade union rights, reporting officers should bear in mind that article 8 of ICESCR, and article 5(e)(ii) of ICERD may be of interest when reporting under article 22 of the Covenant.

ARTICLE 23

-Text of article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

-Text of general comment 19 (39)

1. Article 23 of the International Covenant on Civil and Political Rights recognizes that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Protection of the family and its members is also guaranteed, directly or indirectly, by other provisions of the Covenant. Thus, article 17 establishes a prohibition on arbitrary or unlawful interference with the family. In addition, article 24 of the Covenant specifically addresses the protection of the rights of the child, as such or as a member of a family. In their reports, States parties often fail to give enough information on how the State and society are discharging their obligation to provide protection to the family and the persons composing it.

2. The Committee notes that the concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept a standard definition. However, the Committee emphasizes that, when a group of persons is regarded as a family under the legislation and practice of a State, it must be given the protection referred to in article 23. Consequently, States parties should report on how the concept and scope of the family is construed or defined in their own society and legal system. Where diverse concepts of the family, "nuclear" and "extended", exist within a State, this should be indicated with an explanation of the degree of protection afforded to each. In view of the existence of various forms of family, such as unmarried couples and their children or single

parents and their children, States parties should also indicate whether and to what extent such types of family and their members are recognized and protected by domestic law and practice.

3. Ensuring the protection provided for under article 23 of the Covenant requires that States parties should adopt legislative, administrative or other measures. States parties should provide detailed information concerning the nature of such measures and the means whereby their effective implementation is assured. In fact, since the Covenant also recognizes the right of the family to protection by society, States parties' reports should indicate how the necessary protection is granted to the family by the State and other social institutions, whether and to what extent the State gives financial or other support to the activities of such institutions, and how it ensures that these activities are compatible with the Covenant.

4. Article 23, paragraph 2, of the Covenant reaffirms the right of men and women of marriageable age to marry and to found a family. Paragraph 3 of the same article provides that no marriage shall be entered into without the free and full consent of the intending spouses. States parties' reports should indicate whether there are restrictions or impediments to the exercise of the right to marry based on special factors such as degree of kinship or mental incapacity. The Covenant does not establish a specific marriageable age either for men or for women, but that age should be such as to enable each of the intending spouses to give his or her free and full personal consent in a form and under conditions prescribed by law. In this connection, the Committee wishes to note that such legal provisions must be compatible with the full exercise of the other rights guaranteed by the Covenant; thus, for instance, the right to freedom of thought, conscience and religion implies that the legislation of each State should provide for the possibility of both religious and civil marriages. In the Committee's view, however, for a State to require that a marriage, which is celebrated in accordance with religious rites, be conducted, affirmed or registered also under civil law is not incompatible with the Covenant. States are also requested to include information on this subject in their reports.

5. The right to found a family implies, in principle, the possibility to procreate and live together. When States parties adopt family planning policies, they should be compatible with the provisions of the Covenant and should, in particular, not be discriminatory or compulsory. Similarly, the possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in co-operation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.

6. Article 23, paragraph 4, of the Covenant provides that States parties shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

With regard to equality as to marriage, the Committee wishes to note in particular that no sex-based discrimination should occur in respect of the acquisition or loss of nationality by reason of marriage. Likewise, the right of each spouse to retain the use of his or her original family name or to participate on an equal basis in the choice of a new family name should be safeguarded.

During marriage, the spouses should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets. Such equality continues to be applicable to arrangements regarding legal separation or dissolution of the marriage.

Thus, any discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody, maintenance or alimony, visiting rights or the loss or recovery of parental authority must be prohibited, bearing in mind the paramount interest of the children in this connection. States parties should, in particular, include information in their reports concerning the provision made for the necessary protection of any children at the dissolution of a marriage or on the separation of the spouses.

-Commentary

As indicated in the general comment adopted by the Committee, article 23 is aimed at the protection of the family which is considered to be the natural and fundamental group unit of society. Paragraph 1 contains neither a definition of the term "family", nor indicates what protective measures fall within the responsibility of the State and the society. Reports should therefore provide basic

information on how the concept of family is understood or defined in the society and, as the case may be, in the law of the reporting State. Reports should describe how the society and the State ensure the effective protection of the family. They should further state whether the law recognizes and protects a family formed by a permanent cohabitation of partners without formal marriage.

Article 23, paragraphs 2-4 protect certain rights of members, or future members, of a family based on marriage. In this respect, article 23 recognizes the right to marry, and establishes the principle that a valid marriage must be based upon the free consent of the spouses. Reports should give the marriageable age of men and of women, and the requirements and procedures for entering into a valid marriage, and any restrictions or impediments affecting the exercise of the right to marry. Article 23 also establishes the principle of equality of rights and responsibilities of spouses with regard to marriage, during marriage and at its dissolution. Accordingly, reports should provide information about the non-discriminatory treatment of men and women with regard to marriage itself, and with regard to any consequences resulting therefrom, such as the nationality of spouses, and the rights and duties between the spouses and towards their children. Reports should also address the treatment of requests for divorce, the granting of a divorce, child custody and visiting rights, in particular with regard to non-discrimination between men and women. Finally, and in accordance with paragraph 4, last sentence, reports should indicate how the necessary protection of any children born in or out of wedlock is ensured in case of dissolution of marriage, and with regard to the paramount interest of the children.

ARTICLE 24

-Text of article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

-Text of general comment 17 (35)

1. Article 24 of the International Covenant on Civil and Political Rights recognizes the right of every child, without any discrimination, to receive from his family, society and the State the protection required by his status as a minor. Consequently, the implementation of this provision entails the adoption of special measures to protect children, in addition to the measures that States are required to take under article 2 to ensure that everyone enjoys the rights provided for in the Covenant. The reports submitted by States parties often seem to underestimate this obligation and supply inadequate information on the way in which children are afforded enjoyment of their right to a special protection.

2. In this connection, the Committee points out that the rights provided for in article 24 are not the only ones that the Covenant recognizes for children and that, as individuals, children benefit from all of the civil rights enunciated in the Covenant. In enunciating a right, some provisions of the Covenant expressly indicate to States measures to be adopted with a view to affording minors greater protection than adults. Thus, as far as the right to life is concerned, the death penalty cannot be imposed for crimes committed by persons under 18 years of age. Similarly, if lawfully deprived of their liberty, accused juvenile persons shall be separated from adults and are entitled to be brought as speedily as possible for adjudication; in turn, convicted juvenile offenders shall be subject to a penitentiary system that involves segregation from adults and is appropriate to their age and legal status, the aim being to foster reformation and social rehabilitation. In other instances, children are being protected by the possibility of the restriction -- provided that such a restriction is warranted -- of a right recognized by the Covenant, such as the right to publicize a judgement in a suit at law or a criminal case, from which an exception may be made when the interest of the minor so requires.

3. In most cases, however, the measures to be adopted are not specified in the Covenant and it is for each State to determine them in the light of the protection needs of children in its territory and within its jurisdiction. The Committee notes in this regard that such measures, although intended primarily to ensure that children fully enjoy the other rights enunciated in the Covenant, may also be economic, social and cultural. For example, every possible economic and social measure should be taken to reduce infant mortality and to eradicate malnutrition

among children and to prevent them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labor or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means. In the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant, particularly the right to freedom of opinion and expression. Moreover, the Committee wishes to draw the attention of States parties to the need to include in their reports information on measures adopted to ensure that children do not take a direct part in armed conflicts.

4. The right to special measures of protection belongs to every child because of his status as a minor. Nevertheless, the Covenant does not indicate the age at which he attains his majority. This is to be determined by each State party in the light of the relevant social and cultural conditions. In this respect, States should indicate in their reports the age at which the child attains his majority in civil matters and assumes criminal responsibility. States should also indicate the age at which a child is legally entitled to work and the age at which he is treated as an adult under labour law. States should further indicate the age at which a child is considered adult for the purposes of article 10, paragraphs 2 and 3. However, the Committee notes that the age for the above purposes should not be set unreasonably low and that in any case a State party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law.

5. The Covenant requires that children should be protected against discrimination on any grounds such as race, colour, sex, language, religion, national or social origin, property or birth. In this connection, the Committee notes that, whereas non-discrimination in the enjoyment of rights provided for in the Covenant also stems, in the case of children, from article 2 and their equality before the law from article 26, the non-discrimination clause contained in article 24 relates specifically to the measures of protection referred to in that provision. Reports by States parties should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every field, including inheritance, particularly as between children who are nationals and children who are aliens or as between legitimate children and children born out of wedlock.

6. Responsibility for guaranteeing children the necessary protection lies with the family, society and the State. Although the Covenant does not indicate how such responsibility is to be apportioned, it is primarily incumbent on the family, which is interpreted broadly to include all persons composing it in the society of the State party concerned, and particularly on the parents, to create conditions to promote the harmonious development of the child's personality and his enjoyment of the rights recognized in the Covenant. However, since it is quite common for the father and mother to be gainfully employed outside the home, reports by States parties should indicate how society, social institutions and the State are discharging their responsibility to assist the family in ensuring the protection of the child. Moreover, in cases where the parents and the family seriously fail in their duties, ill-treat or neglect the child, the State should intervene to restrict parental authority and the child may be separated from his family when circumstances so require. If the marriage is dissolved, steps should be taken, keeping in view the paramount interest of the children, to give them necessary protection and, so far as is possible, to guarantee personal relations with both parents. The Committee considers it useful that reports by States parties should provide information on the special measures of protection adopted to protect children who are abandoned or deprived of their family environment in order to enable them to develop in conditions that most closely resemble those characterizing the family environment.

7. Under article 24, paragraph 2, every child has the right to be registered immediately after birth and to have a name. In the Committee's opinion, this provision should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child's legal personality. Providing for the right to have a name is of special importance in the case of children born out of wedlock. The main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant. Reports by States parties should indicate in detail the measures that ensure the immediate registration of children born in their territory.

8. Special attention should also be paid, in the context of protection to be granted to children, to the right of every child to acquire a nationality, as provided for in article 24, paragraph 3. While the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in co-operation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents. The measures adopted to ensure that children have a nationality should always be referred to in reports by States parties.

With regard to articles 23 and 24 of the Covenant, reporting officers should be aware of related articles 10 of ICESCR, 5(d)(iv) of ICERD, and 16, 12, and 4(2) of CEDAW, dealing with the rights to marry and to found a family, and with the protection of the family, mother and children. The right (of every child) to a nationality of article 24(3) of the Covenant is contained in related articles 5(d)(iii) of ICERD, and 9 of CEDAW. With regard to article 24, reporting officers should also be aware of the Convention on the Rights of the Child, which was adopted by the General Assembly of the United Nations with resolution 44/25 of 20 November 1989. The Convention, which entered into force on 2 September 1990 in accordance with its article 49(1), deals in detail with the rights of children.

ARTICLE 25

-Text of article 25

Every citizen shall have the right and the opportunity, without any of the restrictions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

-Commentary

Article 25 concerns the political rights of citizens and establishes the principle that such rights must be guaranteed without unreasonable restrictions, as well as on a non-discriminatory basis on the grounds set forth in article 2.

Reports should indicate any regulations and restrictions that apply to the exercise of political rights of both citizens in general and with regard to certain categories of persons. Reports should describe the legislation and the practice regarding the access to public office, and should make specific reference to the electoral system in the reporting State. Reports must show how the requirements contained in article 25(a) and (b) are reflected in the rules and regulations that govern the electoral process, in particular also with regard to the need to observe the principle of non-discrimination and to ensure every citizen's equal opportunity to take part in the conduct of public affairs. States parties which have a single party system also must address this issue in order to show how the requirements set forth in article 25 are safeguarded.

Furthermore, article 25(c) requires the equal access to public service; reports should provide information on the rules and regulations governing such equal access.

Finally, although the rights contained in article 25 must be guaranteed only to citizens, a description of experiences in applying provisions regarding the right of foreign nationals to take part in the conduct of public affairs, especially through general or local elections, and to hold public office in central or local government bodies, should also be included in the report.

With regard to political rights and access to public service, information assembled for articles 5(c) of ICERD, and 7 and 8 of CEDAW may be of some usefulness also with regard to this Covenant.

ARTICLE 26

-Text of article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

-Text of general comment 18 (37)

1. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes a basic and general principle relating to the protection of human rights. Thus, article 2, paragraph 1, of the International Covenant on Civil and Political Rights obligates each State party to respect and to ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Indeed, the principle of non-discrimination is so basic that article 3 obligates each State party to ensure the equal right of men and women to the enjoyment of the rights set forth in the Covenant. While article 4, paragraph 1, allows States parties to take measures derogating from certain obligations under the Covenant in time of public emergency, the same article requires, inter alia, that those measures should not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. Furthermore, article 20, paragraph 2, obligates States parties to prohibit, by law, any advocacy of national, racial or religious hatred which constitutes incitement to discrimination.

3. Because of their basic and general character, the principle of non-discrimination as well as that of equality before the law and equal protection of the law are sometimes expressly referred to in articles relating to particular categories of human rights. Article 14, paragraph 1, provides that all persons shall be equal before the courts and tribunals, and paragraph 3 of the same article provides that, in the determination of any criminal charge against him, everyone shall be entitled, in full equality, to the minimum guarantees enumerated in subparagraphs (a) to (g) of paragraph 3. Similarly, article 25 provides for the equal participation in public life of all citizens, without any of the distinctions mentioned in article 2.

4. It is for the States parties to determine appropriate measures to implement the relevant provisions. However, the Committee is to be informed about the nature of such measures and their conformity with the principles of non-discrimination and equality before the law and equal protection of the law.

5. The Committee wishes to draw the attention of States parties to the fact that the Covenant sometimes expressly requires them to take measures to guarantee the equality of rights of the persons concerned. For example, article 23, paragraph 4, stipulates that States parties shall take appropriate steps to ensure equality of rights as well as responsibilities of spouses as to marriage, during marriage and at its dissolution. Such steps may take the form of legislative, administrative or other measures, but it is a positive duty of States parties to make certain that spouses have equal rights as required by the Covenant. In relation to children, article 24 provides that all children, without any distinction as to race, colour, sex, language, religion, national or social origin, property or birth, have the right to such measures of protection as are required by their status as minors, on the part of their family, society and the State.

6. The Committee notes that the Covenant neither defines the term "discrimination" nor indicates what constitutes discrimination. However, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Similarly, article 1 of the Convention on the Elimination of All Forms of Discrimination against Women provides that "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

7. While these conventions deal only with cases of discrimination on specific grounds, the Committee believes that the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

8. The enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance. In this connection, the provisions of the Covenant are explicit. For example, article 6, paragraph 5, prohibits the death sentence from being imposed on persons below 18 years of age. The same paragraph prohibits that sentence from being carried out on pregnant women. Similarly, article 10, paragraph 3, requires the segregation of juvenile offenders from adults. Furthermore, article 25 guarantees certain political rights, differentiating on grounds of citizenship.

