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ON CIVIL AND  
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held at the Palais des Nations, Geneva,  
on Thursday, 20 March 1980, at 3 p.m.

Chairman: Sir Vincent EVANS

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Covenant (continued)

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The meeting was called to order at 3.20 p.m.

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

Iraq (continued) (CCPR/C/1/Add.45)

1. Mr. LALLAH said that he was particularly interested to know whether there were any restrictions on freedom of thought in Iraq and how extreme were the sanctions in that area, if any existed. The fact that Iraq had incorporated the Covenant in its legal system suggested questions concerning, inter alia, the procedure for invoking the Covenant and the number of cases in which the courts had made specific pronouncements thereon. A related question was whether the courts had made any rulings in respect of differences of interpretation between the provisions of the Covenant and those of the Constitution and domestic legislation. Since it appeared that Iraq attached special importance to the Covenant, he wondered whether the Government had any plans to organize meetings to enable administrators and judges to discuss the various provisions of the Covenant.
2. He asked what impact, if any, emergency measures had on freedom of thought, a question all the more relevant as Iraq was still in the process of constitutional evolution. As far as he knew, a state of emergency had been declared in Iraq in the late 1950s and lifted in the early 1970s, before Iraq had become party to the Covenant. He wondered whether a de facto state of emergency still existed and whether there were any measures which could now be classified as emergency measures. Press reports referring to certain provisions and to the existence of special courts in various parts of Iraq to deal with major political offences suggested that there were.
3. Presumably, the "most serious crimes" referred to in article 6, paragraph 2, of the Covenant would include not only crimes of violence against individuals but also attacks against the security of the State itself. The definition of crimes against State security was, however, a thorny problem. It would be useful to know for what political offences the death penalty could be imposed in Iraq and whether the normal rules for criminal offences were also applicable in such cases. The section of the Iraqi report (CCPR/C/1/Add.45) concerning article 6, paragraph 2, of the Covenant indicated that the death penalty had to be ratified by the President of the Republic by a republican decree. He would like to know the number of such decrees issued since Iraq had become party to the Covenant and the number of times the death penalty had been imposed since then for political offences.
4. He wondered whether citizens were free to engage in political activity and to subscribe to varying political ideologies without the risk of falling foul of some aspect of criminal law for which the death penalty could be imposed. He was also anxious to know whether there were certain minimum guarantees to ensure that persons brought before special courts, if such courts existed, obtained fair trials. In view of the large number of convictions based on confessions, it was important to examine whether in the pre-trial stage the accused was left helpless against the powerful State machinery or whether his legal counsel was allowed to be present during interrogations to see that any confession was obtained by fair means. The length of detention itself might be a major factor in producing a confession. Other questions concerning special courts were whether the judges were free from undue influence, how they were appointed, what their terms of tenure were and whether they were answerable to anyone.

5. Article 8, paragraph 3, of the Covenant prohibited forced or compulsory labour. He was pleased to note that there was no provision in Iraqi legislation that required anyone to perform such labour and that Iraq had signed conventions to that effect. There was, however, a relationship between forced labour and compulsory employment, and he was concerned about legal provisions limiting the conditions under which certain categories of workers could stop work. He inquired whether the youth training schemes involved forced labour and whether section 364 of the Penal Code making public service employees liable, under certain conditions, to imprisonment and forced labour if they stopped work was applicable to judges.

6. Mr. GRAEFRATH said that the information provided concerning the recent history and development of Iraq, its liberation from various kinds of oppression and its struggle for independence had given him a good insight into the progress made in the observance of human rights in Iraq. The report referred to Iraq's efforts to strike a proper balance between the rights of the individual and his duties to others and to society as a whole, which in turn reflected an understanding of freedom far different from the abstract notions often encountered. There were countries where the enjoyment of human rights depended on the possession of money and power and was therefore guaranteed only for the privileged élite, contrary to the provisions of article 2, paragraph 1, of the Covenant. Iraq was making a commendable effort to avoid such pitfalls.

7. He would like more information on the functioning of the "Law of the Leading Party" referred to in Part One, section 1, of the report. It was not clear whether the "Law for the Reformation of the Legal System", referred to in the same section, would reform the system gradually or would immediately give effect to newly established rules and institutions. The report indicated that the provisions of the Covenant had become part of domestic legislation and could be invoked before tribunals and other specialized administrative bodies. He was interested to learn about Iraq's experience in that regard, particularly in cases of differences between domestic law and the Covenant. According to the commentary on article 23, paragraph 4, a wife was required to accompany her husband at home or in travel. The question was whether the courts would be in a position to rule in favour of the Covenant if it was invoked against that domestic provision. Again, there appeared to be no specific provision in the Penal Code making propaganda for war punishable. There should be clear guarantees that the provisions of the Covenant would be applicable in the domestic legal system.

