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Fifteenth session

SUMMARY RECORD OF THE 353rd MEETING

Held at Headquarters, New York,
on Monday, 5 April 1982, at 10.30 a.m.Chairman: Mr. PRADO VALLEJO

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The meeting was called to order at 11 a.m.

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

Guyana (CCPR/C/4/Add.6)

1. At the invitation of the Chairman, Mr. Scotland (Guyana) took a place at the Committee table.
2. Mr. BARTON-SCOTLAND (Guyana), introducing the initial report of Guyana, said that his Government had generally tried to follow the guidelines adopted by the Committee for the preparation of the report.
3. The new Constitution, which had been adopted by the Parliament of Guyana on 6 October 1980, emphasized the place of the individual in the political, social and economic system of the country. Many of the more important provisions of the Covenant had been enshrined in the Constitution. The Constitution contained 12 sets of rights, which corresponded to the rights and freedoms set forth in the Covenant, such as the right to life, liberty, freedom of movement and freedom of assembly and association, while Guyanese legislation gave effect to certain other provisions of the Covenant which were not provided for in the Constitution.
4. The rights set out in the Constitution could only be changed by the passage of a bill to that effect by the National Assembly and approval by the electorate through a referendum. In no circumstances did the Constitution permit derogation from the right to life, to freedom from torture or cruel or inhuman treatment or punishment, to freedom from slavery, servitude or forced or compulsory labour, to freedom from retroactive findings of guilt and to freedom of thought and religion. Under article 150 (1), however, the Constitution provided for derogation, in times of war, a state of emergency or the threat of subversion, from the right to personal liberty, to protection from forced labour, to protection against arbitrary search, to freedom of conscience, to freedom of movement, assembly and association, and to protection from discrimination on the grounds of race, place of origin, political opinions, colour or creed.
5. Only those provisions of the Covenant which were part of the Constitution and Guyanese legislation could be invoked before the courts or other competent tribunals. Article 153 of the Constitution, which dealt with the enforcement of protective provisions, envisaged action by the individual either to obtain redress for infringement of his fundamental rights or to prevent such infringements. Furthermore, any person could sue for redress on behalf of another person where it was alleged that some fundamental right or freedom was being infringed. The High Court exercised original jurisdiction in matters affecting fundamental rights and freedoms. The Court of Appeal could make a declaration of violation of rights and award damages and also had the power to issue writs to enforce fundamental rights under the Constitution.

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(Mr. Barton-Scotland, Guyana)

6. As far as the right to self-determination was concerned, Guyana maintained that it was not a static right which was fulfilled with the attainment of independence but encompassed a number of personal rights, social rights and civic duties. Accordingly, the report (CCPR/C/4/Add.6) cited a list of constitutional articles in connexion with article 1 of the Covenant.
7. Articles 71 to 88 provided for a system of local democratic organs, which was designed to provide the general population with a greater voice in its affairs through the division of the country into autonomous regions. The members of those organs were elected in their respective regions and had the responsibility of ensuring efficient management, promoting the development of their regions and providing leadership by example. At a higher level, the National Congress of Local Democratic Organizations, which was composed of representatives elected from among the members of the regional councils, had the responsibility for local government in Guyana. The Supreme Congress of the People, which consisted of all the members of the National Assembly and the National Congress of Local Democratic Organs, had the broadest authority to discuss any matter of public interest, make recommendations in that regard to the National Assembly or the Government, and advise the President.
8. At the international level, Guyana firmly advocated the principle of self-determination with regard to both its own region and other parts of the world.
9. Article 3 of the Covenant was reflected in article 29 of the Constitution. Men and women had equal rights and had the same legal status in all spheres of political, economic and social life. All discrimination against women on the basis of sex was illegal.
10. The right to life was provided for under article 138 of the Constitution. The death sentence could only be imposed for the most serious crimes, while articles 188 to 190 of the Constitution provided for the exercise of the prerogative of mercy.
11. The definition of forced labour in the Constitution (art. 140) substantially matched the definition in the Covenant. Article 139 of the Constitution provided the right to liberty and security of person; under paragraph 5 of that article, a person who was unlawfully arrested or detained was entitled to compensation. The Prisons Act fully reflected the provisions of the Covenant which referred to the treatment with humanity and dignity of persons deprived of their liberty. Sections 24 to 28 of that Act concerned the treatment of prisoners suffering from some form of illness or physical or mental disability and provided for the transfer of such persons to institutions where they could be treated. The Act also provided for the transfer of young prisoners to approved institutions, the separation of male and female prisoners and the release on licence of young persons and persons serving life imprisonment. Under the Act a board of visiting justices had extensive powers with regard to the dietary, health and welfare arrangements of prisoners. The board could hear complaints, make recommendations and inquire into irregularities and abuses.

