

UNITED
NATIONS

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**International Covenant
on Civil and
Political Rights**Distr.
GENERALCCPR/C/SR.510
12 April 1984

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Twenty-first session

SUMMARY RECORD OF THE 510th MEETING

Held at Headquarters, New York,
on Monday, 9 April 1984, at 3 p.m.Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 3.10 p.m.

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

Democratic People's Republic of Korea (continued) (CCPR/C/22/Add.3 and Add.5)

1. Sir Vincent EVANS observed that the reports of some States parties considered earlier had concentrated largely on legal and constitutional provisions at the expense of essential information on the economic, social and cultural background affecting the human rights situation in the State concerned. The initial report of the Democratic People's Republic of Korea went too far in the opposite direction. The addendum to the initial report, however, (CCPR/C/22/Add.5) went some way toward rectifying the omissions in the initial report (CCPR/C/22/Add.3), as had the introductory statement made at the preceding meeting by the representative of the Democratic People's Republic of Korea.

2. It would be of interest to the Committee to have more information about the country's political system, with particular reference to article 25 of the Covenant. Clarification was needed with regard to a number of fundamental concepts embodied in the Constitution, such as the "Juche" idea referred to in article 4, the "Chongsan-ri" spirit and method mentioned in article 12, and the "Chollima" movement referred to in article 13.

3. With regard to the provisions of the Covenant relating to the participation of the people in the conduct of public affairs, he asked how candidates for elections were chosen. Whether the voters had a choice of candidates, and whether anyone could present himself for election if he felt he had a contribution to make in one of the People's Assemblies. He inquired whether there were any restrictions on the formation of political parties and what the role of the Workers' Party was in relation to other organs of government. It would also be useful to know what proportion of the population belonged to the Workers' Party, and whether membership was open to anyone who wished to join or whether there were specific conditions for membership.

4. He asked what safeguards existed to ensure that the provisions of articles 7 and 10 (1) of the Covenant were duly observed in practice, particularly by the police and the security services. Were there any arrangements whereby places of detention were regularly visited and inspected by persons independent of the authorities responsible for such facilities? What procedures existed to investigate complaints of ill-treatment in places of detention and how effective were they for bringing offenders to justice?

5. On the subject of the liberty and security of persons, he wished to know in what circumstances an individual could be arrested and detained under the laws of the Democratic People's Republic of Korea, whether there were any provisions for the preventive detention of individuals for political reasons, and, if so, how many persons were so detained. He also asked what provisions there were for reviewing the detention of such persons.

(Sir Vincent Evans)

6. As to the rights guaranteed in article 12 of the Covenant, he inquired about the reasons why there was so little movement of persons into and out of the Democratic People's Republic.

7. Emphasizing the importance of the independence of the judiciary, he asked whether the provisions of articles 103 and 142 of the Constitution meant that the courts were subject to political control.

8. One of the most regrettable consequences of the division of the Korean peninsula from the point of view of human rights had been the separation of families and friends. He asked whether any efforts had been made to restore contact and communication between divided families, and how great a willingness there was on the part of the Democratic People's Republic to make progress in that direction.

9. It was indicated in the report that freedom of religion was ensured by article 54 of the Constitution but he wished to know to what extent individuals were permitted to manifest their religious beliefs in practice, whether any Christian churches were still allowed to operate publicly and how active they were. The freedom to seek, receive and impart information and ideas, regardless of frontiers, embodied in article 19 (2) of the Covenant, was one of the most important human rights since individuals frequently needed to rely on it in order to secure other human rights. He wondered how free individuals in the Democratic People's Republic were to express their views and canvass their ideas for change and the improvement of the society in which they lived. The Committee needed to know, for example, whether individuals were at liberty to raise matters for public discussion at meetings or through the press, what restrictions existed on the right to freedom of expression, and to what extent the exchange of information across frontiers was permitted and encouraged in the Democratic People's Republic. He wondered specifically whether any foreign newspapers and publications were available in the country.

10. Mr. HANGA asked what the role of the masses was in the realization of the principle of democratic centralism referred to in article 9 of the Constitution, and what the relationship was between that principle and the "Chongsan-ri spirit" mentioned in article 23.

11. Article 21 of the Constitution seemed to suggest that, through a dialectic process, the property of co-operative organizations was to be gradually transformed into State property. He asked what consequences that process had for enjoyment of civil and political rights.

12. He noted with satisfaction the support of the Democratic People's Republic of Korea for the creation of new societies. However, such societies could not be created unless the foundations of a new international economic order were laid. He therefore wished to know what the Government's position on the new international economic order was and what tangible measures it had taken to bring such an order about.