8. Additional information was required concerning the judicial system in Iraq. Specifically, he wished to know who appointed the judges, what qualifications were required and whether women could become judges. In Part One, section 3, of the report, it was stated that the judicial system was built on the principle of a single, rather than dual, jurisdiction. He wondered whether that meant that normally the administration acted under the supervision of the courts. Furthermore, the report did not indicate what types of disputes and what types of criminal cases were excluded from the jurisdiction of civil and criminal courts respectively. Nor did it give details about the competence of Shari'a courts, the relationship between Shari'a and general law, and the composition and competence of the Revolutionary Court referred to in Part One, section 3, of the report.

9. It was at times difficult to reconcile the wording of provisions described in the report with the terms of the Covenant. According to the commentary on article 6, paragraph 5, if a juvenile had not yet completed his fifteenth year of age, he was defined as a "boy". That would appear to exclude girls. He had already referred to the requirement that a wife should accompany her husband at home or in travel and wished to know whether a reverse provision existed. Similar questions arose in connexion with the provisions concerning divorce, where it was not clear whether men and women had the same rights. For example, article 59 of the Personal Status Law, referred to in the commentary on article 24, paragraph 1, suggested a distinction in the provisions for the maintenance of male and female children. A sex-based distinction was also implied in the Iraqi Nationality Law No. 43, according to which everyone born in Iraq or abroad of an Iraqi father was considered an Iraqi. He requested details on the results of measures to ensure equal rights and duties for men and women in public office.

10. The inherent right to life referred to in article 6 of the Covenant covered more than the deprivation of life by means of the death penalty. Also important was information on action taken by the Iraqi Government to reduce the infant mortality rate.

11. In connexion with article 10, paragraph 2, the report stated that the provisions of the Prisons Administration Law No. 151 did not deal with accused persons detained in police stations or in places specially set aside for detention. The precise nature of those special places of detention should be defined. In reference to paragraph 3, it was stated that excepting those who had committed criminal offences against the safety of the State, the rights of the people or the honour of allegiance to the Homeland, it was necessary to protect offenders from the cruelty of punishment. The obvious question was why exception should be made for those offenders.

12. With reference to article 10, paragraph 3, of the Covenant, the Iraqi report cited Revolutionary Command Council Decision No. 1059, according to which released prisoners were to resume their previous jobs upon leaving prison. While agreeing that it was a good idea to try to reintegrate ex-prisoners into society, he doubted whether it was always possible, or even desirable from the point of view of the prisoner, to return him to his former environment and former employment. He requested information on the practical experience obtained in implementing the decision.

13. In its discussion relating to article 18, paragraphs 1 and 2 of the Covenant, the report dealt with religious freedom but failed to mention freedom of thought and conscience. He would like more information on those latter freedoms. With reference to paragraph 4 of the same article, the report discussed religious education in the school curricula but did not say whether individuals who did not wish to participate in religious education were obliged to do so. In that connexion, he noted that article 4 of the Constitution stated that Islam was the State religion, a statement whose practical consequences should be explained to the Committee. Did it mean, for instance, that Islam had a privileged position in Iraq over other religions?

14. With reference to article 23, paragraph 2, of the Covenant, the report mentioned marriages which took place outside the courts. He would like more information on the various methods of contracting marriage in Iraq.

15. The section of the report dealing with article 25 of the Covenant made very little mention of the Revolutionary Command Council, which seemed to be an extremely important body in the State structure. He asked for more information about the Council, in particular how its membership was chosen and what its political structure was.

16. With reference to article 27 of the Covenant and the section of the report dealing with the Kurdistan region, he noted that election to the Legislative Council of that region was by free and direct ballot but that members of the Council must be able to read and write the Kurdish or Arabic language. Such a provision could be discriminatory if illiteracy was a significant problem in the region. He requested further information about the level of literacy in the region and asked whether similar provisions existed in the election laws in other regions of the country. Within the context of the Law of Autonomy for the Kurdistan region, he asked how and by whom judicial courts in the region were constituted.

17. Mr. OPSAHL expressed his appreciation of the detailed and carefully prepared report submitted by the Government of Iraq. He noted that Iraq had ratified many of the relevant international conventions in the field of human rights and had played an active role in the work of the Commission on Human Rights. It also appeared that the Government had made great efforts and had achieved great success in improving the domestic situation and the life of the people, both through the adoption of an impressive reform programme and through the preservation of valuable traditions.

