

**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**



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Twelfth session

SUMMARY RECORD OF THE 284th MEETING

Held at Headquarters, New York,
on Tuesday, 7 April 1981, at 3 p.m.

Chairman: Mr. GRAEFRATH

later: Mr. MAVROMMATIS

CONTENTS

Consideration of reports submitted by States parties under article 40 of the
Covenant (continued)

Organization of work

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The meeting was called to order at 3.30 p.m.

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

MALI (continued) (CCPR/C/1/Add.49)

1. Mr. TARNOPOLSKY said the international community expected the same importance to be given to the International Covenant on Economic, Social and Cultural Rights as to the International Covenant on Civil and Political Rights. States parties should not be allowed to use their obligations under the latter Covenant as a pretext for avoiding, overlooking or ignoring their obligations under the former. Although under its mandate the Committee was concerned with the International Covenant on Civil and Political Rights, it must not lose sight of the interrelationship of the two Covenants.
2. It was a fundamental principle of the United Nations and of international law that all States were of equal status. Unless a State party could show why certain norms should not apply to it, it was bound by all international legislation. In interpreting the Covenant, it was the Committee's responsibility to take account of the difficulties faced by various countries. However, frank reporting by countries was necessary if the Committee was to do its work properly. The Committee needed full information on the factors and difficulties preventing a country from implementing the Covenant, which provisions they had been unable to fulfil, and what measures it had taken to overcome the difficulties. For instance, it would be useful to know how the two-fold burden of drought and inflation had affected the exercise of civil and political rights in Mali, and he suggested that such information should be included in the next report.
3. The Covenant set out permissible limitations in its articles 12, 14, 18, 19, 21 and 22 whereby, in given circumstances, certain civil and political rights could be restricted. It allowed for no restrictions, however, on the subjects covered in articles 6 to 11, except if a State party declared a state of emergency. Like other speakers, he wished to know whether a state of siege or emergency had been declared in Mali, and what was the difference between those two situations and the special measures provided for in section 32 of the Constitution. Information was needed as to whether any such measures were currently in effect, whether there had been any derogations in respect of human rights and if so, which ones and for what reasons.
4. He shared Mr. Opsahl's view that it was necessary to find out whether the Constitution contained provisions designed to meet the obligations imposed under article 2, and if so, to what extent those provisions were being applied.
5. The Mali Constitution contained no references to many of the important rights proclaimed in the Covenant, such as freedom of expression (article 14), freedom of peaceful assembly (article 21), and freedom of association (article 22). It was impossible to tell whether the pieces of legislation mentioned on page 3 of the

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(Mr. Tarnopolsky)

report (CCPR/C/1/Add.49) ensured the exercise of those rights. He requested clarification of the term "order" as to whether it differed from an "act", and if so how.

6. Concerning article 6, he wished to know what were the most serious crimes punishable by the death penalty. In general, the Covenant favoured abolition of the death penalty (article 6, paras. 2 and 6). He understood, however, that in Mali the death penalty was still imposed in cases not only of murder but also of conspiracy between civil servants and soldiers and assault on civil servants. More information was needed on what constituted "conspiracy" and "assault", and why they were considered so serious as to warrant the death penalty. Information was also needed on the kinds of offences to which the death penalty had been applied since the Covenant had come into effect in 1976.

7. Linking articles 7, 10 and 23, he asked what provision had been made to allow imprisoned persons to maintain family contact. He understood that the prisons were in fairly isolated places and, if that was so, how was it possible for family members, doctors and lawyers to visit the prisoners? Information was needed on solitary confinement: how long it lasted, whether there were rules ensuring that the family and the lawyer were informed, and in what conditions the prisoners lived.

8. In connexion with article 9, he understood that there was a regulation for house arrest, banning and expulsion which could be implemented not by the court but by ministerial order; if that was true, how was it reconcilable with article 9?