9. Reports of many States parties contain information regarding legislative as well as administrative measures and court decisions which relate to protection against discrimination in law, but they very often lack information which would reveal discrimination in fact. When reporting on articles 2(1), 3 and 26 of the Covenant, States parties usually cite provisions of their constitution or equal opportunity laws with respect to equality of persons. While such information is of course useful, the Committee wishes to know if there remain any problems of discrimination in fact, which may be practised either by public authorities, by the community, or by private persons or bodies. The Committee wishes to be informed about the legal provisions and administrative measures directed at diminishing or eliminating such discrimination.

10. The Committee also wishes to point out that the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.

11. Both article 2, paragraph 1, and article 26 enumerate grounds of discrimination such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Committee has observed that in a number of constitutions and laws not all the grounds on which discrimination is prohibited, as cited in article 2, paragraph 1, are enumerated. The Committee would therefore like to receive information from States parties as to the significance of such omissions.

12. While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not specify such limitations. That is to say, article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.

13. Finally, the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.

-Commentary

General comment 18 (37) adopted by the Committee clearly sets out the scope of article 26 and of the principle of non-discrimination contained therein. However, it should be pointed out that this general comment refers not only to article 26, but it also extends in general to the non-discrimination clauses contained in various other articles of the Covenant. Therefore, general comment 18 (37) also needs to be taken into account when reporting on these other articles of the Covenant.

The most important point for States parties to be aware of with regard to the meaning of article 26 is that this article provides for an autonomous right that may also apply in areas not directly addressed in the Covenant. The impact of the right contained in article 26 may extend also to any legislative measure in domestic law that provides for an individual right (see paragraph 12 of the general comment). Reports should therefore also describe the steps taken to revise existing legislation and to enact new legislation in order to ensure their non-discriminatory content.

See also articles 2(1) and 3 of this Covenant.

ARTICLE 27

-Text of article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

-Commentary

Article 27 sets forth a right of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion and to use their own language. Since the obligation to protect the rights contained in article 27 is only imposed on States in which minorities, including indigenous groups, exist, States parties' reports must indicate if any such groups live in the country, whether permanently or otherwise. In this respect it has to be kept in mind that any existing minority, though small, must be taken into account under this article. In particular it must be underlined that the existence of a constitutional or other provision establishing that all citizens should be treated equally does not in itself mean that no minorities exist in a given country. Should any such groups exist within the territory of the reporting State, information must be provided about these existing minorities, their respective number as compared to the majority population of the country, and the concrete positive measures adopted by the reporting State to preserve their ethnic, religious, cultural and linguistic identity, as well as on any measures to provide minorities with equal economic and political opportunities. Particular reference should be made to their representation in central government and in local government bodies.

Reporting States also should bear in mind that although article 27 refers to the enjoyment of rights by persons belonging to a minority "in community with the other members of their group", the rights themselves are individual rights and have to be protected as such. States reports should therefore provide information not only on the measures they have taken in general to protect minorities and indigenous populations established on their territory, but also on how an individual member of a minority may effectively exercise his or her rights. Furthermore, under this article reports have to provide information on any remaining discrimination in law and/or practice regarding the enjoyment by members of minorities of other rights enshrined in the Covenant, since such discrimination may indirectly lead to restrictions or violations of the rights contained in article 27 as well. In this context, special attention must be paid to the possible existence of discrimination against individuals on the basis of their belonging to a minority or indigenous group. Of particular concern in this regard are civil rights in the areas most closely related to the rights protected by article 27, and political rights such as the participation in the conduct of public affairs and the access to public service in the reporting State.

The rights of vulnerable groups are protected by other international instruments as well. Reporting officers should bear in mind that articles 2(3) of ICESCR, 1(4) of ICERD, and 4 and 14 of CEDAW may be of relevance when reporting under article 27 of the Covenant.

B. CONSIDERATION OF REPORTS BY THE HUMAN RIGHTS COMMITTEE

(a) The Committee: its composition

It was mentioned earlier that according to article 40 of the Covenant, reports submitted by States parties are to be considered by the Human Rights Committee.

The Committee is a treaty body established according to article 28 of the Covenant. It consists of eighteen members of high moral character and recognized competence in the field of human rights. Members serve in their personal capacity.

-Text of article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

-Text of article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

The procedure for the election is set forth in article 30, which provides for the Secretary-General of the United Nations to prepare a list of persons nominated for the purpose and to convene a meeting of the States parties in order to elect the members of the Committee. The Covenant further specifies that the Committee may not include more than one national of the same State, that consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems. Nominees who obtain an absolute majority and the largest number of votes are elected. The members of the Committee are elected for a four year term, and if renominated may be re-elected. Elections take place every two years for one half of the Committee members.

Although nominated and elected by States parties to the Covenant, the members of the Committee are in no way representatives or delegates of the States whose nationality they carry, but independent experts serving in their personal capacity: as such, before taking up their duties, they make a solemn declaration in an open, i.e. public, meeting that they will perform their functions impartially and conscientiously.

The Committee elects from among its members a Chairperson, three Vice-Chairpersons, and a Rapporteur, each serving a term of two years.

(b) The Committee: its method of work

The Committee normally holds three sessions of three weeks each per year -- one in New York (March/April), and two in Geneva (July and October/November). Each session is preceded by a one-week session of its working groups. (One working group deals with communications under the Optional Protocol to the Covenant; a second working group deals with issues regarding the work of the Committee under article 40: among others, it prepares the "list of issues" concerning periodic reports.) In general, meetings for the consideration of States reports are public, whereas the examination of individual communications under the Optional Protocol takes place in closed sessions. Twelve members constitute a quorum, and decisions are taken by majority vote; however, the Committee has resolved that its method of work should normally attempt to reach decisions by consensus before resorting to voting. This method has been the rule ever since the Committee's inception.

The procedure for the consideration of States reports is laid down in article 40(4-5) of the Covenant, in the Committee's own rules of procedure, as well as in a number of internal decisions and in the practice developed by the Committee.

Article 40(4) states that the Committee "shall study the reports submitted by States Parties" to the Covenant. The rules of procedure and the practice of the Committee established that such study, after the necessary individual examination of the report by each member of the Committee, takes place collectively in a public meeting and in the presence of representative(s) of the State party concerned. The reporting State is notified of the date of consideration of its report, so that the State can authorize its representatives to attend the scheduled meeting. The representatives should be able to answer questions put to them by the Committee and make statements on the report submitted by their State. They may also submit additional information (rule 68): it is therefore desirable that the status and experience, and preferably the number, of the attending representatives enable them to respond to questions posed and comments made by the Committee on the whole range of matters covered by the Covenant.

(c) Constructive dialogue

The purpose of a public meeting with representatives of the reporting State is to establish a constructive dialogue between the Committee and the State party. In this connection it has to be underlined that the Committee in its consideration of States reports is neither a judicial nor even a quasi-judicial body. Its role is not to pass judgement on the implementation of the provisions of the Covenant in any given State. The main function of the Committee is to assist States parties in fulfilling their obligations under the Covenant, to make available to them the experience the Committee has acquired in its examination of other reports and to discuss with them any issue related to the enjoyment of the rights enshrined in the Covenant in a particular country. In fulfilling this function, the Committee or its members pose questions to the representatives of the reporting State in order to obtain information or clarification on any factual or legal matter or factor that may affect the implementation of the Covenant.

Practice has shown that in asking questions the Committee is not limited by the pronouncements made by the State party in its report. Since the Committee is not a court and its procedure is not a judicial one, such restrictions would not be justified. In the performance of the duties entrusted to it, the Committee must be bound only by the Covenant and therefore it must be free to raise any issue falling within the scope of the Covenant itself. The Committee must be free to use any information available to it, whether it comes from official documents of reporting State authorities, from intergovernmental organizations, or from unofficial sources such as the press or non-governmental organizations. Any information may therefore serve as the basis for a fruitful dialogue, whose purpose is to obtain from the representatives of the reporting State a complete picture of the situation in the country and to allow members of the Committee to make comments they deem necessary for a further implementation of the rights enshrined in the Covenant at the national level.

The procedure allowing for a constructive dialogue between the Committee and the States parties has undergone some changes since the inception of the Committee's activities in 1977. Since the rules of procedure are drafted in rather general terms, the Committee in practice has developed procedural norms that are sufficiently detailed to govern the consideration of reports. This practice distinguishes between the consideration of initial and subsequent periodic reports.

(d) Presentation and examination of reports

A meeting considering an initial report starts with a short presentation of the report by the representative of the State party, which should not exceed 30 minutes. In this general introductory statement, the representative may in particular wish to inform the Committee of any major developments that took place since the submission of the report to the Secretary-General of the United Nations and before its consideration. After this introduction, Committee members have the opportunity to make comments on the report and to ask all the questions that may provide additional information. Members normally each take the floor once. At the end of this period, the representatives receive one day to prepare the answers to the questions raised. These answers are then presented to the Committee during another meeting. Should there be any issues which the representatives are unable to address immediately, they may reserve to submit additional information. After listening to the representatives' explanations, Committee members may make general observations on the consideration of the report, and then time is allocated for a concluding short statement by the

representatives. On average, the consideration of an initial report requires two to three meetings of three hours each.

As noted above, the Committee is not a court and the result of the dialogue is not a judgement on the level of implementation of the Covenant in States parties. That does not mean, however, that the consideration of reports does not yield any results. According to article 40(4) of the Covenant, the Committee transmits its reports and general comments to the States parties. This provision has two aspects: first, the Committee members formulate their comments at the end of the consideration of a report, as described above. Such comments are addressed directly to the individual reporting State. Secondly, the Committee adopts **general comments**, which are of a more general nature, and make no reference to information gathered during the consideration of a specific State report. They reflect the experience gained by the Committee in its consideration of a significant number of reports, and deal with specific articles of the Covenant, or particular issues raised under it. These general comments are addressed to all States parties.

In presenting its general comments to States parties, the Committee underlines the fact that they reflect the experience acquired in reviewing the situation in various countries, representing different regions of the world and different political, social and legal systems. These comments illustrate most of the problems that may arise in implementing the Covenant, although they do not allow for a fully comprehensive, world-wide review of the status of civil and political rights. As the Committee has pointed out, "The purpose of these general comments is to make this (the Committee's) experience available for the benefit of all States parties in order to promote their further implementation of the Covenant; to draw their attention to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedure and to stimulate the activities of these States and international organizations in the promotion and protection of human rights. These comments should also be of interest to other States, especially those preparing to become parties to the Covenant and thus to strengthen the co-operation of all States in the universal promotion and protection of human rights." (Document CCPR/C/21/Rev.1, p.1.)

The intention is to assist States and to draw their attention to certain aspects, without imposing limits or attributing priorities between different aspects of the implementation of the Covenant. As of 1990, the Committee has adopted nineteen general comments: seventeen on specific articles and two on issues covered by various provisions of the Covenant (on the position of aliens, and on non-discrimination).

Another aspect of the outcome of the consideration of States reports under article 40 is the submission by the Committee of an annual report on its activities to the General Assembly (article 45). This report contains a detailed summary of the consideration of each report, indicating the issues raised by the Committee, the replies given by the States' representatives and the comments made by the Committee members at the end of the meeting. Therefore, if the Committee expresses its concern with regard to any situation occurring in a particular country, this is reflected in its annual report, which is issued as an official document of the General Assembly and receives the attention of the Third Committee of the General Assembly during its discussion of the Covenant and its implementation.

(e) Follow-up

This debate on the annual report in the General Assembly can be considered in itself a follow-up to the consideration of States' reports by the Committee. However, the follow-up at the national level is even more important. Indeed, one has to keep in mind that, although the international implementation machinery provides a guarantee for the protection of the rights enshrined in international instruments, in the final analysis however, it is the duty and responsibility of States to ensure the concrete and full enjoyment and exercise of human rights within their territories and jurisdictions. Therefore, it is critically important that the result of the dialogue with the Committee receive the highest attention of the government in question and that any issue raised during the consideration of the report be put before the competent political, administrative and judicial national authorities, so that they can keep under review the measures that they are taking, or that need to be taken, to give full effect to the rights recognized in the Covenant.

It is also desirable to give the widest publicity to the process of reporting and to the State party's co-operation with the Committee. Through the media and other channels, bodies and groups outside the government and the public at large should be involved in the debate about the correct implementation of the Covenant and the full enjoyment of the rights recognized therein. Monitoring the process of implementation by the State party, supported by feedback obtained from the involvement of

the public, should lead to the adoption of such measures as may be necessary to bring internal legislation and practice into line with the requirements of the Covenant.

Supplemented in this way by extensive national follow-up activities, the consideration of a report will prove to be a truly fruitful exercise and allow the State party to come back to the Committee with an important new periodic report, covering developments that occurred and progress made since the submission of the previous report. The exchange of views and experience with the supervisory body for the purpose of the implementation of the Covenant can thus continue.

C. PERIODIC REPORTS: THE KEY ISSUES

Based on the experience it gained during the consideration of initial reports, the Committee in 1981 prepared guidelines for the preparation of periodic reports (document CCPR/C/20). The purpose of such subsequent reports is to complete the information required by the Committee under the Covenant and to bring it up to date. Subsequent reports "should be in two parts":

-Text of the general guidelines for periodic reports

Part one: general. This part should contain information concerning the general framework within which the civil and political rights recognized by the Covenant are protected by the reporting State.

Part two: information in relation to each of the articles in parts I, II and III of the Covenant. This part should contain information in relation to each of the provisions of individual articles.

Under these two main headings the contents of the reports should concentrate especially on:

(a) The completion of the information before the Committee as to the measures adopted to give effect to rights recognized in the Covenant, taking account of questions raised in the Committee on the examination of any previous report and in particular additional information as to questions not previously answered or not fully answered;

(b) Information taking into account general comments which the Committee may have made under article 40, paragraph 4, of the Covenant;

(c) Changes made or proposed to be made in the laws and practices relevant to the Covenant;

(d) Action taken as a result of experience gained in co-operation with the Committee;

(e) Factors affecting and difficulties experienced in the implementation of the Covenant;

(f) The progress made since the last report in the enjoyment of rights recognized in the Covenant.

It should be noted that the reporting obligation extends not only to the relevant laws and other norms, but also to the practices of the courts and administrative organs of the State party and other relevant facts likely to show the degree of actual enjoyment of rights recognized by the Covenant.

The report should be accompanied by copies of the principal legislative and other texts referred to in it.

It is the desire of the Committee to assist States parties in promoting the enjoyment of rights under the Covenant. To this end the Committee wishes to continue the dialogue which it has begun with reporting States in the most constructive manner possible and reiterates its confidence that it will thereby contribute to mutual understanding and peaceful and friendly relations among nations in accordance with the Charter of the United Nations.

The Committee recently also decided to adopt certain measures to follow up on its views on communications under the Optional Protocol to the Covenant. At its thirty-ninth session in 1990, the Committee amended its guidelines for the submission of initial and periodic reports by adding a new paragraph, which reads as follows:

"When a State party to the Covenant is also a party to the Optional Protocol, and if in the period under review in the Report the Committee has issued Views finding that the State party has violated provisions of the Covenant, the Report should include a section explaining what

action has been taken relating to the communication concerned. In particular, the State party should indicate what remedy it has afforded the author of the communication whose rights the Committee found to have been violated."

