

**INTERNATIONAL  
COVENANT  
ON CIVIL AND  
POLITICAL RIGHTS**



**CCPR**

Distr.  
GENERAL

CCPR/C/SR.283  
10 April 1981

ORIGINAL: ENGLISH

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HUMAN RIGHTS COMMITTEE

Twelfth session

SUMMARY RECORD OF THE 283rd MEETING

Held at Headquarters, New York,  
on Tuesday, 7 April 1981, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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Covenant (continued)

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The meeting was called to order at 11 a.m.

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

Mali (CCPR/C/1/Add.49)

1. At the invitation of the Chairman, Mr. Keita (Mali) took a place at the Committee table.
2. The CHAIRMAN invited the representative of Mali to introduce his country's initial report (CCPR/C/1/Add.49), but pointed out that the report was not in accordance with the Committee's guidelines and was much too short.
3. Mr. KEITA (Mali) said the fact that his country was, both historically and geographically, a crossroads of many races and religions accounted for the special nature of its Constitution. The Committee had before it the text of the Constitution of 2 June 1974, the provisions of which were explained in the report (CCPR/C/1/Add.49). Politically, Mali had a combination of a presidential system and a party system. It adhered to the Universal Declaration of Human Rights and to the purposes and principles of the United Nations and its resolutions, as affirmed in the preamble to the Constitution. There were no political prisoners and no discrimination of any kind. Islam, Christianity and animism were equal before the law. All citizens enjoyed fundamental rights under articles 7 to 19 of the Constitution. Article 53 ensured co-operation among the three branches of government, executive, legislative and judicial. A Council of the Judiciary, formerly lacking, was now functioning, thus guaranteeing the freedom and independence of judges. Despite the provisions of article 32, concerning exceptional powers, and article 33, concerning state of siege and state of emergency, the President's actions were limited by article 28 of the Constitution and by the party, which prohibited the holding of multiple offices. The death penalty was imposed only for offences under the ordinary law.
4. The single-party system had been chosen because of Mali's colonial history and in order to avoid the kind of self-seeking practices engaged in by large and small parties both in Africa and elsewhere. The party's goal was to pursue the mobilization of the resources of all the people and to bring about a national planned economy for the benefit of all citizens. Mali supported international co-operation based on respect for national sovereignty, peaceful coexistence, non-alignment and settlement of international disputes by peaceful means. It was one of the few African States, if not the only one, to proclaim, in article 70 of its Constitution, a positive policy for the realization of African unity.
5. In February 1981, several changes had been made by the National Congress. The party had been democratized to make it open to all citizens and all schools of thought, with a view to achieving true national unity and mobilizing all citizens for national construction. Article 30 of the Constitution had been amended to enable the President to appoint a Prime Minister under the same conditions as other ministers, and the Electoral Code had been revised to eliminate

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(Mr. Keita, Mali)

incompatibilities between certain offices and to enable citizens outside the country to vote. The statute and rules of the party had also been amended; among other things, the term of office of deputies had been reduced from five to three years and that of the President had been increased from five to six years.

6. Mali had a range of decision-making organs, including the administration, the party, the army and popular monitoring organizations, including the National Union of Women, the National Union of Youth and the National Trade Union. The role of the army since the coup d'état of 19 November 1968 had been to serve the Malian people. There was no distinction between military and civilian citizens. Soldiers were not killers but party workers whose role was to repair hospitals and roads and to participate in development.

7. In accordance with articles 5, 28 and 39, the party was the co-ordinating organ for the three branches of government. The system was based on democratic centralism, in which all the aspirations of the people converged toward a focal point, namely, the party, and all decisions were taken by the majority. It was a pyramid of which the base was formed by the subsections of the committees, its middle by the sections and its apex by the Congress and the National Council. The single-party system was typical in developing countries, which could develop only through their own resources and their own efforts. The single party mobilized all resources to recover the country's freedom and national wealth. The sovereign State controlled the economy through scientific planning, whose goal was economic and cultural independence, the eradication of poverty and the restoration of wealth to its rightful owners.

8. The purpose of his statement had been to explain the single-party system, which, for non-Malians, was the Gordian knot of the Constitution. The Government of Mali intended to send a supplementary report to the Committee in the near future.