9. He endorsed Mr. Dieye's remarks on article 14 and the importance of an independent judiciary. The rights laid down in the Covenant were intended to protect the individual from the State's executive branch, and the only body which could act as a buffer between the individual and the executive was an independent judiciary. He therefore requested further details on how judges were appointed and removed.

10. As for the fundamental freedoms provided for in articles 18 to 22, the Constitution made no references to the last three, and only provided for the freedom of thought, conscience and religion mentioned in article 18. Information was therefore necessary on the laws dealing with the matters covered in articles 19 to 22.

11. In connexion with article 25 (b), he wondered how every citizen could freely express his will in any country with a one-party system, where not all citizens were members of that party. To what extent could citizens not members of the party exercise their freedom of choice? One-party States were not incompatible with the Covenant, but States with such systems should explain very fully how the rights provided for in article 25 were exercised. The Committee was prepared to consider the various conditions which created the need for different kinds of governmental arrangements, but it could not properly examine the cases unless the State party concerned provided details on measures taken to ensure the exercise of human rights.

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12. Mr. BOUZIRI said that, as had already been pointed out, the Western democracies, the East European countries and the countries of the third world had different approaches to the question of human rights. Since the Covenant represented a compromise between those three approaches, it necessarily contained shortcomings and was subject to different interpretations. As had been noted, the Covenant did not require that a country should have a multiparty system. The comments made by the representative of Mali that morning concerning the one-party system in his country were important. Possibly the Committee might like to have an exchange of views concerning the terms used and their meaning.

13. In future, the Committee should, perhaps, draw the attention of States to the Committee's guidelines so that the information they provided would be more specific. It was not enough simply to cite a list of legislative texts and to say that the people enjoyed the various freedoms recognized in the Covenant. The Committee must be shown how those freedoms were guaranteed in practice. For example, on page 3 of the report it was stated that all Malians enjoyed the rights recognized in the Covenant without distinction and that everyone was equal before the law, but no details were given from the relevant laws. In order to demonstrate that men and women were equal it was necessary to know the percentage of girls in school as compared to boys; the percentage of women in Parliament; whether women were paid the same amount as their male counterparts with the same qualifications; who was the head of the family; and whether, in the event of a divorce, there were any guarantees for women.

14. As Mr. Dieye had pointed out, human rights were viewed differently depending on whether the State concerned was a Western democracy, an East European State, or an African or Asian State. Accordingly, in considering a report, the Committee must take into account the situation prevailing in the country in question.

15. With regard to the death penalty he was somewhat puzzled by the statement in the report to the effect that, if he had acted with cognizance, a convicted person under 18 years of age might not be sentenced to death or to penal servitude for life. Perhaps it could be clarified. The provision postponing application of the death penalty to pregnant women until after their confinement seemed unduly harsh to him. Who would look after the infant? Perhaps the representative of Mali could reassure him by saying that, in fact, the death sentence was not carried out in such cases. After all, the ultimate aim of article 6 of the Covenant was to prevail upon countries to abandon the death penalty.

16. Concerning the one-party system he noted that, although it was generally feared that under a one-party system the rights recognized in articles 18, 19, 21, and 22 of the Covenant could not be guaranteed properly, that was not necessarily so. In Tunisia for example, despite the one-party system, all those freedoms were effectively enjoyed and the Government was openly criticized in the press and in the media. However, the Committee must be given details regarding the situation in Mali. For example, was there freedom of expression and of assembly and how could people express their different opinions in practice? Likewise, the statement that every Malian citizen was eligible for election and entitled to vote in the conditions determined by the law must be accompanied by details of the laws

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showing how those rights were guaranteed in practice. The Committee needed details in order to understand how the one-party system operated in Mali and how people with different opinions from those of the Government could be associated with the party.

17. Sir Vincent EVANS welcomed the fact that Mali was represented in the Committee by a legal adviser to the Foreign Minister and expressed appreciation for the interesting and informative background information he had provided at the previous meeting.

