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ON CIVIL AND
POLITICAL RIGHTS**



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Ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)^{*/} OF THE 214th MEETING

held at the Palais des Nations, Geneva,
on Monday, 31 March 1980, at 3 p.m.

Chairman: Mr. NAVROMMATIS
later: Sir Vincent EVANS

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^{*/} The summary record of the second part (closed) of the meeting appears
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session.

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)

Senegal (continued) (CCPR/C/6/Add.2)

1. Sir Vincent EVANS said that Senegal's report had the great merit of being both clear and concise. He had been impressed by the reference in the introductory statement to measures which were being taken to ensure that individuals knew what their rights were; he had always thought that that was a necessary starting-point for ensuring the enjoyment of those rights. It was well known that Senegal, under the leadership of President Senghor, had one of the best human rights records in Africa and that it was a country in which civil and political rights were enjoyed to a far higher degree than in many other countries which were economically vastly better off. One of the keystones was undoubtedly the quality and the independence of the judiciary. He associated himself with the questions which had already been asked about the status of the Covenant within the domestic legal system.

2. In connexion with article 2 of the Covenant the report referred to article 56 of the Constitution which mentioned "fundamental guarantees granted to civil and military officers in the service of the State". He asked what those guarantees were, whether they afforded to civil and military officers, including perhaps the police, any kind of immunity in regard to possible violations of the rights of private individuals, and whether they were consistent with the provisions of article 2, paragraph 3 (a), of the Covenant.

3. On the question of the death penalty, it was clear that although article 6 of the Covenant regulated and restricted the use of the death penalty, it also looked towards its abolition. He asked whether any consideration had been given to the abolition of the death penalty in Senegal; perhaps Senegal could set an example to other countries in the area by abolishing it.

4. In relation to article 7 of the Covenant, the report referred to article 6 of the Constitution and went on to explain the circumstances in which and the period of time for which a person might be held in police custody for the purpose of a preliminary investigation into a suspected offence. He asked what other rules there were to ensure that individuals were not physically ill-treated by the police and what procedures existed for investigating complaints by individuals of ill-treatment by the police and for dealing with the persons responsible.

5. In discussing article 9, the report listed cases in which the deprivation of liberty was permitted, including "arrest in execution of an order to take into custody"; that was rather a general expression and he asked for what purposes such an order might be given. Another case mentioned was the "deprivation of liberty in application of certain precautionary measures"; he asked what those precautionary measures were and whether they included the detention of political prisoners. He

would like some indication of the length of time for which individuals were normally held in custody pending trial and whether there was any maximum period. He could find no reference to habeas corpus, in relation to article 9, paragraph 4, although there was a reference to a procedure for obtaining provisional release pending trial. He asked what happened if an individual complained that he had been detained in custody in circumstances which were not permitted by law, and whether he could go to a court to have the question of the lawfulness of the detention determined by the court and to obtain prompt release if the court decided that his detention was not lawful.

6. With regard to the judicial system, described in connexion with article 14 of the Covenant, he noted that chapter VIII of the Constitution referred to a High Court of Justice, which seemed to be composed largely of members of the National Assembly elected from among themselves, although it was presided over by a professional judge. It was therefore a highly political body and it also appeared to have jurisdiction to try the President and members of the Government and their accomplices for alleged offences, which could also be of a highly political character. A court with that composition and jurisdiction could be a rather dangerous instrument in certain circumstances; he asked why it was considered desirable to take the particular cases concerned outside the jurisdiction of the ordinary courts composed of professional judges. He would like to know what cases had been considered by the High Court of Justice, whether its procedures complied in all respects with article 14 of the Covenant and whether a person who was convicted by the Court had the right to have his conviction and sentence reviewed by a higher tribunal, as required by article 14, paragraph 5, of the Covenant.