Accordingly, States parties to whom the provision of this new paragraph of the guidelines applies, are expected to include the appropriate information in their reports to the Committee.

The differences in the requirements for initial and subsequent periodic reports lie in general in the request for more detailed and specific information in subsequent reports, in particular regarding changes and developments that occurred during the five-year period since the consideration or the submission of the previous report. It is essential for the reporting State to respond to the issues raised by the Committee during the consideration of previous reports and to address the questions that had remained unanswered on that occasion. Any action taken by the State party as a follow-up to the examination of previous reports also needs to be included. Such information will serve the double purpose of providing the Committee with a thorough picture of the situation in the reporting State, and of testing the effectiveness of the Committee's procedures. It also contributes to the constructive dialogue, which is at the heart of the consideration of reports under article 40 of the Covenant between the Committee and the reporting State.

The consideration of subsequent periodic reports by the Committee takes into account that a first general information is already available and that the dialogue should focus on the progress made by the State in question since the submission, or consideration, of the previous report. As with the initial report, one should follow the guidelines regarding the form and content of periodic reports. (The above subsection (c) Reporting on the substantive provisions should be fully consulted when preparing a periodic report.)

In order to strengthen the effectiveness of the dialogue, a method different from the consideration of initial reports has been elaborated, and since no State party has ever objected to this procedure, it is usually followed in practice. This approach envisages that questions posed receive an immediate reply at the same meeting. The Committee identifies in advance the various matters which might most usefully be discussed with the representatives of the reporting State. A working group of the Committee is entrusted with the preparation of a written "list of issues", which is formally adopted by the full Committee at the beginning of each session. At the Committee's request, the list is transmitted to the Government through its permanent representative to the United Nations. The list is divided into chapters, each covering a specific article or a group of related articles of the Covenant. During the meeting, the State's representatives make again an introductory statement, after which the dialogue takes place on a chapter-by-chapter basis.

On each chapter, the representatives provide the Committee with oral replies to the written questions on the list. Following such replies, members of the Committee can seek further clarification on the same issue, or ask additional questions. It needs to be pointed out that the list is not intended to be exhaustive and cannot be interpreted as limiting or prejudging the type and range of questions the members of the Committee will pose in the course of the dialogue. These additional questions or requests for further clarification should be answered immediately by the representatives, permitting therefore a direct dialogue with the Committee. They can, however, reserve their replies for a later time.

In concluding the consideration of the report, members of the Committee usually make general observations, summing up their previous remarks or commenting in some form on the result of the dialogue. The consideration of second periodic reports usually requires three to four meetings.

Since reports are submitted in a periodic interval of five years the Committee, as of 1990, has mainly considered initial and second periodic reports. It has only recently begun to receive third periodic reports. In this respect, the Committee agreed that the methodology for considering third, as well as other subsequent reports, should generally be similar to the one used for second periodic reports. As before, the main objective is to maintain and strengthen the dialogue between the Committee and the States parties to the Covenant.

In order to avoid repetitions and to make the dialogue more effective, the list of issues prepared before the examination of third and subsequent reports for transmission to States parties is more concise and more precise than the one prepared for the consideration of second periodic reports. In principle, the list concentrates on developments occurring after the submission of previous reports and does not include issues extensively dealt with at these occasions, except those identified as giving rise to concern. The meeting follows the format developed for considering second periodic reports. Usually, not more than three meetings will be allocated for dealing with third periodic reports.

The consideration of second and subsequent reports should be followed on the national level by activities similar to those discussed under initial reports. Such steps will again enable the reporting authorities to prepare in a meaningful way for the submission of subsequent reports.



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HUMAN RIGHTS COMMITTEE

GENERAL COMMENTS

adopted by the Human Rights Committee under Article 40, paragraph 4 of the International Covenant on Civil and Political Rights (up to April 1989)

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*/ The number in square brackets indicates the session at which the general Comment was adopted. Other details relating to the adoption of the general Comments are provided in the annex.

GENERAL COMMENTS

under Article 40, paragraph 4, of the International Covenant on Civil and Political Rights

Introduction **/

The Committee wishes to reiterate its desire to assist States parties in fulfilling their reporting obligations. These general comments draw attention to some aspects of this matter but do not purport to be limitative or to attribute any priority between different aspects of the implementation of the Covenant. These comments will, from time to time, be followed by others as constraints of time and further experience may make possible.

The Committee so far has examined 77 initial reports, 34 second periodic reports and, in some cases, additional information and supplementary reports. This experience, therefore, now covers a significant number of the States which have ratified the Covenant, at present 87. They represent different regions of the world with different political, social and legal systems and their reports illustrate most of the problems which may arise in implementing the Covenant, although they do not afford any complete basis for a world-wide review of the situation as regards civil and political rights.

The purpose of these general comments is to make this experience available for the benefit of all States parties in order to promote their further implementation of the Covenant; to draw their attention to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedure and to stimulate the activities of these States and international organizations in the promotion and protection of human rights. These comments should also be of interest to other States, especially those preparing to become parties to the Covenant and thus to strengthen the co-operation of all States in the universal promotion and protection of human rights.

GENERAL COMMENT 1 [13] (Reporting obligation)

States parties have undertaken to submit reports in accordance with article 40 of the Covenant within one year of its entry into force for the States parties concerned and, thereafter, whenever the Committee so requests. Until the present time only the first part of this provision, calling for initial reports, has become regularly operative. The Committee notes, as appears from its annual reports, that only a small number of States have submitted their reports on time. Most of them have been submitted with delays ranging from a few months to several years and some States parties are still in default despite repeated reminders and other actions by the Committee. The fact that most States parties have nevertheless, even if somewhat late, engaged in a constructive dialogue with the Committee suggests that the States parties normally ought to be able to fulfil the reporting obligation

**/ See Report of the Human Rights Committee, Official Records of the General Assembly, Thirty-sixth Session, Supplement No.40 (A/36/40), annex VII.

within the time limit prescribed by article 40 (1) and that it would be in their own interest to do so in the future. In the process of ratifying the Covenant, States should pay immediate attention to their reporting obligation since the proper preparation of a report which covers so many civil and political rights necessarily does require time.

GENERAL COMMENT 2 [13] (Reporting guidelines)

1. The Committee has noted that some of the reports submitted initially were so brief and general that the Committee found it necessary to elaborate general guidelines regarding the form and content of reports. These guidelines were designed to ensure that reports are presented in a uniform manner and to enable the Committee and States parties to obtain a complete picture of the situation in each State as regards the implementation of the rights referred to in the Covenant. Despite the guidelines, however, some reports are still so brief and general that they do not satisfy the reporting obligations under article 40.

2. Article 2 of the Covenant requires States parties to adopt such legislative or other measures and provide such remedies as may be necessary to implement the Covenant. Article 40 requires States parties to submit to the Committee reports on the measures adopted by them, on the progress made in the enjoyment of the Covenant rights and the factors and difficulties, if any, affecting the implementation of the Covenant. Even reports which were in their form generally in accordance with the guidelines have in substance been incomplete. It has been difficult to understand from some reports whether the Covenant had been implemented as part of national legislation and many of them were clearly incomplete as regards relevant legislation. In some reports the role of national bodies or organs in supervising and in implementing the rights had not been made clear. Further, very few reports have given any account of the factors and difficulties affecting the implementation of the Covenant.

3. The Committee considers that the reporting obligation embraces not only the relevant laws and other norms relating to the obligations under the Covenant but also the practices and decisions of courts and other organs of the State party as well as further relevant facts which are likely to show the degree of the actual implementation and enjoyment of the rights recognized in the Covenant, the progress achieved and factors and difficulties in implementing the obligations under the Covenant.

4. It is the practice of the Committee, in accordance with Rule 68 of its Provisional Rules of Procedure, to examine reports in the presence of representatives of the reporting States. All States whose reports have been examined have co-operated with the Committee in this way but the level, experience and the number of representatives have varied. The Committee wishes to state that, if it is to be able to perform its functions under article 40 as effectively as possible and if the reporting State is to obtain the maximum benefit from the dialogue, it is desirable that the States representatives should have such status and experience (and preferably be in such number) as to respond to questions put, and the comments made, in the Committee over the whole range of matters covered by the Covenant.

GENERAL COMMENT 3 [13] (Article 2: Implementation at the national level)

1. The Committee notes that article 2 of the Covenant generally leaves it to the States parties concerned to choose their method of implementation in their territories within the framework set out in that article. It recognizes, in particular, that the implementation does not depend solely on constitutional or legislative enactments, which in themselves are often not per se sufficient. The Committee considers it necessary to draw the attention of States parties to the fact that the obligation under the Covenant is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights. This is obvious in a number of articles (e.g. article 3 which is dealt with in General Comment 4 [13] below), but in principle this undertaking relates to all rights set forth in the Covenant.

2. In this connection, it is very important that individuals should know what their rights under the Covenant (and the Optional Protocol, as the case may be) are and also that all administrative and judicial authorities should be aware of the obligations which the State party has assumed under the Covenant. To this end, the Covenant should be publicized in all official languages of the State and steps should be taken to familiarize the authorities concerned with its contents as part of their training. It is desirable also to give publicity to the State party's co-operation with the Committee.

GENERAL COMMENT 4 [13] (Article 3)

1. Article 3 of the Covenant requiring, as it does, States parties to ensure the equal right of men and women to the enjoyment of all civil and political rights provided for in the Covenant, has been insufficiently dealt with in a considerable number of States reports and has raised a number of concerns, two of which may be highlighted.

2. Firstly, article 3, as articles 2 (1) and 26 in so far as those articles primarily deal with the prevention of discrimination on a number of grounds, among which sex is one, requires not only measures of protection but also affirmative action designed to ensure the positive enjoyment of rights. This cannot be done simply by enacting laws. Hence, more information has generally been required regarding the role of women in practice with a view to ascertaining what measures, in addition to purely legislative measures of protection, have been or are being taken to give effect to the precise and positive obligations under article 3 and to ascertain what progress is being made or what factors or difficulties are being met in this regard.

3. Secondly, the positive obligation undertaken by States parties under that article may itself have an inevitable impact on legislation or administrative measures specifically designed to regulate matters other than those dealt with in the Covenant but which may adversely affect rights recognized in the Covenant. One example, among others, is the degree to which immigration laws which distinguish between a male and a female citizen may or may not adversely affect the scope of the right of the woman to marriage to non-citizens or to hold public office.

4. The Committee, therefore, considers that it might assist States parties if special attention were given to a review by specially appointed bodies or institutions of laws or measures which inherently draw a distinction between men and women in so far as those laws or measures adversely affect the rights provided for in the Covenant and, secondly, that States parties should give specific information in their reports about all measures, legislative or otherwise, designed to implement their undertaking under this article.

5. The Committee considers that it might help the States parties in implementing this obligation, if more use could be made of existing means of international co-operation with a view to exchanging experience and organizing assistance in solving the practical problems connected with the ensurance of equal rights for men and women.

GENERAL COMMENT 5 [13] (Article 4)

1. Article 4 of the Covenant has posed a number of problems for the Committee when considering reports from some States parties. When a public emergency which threatens the life of a nation arises and it is officially proclaimed, a State party may derogate from a number of rights to the extent strictly required by the situation. The State party, however, may not derogate from certain specific rights and may not take discriminatory measures on a number of grounds. The State party is also under an obligation to inform the other States parties immediately, through the Secretary-General, of the derogations it has made including the reasons therefor and the date on which the derogations are terminated.

2. States parties have generally indicated the mechanism provided in their legal systems for the declaration of a state of emergency and the applicable provisions of the law governing derogations. However, in the case of a few States which had apparently derogated from Covenant rights, it was unclear not only whether a state of emergency had been officially declared but also whether rights from which the Covenant allows no derogation had in fact not been derogated from and further whether the other States parties had been informed of the derogations and of the reasons for the derogations.

3. The Committee holds the view that measures taken under article 4 are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and that, in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which no derogations can be made. The Committee also considers that it is equally important for States parties, in times of public emergency, to inform the other States parties of the nature and extent of the derogations they have made and of the reasons therefor and, further, to fulfil their reporting obligations under article 40 of the Covenant by indicating the nature and extent of each right derogated from together with the relevant documentation.

GENERAL COMMENT 6 [16] (Article 6)

1. The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the

nation (article 4). However, the Committee has noted that quite often the information given concerning article 6 was limited to only one or other aspect of this right. It is a right which should not be interpreted narrowly.

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

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

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

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

6. While it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes". The article also refers generally to abolition in terms which strongly suggest (paragraphs 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the

Committee. The Committee notes that a number of States have already abolished the death penalty or suspended its application. Nevertheless, States' reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.

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

GENERAL COMMENT 7 [16] (Article 7)

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

2. As appears from the terms of this article, the scope of protection required goes far beyond torture as normally understood. It may not be necessary to draw sharp distinctions between the various prohibited forms of treatment or punishment. These distinctions depend on the kind, purpose and severity of the particular treatment. In the view of the Committee the prohibition must extend to corporal punishment, including excessive chastisement as an educational or disciplinary measure. Even such a measure as solitary confinement may, according to the circumstances, and especially when the person is kept incommunicado, be contrary to this article. Moreover, the article clearly protects not only persons arrested or imprisoned, but also pupils and patients in educational and medical institutions. Finally, it is

also the duty of public authorities to ensure protection by the law against such treatment even when committed by persons acting outside or without any official authority. For all persons deprived of their liberty, the prohibition of treatment contrary to article 7 is supplemented by the positive requirement of article 10 (1) of the Covenant that they shall be treated with humanity and with respect for the inherent dignity of the human person.

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

GENERAL COMMENT 8 [16] (Article 9)

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

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

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

4. Also if so-called preventive detention is used, for reasons of public security, it must be controlled by these same provisions, i.e. it must not be arbitrary, and must be based on grounds and procedures established by law

(para. 1), information of the reasons must be given (para. 2) and court control of the detention must be available (para. 4) as well as compensation in the case of a breach (para. 5). And if, in addition, criminal charges are brought in such cases, the full protection of article 9 (2) and (3), as well as article 14, must also be granted.

GENERAL COMMENT 9 [16] (Article 10)

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

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

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

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

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

Subparagraph 2 (b) of the article calls, *inter alia*, for accused juvenile persons to be separated from adults. The information in reports shows that a number of States are not taking sufficient account of the fact that this is an

unconditional requirement of the Covenant. It is the Committee's opinion that, as is clear from the text of the Covenant, deviation from States parties' obligations under subparagraph 2 (b) cannot be justified by any consideration whatsoever.

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

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

GENERAL COMMENT 10 [19] (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 his 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 State reports 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 the 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 of the United Nations. 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.

GENERAL COMMENT 12 [21] (Article 1)

1. In accordance with the purposes and principles of the Charter of the United Nations, article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The

right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as article 1 apart from and before all of the other rights in the two Covenants.

2. Article 1 enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.

3. Although the reporting obligations of all States parties include article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of article 1.