18. Turning to Part One of the Iraqi report, dealing with the general legal framework for the protection of human rights in Iraq, he noted the statement on page 5 that the enjoyment of those rights was subject to the compatibility of such enjoyment with the ideological principles and foundations of the political system; that rule was not compatible with the Covenant and could be used to apply harsh measures in contravention of the Covenant. There were other areas of the report which suggested that Iraq's treatment of political dissent and political offences was not in full compliance with the Covenant. It was stated in the section of the report dealing with article 10, paragraph 3, that, except for those who had committed criminal offences against the safety of the State, the rights of the people or the honour of allegiance to the Homeland, it was necessary to protect offenders from the cruelty of punishment. The exclusion of such offenders was incompatible with the Covenant, since all offenders should be granted equal protection. Such matters were of special concern to the Committee because there had been reports of recent executions in Iraq for political offences.

19. In connexion with the death penalty, he was concerned about the content and use of article 200 of the Penal Code, which, as he understood it, allowed the death penalty to be imposed for certain non-violent offences, such as double membership in political parties, even lawful political parties. He asked whether and how article 200 had been applied. Political activity in the army seemed also to be punishable by the death penalty; he asked whether any offences in connexion with such activities had been so punished. In view of other reports received by the Committee, he felt it necessary to ask whether persons had been arrested and punished in recent years for participation in religious meetings. If those reports were correct, he asked how the Iraqi Government could justify such measures in view of its obligations under the Covenant.

20. With reference to article 22, paragraph 3, of the Covenant, the report stated that Iraq observed all the ILO Conventions, although information elsewhere suggested that Iraq had ratified only a certain number of those Conventions. He would like that point explained.

21. The section of the report dealing with article 9 of the Covenant mentioned only arrest and detention for criminal offences, whereas article 9 covered all deprivations of liberty. Many countries had, for instance, administrative procedures and social institutions which were authorized to detain individuals on the grounds of physical or mental illness, drug or alcohol intoxication, vagrancy, and so forth. He asked for information to be provided on detention of that sort, in particular on the nature of the laws which applied, the authorities who were competent, the grounds for such detention and the guarantees protecting the individuals concerned.

22. Mr. KOULISHEV praised the Iraqi report for its detailed preparation in compliance with the Committee's guidelines and expressed his appreciation of the importance which the Iraqi Constitution placed on the economic and social basis of the State, which was a precondition for the enjoyment of civil and political rights. Noting that the existing Constitution had been designated as "provisional", he asked whether a permanent instrument would be adopted soon.

23. With reference to Part One of the Iraqi report, he asked for further details on the Law for the Reformation of the Legal System. It was not clear from the report whether the Law established a procedure for reform or went on to enact the new laws. Similarly, more information would be useful on the Revolutionary Command Council, especially with regard to its membership, the role it played in the Government and its relation to the "Leading Party". With reference to chapter 2 of the Constitution, he asked how the National Council was constituted, who designated the representatives of the people and what powers the Council had. He had heard that a new law on the National Council was to be enacted soon and asked if the Committee could be told about the content of that law. The legal and legislative system in Iraq, as described in the Constitution, seemed unique and complex. He asked if more information could be provided about the usual procedures by which laws were adopted. Furthermore, it was not clear whether the President of the Republic or the Revolutionary Command Council was the competent authority for the ratification of treaties.

24. Iraq was more or less unique in having introduced the Covenant directly into its internal legislation; he wondered what would happen if a treaty were ratified and introduced into the internal legislation and a subsequent law was adopted which contradicted that treaty. States handled the problem of international responsibility in various ways and he would like to know how Iraq resolved the problem of contradictions which might exist between the Constitution and other internal legislation, on the one hand, and treaties and other international obligations, on the other. More information would be helpful on remedies and the recourse procedures available, especially the administrative procedures, in the human rights area.

25. According to Part One of the Iraqi report, both the Civil Litigation Law and the Criminal Procedural Law allowed for certain exceptions from normal procedures, in that certain cases were excluded from the competence of the ordinary courts on the basis of special provisions and sent to special courts. It would be useful to have more information about those exceptions and about the cases dealt with by the Shari'a courts. Similarly, the references to revolutionary courts and exceptional military courts required further explanation. In particular, what laws served as the basis for sentences passed by those courts?

