



**International Covenant
on Civil and
Political Rights**

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*Reports to be
considered*

HUMAN RIGHTS COMMITTEE

Fifteenth session

SUMMARY RECORD (PARTIAL)* OF THE 354TH MEETING

Held at Headquarters, New York,
on Monday, 5 April 1982, at 3 p.m.

Chairman: Mr. TOMUSCHAT

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* No summary record was prepared for the rest of the meeting.

This record is subject to correction.

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The meeting was called to order at 3.25 p.m.

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

Guyana (continued) (CCPR/C/4/Add.6)

1. At the invitation of the Chairman, Mr. Barton-Scotland (Guyana) took a place at the Committee table.
2. Mr. GRAEFRATH said that article 153 of the Constitution, relating to the enforcement of protective provisions, and article 191, concerning the Ombudsman, were very important. He would like to know however how effective the remedies provided by those articles were in practice. In particular, he would like to have information regarding the number of cases in which remedies had been sought under those articles, the types of cases which had arisen and whether people in fact used such remedies. The Ombudsman system could represent a very effective remedy but, on the other hand, it could be an excuse for a lack of other remedies.
3. The issue of human rights appeared to be covered by chapter II of the Constitution, which dealt with the principles and bases of the political, economic and social system. The right to form political parties and their freedom of action were guaranteed by article 10; the right to work were guaranteed under article 22 and equality for women was guaranteed by article 29.
4. The protection of fundamental rights and freedoms of the individual was covered by Part 2, Title 1, of the Constitution. It would seem that the competence of the High Court to protect human rights under article 153 was limited to the rights specified in that Title, which, however, did not cover the right to form political parties, the right to work or the question of equality for women. It seemed to be the function of Part 1, chapter III, to clarify that there were different categories of human rights under the Constitution and that protection was limited to those specified in Part 2, Title 1. He would like to know the reason for such differentiation.
5. The provisions of articles 3, 23, 24 and 27 of the Covenant did not seem to be met by the provisions of Part 2, Title 1. Article 149 concerned protection from discrimination on the grounds of race etc., but seemed to exclude family law. He would like to know whether discrimination on grounds of sex existed in the family law of Guyana.
6. He had noted from the last paragraph of the report (CCPR/C/4/Add.6) that there were no factors or difficulties affecting the enjoyment of the rights protected by the Covenant in respect of persons within the jurisdiction of Guyana. As most countries had encountered difficulties in that respect he was curious to know how Guyana had managed to avoid similar difficulties.

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7. Mr. LALLAH said that the report appeared to provide only a general legal framework. He would like to know the extent to which the Covenant was known in Guyana to the general public and to law offices and all those responsible for the administration of public affairs. He also wished to know whether the Government was taking action to make the public and other persons concerned aware of the Covenant and to ensure that the rights which were stipulated therein were effectively enjoyed. He also inquired whether government officials in Guyana were aware of the Committee's approach to its work and of the guidelines and general comments which were contained in its report to the General Assembly (A/36/40).
8. The Covenant had come into force in Guyana in 1977 when the country had had a different Constitution. Guyana must have met difficulties in connexion with its previous Constitution, as otherwise there would not have been a need for change; he would like to know what those difficulties had been and the remedies which had been sought; such information would help the Committee in its consideration of the new Constitution.
9. The Constitution provided a broad legal framework but there was little reference to specific laws for the implementation or limitation of the Constitution. He would like to have information as to what those laws were, the manner in which they were applied and the extent to which they might implement or inhibit the application of the Covenant. It must be borne in mind that the essence of the Covenant was that Governments were required not only to protect human rights but also to take action to ensure their enjoyment.
10. In its General comment 4/13 (A/36/40, annex VII) the Committee had pointed out that article 3 of the Covenant had been insufficiently dealt with in a considerable number of States reports and had raised a number of concerns. In particular, in so far as the article primarily dealt with the prevention of discrimination on a number of grounds, among which sex was one, it "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". The issue of positive action was also relevant to other articles of the Covenant, particularly, article 6.
11. Articles 2 (1) and 26 of the Covenant called for measures by the State to ensure that persons were not discriminated against on grounds of political opinion or race. In that connexion the electoral laws were of importance. Such laws were designed to ensure that people could exercise their political rights to the fullest extent. He would like to know what measures existed in Guyana to ensure that people could register as voters and what remedies they had in that regard. It was important that elections should be supervised by people outside the executive. He also inquired what measures existed to ensure that the party in power did not abuse the electoral system to perpetuate its power. The issue was important in terms of compliance with article 25 (b) of the Covenant. In that connexion, article 146 of the Constitution, relating to protection of freedom of expression, and article 149,

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(Mr. Lallah)

concerning protection from discrimination on the grounds of race etc., were relevant.