4. With regard to paragraph 1 of article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.

5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence". This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but *vis-à-vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect

for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and co-operation between States and to strengthening international peace and understanding.

GENERAL COMMENT 13 [21] (Article 14)

1. The Committee notes that article 14 of the Covenant is of a complex nature and that different aspects of its provisions will need specific comments. All of these provisions are aimed at ensuring the proper administration of justice, and to this end uphold a series of individual rights such as equality before the courts and tribunals and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. Not all reports provided details on the legislative or other measures adopted specifically to implement each of the provisions of article 14.

2. In general, the reports of States parties fail to recognize that article 14 applies not only to procedures for the determination of criminal charges against individuals but also to procedures to determine their rights and obligations in a suit at law. Laws and practices dealing with these matters vary widely from State to State. This diversity makes it all the more necessary for States parties to provide all relevant information and to explain in greater detail how the concepts of "criminal charge" and "rights and obligations in a suit at law" are interpreted in relation to their respective legal systems.

3. The Committee would find it useful if, in their future reports, States parties could provide more detailed information on the steps taken to ensure that equality before the courts, including equal access to courts, fair and public hearings and competence, impartiality and independence of the judiciary are established by law and guaranteed in practice. In particular, States parties should specify the relevant constitutional and legislative texts which provide for the establishment of the courts and ensure that they are independent, impartial and competent, in particular with regard to the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office; the condition governing promotion, transfer and cessation of their functions and the actual independence of the judiciary from the executive branch and the legislative.

4. The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized. The Committee notes the existence, in many countries, of military or special courts which try civilians. This could present serious problems as far as the equitable, impartial and independent administration of justice is concerned. Quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice. While the Covenant does not prohibit such categories of courts, nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in article 14. The Committee has noted a serious lack of information in this regard in the reports of some States parties whose judicial institutions include such courts for the trying of civilians. In some countries such military and special courts do not afford the strict guarantees of the proper administration of justice in accordance with the requirements of article 14 which are essential for the effective protection of human rights. If States parties decide in circumstances of a public emergency as contemplated by article 4 to derogate from normal procedures required under article 14, they should ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation, and respect the other conditions in paragraph 1 of article 14.

5. The second sentence of article 14, paragraph 1, provides that "everyone shall be entitled to a fair and public hearing". Paragraph 3 of the article elaborates on the requirements of a "fair hearing" in regard to the determination of criminal charges. However, the requirements of paragraph 3 are minimum guarantees, the observance of which is not always sufficient to ensure the fairness of a hearing as required by paragraph 1.

6. The publicity of hearings is an important safeguard in the interest of the individual and of society at large. At the same time article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public for reasons spelt out in that paragraph. It should be noted that, apart from such exceptional circumstances, the Committee considers that a hearing must be open to the public in general, including members of the press, and must not, for instance, be limited only to a particular category of persons. It should be noted that, even in cases in which the public is excluded from the trial, the judgement must, with certain strictly defined exceptions, be made public.

7. The Committee has noted a lack of information regarding article 14, paragraph 2 and, in some cases, has even observed that the presumption of innocence, which is fundamental to the protection of human rights, is expressed in very ambiguous terms or entails conditions which render it ineffective. By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.

8. Among the minimum guarantees in criminal proceedings prescribed by paragraph 3, the first concerns the right of everyone to be informed in a language which he understands of the charge against him (subparagraph (a)).

The Committee notes that State reports often do not explain how this right is respected and ensured. Article 14 (3) (a) applies to all cases of criminal charges, including those of persons not in detention. The Committee notes further that the right to be informed of the charge "promptly" requires that information is given in the manner described as soon as the charge is first made by a competent authority. In the opinion of the Committee this right must arise when in the course of an investigation a court or an authority of the prosecution decides to take procedural steps against a person suspected of a crime or publicly names him as such. The specific requirements of subparagraph (3) (a) may be met by stating the charge either orally or in writing, provided that the information indicates both the law and the alleged facts on which it is based.

9. Subparagraph 3 (b) provides that the accused must have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. What is "adequate time" depends on the circumstances of each case, but the facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel. When the accused does not want to defend himself in person or request a person or an association of his choice, he should be able to have recourse to a lawyer. Furthermore, this subparagraph requires counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communications. Lawyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgement without any restrictions, influences, pressures or undue interference from any quarter.

10. Subparagraph 3 (c) provides that the accused shall be tried without undue delay. This guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgement be rendered; all stages must take place "without undue delay". To make this right effective, a procedure must be available in order to ensure that the trial will proceed "without undue delay", both in first instance and on appeal.

11. Not all reports have dealt with all aspects of the right of defence as defined in subparagraph 3 (d). The Committee has not always received sufficient information concerning the protection of the right of the accused to be present during the determination of any charge against him nor how the legal system assures his right either to defend himself in person or to be assisted by counsel of his own choosing, or what arrangements are made if a person does not have sufficient means to pay for legal assistance. The accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defences and the right to challenge the conduct of the case if they believe it to be unfair. When exceptionally for justified reasons trials in absentia are held, strict observance of the rights of the defence is all the more necessary.

12. Subparagraph 3 (e) states that the accused shall be entitled to examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. This provision is designed to guarantee to the accused the same legal powers of compelling the attendance of witnesses and of examining or cross examining any witnesses as are available to the prosecution.

13. Subparagraph 3 (f) provides that if the accused cannot understand or speak the language used in court he is entitled to the assistance of an interpreter free of any charge. This right is independent of the outcome of the proceedings and applies to aliens as well as to nationals. It is of basic importance in cases in which ignorance of the language used by a court or difficulty in understanding may constitute a major obstacle to the right of defence.

14. Subparagraph 3 (g) provides that the accused may not be compelled to testify against himself or to confess guilt. In considering this safeguard the provisions of article 7 and article 10, paragraph 1, should be borne in mind. In order to compel the accused to confess or to testify against himself, frequently methods which violate these provisions are used. The law should require that evidence provided by means of such methods or any other form of compulsion is wholly unacceptable.

15. In order to safeguard the rights of the accused under paragraphs 1 and 3 of article 14, judges should have authority to consider any allegations made of violations of the rights of the accused during any stage of the prosecution.

16. Article 14, paragraph 4, provides that in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. Not many reports have furnished sufficient information concerning such relevant matters as the minimum age at which a juvenile may be charged with a criminal offence, the maximum age at which a person is still considered to be a juvenile, the existence of special courts and procedures, the laws governing procedures against juveniles and how all these special arrangements for juveniles take account of "the desirability of promoting their rehabilitation". Juveniles are to enjoy at least the same guarantees and protection as are accorded to adults under article 14.

17. Article 14, paragraph 5, provides that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. Particular attention is drawn to the other language versions of the word "crime" ("infraction", "delito", "prestuplenie") which show that the guarantee is not confined only to the most serious offences. In this connection, not enough information has been provided concerning the procedures of appeal, in particular the access to and the powers of reviewing tribunals, what requirements must be satisfied to appeal against a judgement, and the way in which the procedures before review tribunals take account of the fair and public hearing requirements of paragraph 1 of article 14.

18. Article 14, paragraph 6, provides for compensation according to law in certain cases of a miscarriage of justice as described therein. It seems from many State reports that this right is often not observed or insufficiently guaranteed by domestic legislation. States should, where necessary, supplement their legislation in this area in order to bring it into line with the provisions of the Covenant.

19. In considering State reports differing views have often been expressed as to the scope of paragraph 7 of article 14. Some States parties have even felt the need to make reservations in relation to procedures for the resumption of

criminal cases. It seems to the Committee that most States parties make a clear distinction between a resumption of a trial justified by exceptional circumstances and a re-trial prohibited pursuant to the principle of ne bis in idem as contained in paragraph 7. This understanding of the meaning of ne bis in idem may encourage States parties to reconsider their reservations to article 14, paragraph 7.

GENERAL COMMENT 14 [23] (Article 6)

1. In its general comment 6 [16] adopted at its 378th meeting on 27 July 1982, the Human Rights Committee observed that the right to life enunciated in the first paragraph of article 6 of the International Covenant on Civil and Political Rights is the supreme right from which no derogation is permitted even in time of public emergency. The same right to life is enshrined in article 3 of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948. It is basic to all human rights.

2. In its previous general comment, the Committee also observed that it is the supreme duty of States to prevent wars. War and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year.

3. While remaining deeply concerned by the toll of human life taken by conventional weapons in armed conflicts, the Committee has noted that, during successive sessions of the General Assembly, representatives from all geographical regions have expressed their growing concern at the development and proliferation of increasingly awesome weapons of mass destruction, which not only threaten human life but also absorb resources that could otherwise be used for vital economic and social purposes, particularly for the benefit of developing countries, and thereby for promoting and securing the enjoyment of human rights for all.

4. The Committee associates itself with this concern. It is evident that the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today. This threat is compounded by the danger that the actual use of such weapons may be brought about, not only in the event of war, but even through human or mechanical error or failure.

5. Furthermore, the very existence and gravity of this threat generates a climate of suspicion and fear between States, which is in itself antagonistic to the promotion of universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and the International Covenants on Human Rights.

6. The production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity.

7. The Committee accordingly, in the interest of mankind, calls upon all States, whether Parties to the Covenant or not, to take urgent steps, unilaterally and by agreement, to rid the world of this menace.

GENERAL COMMENT 15 [27] (The position of aliens under the Covenant)

1. Reports from States parties have often failed to take into account that each State party must ensure the rights in the Covenant to "all individuals within its territory and subject to its jurisdiction" (article 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.

2. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof. This guarantee applies to aliens and citizens alike. Exceptionally, some of the rights recognized in the Covenant are expressly applicable only to citizens (article 25), while article 13 applies only to aliens. However, the Committee's experience in examining reports shows that in a number of countries other rights that aliens should enjoy under the Covenant are denied to them or are subject to limitations that cannot always be justified under the Covenant.

3. A few constitutions provide for equality of aliens with citizens. Some constitutions adopted more recently carefully distinguish fundamental rights that apply to all and those granted to citizens only, and deal with each in detail. In many States, however, the constitutions are drafted in terms of citizens only when granting relevant rights. Legislation and case law may also play an important part in providing for the rights of aliens. The Committee has been informed that in some States fundamental rights, though not guaranteed to aliens by the Constitution or other legislation, will also be extended to them as required by the Covenant. In certain cases, however, there has clearly been a failure to implement Covenant rights without discrimination in respect of aliens.

4. The Committee considers that in their reports States parties should give attention to the position of aliens, both under their law and in actual practice. The Covenant gives aliens all the protection regarding rights guaranteed therein, and its requirements should be observed by States parties in their legislation and in practice as appropriate. The position of aliens would thus be considerably improved. States parties should ensure that the provisions of the Covenant and the rights under it are made known to aliens within their jurisdiction.

5. The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.

6. Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the Covenant.

7. Aliens thus have an inherent right to life, protected by law, and may not be arbitrarily deprived of life. They must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; nor may they be held in slavery or servitude. Aliens have the full right to liberty and security of the person. If lawfully deprived of their liberty, they shall be treated with humanity and with respect for the inherent dignity of their person. Aliens may not be imprisoned for failure to fulfil a contractual obligation. They have the right to liberty of movement and free choice of residence; they shall be free to leave the country. Aliens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law. Aliens shall not be subjected to retrospective penal legislation, and are entitled to recognition before the law. They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. They have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association. They may marry when at marriageable age. Their children are entitled to those measures of protection required by their status as minors. In those cases where aliens constitute a minority within the meaning of article 27, they shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language. Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant.

8. Once an alien is lawfully within a territory, his freedom of movement within the territory and his right to leave that territory may only be restricted in accordance with article 12, paragraph 3. Differences in treatment in this regard between aliens and nationals, or between different categories of aliens, need to be justified under article 12, paragraph 3. Since such restrictions must, *inter alia*, be consistent with the other rights recognized in the Covenant, a State party cannot, by restraining an alien or deporting him to a third country, arbitrarily prevent his return to his own country (article 12, para. 4).

9. Many reports have given insufficient information on matters relevant to article 13. That article is applicable to all procedures aimed at the obligatory departure of an alien, whether described in national law as expulsion or otherwise. If such procedures entail arrest, the safeguards of the Covenant relating to deprivation of liberty (articles 9 and 10) may also be applicable. If the arrest is for the particular purpose of extradition, other provisions of national and international law may apply. Normally an alien who is expelled must be allowed to leave for any country that agrees to take him. The particular rights of article 13 only protect those aliens who are lawfully in the territory of a State party. This means that national law concerning the requirements for entry and stay must be taken into account in determining the scope of that protection, and that illegal entrants and aliens who have stayed longer than the law or their permits allow, in particular, are not covered by its provisions. However, if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or

deportation ought to be taken in accordance with article 13. It is for the competent authorities of the State party, in good faith and in the exercise of their powers, to apply and interpret the domestic law, observing, however, such requirements under the Covenant as equality before the law (article 26).

10. Article 13 directly regulates only the procedure and not the substantive grounds for expulsion. However, by allowing only those carried out "in pursuance of a decision reached in accordance with law", its purpose is clearly to prevent arbitrary expulsions. On the other hand, it entitles each alien to a decision in his own case and, hence, article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions. This understanding, in the opinion of the Committee, is confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by and to be represented before the competent authority or someone designated by it. An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one. The principles of article 13 relating to appeal against expulsion and the entitlement to review by a competent authority may only be departed from when "compelling reasons of national security" so require. Discrimination may not be made between different categories of aliens in the application of article 13.

GENERAL COMMENT 16 [32] (Article 17)

1. Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation. In the view of the Committee this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons. The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.

2. In this connection, the Committee wishes to point out that in the reports of States parties to the Covenant the necessary attention is not being given to information concerning the manner in which respect for this right is guaranteed by legislative, administrative or judicial authorities, and in general by the competent organs established in the State. In particular, insufficient attention is paid to the fact that article 17 of the Covenant deals with protection against both unlawful and arbitrary interference. That means that it is precisely in State legislation above all that provision must be made for the protection of the right set forth in that article. At present the reports either say nothing about such legislation or provide insufficient information on the subject.

3. The term "unlawful" means that no interference can take place except in cases envisaged by the law. Interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant.

4. The expression "arbitrary interference" is also relevant to the protection of the right provided for in article 17. In the Committee's view the expression "arbitrary interference" can also extend to interference provided for under the law. The introduction of the concept of arbitrariness

is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.

5. Regarding the term "family", the objectives of the Covenant require that for purposes of article 17 this term be given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned. The term "home" in English, "manzel" in Arabic, "zhùzhái" in Chinese, "domicile" in French, "zhilische" in Russian and "domicilio" in Spanish, as used in article 17 of the Covenant, is to be understood to indicate the place where a person resides or carries out his usual occupation. In this connection, the Committee invites States to indicate in their reports the meaning given in their society to the terms "family" and "home".

