

**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**

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Tenth session

SUMMARY RECORD OF THE 240TH MEETING

Hold at the Palais des Nations, Geneva,
on Monday, 28 July 1980, at 3 p.m.

Chairman:

Mr. MAVROMMATIS

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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)

Costa Rica (continued) (CCPR/C/1/Add.46)

1. Mr. FREER-JIMENEZ (Costa Rica) said that he wished first of all to refer to a question that the experts seemed to have found particularly striking, namely, incorporation of the provisions of the Covenant into his country's legal order in conformity with article 7 of the Political Constitution in force. That article was rather similar to article 25 of the 1949 Constitution of the Federal Republic of Germany, which provided that the general rules of international law should be an integral part of federal law. Article 7 of his country's Constitution did not make specific reference to the general rules of international law, but to international treaties and agreements. It was true that a distinction should be drawn between legal provisions or rules that were laid down in a treaty and could be applied directly by a court and other rules whose application called for special legislation. Naturally, in the latter case the courts could not apply a rule directly unless the legislature had drawn up provisions establishing the necessary body or procedure for application of the rule in question. In that respect, therefore, article 7 sometimes called for adoption of domestic rules or laws. The most widely known precedent for article 7 of the Costa Rican Constitution was article 26 of the former French Constitution of 27 October 1946, which had stipulated that duly ratified and published diplomatic agreements had the force of law, even where they were contrary to French domestic law, without it being necessary to adopt further legislative provisions for their implementation other than those required for ratification. The formulation of article 55 of the current French Constitution was somewhat less explicit and contained a reciprocity clause, which probably made application of that article rather more complex. His country's system was therefore more advanced than most domestic legislation.
2. Turning to the questions raised by the experts regarding various articles of the Covenant, he recalled, with regard to article 1, that his country had voted in favour of General Assembly resolutions 34/65, 34/70 and 34/90 concerning the situation in Palestine and the Middle East. His country had established diplomatic relations with Israel in exercise of its sovereign rights, and that did not imply any failure to recognize the right of all peoples to self-determination.
3. Where article 2 of the Covenant was concerned, a series of norms had been introduced following ratification of the Covenant in order to supplement the provisions in question. His Government would forward a report on that question to the Committee at a later date, since the Mission in Geneva did not have the necessary elements to do so. Moreover, with regard to the conduct of studies with a view to establishing to what extent the Covenant was implemented by academic institutions, his Government would be requested to supply specific information. His delegation knew of no instance where the scope of the provisions of the Covenant was broader than that of the provisions of his country's domestic legislation. In order to establish whether the Inter-American Convention on Human Rights would prevail over the International Covenant on Civil and Political Rights there would have to be a conflict between the two instruments, and to his knowledge there had so far been no such conflict. Establishing whether the status of the provisions of the Covenant was

constitutional or merely legal was no more than an academic question because, under article 7 of the Political Constitution, in the event of a conflict between an international agreement and a domestic law, it was the international agreement that prevailed.

4. He requested the Chairman to permit Miss Quiros, who was also a representative of his country, to reply to the questions that had been raised with regard to article 3 of the Covenant.

5. Miss QUIROS (Costa Rica) said that many rules guaranteed equal rights for the sexes under her country's legal order. Costa Rican legislation laid down equality of the sexes regarding remuneration in article 167 of the Labour Code, which provided that the value of work should be assessed on the basis of quantity, quality and the circumstances in which it was performed, and not on the basis of age, sex, or nationality.

6. Where participation of women in government was concerned, more specific information on statistics concerning the number and percentage of women employed in the executive, the legislature, the judiciary and the diplomatic service would be supplied at a later date, since her delegation did not currently have those statistics at its disposal. However, she was in a position to say that in the current Government out of 14 ministers there were three women, who respectively held the office of Minister of Justice, Minister for Education and Culture and Minister for Youth and Sport. In the legislature, five of the 57 representatives were women, one of whom had been first vice-president of the Legislative Assembly for the 1979-1980 term. With regard to the possibility for Costa Rican women to be elected to public office, there was no discrimination whatsoever in that area, since article 1 of the Electoral Code provided that all Costa Ricans over the age of 18 years included on the electoral roll of the civil register were entitled to vote. Under articles 1 and 5 of the same Code, women could both vote and be elected President or Vice-President of the Republic, as representatives in the Legislative Assembly or a Constituent Assembly, and as mayors or town councillors.