9. Mr. TOMUSCHAT said that the report of Mali was extremely brief, and greater effort was required of the Government in order to provide the Committee with adequate information regarding implementation of the provisions of the Covenant. The Committee took its concern for the general enjoyment of human rights seriously and hoped that States parties did the same. Furthermore, the report did not indicate any factors or difficulties affecting the implementation of the Covenant, as called for in article 40, paragraph 2. That omission was all the more striking in view of reports from other sources, such as Amnesty International, concerning the human rights situation in Mali.

10. The Committee was aware, at least in general terms, of the difficulties facing Mali as a developing country in a geographically difficult situation and of the fact that Mali was not in a position to set up a vast machinery to protect human rights; however, a brief discussion resting at the abstract level of pure law, such as was found in the report, was not sufficient for the Committee's purposes. The Committee needed to satisfy itself that, despite the often necessary strong measures taken by the Government to protect the State, the obligations it had assumed under the Covenant were being fulfilled. Specifically, did a state of

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(Mr. Tomuschat)

seige exist in the country and, if so, since what date? Was the Constitution now being fully applied or had it been suspended in part? What was the situation of political detainees? Were they held incommunicado, and what legal procedures governed their detention? How were the provisions of article 9 of the Covenant implemented? In connexion with article 6 and article 10, how did the Government ensure that detainees were held in proper conditions? There had been reports of isolated prisons and prison camps in the north of the country, which would be a violation of the Covenant. Finally, there was the problem of the status of political freedoms in Mali. The Committee had been told that the one-party system was necessary for political stability, but it should be possible to have public debate on issues, even if only within the party. He asked how views were expressed and how public freedoms were guaranteed. Freedom should be the rule, and any restrictions must be justified. A full study of the problem would require an analysis of Malian legislation in relation to each article of the Covenant.

11. Mr. ERMACORA asked whether the Covenant had a status in the constitutional order of Mali and, in particular, how it fitted in with article 62 of the Constitution. On the question of a state of siege, he would like to know how article 32 of the Constitution guaranteed observance of the rules set forth in article 4 of the Covenant with regard to national emergencies and State security. Concerning the right to life, he asked what specific crimes could be punished by the death penalty. There was some indication that assault against public officials could be punished by death; if that was true, it would not seem to be in accordance with the provisions of article 6, paragraph 2, of the Covenant. He asked how many persons, if any, had been executed for such crimes and for offences against public security. With regard to the prohibition of torture, he noted that there had been reports of inhuman treatment of a certain professor in detention and wondered whether there had ever been an official investigation into the case and whether the Government received reports on inhuman treatment. He asked what conditions applied to arbitrary detention and how the Act of 2 March 1967 had been applied to specific cases, particularly cases involving trade union activities. The report mentioned a juvenile rehabilitation camp, and there were reports of other camps in the country. He asked what conditions prevailed in those camps and whether the Government respected the Standard Minimum Rules for the Treatment of Prisoners adopted by the Economic and Social Council.

12. With regard to article 22 of the Covenant, he asked whether Mali had ratified the various ILO Conventions on trade union rights, particularly their right to organize. In view of the fact that trade unions were joined in a national union, he wondered how pluralism and freedom of association were protected. Furthermore, certain articles of the Penal Code referred to opposition to lawful authority; that was a broad term which could be used to impose restrictions on trade union activities and could reduce the force of the guarantees in article 13 of the Constitution dealing with freedom of association. He requested that the Government of Mali should provide further details on the legislation relating to freedom of association. He also asked how the Supreme Court of Mali operated to guarantee the protection of human rights.

13. In connexion with article 27 of the Covenant, he asked how non-discrimination was ensured for the protection of the rights of members of religious and ethnic

minorities and groups. Finally, on the subject of forced labour, he asked what guarantees the law provided against such conditions and what was meant in the report by "forced labour within the meaning of the Covenant".

14. Mr. HANGA noted that the economy of Mali had been described as "independent" and "planned". Did the system have the effect of limiting the possible forms of ownership of property, such as State ownership, ownership by agricultural and industrial collectives and private ownership, and did that have any implications for the enjoyment of civil and political rights in Mali? He asked how a citizen could invoke the provisions of the Covenant; would the procedure be the same as for invoking the Constitution or the ordinary laws? Was work not only a duty but also a right of all citizens? Education in Mali had been described as public and secular but was it also compulsory and, if so, up to what level? He asked what provisions the Government had enacted to improve public health. With regard to the prohibition of slavery, he asked what Conventions relating to slavery and forced labour the Government had ratified. Did the provision that all work must be paid for apply equally to men and women?

