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ON CIVIL AND
POLITICAL RIGHTS**



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Tenth session

SUMMARY RECORD OF THE 223rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 16 July 1980, at 10.30 a.m.

Chairman: Sir Vincent EVANS

later: Mr. KOULISHEV

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Covenant (continued)

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The meeting was called to order at 10.40 a.m.

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

Colombia (CCPR/C/1/Add.50) (continued)

1. Mr. GRAEFRATH commended Colombia for its interesting and detailed report and expressed his appreciation of the Colombian representative's introduction to that report, which had provided much additional information. However, it might have been better if that information had been given in the report itself, for consideration of reports was not merely a matter of examining extracts from constitutions, but of finding out how the Covenant was working in actual conditions such as the difficult circumstances prevailing in Colombia. He would also have welcomed information on the social background to the problems Colombia was facing and would have liked to learn what the measures taken under the state of siege actually were and how they affected human rights under the Covenant. He therefore endorsed the questions put by Sir Vincent Evans and other members of the Committee on the previous day.
2. He inquired what were the powers of the military criminal courts referred to in section I, paragraph 6, of the report and what was the scope of their jurisdiction. Had their competence been widened and to what extent had they replaced the ordinary courts?
3. He noted with appreciation that, in implementation of article 3 of the Covenant, men and women in Colombia were now recognized as having equal rights. However, equal rights for women were not achieved simply by legislation, but by changes in social conditions and in men's behaviour, and he would therefore welcome information on action taken in Colombia to enable women effectively to enjoy their rights.
4. With regard to the implementation of article 4 of the Covenant he, like other members of the Committee, would like to know why Colombia had failed to give notification of the state of siege and its wish to avail itself of the right of derogation.
5. He also endorsed the question put by other members of the Committee regarding the implementation of article 6, which concerned the right to life. He would have liked the report to contain information on relevant court decisions concerning violations of the right to life and, particularly, political murder. Closely connected with the right to life was the question of infant mortality. In his ~~view, the right to life did not merely mean an entitlement not to be killed,~~ but extended to the provision of living conditions necessary to ensure survival and the opportunity to do useful work: it was therefore connected with the urgent demands for a new international economic order. He understood that infant mortality was a serious problem in most Latin American countries and would like information on what had been done to reduce it in Colombia and with what results. Moreover, article 364 of Colombia's Penal Code stated that, if the motive for a homicide was mercy, the offender might be granted a judicial pardon. It was the first time he had seen such a provision mentioned in a country's report and it seemed to him that it might easily lay itself open to abuse. He would therefore welcome information on any regulations governing such pardons and on relevant court decisions.

6. With respect to the implementation of article 7 of the Covenant, he asked whether there were provisions in Colombian law dealing with medical and scientific experimentation, a subject on which the report gave no information.

7. In connexion with the implementation of article 9 of the Covenant, the second paragraph of article 28 of the Colombian Constitution referred to the possibility of a person suspected of attempting to disturb public order in time of peace being arrested, while the following paragraph referred to the steps to be taken if such a person had not been released within 10 days following the arrest. Considering that a person deprived of his freedom for more than 48 hours could normally apply for habeas corpus, he inquired whether the state of emergency had resulted in the loss of the right to habeas corpus and, consequently, of the various guarantees set out on pages 11 to 13 of the report. He also wondered whether there were safeguards in Colombia against deprivation of liberty for other than criminal reasons - on medical grounds, for instance. On the subject of bail, he said that, even though the financial situation of the accused had to be taken into account under article 458 of the Colombian Code of Criminal Procedure, he felt doubts about the whole question of bail in a country with many poor people and wondered whether the administration of justice was in fact equal for all.

8. Noting, in connexion with article 10 of the Covenant, that a new prison code was in preparation in Colombia he asked for further information on the existing prison conditions which needed to be improved. He also noted that juveniles under the age of 16 years received special treatment and inquired what was the minimum age of criminal responsibility.

9. One of the main principles laid down by article 14 of the Covenant was equality of access to a country's courts. Since economic and language barriers might make it difficult to ensure such equality, he would like to know what was the situation in Colombia in that regard and what action had been taken to help to overcome barriers of that kind. He also wondered what was the implication of the statement on page 30 of the report that a juvenile should not attend the hearing of his case. He also inquired whether there were any exceptions to the right of appeal against court judgements and, in particular, whether that right had undergone any modification as a result of the declaration of the state of siege.