7. The courts were not influenced in their decisions on divorce or other cases by whether the plaintiff was a man or a woman. The grounds for divorce set forth in article 48 of the Family Code were the same for men and women.

8. The proportion of males and females receiving primary and secondary education was roughly the same. However, statistics on that subject would be communicated to the Committee at a later date. As Costa Rican citizens, Indian women enjoyed the same rights in regard to education.

9. Under article 48 (1) of the Family Code, adultery was a ground for divorce whichever one of the spouses committed it.

10. Article 41 of the Family Code did not differentiate in any way between men and women with regard to the régime governing the spouses' property. Under the provisions of article 127 of the Family Code, parental authority was exercised by both mother and father. In the event of a conflict between the spouses, it was the judge that decided who should exercise authority in the interest of under-age children, in accordance with article 2 of the Family Code. Article 31 of the Civil Code provided that everyone had the right and the duty to have a name, which must be composed of two forenames followed by the father's surname and the mother's first surname. Legally the name of women did not change when they married.

Article 572 of the Civil Code did not differentiate in any way between the spouses where rightful inheritance was concerned. Article 156 of the Family Code provided that the spouses' obligations concerning maintenance should be equal and reciprocal.

11. Mr. FREER-JIMENEZ (Costa Rica), taking the floor again in order to reply to questions concerning other articles of the Covenant, said that the stipulation in article 4 of the Covenant permitting suspension of individual guarantees, which corresponded to the provisions of article 121 (7) of the Political Constitution, had never been implemented by his country's Government since the current Constitution had come into force on 7 November 1949.

12. With regard to article 5 of the Covenant, where the rights laid down in domestic legislation were more extensive than those set forth in the Covenant, it was domestic legislation that was applied.

13. With regard to article 6, under article 111 of the Penal Code homicide perpetrated in respect of members of the supreme powers for motives relating to their office was regarded as an aggravating circumstance. It was therefore not a question of "important persons", as erroneously stated in the report. Article 114 of the Penal Code provided that a security measure consisting in psychiatric treatment should be adopted in the case of persons who had attempted suicide. That article therefore did not penalize attempted suicide, as the report seemed wrongly to indicate. On the other hand, article 115 of the Code in question provided that anyone found guilty of having incited another person to commit suicide or having assisted another person in committing suicide should be sentenced to a prison term of one to five years. In order to check crime or keep it within certain limits, article 50 of the Constitution provided that the State should endeavour to ensure the welfare of the entire population of the country by organizing and stimulating production, as well as by ensuring an appropriate distribution of wealth. Government action in that area was based on that article. With regard to public health, as his country's representative had stated during the thirty-third World Health Assembly in May 1980, most of the goals of the 1971-1980 national health plan had already been attained by 1974 and exceeded since 1978. In that year the life expectancy of Costa Ricans of both sexes had reached 73.4 years and the mortality rate had dropped to 4.1 per thousand, the chief causes of death being diseases of the circulatory system, tumours and accidents, namely, the same causes as in developed countries. Infant mortality had dropped from 27.6 to 22.3 per thousand live births in 1979. Where the environment was concerned, several environment protection programmes were under way, such as those relating to: water supply; mains drainage and other systems for evacuation of waste water and for collection and elimination of solid waste; and action to combat water and soil pollution. It was important to point out that the Environment Division of the Ministry of Public Health considered and approved plans for housing and buildings constructed in the country, in order to check interior plumbing, as well as safety and health installations, and to see that those installations complied with the relevant standards.