(Mr. Hanga)

13. In view of the long history of the Korean people, it would be interesting to know whether there were any progressive traditions that were being used in the building of a new society. He would welcome additional details on the Public Health Law which had been enacted in 1980. Specifically, he wished to know whether the people in villages had benefited from it to the same extent as the inhabitants of towns. With regard to the implementation of article 20 of the Covenant, he requested details on the laws under which propaganda for war was a punishable offence.

14. The fact that divorce had almost disappeared in the Democratic People's Republic was quite an achievement, especially in view of the experience of most other countries where divorce was on the rise. It would be interesting to learn how such family unity had been achieved and, in particular, what educational measures had been used to reduce the number of divorces.

15. More details would be helpful on the structure of the Local People's Assemblies referred to in article 7 of the Constitution. With regard to suffrage, he asked whether it was compulsory for citizens to vote. He noted with interest the information provided in the addendum to the initial report concerning the participation of the people in the administration of the State and the management of the economy. He asked whether such participation was channelled through social organizations and, if so, whether they were structured along, geographical, occupational or other lines. Lastly, he asked whether self-management of the economy was practised in the Democratic People's Republic or whether the people participated in the management of the economy under State control.

16. Mr. AL DOURI, pointing out that relations between his country, Iraq, and the Democratic People's Republic of Korea had been severed, emphasized that he was speaking in a purely personal capacity and not as a representative of Iraq.

17. He welcomed the fact that, according to the initial report of the Democratic People's Republic of Korea, all the provisions of the Covenant had been implemented. However, he requested additional, detailed information on the legislation governing human rights, its scope and its impact on the life of the individual in connection with each article of the Covenant.

18. It was important for members of the Committee to be well-informed about the difficulties that existed in every country, in accordance with article 40 (2). For example, the Governments of many developing countries were unable to give due attention to human rights problems because of the difficulties they were facing in other areas. It was regrettable, however, that no information had been provided on the difficulties affecting the implementation of the Covenant in the Democratic People's Republic of Korea.

19. Since the Covenant was an international treaty, he asked what its status was within the national legal system and requested clarification concerning the "progressive steps" mentioned in the third paragraph on page 2 of document

(Mr. Al Douri)

CCPR/C/22/Add.3. Since the report referred only to provisions of the Constitution, he asked what specific measures had been taken to ensure the enjoyment of the basic human rights.

20. Referring to article 1 of the Covenant, he welcomed the fact that the Democratic People's Republic of Korea supported the right of the peoples of Namibia and Palestine to self-determination, but asked what practical measures had been adopted to that end, for example, whether the South West Africa People's Organization and the Palestine Liberation Organization were represented in the Democratic People's Republic of Korea.

21. With regard to article 3, he requested additional details about the equality of men and women and the role of women in public life at all levels and in all sectors.

22. As had been pointed out by other speakers, neither the Constitution nor the initial report covered the implementation of article 4 of the Covenant. Accordingly, he asked what legal provisions had been adopted to govern situations of public emergency. He endorsed the questions asked previously with regard to article 6, for example whether capital punishment was applied to pregnant women and women in general, whether there were any political crimes punishable by the death penalty and, if so, what those crimes were. In addition, he asked whether any other crimes were punishable by the death penalty but were not mentioned in any specific legal provision.

23. Referring to article 7, he observed that the Constitution contained only an indirect reference to torture and cruel, inhuman or degrading treatment or punishment. He asked whether compensation for such treatment could be sought through the courts and whether it was punishable by law. In connection with article 9, he observed that, sometimes, people in positions of power exceeded their authority, thereby causing violations of human rights.

24. In view of reports of persons secretly leaving the Democratic People's Republic of Korea, he asked whether the provisions of article 12 of the Covenant were being complied with.

25. The right to be presumed innocent until proved guilty according to law was not mentioned in either the report or the Constitution. According to the Constitution, there were four kinds of courts, although no information was given on court procedure. In that connection, he asked about the rules of procedure governing closed hearings, whether the decisions reached could be appealed and, if so, to what body. He also asked whether the decisions reached in the public sessions could be appealed. Along the same lines, he wondered whether, under the current legal system, everyone was free to bring a case before the courts and whether there were lawyers. If so, he asked whether they had formed a professional association and what their relationship was to the State. In addition, he asked whether the right of an accused person to defend himself encompassed the possibility of being represented by counsel of his own choosing.

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(Mr. Al Douri)

26. In connection with article 18, he welcomed the fact that freedom of religion was ensured in the Democratic People's Republic of Korea but asked whether those who enjoyed religious freedom were also free to respond to anti-religious propaganda.

