

**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**



Distr.
GENERAL

CCPR/C/SR.271
1 April 1981

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Twelfth session

SUMMARY RECORD OF THE 271st MEETING

Held at Headquarters, New York,
on Monday, 30 March 1981, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

CONTENTS

Consideration of reports submitted by States parties under article 40 of the
Covenant (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room A-3550, 866 United Nations Plaza.

Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

81-55469

/...

The meeting was called to order at 10.55 a.m.

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

Kenya (CCPR/C/1/Add.47)

1. At the invitation of the Chairman, Mr. Mathanjuki (Kenya) took a place at the Committee table.

2. Mr. MATHANJUKI (Kenya), introducing his country's initial report (CCPR/C/1/Add.47), said that, while it was not exhaustive, it covered areas of information which his Government had thought it important to provide to the Committee.

3. Mr. OPSAHL said that, although the report, together with the Constitution of Kenya also made available to members of the Committee, gave the Committee a basis to work on, he felt that it was the duty of the Committee to express the view that the report as such was not adequate to meet the requirements of the Covenant, particularly when the latter was considered in conjunction with the general guidelines and the practice of the Committee. Since the representative of Kenya could hardly be expected to provide at short notice all the information which members would be seeking, he suggested that the questions they put should perhaps be seen rather as suggestions to the Government of Kenya for the drafting of its next report.

4. Section 70 of the Constitution of Kenya, which was quoted in part in the report, seemed to be of key importance in ensuring the fundamental rights and freedoms of the individual. Further explanation was therefore required of how the limitations mentioned in that section had come into being and whether there were limitations to those limitations.

5. Section 74 (1) of the Constitution conformed to one of the basic provisions of the Covenant by expressly prohibiting torture and inhuman or degrading punishment or other treatment. However, section 74 (2) would seem to suggest that any law might depart from that constitutional prohibition. Although presumably that was not really the case, further elaboration within the wider context of section 74 (2) was called for. That provision seemed to constitute a clause saving legislation on various forms of punishment that had been lawful in 1963, irrespective of the constitutional provision in question. The Committee would require to know more about the extent to which Kenyan legislation in 1963 and at the present time provided for punishment of the kind referred to - probably corporal punishment - which might or might not contravene the prohibition of torture and inhuman or degrading punishment contained in the Covenant.

6. More detailed information was also required on the provisions of section 72, which were only briefly touched on in the report. He noted from the full text of the Constitution that section 72 (1) enumerated the cases in which a person might

/...

(Mr. Opsahl)

be detained, and he hoped that a later report from the Government of Kenya would provide greater detail so that each category could be examined.

7. The report referred to the Preservation of Public Security Act. He would like to know whether the Act permitted indefinite detention, to receive confirmation that the Act was not currently being applied and to have a more detailed explanation of how it functioned if and when it was invoked. Although the report described the purpose of the Act, it was not clear whether the term "public security" used in the Act matched the term "public emergency" in article 4 of the Covenant. He wished to know whether the judgement of the President when invoking public security was final or whether there was any further review. He requested further clarification concerning parliamentary approval when the Act was invoked; was it the task of the National Assembly to examine whether public security was threatened, and did it refuse approval if it did not agree with the President? He assumed that the granting of parliamentary approval would mean that the individual could be held indefinitely under the Act, and it therefore seemed to be important to ascertain the role played by the parliament; did it have to approve every single case of detention, or did it simply approve the decision to put the Act into application? In the latter case, it would seem that the safeguard of parliamentary approval was rather weak. He also asked whether such powers, which would require derogation under article 4 of the Covenant, had ever been resorted to and, if so, for what lengths of time, in respect of what numbers of persons and on what grounds. He had learnt from other sources that there was a safeguard in the form of a tribunal to review the question of detention, which would sit in camera every six months and whose decisions would not be binding on the executive; such a system seemed to offer too weak a safeguard in normal conditions, or even in an emergency situation, and did not conform to the requirements of the Covenant.

8. Further information was required on the practices of law enforcement officials, which were briefly referred to in the final paragraphs of the report. The statement that legal remedies were available and compensation was given "when" a person became a victim of torture seemed rather unfortunately worded. Although it was clearly desirable that law enforcement officials should be warned not to interfere with individual liberties, as stated in the report, that in itself did not meet the requirements of the Covenant. He wished to know how it was ensured that the Covenant was observed by everyone in public service, including law enforcement officials. It would be useful for the Committee to be informed whether the Board of Review mentioned in the report actually examined individual sentences or merely reviewed the conduct of prisoners. More information was required on the treatment of detainees and on prison regulations, and it was important to ascertain whether prisoners had the right to receive visits, have access to lawyers, receive and send correspondence and have reading materials at their disposal or whether such facilities were regarded as a privilege to be accorded at the discretion of the officer in charge of the place of detention. It was also important to know how many visits a prisoner was allowed.

9. Lastly, with regard to protection of the right to life, he noted that section 71 of the Constitution was not mentioned in the report. It would be useful

/...