14. With regard to article 7 of the Covenant, article 129 of the Penal Code provided for impunity in respect of injuries sustained voluntarily where they were brought about for health reasons. That provision referred to surgical operations carried out by medical practitioners with the consent of the patient in order to obtain live tissue or organs for grafts on to other persons, for the purpose of ensuring the recovery of the latter. In his country surgical operations that were necessary for organ transplants were among the "injuries sustained voluntarily" provided for in article 129 of the Penal Code.

15. With respect to article 8 of the Covenant, the report was wrong in stating that article 55 of the Penal Code gave a convicted person the option of paying off a fine imposed on him by working without remuneration for municipal authorities, the public administration and even private enterprise; what article 55 of the Code actually stated was that, having examined the prisoner's psychological, psychiatric and social characteristics, the Institute of Criminology might authorize the convicted person to pay the fine or serve the prison term to which he had been sentenced by working for the public administration, for autonomous and semi-autonomous State institutions and agencies or for a private enterprise. For that purpose, a normal day's work was equivalent to one day's fine, and two normal days of work were equivalent to one day of imprisonment. Work of all types carried out at the Centre for Social Rehabilitation and outside that Centre was calculated in the same way. The wages in question went either entirely or in part towards payment of the fine imposed. The prisoner enjoyed the advantages that the State and State institutions granted to workers, but there was no labour relationship between the employer and the imprisoned employee. The Costa Rican Government would send the Committee supplementary information in that connexion. Where forced labour was concerned, the Legislative Assembly had, by Act No. 2561 of 11 May 1960, ratified Convention No. 29 on forced and compulsory labour. That ratification had been registered on 2 June 1960. Convention No. 148 on the environment had not yet been ratified.

16. With regard to article 9 of the Convention, the Penal Code stipulated in article 97 of Title 6, Book 1, that security measures were only applicable to persons who had committed an offence in cases where the report submitted by the Institute of Criminology gave reason to believe that those persons were likely to commit a further offence. Under article 98 of the same Code the judge was required to impose security measures in certain specific cases, which were listed. Articles 99 and 100 of the same Code governed the application of security measures to young persons between the ages of 17 and 21 years. Article 101 (section II) specified that security measures included curative measures, confinement measures and surveillance measures. Article 102 set forth the way in which security measures were to be implemented and specified which categories of persons were to be sent to a psychiatric hospital or an establishment for special and educational treatment and to work farms or labour establishments, in which instances probation should be prescribed, etc. It also provided that the Institute of Criminology should keep the judge informed of the conduct of persons placed under the probation system. In the context of those provisions, the judge might prohibit a person from residing in, or frequenting, a certain place. Moreover, article 39 of the Political Constitution provided that a person might be convicted only of an offence or misdemeanour sanctioned by a pre-existing law and under a definitive sentence handed down by a competent authority, after the accused had exercised his right to a defence and his guilt had been duly proved. Imprisonment for debt in civil or labour cases, or imprisonment ordered on grounds of insolvency, bankruptcy etc., did not constitute a violation of that article. Article 37 of the Constitution stipulated that no one could be detained without proof that he had committed an offence and without an order in writing from a judge or the authority responsible for ensuring respect for public order, unless the person in question was an escaped prisoner or an offender caught in the act; however, in all events, the prisoner must be placed at the disposal of the competent judge within 24 hours. Article 38 provided that no one could be imprisoned for debt.

17. In accordance with article 37 of the Political Constitution, no one could be remanded in custody by the police for longer than 24 hours. In criminal proceedings the judge could order that the accused should be remanded in custody for the duration of the trial. Remand in custody was governed by articles 292 to 296 of the Code of Criminal Procedure.

18. In accordance with article 289 of the Code of Criminal Procedure, the accused was invited to choose a defence counsel before being brought before the competent judge. If he failed to do so, or in the event of a refusal by the lawyer, the judge appointed a counsel under article 83 of the Code, without prejudice to the accused's right subsequently to choose another counsel, should he so desire.

