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ON CIVIL AND  
POLITICAL RIGHTS**



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HUMAN RIGHTS COMMITTEE

Eighth session

SUMMARY RECORD OF THE 189th MEETING

held at the Palais des Nations, Geneva,  
on Tuesday, 23 October 1979, at 3 p.m.

Chairman: Sir Vincent EVANS

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the Covenant (continued)

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF  
THE COVENANT (agenda item 4) (continued)

Sweden (continued) (CCPR/C/1/Add.42)

1. The CHAIRMAN invited the members of the Committee to resume consideration of the supplementary report of Sweden (CCPR/C/1/Add.42), which dealt with the issues referred to in paragraphs 70 to 83 of the Committee's report to the General Assembly at its thirty-third session (A/33/40).
2. Mr. OPSAHL, referring to the question of how the provisions of the Covenant were implemented in practice in Sweden - a question addressed in paragraph 70 of document A/33/40 - said that the Swedish report, like a number of others, failed to support its description of measures adopted with sufficient factual material about the life of the country and actual progress in ensuring the effective enjoyment of human rights. There was a genuine need for facts, for example, regarding the implementation of article 25 of the Covenant. He would like to know, for instance, what percentage of women actually occupied public office in Sweden.
3. On the other hand, in its comments on paragraph 73 of document A/33/40, the Swedish Government gave vital information in indicating that the Act on anti-social behaviour, which might have involved violations of the Covenant, was now deemed inapplicable in Sweden and hence was virtually without practical importance. It was equally important to note, from the supplementary information relating to paragraph 75 of that document, that a passport had never been refused on the ground that the applicant was pursuing relations with a foreign power and that no similar ground was incorporated in the new Passport Act.
4. In the information relating to paragraph 77 of document A/33/40, the Swedish report stated that proceedings before a court might in certain cases be held in camera, whereas the Covenant required public proceedings. It would be important to know whether the in camera procedure was in practice applied frequently, in which case there was a genuine problem, or only seldom. The report also referred to the possibility of rejecting counsel. There again, he wondered how often that rule was actually applied.
5. In relation to paragraph 79 of document A/33/40, the Swedish Government stated that the question of what constituted "public indignation" had never been submitted to a court for consideration. That was an important matter, since it had practical implications with respect to limitations on freedom of religion.
6. It was unfortunate that it was not yet standard practice for States parties to supplement their reports with a systematic presentation of facts which would enable the Committee to assess the real situation in the country as well as the norms which existed on paper.
7. Mr. DANIELIUS (Sweden) said he agreed that a composite picture of the human rights situation in a country covering more than just legal arrangements was necessary. However, the facts were not always easy to establish. It was difficult, for example, to gather accurate information on the extent to which certain provisions, such as those relating to in camera proceedings, had actually been applied. Whenever it had been ascertained that a particular provision had never been applied, that fact had been indicated in the supplementary report.

8. The CHAIRMAN drew attention to the section of the supplementary report of Sweden which referred to paragraph 71 of the Committee's previous annual report (A/33/40).
9. Mr. DANELIUS (Sweden) said that the new Act on equal treatment of men and women which was referred to in that section covered equality in employment, training, working conditions and the like, and provided a judicial remedy in case of complaint. The Government Commission had originally suggested the appointment of an ombudsman to deal with complaints, but the Parliament had considered that there was not yet a clear need for such an official and had decided to defer the matter.
10. Mr. TARNOPOLSKY said that in his view articles 3 and 26 of the Covenant required more than restraint by the State party. They required the adoption of positive measures to prevent discrimination, including discrimination by other citizens. He did not think that affirmative action in favour of a disadvantaged group constituted reverse discrimination; in fact, it was sometimes essential. He wished to know whether the new Act on equal treatment of men and women provided for affirmative action with respect to sexual equality, and particularly whether it followed the ILO recommendation of equal pay for work of equal value as opposed to equal pay for equal work.
11. Mr. DANELIUS (Sweden) said that the point raised by Mr. Tarnopolsky was reflected in the new Act, which provided that if an employer appointed someone of lesser qualifications as part of an effort to ensure equality between the sexes in working life, he was not guilty of sexual discrimination. As to equal pay for work of equal value, the new Act stipulated that sexual discrimination existed if less favourable conditions of employment applied to one sex than to another when the work involved was the same or equal. He would be happy to provide the Committee with the text of the new Act.
12. Mr. KOULISHEV said that he had studied carefully the supplementary report submitted by Sweden and commended both its content and its form, which followed that of the relevant section of the Committee's previous annual report. The Swedish Government was also to be commended for its excellent co-operation with the Committee.
13. The CHAIRMAN, referring to the observation made by Mr. Tarnopolsky, said that the notions of reverse discrimination, special treatment and affirmative action were perhaps more relevant to the International Covenant on Economic, Social and Cultural Rights than to the International Covenant on Civil and Political Rights.
14. Mr. LALLAH said that article 3 of the International Covenant on Civil and Political Rights clearly called for affirmative action, including social, economic and administrative measures, in order to ensure the equal right of men and women to the enjoyment of all the rights set forth in that Covenant. It was therefore important to know, for example, what budgetary resources in a country were earmarked to the training of women, and what measures were taken to relieve women of their domestic burdens.
15. Mr. TARNOPOLSKY noted that, in the penultimate paragraph of its supplementary report, the Swedish Government, stating that it considered the obligations under articles 26 and 27 of the Covenant to be similar to those deriving from the International Convention on the Elimination of All Forms of Racial Discrimination,