27. Referring to political affairs in the Democratic People's Republic of Korea, he asked, in connection with articles 19, 21 and 22, whether there was any opposition, whether the press, radio and television were owned by the Government or could offer opposing views, and what the political parties were. He observed that the provisions of the Constitution gave rise to a number of questions about the freedom of political parties.

28. Noting that divorce had almost disappeared in the Democratic People's Republic of Korea, he asked whether that had been achieved by the people themselves or whether there had been Government intervention and, if so, in what respect.

29. In connection with article 25 of the Covenant, he asked whether individuals who were not members of the Workers' Party of Korea could hold high-level political posts, for example, in the Council of Ministers or in the Supreme People's Assembly.

30. Mr. TOMUSCHAT welcomed the fact that the Democratic People's Republic of Korea had become a party to the Covenant, even though it was not a Member of the United Nations. However, ratification must be seen as an historical turning-point which entailed far-reaching obligations and which might even require changes in the country's Constitution and political processes. For example, several provisions of the Covenant called for the establishment of true democracy at the grass-roots level, which was the opposite of a system in which power was held by a political elite.

31. With regard to paragraph 6 of the addendum to the initial report (CCPR/C/22/Add.5), he welcomed the reference to the peaceful reunification of Korea but observed that, even in the struggle for national independence, the Charter of the United Nations prohibited the use of force, as such. In that connection, he asked what the Government of the Democratic People's Republic of Korea was doing in practice to encourage reunification.

32. In the context of article 12 (2), he asked whether travel was permitted between the two Korean States, since neither the report nor the Constitution mentioned freedom of movement. According to information he had received, only a few people were permitted to travel abroad, and there was little communication with the Republic of Korea. He therefore requested additional information on the legislation governing the right of citizens to leave the country, why restrictions had been enacted and how they had been justified under the terms of the Covenant. That information should include statistics on the number of people who had been allowed to leave the country and a breakdown by reason for leaving, for example to join family members abroad. In accordance with both the Optional Protocol and article 12 of the Covenant, Governments were obliged to allow family members to travel in order to reside together.

(Mr. Tomuschat)

33. Referring to article 18 of the Covenant, he noted that article 54 of the Constitution provided for freedom of religious belief. However, he had heard that it was extremely difficult in practice to exercise that freedom. He therefore asked whether religious organizations were founded by the Government or by the religious communities themselves, whether there were Catholic and other Christian communities, and whether they were free to communicate with churches abroad. He also asked about the importance of Chundo Kyo and whether its followers could practise their faith without discrimination. In addition, he wondered whether religious writings published abroad could be freely imported.

34. Referring to the remedies called for in article 2 (3), he asked whether they were available for violations of the freedom of religious belief, how the exercise of that freedom was guaranteed and whether there had been any court decisions on that issue. He also requested information about any court decisions relating to rights embodied in article 9 of the Covenant and supported requests for statistics on the number of people being held in custody for each category of offence.

35. He drew attention to the fact that the provisions of article 20 were much broader than construed in paragraph 38 of the addendum to the report. He therefore requested additional information on the laws in question.

36. The provisions of article 25 on the right to vote were designed to ensure the free expression of the will of the electorate, and they therefore had far-reaching institutional implications. Freedom of expression was possible only if the electorate had a choice. He therefore asked whether there was any choice of candidate in elections in the Democratic People's Republic of Korea and whether there was an opposition party or any alternative within the ruling party. He also asked for details on the election of members of the Supreme People's Assembly and on the selection process prior to the main elections. He noted with interest that the turnout at elections in the Democratic People's Republic was usually 100 per cent and that candidates received 100 per cent of the votes. He wondered how that could be since under a free electoral system some people would inevitably disagree. Indeed, the freedom to disagree was at the very heart of freedom of expression. Accordingly, it would be interesting to receive information on the possibilities of dissent in the Democratic People's Republic of Korea.

37. Article 90 of the Constitution described the election of the Head of State. Questions which arose in that connection concerned the source and length of his mandate, when it had to be renewed, and how many candidates normally stood for election to the Presidency. History had shown that the personalization of power could be prevented only if limits were set to the period during which one individual could retain supreme power. The report of the Democratic People's Republic of Korea did not go into sufficient detail on the presidency.

38. Much more detailed information was required on the situation in places of detention and on how the Committee's current deliberations would be publicized in the country itself and whether there would be any follow-up to the questions which had been raised.

