

**INTERNATIONAL
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ON CIVIL AND
POLITICAL RIGHTS**



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HUMAN RIGHTS COMMITTEE

Ninth session

SUMMARY RECORD OF THE 199TH MEETING

held at the Palais des Nations, Geneva,
on Thursday, 20 March 1980, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

later: Mr. PRADO VALLEJO

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Covenant (continued)

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The meeting was called to order at 10.50 a.m.

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

Report from Iraq (CCPR/C/1/Add.45)

1. The CHAIRMAN said that for reasons beyond his control he was obliged to leave Geneva later in the date for New York, but would return to the Committee before the end of the following week. He had arranged to be kept informed, during his absence, of the progress of the Committee's work. He invited the representative of Iraq, Mr. Rushdi Rashid, Director of the Department of Foreign Affairs at the Ministry of Justice of Iraq, to introduce the report of Iraq, issued as document CCPR/C/1/Add.45.
2. Mr. RUSHDI RASHID (Iraq) said that he was happy to introduce to the Committee the report on the arrangements made by his country to implement the International Covenant on Civil and Political Rights. Iraq had ratified that Covenant in 1970, two years after the progressive socialist revolution of 17 July 1968, which had been a decisive turning point in the modern history of Iraq. Since that date, the question of human rights had consistently occupied a leading place in the political, social, economic and cultural life of the country. The position taken by Iraq in international bodies and its accession to the many international legal instruments on the subject bore witness to Iraq's attachment to human rights.
3. The report, which had been drawn up in conformity with the guidelines provided by the Committee, gave an account of the different measures taken by Iraq to implement the provisions of the Covenant both nationally and internationally. As human rights covered a very wide field, however, the authors of the report had not wished to go into too much detail and had restricted themselves to outlining the legal framework within which the principles of the Covenant were applied. Among the legal instruments mentioned in the report were the Constitution and the Political Report adopted in January 1974 by the Eighth Regional Congress of the Arab Ba'ath Socialist Party and promulgated as a law in October 1974. The Law for the Reformation of the Legal System (Law No. 35, 1977) had been enacted to form the basis for a radical reformation of the legal system in Iraq. The report also mentioned the provisions of the Civil Code, the Penal Code, the Civil Litigation Law, the Criminal Procedure Law, the Labour Code, etc.
4. He wished to stress two particular points. The first was that Iraq granted to the nationals of other Arab countries all the rights enjoyed by its own nationals, with very few exceptions. Secondly, since the submission of its report to the Secretary-General, Iraq had adopted new legislation of fundamental significance. Among the most important and most recent measures were the law concerning the National Council, and the law concerning the Legislative Council of the autonomous Kurdistan region both of which had been promulgated on 16 March 1980, together with the amendment to the Law of Personal Status. Another point of interest was the entry into force on 17 January 1980 of a new law on judicial organization, which had replaced Law No.26 of 1963, referred to in the report.

5. The establishment of a National Council, sharing the legislative powers with the Revolutionary Command Council, was an important step towards the building of a democratic society. In connexion with the adoption of the law in question, a trial had been made of an eminently democratic procedure which had produced most satisfactory results. The texts of that Bill and of the Bill on the Legislative Council had been officially submitted to the people for a period of 45 days, so that they could study, through the information media, the principles on which the Bills were based and the provisions they contained.

6. The present growth of interest in human rights in Iraq was perfectly natural in view of the facts that Iraq had been the cradle of civilization and that the first legal code had been drawn up in earlier times in that country.

7. Mr. Prado Vallejo took the Chair.

8. Mr. HANGA congratulated the Iraqi Government on its report, notable for both its substance and its form. He thanked the representative of Iraq for the additional information that he had just provided.

9. Before speaking of the contents of the report, he wished to ask two questions about certain provisions of the Constitution of the Republic of Iraq. It appeared from articles 13, 14 and 16 of Chapter II of the Constitution that there were three forms of ownership in Iraq: State ownership, co-operative ownership and private ownership, and that ownership of any form was a social function to be exercised in accordance with the objectives of society and the plans of the State, and with the stipulations of the law. In view of the close link between property, as a social and political institution, and the implementation of civil and political rights, it would be useful to know how the different forms of ownership contributed to the implementation of civil and political rights. Furthermore, it was stated in article 16, paragraph (b), that private ownership was guaranteed on condition that the exercise of that right did not conflict with or hamper economic and general planning. He would like to know what exactly the Iraqi authorities understood by the word "planning", and what legal provisions governed planning, for although planning came under the economy, it should be covered by legal rules.