7. He thought that there had at one time been a Security Court in Senegal with jurisdiction to try political cases and to provide for preventive detention in cases involving a threat to national security. He asked whether that court still existed and, if so, what its composition and jurisdiction were, whether its procedures complied with the requirements of article 14 of the Covenant, whether there was any appeal against its decisions and how many cases it had considered during the period since the Covenant had entered into force for Senegal.

8. He had always felt that article 19 covered some of the most important rights in the Covenant, but the report dealt with it merely by a reference to article 8 of the Constitution. That article, however, made the freedoms of expression and information subject to the "provisions of the laws and regulations"; he asked what controls existed, particularly with regard to publications and the press. He associated himself with the questions already asked about the press code which had been introduced in 1979 and asked whether the two press commissions that it had established were justified under article 19, paragraph 3, of the Covenant.

9. With regard to freedom of association, he asked what restrictions there were on the right to form and belong to political parties and how such restrictions were justified under articles 22 and 25 of the Covenant.

10. He had the impression that many ordinary people were rather sceptical about the prohibition of propaganda for war laid down in article 20, paragraph 1, of the Covenant and regarded it as somewhat hypocritical in an age when major countries in the world were spending vast sums of money and devoting enormous resources of effort and knowledge, not to the relief of human suffering and the improvement of living standards, but to the development of ever more powerful weapons of mass destruction, flaunting them as major technological achievements and even displaying them in mighty military parades in their capital cities. That could only be described as propaganda for war and it was the biggest crime against humanity and by far the greatest threat to the rights and freedoms, and particularly the right to life, which the Covenant sought to protect.

11. On the subject of the right of self-determination, laid down in article 1 of the Covenant, the report drew attention to Senegal's adherence to the principle recognized in the Charter of the Organization of African Unity that it was the inalienable right of all people to control their own destiny. Compared with the fourth paragraph of the preamble to the Covenant and with article 2, paragraph 1, the provision in article 1, paragraph 1, was expressed in significantly broader terms. He considered that it was unacceptable for States parties to the Covenant, or indeed for any other State, to intervene in the affairs of any State so as to interfere with the right of its people to self-determination, and to do so with armed forces and weapons of war which brought terror and destruction to many innocent people; such actions could only be regarded as flagrant violations of the letter and spirit of the United Nations Charter and of the Covenant.

12. He would be interested to know whether the representative of Senegal took the same view as he did on the two issues he had mentioned.

13. Mr. HANGA said that the introduction to the report indicated that the provisions of the Covenant had not been incorporated into Senegalese domestic law; he asked whether an individual who considered that his rights under the Covenant had been violated could invoke the provisions of the Covenant when there was no corresponding provision in Senegalese law, and which law would apply if there was a contradiction between the provisions of the Covenant and the provisions of domestic law. On a closely connected subject, he asked what publicity had been given to the provisions of the Covenant in Senegal and whether the Covenant had been published in the different languages spoken in the country.

14. The question of the establishment of a new international economic order, which the report mentioned in connexion with article 1 of the Covenant, was of the utmost importance, for without a new international economic order it was not possible to solve all the problems, not only economic but also political and legal, faced by mankind. All Governments must keep that concept in mind when trying to solve national and world problems.

15. In connexion with article 2 of the Covenant, he asked to what extent the application of the provisions of the Covenant was ensured to all those who lived in Senegal, including resident aliens.

16. In relation to article 3, he asked what was the legal capacity of women, especially in respect of the conclusion of contracts, and specifically labour contracts, and whether it differed from the legal capacity of men. He asked what role was played by women in the political and social life of the country.

17. The report stated, in connexion with article 5, that Senegal recognized the predominance of international law over internal law; that question was also regulated by articles 78 and 79 of the Constitution. He asked what the situation was if a provision of an international instrument to which Senegal was party was not reflected in its domestic legislation.

18. Questions had been asked about the death penalty in connexion with article 6 of the Covenant, but that article was concerned also with health and living conditions; he asked what laws existed to regulate public health and what steps were being taken by the Government to improve the level of health and well-being of the Senegalese people.