12. The powers and role of the judiciary in regard to the provision of remedies on the issue of human rights seemed to be limited. He would like to know whether in practice people had availed themselves of recourse to the High Court to ensure that their basic rights were safeguarded.

13. In that connexion the Committee had found (A/36/40, annex VII, general comment 2/13) that it had in the past been difficult to understand from some reports whether the Covenant had been implemented as part of national legislation and many of them had clearly been incomplete as regards relevant legislation. In some reports the role of national bodies in supervising and in implementing the rights had not been made clear. Further, very few reports had given any account of the factors and difficulties affecting the implementation of the Covenant.

14. The Ombudsman was a new feature in the 1980 Constitution. He would like to have further information on both the successful and the unsuccessful work of the Ombudsman.

15. Mr. TARNOPOLSKY said that he would like to have information regarding the possible effects of articles 3, 6 and 7 (2) of the Schedule at the beginning of the Constitution and whether, under the terms of those articles, the President could change any law, including the Constitution. In particular, he would like to know whether the conditions of article 153 could be changed. It was important for the understanding of the Constitution to know the breadth of the powers conferred under article 6 and 7 (2) of the Schedule. It would be interesting to know what laws had been affected under those articles and whether they had included laws relating to the Constitution; those articles were also relevant to the last paragraph of Guyana's report (CCPR/C/4/Add.6).

16. In order to know whether articles 12, 18, 19, 21 and 22 of the Covenant were effective in Guyana, the facts and difficulties of the situation in the country must be known. He would also like to have information as to whether articles 9 (5), 12 (3) and 14 were effective in Guyana and, if not, what difficulties had been encountered. It would also be interesting to know what laws and case decisions existed in Guyana regarding the freedoms guaranteed by the Covenant; any case decisions relating to article 2 (3) would be of special interest.

17. Referring to article 150 (1) (b) of the Constitution, he inquired whether there had been any "proclamations of emergency" since the Covenant had entered into force in respect of Guyana. According to article 150 (2), nothing contained in or done under the authority of any law could be held to be inconsistent with or in contravention of, inter alia, any provision of articles 145 to 149. Article 149 afforded protection from discrimination on the grounds of race, place of origin, political opinions, colour or creed. Under article 4 (1) of the Covenant, measures derogating from obligations under the Covenant, in time of public emergency, could not involve discrimination solely on the ground of race, colour, sex, language,

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(Mr. Tarnopolsky)

religion or social origin. Article 150 (2) of the Constitution therefore appeared to allow a dérogation that would be contrary to the provisions of the Covenant.

18. Under article 6 of the Covenant, States parties had a responsibility to prevent the arbitrary deprivation of the inherent right to life. It would appear that many of the provisions of the Covenant had been violated at the Jonestown community in Guyana. He was in no way implying that the Government was responsible for any of those violations. It did, however, have a responsibility to protect the right to life and to investigate the circumstances surrounding the events at Jonestown. He wished to know whether an investigation had been conducted and, if so, what the findings had been. He also wished to know whether the circumstances surrounding the death of the political activist Walter Rodney had been investigated.

19. Articles 7, 10 and 23 of the Covenant referred respectively to the prohibition of cruel, inhuman or degrading treatment or punishment, respect for the inherent dignity of the human person and the protection of the family by society and the State. Information should be provided concerning the opportunities for contact between detainees and relatives, the inspection of prisons, conditions in police cells, the independent supervision of conditions of imprisonment and the impartial investigation of complaints. He inquired whether prisoners were required to work and, if so, whether they were remunerated.

20. Guyana's report did not specify what provisions had been adopted to guarantee such rights as the right to privacy, the right to freedom of thought, conscience and religion, and the right to hold opinions without interference. Information should be given concerning any restrictions on the exercise of such rights and concerning provisions enabling agents of the State to enter the homes of individuals or to interfere with private correspondence.

21. He wished to know what laws Guyana had concerning sedition, treason and offences against the State, and how many people had been arrested, charged and convicted under such laws since 1977. Another question was whether the perception of an immediate threat to the State was sufficient to secure the conviction of individuals who were not actually using force.