15. With respect to article 9 of the Covenant, he asked whether a person who had been illegally arrested or detained had the right to compensation and, if so, in what form and subject to what limitations? The judiciary was described in the Constitution as independent; in that connexion, he asked how judges were appointed or elected and whether they could be removed. He was quite interested in the special procedures for juvenile offenders and would like to know how those procedures were organized, how they operated and what results had been achieved.

16. Inasmuch as there were various religious communities in Mali, he asked what guarantees of protection against religious discrimination existed and whether they were legislative or customary in nature. Noting the slogan "Everything for the people and by the people", he asked how access to the mass media was ensured for all the people. In view of the existence of a single official party, he asked what technical arrangements had been made to ensure that there would be freedom of expression and freedom to disseminate information. Considering the various religions practised in the country, each of which might have different views on the structure of the family, it would be interesting to know whether the law gave parental authority to the father, the mother or both parents and what provision it made in case of the absence of parental authority.

17. He asked what qualifications were required for admission to public office, and in particular the extent to which women were able to enter the public service. Finally, were there any provisions for protection of the rights and the tranquillity of the various ethnic groups in the country?

18. Mr. PRADO VALLEJO asked what effective means of recourse were available to the citizen if he felt that his rights under the Covenant had been violated by public officials or authorities. In the context of the single official party, with the Government as the focal point of power and the expression of democratic centralism, what guarantees did the citizen have that he could participate and express his views, regardless of his ideology? What exactly did democratic centralism

(Mr. Prado Vallejo)

mean in the Malian context? How was freedom of expression guaranteed if the views expressed could be seen as running counter to the programme of the party?

19. Mr. OPSAHL said that, while the concept of civil and political rights set forth in the Covenant must be interpreted with some flexibility, there were limits to the latitude allowed. It was the duty of States parties to make the Covenant work and the duty of the Committee to study how States parties implemented the Covenant and to prepare general comments. The people of Mali had achieved statehood, thus attaining the goal of article 1 of the Covenant, namely, self-determination, and the Committee must now study the situation in Mali with regard to the other articles. The report submitted by the Government was a useful but very brief document to serve as the starting-point for such a study.

20. States parties usually sought to ensure compliance with the provisions of the Covenant by including in their Constitutions provisions more or less modelled on the Covenant and by adopting other laws and practices in support of those provisions. Many States parties, in their reports to the Committee, relied essentially on the provisions of their Constitutions. The two basic questions were whether the Constitution of a State party reflected the provisions of the Covenant and whether it was a living instrument which really worked. In the case of Mali, the mere fact that the Constitution had been adopted by referendum with a vote of over 99 per cent in favour and that the civilian Government had been established by a similar popular vote in 1979 was not necessarily proof of that; neither was the existence of a political system in which supreme authority and expression of national unity lay with a single party. Further information was therefore necessary to establish whether any political opposition or independent political organizations were allowed, whether trade unions and the mass media were government-controlled, what legal remedies were available to uphold the Constitution, and how the judiciary and the legal profession actually operated. He understood that up to 1980 only seven lawyers had been called to the bar; he therefore wondered what arrangements had been made to provide further legal education and to train judges, and what steps were being taken to ensure an independent judiciary.

21. He noted that articles 76 and 77 had been deleted from the Constitution. He understood from other sources that those articles had dealt with the status of members of the pre-1968 régime, but there was nothing in the report to confirm that or to explain when and why they had been deleted. As for the election of the civilian Government and the new Assembly, he inquired whether there had been one or several lists of candidates.

22. With regard to the rule of law, he asked what legal instruments existed in Mali governing deprivation of liberty under article 9 of the Covenant, and in particular whether the 1966 laws on house arrest, banning and expulsion were still in effect and the so-called re-education centre in the Sahara - which might more properly be referred to as a labour camp or prison - was still in existence; if so, what were the conditions of detention there, and were they in compliance with article 10 of the Covenant? The State Security Court, as he understood it,

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had been established in 1976, the Committee should be given information on the implementation of the guarantees of article 14 in proceedings before that court. If they were not being implemented, he wondered whether the derogations could be justified by an emergency situation.