19. In connexion with article 8, he requested information on the Labour Code and what the concept of work was. Work could not be regarded as a commodity since it was the intellectual and physical product of the individual and it had changed, and would continue to change, the face of the world. He asked in what way the responsibility of employers towards their employees was regulated and how work contracts, and particularly collective labour contracts, were concluded.

20. He asked what legislative measures and what legal practice existed to ensure that individuals who had been arrested or detained were judged within a reasonable time, in accordance with article 9, and what legal and administrative means were available to an individual who had been arrested or detained to ensure the implementation of article 9, paragraph 3, of the Covenant.

21. In connexion with article 14, he asked what bodies judged labour conflicts in Senegal and whether, in addition to criminal and civil courts, there were administrative courts to consider administrative cases. The question of the independence of the judges was of great importance; without an independent judiciary, it was impossible to ensure the full implementation of the provisions of the Covenant. He asked for information about the organic law referred to in article 80 of the Constitution. He would like to know what was done to ensure the independence of judges and what professional and moral criteria governed their appointment.

22. In relation to article 20, paragraph 1, he asked whether there was a law which effectively prohibited war propaganda and laid down penalties. On the subject of freedom of assembly, he asked whether Act No. 78-02 prohibited public meetings only in the event of a real threat to public order or whether it included other restrictions as envisaged in article 21 of the Covenant.

23. In connexion with the information provided on article 23 of the Covenant, he asked about the legal system for property: whether spouses had community or separation of goods and whether there were different customs in different parts of the country in that matter.

24. In the context of article 24, he asked what the legal situation of illegitimate children was and to what extent they could be legitimized. He asked whether adoption existed and whether adopted children had the same rights as legitimate children.

25. In connexion with article 25, the report referred to Act No. 61-33. He asked for information on the professional and moral conditions which had to be met by candidates for public posts and on the procedure for ensuring the constitutionality of laws.

26. In relation to article 27 of the Covenant, he asked what was being done to ensure the national development and protect the culture of national minorities.

27. Sir Vincent Evans took the Chair.

28. Mr. KOULISHEV said that, as the report indicated, Senegal had engaged in considerable activity in international co-operation in the field of human rights, in particular by becoming party to many international conventions in that field.

29. On the question of the incorporation of the provisions of the Covenant into Senegalese domestic law, in relation to article 2 of the Covenant, he noted that the report mentioned that Senegal recognized the predominance of international law over internal law. Articles 77 to 79 of the Constitution were relevant in that respect; he asked whether the Covenant had been ratified in accordance with the provisions of article 77 and whether it had been ratified by means of a law. He would like further explanation of the reservation on the question of reciprocity, in article 79, and whether it had ever been applied. The question of reciprocity was much more difficult in relation to multilateral instruments, particularly on human rights, than in the case of bilateral instruments. Perhaps the reservation was related to article 60 of the Vienna Convention on the Law of Treaties. He would also like to know whether Senegal had considered it necessary to modify its domestic law to take into account the provisions of the Covenant.

30. With regard to article 2 of the Covenant, he asked for information on the administrative or legal procedures to which an individual could appeal if he felt that his rights had been violated. The commentary on article 3 was very brief; details could perhaps be given on the role of women in the economic and political life of Senegal. The report stated that the death penalty could be imposed in strictly limited cases for particularly serious crimes; he wondered what kinds of serious crimes were envisaged. With respect to article 7 of the Covenant, he inquired whether there were any legal provisions expressly prohibiting torture or cruel, inhuman or degrading treatment or punishment.