10. Turning to the text of the report, and particularly to Part One, paragraph 2, on invoking the provisions of the Covenant before tribunals and administrative bodies, he asked whether the Covenant could be invoked not only in preventive proceedings but also in enforcement proceedings. With regard to paragraph 3 of Part One dealing with the legal and administrative authorities that had judicial powers concerning human rights, he wished to know what were the criteria and methods used in selecting judges, and the requirements that candidates for such posts must meet. In particular, he wished to know whether the judiciary was open to women. With regard to article 1, paragraphs 1 and 3 of the Covenant, he referred to the statement on page 13 of the report: "Added to this is Iraq's constant support for the establishment of a new International Economic Order which will guarantee for developing countries their right to development". The notion of a new International Economic Order was of major importance; however, it should be achieved not by a redistribution of wealth but by a reorganization of the production capacity of all countries. There were

also political and legal aspects of the notion of a new International Economic Order, and in that connexion he asked the representative of Iraq to explain how the Iraqi Government viewed the new International Economic Order. On the subject of the nationalization decision mentioned on page 15 of the report in the part dealing with article 1, paragraph 2, of the Covenant, he asked whether Iraq, having nationalized the oil sector, intended to nationalize other sectors of the economy. With regard to article 3 of the Covenant, dealt with on page 20 of the report, he asked how many women were to be found in the Ba'ath Party and in general, what was the political role of women and what posts they could hold in the political, economic and social spheres. Turning to article 6, paragraph 1, of the Covenant, relating to the right to life, he quoted the following passage from page 29 of the report: "Iraqi legislation has gone a long way in protecting this right through the equality, equal opportunities, care, social, economic and educational protection it provides for man". He would like details about the measures taken by the State in the field of public health. He also wished to know what were the provisions in force with regard to social welfare, and what were the expectation of life and the birthrate in Iraq. Referring to article 22, paragraphs 1 and 2, of the Covenant, he said it seemed from the information given on page 87 of the report that trade union bodies played a very important role in Iraq. It would nevertheless be useful to know what were the required conditions for forming a trade union, what types of trade unions were authorized (occupational trade unions or others), what was the legal status of the trade unions and what was their role in economic and political life. For example, could the trade unions put up candidates for elections and propose Bills? On the subject of articles 23 and 24 of the Covenant, dealing respectively with the family and the child, he wished to know what rules governing marriage were currently in force in Iraq, and what was the legal status of an illegitimate child in that country. Concerning article 25 of the Covenant, he noted that according to page 104 of the report the Iraqi authorities had established popular organizations and People's Councils. He wished to have some details about those popular organizations, including information about their contribution to the establishment of direct democracy. He asked whether the People's Councils were simply administrative organs or whether, as was the case in most socialist countries, they represented the State at the local level. In the latter case, it would be useful to have further information on their political role and how they provided the necessary liaison between the masses and the central government.

11. Sir Vincent EVANS said that the report presented by the Iraqi Government was very full. The additional documentation given to the Committee and Mr. Rashid's statement had provided useful further information.

12. As to the "just balance" between the fundamental human rights and the duties of the individual towards others and society mentioned in the introduction to the Iraqi report, the Covenant provided a minimum standard to which that balance between the rights and duties of the individual must conform. While States could of course give individuals better treatment than that laid down in the Covenant, they could

in no case fall below those standards. Furthermore, there could be no derogation from the civil and political rights defined in articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18 of the Covenant, even in time of public emergency. Paragraph 2 of the first part of Iraq's report clearly stated that the provisions and rules set forth in the Covenant had become part of the domestic legislation, but he asked where the Covenant ranked in the hierarchy of Iraqi legislation. To the extent that it contained provisions of international law considered as above domestic law, it would be normal and logical for those provisions to override those of the Constitution. If that was not so, did the Covenant override other legislative provisions adopted either before or after the Covenant itself was incorporated into domestic law? It would also be interesting to know if the provisions of the Covenant were invoked before the courts or administrative bodies and if any jurisprudence was developing on that basis. What measures were taken when any law or any administrative act was found to conflict with the provisions of the Covenant? What had been done to publish the Covenant in languages that the people understood? Was the text of the Covenant readily available in public libraries or elsewhere?