22. Article 146 (2) (b) of the Constitution referred to the need to ensure fairness and balance in the dissemination of information to the public. He asked what was actually done to ensure fairness and balance, and whether persons opposed to government policies were free to present their views on State-controlled stations.

23. The report submitted by Guyana contained no references to the Amerindian population. The question was whether special efforts were made to preserve the religion and culture of the Amerindians and to protect their rights. In the case of such indigenous groups, mere proclamations of equality were often not enough. He was also interested to know what action was taken to protect the rights of the various other groups making up the multiracial society of Guyana.

24. Mr. BOUZIRI said that the report submitted by Guyana (CCPR/C/4/Add.6) did not follow the guidelines adopted by the Committee and fell far short of expectations. It did not afford a sound basis for the Committee's consideration of the human rights situation in Guyana. He hoped that the Government would provide further details in a supplementary report. Since the Constitution had only recently been distributed, it would not have been very useful to him even if it had been available in French. The texts of constitutions and of relevant laws were supposed to supplement the information contained in the reports, which should themselves be self-sufficient.

25. The Constitution of Guyana allowed certain restrictions on human rights. According to article 145 (5), nothing contained in or done under the authority of any law could be held to be inconsistent with or in contravention of article 145 to the extent that the law in question made provision which was reasonably required, inter alia, in the interests of defence, public safety and public order. A similar provision was contained in article 146 (2). Those two articles dealt with the protection of freedom of conscience and the protection of freedom of expression. The words "which is reasonably required" lent themselves to highly subjective interpretations. In human rights matters, it was important to avoid such vagueness.

26. According to the report submitted by Guyana, the provisions of the Covenant could not be invoked before or directly enforced by the courts, other tribunals or administrative authorities (Part I (b)). The report failed to mention, however, any laws or court decisions relating to the practical application of human rights provisions. In the absence of such information, members of the Committee could merely engage in monologues. He hoped, however, that the replies provided by Guyana would mark the beginning of a true dialogue. He also hoped that, in future, the Government would furnish fuller information on the human rights situation in Guyana and on the precise implications for human rights of the President's power to change legislation.

27. Mr. PRADO VALLEJO said that Guyana's demonstration of co-operation with the Committee was in itself worthy of commendation. He hoped, however, that a report would be submitted to supplement the information in the current report (CCPR/C/4/Add.6).

28. The report stated that, except to the extent that any derogation appeared in articles 138 to 149 of the Constitution, the fundamental rights and freedoms of the individual were of full force and effect (Part I (a)). He wondered whether that meant that national legislation could contain derogations from the human rights provisions embodied in the Covenant.

29. The report added that, although the provisions of the Covenant could not be invoked before or directly enforced by the courts, other tribunals or administrative authorities, they could indirectly be enforced by the courts (Part I (b)). The provisions of the Covenant, as he understood them, were very specific; either they were enforced or they were not. He failed to understand the concept of indirect enforcement.

(Mr. Prado Vallejo)

30. The report stated that any person had a right of access to the courts where a contravention of fundamental rights and freedoms was alleged in relation even to another person who was detained (Part I (d)). He wished to know what the relationship between the applicant and the detainee had to be.

31. He also requested information on the functions of the Ombudsman and on that official's effectiveness in protecting and promoting human rights in Guyana.

32. Mr. DIEYE said that the Guyanese report, like many other reports from third world countries which the Committee had discussed, was short and lacking in detail. He had the impression that such countries did not appreciate the problems that the Committee saw; certainly, whatever the legal system they applied, the same imperfections were to be found in their reports. In the case of Guyana, most of the relevant questions had already been asked but he thought the country should be asked more specifically what obstacles it had encountered in applying the Covenant.

33. He wondered whether the people of Guyana were aware of the Covenant's existence or of how it protected individual liberties - there was little point in ratifying an international treaty if the citizenry of the country did not know about it. The human rights situation of many countries could be fine in theory, but in practice matters might be very different. Indeed, the point was so important that he felt that the Committee should at its next session frame suggestions for third world countries on how best to comply with the Covenant.

34. The most important points for developing countries to bear in mind were that they should not restrict certain basic rights or resort to certain kinds of degrading punishment. Both of those tasks required the existence of an independent judiciary. Accordingly, he wanted to know how the Guyanese judiciary was safeguarded: whether the President could appoint or dismiss judges; whether the head of State in fact acted as a supreme ruler, as in many countries - and whether it would be possible for him to do so in Guyana; and whether there were legal provisions to protect judges who arrived at decisions differing from the Government's notion of public order.