31. According to the commentary on article 20 of the Covenant, article 4 of the Constitution provided that any regionalist propaganda liable to affect the internal security of the State or the territorial integrity of the Republic was punishable by law. He asked what was meant by "regionalist propaganda" and whether that provision was consistent with articles 19 and 27 of the Covenant. Senegal had signed the Charter of the Organization of African Unity, which affirmed the principles of peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration and of non-interference in the internal affairs of States. It should be pointed out, however, that the obligation to settle disputes by peaceful means was not the same as the prohibition by law of propaganda for war within the meaning of article 20, paragraph 1, of the Covenant. There seemed to be no provision to that effect in Senegalese legislation. There was the danger that a State which considered such a provision unnecessary or unimportant might go further and challenge the universally recognized principle of non-use of force.

32. Article 3 of the Constitution contained an interesting provision concerning political parties. He was curious to know how that original four-party system worked in practice and what precise legislation governed the formation of political parties.

33. In conclusion, he noted that the terms of article 1 of the Constitution were more limited than those of article 26 of the Covenant and requested more information on the various minorities in Senegal and their status in the political and cultural life of the country.

34. Mr. JANCA^V said that, although the report and the introductory statement had furthered the Committee's understanding of the situation in Senegal with respect to the observation and implementation of the Covenant, the report itself was mainly confined to re-statements of the basic legal regulations of Senegal concerning the protection of human rights and fundamental freedoms. It did not give enough detail on the direct implementation of the relevant provisions of the Covenant, on progress made in the enjoyment of human rights in Senegal or on any factors and difficulties affecting the implementation of the Covenant.

35. He would be interested to learn about the relationship between international and domestic law in Senegal and in particular the status and legal effect of the Covenant within the country's legal system. He would like to know whether courts in Senegal could take decisions based directly on the provisions of the Covenant or whether their decisions had to be based on corresponding national legislation interpreted in conformity with the Covenant. In the latter case, he wondered how the courts dealt with contradictions between the provisions of the Covenant and domestic legislation.

36. He asked whether the people of Senegal were ethnically and culturally homogeneous, what percentage of women were employed and whether an appreciable number of women had acquired economic independence. He also asked about the extent to which women were involved in the political life of the country and represented in legislative, judicial and other State organs. Information concerning the participation of women in educational, medical and other professions would give the Committee a clearer picture of the effect of the Covenant on the enjoyment of human rights and freedoms in Senegal.

37. He inquired whether Senegal, a well-known supporter of the right of all peoples to self-determination, had any provisions guaranteeing respect for the right to self-determination of peoples within its own boundaries.

38. The Constitution specified fewer grounds on the basis of which discrimination was forbidden than did the Covenant. He asked whether there were laws prohibiting discrimination on the basis of the grounds referred to in the Covenant. Act No. 61-33 of 15 June 1961 prohibited discrimination in the conditions of access to the public service. The question was whether the prohibition covered only the grounds specified in the Constitution or covered also those mentioned in the Covenant.

39. It was difficult to conclude, on the basis of the information provided in the report, that the Code of Penal Procedure prohibited, either directly or indirectly, inhuman or degrading treatment or punishment. Additional information was required in that respect. According to the commentary on article 9 of the Covenant, a person held in custody pending trial enjoyed a number of guarantees which helped to speed up the procedure and thus prevented the period of detention from being unnecessarily prolonged. The report did not, however, define those guarantees. It was his impression that the Code of Penal Procedure did not state how long a person could be held in custody pending trial.

40. In relation to article 22 of the Covenant, the report stated that free association was permitted with no requirement other than prior declaration and registration. It added that the competent administrative authority could refuse registration only on statutory grounds, and in particular if the objective of the association was illicit. He would like to know which objectives of an association could be considered illicit according to the laws in force.

41. He did not grasp the full legal meaning and implications of the provision that made the husband the head of the family exercising that power in the common interest of the married couple and of the children. The wording did not seem to be consistent with article 23, paragraph 4, of the Covenant.