(Mr. Opsahl)

to have information on the death penalty and on the provisions in section 71 (2) concerning the possibility of the taking of life in cases of defence of persons from violence or defence of property or to prevent the commission of a criminal offence. He requested clarification on the extent to which the taking of life was permissible, how often it occurred and how the law insured against abuse.

10. Mr. ERMACORA said that the report did not explain the position of the Covenant in the Kenyan constitutional system and did not indicate the factors and difficulties, if any, affecting the implementation of the Covenant, as provided for in article 40. He requested information concerning the legal protection of the right to a fair trial in accordance with articles 14 and 15 of the Covenant and asked whether there were any difficulties in implementing article 3 of the Covenant so as to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the Covenant. He inquired about the status of the Ugandan refugees in Kenya under the Covenant or the Kenyan Constitution, especially with regard to personal liberty and freedom of movement. He asked whether the death penalty had been applied since Kenya had become a party to the Covenant. Did the Kenyan penal system provide for standard minimum rules concerning prison conditions and, if so, were those rules applied?

11. He inquired whether the Preservation of Public Security Act contained a non-derogation clause or whether the non-derogation clause of article 4, paragraph 2, of the Covenant was an internal obligation which the Government of Kenya must respect. He requested details concerning the Acts of Parliament referred to in the fifth paragraph on page 3 of the report and asked whether any disciplinary action had ever been taken when a law enforcement official exceeded the limits imposed on him. Lastly, he inquired whether the legal remedies mentioned in the last paragraph of the report had ever been invoked when a person had become the victim of torture by law enforcement officials.

12. Mr. HANGA said that the report submitted by Kenya was too brief. Nevertheless, the Committee could examine the human rights situation in that country from the point of view of the Constitution of Kenya, which contained a chapter on civil and political rights. There seemed to be provisions of civil law which were called for in the Covenant but which did not appear in the Constitution. He inquired whether provisions of the Covenant which were not incorporated in the Constitution could be invoked before a court of law or an administrative court in Kenya.

13. With respect to section 71 of the Constitution, which corresponded to article 6 of the Covenant, he asked what measures had been taken for the protection of life as a social value, such as improvement of the general living conditions of the population and action to eradicate epidemics and provide better health conditions.

14. Section 72 of the Constitution corresponded to article 9 of the Covenant. With respect to section 72 (1) (c), he inquired whether a person could be deprived of his personal liberty if he had not fulfilled his obligations under civil law - for example, a contractual obligation as referred to in article 11 of the Covenant. He also asked whether, under section 72 (1) (f), persons could in fact be deprived of their liberty up to the age of 18 years for the purpose of their education.

/...

15. With regard to section 72 (6), he inquired whether compensation for unlawful arrest or detention was made by the State or by the law enforcement official concerned. There seemed to be a contradiction between section 74 of the Constitution and the statement in the last paragraph of the report, and he requested information concerning the penalties imposed on law enforcement officials who practised torture.
16. With respect to section 75 of the Constitution, he asked to what extent the rights of property-owners were regulated in Kenya. The wording of section 76 of the Constitution seemed broader than the corresponding provision in article 17 of the Covenant, especially in view of the use of the word "reasonably" in subsection (2) (a) and (b). In regard to section 77, he asked what measures the judiciary could take to enforce its judgements and decisions if a conflict arose with the administrative bodies.
17. In connexion with section 78 of the Constitution, which corresponded to article 18 of the Covenant, he requested information on equality of treatment for different religions and on whether religion was separate from the State. Concerning section 79, he inquired as to the role of the State in relation to the mass media and whether there was control of the press in Kenya. With respect to section 80, he requested information on trade union activities aimed at improving living conditions in Kenya and on the political role of trade unions.
18. The provisions of the Constitution covered almost all political rights, but not all civil rights. He therefore requested information concerning the implementation of articles 23 and 24 of the Covenant, including information on the legal status of children born out of wedlock and adopted children.
19. Mr. BOUZIRI agreed with previous speakers that the report of Kenya was extremely brief. Apparently those who had drafted the report had not been aware of the Committee's guidelines for the preparation of such reports. It should be possible in the future for the Government of Kenya to follow those guidelines, and it could perhaps use as models the many excellent reports which had been submitted in 1980.
20. The report stated that during times of war individual liberties might be withdrawn to enable the Government to protect the nation. He requested information as to which individual liberties could be suspended and for how long, since article 4, paragraph 2, of the Covenant provided that there could be no derogation from certain articles which dealt with fundamental rights. With regard to article 12 of the Covenant, he requested information on the status of foreigners, and in particular on what restrictions, if any, were placed on their freedom of movement.
21. He would like some information on equality of the sexes in Kenya, and especially on the rights of women. What was the legal status of women under the Constitution, and what was the percentage of males to females in education, elected offices and governmental positions? He also requested information concerning the

/...

(Mr. Bouziri)

applicability of the death penalty to persons under 18 years of age and whether the death penalty could be suspended in the case of pregnant women.