19. Costa Rican law did not provide for imprisonment for debt or non-fulfilment of a contractual obligation. The only restrictions on the right to leave the country, whether for Costa Rican citizens or for aliens, concerned persons required to pay alimony and persons released on bail. The right of re-entry was safeguarded by article 22 of the Political Constitution, the last paragraph of which provided that no requirements could be issued to prevent Costa Ricans from entering the country. Anyone losing Costa Rican nationality was subject to the new provisions applicable to all aliens.

20. Expulsion of aliens was governed by the law on the expulsion of aliens. Aliens could appeal to the courts against an expulsion order by the executive power. Further information on that question would be provided later.

21. Regarding article 14 of the Covenant, the principle of presumption of innocence was embodied in article 1 of the Code of Criminal Procedure and information on the jurisprudence of the courts in that respect would be communicated later. Costa Rican legislation did not provide for recourse to the services of an interpreter where an accused person did not understand or speak the language used at the hearing, but the courts had established a practice in the matter, details of which would be communicated later.

22. In accordance with article 7 of the Political Constitution, all public treaties and international conventions took precedence over Costa Rican municipal law, as from their promulgation.

23. Judges could not impose penalties heavier than those provided by the law. At most, they could impose security measures when they considered that the sentence pronounced had not led to the rehabilitation of the convicted person. With regard to appeal, the legislature had considered that, to avoid overburdening the courts, only sentences of more than two years should be subject to appeal. The competent authorities would provide written information on that point at a later date.

24. In connexion with article 14 (b), he said that under article 498 of the Code of Criminal Procedure, it was always open to the victim of a miscarriage of justice to take action against the State for damages provided that such person was not the source of the miscarriage of justice. The same applied, under article 45 of the Civil Code, when a person had been falsely accused; in that case, the person responsible was liable to pay reparation to the injured party.

25. On the question of legal personality, article 13 of the Civil Code provided that a person had rights, including the right of inheritance, as from the three hundredth day before birth. Equality before the law also applied to the children of incestuous relations, under article 54 of the Political Constitution.

26. Freedom of thought, conscience and religion was embodied in article 75 of the Political Constitution, which provided for an annual State grant to the Apostolic Roman Catholic Church, without prejudice to the right of followers of other faiths to enjoy freedom of worship as long as they did not undermine morality. On the separation of Church and State, while there was no real separation, it should be borne in mind that, under articles 131 and 142 of the Political Constitution, only secular persons could be appointed to the office of President of the Republic or as Ministers. Regarding the oath to be taken by State employees and what would happen if the employee concerned was agnostic, he said that no provision had been made for such a case. The expression "universal morality and good customs" meant the moral standards recognized by civilized nations, standards which, being imprecise, had to be interpreted and specified by the courts, both nationally and internationally.

27. Freedom of expression was recognized for all persons, including aliens. Article 19 of the Political Constitution granted aliens absolute freedom of oral or written expression, provided - and that was the sole restriction on that right - that they did not interfere in the political affairs of the country. Article 24 of the Political Constitution stated: "Private documents and written or oral communications of the inhabitants of the Republic are inviolable". He noted that the text spoke of "inhabitants" of the Republic, a term which included aliens. Under article 198 of the Penal Code abuse of power by a police or administrative authority was regarded as an aggravating circumstance. Where such abuse involved moral or economic prejudice, the injured person could take action for damages against the State.

28. On the question of political propaganda, article 79 of the Electoral Code provided that political parties had the right at all times to conduct electoral propaganda but that demonstrations or parades were authorized only during the two months prior to elections. In accordance with article 85 of the Code, such activities in so far as radio and television companies, periodicals and publishing houses, duly registered by their representatives with the Supreme Election Tribunal, were concerned, were authorized as from proclamation of the elections. That measure was designed to prevent false information in the pre-electoral period.

29. As far as propaganda for war was concerned, that was regarded as unthinkable and there were no provisions against it in Costa Rican legislation. However, article 280 of the Penal Code prescribed a penalty of one to six years' imprisonment for any person who, by acts of hostility not approved by the national Government, provoked an imminent threat of a declaration of war against the nation, exposed the inhabitants of the country to reprisals against their person or their property, or compromised the friendly relations between the Costa Rican Government and a foreign Government.