26. With reference to article 20 of the Covenant, he asked whether there was any provision in the Iraqi Penal Code for the punishment of offences involving war propaganda. With reference to article 22 of the Covenant, he would like more information on the role played by trade unions in the management of enterprises and the political life of the country. It was stated in the section of the report dealing with article 23, paragraph 4, of the Covenant that the law ensured equality of rights and responsibilities of both spouses during marriage and in divorce. He asked whether the discussion on those matters in the report was a close paraphrase of legal provisions or simply a commentary on the goals sought by legislation. The report spoke in several places of the grounds for divorce but the grounds for men and for women did not seem to be identical. He would like some explanation of the statement that a woman should not be married to a man who was unrelated to her child. It would also be valuable to have information on the property relations in marriage and in divorce. The reference to the National and Progressive Front in connexion with article 25 of the Covenant was very brief and he requested fuller explanation of the nature of that body, as also of the People's Councils, which did not appear to have a place in the Constitution. With reference to article 27 of the Covenant, he requested more information on the size of the minorities existing in Iraq.

27. Mr. TOMUSCHAT said that Iraq's report was exemplary in that it gave a detailed description of the legal provisions which corresponded to each article of the Covenant and set forth the fundamental rights and freedoms of the Iraqi people; he wondered whether the Iraqi Government would consider publishing it so that every citizen would be aware of his rights.

28. Iraq's political régime was unique in that there was a close interconnexion between the State machinery and the Ba'ath party; the report indicated that although the statute of the Ba'ath party had been promulgated as law, the Executive had been instructed to observe the party's Political Report as a programme in the performance of its duties. The report mentioned other political parties but it was not altogether clear how many parties existed and what their position was vis-à-vis the so-called Leading Party. It appeared that there was no equality among the political parties and that the other parties were confined to an auxiliary function; the Covenant, however, not only provided for freedom of association, including the freedom to form political parties, but set forth in article 2, paragraph 1, a general prohibition of discrimination. That prohibition was much broader than the corresponding formula in article 19 of Iraq's Constitution which made no mention of discrimination on grounds of political opinion. A distinction needed to be drawn; discrimination against the expression of non-violent beliefs and convictions must be prohibited, but it was a different matter when the violent overthrow of a government was advocated or there was a clear danger to national welfare, as indicated in article 20 of the Covenant. Bearing in mind that distinction, the public expression of political ideas must be free, for otherwise a really democratic system as presupposed in the Covenant was not possible.

29. Iraq had chosen the method of directly incorporating the provisions of the Covenant into domestic law; he would like some examples of decisions which had been taken in application of the Covenant.

30. In connexion with article 3 of the Covenant, it seemed that great progress had been made in Iraq in achieving the same rights for women as for men, although Iraq was a country with long-standing patriarchal traditions. The report indicated that all the main areas of discrimination had been eliminated, but many doubtful points remained.

31. In relation to articles 7 and 10 of the Covenant, it had been rightly said that it was not enough to prohibit torture and maltreatment; article 2, paragraph 1, of the Covenant provided that the rights recognized in the Covenant must be ensured. In some cases a State could take the position that nothing needed to be done until a complaint was made about a violation of a right but torture and maltreatment were of so serious a nature that a State must establish mechanisms to prevent in advance any infringement of the general prohibition. In other countries there were special mechanisms such as prison inspection boards that were independent of State machinery and he wondered if there were any such institutions in Iraq. He asked to what authorities a prisoner could apply, whether there were specific methods of investigation and whether an inquiry was automatically carried out on allegations of torture or maltreatment.

32. The report stated in connexion with article 8, paragraph 3, that work was a "sacred duty"; he wondered what precise legal duties flowed from that general provision and whether the Iraqi legislation provided that work should be given to anyone whom the authorities did not consider to be working in the manner required in the Constitution. Perhaps the provision embodied a political goal and had no direct legal effect.

33. Ample information had been provided on the principle set forth in article 9, paragraph 5, of the Covenant, but it referred only to cases of miscarriage of justice; since the article also applied to instances in which the responsible officer was not to blame, he asked what the position was in Iraqi legislation and whether, in such cases, an individual could claim compensation. In connexion with article 10, he asked whether Iraqi legislation included any rule prohibiting reliance on evidence which had been extorted by illegal means, specifically by torture, since that was an important safeguard in ensuring the legal rules of due process. In relation to article 12, he asked whether Iraqi legislation provided that an Iraqi citizen could be deprived of his nationality and, if so, in what circumstances.