18. As Mr. Dieye had said, it was particularly important for members of the Committee to understand the background and the conditions prevailing in the country concerned; he personally seized every opportunity to read press articles about such conditions, especially in countries that had acceded to the Covenant.

19. Referring to the status of the Covenant in Mali as he understood it, article 64 of the Constitution stipulated that treaties or agreements which had been duly ratified had primacy over national laws. In accordance with title VII of the Constitution, the Covenant was such a treaty and, under article 62 of the Constitution, it must be ratified in accordance with the law. Thus, articles 62 and 64 together had the effect of incorporating the provisions of the Covenant in national law; an individual could thus invoke those provisions before the courts in connexion with his relations with the administrative authorities. If that understanding was correct, he asked whether the provisions of the Covenant had ever been invoked in that manner, for example, when an individual had considered that a national law was not in conformity with the requirements of the Covenant or that his rights had been infringed by an administrative authority. Since Mali had a system of administrative courts to supervise the duties of the administrative authorities, he asked whether an individual who felt that his rights under the Covenant had been infringed could initiate proceedings before those courts, and whether such complaints were remedied if the courts found that his rights had in fact been infringed. In that connexion, he also asked whether individuals, or their legal advisers, were aware of their rights under the Covenant and, accordingly, whether the Covenant had been published, for example, in the Official Gazette or in the press, and whether it was available in any of the national languages of Mali.

20. Although article 6 of the Covenant sought to regulate the use of the death penalty in those States where it had not yet been abolished, the provisions of the Covenant were in general directed towards the abolition of that penalty, as was clear from article 6 (6). He asked whether any consideration had been given in Mali to the abolition of the death penalty, and what views the people of Mali held in that connexion.

21. Towards the end of 1979, he had read articles in the British press about disturbances relating to the educational system in Mali, and there had been reports that particularly harsh measures had been used to control the crowds on that occasion. Although any responsible Government must take the necessary measures to

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(Sir Vincent Evans)

maintain public order, such measures must be reasonable and proportionate to the circumstances. However, on the occasion to which he was referring, some people had apparently died and other had been seriously injured as a result of police action. Therefore, he asked whether any investigation had been made into those occurrences and into the type of measures used; had the powers of the police been reviewed and any new instructions issued to them; had any steps been taken to ensure that police training programmes provided proper instruction in such situations so as to ensure that the measures employed were not unduly harsh or disproportionate to the situation. That question was important, not only for the protection of human rights, but also in that, because of the growing interest in human rights questions, incidents similar to that to which he had referred were widely publicized and thus affected the image the country concerned enjoyed abroad.

22. Referring to article 10 of the Covenant, he asked whether there were any rules governing prison conditions and appropriate standards for the treatment of prisoners in Mali. He also asked what safeguards there were to ensure that prison authorities complied with such rules. Many countries had a system whereby independent observers visited prisons, inspected conditions, heard the complaints of prisoners and arranged for an investigation of such complaints. He asked whether there were any such provisions in Mali.

23. Referring to articles 9 and 14, which contained a number of very important detailed requirements relating to detainees and due process of law, he pointed out that the report did not provide any assurances that the requirements set forth in those two articles were being fulfilled. In that connexion, he asked what was the maximum period of time a person could be detained pending trial, how long such people were usually held and what specific legal provisions existed for the implementation of each of the detailed requirements in those two articles.

24. With regard to the one-party system, he asked what was the position of non-party members, were they at a disadvantage or were party members privileged in any way; for example, was any distinction made between party and non-party members in connexion with article 25 (c) of the Covenant. He also asked whether people were free to disagree with the party, to criticize party policies, how much political freedom they really had and whether they could put forward their own ideas on how to improve the system. Lastly, he asked how party policy was made and how political decisions were reached, did such policy filter down from the top of the party, or was it formulated at the grass-roots level; in other words, was the party used as a vehicle to enforce policy made above or was it a truly democratic means of formulating policy in accordance with the wishes of the people in general.