13. Concerning the Revolutionary Court mentioned in paragraph 3 of Part One of the report, it would be useful to know more about what cases were within jurisdiction. Had other special courts been established either on an ad hoc or permanent basis, to try persons for certain offences? Since the report stated, in connexion with the application of article 4, paragraph 3 of the Covenant, that no state of emergency had been declared in Iraq since the Covenant had entered into force in 1976, he asked whether one had been declared previously, and whether any emergency measures or legislation adopted before that date were still being applied. It would also be useful to know whether the procedures of the special courts were in conformity with the provisions of article 14 of the Covenant. What guarantees were there of their independence from the Executive and their impartiality? Was there a right of appeal against their rulings?

14. With respect to article 2 of the Covenant, it was noted on page 9 of the report, in relation to remedies for acts violating human rights, that the injured party was entitled to claim compensation for any harm caused to him by the person responsible for the violation of those rights. But if the person responsible were an official of the State without sufficient means to pay the compensation awarded by the court, would the State undertake to pay it?

15. The right to life proclaimed in article 6 of the Covenant was described in the report as "an inherent right since creation". The representative of another State had described it as the supreme right. Accordingly, the provisions of article 6 of the Covenant clearly looked towards the abolition of the death penalty. While many countries had already abolished the death penalty or discontinued its use, from other countries there were reports of multiple executions, even for the elimination of political opponents. The provisions of Iraq's criminal legislation

seemed to conform to article 6, paragraph 2 of the Covenant, stating that sentence of death could be imposed only for the most serious crimes, but the report did not specify for what offences it could be imposed. He would like the Iraqi representative to give further information on the matter and say how many people had been executed over the past two years, for example, and for what crimes. Nor did the report state which courts could impose the death penalty or how far their procedures conformed to the provisions of article 14 of the Covenant.

16. In accordance with the provisions of article 7 and article 10, paragraph 1 of the Covenant, the Iraqi Constitution prohibited the exercise of any form of physical or psychological torture, but the report did not specify what safeguards there were to ensure the respect of that prohibition by the police and security services. In cases of alleged torture, what procedures were used to investigate the matter and bring the offenders to justice? The report did not say whether there was any provision for the supervision of penal establishments to ensure that prisoners were treated humanely. It would also be interesting to know whether independent persons were allowed to visit penal establishments from time to time to inspect them and interview detained persons.

17. With respect to article 9 of the Covenant he asked what were the "circumstances defined by law" in which a person could be arrested or detained without a warrant. What authorities (police forces, security services, etc.) were authorized to arrest or detain persons in those circumstances? Were any persons being detained without trial for political reasons, and if so, on what authority? Concerning article 9, paragraph 3, the report did not make clear the maximum length of detention pending trial. In view of the extension of the period of detention pending trial provided for in Iraq's legislation on criminal procedure, it appeared that in some cases the period would greatly exceed the six months initially laid down.

18. As to the freedom of movement provided for in article 12 of the Covenant, the Iraqi law on passports appeared to have turned the provision upside down, since it provided that no one was allowed to leave Iraqi territory unless he held a passport or any other travel document that was valid and in good order: in what circumstances might a passport or other travel document be refused?

19. Under the Iraqi Constitution persons were protected against arbitrary or unlawful interference in their privacy, family, home or correspondence, which was prohibited under article 17 of the Covenant. However, it was not stated what the powers of the police and security services were in that area and how much discretion was left to them.

20. The right to freedom of opinion proclaimed in article 19, paragraph 1 of the Covenant was an absolute and unqualified right which could not be restricted except within the terms of article 4 of the Covenant. It was essential to know whether the exercise of that right was subject to restrictions or reservations in Iraq. The right to freedom of expression mentioned in paragraph 2 of that article was one of the most important rights in the Covenant, since it was essential to the development of the human personality. That was why its exercise could be subject only to such restrictions as were necessary for respect of the rights or reputation of others, and the protection of national security or of public order, or of public health or morals. Since no system of government and no social order was perfect, the individual should have the right to express his views, to offer his criticisms and to canvass his ideas for changing and improving the established system, provided that he did not seek to attain his ends by violent means. However, according to article 26 of Iraq's Constitution, it seemed that the right to freedom of expression, and also to the right of assembly and the right of association provided for in articles 21 and 22 of the Covenant, were subject to considerable restrictions, especially of a political nature. What in fact were the rights of the individual in Iraq in this field? To what restrictions were they subject? How far was the dissemination of information through the media and the press subject to control? Were those restrictions and controls really compatible with the provisions of article 19 of the Covenant?