42. It was a pity that the comments concerning article 25 of the Covenant were not fuller. It would be useful for the Committee to learn more about the composition, competence and powers of the institutions conducting public affairs and about the conditions under which citizens could be elected to the various State bodies. With regard to article 27 of the Covenant, he requested information on the size of minority groups and asked whether there were schools and mass communications media operating in the languages of the minorities and what legal guarantees there were for the development of their cultural life.

43. Mr. OPSAHL said that the Committee welcomed the clarity and conciseness of the report and appreciated the contribution which Senegal had made, at the national and international levels, to the promotion and protection of human rights in such fields as assistance to refugees. Certainly the Constitution of Senegal could serve as a model in discussions on constitutional reform.

44. Article 56 of the Constitution stipulated that the law should lay down the rules in respect of a number of issues related to human rights. He inquired whether the list was exhaustive. Article 1 of the Constitution stated, on the one hand, that the Republic guaranteed equality before the law of all citizens without distinction as to creed, and, on the other hand, that the nation's motto was "One people - one goal - one faith". That apparent contradiction prompted the question whether the religion of the majority had been elevated to the status of the State religion. He would also like more information concerning the four-party system referred to in article 3 of the Constitution.

45. Article 6, paragraph 5, of the Covenant laid down that sentence of death should not be imposed for crimes committed by persons below 18 years of age. The commentary on article 6 stated that if a minor above the age of 13 incurred the death penalty, he would be sentenced to between 10 and 20 years' imprisonment where the circumstances of the case and the personality of the offender so warranted. He requested further clarification concerning that provision.

46. The information on article 7 of the Covenant given in the report related more to conditions of detention than to treatment and was therefore more relevant to article 9. He was pleased to note that damages of no less than 10,000 francs per day could be claimed for arbitrary detention and would like to know how much that figure represented in other currencies. In connexion with article 9, the report stated that during the investigation of flagrant offences, the criminal police officer could hold three categories of persons, including persons able to give information concerning the facts. The report did not state, however, whether such persons were informed of the reasons for their arrest. It also failed to state whether there were guarantees against the unnecessary prolongation of pre-trial detention or what was the average and maximum length of such detention.

47. According to the commentary on article 13, an alien who was the subject of an expulsion order could appeal to a judicial or administrative body to have his case reviewed. He would like to know precisely which bodies and whether all the provisions of article 13 were adhered to. In connexion with article 16, he welcomed the fact that civil death was not among the penalties provided for in Senegal. He was curious to know, however, what were the penalties deprivative of rights which might affect legal personality.

48. Mr. LALLAH said that the excellent report submitted by Senegal, one of the four African States parties to the Covenant and the Optional Protocol, covered all the articles of the Covenant and gave a good idea of the legal framework for the observance of human rights, as was to be expected of a country with a tradition of respect for human rights. It should not be forgotten, however, that article 40 of the Covenant required States parties to submit reports not only on the measures adopted to give effect to the rights recognized therein, but also on the progress made in the enjoyment of those rights and the factors and difficulties, if any, affecting the implementation of the Covenant. The Committee would better be able to appreciate the situation in Senegal if it received information on any such factors and difficulties.

49. He did not entirely understand the status of the Covenant and the way in which it was implemented within the legal framework. In particular, he would like to know whether article 79 of the Constitution applied only to bilateral treaties or also to multilateral instruments such as the Covenant, and whether there were any domestic laws to render invalid or inoperative internal legislation that was in conflict with international instruments. He was assuming that it had not been found necessary to adopt specific legislation to give effect to the Covenant.

50. The commentary on article 12 of the Covenant stated that although the Act of 4 February 1965 would appear to have the effect of limiting freedom of movement, it was justified, in particular, by the fact that it protected Senegalese workers, who often lived in inhuman conditions abroad, and served the interest of economic development. Inasmuch as the provisions of the Act went far beyond article 12, he wondered whether the courts were competent to declare the Act invalid. Another question was whether a person who felt that his rights under the Covenant had been violated had to submit a case to the courts before they could act. In the absence of specific provisions prohibiting propaganda for war in Senegal, he wondered whether someone engaging in such propaganda could be prosecuted and how the matter would be dealt with.