referred the Committee in that connexion to its various reports on Sweden's implementation of the Convention. In fact, article 26 of the Covenant referred not merely to the, as it were, negative or passive aspect of the prevention of discrimination through guarantees of equality before the law - an aspect already covered by article 14 of the Covenant - but also to the positive aspect of active "protection against discrimination" on the various grounds enumerated, including that of sex, which was the subject of article 3 of the Covenant. He did not, therefore, think that article 3 coincided with the provisions of any other international instrument, and he doubted whether a reference to reports relating to other instruments was sufficient to cover the matter of the positive measures of protection required by articles 3 and 26.

16. Mr. DANELIUS (Sweden) agreed that article 26 of the International Covenant on Civil and Political Rights called for positive action for the elimination of discrimination, and not merely passive measures of prevention, but so, in his view, did the International Convention on the Elimination of All Forms of Racial Discrimination. It was for that reason that the Swedish Government in its supplementary report, had referred to its very full and detailed accounts of its actions under that Convention.

17. Mr. OPSAHL said that, in his view, the Committee should welcome any information which helped it to see what positive action States were taking to ensure the implementation of the Covenant, including, in connexion with article 3, measures which would serve to create the conditions in which women could enjoy and exercise their full rights.

18. Mr. BOUZIRI, referring to the Swedish Government's supplementary information relating to paragraph 73 of document A/33/40, asked what was the general trend of Swedish legislation with regard to the treatment of offenders. He wondered whether it tended towards punishment or towards social rehabilitation, in the spirit of article 10, paragraph 3, of the Covenant.

19. Mr. DANELIUS (Sweden) said that the Swedish penal system was to a very large degree based on the idea of social rehabilitation. In fact, very few persons were sent to prison; prison sentences, when pronounced, were very short compared with the sentences applied in other countries, and prison conditions and methods were designed to ensure the rehabilitation of prisoners on their release. Thus the Swedish penitentiary system was very much in the spirit of article 10, paragraph 3, of the Covenant.

20. The CHAIRMAN, speaking as a member of the Committee, said, with reference to the same section of the supplementary report, that in spite of the further information given regarding the Swedish Act on anti-social behaviour prejudicial to the community, he was concerned about the possible harmful consequences in other countries if that Act were taken as a model. Since, as it appeared, the law had in fact never been applied, and was thus in effect without practical importance, it would seem advisable for it to be repealed so that it should not serve as a precedent to be followed by other countries where, he believed, it could very easily lead to abuse.

21. Mr. DANELIUS (Sweden) agreed that, although the intention of that Act in Sweden was perfectly innocuous, it could nevertheless cause problems owing to the difficulty of defining the persons to whom it was intended to apply, and that the consequent vagueness of its terms could represent a danger. The fact that it had, as it appeared, never been applied, would indeed seem to justify its repeal, and he would take that matter up with the appropriate authorities when he returned to his country.

22. Mr. BOUZIRI noted from the Swedish Government's supplementary information relating to paragraph 74 of document A/33/40 that the system of release on bail of a person suspected of having committed an offence punishable by imprisonment was replaced in Sweden by a system whereby the suspect was free but subject to certain conditions designed to ensure that he would not flee the country or otherwise evade legal proceedings, such as the placing of his personal property under provisional attachment. That system appeared to him to be very enlightened and he thought that it might well serve as an example to other countries.

23. Mr. TOMUSCHAT, referring to the same part of the Swedish Government's supplementary report, said that article 9 of the Covenant referred not merely to persons detained on criminal charges, but to all cases involving deprivation of liberty, for whatever reason. He therefore welcomed the information concerning the reasons other than a criminal charge which could justify a person being held in custody in Sweden. He noted, however, that the supplementary report spoke of a police board as the relevant authority, whereas article 9, paragraph 4, referred to a court. He wondered, therefore, whether the police board qualified as a tribunal, with all the necessary guarantees as to its composition and procedures, and if not, whether its decisions could be appealed against to a body which did so qualify.