22. Article 23 of the Covenant required States parties to take appropriate steps to ensure equality of rights and responsibilities of spouses. In that connexion, he wondered whether in Kenya a wife could be declared head of the family, whether the respective rights of spouses could be upheld by the courts, and what arrangements there were for awarding custody of children to the mother and for the payment of alimony. If there were sanctions against adultery, he wondered whether they were stricter for women, and he would like to know what was the attitude of the Kenyan Government to polygamy and concubinage; in particular, could recognized, long-standing cohabitation constitute the basis for any kind of financial claim to pensions, survivors' benefits, and so forth? Details of government policy with respect to family planning and a woman's right to legal abortion would also be of interest, as would details about the legal status and inheritance rights of children born out of wedlock.

23. According to the Constitution, the official language was English; he wondered whether that was still the case, and what provision was made by the Government to protect the language and culture of minority groups.

24. Mr. TARNOPOLSKY said that the representative of Kenya would not of course be able to reply to all the questions, but he hoped that the Government would study them, as reflected in the summary record, with a view to submitting a report of more adequate length on the next occasion. He had no doubt that Kenya possessed the necessary legal talent to do so.

25. It was quite clear from article 2 of the Covenant that a State party must take the necessary steps to adopt any legislative or other measures necessary to give effect to its provisions, and the reports called for under article 40 should contain information in that regard. Mere constitutional measures were not sufficient; the Committee required, *inter alia*, details of supplementary legislation and rules and examples of judicial decisions. As Mr. Ermacora had pointed out, a State party was always asked to indicate the constitutional status of the Covenant. In the case of common-law countries, where ratification did not automatically make an international instrument the law of the land, it was particularly important to show how the rights spelt out in the Covenant were put into effect. The report referred to interpretation by the courts and to various legal remedies; it would be extremely useful to have some illustrations in the form of cases adjudicated since the Covenant had entered into force for Kenya. While he welcomed the provision barring the use of evidence obtained by force, it seemed to him that there could be contraventions of article 7 which did not go so far as to involve torture or inhuman or degrading treatment; those too should be covered.

26. He was a little puzzled by the reference in section 86 (1) of the Constitution to the National Youth Service. Some explanation was required of why it was considered necessary to make provision for deprivation of certain rights in the case of members of that Service.

/...

(Mr. Tarnopolsky)

27. On the question of discrimination, he noted that discrimination on the basis of sex was prohibited under section 70 of the Constitution but was not included in the definition of "discriminatory" in section 82 (3). There seemed to be some discrepancy between the two sections in that regard.

28. Under article 4, paragraph 2, of the Covenant, no derogation might be made from the articles concerning fundamental rights and freedoms, even in time of public emergency. However, it appeared from sections 83 and 85 of the Constitution that such derogations were possible in Kenya when the President gave effect to the provisions of the Preservation of Public Security Act, whether or not there was a "public emergency which threatens the life of the nation", as referred to in article 4, paragraph 1.

29. From material he had acquired from other sources, he knew that there had been a tremendous improvement in the situation in Kenya in the past few years with respect to the death sentence. However, he would like to know how many executions there had been since 1976, and for what offences. It was his understanding that the death penalty had been retained for serious crimes, such as armed robbery. The question must be considered in the light of article 14 as well as article 6, and he wondered whether the persons tried and executed for serious crimes had been assigned legal counsel. As Mr. Opsahl had said, more information was required about the treatment of detainees, including provisions for family visits, correspondence, and so forth.

30. In view of the rights set forth in article 17 of the Covenant, he was somewhat surprised to see from section 76 of the Constitution that a person or his property could be searched in the interests of town and country planning or the development and utilization of mineral resources or other property in such a manner as to promote the public benefit. If that really meant that a person could be searched and his privacy invaded on those grounds, he considered the provision much too wide in scope.

31. As he had had occasion to point out to many States parties, it was not sufficient to proclaim in the Constitution the fundamental freedoms set forth in articles 18, 19, 21 and 22 of the Covenant. The Committee needed to know what limitations were placed on those freedoms, in order to determine whether or not they were properly safeguarded. He noted that at several places in the Constitution - for example, sections 78 and 79 - the term "reasonably required" was used. However, article 19, paragraph 3, of the Covenant stated that restrictions on the rights proclaimed in that article should only be such as were provided by law and were necessary for specified purposes. There was a great difference between what was reasonably required and what was necessary, and he hoped that the next report would give some examples of circumstances in which restrictions had been found to be reasonably required. He also inquired what laws there were, if any, restricting the rights set forth in article 19 for reasons not involving violence. For instance, he wondered whether there were any laws making it an offence to criticize the President or the Government and, if so, whether they made reference to national security and public order and to what extent they could be justified in a society such as that of Kenya.

/...

(Mr. Tarnopolsky)

32. With regard to articles 26 and 27 of the Covenant, he asked whether the tribes which made up the wide diversity of peoples in Kenya were considered to be ethnic groups, and what provision was made in respect of their right to enjoy their own culture, practise their own religion and use their own language.

33. Mr. GRAEFRATH noted that, under section 84 of the Constitution, the High Court had original jurisdiction with respect to alleged contraventions of human rights. He wondered whether the High Court had given any rulings under that section and, if so, to which specific rights they related.

The meeting rose at 1 p.m.