30. With regard to article 22 of the Covenant, article 60 (2) of the Constitution prohibited foreigners from exercising direction or authority in trade unions. However, foreigners were free to belong to a trade union and that provision of the Constitution was more liberal than article 22 (2) of the Covenant, which permitted States parties to restrict the exercise of that right by both nationals and foreigners "in the interests of national security or public safety, public order, (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

31. Freedom of association was assured in practice in the plantations and elsewhere, but difficulties had arisen in the event when certain employees had indicated their intention to hold trade union meetings on premises belonging to the Compañía Bananera de Costa Rica, in contravention of article 45 of the Constitution, which proclaimed the inviolability of property. The Government of Costa Rica was following the matter very closely.

32. Regarding the role of employers in employees' organizations, particularly in the plantations, he invited the Committee to consult the report of the Comisión de Expertos en Aplicación de Convenios y Recomendaciones, Informe III (Parte 4-A) 1980, page 87, paragraph 2.

33. Regarding article 24, stateless persons in Costa Rica enjoyed the same status as foreigners. Under article 13 (3) of the Constitution, the children of stateless parents born in Costa Rican territory were Costa Rican citizens if their parents declared them as such while they were minors or if they themselves indicated their wish to be so declared before the age of 25 years.

34. Article 54 of the Constitution prohibited any discrimination between children based on the nature of their filiation. Article 53 of the Constitution imposed the same obligations on parents in respect of all their children and affirmed the right of all people to know who their parents were, in accordance with the legislation in force. Article 91 of the Family Code permitted children and their descendants to ascertain their filiation on their father's and mother's side. In accordance with those principles, natural children had the right to inherit from their parents in the same conditions as their legitimate brothers, subject to proof - except in case of recognition - of their filiation with the de cujus by the establishment of paternity. In that case, transmission of the inheritance was suspended pending a legal decision on paternity.

35. With regard to article 25 of the Covenant and more particularly new political movements, article 96 (c) of the Constitution denied the right to receive contributions to parties which had not obtained a minimum of 5 per cent of votes in the electoral constituency where they were registered, in order to avoid an excessive number of small political parties which might distort the democratic régime.

36. In reply to a question on the obligation to vote, he pointed out that, under the Covenant, every State party was required to guarantee the rights enshrined in that instrument. There was therefore nothing to prevent a State from laying down as an obligation what in the Covenant, appeared, only as a right. Moreover, as voting was secret, in accordance with article 93 of the Constitution, an obligation to vote left open the possibility of abstention the time of casting one's vote.

37. With regard to article 26 of the Covenant, he mentioned that under article 33 of the Constitution "all men are equal before the law and no discrimination contrary to human dignity may be exercised". In that context the word "men" meant "human beings" or "persons".

38. Miss QUIROS (Costa Rica) stated that the indigenous population was, of course, also covered by the article in question.

39. Article 78 of the Constitution guaranteed access to education. In regions where there was a large minority population of indigenous persons, instruction was given in Spanish and in the language of the minority involved. The same applied in areas where there was a sizeable English-speaking population of Caribbean origin, as was the case in the province of Limón. Teachers had to have a command of the two languages of the place where they worked.

40. Her country did not practise any particular policy in regard to the assimilation of minorities. A comprehensive indigenous development project had been worked out for the benefit of the indigenous minority. Similarly, various laws and regulations for the protection of land-ownership by the indigenous population were being given practical application. On that point the Committee could consult the text of Decreto Ejecutivo No. 93036 of 2 November 1978.

41. The text of the Covenant had not been given public circulation in the languages of the minorities. Everyone had, however, had the opportunity of obtaining information on it through the radio, as there was practically no family not in possession of a radio set.