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(Mr. Barton-Scotland, Guyana)

12. Article 139 (1) of the Constitution, which specified the cases in which a person might be deprived of his personal liberty, was substantially in accord with the general thrust with article 11 of the Covenant. The right to liberty of movement and the freedom of the individual to choose his residence as set out in article 12 of the Covenant were enshrined in article 148 of the Constitution. Paragraph 3 of the constitutional article provided that the imposition of restrictions on the freedom of movement or residence made in the interests of defence, public safety or public order, public morality or public health or for the purpose of preventing the subversion of democratic institutions in Guyana should not be held to be inconsistent with or in contravention of article 148. The protection envisaged for aliens under article 13 of the Covenant was guaranteed under the Expulsion of Undesirables Act. Under sections 4 and 5 of the Act an expulsion order could be issued against an undesirable alien, who could make representations in writing against its implementation.

13. Articles 14, 15 and 26 of the Covenant found expression in article 144 of the Constitution, and articles 16 and 17 of the Covenant in article 40 of the Constitution. The Defamation Act made provision for redress in cases of libel or slander. Articles 18 and 19 were reflected in articles 145 and 146 of the Constitution. Provision was made for exceptions in the interests of defence, public safety, public order, public morality or public health, or to protect the rights or freedoms of others.

14. The Racial Hostility Act provided protection against any advocacy of national, racial or religious hatred, as required under article 20 of the Covenant. Furthermore, any person convicted of an offence under the Act was subject to severe penalties including disqualification from public office. Articles 21 and 22 of the Covenant were substantially reproduced in article 147 of the Constitution. The exceptions generally conformed to the exceptions provided for under the Covenant. The rights protected in article 23 of the Covenant were recognized in the Marriage Act and the Matrimonial Causes Act, while article 24 of the Covenant was reflected in the Infancy Act, the Registration of Births and Deaths Act and the Guyana Citizenship Act.

15. Under article 43 of the Constitution, every person born in Guyana after the commencement of the Constitution became a citizen of Guyana at the date of his birth. Article 53 of the Constitution defined the qualifications for membership in the National Assembly, which coincided with the qualifications for voter registration within a local authority area.

16. Sir Vincent EVANS said that the Constitution of Guyana was one of the most impressive constitutions that the Committee had considered in the course of its work. It was a very complex instrument with a number of unusual, if not unique, features which could have important implications in the field of human rights. He requested information on the principal innovations which the Constitution had introduced and explanations as to why those innovations were considered desirable.

17. Under the Constitution a great deal of authority was delegated to the President; much would depend on the way in which he exercised his functions and

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(Sir Vincent Evans)

fulfilled his responsibilities. It would be of interest to learn how elections were organized in practice and how lists of candidates were drawn up.

18. He expressed satisfaction at the independence and impartiality of the judiciary system in Guyana. A truly independent judiciary was a firm guarantee of the rights of individuals and nothing should be done to impair that independence. He inquired whether the High Court had much experience in the exercise of jurisdiction under article 153 of the Constitution and whether that jurisdiction had been invoked by individuals. More information would be appreciated with regard to the number of cases considered and the type of jurisdiction involved. He also requested further details concerning the functions of the Ombudsman as provided for in article 192 (3) of the Constitution and asked how active and effective had the Ombudsman been in protecting fundamental rights and freedoms.