21. Concerning article 25 of the Covenant, he said it would be most helpful if the Iraqi delegation could give more information about the holding of elections leading to the establishment of a national assembly and of a Legislative Council in the autonomous Kurdistan Region. He agreed with Mr. Hanga that more specific information on the composition and functions of the People's Councils in Iraq would be welcome. He would also like to know what political parties there were other than the Arab Ba'ath Socialist Party, and what restrictions there were on the right to set up political parties or to join them.

22. With respect to article 27 of the Covenant, he said it seemed that the Iraqi Revolutionary Council was trying to solve the Kurdish question and to recognize the cultural rights of the Turkmen, Assyrian and Chaldean minorities. Those were very complex problems which the Committee should probably follow up at future sessions. There was already a Law of Autonomy for the Kurdistan Region, providing for the setting up of a Legislative Council and an Executive Council. He asked whether those bodies already existed or whether they would be set up only after the forthcoming elections. It would also be useful to know what were the effects on the social and cultural life of people, of steps taken to modernize the regions where minorities were living, and whether any particular difficulties had been encountered.

23. Mr. BOUZIRI said that the very substantial, comprehensive and explicit report submitted by the Iraqi Government showed that the latter had made a great effort not only to provide the Committee with detailed information regarding the progress made in Iraq in the field of human rights but also to give full effect to the International Covenant on Civil and Political Rights in Iraqi legislation and in

administrative practice. He had been particularly impressed by the sincerity and honesty shown by the Iraqi Government in stating in its report in connexion with Article 25 of the Covenant, that "it had been passing from one dictatorial régime to another, from the days of Ottoman domination up to the Revolution of 17 July 1968. This fact has led the political leadership to take the most cautious steps along the road towards democracy, and to try, through various means, to devise new formulas to achieve its objectives gradually." In his view that statement was in keeping with the spirit in which the reports should be submitted and showed highly commendable courage, for Governments did not like to admit that they encountered difficulties, especially in connexion with the establishment of democracy, on which respect for human rights depended.

24. Analyzing the Iraqi report, he began by referring to Part One, section 1, which stated that the enjoyment of the rights proclaimed in the Covenant was "subject only to the conditions and limitations specified by law for the purpose of protecting State sovereignty, its national interest and security, the general morals and ethics of the land, and the compatibility of such enjoyment with the ideological principles and foundations of the political system and its prevailing plans and programmes." He would like to know what that sentence meant, in what cases the enjoyment of basic rights might be incompatible with ideological principles and foundations, how that incompatibility might manifest itself and how it was punished. If the law placed too many restrictions on freedom, the question of the compatibility of those restrictions with the provisions of the Covenant might arise. In his capacity as an expert, he was not entitled to pass judgement on the fundamental choices of a country, but he thought that it was his duty to find out to what extent the restrictions imposed in the name of an ideology were compatible with the provisions of the Covenant.

25. Reference to the "Revolutionary Court" was made in Part One, section 3, of the report. He would like to know the composition of that court, how the independence of the judges or members of the court was guaranteed and what were the "cases specified by law" which it decided. Drawing attention to the statement in Part One, section 5, of the report that "the principles and provisions set forth in local legislations to ensure the enjoyment and protection of human rights surpass in range and comprehensiveness those proclaimed in the Covenant itself", he pointed out that the Covenant was the result of a compromise between several tendencies, that the rules and principles set forth in it regarding human rights constituted no more than a minimum goal and that it was therefore natural that some national legislations went beyond that. He noted with satisfaction that in the matter of prison administration Iraqi legislation was outstanding and ensured effective protection of the rights of prisoners, but he would like to know whether the same was true of other areas.

26. Turning to Part Two of the report, which dealt with the implementation at the local level of various articles of the Covenant, he pointed out that article 19, paragraph (a), of the Iraqi Constitution, which was quoted in the report, made no mention of the fact that the rights had to be guaranteed without distinction of political opinion, as was stated in article 2, paragraph 1 of the Covenant. That gave rise to the question whether the Iraqi Constitution allowed discrimination

against individuals because of their political ideas. He would like some elucidation on that point and asked why the term "political" had been omitted from the text of the Iraqi Constitution.

27. With regard to article 3 of the Covenant, which dealt with the equality of rights of men and women, he would like to know how that equality was ensured in Iraq in the case of divorce. In connexion with article 9, paragraph 3, the report showed that in Iraq preventive detention could last six months. That seemed excessive and he would be grateful to the representative of Iraq if he would state whether the detained person had the right to appeal for a reduction of the length of preventive detention, whether he was immediately given the assistance of a defence lawyer and whether his family was promptly notified of his detention.