51. He noted that the report, in dealing with article 22 of the Covenant, specified certain grounds on which the competent administrative authority might legally refuse registration of an association. He asked whether, when registration had been refused, there was any right of appeal from the decisions of the executive power to the court. He wondered whether Act No. 65-40, which, inter alia, provided for the dissolution by administrative authority of occupational organizations without previous submission to the courts, could not be seen as being in conflict with paragraphs 1 and 3 of article 22 of the Covenant.

52. On the subject of article 6 and the right to life, he said that Senegal seemed to understand its obligations under the Covenant with regard to preventing individuals from taking the life of others. He asked whether the Government did not feel that the article dealt also with the social value and the quality of life and whether the Government had any specific policies designed to give a more profound interpretation to the article. With reference to articles 3, 23 and 24 of the Covenant he asked whether there were any deliberate government policies to ensure that women were in a position to enjoy the same rights as men. In that connexion he drew attention to the reference in the section of the report dealing with article 24 of the Covenant to the problem of the nationality of a legitimized natural child; it did not seem that the father and the mother enjoyed equal rights in that respect.

53. Mr. GRAEFRATH, referring to the legal framework for the protection of civil and political rights in Senegal, asked whether the statement that any victim of a violation of the rights provided for in the Covenant could invoke Senegalese law before the relevant courts meant also that he could invoke the Covenant directly.

54. He expressed his appreciation of the reference in Part I of the report to Senegal's assistance to liberation movements and asked whether the Committee could receive more information on how Senegal perceived the link between the establishment of a new international economic order and the right of peoples to self-determination.

55. With reference to article 2 of the Covenant, which prohibited discrimination on various grounds, he noticed that there was no mention in the Senegalese report of certain important grounds, namely language, political opinion, property and "other status". In connexion with article 6 of the Covenant, he would like more information on the results achieved by Senegal in its efforts to reduce infant mortality and fight epidemic disease. He would also like to know whether the statement that a pregnant woman sentenced to death did not suffer the penalty meant that she was sentenced but not executed.

56. In the commentary on article 7 of the Covenant there seemed to be no mention of any provisions in the Penal Code for the punishment of torture and inhuman treatment. He asked whether the provisions for imprisonment for debt referred to in the sections of the report dealing with articles 9 and 14 were not in conflict with article 11 of the Covenant. With regard to article 12 of the Covenant he would like some information on the percentage of the population which travelled abroad.

57. Article 14 stressed the principle of equality before the law and the importance of a competent, independent and impartial judiciary. He did not think that the separation of powers and the establishment of professional and irremovable judges were of themselves sufficient guarantees for the establishment of an independent judiciary. Furthermore, the irremovability of judges could be seen as a kind of discrimination and privilege vis-à-vis other professions on grounds of social status and could be dangerous to the establishment of a democratic society. He asked what were the preconditions for becoming a judge in Senegal, and how judges received their professional training. Noting that the report stated that the presumption of

innocence meant that the burden of proof lay with the plaintiff, he suggested that the problem of the presumption of innocence was possibly broader than the mere question of the burden of proof. He wondered whether the statement that legal assistance was compulsory before an assize court meant that the accused was considered not competent to defend himself, which would be in conflict with article 14, paragraph 3 (d) of the Covenant.

58. With reference to article 20 of the Covenant, he asked the meaning of the term "regionalist propaganda" in article 4 of the Constitution. He would like to know whether, in the commentary on article 22 of the Covenant, the reference to the requirements for free association meant that there was no right to form associations without prior registration. In connexion with article 23 of the Covenant, he asked the meaning of the term "marriage property system" referred to in connexion with divorce. With reference to article 27 of the Covenant he asked what minorities there were in Senegal.

The public meeting rose at 5.40 p.m.