19. Only those provisions of the Covenant which had been incorporated into the Constitution could be invoked before the courts or any other competent tribunal in Guyana. Nevertheless, the provisions of the Covenant transcended those of the Constitution in that they were binding international treaty obligations. He inquired whether the provisions of the Covenant had been brought to the attention of all authorities in the country, not only the courts at all levels, but also the police and prison authorities and the civil service.

20. He asked whether any consideration had been given to abolishing the death penalty. The Committee had come to interpret article 6 of the Covenant as meaning that the law must strictly control and limit the circumstances in which a person might be deprived of life by the State authorities. One very important context in which that applied was the use of force by the police. There were cases in which the lethal use of force by the police might be regarded as justified, but it was clear that they must be wholly exceptional. He asked what rules applied to the use of force by the police, whether they were strictly enforced, and whether the police received proper training and instructions in that regard. While article 141 of the Constitution provided that no person should be subjected to torture or other cruel and inhuman treatment, paragraph 2 of that article seemed to suggest that antedating the Constitution were some laws which authorized some form of inhuman or degrading treatment or punishment. He requested an explanation of that provision of the Constitution.

21. Even in the best regulated penal establishments, allegations of ill treatment were made from time to time by persons detained and it was important that such establishments should be properly supervised. The representative of Guyana had referred to a system of visiting justices and he requested more information regarding the procedures for reviewing and investigating complaints brought by persons detained in prisons or other establishments.

22. Article 139 of the Constitution covered the obligation under article 9 of the Covenant to prohibit arbitrary arrest and detention. However, the constitutional article also referred to preventive detention and he asked in what circumstances and under what conditions a person could be subjected to preventive detention,

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(Sir Vincent Evans)

whether any persons were held in preventive detention at the current time and, if so, on what grounds had they been detained and for how long. Lastly, he asked whether the right of habeas corpus, as called for in article 9 (4) of the Covenant, was duly provided for and respected in Guyana.

23. Mr. TOMUSCHAT said that it was not easy to deal with the situation in Guyana. The Committee's task under the Covenant was not confined to comparing the laws of a State party with the normative standards established in the Covenant. Various provisions of the Covenant, especially article 2 (1) and (2), article 40 (2) and the third preambular paragraph, made it abundantly clear that the Committee must concern itself with not only the texts of the Constitution and other laws but also with the actual circumstances and conditions affecting the enjoyment of human rights in a country.

24. The Constitution of Guyana seemed to be an excellent basic charter for the country's political life, containing an extensive chapter on the protection of the fundamental rights of the individual. A number of provisions were patterned on the Covenant and even improved on it by dealing more specifically with matters covered only generally in the latter. However, Guyana seemed to be having some difficulty in observing the standards set in the Constitution and those problems seemed to relate primarily to the mechanisms for ensuring and monitoring the actual observance of the legal provisions in force. In that connexion, he emphasized the responsibility of national bodies for implementing human rights, since the Committee's role under article 40 was limited.

25. To ensure the effective enjoyment of human rights, the Covenant placed trust in several institutions. The first was the democratic process and its outcome, the law. The expression "the law" recurred in the text of the Covenant, especially in its limitation clauses. Obviously, that expression was intended to cover any legislative act duly considered and approved by the parliamentary body, but it was not clear whether acts of the executive were also to be regarded as "the law". The underlying premise of the Covenant was that a law enacted by a parliamentary body elected in accordance with article 25 of the Covenant was likely to represent a reasonable balance between the various interests involved. However, modern parliaments were admittedly overworked, and legislation by executive order had to be accepted as a device for regulating the scope of the rights provided for in the Covenant. A different situation arose when the executive branch was given quasi-legislative powers in situations other than a clear emergency. He requested more information regarding section 7 (2) of the Constitution Act 1980, specifically, what its scope was, whether it had ever been applied and whether it authorized the President to modify even the Constitution.