42. Participation of minorities in public life was guaranteed in the same way for all Costa Ricans and practice was in conformity with legislation. There were two minorities in her country: the indigenous minority and the English-speaking minority of Caribbean origin. There were no religious minorities properly so-called, but only various denominations which had a smaller following than did the Catholic Church. Only in that sense was it possible to speak of minorities. The right of the various minorities to the development of their own culture was guaranteed under the constitutional provisions already mentioned. Minorities had no special newspapers, although there was an English-language newspaper. It had to be remembered, however, that all citizens knew Spanish as they received education in that language.

43. Mr. FREER-JIMENEZ (Costa Rica) said that Costa Rica was so named because at the time of the discovery of America the Spanish colonizers had been especially struck by the abundance of agricultural produce and tropical fruit.

44. With regard to the publication and public dissemination of the Covenant, he explained that the text of that instrument, and of a bill, had been published in the Official Gazette and had been broadcast nationally by the radio on the occasion of its consideration by the Legislative Assembly. His country's report to the Committee had been drawn up by the Ministry of Foreign Affairs and would be published in the annual report of the Ministry to the Legislative Assembly which would appear on 1 May 1981. It could be said that wider circulation would be met with a measure of indifference among the public, especially in view of the fact that the majority of the rights set out in the Covenant were recognized and guaranteed by Costa Rican legislation and practice. He would, nevertheless, transmit to his Government the Committee's requests on that point.

45. With regard to the question of maternity allowances, he stated that under the Family Allowance Act his Government granted assistance to poor families, the assistance being given to the mother in a number of cases. Furthermore, article 51 of the Constitution provided special protection for mothers, children, old people and invalids. The special protection for mothers and minors was the responsibility of the National Children's Association in collaboration with other State institutions, in accordance with article 55 of the Constitution.

46. With regard to the independence of the judiciary, he stated that the Constitution provided all the necessary guarantees as, under article 164, the judiciary was subject only to the Constitution and the law and, under article 158, judges automatically remained in office unless there was a decision to the contrary adopted by a two-thirds majority of the membership of the Legislative Assembly, which in practice meant that the majority of political parties would have to vote together.

47. In addition, the Ley de Administración Pública (No. 6227) of 2 May 1968 laid down that officials of the administration who failed to carry out within a specified period judicial decisions rendered against the State incurred criminal and civil liability. That was one of the most advanced legislative measures of its kind, for the administration could incur liability even in the event of lawful conduct by the State. That was a veritable administrative code which surely went further than any other in the world.

48. On the subject of the right of asylum, he stated that article 31 of the Constitution made that a subjective right of the individual; there again, his country's legislation was one of the most advanced in the world in that sphere. It was for the Government to decide in each particular case whether the applicant satisfied the conditions necessary in order to be considered as persecuted for political reasons in accordance with the provisions of the regional conventions on the subject to which his country had acceded, namely the Caracas Conventions of 1954 on diplomatic and territorial asylum. The political authorities could exercise their own judgement in the matter, but subject to certain objective criteria. He had personally had to intervene in the case of a person from a neighbouring country who had been seeking asylum in Costa Rica. As a representative of the Government which had decided to reject the application, he had had to demonstrate to the competent courts that the applicant had not proved that he had been persecuted for political reasons; the Government's decision had been upheld by the judiciary.

49. With regard to the right to establish associations of wage-earners or of employers, he pointed out that article 60 of the Constitution placed both on an equal footing and allowed unions to be established freely for the sole purpose of obtaining and defending economic, social or professional advantages. Union activities were governed by article 169 of the Labour Code, under which a union was considered to be any permanent association of wage-earners, employers or persons exercising an independent profession or trade, established solely to consider, improve and protect the common economic and social interests of its members.

50. He concluded by saying that he remained available to the Committee for any further explanation which it might wish to have, and he undertook to transmit as soon as possible the additional information which members had requested. He would of course pass on to his Government all the comments made by the Committee.

51. The CHAIRMAN thanked the representatives of Costa Rica for the dialogue in which they had participated and requested them to transmit to their Government the Committee's thanks for the report which it had submitted and for the co-operative spirit which it had displayed.

The meeting rose at 5.25 p.m.