24. Mr. DANELIUS (Sweden) pointed out that, as was indicated in his Government's supplementary information (CCPR/C/1/Add.42, p. 10), the police board's powers were confined to the taking of persons into provisional custody, which meant custody for a maximum of one or two days. Thereafter, it was for the special bodies set up under the various acts referred to in the supplementary report to take appropriate action, and all decisions of those special bodies were subject to appeal to an administrative court or to another comparable body providing all the necessary guarantees as to its composition and procedures. If necessary, appeals could be taken further, to the country's supreme administrative court.

25. Mr. OPSAHL also welcomed the information concerning administrative deprivation of liberty, which was so often lacking in the reports which the Committee received from States parties. He noted from the initial report of Sweden (CCPR/C/1/Add.9, p.9) that under an Act of 1974 any person unlawfully arrested or detained was entitled to compensation. However, neither the initial report nor the supplementary report explained exactly how such compensation could be obtained.

26. Mr. DANELIUS (Sweden) said that under the Tort Act enacted a few years earlier the State was held generally responsible for wrongful acts committed by public bodies in Sweden, and that the amount of compensation due in such cases was decided by a court.

27. Mr. DIEYE asked whether a foreigner held in custody on the basis of an expulsion order which was subsequently annulled would also be entitled to compensation.

28. Mr. DANELIUS (Sweden) said that such a person would be entitled to compensation. The correct procedure would be for him to sue the State before an ordinary court, asking for compensation with respect to the unlawful decision of a public body.

29. Mr. TARNOPOLSKY said that he still had some difficulty in seeing how restrictions to freedom of expression on the ground of "the economic well-being of the people" or of the "national economy" (CCPR/C/1/Add.42, pp.22-23) could come within the permissible restrictions to article 19, paragraph 3 of the Covenant. A restriction based on the national economic defence in times of war (ibid., p.23) could be justified by the requirements of national security, but the term "national economy" had a much broader connotation.

30. It was difficult for the Committee to reach a conclusion as to the congruence of restrictions with articles 18-22 of the Covenant without knowing in some detail the terms of all the laws restricting otherwise absolute freedoms. It had not been made clear whether the restriction in the interest of the "national economy" was applied as narrowly as was suggested on page 23 of Sweden's supplementary report.

31. While the purpose of the provision on rejection of counsel (ibid., p.17) might be the benevolent one of protecting the accused, article 14 of the Covenant required that the latter should be able to choose his own counsel. The provision might be used to the disadvantage of the accused.

32. Mr. OPSAHL said that a problem arose from the fact that the Covenant required any restrictions on the exercise of the rights recognized in it to be provided for by law, even though there was no similar requirement for the rights themselves. That problem had obviously occupied the Swedish authorities to a large extent, particularly when providing for the constitutional reforms of the 1970s. Referring to the statement in the penultimate paragraph of Sweden's initial report (CCPR/C/1/Add.9) to the effect that one solution to the problem might be to create rules implying that restrictions of rights and freedoms could not be decided as speedily as ordinary law, he asked whether that idea or any other had been acted upon.

33. Mr. DANELIUS (Sweden) said that the term "in the interest of the national economy" was not an adequate translation of the Swedish term, whose exact meaning was "in order to provide for the needs of the people". What the legislators had had in mind was the eventuality of war or some other emergency situation, in which special measures had to be taken to provide for the basic economic needs of the people.

34. As concerned rejection of counsel, while a provision of the kind referred to might in theory be subject to abuse, there had never been any question of such abuse in his experience. The provision was applied only in very exceptional cases when the behaviour of lawyers was such that the proceedings could not continue in a reasonable way.

35. With regard to the point raised by Mr. Opsahl, he said that a new amendment to the Constitution, in the form of two new paragraphs relating to the restrictions provided for in chapter 2, section 12, had been submitted to Parliament. The amendment provided that 10 members of Parliament should have the right to request that any bill designed to restrict the rights and freedoms referred to in that chapter should not be voted upon until 12 months had elapsed from the time of the bill's arrival in Parliament.

36. Mr. BOUZIRI asked what material assistance was given to persons claiming the right of asylum in Sweden.

37. Mr. DANELIUS (Sweden) said that substantial aid was given to persons accepted as refugees. The cost of such aid was met from public funds and came within the Swedish social welfare system, which was open to the persons concerned in the same way as to all other persons living in Sweden.

38. The CHAIRMAN, speaking on behalf of the Committee, thanked the representative of Sweden for his extremely helpful statements, which had provided much additional information concerning the way in which Sweden interpreted and applied the Covenant.

The meeting rose at 4.55 p.m.