26. The second pillar for the effective safeguarding of human rights was a political opposition which was free under the law to criticize actions of the Government which might entail violations of human rights. The provisions of the Constitution were encouraging in that respect, since article 110 entrusted the Minority Leader with important functions. He asked who currently held that office, whether the first elections under section 8 (6) of the Constitution Act 1980 had already taken place, and whether the various political parties were on a footing of

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(Mr. Tomuschat)

legal equality. He had learned from another source that the paramountcy of the current governing party, the Peoples' National Congress, was a doctrine in Guyana and asked whether that implied any discrimination against the other parties. He also asked whether there were any independent bodies to supervise elections so as to ensure the effective protection of rights under article 25 of the Covenant.

27. Another important institution for the safeguarding of human rights was a free press. While understanding the provisions of article 146 of the Constitution to the effect that the Government had a responsibility to ensure fairness and balance in the dissemination of information, he wished to know how those provisions operated in practice, how many newspapers there were, and what their political orientation was. He had information that a non-government newspaper was experiencing difficulties in obtaining newsprint and asked what the reason for that situation was. If the shortage of newsprint was a result of currency problems, he asked whether the necessary cuts had been applied across the board to all newspapers.

28. The Covenant clearly identified an independent and impartial judiciary as the best protection of civil and political rights and provided for the possibility of judicial review. He personally doubted the wisdom of any approach that differed from that outlined in article 14 of the Covenant. However, he recognized that many individuals had a fear of formal court proceedings because they felt that they could not effectively defend themselves or found the cost of legal counsel too expensive. Accordingly, he was interested in additional information on the office of Ombudsman. In particular, he wished to know the background to the establishment of the office, how many cases were dealt with each year and whether the Ombudsman was responsible for reporting on his activities and in what form. Such information would enable the Committee to determine whether the Ombudsman could be regarded as an effective remedy under article 2 of the Covenant. Even if the institution of the Ombudsman was successful, it should in no way detract from the importance of the traditional judiciary. He asked, therefore, what devices were used to ensure the independence of the judiciary from the executive and whether there had been any complaints from judges that they had been subjected to pressure from any quarter.

29. The Constitution (art. 8) provided that any law that was contrary to it was null and void. He asked who determined whether a law was inconsistent with the Constitution and declared it null and void, whether the judiciary had the authority to do so and whether the power of review extended to the executive.

30. Mr. OPSAHL observed that, while following the Committee's guidelines, the report was extremely concise and contained many references to the Constitution, statute law and other documents that had been made available to the Committee secretariat. However, for logistic reasons, members of the Committee had generally been unable to familiarize themselves with that reference material. It was disappointing that the report contained so little information about the factors that hindered the State party's implementation of the Covenant. While noting the assurance in the report that the ample powers of the courts to enforce the relevant provisions of the Constitution and other statute law ensured the implementation of the Covenant, he said that there were three dimensions to the implementation of the

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(Mr. Opsahl)

Covenant at the national level. The first was the incorporation of the rights into a country's laws and constitution. The second was the provision of effective remedies, and in that connexion the powers of the courts and other State organs were of paramount importance. The third dimension was the practice of the State authorities in applying and interpreting the laws and the Constitution. It was on the third dimension, which determined the actual situation with regard to the effective enjoyment of civil and political rights, that the Committee should focus its attention.

31. Concerning implementation of the Covenant at the international level, which was also the preserve of the Committee, he said that the reports of States parties constituted an essential instrument. The question of whether Governments had ratified the Optional Protocol, as many had in Latin America and the Caribbean, was also significant.

32. The Committee's main need was for a greater understanding of Guyana. Little background information was provided in the report. Details of the population and of the principal organizations in the country would, for example, be useful in assessing how effectively the Covenant was being implemented. The Committee should have information on trade unions and human rights organizations in the country and details of any Government co-operation with them. Information on the media would also be valuable.

33. The rights enshrined in article 25 of the Covenant were extremely important, and more information on the situation with respect to those rights should have been provided. Details of constitutional developments and the electoral process were needed. What, for example, was the role of the executive under the new Constitution in the light of article 25?