10. Turning to the implementation of article 23 of the Covenant, he noted that article 116 of the Civil Code provided that persons over 18 years of age should be free to marry, yet the next article of the Code stated that the consent of the adoptive father and mother was required for the marriage of an adopted son under 21 years of age. He wondered why an adopted son was subject to different conditions.

11. Concerning implementation of article 25 of the Covenant, he noted that candidates for election to public office, particularly that of senator, President of the Republic and judge, were subject to many conditions. He wondered how those conditions, which he felt might make it very difficult for ordinary people to aspire to such posts, could be reconciled with the right of equal access to public service.

12. Finally, he, like other members of the Committee, wondered why the indigenous groups referred to in connexion with article 27 of the Covenant could not be regarded as an ethnic minority, particularly in view of the terms of Decree No. 1142.

13. Mr. LALLAH said that the report before the Committee was from one of the few States parties which had acceded to the Optional Protocol to the Covenant and was therefore especially welcome. It was also a report from one of the few States parties which was living under a state of siege and therefore could not adhere to the Committee's guidelines, which had been formulated for the benefit of States parties that had not derogated from any of the articles of the Covenant. In that connexion, he strongly supported the view expressed by Mr. Tarnopolsky that, in its report, such a State party should indicate not only the obligations from which it found it necessary to derogate but also the extent of, and necessity for, such derogations. Moreover, under article 40, paragraph 2, of the Covenant, States parties were required to indicate the factors and difficulties, if any, affecting the implementation of the Covenant, yet the report of Colombia gave no such indication. As a result of those omissions, he was unable to assess the impact of the state of siege on human rights in Colombia.

14. While recognizing Colombia's commitment to human rights, he submitted that the report should also have provided information on what measures the State was taking to protect human rights despite the state of siege. Article 2 (3) (a) of the Covenant, which provided that each State party should ensure that any person whose rights or freedoms had been violated should have an effective remedy, notwithstanding that the violation had been committed by persons acting in an official capacity, was all the more important during a state of siege, when some of the functions of the ordinary judiciary were transferred to military courts. When that happened, it was essential for the military courts to maintain the accepted methods of the judicial process, namely, to ensure that the guarantees of a fair and public trial and the right to a defence were respected. Again, it might be permissible to resort to preventive detention in an exceptional situation such as a state of siege, but such detention afforded possibilities for the grossest violations of human rights. He therefore inquired what positive guarantees were being granted and what measures taken by the Colombian Government, in implementation of articles 6 and 7 of the Covenant, to prevent such violations: were people subject to preventive detention allowed access to lawyers; were their families informed about their situation; how many people had been detained in preventive detention, during the last year for example; and how many people, if any, had died in such detention - inter alia, from self-inflicted injuries?

15. He noted that during the existence of a state of siege it became increasingly important to ensure that those acting in an official capacity could be punished if they transgressed legal norms. He therefore inquired to what extent Colombia had derogated from the provisions of article 2, paragraph 3 (a) of the Covenant and to what extent measures had been enacted to render military courts amenable to civilian control.

16. The safeguarding of women's rights also took on greater importance during a state of siege. In addition to article 3, there were a number of other articles in the Covenant linked with women's rights; in particular, he mentioned article 23, by virtue of which the family was entitled to protection by society and the State. It was to be presumed that the majority of those detained under the state of siege in Colombia would be men, the traditional breadwinners of the family, and that such detention would entail hardship for the women and children concerned. He

asked what measures were taken by the State to ensure that the fundamental group unit of society did not suffer harm during the state of siege.

17. His final question concerned the disappearance of persons. Such disappearance was not specifically mentioned by the Covenant, but a number of articles were relevant to it - for example article 9, dealing with the right to liberty and security of person. He wished to know whether, in the event that fugitives from neighbouring countries came to Colombia, the State would take measures to ensure their welfare.