6. The Committee considers that the reports should include information on the authorities and organs set up within the legal system of the State which are competent to authorize interference allowed by the law. It is also indispensable to have information on the authorities which are entitled to exercise control over such interference with strict regard for the law, and to know in what manner and through which organs persons concerned may complain of a violation of the right provided for in article 17 of the Covenant. States should in their reports make clear the extent to which actual practice conforms to the law. State party reports should also contain information on complaints lodged in respect of arbitrary or unlawful interference, and the number of any findings in that regard, as well as the remedies provided in such cases.

7. As all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual's private life the knowledge of which is essential in the interests of society as understood under the Covenant. Accordingly, the Committee recommends that States should indicate in their reports the laws and regulations that govern authorized interferences with private life.

8. Even with regard to interferences that conform to the Covenant, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. A decision to make use of such authorized interference must be made only by the authority designated under the law, and on a case-by-case basis. Compliance with article 17 requires that the integrity and confidentiality of correspondence should be guaranteed de jure and de facto. Correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment. So far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex.

9. States parties are under a duty themselves not to engage in interferences inconsistent with article 17 of the Covenant and to provide the legislative framework prohibiting such acts by natural or legal persons.

10. The gathering and holding of personal information on computers, databanks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant. In order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.

11. Article 17 affords protection to personal honour and reputation and States are under an obligation to provide adequate legislation to that end. Provision must also be made for everyone effectively to be able to protect himself against any unlawful attacks that do occur and to have an effective remedy against those responsible. States parties should indicate in their reports to what extent the honour or reputation of individuals is protected by law and how this protection is achieved according to their legal system.

GENERAL COMMENT 17 [35] (Article 24)

1. Article 24 of the International Covenant on Civil and Political Rights recognizes the right of every child, without any discrimination, to receive from his family, society and the State the protection required by his status as a minor. Consequently, the implementation of this provision entails the adoption of special measures to protect children, in addition to the measures that States are required to take under article 2 to ensure that everyone enjoys the rights provided for in the Covenant. The reports submitted by States parties often seem to underestimate this obligation and supply inadequate information on the way in which children are afforded enjoyment of their right to a special protection.

2. In this connection, the Committee points out that the rights provided for in article 24 are not the only ones that the Covenant recognizes for children and that, as individuals, children benefit from all of the civil rights enunciated in the Covenant. In enunciating a right, some provisions of the Covenant expressly indicate to States measures to be adopted with a view to affording minors greater protection than adults. Thus, as far as the right to life is concerned, the death penalty cannot be imposed for crimes committed by persons under 18 years of age. Similarly, if lawfully deprived of their liberty, accused juvenile persons shall be separated from adults and are entitled to be brought as speedily as possible for adjudication; in turn, convicted juvenile offenders shall be subject to a penitentiary system that involves segregation from adults and is appropriate to their age and legal status, the aim being to foster reformation and social rehabilitation. In other instances, children are protected by the possibility of the restriction - provided that such restriction is warranted - of a right

recognized by the Covenant, such as the right to publicize a judgement in a suit at law or a criminal case, from which an exception may be made when the interest of the minor so requires.

3. In most cases, however, the measures to be adopted are not specified in the Covenant and it is for each State to determine them in the light of the protection needs of children in its territory and within its jurisdiction. The Committee notes in this regard that such measures, although intended primarily to ensure that children fully enjoy the other rights enunciated in the Covenant, may also be economic, social and cultural. For example, every possible economic and social measure should be taken to reduce infant mortality and to eradicate malnutrition among children and to prevent them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labour or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means. In the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant, particularly the right to freedom of opinion and expression. Moreover, the Committee wishes to draw the attention of States parties to the need to include in their reports information on measures adopted to ensure that children do not take a direct part in armed conflicts.

4. The right to special measures of protection belongs to every child because of his status as a minor. Nevertheless, the Covenant does not indicate the age at which he attains his majority. This is to be determined by each State party in the light of the relevant social and cultural conditions. In this respect, States should indicate in their reports the age at which the child attains his majority in civil matters and assumes criminal responsibility. States should also indicate the age at which a child is legally entitled to work and the age at which he is treated as an adult under labour law. States should further indicate the age at which a child is considered adult for the purposes of article 10, paragraphs 2 and 3. However, the Committee notes that the age for the above purposes should not be set unreasonably low and that in any case a State party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law.

5. The Covenant requires that children should be protected against discrimination on any grounds such as race, colour, sex, language, religion, national or social origin, property or birth. In this connection, the Committee notes that, whereas non-discrimination in the enjoyment of the rights provided for in the Covenant also stems, in the case of children, from article 2 and their equality before the law from article 26, the non-discrimination clause contained in article 24 relates specifically to the measures of protection referred to in that provision. Reports by States parties should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every field, including inheritance, particularly as between children who are nationals and children who are aliens or as between legitimate children and children born out of wedlock.

6. Responsibility for guaranteeing children the necessary protection lies with the family, society and the State. Although the Covenant does not indicate how such responsibility is to be apportioned, it is primarily incumbent on the family, which is interpreted broadly to include all persons composing it in the society of the State party concerned, and particularly on the parents, to create conditions to promote the harmonious development of the child's personality and his enjoyment of the rights recognized in the Covenant. However, since it is quite common for the father and mother to be gainfully employed outside the home, reports by States parties should indicate how society, social institutions and the State are discharging their responsibility to assist the family in ensuring the protection of the child. Moreover, in cases where the parents and the family seriously fail in their duties, ill-treat or neglect the child, the State should intervene to restrict parental authority and the child may be separated from his family when circumstances so require. If the marriage is dissolved, steps should be taken, keeping in view the paramount interest of the children, to give them necessary protection and, so far as is possible, to guarantee personal relations with both parents. The Committee considers it useful that reports by States parties should provide information on the special measures of protection adopted to protect children who are abandoned or deprived of their family environment in order to enable them to develop in conditions that most closely resemble those characterizing the family environment.

7. Under article 24, paragraph 2, every child has the right to be registered immediately after birth and to have a name. In the Committee's opinion, this provision should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child's legal personality. Providing for the right to have a name is of special importance in the case of children born out of wedlock. The main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant. Reports by States parties should indicate in detail the measures that ensure the immediate registration of children born in their territory.

8. Special attention should also be paid, in the context of the protection to be granted to children, to the right of every child to acquire a nationality, as provided for in article 24, paragraph 3. While the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in co-operation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents. The measures adopted to ensure that children have a nationality should always be referred to in reports by States parties.

ANNEX

CHECK-LIST OF GENERAL COMMENTS ADOPTED
BY THE HUMAN RIGHTS COMMITTEE

311th meeting, 28 July 1981

- General comment 1 [13] */ (Reporting obligation)
- General comment 2 [13] (Reporting guidelines)
- General comment 3 [13] (Article 2: Implementation at the national level)
- General comment 4 [13] (Article 3)
- General comment 5 [13] (Article 4)

378th meeting, 27 July 1982

- General comment 6 [16] (Article 6)
- General comment 7 [16] (Article 7)
- General comment 8 [16] (Article 9)
- General comment 9 [16] (Article 10)

461st meeting, 27 July 1983

- General comment 10 [19] (Article 19)

464th meeting, 29 July 1983

- General comment 11 [19] (Article 20)

516th meeting, 12 April 1984

- General comment 12 [21] (Article 1)
- General comment 13 [21] (Article 14)

*/ The number in square brackets indicates the session at which the General Comment was adopted.

563rd meeting, 2 November 1984

- General comment 14 [23] (Article 6)

696th meeting, 22 July 1986

- General comment 15 [27] (The position of aliens under the Covenant)

791st meeting, 23 March 1988

- General comment 16 [32] (Article 17)

891st meeting, 5 April 1989

- General comment 17 [35] (Article 24)

HUMAN RIGHTS COMMITTEE

52nd Session (Geneva, 17 October – 4 November 1994)

The Committee examined the reports of Libya, Morocco, Nepal, Tunisia and Yemen. The Committee also completed a draft General Comment on reservations by States parties to the Covenant, discussed its methods of work and continued consideration of a draft General Comment under Article 25 of the Covenant.

The Human Rights Committee is the supervisory organ of the International Covenant on Civil and Political Rights. The 18 expert members of the Committee are mandated to oversee the application of the Covenant and its two Optional Protocols, the first involving individual communications and the second on the death penalty.

As of 4 November 1994, the Covenant has been ratified by 127 member-

States, the first Optional Protocol by 77 States and the second Optional Protocol by 27 States.

During this session of the Committee, a General Comment on reservations to the Covenant made by States parties at the time of ratification was adopted by the members. The Committee also continued its consideration (from the previous session) of a draft General Comment on Article 25 of the Covenant,

which concerns participation in public affairs.

1. Reports from member-States

Afghanistan once again requested a postponement of the study of its report until the 53rd Session.

The Committee is comprised of 18 members, as follows:

| Member of the Committee | Country | Mandate Expires |
|--------------------------|-----------------------|-----------------|
| Mr. F. J. AGUILAR URBINA | Costa Rica | 1996 |
| Mr. M. ANDO (*) | Japan | 1994 |
| Mr. T. BÀN | Hungary | 1996 |
| Mr. M. BRUNI CELLI | Venezuela | 1996 |
| Ms. C. CHANET | France | 1994 |
| Mr. V. DIMITRIJVEIC (**) | Serbia and Montenegro | 1994 |
| Mr. O. EL SHAFEI (**) | Egypt | 1996 |
| Ms. E. EVATT | Australia | 1996 |
| Mr. L. FRANCIS | Jamaica | 1996 |
| Mr. K. HERNDL | Austria | 1994 |
| Ms. J. HIGGINS | United Kingdom | 1996 |
| Mr. R. LALLAH | Mauritius | 1996 |
| Mr. A. V. MAVROMMATIS | Cyprus | 1996 |
| Mr. B. NDIAYE | Senegal | 1994 |
| Mr. F. POCAR | Italy | 1996 |
| Mr. J. PRADO VALLEJO | Equator | 1994 |
| Mr. W. SADI | Jordan | 1994 |
| Mr. B. WENNERGREN (**) | Sweden | 1994 |

(*) Chairperson
 (**) Vice-Presidents
 Mr. Aguilar is the Rapporteur.

Guide to Abbreviations

(All dates correspond to the year the document enters into effect.)

- ICCPR: International Covenant on Civil and Political Rights (year into force)
- Article 41: Complaints lodged between member-States
- OP1: First Optional Protocol (individual communications)
- OP2: Second Optional Protocol (capital punishment)
- Reservations: Articles to which reservations have been stated
- IR: Initial report
- PR2, PR3, PR4: 2nd, 3rd, 4th Periodic Reports

The year of succession of the three years listed afterwards corresponds to:

1. The year for which the report is valid
2. The year the report was actually submitted
3. The year the report was formally studied

LIBYA
 Second periodic report (CCPR/C/28/Add.16)

ICCPR: 1976
 Article 41: No
 OP1: Yes (1989)
 OP2: No
 Reservations: Non-recognition of Israel

IR: 1977/1978/1978
 PR2: 1983/1993/1993-94
 PR3 due: 1988/1995

The return of the Libyan delegation after last year's unsatisfactory report was welcomed by the Committee. However, certain questions appeared during the examination of its report concerning the use of the death penalty, cases of torture and reports of prisoners being held incommunicado for long periods of time.

The Status of the Covenant

Although the Covenant has been adopted into national legislation, the actual status of the Covenant in practice remained somewhat unclear. Information gathered by the UN and other reliable sources points to the occurrence of summary and

extra-judicial execution and torture being perpetrated by governmental officials. Human rights violations which have been acknowledged by the Head of State have not been mentioned in the revised report. Although the government has demonstrated its willingness to continue a dialogue with the Committee by submitting written responses to questions posed

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by the experts, the clarity of the actual human rights situation in Libya is questionable.

The Green Charter

Certain provisions of the Covenant have been included in the "Great Green Charter of Human Rights of the Jamahiriyan Era". The Committee welcomed this, as well as the fact that the Covenant has received some publicity in the Official Bulletin and in the media. However, the Green Charter does not go far enough. Although the Libyan delegation mentioned its desire to eliminate the death penalty (but does not want to ratify the second optional protocol), capital punishment still exists as punishment for "heinous, abhorrent crimes", with approximately **twenty individuals having been executed in the**

MOROCCO Third periodic report (CCPR/C/76/Add.3 and Add.4)

ICCPR: 1979
Article 41: No
OP1: No
OP2: No
Reservations: None

IR: 1980/1981/1981
PR2: 1986/1990/1990-91
PR3: 1991/1993/1994
PR4 due: 1996

Law and Practice

Morocco's third periodic report was quite detailed in terms of the laws and regulations which apply to the Covenant but it did not include sufficient information about the difficulties of applying the Covenant in practice. The delegation, however, provided satisfactory responses to the questions concerning the status of the Covenant in Morocco.

Positive Aspects

The delegation acknowledged certain specific human rights violations such as "disappearances", the existence of the **Tazmamert detention centre**. The 1992 amended Constitution granted amnesty to a large number of political prisoners, compensation has been paid to certain persons who have been illegally detained and many death sentences have been commuted to life in prison. Also, the status of women seems to be slowly improving, at least in areas of political rights.

Lingering Problems

The delegation remarked that Morocco was in a transitional stage, with certain traditional customs continuing to exist which are not in line with the Covenant, particularly in matters of

NEPAL Initial report (CCPR/C/74/Add.2)

ICCPR: 1991
Article 41: No
OP1: Yes
OP2: No
Reservations: None

IR: 1992/1994/1994
Additional info due: 1997

A First Step

The initial report of Nepal brought a **constructive dialogue**. The State party also sent a competent delegation which pro-

HUMAN RIGHTS COMMITTEE

past year. The question of the applicability of the death penalty for "economic crimes" was also brought up by the experts. Additionally, flogging and amputations were mentioned by the experts as punishments which are sanctioned by the state.

Restrictions on Liberties

Certain restrictions imposed by the Libyan government concerning the rights of freedom of opinion, freedom of expression, the rights to assembly and association and freedom of religion are not in accordance with the Covenant. Although certain improvements have been made in the field of women's rights, discrimination against women was found to be fairly common, with women lacking equality with men in areas of inheritance rights and nationality. ■

Numerous measures have been taken which have improved the emerging democracy in the country and have created a legal system more favourable to the promotion and protection of human rights. Contrary to the past, the governmental delegation took a conciliatory attitude towards the members of the Committee and an enhanced dialogue was possible.

equality of the sexes. The experts raised concerns that women face discrimination in many areas, including the right to leave the country, freedom to conduct commercial activities, personal status, marriage and divorce. Freedom of religion was another point of concern, especially in areas concerning non-Muslims, the Baha'i community in particular. The state of Moroccan prisons and limitations to the right of freedom of expression, **especially involving individuals who criticise the King**, were denounced by the Committee. In its opinion, further measures should be taken to improve detention conditions and to ensure that UN Standard Minimum Rules for the Treatment of Prisoners are being followed.