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39. Mr. OPSAHL said that it was the right of every people to choose its own form of government but that, when a State acceded to the Covenant, the situation changed. By that act, the Democratic People's Republic of Korea had accepted the authority of the Human Rights Committee to look into the human rights situation there and to ascertain whether it was satisfactorily meeting its obligations under articles 2 and 40 of the Covenant, in particular.

40. He would like to know whether the Democratic People's Republic of Korea subscribed to the principle of the indivisibility of human rights, including not only economic and social but also political and civil rights and whether the Government had taken new measures following the entry into force of the Covenant to implement its provisions. It would also be interesting to know what steps had been taken to bring the Covenant to the attention of the public.

41. Points on which further information was desirable included the manner in which the Constitution had been adopted and how it could be amended to bring it into closer harmony with the Covenant. Article 76 of the Constitution set out the powers of the Supreme People's Assembly but there was nothing on its procedures. Article 90 provided that the term of office of the President was four years, while article 98 stipulated that he was responsible to the Supreme People's Assembly for his activities. It would be of interest to the Committee to have further information regarding the responsibility of the President between elections and whether he could be criticized by the Supreme People's Assembly. Chapter V of the Constitution dealt with the basic rights and duties of citizens but did not specify who was a citizen.

42. It would also be interesting to know something more about the rights and duties of foreigners. Article 66 provided protection for foreigners seeking asylum after fighting for peace and democracy, national independence and socialism, and for the freedom of scientific and cultural pursuits; there were no general provisions on the status of foreigners, however. Article 2 of the Covenant provided that there should be no distinction of any kind between individuals within the territory of a State; he would like to know how that article was being implemented.

43. Article 72 of the Constitution provided that treason would be severely punished but did not define treason or specify the punishment in question. It would seem that crimes against the State were dealt with outside the Code of Criminal Procedures but it would be interesting to know how the rights of individuals were protected in such cases. The report contained no information on forced labour, which was prohibited under article 8 of the Covenant.

44. He was particularly interested in article 62 of the Constitution, under which the State claimed that it had freed women from the heavy burdens of household chores and provided every condition for them to participate in public life; he would like to learn how the State had accomplished that in practice.

45. The report mentioned the virtual disappearance of divorce in the Democratic People's Republic of Korea but he would like to have further details on whether, as

(Mr. Opsahl)

in Sweden, an increasing number of people were living together in an unmarried state, whether spouses could live apart without divorce and, if such people took new partners and had children, what the legal position of all concerned would be.

46. Mr. GRAEFRATH said that, by submitting a supplementary report, the Democratic People's Republic of Korea had clearly demonstrated its willingness to co-operate with the Committee. Bearing in mind that the country had attained independence following a long struggle against colonialism and occupation by foreign armed forces, it was understandable that the issues of sovereignty, independence and security should have high priority in the Constitution; those issues were closely related to the right of the Korean people to self-determination. The Constitution also stressed the importance of the maintenance of peace to the protection of the right to life.

47. The Democratic People's Republic of Korea had taken positive action in compliance with its obligations under the Covenant, including the abolition of the death penalty as an ordinary punishment and its reservation for special crimes only. Considerable progress had been made in other areas. The increase in life expectancy from 38 to 74 years and the decline in the death rate from 20.8 to 4.4 per mil, in particular, were remarkable achievements in promoting the right to life and attested to the fundamental changes that had taken place in the country. It would be interesting to know whether there were differences in infant mortality and life expectancy between rural and urban areas and what the reasons for any such differences might be.

48. The place of the Covenant in the legal system of the country was not clear from the report, which did not say whether special legislation was necessary for its implementation. While the report contained a great deal of information on affirmative action by the State to guarantee rights, more was needed on the remedies available through both legal and administrative channels.

49. In connection with the structure of the court system, it would be interesting to know whether there were special labour, juvenile or family courts. Other points of interest would relate to the training of judges; whether there were women judges and in what courts they served; how equality of access to the courts was guaranteed and whether there was a right to legal counsel in criminal proceedings.

50. In connection with article 25 of the Covenant, the report referred only to the election laws. The scope of that article was, however, much broader in that it applied to public affairs in general; it would therefore be interesting to know how people participated in public life other than through elections and how the equality of men and women was ensured in that regard.

51. Mr. BOUZIRI said that the Democratic People's Republic of Korea was to be congratulated on its accomplishments in the social field, particularly in education and in the attention given to children. The report was, however, too brief and did not contain sufficient material to make a genuine dialogue possible between the Committee and the country. He therefore hoped that the Government would provide a

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(Mr. Bouziri)

supplementary report. In the meantime, he would like to have a number of important points clarified.