34. The report provided an impressive picture of legal safeguards under domestic legislation in connexion with article 14 and gave the impression that Iraq fully lived up to the standards of the Covenant in that respect. In connexion with paragraph 3 (f) of that article, the report did not specify whether the assistance of an interpreter was provided free of charge to the accused. He asked whether the provisions of the Covenant would always take precedence over national law, and whether the guarantees set forth in the report applied to all proceedings, even the proceedings in the Revolutionary Court.



35. The information provided on article 17 needed to be amplified. There were some limitations in article 23 of the Iraqi Constitution and he asked in what circumstances the authorities were able to search private homes or investigate correspondence or communications. That information was needed in order to determine whether there was a balance between State and individual interest in keeping with the requirements of the Covenant. In relation to article 18 of the Covenant, article 25 of the Iraqi Constitution seemed rather weak since it had a number of limitations. It referred to violation of provisions of the Constitution. As article 4 of the Constitution laid down that Islam was the State religion, he asked what was the legal situation of other religions. Countries were entirely free to profess attachment to a given religion, but that must not be to the detriment of other religious groups. Under article 18 of the Covenant, freedom to adopt a religion was an absolute right which could not be restricted, but freedom to manifest a belief could be restricted; in order to be fully in harmony with the Covenant, Iraqi legislation needed to be more specific on that point.

36. Article 22 of the Covenant was clearly designed to confer rights which an individual could exercise without any State interference; in Iraq, however, the opposite seemed to be the case, since although an impressive number of unions had been created by public statute, the laws of association restricted the right of association and therefore required specific justification.

37. In connexion with article 27, it was laudable that Iraq had embarked on a course of granting full autonomy to the Kurdistan region, after so many years of war and oppression. Sincerity and loyalty was needed on both sides, since Iraq must honour its commitments and allow the Kurdish population to preserve its identity, but at the same time the Iraqi Government could expect the Kurdish people to remain loyal citizens of Iraq. It was not easy to steer a middle course and he hoped that solutions to all the problems that arose would be found through peaceful methods.

38. Mr. PRADO VALLEJO said that the Iraqi report followed the general guidelines the Committee had provided for the presentation of reports and described in detail the legislative machinery which existed in Iraq to ensure the operation of the Iraqi laws.

39. It was indicated in Part One, paragraph 2, of the report that the Covenant had become part of domestic legislation; that was eminently satisfactory. The report also referred to Iraq's support for the establishment of a new international economic order and that was in line with the objectives of the third world in general. It was equally encouraging that the report referred to the question of achieving sovereignty over national resources for the benefit of the people, since that was also part of the third-world struggle. He agreed with other members of the Committee that economic and social development was essential to the promotion of civil and political rights.

40. The independence of the judiciary was fundamental to the guarantee of human rights, but he had some doubts about the independence of the Iraqi courts. The report referred to various types of courts and indicated that some of the courts included representatives of the Government. He asked how the independence and integrity of the courts could be maintained when representatives of the Government enforced laws and dispensed justice. If they were to be respected and to dispense the law properly, the courts must be independent and must take their decisions according

to the dictates of conscience and law. He asked how Iraq guaranteed the right of appeal against verdicts of the courts which individuals considered to be unjust or illegal, particularly since the courts included representatives of the Government who would act in accordance with official interests.

41. The report indicated that special courts existed in Iraq in addition to the ordinary civil and criminal courts; he asked how they operated, how they were appointed, what powers they had and what an individual could do if he felt that a verdict of a special court was unjust. It appeared that the verdicts of the special courts were not subject to appeal and that those courts were made up of military men who probably knew little or nothing about law and of representatives of the Government who were likely to act on Government instructions.

42. In connexion with the death penalty, the Iraqi Penal Code provided that one of the grounds for the penalty was the refusal of an individual to divulge his previous political activities; that did not seem just or consistent with the Covenant. The report also referred to the existence of the death penalty for members of the armed forces; he would like to know in what circumstances it was applicable.

43. He asked whether there were any political prisoners in Iraq, since the existence of political prisoners involved a number of legal aspects which the Committee would have to consider.

44. The prohibition of torture was very clear under the Iraqi Constitution and laws; nevertheless, the report did not indicate whether the use of torture in investigating a crime was prohibited, what punishment existed for an investigator who resorted to torture, what authorities were involved and what the victim could do in such circumstances. Moreover, the report referred only to the prohibition of torture, but there were other aspects of the problem such as cruel and degrading treatment which must be condemned. He asked what steps had been taken to prevent cruel and degrading treatment in the process of investigation.

45. The report seemed to imply that persons professing the official religion had not only political but also social privileges, so that there could apparently be political and social discrimination. He asked for enlightenment on that point.

The meeting rose at 6 p.m.