Questions about Western Sahara

The Committee was also concerned about Morocco's role regarding problems of **self-determination in Western Sahara** and found the obligations assumed in Article 1(3) of the Covenant to be unfulfilled. Specifically, although the Moroccan delegation stated that it was committed to self-determination in Western Sahara, it could not promise a date or working method for a referendum in the territory. The Committee, however, chose not to make any specific recommendations about Western Sahara. ■

New democratic institutions, multi-party elections, and a declaration to follow the rule of law and the independence of the judiciary was appreciated by the Committee. However, the governmental officials responsible for the preparation of the report neglected to follow the Committee's guidelines. The complete lack of information concerning the difficulties experienced by Nepal in the implementation of the Covenant prohibited a full understanding of the true human rights situation in the country.

vided frank answers to the expert's questions. The Committee acknowledged the country was coming out of a long period of authoritarian rule and isolation and that economic depression, extreme poverty and widespread illiteracy remains common.

RECENT MEETINGS

The Nepalese Legal System

Although Nepal has acceded to the Covenant and its first Optional Protocol, the **status of the Covenant within the domestic legal framework is ambiguous**. A large gap exists between the provisions made for upholding civil and political rights in the new Constitution and the implementation of these provisions in practice. The possibility of invoking certain clauses of the Covenant in domestic law (as well as raising the awareness of such clauses) needs to be more clearly defined. The lack of some civil and political rights to non-citizens in Nepal is not in line with the Covenant. Some experts complained about the lack of a representative from the Ministry of Justice during the dialogue.

TUNISIA Fourth periodic report (CCPR/C/84/Add.1)

ICCPR: 1976
Article 41: Yes
OP1: No
OP2: No
Reservations: None

IR: 1977/1977/1977
Additional info due: 1979
PR2: 1983/1986/1987
PR3: 1988/1989/1990
PR4: 1993/1993/1994
PR5 due: 1998

Law and Practice

The Tunisian government seems to be sincerely interested in improving its human rights image. However, certain reports, like the one prepared by Amnesty International, suggest that **much more needs to be done**. The State report to the Committee was of very high quality, particularly regarding legislation, although information on difficulties encountered in its implementation was lacking. Still, Tunisia has taken the first steps towards building a comprehensive constitutional and legal framework for the promotion of human rights. Yet most of these State organs have been concentrated exclusively within the executive branch, which brings about some question as to whether the other branches of government can effectively monitor and direct the implementation of human rights policies.

Freedom of Expression

The Committee is worried by media controls by the present laws which protect government officials. At least two foreign

YEMEN Second periodic report (CCPR/C/82/Add.1)

ICCPR: 1987
Article 41: No
OP1: No
OP2: No
Reservations: Non-recognition of Israel

IR: 1988/1989/1989
PR2: 1993/1993/1994-95

A Shameful Spectacle

The "dialogue" began with the Yemeni Ambassador's statement to the experts that he would rather be elsewhere. The delegation was not only unaware of the relevant provisions of the Covenant but also unaware of what was in its own country's report. When asked by the experts if it would be possible

HUMAN RIGHTS COMMITTEE

Equality and Non-Discrimination

The **non-discrimination** clauses mentioned in the Constitution do not cover all the issues provided for in Articles 2 and 26 of the Covenant. In practice, the non-prohibition of the caste system creates a discriminatory atmosphere. The practices of debt bondage, trade in human beings, child labour and imprisonment due to the inability to fulfill a contractual obligation are clear violations of the Covenant. Women are de facto objects of discrimination as regards, among other things, marriage and divorce, inheritance, transmission of citizenship, education and wages. The Committee, in its suggestions and recommendations, advises that the legislative reforms currently under way continue and that administrative and educational measures be introduced to eliminate traditional practices which marginalise certain groups of society. ■

The presence of a high-level, competent delegation of experts knowledgeable about the human rights situation in Tunisia was welcomed by the Committee. However, the status of certain basic civil and political rights has deteriorated.

publications have been suspended because they refused the right of reply to the Tunisian government and for publishing so-called "false information". Criticism of the Government is not fully tolerated. The Associations Act was cited by the Committee as possibly **limiting the independence of human rights NGOs**.

Mistreatment of Detainees

Reports of the abuse, mistreatment and torture of detainees, including deaths in custody under suspicious circumstances were reported to the Committee. The Committee suggested that the Tunisian authorities were not doing everything in their power to prevent such violations and questioned whether investigations to reports of human rights violations in custody are immediately begun. The Committee showed particular concern at the **anonymity** of government officials who have been found guilty of wrong-doing in the name of security matters. ■

The dialogue opened with some degree of hostility between the governmental delegation and the experts and deteriorated from there, with the Yemeni Ambassador accusing the Committee of "chest-beating" and the consideration of the report being eventually suspended.

to have a better-informed delegation come before the Committee, the delegation responded that the government was "too busy". In view of this uncooperative attitude, the Committee decided to **suspend consideration** of the report. The Yemeni government will be asked to re-appear before the Committee. ■

2. Other Deliberations of the Committee

General Comment on Reservations

States-parties acceding to the ICCPR have shown a growing tendency to enter reservations to the Covenant. The Committee has recognised this and in its 52nd Session adopted a General Comment on the impact of such reservations.

The Committee has recognised that States parties do have the right to reservations in circumstances which help the general policies of the Covenant be more specifically adapted to the actual situation in a particular country. The General Comment states, however, "that it is desirable in principle that States accept the full range of obligations, because the human rights norms are the legal expression of the essential rights that every person is entitled to as a human being." Moreover, the Committee was also careful to note that States parties who submit excessive numbers of reservations to the Covenant may undermine its full implementation.

Thus, the Comment defines the role of reservations by States parties and which specific rights may or may not be the subject of reservations. The Comment also recommends that States parties should begin procedures to verify that any reservations that may be entered are compatible "with the object and

New members of the Human Rights Committee

In a vote taken on 9 September 1994 in New York, the following individuals were elected as new members of the Human Rights Committee: Mr. P. N. Bhagwati (India), Mr. T. Buergenthal (USA), Mr. E. Klein (Germany), Mr. D. Kretzmer (Israel) and Mrs. C. Medina Quiroga (Chile). From 1 January 1995, they will be replacing Messrs. Dimitrijevic, Herndl, Ndiaye and Sadi. Messrs. Ando and Prado Vallejo and Ms. Chanet were re-elected as members of the Committee.

purpose of the Covenant". Forty-six of the 127 States parties to the Covenant have submitted a total of 150 reservations.

Other Matters

Prior to the 52nd Session, the Committee's Working Group on Article 40 met to discuss recommendations related to the participation of UN Specialised Agencies and NGOs in the activities of the Committee.

The Committee also addressed measures taken to improve its working methods, especially the measures that need to be taken when dealing with

emergency situations and countries that are long overdue in the submission of their reports. (Currently, the reports of approximately 80 States parties are overdue.) The financial crisis and lack of support staff in the UN Centre for Human Rights - and ways the Committee can work around these problems - were discussed.

Finally, the Committee continued its discussion of a draft General Comment on Article 25 of the Covenant, which involves the right of participation in public affairs and voting rights.

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Reports to be Examined During the 53rd Session (New York, 20 March-7 April 1995)

- Argentina: Second periodic report
- New Zealand: Third periodic report
- Paraguay: Initial report
- United States: Initial report

The Committee will also continue its examination of the Yemeni report.

As a result of a decision taken during the 52nd Session, the governments of Haiti and Rwanda were asked to submit special reports at the 53rd Session.

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Eleventh Session (Geneva, 21 november - 9 December 1994)

The Committee examined the reports of Argentina, Austria, United Kingdom and the dependent territories. Mali, Surinam, the Dominican Republic and Panama were also discussed. A general comment has been adopted on persons with disabilities and the Committee continued with its discussion on the draft optional protocol.

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council (ECOSOC) in 1985 to monitor the application of the International Covenant on Economic, Social and Cultural Rights. The Covenant was adopted by the General Assembly in December 1966 and entered into force in January 1976. As of November 1994, 129 States had ratified or acceded to the Covenant.

1. State Party Reports

Argentina (art 6-12)

Years after the end of military dictatorship, NGO reports have noted that emergency decrees have been enacted al-

though Parliament continues to be in session. The government, which as recently as 1989 has experienced annual inflation rates of 3700% (although this figure is now down to 4% annually), has chosen privatisation and deregulation of certain sectors as principal tools to the realisation of economic, social and cultural rights. This was met with strong criticism from some members of the Committee, who suggested that by using privatisation as a "panacea to all problems", the country risks sacrificing its most vulnerable sectors of society.

The Committee's concern were the lack of clarity about the implementation of the Covenant, the housing and the effort to de-centralize the government which has caused some problems due to lack of accountability.

United Kingdom (art 10-12 and 13-15)

Several Committee members expressed concern over the fact that NGOs were not consulted at all. There was very little public awareness of the provisions of the Covenant or on the reports themselves. The government delegation responded by saying that it was not of the opinion that the preparation of a report should be a "joint enterprise" between the government and NGOs.

Regarding the independence of the dependent territories, the delegation stated that the United Kingdom would not interfere with the wishes of those dependent territories which truly want independence, nor would they press towards independence. Some would never

HUMAN RIGHTS COMMITTEE

53rd session (New York, 20 March-7 April 1995)

54th session (Geneva, 10-28 July 1995)

55th session (Geneva, 16 October-3 November 1995)

In its three sessions in 1995, the Committee considered the reports of Argentina, New Zealand, Paraguay, Haiti, Yemen, the United States of America, Ukraine, Sri Lanka, the Russian Federation, Latvia, the United Kingdom of Great Britain and Northern Ireland, the United Kingdom on Hong Kong, Estonia and Sweden. The Committee also worked on a General Comment on article 25 (election rights).

Introduction

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the General Assembly on 16 December 1966 and entered into force 23 March 1976. As of 31 December 1995, there were 132 State Parties to the Covenant; another four States had signed but not ratified at that time.

The Human Rights Committee was established pursuant to article 28 of the Covenant on 20 September 1976. The Committee is comprised of 18 independent experts of high moral standing and recognized competence in the field of human rights. In addition to examining reports submitted by State Parties, the Committee periodically makes General Comments on the scope and meaning of provisions of the Covenant.

Individuals from a State which is a Party to the first Optional Protocol, may bring a complaint to the Committee alleging that their rights under the Covenant have been violated by the State Party. As of 31 December 1995, 87 State Parties to the Covenant were Parties to the first Optional Protocol; four other States had signed but not ratified at that time. A second Optional Protocol deals with the abolition of the death penalty. As of 31 December 1995, 29 States were Parties; another four State Parties had signed but not ratified at that time.

States Parties may choose to make a declaration under article 41 of the Covenant which recognized the competence of the Committee to receive and consider inter-State complaints. As of December 31 1995, 41 State Parties had made such declarations.

Guide to abbreviations

- ICCPR: International Covenant on Civil and Political Rights (year ratified or acceded to)
- Article 41: Complaints lodged between member-States (year State Party made a declaration)
- OP1: First Optional Protocol on Individual Communications (year State Party became a party)
- OP2: Second Optional Protocol on Capital Punishment (year State Party became a party)
- Reservations: Articles to which reservations have been made
- IR: Initial Report (year due/ submitted/considered)
- PR2, PR3, PR4: 2nd, 3rd, 4th Periodic Reports (year due/ submitted/considered)
- SR: Special Report (year due/ submitted/considered)

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The reference to CCPR/C in the number indicates that it is a document of the Human Rights Committee under International Covenant on Civil and Political Rights. The suffix Add. indicates that the document is an addition to the text of the main document. The suffix Rev. indicates a new text superseding and replacing that of a previously issued document. (Used when the document must be reissued in its entirety, whether for substantive or technical reasons.) Documents designated as HRI/CORE indicate more general reports which are then tailored to the specific Committee.

MEMBERS OF THE COMMITTEE

| Members of the Committee | Country | Mandate expires |
|--------------------------|----------------|-----------------|
| Mr. F.J. AGUILAR URBINA* | Costa Rica | 1996 |
| Mr. M. ANDO | Japan | 1998 |
| Mr. T. BAN | Hungary | 1996 |
| Mr. P.N. BHAGWATI | India | 1998 |
| Mr. M. BRUNI CELLI | Venezuela | 1996 |
| Mr. T. BUERGENTHAL | United States | 1998 |
| Ms. C. CHANET | France | 1998 |
| Mr. O. EL SHAFEI | Egypt | 1998 |
| Ms. E. EVATT | Australia | 1996 |
| Mr. L. FRANCIS | Jamaica | 1996 |
| Ms. R. HIGGINS** | United Kingdom | 1996 |
| Mr. E. KLEIN | Germany | 1998 |
| Mr. D. KRETZMER | Israel | 1998 |
| Mr. R. LALLAH | Mauritius | 1996 |
| Mr. A.V. MAVROMMATIS | Cyprus | 1996 |
| Ms. C. MEDINA QUIROGA | Chile | 1998 |
| Mr. F. POCAR | Italy | 1996 |
| Mr. J. PRADO VALLEJO | Ecuador | 1998 |

* Chairperson. The Vice-Chairpersons are Mr. EL SHAFEI, Mr. BAN and Mr. BHAGWATI.

The Committee's Rapporteur is Ms. CHANET.

** Ms. Rosalyn HIGGINS resigned from the HRC after she was appointed as judge to the International Court of Justice.

Secretary HRC: Mr. Eric TISTOUNET, Room D-204, Tel: (41 22) 917 39 65/ 917 14 77

1. STATE PARTY REPORTS

**ARGENTINA (53rd session)
Second report (CCPR/C/75/Add.1)**

ICCPR: 1986
Article 41: Yes (1986)
OP1: Yes (1986)
OP2: No
Reservations: Article 15
IR: 1987/1989/1990
PR2: 1992/1994/1995 (53rd)

The Committee regretted that the report did not adequately deal with difficulties encountered with regard to the actual implementation of the Covenant. This problem was alleviated by the oral update by the high-level delegation. Introducing the report the delegation emphasised the continuous progress in the efforts to democratise and to protect human rights. Still problems remain.

Law of "Punto Final"

The Committee welcomed measures that grant compensation to persons detained by order of the Executive and to relatives of disappeared persons (Act no. 23,852). The Committee considered the Law of Due Obedience and the Law of Punto Final and found them to deny effective remedy to victims of human rights violations and to be inconsistent with the requirements of the Covenant. The Committee cautioned that the Presidential pardon of top military personnel results in an atmosphere of impunity that weakens the respect for human rights and urged that care be taken in the use of pardons. The Committee urged Argentina to investigate the whereabouts of disappeared persons.

Other concerns

- Concerns included the lack of compensation for the victims

of torture, the fact that there is no clear system for investigating complaints and the existence of provisions in the Penal Code that are in conflict with the principle of presumption of innocence.

- The Committee proposed that the system of pre-trial detention should be reviewed and that Argentina take preventive disciplinary measures and provide appropriate training in order to prevent cases of excessive use of force.
- The Committee asked for more information on the position of indigenous peoples, in particular on the return of land to indigenous groups and the recognition of customary law.
- The Committee was concerned about threats to members of the judiciary and attacks against journalists and unionists, leading to breaches of the independence of judiciary and of the rights of expression and association.