18. Mr. MOVCHAN, expressing his appreciation for the co-operation of the Colombian representative with the Committee, noted that in the latter's introductory statement considerable attention had been devoted to the so-called state of siege existing in the country. However, apart from a brief reference in connexion with the implementation of article 4 of the Covenant (CCPR/C/1/Add.50, p.7 and in the annexes to the report, there was insufficient information on the state of siege. He would have liked further information from the Colombian Government as to what it now considered to be the situation in the country: was it a state of emergency or a state of siege, and what reasons had brought it about? Not only was it a very unusual situation for a State party to the Covenant to be in, but it also involved non-compliance with the requirements of the Covenant, specifically the requirement in article 4, paragraph 3 that any State party availing itself of the right of derogation should immediately inform the other States parties to the Covenant of the details of such derogation. As he understood it, no such information had been given. He therefore asked that Colombia should provide information regarding the provisions of the Covenant from which it had derogated, the reasons for such derogation, and the date on which such derogation would be terminated. In that connexion, he endorsed Mr. Lallah's comment to the effect that in their reports Governments should indicate any difficulties they had encountered in implementing the Covenant. He associated himself with the questions asked by his colleagues on the Committee regarding the reasons for the introduction of a state of siege, its characteristics, and the nature and extent of derogations from the Covenant. The very existence of a state of emergency implied that there had been such derogations.

19. He further asked how the mandate of authorities in Colombia had been changed as a result of the state of siege, how the powers of the judiciary had been limited, and what additional powers had been given to the Executive. How had the functions of the various courts changed and in what areas did the military courts now play the primary role? The existence of a state of siege clearly implied that such changes had occurred.

20. The Colombian report referred to various provisions which were not altogether clear to him. For example, he wished to know what was the present situation regarding a judge's powers in the matter of detention as mentioned in connexion with article 9 of the Covenant. Concerning the information on implementation of article 17 of the Covenant, he noted that the police were entitled under article 78 of the National Police Code to force an entry into places of residence by virtue of a warrant issued by the competent authority. He asked what was the present situation in that regard and who supervised such police activities and made sure such warrants were issued lawfully. He further inquired what was the permissible period of preliminary detention before a person was charged and brought to court.

21. Like Mr. Lallah, he was concerned over the situation in Colombia regarding the right of persons to be represented in court. He further inquired whether he was correct in his understanding that the state of siege had been in force in the country for 30 years.

22. Many more questions might be asked, but he would merely stress that in accordance with the Committee's guidelines and with the Covenant the principal task of States parties and of the Committee was to develop and encourage respect for civil and political rights. The Committee should assist States in the promotion of those rights and not in any way seek to apportion blame.

The meeting was suspended at 11.50 a.m.
and resumed at 12.15 p.m.

23. Mr. Koulishev took the Chair.

Suriname (CCPR/C/4/Add.4)

24. At the invitation of the Chairman, Mr. Waaldijk (Suriname) took a place at the Committee table.

25. Mr. WAALDIJK (Suriname), introducing his Government's report (CCPR/C/4/Add.4), said he wished to dispel any impression that the political change which had taken place in Suriname on 25 February 1980 was detrimental to the enjoyment of human rights as guaranteed in the country's Constitution.

26. Development was an essential precondition to the true enjoyment of human rights. Like most developing countries, Suriname was still struggling with the remnants of 300 years of colonialism. On attaining its independence on 25 November 1975, Suriname had received from the former colonial Power the sum of \$1.5 billion for its development. However, the delays in the execution of development projects resulting from the conditions attached to the use of those funds had created discontent, since the Government had been unable to fulfil its numerous promises to the satisfaction of the population as a whole. The factor of an approaching election, due to be held on 27 March 1980, had fanned the spark of dissatisfaction into a blaze. The desire to eliminate the tremendous arrears created by a very long period of neglect had created a revolutionary trend of thinking, and on 25 February 1980, a group consisting chiefly of non-commissioned officers had initiated a more hopeful future for Suriname. That event had been followed by the installation of a civilian Government on 15 March 1980. Violent deeds were still being done and rash statements were still being made, but there was a clear determination to provide a broader and better base for giving the citizens of Suriname an adequate experience of human rights. The fact that the changes had been made with so little bloodshed and with a rapid return to normality was especially important, and new meaning had been given to the principle laid down in article 4 of the Covenant.

27. The events of 3 and 4 July 1980 represented a milestone in the history of Suriname. On 3 July the Prime Minister had firmly informed the former colonial Power that Suriname no longer valued her guardianship and that it wished to be recognized as an equal partner at the negotiating table. On 4 July his words had been ratified by massive demonstrations of the people. Such new psychological freedom was inherent in the right of self-determination mentioned in article 1 of the Covenant.

28. Thus independence now had greater meaning for the people of Suriname. The country was now able to seize the opportunity offered by the Netherlands in its Memorandum on Human Rights and Foreign Policy dated 3 May 1979, paragraph 32 of which stated that development of the third world was an essential precondition for enabling the people who lived there to enjoy human rights in a real and meaningful sense. The people of Suriname now had a real chance to learn the significance of civil rights in a responsible manner within a foreseeable time and to enjoy the human rights established in the Covenant in a more effective way.