25. Mr. Mavrommatis took the Chair.

26. Mr. AL DOURI noted that the status of the laws of a particular country reflected its legal maturity. Although developing countries sometimes understood certain matters differently from the developed countries and while they faced different problems and had different priorities, no State party should hesitate

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truthfully to describe how its laws and the commitments it had assumed under the Covenant were put into practice. It was necessary to obtain detailed information about the legal situation in every country and about the laws enacted in connexion with all the provisions of the Covenant, without exception. The Committee members were entitled to such information, because all those elements might affect the situation of human rights.

27. The report was too short and did not refer to the specific ways in which the provisions of the Covenant had been put into practice. Even the replies given at the Committee's previous meeting did not fully answer the various questions asked.

28. Referring, in particular, to the election of members of Parliament, he asked how many were appointed, for example, by particular institutions. He also asked what conditions governed candidatures in such elections and what role trade unions and the political party played in the light of article 25 of the Covenant. He further inquired what relationship existed between the Government and the party and whether any of the people holding key Government positions were not party members.

29. Referring to article 19 of the Covenant, he asked whether there were any special courts to hear complaints of violations of the right of freedom of expression, how such courts were formed and what laws governed them. He also requested additional information concerning article 33 of the Constitution as it related to article 4 of the Covenant.

30. In connexion with articles 7 and 9 of the Covenant, he asked what legal remedies were available in the event the rights set forth therein were violated, particularly in accordance with article 9 (5), since there were many different ethnic groups and religions in Mali.

31. He also asked whether the Covenant had been published and whether the mass media had referred to the fact that Mali had acceded to it.

32. In conclusion, he expressed the hope that, in future, the Government of Mali would follow the guidelines set forth for the preparation of such reports and would submit another report containing additional, more detailed information.

33. Mr. AGUILAR said that the purpose of the questions asked by members of the Committee was to verify whether the Covenant was being properly implemented. Implementation varied between States parties according to the degree of their development but every State party had an obligation to implement the Covenant.

34. Article 40 (2) specified that reports must indicate the factors and difficulties affecting implementation. The less developed countries should be asked what those difficulties were in each case. It might well be that material circumstances, such as an insufficient number of jurists or inadequate minimum prison standards, might make implementation difficult for some. The Committee should acknowledge such difficulties and refrain from criticizing countries which were not yet in a position to implement the Covenant fully. In situations arising under article 4, for example, it might be necessary to permit certain derogations from the Covenant.

(Mr. Aguilar)

35. There must be no divergence between national legislation and the provisions of the Covenant; all States parties must adapt their own legislation accordingly. Apart from the purely legal situation, however, the Committee was interested in the effective implementation of the rights guaranteed under the Covenant. In a number of countries the written legislation was ideal but many did not fulfil their obligations because they did not have the necessary resources. In their replies, reporting States should pay particular attention to informing the Committee regarding their practice. It was important for the Committee to know whether implementation was consistent in practice. Questions which arose in that connexion concerned the independence of the judiciary, whether all citizens were equal before the law and whether citizens had sufficient confidence in the judicial system to appear before a magistrate. The existence of single-party systems might contribute to inequality to the extent that, in certain cases, some individuals might be above the law.

ORGANIZATION OF WORK

36. The CHAIRMAN said that the Committee might wish to set up a second pre-sessional working group to consider reports submitted by States parties under article 40. It had been suggested that such a group might consist of four or five members, representing a wide cross-section of the Committee, and might concern itself with general recommendations as well as with the drafting of decisions on the second periodic report; it might also compile a list of the questions most frequently put to States parties by members of the Committee.

37. If enough members were available to constitute such a group, it might meet simultaneously with the Working Group on Communications at Geneva, during the week immediately preceding the thirteenth session of the Committee in July 1981.

The meeting rose at 6.15 p.m.