**NEW ZEALAND (53rd session)
Third report (CCPR/C/64/Add.10)
Core document (HRI/CORE/1/Add.3)**

ICCPR: 1979
Article 41: Yes (1978)
OP1: Yes (1989)
OP2: Yes (1990)
Reservations: Articles 10(2)b, 10(3), 14(6), 20 and 22
IR: 1980/1982/1983
PR2: 1985/1988/1989
PR3: 1990/1994/1995 (53rd)

The Committee expressed its appreciation to New Zealand for its excellent report, which contains detailed information on law and practice relating to the Covenant. Introducing the report the delegation emphasised the fact that three important laws were adopted during the reporting period: the Abolition of the Death Penalty Act 1989, the Bill of Rights Act 1990 and the Human Rights Act 1993.

Incorporation of the Covenant

The Committee welcomed the above-mentioned legislation, and the ratification of the first and the second Optional Protocols. However it regretted that the Covenant had not been fully incorporated into domestic law and given an overriding status in the legal system. The Committee urged New Zealand to reconsider its reservations.

Discrimination

The Committee expressed its concern at the absence of remedies for victims of violations of the Covenant or New Zealand's Bill of Right and proposed that the Bill of Rights should be revised on this point. The Committee noted with regret that the prohibited grounds of discrimination in the Human Rights Act 1993 failed to include all those in the Covenant and that the addition of new prohibited grounds could not occur until the year 2000.

Position of Maori

The delegation explained that the rights of Maori had been strengthened in the following ways: a historical settlement of fishing claims had been implemented by the Treaty of Waitangi and proposals had been made to resolve the issue of land claims and claims to natural resources. The Committee appreciated the improvement of the position of the Maori but expressed a continued concern that Maori still experience disadvantage.

Criminal Justice Amendment Act

The Committee was concerned about provisions in the Criminal Justice Amendment Act which provide for a sentence of indeterminate detention for offenders who had been previously convicted of serious crimes and are likely to re-offend in a similar manner. The Committee expressed the view that this provision is inconsistent with articles 9 and 14 of the Covenant.

**PARAGUAY (53rd session)
Initial report (CCPR/C/84/Add.3)
Core document (HRI/CORE/1/Add.24)**

ICCPR: 1992
Article 41: No
OP1: Yes (1995)
OP2: No
Reservations: None
IR: 1993/1994/1995 (53rd)

The Committee found the report very detailed and systematic but noted that it did not adequately deal with the actual state of implementation of the Covenant in practice. The Committee expressed understanding for the fact that full implementation of the Covenant is not yet possible because the country is in the middle of a process of transition towards democracy.

Positive developments

The Committee welcomed the recent positive developments in the human rights situation in Paraguay. They cited with approval the State's ratification without reservation of the Covenant and the first Optional Protocol and its expressed will to ratify the second Optional Protocol. The Committee particularly welcomed the promulgation of the 1992 Constitution and its guarantees for human rights and the establishment of a machinery to receive complaints. It expressed satisfaction with the fact that human rights education will be given in schools and urged that such education be extended to members of the police and security forces, the legal profession and other persons involved in the administration of justice.

No amnesty

The delegation commented on a bill currently before Parliament seeking compensation for victims of violations of human rights under the dictatorship. The Committee was pleased to hear that the Government will not enact any amnesty law and

that steps have been taken to make accountable perpetrators of human rights abuses.

Ill-treatment of detainees

Despite improvements, the Committee remained concerned about the occurrence of torture and ill-treatment of detainees. The Committee urged the State party to investigate these allegations. The Committee urged Paraguay to put an end to the practice of not detaining accused persons separately from convicted persons, a practice which is in violation of article 10 of the Covenant.

Other concerns

Other issues of concern were the unequal treatment of women under certain laws, the lack of compensation for victims of human rights violations during the dictatorship, the high number of deaths among expectant mothers, the existence of discrimination against non-Catholics and the situation of indigenous groups.

**HAITI (53rd session)
Special report (CCPR/C/105)**

ICCPR: 1991
Article 41: No
OP1: No
OP2: No
Reservations: None
IR: due in 1992
SR: considered 1995 (53rd)

In the light of past and continuing events in Haiti affecting the human rights situation in the country, the Committee requested that the Government of Haiti provide a special report. The report and the discussion focused on the implementation of articles 6 (right to life), 7 (prohibition of torture), 9 (security of person), 10 (humane treatment of prisoners) and 14 (fair trial) of the Covenant.

Restoration of the rule of law

The delegation stated at the introduction of the report that since President ARISTIDE had returned to power, efforts had been made to improve the human rights situation in the country. Committee member Mr Bruni CELLI, who had visited Haiti in January 1995 in his capacity of Special Rapporteur, said that he was more convinced than ever of the desire of the ARISTIDE Government for reform. The Committee welcomed the restoration of the legitimate Government and the efforts made by it to improve the human rights situation. It noted with satisfaction the creation of a civil police service and a programme for the training of judges and police officers. The Committee stated that it was cognisant of the difficulties met by the Government because of the transition to democracy and the continuing occurrence of violence and disorder disrupting society.

Other concerns

- The Committee asked for more information about the near-

slavery conditions of Haitians working in the sugar cane fields in the Dominican Republic.

- The Committee was extremely concerned about an Amnesty Act which might impede investigations into allegations of human rights violations and lead to an atmosphere of impunity. The Committee recommended that human rights violators should be excluded from service in the police force and the judiciary and recommended that the Amnesty Act not be applicable to human rights violators.
- The Committee was also concerned about the human rights violations which are still occurring in Haiti. The Committee stated that the number of weapons in the community must be reduced.
- The Committee urged the Government to ratify the Optional Protocols and to incorporate all the provisions of the Covenant into the national legal system.
- Other concerns of the Committee included the problematic functioning of the judiciary, the lack of full and effective control by civilian authorities over the military and forced labour of minors.

YEMEN (53rd session)**Second report (CCPR/C/82/Add.1)**

ICCPR: 1987
 Article 41: No
 OP1: No
 OP2: No
 Reservations: Non recognition of Israel
 IR: 1988/1989/1989
 PR2: 1993/1993/1994 (52nd) and 1995 (53rd)

At the introduction the delegation made reference to Yemen's Constitution and laws that incorporate the provisions of the Universal Declaration of Human Rights and the two international human rights covenants. The delegation noted that during the reporting period elections were held and for the first time in history representatives of different political parties were elected. They also stated that the implementation of human rights is difficult because of a history of deprivation of rights

UNITED STATES OF AMERICA (53rd session)**Initial report (CCPR/C/81/Add.4)
Core document (HRI/CORE/1/Add.49)**

ICCPR: 1992
 Article 41: Yes (1992)
 Op1: No
 Op2: No
 Reservations: Articles 2(1), 5, 6, 7, 10(2)(b), 10(3), 14(4), 15(1), 19, 20, 26, 27, 47
 IR: 1993/1994/1995 (53rd)

Incorporation of the Covenant

The Committee welcomed the recent ratification by the United States of a number of international human rights instruments (CCPR, CAT and CERD) and the steps taken by the Federal Government to ensure that the States of the Union ensure the realization of human rights and fundamental freedoms. The Committee regretted the extent of reservations and declarations associated with the Covenant and it noted that declarations regarding the federal system did not constitute reservations to the Covenant.

Independence of judiciary

The Committee stressed the need for members of the judiciary at the federal, state and local level to be made aware of the obligations under the Covenant. The Committee noted a concern that in some states in the United States the system of election of judges may have an adverse impact on the implementation of rights protected by article 14 (fair trial) of the Covenant.

The Yemeni delegation appeared before the Committee at its 52nd session, however the delegation was not prepared and extremely uncooperative. It was decided at that time to suspend consideration of the report and request that they re-appear at the 53rd session. At this session the Committee welcomed the report, although it lacked information about the actual status of implementation of the Covenant.

under former regimes.

The Committee asked for information about the impact of the civil war on the human rights situation, the position of women and the lack of equality of sexes, the employment of minors and the education of human rights. The Committee asked whether allegations (by Amnesty International and other NGOs) of torture, disappearances and political detention were being investigated by the Government. ■

The Committee expressed its appreciation for an excellent report. The Committee found the dialogue with the US delegation very fruitful and constructive because of the comprehensive answers given by the high level delegation which included several experts in the field of human rights. The delegation acknowledged such problems as crime, drugs, poverty, discrimination, and violence against women.

Excessive use of death penalty

The Committee expressed concern about the excessive number of offences punishable by the death penalty in a number of States, the number of death sentences handed down by courts and the long stay on death row. It also deplored the fact that it was possible in some States to punish persons under 18 years and mentally retarded persons with the death penalty.

Other concerns

- The Committee was concerned about the classification in some states of the United States of sexual relations between adults of the same sex as a criminal offence. This constitutes a serious infringement of private life.
- Also ill-treatment and killings by members of police force were of concern to the Committee.
- Other concerns included the fact that high costs adversely affect the right of persons to be candidates at elections, the position of Native Americans, the conditions of detention and the poor living circumstances African Americans, Hispanics and single parent families. ■

UKRAINE (54th session)**Fourth report (CCPR/C/95/Add.2)**

ICCPR: 1976
 Article 41: Yes (1992)
 OP1: Yes (1991)
 OP2: No
 Reservations: Article 48(1)
 IR: 1977/1978/1979
 PR2: 1984/1984/1985
 PR3: 1989/1990/1990
 PR4: 1994/1994/1995 (54th)

Problems remain

Although progress was made, the government delegation admitted that many problems still had to be solved, including discrimination, compensation for political oppression in the past, the tense situation in the Crimea and the high reliance on the death penalty. Another difficulty is the position of individuals and women in particular. The Committee felt that the present transitional stage was the appropriate time to improve the position of women in society. The Committee stressed

During the reporting period major changes had occurred in Ukraine's economic and legislative situation. According to the delegation a new Constitutional Agreement provides for a vertical system of executive authority, headed by the President, and for a strengthened parliamentary and legislative role of the Supreme Council. Although progress was made, the Government delegation admitted that many problems still had to be solved, including discrimination, compensation for political oppression in the past, the tense situation in the Crimea and the high use of the death penalty.

that economic difficulties could not justify the failure to protect human rights.

Role of NGOs

The Committee stated that law on its own cannot end an atmosphere of discrimination; in addition independent NGOs had to be encouraged and restrictions on them should be removed. ■

SRI LANKA (54th session)**Third report (CCPR/C/70/Add.6)
Core document (HRI/CORE/1/Add.48)**

ICCPR: 1980
 Article 41: Yes (1980)
 OP1: No
 OP2: No
 Reservations: None
 IR: 1981/1983/1983-84
 PR2: 1986/1990/1991
 PR3: 1991/1994/1995 (54th)

The Committee criticised the report as too superficial, purely legalistic and inadequate; however the additional information submitted by the Government of Sri Lanka (CCPR/C/70/Add. 4) was more helpful. Because it came after the report, the Committee did not have the opportunity to consider the additional information.

Peace talks and emergency laws

The delegation stated that despite Government efforts towards a political settlement, the Liberation Tigers of Tamil Eelam (LTTE) had not responded positively. The Committee welcomed the efforts to commence peace negotiations with the LTTE. The Committee expressed its concern about the derogations of fundamental rights under the emergency law, that may not be in accordance with the Covenant.

domestic legal system of Sri Lanka does not guarantee all of the rights set forth in the ICCPR.

Constitutional reforms

The Committee welcomed the package of proposed constitutional reforms which include the incorporation of new rights and the extension of existing rights. One Committee Member stressed the need for the Government to take into account the comments by NGOs in the process of constitutional reform. The Committee was concerned that the multiplication of government institutions dealing with human rights issues without a co-ordinating body may be counter-productive. The Committee urged Sri Lanka to consider the ratification of the first Optional Protocol; this is particularly necessary because the

Children

The Committee stated that concerns remained regarding child labour and child prostitution. Also the minimum age of twelve years for girls to marry under Muslim law was a source of concern.

Other concerns

- The Committee noted its concern over the occurrence of extra-judicial executions and torture
- The Committee stated that Parliament's power to punish journalists who are critical of Parliament constitutes a breach of the freedom of expression.
- A judgement by a Parliamentary Committee under article 107 of the Constitution about the conduct of a judge which led to his dismissal was viewed as unacceptable to the Committee because such a power undermines the judiciary. ■

**RUSSIAN FEDERATION (54th session)
Fourth report (CCPR/C/84/Add.2)
Core document (HRI/CORE/1/Add.52)**

ICCPR: 1976
Article 41: Yes (1991)
OP1: Yes (1992)
OP2: No
Reservations: Article 48(1)
IR: 1977/1978/1978
PR2: 1983/1984/1984
PR3: 1988/1988/1989
PR4: 1993/1994/1995 (54th)

The Committee thanked the delegation for a very good report and its excellent co-operation during the session. The delegation stated that the dissolution of the Soviet Union had brought about a reduction in standards of living, but it also permitted the establishment of mechanisms for democracy, in particular the recognition of individual, private rights. The Committee was pleased with changes in the Russian Federation, but stated that concerns still remain.

Prison conditions

The Committee found that prison conditions are still unacceptable. The delegation admitted that the prison system is in a crisis due to a lack of economic resources.

Discrimination

The Committee stated that ethnic and gender discrimination and restrictions to the right to leave the country breach the Covenant. The Committee pointed to a need to create an atmosphere of human rights and to solve the lack of understanding of the value of individuals.

Chechnya crisis

The delegation said that human rights violations occurred under the regime of President DUDAYEV in relation to the Chechnya conflict. They said the conflict is not ethnic in nature, but a legal one against those who had violated the law. The Committee was critical of the violations of human rights in Chechnya and made it clear that this situation could not be justified by earlier violations by the DUDAYEV troops. It stated that violations of human rights by both sides should be investigated and punished.

**LATVIA (54th session)
Initial report (CCPR/C/81/Add.1/Rev.1)**

ICCPR: 1992
Article 41: No
OP1: Yes (1994)
OP2: No
Reservation: None
IR: 1993/1994/1995(54th)

The Committee was critical of the report as it was too general to be helpful; it lacked information on the actual situation in Latvia. The Committee was impressed by the goodwill of the Latvian delegation by answering their questions.

Arbitrary system of citizenship

The Committee found the existing system of citizenship and the process of naturalisation to be too arbitrary. Under this process all persons who had been citizens on 6 October 1940, and their direct descendants, were recognized as Latvian citizens. That meant that under current law some 30% of the population (some 750,000 people) were registered as non-citizens.

New laws are no guarantee

The Committee stated that neither the several hundred items of legislation adopted since the end of Soviet occupation nor the Constitution of Latvia provide a real guarantee for the enjoyment of rights and freedoms. According to the Committee the lack of legal infrastructure has to be solved before

protection of human rights can be made a reality. Also a constitutional court and a system of remedies for violations must be set up. The Committee stressed that the ICCPR should get a proper place in the legislation and that education must be used to create an atmosphere of respect for human rights. The delegation cited bureaucratic reluctance to reform, ignorance of human rights and lack of resources as factors contributing to delays in establishing the rule of law in Latvia.