34. The right to liberty, to a fair trial and to freedom of expression under articles 9, 14 and 19, respectively, of the Covenant were of great significance. It was important to ensure that such rights were enjoyed by the opponents of the Government. Had members of opposition parties been arrested and charged in the recent past? If so, what had been the outcome? What would the legal position be if such charges were brought and dismissed by the courts? Was article 14 (7) of the Covenant implemented? Such considerations were important in understanding the relationship between the courts and the executive branch of the Government, as was the status of the press.

35. The Covenant was impartial with respect to social, economic and political systems, as the Committee should strive to be. The people of Guyana had set themselves three aims: to achieve socialism, to consolidate self-determination and to respect civil and political rights. It would be encouraging if they succeeded in attaining those three objectives at the same time. Their experiment deserved to be viewed sympathetically by the world.

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36. Mr. ERMACORA said that the report contained no reference to any problems the Government had had in implementing the provisions of the Covenant. The new Constitution had come into force in 1980, following Guyana's ratification of the Covenant, which should therefore be reflected in it.

37. With regard to personal liberty, article 139 (3) of the Constitution stated that any person who was arrested or detained should be informed as soon as reasonably practicable of the reasons for his arrest or detention; that seemed to fall short of article 9 (2) of the Covenant, which required that anyone who was arrested should be promptly informed of any charges against him. Article 144 (2) (b) also appeared to be inconsistent with the Covenant for the same reason.

38. Article 141 (1) of the Constitution, which stated that no person should be subjected to torture or to inhuman or degrading punishment or other treatment, was acceptable. Yet paragraph 2 of that same article provided that nothing done under the authority of any law should be held to be in contravention of the article to the extent that the law in question authorized the infliction of any punishment. It was difficult to reconcile those two provisions, in the light of article 7 of the Covenant.

39. Article 143 (1) of the Constitution corresponded to article 17 of the Covenant, and dealt with protection against arbitrary search and entry. Yet article 143 (2) (c) of the Constitution appeared to authorize such search and entry under certain circumstances.

40. Article 146 (2) (b) of the Constitution referred to ensuring balance in the dissemination of information, which appeared to leave open the possibility of censorship. There seemed to be a conflict between the Covenant and article 150 of the Constitution which, in conjunction with article 140, suggested that in time of war forced labour might be instituted.

41. It was not clear whether there were provisions governing the racial composition of public bodies, such as the Commission referred to in article 200 of the Constitution; that question had arisen at the time of Guyana's independence. Guyana's report (CCPR/C/4/Add.6) referred to several racial elements in Guyanese society. Information should be provided on such elements and the distribution of the various ethnic groups, and on the extent to which the Constitution allowed such groups to participate in public service.

42. Mr. HANGA said that the Constitution was well drafted and provided information on the legal principles obtaining in Guyana. Article 8 of the Constitution stated that any laws inconsistent with it should be void, but it was not clear what the appropriate legal procedure was. Article 16 dealt with co-operativism. It would be of interest to know what the role of co-operativism was in the country's economic system and legal procedure, and what the historical background was.

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(Mr. Hanga)

43. Chapter VII of the Constitution dealt with local government and its organs. Were those organs concerned purely with administration or did they represent the power of the State? Article 71 implied a form of direct democracy, which was laudable, but additional information was required.

44. There was no information on customary law in Guyana. If it existed, was it consistent with the Covenant?

45. Article 10 of the Covenant required that accused juvenile persons be separated from adults. Did that happen in Guyana?

46. The provisions of article 20 (2) of the Covenant seemed to be met by the Racial Hostility Act, but it was not clear whether there was any act prohibiting propaganda in favour of war. More details were needed of the Marriage Act, which corresponded to article 23 of the Covenant. In particular, did the Act contain any provisions concerning property? The Infancy Act corresponded to article 24 of the Covenant, but no details had been provided of the rights of illegitimate children. Finally, the report referred to the existence of several ethnic groups in the country, without making it clear whether all ethnic and religious minorities were represented in the Parliament.

The meeting rose at 1.05 p.m.