29. Pages 6 to 10 of the Government Declaration of 1 May 1980 gave some further information on the situation. The coup of 25 February 1980 had led to the establishment of the National Military Council, which had completely taken over the political, civil and military power. On 15 March 1980 the President of the Republic had reassigned the executive powers to a civilian Government. However, the National Military Council continued to function alongside the civilian Government. At present the country was ruled by the Government inaugurated on 15 March 1980, strongly supported by the National Military Council, which participated in the Administration through two cabinet ministers.

30. The Government did not deny that its formation had not taken place in accordance with the procedure laid down in the Constitution, which stipulated that a government should be formed by means of elections. The Government was of the opinion that because of the present situation and the fact that both the public and national safety still required an increased measure of alertness, the country should be ruled in close consultation with the National Military Council.

31. Many people were wondering when normal election procedures would be re-established. The Government deemed it necessary for the term of the present Parliament to be extended by at least one year, because in the present circumstances it was not possible to prepare for elections now. New elections would probably take place in October 1982, but they would be held only if the Government was completely convinced that it was absolutely impossible for the country to return to the conditions existing before 25 February 1980, when corruption and favouritism had reigned supreme and when the people had been misled by fraudulent manipulations of the poll, making the country a parliamentary democracy in name, but not in reality.

32. The Government was to initiate and complete comprehensive renewal projects in the political, social, economic and educational systems with a view to ensuring that the country would be ruled in accordance with the best democratic conditions.

A committee would be appointed to study the amendments to be made to the present Constitution. A law on political parties would be issued, stipulating on which principles they were to be formed and regulating their finances. Measures would be taken to ensure internal democracy within each political party that desired to participate in the elections. Furthermore, the election system would be revised; at the next elections the legal voting age would be 18 instead of 21 and the composition of Parliament would be based on the principle of proportional representation. The Government recognized that the press and other mass media could play important roles, but it considered it essential for a certain measure of organization to be effected within the press. The Government would, furthermore, appoint district councils with a view to involving the entire population in its course of action.

33. Mr. Waaldijk (Suriname) withdrew.

34. Mr. OPSAHL said that, while the representative of Suriname had provided some essential information on the changes which had occurred since his country had submitted its report, that report was presumably still valid as far as fundamental rights were concerned. He was pleased to note that Suriname's commitment to the Covenant had been strengthened by its acceptance of the Optional Protocol. It would be most interesting to know whether the new Government confirmed that commitment to the Optional Protocol and what measures were being taken to publicize its terms and to inform the people of the procedures available.

35. He took it that the admirable Constitution was also still valid, although it was to be amended with a view to making the country's parliamentary democracy more genuine than it had reportedly been in the past. The Constitution appeared to reflect, to a large extent, Suriname's obligations under the Covenant. The representative of Suriname might wish to indicate the extent to which the rights affirmed in the Constitution had been affected by the recent political changes. In particular, some information on the statute which now governed the legislative powers and the position of the citizens would be appreciated. The enabling law of 20 May 1980 appeared to confer upon the Government legislative powers normally vested in Parliament, thereby suggesting that the legislative authority was entirely in the hands of the Government. Was it possible to derogate from the rights affirmed in section I of the Constitution under present legislative procedures?

36. Article 11 of the Constitution stated that everyone was entitled to legal aid, but was there any specific law on legal aid? Article 133 gave the judiciary powers to declare laws unconstitutional, but was there any constitutional court as such, had any laws been declared unconstitutional in the past, and would that possibility still be provided under the new Government?

37. Article 3 of the Covenant dealt with the duty of States to ensure the equality of women. Would Suriname consider the possibility of proposing a woman to fill the forthcoming vacancy in the membership of the Committee, which at present had no female members?

38. Finally, it should perhaps be made clear to the representative of Suriname that the Committee, in dealing with the reports of States Parties under article 40 of the Covenant, was concerned with the implementation of the provisions of the

Covenant, not with violations, which would have to be considered under other procedures. It was, however, impossible to deal with the question of implementation without examining possible shortcomings, which amounted to non-implementation rather than to violations. Consequently, a careful investigation of the facts was necessary in order to ascertain whether the rights affirmed in the Covenant were protected in national legislation. All issues relating to implementation were matters for the Committee, and the procedures under article 40 of the Covenant were not intended to express condemnation.

The meeting rose at 1 p.m.