35. When developing countries enacted legislation they generally tried to strike a balance between "modernism" and their own traditions and customs. He wondered whether that was true of Guyana and, if so, to what extent balance had been achieved.

36. The Committee had been informed that, in Guyana, persons subject to wrongful arrest could claim reparation for the inconvenience they suffered, but that such reparation was not automatic. He wished to know what criteria applied in such cases.

37. Although the Committee had been told that there was no discrimination in Guyana, he wondered what opportunities there might be for someone who was nevertheless subject to discrimination to obtain redress. Was it, indeed, possible at all under Guyanese law?

(Mr. Dieye)

38. He believed there was a need for the Committee to devise a mechanism for helping countries like Guyana to see how best to implement the Covenant, and to guard against the temptation for States parties to regard ratification of the Covenant as a mere mark of prestige.

39. Mr. BARTON-SCOTLAND (Guyana) thanked the members of the Committee for the penetrating way in which they had dealt with his country's report. His Government intended to co-operate fully with the Committee. When the time came he would seek to give the fullest possible replies to the questions asked; those he could not answer personally would be referred back to his Government for consideration.

ORGANIZATIONAL AND OTHER MATTERS

40. The CHAIRMAN asked what reports the Committee should consider at its July session in Geneva. The reports outstanding, in order of submission, were those of Guinea, Iceland, Austria and Jordan. He suggested that the Guinean report should be put on the agenda although it seemed likely that, having no permanent mission in Geneva, Guinea would be unable to send a representative to the Committee's meetings.

41. He foresaw no difficulties with discussing either the Icelandic or the Austrian report. He understood, however, that Jordan wished to amend the information it had presented to the Committee. In addition, the Committee had just received a report from Iran. The Committee could discuss no more than three or four reports at its July session and should, he believed, try to include the Iranian report among them.

42. Mr. LALLAH said that the reports to be discussed should be taken up early in the July session, since the Committee would also have to devote time to adopting its annual report. Work on the general comments should also be concluded at that session.

43. As was the custom, the Committee should discuss no more than three reports at its summer session, and he believed that the Iranian report should take priority; since Jordan had stated it wished to amend its report, the Committee might be content to take up the two others mentioned by the Chairman.

44. Sir Vincent EVANS said it was important to allow the Chairman and the secretariat some latitude in deciding what reports would ultimately be taken up at the summer session. The position at the current session had been somewhat unsatisfactory since, not knowing what State reports were to be taken up, Committee members had been unable to do any preparatory work. He hoped the secretariat, in consultation with the Chairman, would move quickly to make arrangements with three or four States parties for their reports to be discussed at the summer session.

45. If the Iranian report was a sufficient basis for discussion, he felt it would be desirable to take it up; the Committee should also try to discuss the Jordanian report as soon as possible after the supplementary information had been supplied.

46. Mr. PRADO VALLEJO wondered whether it would be possible for the Committee to take a report from Latin America, since he considered it highly desirable to discuss reports from various parts of the world.
47. Th CHAIRMAN said that no report from Latin America was currently available. A report had been received from Nicaragua, but had not yet been processed. In any case, reports had to be taken up in the order of their submission; the Committee would have to have very good reason to depart from that rule.
48. Mr. DIEYE said he thought it would be quite in order to arrange for the Guinean report to be considered in Geneva. The report was very short and contained many gaps. Unless the Committee scheduled it, however, it would never be discussed. He felt that the long-awaited Iranian report should be discussed quickly; having opted to discuss the reports of Guinea and Iran, therefore, the Committee should ask the secretariat to arrange for a third report to be discussed.
49. Mr. TARNOPOLSKY agreed that the Guinean report should be scheduled. If the Government wished consideration of its report to be postponed, it should apply for a postponement. The Government had not suggested discussing the report while the Committee was meeting in New York. Personally, he would favour a decision to discuss the report whether or not a representative of the Government could attend.
50. Th CHAIRMAN suggested that the Committee should indicate to the secretariat its preference for discussing the reports of Iran, Jordan and Guinea, with the possibility of also discussing the report of either Iceland or Austria.
51. It was so decided.

The discussion covered in the summary record ended at 5.20 p.m.