Draft law to abolish death penalty

The Committee expressed its hopes that law to abolish the death penalty, which was in draft form at the time, would be adopted. Meanwhile, it urged that the death penalty not be administered. Also of concern to the Committee was the situation of women and refugees, the poor prison conditions and problems with the legal infrastructure.

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
(54th session)**

**Fourth report (CCPR/C/95/Add.3)
Core document (HRI/CORE/1/Add.52)**

ICCPR: 1976
Article 41: Yes (1976)
OP1: No
OP2: No
Reservations: Articles 1, 10(2), 11, 12(1), 12(4), 13, 14(3)d, 19, 21, 23(3), 24(3), 25(b), misc.
IR: 1977/1977/1979PR2: 1984/1984/1985
PR3: 1989/1990/1991
PR4: 1994/1994/1995 (54th)

This was the first time that NGOs could provide the Committee with information on the human rights situation in the UK. The Committee found the report of good quality, precise and in conformity with the guidelines. The Committee spoke of an important and positive dialogue. The report on Hong Kong was discussed in the 55th session (discussed below).

Northern Ireland

The Committee expressed concern about the Anti-Terrorist Act, but the delegation said that despite recent developments in the peace process in Northern Ireland, it was not yet safe enough to repeal this legislation. The Committee asked for information about the release by executive decision of Private KLEGG, a soldier who killed an Irish woman.

The lack of a Bill of Rights

The Committee urged the United Kingdom to implement the ICCPR in domestic law, to withdraw its reservations, to adopt a Bill of Rights and to ratify the first Optional Protocol. The delegation stated that the United Kingdom does not intend to take any of these steps. The delegation noted its view that fundamental rights are inherent in the common law system and that the right to individual petition under the European

Convention provides sufficient safeguards. The Committee stated that the protection of the individual under the European Convention was not enough because it does not overlap with all provisions of the ICCPR. The Committee cited many examples of violations of human rights where individuals had no possibility of redress. The Committee found the UK's reasons for not implementing the ICCPR to be disappointing and dissatisfying.

Other concerns

- Other key issues of concern for the Committee were ethnic discrimination, violence against women, the rights of minorities and the need for improvement of prison conditions.
- The Committee asked for clarification of the case of Joy Gardner, an asylum seeker who died while she was being deported by authorities.

**HONG KONG (United Kingdom)
(55th session)
Fourth report (CCPR/C/95/Add.5)
Core document (HRI/CORE/1/Add.62)**

ICCPR: 1976
Article 41: Yes (1976)
OP1: No
OP2: No
Reservations: Articles 1, 10(2), 11, 12(1), 12(4), 13, 14(3)d, 19, 21, 23(3), 24(3), 25(b), misc.
IR: IR: 1977/1977/1979
PR2: 1984/1984/1988
PR3: 1989/1990/1991
PR4: 1994/1995/1995 (55th)

The Committee noted that the United Kingdom of Great Britain and Northern Ireland and the People's Republic of China have agreed in the Joint Declaration and Exchange of Memoranda of 19 December 1984 that the provisions of the Covenant as applied to Hong Kong shall remain in force once the People's Republic of China resumes sovereignty over Hong Kong in June 1997. In this connection, in a statement made by the Chairperson, the Committee stated its view that reporting obligations under article 40 of the Covenant will continue to apply and that the Committee will remain competent to receive and consider reports in relation to Hong Kong. In principle, this was the last time that the human rights situation in Hong Kong was to be discussed by the Committee before China resumes sovereignty over the territory in 1997. The day before the discussion of the report, NGOs from Hong Kong were given the opportunity to brief the Committee on the situation in Hong Kong.

Bill of Rights Ordinance

The Committee noted with concern that section 7 of the Bill of Rights Ordinance binds only the Government and all public authorities or those acting on behalf of the Government or public authority. The Committee emphasised that under the Covenant a State party is obligated to protect individuals against violations not just by Government officials but also by private parties. It noted with deep concern the absence of legislation providing effective protection against violations of Covenant rights by non-governmental actors.

The experts expressed their concern about the fact that legal aid in Hong Kong is refused in a large number of Bill of Rights cases that are directed against the Government or public officers.

Police

The Committee expressed concern at the fact that investigative procedure regarding alleged human rights violations by the police rest within the Police Force itself. The Committee noted that in order to have a fair and impartial procedure, it

must be independent. Although changes made to strengthen the status and authority of the Independent Police Complaints Council were welcomed, the Committee noted that the changes still leave investigations entirely in the hands of the police.

Women

The high level of violence and the absence of adequate punitive or remedial measures were of concern to the Committee. The Committee was concerned by a Sexual Discrimination Ordinance which though not yet in force, would limit the damages awarded to women who are subject to sexual discrimination and would not provide for the reinstatement of women who have lost their jobs due to sexual discrimination. The Committee was also concerned that the Ordinance will be too limited in its application; it applies to discrimination based on gender and marriage but does not prohibit discrimination on ground of age, family responsibility or sexual preference.

Emergencies

The Committee indicated its regret that there is not yet detailed legislation to cover emergency situations; the provision in article 18 of the Basic Law (the "mini-constitution" for Hong Kong after 1 July 1997) in this regard appears not to correspond with the provisions of article 4 of the Covenant.

Vietnamese asylum seekers

The Committee expressed concern about the fact that many Vietnamese asylum seekers are subject to long-term detention and that many are held under deplorable living conditions; here serious questions under articles 9 and 10 of the

Covenant are raised. Also of concern are the conditions under which the deportation or return of people of Vietnamese origin not recognized as refugees was carried out. The Committee was especially alarmed about the situation of the children living in the camps.

An electoral system which violates the Covenant

The Committee noted the reservation to article 25 (to the effect that it does not require establishment of an elected Executive or Legislative Council), however, it stated its view that once an elected Legislative Council is established, its election must be conform article 25. The Committee considered that the electoral system in Hong Kong does not meet the requirements of article 25, nor articles 2, 3 or 26 of the Covenant. It noted that only 20 of the 60 seats in the Legislative Council are filled by direct popular election and that the concept of functional constituencies, which gives undue weight to the views of the business community, discriminates among voters on the basis of property and function. This represents a clear violation of articles 2 (1), 25 (b) and 26. The Committee expressed concern that laws depriving convicted persons of their voting rights for periods of up to ten years may be a disproportionate restriction of the rights protected by article 25.

Request for follow-up report

The Committee requested that the Government submit a brief report, by 31 May 1996, on new developments with regard to the enjoyment of human rights in Hong Kong. This report will be discussed during the 58th session to be held in Geneva from 21 October to 8 November 1996.

The dialogue with the Estonian delegation was found to be constructive despite the fact that the report failed to show how the Covenant is implemented in practice. The Committee noted that the country has had some difficulties overcoming its totalitarian past and this resulted in a delay in the restructuring of the legal system. The Government policy with regard to naturalisation and citizenship raises difficulties in the light of the Covenant.

lation are unable to enjoy Estonian citizenship and that permanent residents who are non-citizens are deprived of a number of rights. Also, the Committee expressed concern over limitations to the exercise of freedom of association for long-term permanent residents in Estonia. Further, the Committee expressed its deep concern at the definition of minorities in the Estonian legislation, which only encompasses national minorities.

Also of concern was the fact that the death penalty could still be imposed in Estonia for crimes which cannot be qualified as the most serious crimes under article 6 of the Covenant, cases of excessive use of force by law enforcement officials as well as mistreatment of detainees, the fact that prison facilities are overcrowded and the lack of domestic legislation and procedures governing the treatment of asylum seekers.

ESTONIA (55th session) Initial report (CCPR/C/81/Add.5) Core document (HRI/CORE/1/Add.50)

ICCPR: 1992
Article 41:
OP1: YES 1992
OP2: NO
Reservations:
IR: 1993/1994/1995 (55th)

Positive aspects

The Committee noted the following positive aspects regarding the implementation of the Covenant: Estonia's accession to the Covenant and other human rights instruments, Estonia's recognition of the competence of the Committee to receive individual communications, its intention to accede to the Second Optional Protocol, the guarantee in the new Constitution that international treaties prevail over domestic law and the fact that it has taken some steps to secure the independence and impartiality of the judiciary.

Subjects of concern

The Committee expressed concern about various matters including the fact that a significantly large segment of the popu-

SWEDEN (55th session) Fourth report (CCPR/95/Add.4) Core document (HRI/CORE/1/Add.4)

ICCPR: 1976
Article 41: YES (1976)
OP1: YES (1976)
OP2: YES (1990)
Reservations:
IR: 1977/1977/1978
PR2: 1984/1984/1985
PR3: 1989/1989/1990
PR4: 1994/1994/1995 (55th)

Women

The Committee noted that there remain areas where women are subject to *de facto* discrimination, in particular with regard to equality of remuneration. The Committee noted with concern that in certain areas, in particular in public offices, the situation of women with regard to equal remuneration for work of equal value had significantly deteriorated recently.

Other matters

- Despite efforts of the Government to eliminate racial and ethnic discrimination, the Committee expressed its concern about the rise of racism and xenophobia within Swedish society and about the high rate of racist crimes and the increase of racist behaviour among the younger part of the population.

AFGHANISTAN (55th session)

No significant factors and difficulties were indicated by the Committee as preventing the effective implementation of the Covenant in Sweden.

- The Committee noted that legislative provisions, recently adopted by the *Riksdag*, providing for the right for everyone to fish and hunt on public lands may have adverse consequences on the traditional rights of the members of the Saami people.
- The Committee expressed its regret that the Covenant cannot be directly invoked before Swedish courts and administrative authorities and the fact that no mechanism exists to implement views adopted by the Committee under the Optional Protocol to the Covenant.
- The Committee was also concerned at the length of detention of illegal immigrants, asylum seekers and persons ordered to be expelled and the possibility of a decision to expel an individual or deny asylum being taken by the Board of Immigration and the Aliens Appeal Board without the affected individual being given an appropriate hearing.

In view of the fact that the delegation dealing with human rights conditions in Afghanistan was stranded in New Delhi, the Committee decided to postpone the discussion of the report until its July 1996 session.

2. GENERAL COMMENT ON ARTICLE 25 (ELECTORAL RIGHTS)

- Article 25 of the Covenant recognizes and protects the rights of every citizen to take part in public affairs, to vote and to be elected and to have access to public service. The Committee decided to clarify its views on article 25 in order to emphasise the important role played by democracies in promoting and protecting human rights. What follows are some of the highlights of the discussion:
- The Committee noted that a distinction between rights of those who have citizenship by birth and those who have citizenship by naturalisation with regard to the right to public service (something which exists under the legislation of most South American countries) is not compatible with the rights protected under article 25.
- Although article 25 allows for the deprivation of the right to vote during the period of detention, the Committee felt that this provision should be limited to the period of sentence.
- The idea of accountability of representatives was stressed as was the idea that no citizen can exercise more power than what he or she is elected for.
- A paragraph dealing with the voting process made a clear reference to ways of participation by citizens in public affairs, other than by elections, such as by demonstrating and by lobbying.
- The Committee stated that intervals between elections must be not too long and that "life time elections" should be prohibited. Members also spoke about the danger of so called elections by dictatorships which are meaningless because there are always the same few candidates.
- Regarding restrictions to the right to vote, the Committee stated that a system of registration before elections can be legal, but this registration must be facilitated.
- The right to campaign freely for election in conditions of equality, such as access to mass media or electoral fund distribution, was raised as a necessary element of the right and opportunity to be elected. The Committee expressed its belief that for elections to be genuine, they should be conducted fairly and freely on a periodic basis within the framework of laws guaranteeing citizens' rights and

enabling them to be enforced. Citizens should be free to vote for any candidate and for or against any proposal submitted to referendum. They should be free to support or to oppose the Government, without undue influence or coercion of any kind which might distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free from violence or threat of violence, compulsion, inducement or manipulative interference of any kind and they should have access to unimpaired campaign advertisements.

- The Committee decided to continue to consider the General Comment in its 56th session.

A great loss to the Committee

The Committee member from the United Kingdom, Ms Rosalyn Higgins, resigned from the Committee in 1995 to take up a position as Judge on the International Court of Justice. She is the first woman to sit on the World Court. The Committee praised her professional expertise and expressed gratitude for her tireless efforts on behalf of the Committee.

Affirmative action required to comply with the Covenant?

One controversial area which arose during the discussion of the proposed General Comment on Article 25 was the question of whether a certain number of parliamentary seats should be reserved for minorities in order to ensure their representation. Some experts were of the view that if affirmative rules were undertaken and seats were accorded to minorities, it would collide with the equal participation principle of one person, one vote. Affirmative rules could adversely affect the equality of others, the experts said. However, such measures might be justified to ensure the representation of minorities in the conduct of public affairs. Many speakers indicated that certain electoral systems excluded minorities and women from being represented in national and local public congresses. A few experts observed that the principle of one person, one vote was not entirely satisfactory in many countries where women were not equally represented in Parliaments.

OTHER MATTERS

Methods of work

During its 55th session the Committee discussed ways to restructure the procedure for considering initial and periodic reports of State Parties to the Committee with a view to reducing the time spent in examining reports. It was proposed that more precise and comprehensive lists of issues should be prepared so that very few oral questions would have to be posed and the prac-

tice of adopting lists of issues should be extended to initial reports. The Committee stressed the need to deal effectively with urgent situations of human rights violations by requesting special reports from the State Party where human rights were jeopardised. They also noted the helpful work of country rapporteurs relating to the implementation of decisions taken by the Committee. With regard to long overdue reports, the experts proposed that special decisions should be adopted to remind State Parties of their obligations under article 40. ■

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

12th session (Geneva, 1-19 May 1995)

13th session (Geneva, 20 November-8 December 1995)

In its 1995 sessions, the Committee considered the reports of Korea, Philippines, Sweden, Suriname, Portugal, Colombia, Norway, Mauritius, Ukraine and Algeria. It also adopted a General Comment on the rights of older persons. There was also a discussion of a visit made to Panama by one of the Committee members.

Introduction

The Committee on Economic, Social and Cultural Rights was established by ECOSOC in 1985 to monitor the application of the International Covenant on Economic, Social and Cultural Rights. The Covenant was adopted by the General Assembly in December 1966 and entered into force in January 1976. As of 31 December 1995, 133 States were Party to the Covenant; four other States had signed the Covenant but not ratified.

1. State Party Reports

• Republic of Korea (initial report) (12th session)

The Committee noted that the report, although comprehensive, was excessively general. The Committee noted with satisfaction the significant economic growth in the Republic of Korea, the first steps taken towards the development of a social security system, the efforts to eradicate illiteracy and the increase in life expectancy.

Situation in South Korea

The Committee recognized that South Korea is passing through a period of social and political transition. The country has only recently emerged from a sustained period of military rule to a system of democratic government and it faces a heavy agenda of changes in the establishment of a civil society, particularly in the face of social prejudices. In addition, problems deriving from the political partition of the Korean Peninsula continue to impose a pervasive fortress