23. Freedom of expression and related rights were basic to the Covenant, but he had found no mention of them in the Constitution. Information was therefore required as to how those rights were protected, including how the authorities had dealt with criticisms at the time of the 1974 referendum and of the proclamation of the Republic in 1979. He also requested information on the manner in which the authorities had dealt with recent student protests, including the reported dissolution of students' and teachers' organizations, the arrest of some teachers and the forced induction of students into the armed forces.

24. Mr. SADI welcomed the additional information provided by the representative of Mali, but said that he was still concerned about the status of the Covenant vis-à-vis the Constitution. Unfortunately no English version of the 1979 Constitution was available, but he gathered from his reading of articles 62, 63 and 64 that laws must be enacted before an international treaty could enter into force, and that its legality could be tested by the Supreme Court or the President of the Republic if any conflict was suspected between its provisions and those of the Constitution, which would have to be revised, if necessary, before accession to or ratification of the treaty. The representative of Mali could perhaps inform the Committee whether the Covenant had ever been involved before the courts and whether the Constitution had had to be revised to meet its requirements. In view of the fact that there were several minority groups and languages in Mali, he wondered what steps had been taken to publicize the Covenant so as to ensure that individuals were aware of its contents.

25. On the question of the one-party State, while it was true that the Covenant did not specify what kind of government States parties must have, whatever system they chose should be such as to guarantee implementation of the provisions of the Covenant, particularly those relating to the right of peaceful assembly and freedom of association through which freedom of opinion could be given practical expression. The burden was on States parties to show that the form of government they had adopted was not an obstacle to the enforcement of those important provisions.

26. He would wish to see the exact wording of the laws governing harmonious relations between religious groups, and also to know what measures were taken to implement article 20, paragraph 1, of the Covenant. As an illustration of the equality of women with men, he would like to see figures showing how many women were in the Government, the legislature and the judiciary and in administrative positions, both public and private. He asked what measures had been taken to implement article 23, paragraph 2, particularly with respect to forced marriages which might take place as a result of traditional or religious practices. He inquired whether there were any specific laws to implement article 7, including provisions to monitor the situation and, if necessary, to punish any police officer or other official responsible for the kind of acts referred to in the

(Mr. Sadi)

article. Examples of any such cases would be of interest. Details should also be given with respect to the implementation of article 4, and in particular of any derogations resulting from the proclamation of a state of siege. In connexion with the provisions on freedom of expression, he inquired whether there was government control of the mass media and what laws existed to protect freedom of the press.

27. He wished to emphasize that his questions were intended to elicit information and did not imply any value judgement.

28. Mr. DIEYE observed that dealing with the reports of States parties in the abstract might not help those States to improve the situation or be fruitful in terms of achieving the aims of the Covenant. Obviously, the Committee must take a rigorous, probing and objective approach in seeking to ascertain whether a State party was safeguarding the rights set forth in the Covenant, but it should bear in mind that civil and political rights and economic, social and cultural rights were interdependent, and the economic circumstances of a Sahelian country like Mali could not be overlooked when considering its report. It should be noted in that connexion that the Commission on Human Rights, with no dissenting vote, had declared the right to development to be a fundamental human right. However, he was not of course suggesting that a State party's difficult economic circumstances could justify any violation of civil and political rights.

29. There were so many close links between Mali and his own country that he had felt personally affected by some of the questions asked by other members of the Committee. While as an independent expert he was, of course, expressing his personal opinions - and would be equally prepared to do so if he felt that his own country was not living up to its obligations in the human rights field - he believed that his knowledge of the region could be helpful to the Committee in its consideration of the report. He did not feel that the report could be judged in absolute terms or on the same basis as a report from a developed country. The fact remained that the report was somewhat disappointing. He believed that the State party should have stressed its own African approach to human rights; more should have been said, for example, about the steps being taken by African countries to draw up a human rights charter within the framework of the Organization of African Unity. In that connexion, he pointed out that the Government of his own country was as much committed to the goal of African unity as was the Government of Mali.

30. One particular point he would like to make was that, in his view, an independent judiciary was absolutely essential in Africa. The immunity from prosecution which was afforded to party members in Mali by the Constitution should also apply to the judiciary.

31. He hoped that, in the light of his general comments, the Committee would take account of the specificity of the situation in Mali, and that the Government of that country would benefit from a continued dialogue with the Committee.

The meeting rose at 1.15 p.m.