52. His first query related to the description of man as the master of nature in the passage dealing with the Public Health Law on page 4 of the initial report (CCPR/C/22/Add.3). He had visited many countries and realized that people everywhere were striving hard to control the elements, but it was obvious that they had so far not succeeded. While man needed to become the master of nature, the description of him as such in the report appeared to be no more than an expression of hope.

53. On the same page, the report referred to pre-school children living happily in nurseries and kindergartens where they were educated in the principles of socialism. In his own country, children attending such institutions would be less than six years of age. He was himself both a socialist and a father, but he did not understand how four- or five-year-old children could be taught the principles of socialism. He would therefore be grateful for more information about what was involved in their kindergarten education.

54. He noted that article 53 of the Constitution referred to political parties in the plural, but he was informed that only one such party existed in the Democratic People's Republic of Korea. In his own country too, there had formerly been only one party, but more had eventually been established to represent those who held different political views. Since article 53 of the Constitution referred to the State guaranteeing conditions for the activities of democratic political parties, he wondered if it indicated an intention that other parties should eventually be allowed.

55. In conclusion, he wished to have more information about the independence of the judiciary in the Democratic People's Republic of Korea since he did not find the evidence in the report conclusive in that respect. He hoped that the information provided in future reports would enable members of the Committee to grasp the realities of life and the rights enjoyed in the civil and political fields in the Democratic People's Republic and facilitate a fruitful dialogue on the implementation of the Covenant's provisions on such fundamental issues as the freedoms of thought, belief, press, publication and assembly.

56. The meeting was suspended at 5.30 p.m. and resumed at 5.40 p.m.

GENERAL COMMENTS UNDER ARTICLE 40, PARAGRAPH 4, OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (continued)

Draft general comments on article 14 (continued) (CCPR/C/XXI/CRP.2)

57. Ms. CÔTÉ-HARPER observed that the French text of the third sentence of paragraph 2 needed to be brought into line with the other language versions.

(Ms. Côté-Harper)

58. Turning to paragraph 7, she proposed that the word "doubt" in the second sentence should be qualified by the word "reasonable" and that the words "in pre-trial proceedings and in courts of first instance" should be added at the end of the penultimate sentence. She would like to see a sentence added at the end of paragraph 10 to the effect that the same right also existed in respect of appeal proceedings, since she believed that the Committee had already taken the view that appeals as well as trials should proceed without undue delay.

59. Mr. HANGA said that the Committee should take care with the wording of the second sentence of paragraph 7 since the benefit of the doubt was not really involved. He suggested that the reference to the benefit of the doubt should be deleted and replaced by the words "because the accused is deemed innocent until proved guilty". Similar care should be exercised over the final sentence of paragraph 5, which seemed to imply that the Covenant was self-contradictory.

60. Ms. CÔTÉ-HARPER said that in view of Mr. Hanga's remark, the second sentence of paragraph 7 could perhaps be reworded to state that the accused had the right to the benefit of reasonable doubt.

61. The CHAIRMAN said that, to his mind, Ms. Côté-Harper's amendment would improperly restrict the rights of accused persons.

62. Mr. NDIAYE said that his understanding of the benefit of the doubt and the presumption of innocence seemed to differ from Ms. Côté-Harper's. The former applied when there were indications of possible guilt but guilt could not be established. Presumption of innocence, on the other hand, meant simply that an accused person had the right to be presumed innocent until proved guilty. The two concepts were quite different and the Committee must distinguish carefully between them.

63. Mr. ERMACORA suggested that the final sentence of paragraph 4 should be amplified so as to state that any derogations from the normal procedures required under article 14 should respect all the other conditions laid down in article 4 (1) of the Covenant as well as the one currently mentioned. In paragraph 8, the words "in a language which he understands" should be added at the end of the first sentence to take account of the same provision in article 14 (3) (a). Finally, he suggested that the third and fourth sentences of paragraph 9 should be deleted because their references to the confidentiality of communications went beyond the text of article 14 (3) (b) of the Covenant.

64. Mr. BOUZIRI, speaking as Chairman of the Working Group, drew attention to an amendment submitted by Mr. Dimitrijevic which would make the final sentence of paragraph 7 read: "It is also a duty for all public authorities to secure that the outcome of a trial is not prejudged."

65. Mr. AGUILAR pointed out that the Spanish text of the draft general comments differed from the French and English texts. In particular the words "en todo respecto" in the fourth sentence of paragraph 5 were an incorrect translation of the corresponding phrase in the English original.

The meeting rose at 6.10 p.m.