28. On the question of the implementation of article 12, paragraph 1, of the Covenant, he asked what were the "cases defined by the law" in which an Iraqi citizen could have a restriction imposed on his liberty of movement or on his freedom to choose his place of residence within the country. Furthermore, the fact that an Iraqi citizen who had been prevented by the administration from leaving his country could file an appeal to the Minister of the Interior did not appear to constitute a sufficient guarantee and he would like to know whether Iraqi legislation provided for the possibility of introducing an appeal before the courts, which would guarantee greater objectivity.

29. With regard to the implementation in Iraq of article 14, paragraph 1, of the Covenant, he observed that the Iraqi Constitution provided that "jurisdiction is independent and no power shall be exercised over it except that of the law" (article 63, para. (a)). He would nevertheless like to have further information regarding the procedure for appointing judges, the termination of their functions and the disciplinary system which applied to them, for those were the factors which to a large extent determined how independent they were.

30. He noted that privacy of mail, telegraphic and telephonic correspondence and communications was guaranteed under article 23 of the Iraqi Constitution and that article 328 of the Penal Code provided penalties in the event of violation, but that that privacy could be violated if justice and public security required it. He would like to know what specific cases those provisions covered and who was empowered to decide when privacy could be violated.

31. Turning next to the question of the forthcoming election of a new national assembly, he asked the representative of Iraq if he could provide information on the conditions under which the election would take place. He would like to know whether the members would be chosen solely from the members of the National and Progressive Front, including the Arab Ba'ath Socialist Party and the Iraqi Communist Party, or whether persons representing other political trends could be elected. He also thought that it would be useful to have more information on the powers of that future assembly and of the People's Councils.

32. Finally, he referred to article 26 of the Iraqi Constitution, under which the State endeavoured to provide the means required for practising freedoms "which are compatible with the nationalist and progressive line of the Revolution" and noted that in the report of another socialist country which the Committee had just finished considering it was stated that the propagation of ideas of chauvinism and nationalism was prohibited by law. He therefore thought that it would be useful if the Iraqi delegation could explain the concept of "the nationalist line" in order to avoid any confusion in that regard.

33. Mr. MOVCHAN said that the Iraqi report showed clearly that that country was anxious to fulfil its international obligations under the International Covenants on Human Rights and to co-operate with the Committee. He noted that the report frequently stressed the fact that Iraq had acceded to all the international instruments, including the International Covenants on Human Rights themselves and others which directly affected the implementation of those rights. There could therefore be no doubt that Iraq's contribution to international co-operation in the matter of human rights was very important, and in any case greater than that of other countries. Iraq had anticipated the question whether the provisions of the International Covenant on Civil and Political Rights had been incorporated into Iraqi legislation by stating in Part One, section 2, of the report that since Iraq had ratified that instrument the provisions and stipulations which it set forth had become part of domestic legislation. He would nevertheless like to know how the Covenant was applied and how information relating to international agreements was communicated to the public. He presumed that there were official publications in which the text of those agreements was reproduced for any Iraqi or foreign national to consult.

34. He noted with satisfaction that the report had been prepared in accordance with the guidelines laid down by the Committee and had been drawn up by eminent jurists, with the result that the legal rules were set forth very clearly. For instance, the first sentence of section 4, which stated: "The observance of human rights means that they should be protected from any violation so long as they keep to the limitations binding them" was commendably concise. Nevertheless, great attention should also be paid to economic and social measures, because it was upon them that the implementation of human rights depended. In the event of war, for example, it was impossible to ensure full respect for human rights and all the speeches on that subject were of no avail as long as the physical existence of man was threatened. Iraq's report showed that the country was devoting adequate attention to social and economic measures, and particularly to nationalization, but he would like the Iraqi representative to explain how, from the standpoint of the State, those measures could serve to guarantee the real implementation of human rights. What he had in mind were national, not international measures.

35. Pointing out that Iraq's report indicated that some national laws went beyond the provisions of the Covenant itself, he said that the international standards established by the Covenant represented the minimum without which man could not be free and the objective towards which all countries should strive, even if they did not accede to the international instruments. It was always interesting to observe that some countries went beyond those standards, and he would like the Iraqi delegation to support its statement with a few specific examples.

The meeting rose at 12.55 p.m.