

KENYA

CCPR A/36/40 (1981)

180. The Committee considered the initial report (CCPR/C/1/Add.47) submitted by the Government of Kenya at its 271st and 272nd meetings held on 30 March 1981 (CCPR/C/SR.271 and 272).

181. The report was briefly introduced by the representative of the State party who indicated that, while it was not exhaustive, the report covered areas of information which his Government had thought it important to provide to the Committee.

182. Members of the Committee noted with regret that the report submitted by Kenya was brief, incomplete and did not reflect the human rights situation in that country. They expressed the hope that a new report would be drawn in the light of their questions and comments and the guidelines issued by the Committee. They were confident that Kenya possessed the legal talent to do so. In this connection one member wondered whether some developing countries, when they acceded to an international instrument, were fully prepared to comply strictly with its provisions. The Committee would gain a better understanding of the situation which developing countries faced, while those countries would become better acquainted with the Committee and the way it worked, if the Committee were to hold a session in a developing country.

183. Questions were asked as to whether Kenya's ratification of the Covenant, as well as the latter's text, had been publicized and, if so, whether publication of the Covenant was made in the languages spoken by the bulk of the Kenyan people, and whether there existed in Kenya national or private human rights organizations.

184. As regards article 1 of the Covenant, information was requested on the position of Kenya with respect to the right of self-determination provided for in this article.

185. Commenting on article 2 of the Covenant, members asked whether discrimination on all the grounds mentioned in this article was prohibited by law within the territory of Kenya and, if so, whether such prohibition applied to all individuals subject to its jurisdiction, including foreigners; how the limitations on fundamental rights and freedoms mentioned in Section 70 of the Constitution were reflected in law and practice; why it was considered necessary to make provision for deprivation of certain rights with respect to members of the National Youth Service; what the constitutional status of the Covenant was and how the rights spelt out in it were put into effect; what procedures were applied for adopting provisions of the Covenant as part of the laws in force; and whether provisions of the Covenant which were not incorporated in the Constitution could be invoked before a judicial or administrative body. Information was requested about the courts which could be established by Parliament as subordinate to the High Court and court martial, about their jurisdictions, and the judges who served in them; about the Act relating to the authority of "chiefs", particularly regarding their powers and whether such powers were administrative or judicial, how a chief was appointed and whether a woman could become chief. Questions were also asked as to

whether the High Court had given any ruling with respect to alleged contraventions of human rights and, if so, to which specific rights they related; whether an individual whose rights had been infringed by administrative action or the failure of the authorities to act was entitled to initiate proceedings to secure the protection of his rights; and how it was ensured that the Covenant was observed by everyone in public service, including law enforcement officials, and what the legal remedies referred to in the report entailed and what laws governed them.

186. As regards article 3 of the Covenant, information was requested on the measures taken to ensure equal rights for both sexes in the economic, political and social fields; on whether, when a Kenyan woman married an alien man, the provisions governing the granting of resident status were the same as when a Kenyan man married an alien woman; and on whether there were any difficulties in implementing the principle of equality embodied in this article.

187. In connection with article 4 of the Covenant, reference was made to Sections 83 and 85 of the Constitution which, it was pointed out, seemed to treat the state of emergency as if it were the norm and to allow for derogations from several rights and freedoms under the authority of an Act of Parliament or the provisions of the Preservation of Public Security Act. Questions were asked as to whether the term “public security” used in the Preservation of Public Security Act matched the term “public emergency” in article 4 of the Covenant, how the Act functioned if and when it was invoked, whether the judgement of the President when invoking public security was final or whether it was subject to the approval of Parliament, whether presidential powers under this Act included derogations from the rights provided for in the articles enumerated in article 4, paragraph 2, of the Covenant and, if so, whether such powers had ever been resorted to, for what length of time, in respect of whom and on what grounds. It was asked whether the Act was currently being applied and, if so, what rights and freedoms were limited or derogated from, whether its application conformed with the requirements of article 4 of the Covenant, and what remedies were available to persons, including detainees, who believed that their rights under the Covenant were violated.

188. With respect to article 6 of the Covenant, information was requested on the measures that had been taken for the protection of life in its social context such as improvement of the general living conditions of the population and action to eradicate epidemics and provide better health conditions; on whether the death penalty had been applied since Kenya had become a party to the Covenant and, if so, how many times and for what offences; on the applicability of this penalty to persons under 18 years of age and on whether it could be suspended in the case of pregnant women. Noting that the Constitution listed a number of circumstances in which human life might be taken by the official authorities or by private persons, and bearing in mind a possible conflict between the primacy of law enforcement and the primacy of human rights, in particular, when the provisions of article 14, paragraph 2, of the Covenant were taken into account, members asked for clarification on the extent to which the taking of life under these circumstances was permissible, how often it occurred, on the legal provisions which limited the right of officials and others to take human life and on measures against abuse.

189. As regards articles 7 and 10 of the Covenant, it was noted that the Constitution, while expressly prohibiting torture and inhuman or degrading punishment or other treatment, had nevertheless set forth a general reservation which might depart from the stipulations of the Covenant which allowed for no restrictions on the prohibition of torture. Questions were asked as to whether

the legal remedies mentioned in the report had ever been invoked by a victim of torture practiced by law enforcement officials, whether any disciplinary action had ever been taken against such officials when they had abused their powers; whether the Kenyan penal system provided for standard minimum rules concerning prison conditions and, if so, whether they were applied; whether the Board of Review mentioned in the report actually examined individual sentences or merely reviewed the conduct of prisoners; whether detainees had the right to receive family visits, to have access to lawyers and to correspondence with people outside the prison.

190. In connection with article 8 of the Covenant, information was sought on the circumstances and the extent to which forced labour might be imposed and on whether it was possible for the “chief” in certain circumstances to order forced labour.

191. In relation to articles 9 and 11 of the Covenant, it was noted that, in accordance with the Constitution, persons should be notified of the reasons for their arrest “as soon as reasonably practicable” whereas the Covenant required such persons to be “promptly informed”. In this connection information was requested on each category of the cases enumerated in the Constitution in which a person might be detained and it was asked whether persons could be deprived of their liberty up to the age of 18 years for the purpose of their education, or if they had not fulfilled a contractual obligation; and whether compensation for unlawful arrest or detention was made by the State or by the law enforcement official concerned.

192. As to article 12 of the Covenant, information was sought on the extent to which freedom of movement was enjoyed or restricted by foreigners, including Ugandan refugees, residing in Kenya.

193. With reference to article 14 of the Covenant, it was pointed out that an indication that human rights were respected in a given country was the existence of a judiciary which was independent of the Executive and the political organs. Questions were asked as to how the independence and impartiality of judges were ensured in Kenya and what measures the judiciary could take to enforce its judgements and decisions if a conflict arose with the administrative bodies. In this connection it was asked whether accused persons were ensured a fair trial; how an individual could have a confession annulled on the ground that it had been obtained by violence or torture; whether persons tried for serious crimes were assigned legal counsel.

194. With respect to article 17 of the Covenant, it was noted that, in accordance with the corresponding sections of the Constitution, a person or his property could be searched in the interests of, *inter alia*, town and country planning and it was pointed out that this provision was much broader in scope than stipulated in the Covenant and thus called for clarification.

195. Commenting on the freedoms provided for in article 18, 19, 21 and 22 of the Covenant, members of the Committee sought information on whether religion was separate from the State; on whether different religions were accorded equal treatment; on the role of the State in relating to the mass media; on the number of newspapers published and on whether they could criticize the Government on the extent to which freedom of expression in political matters was ensured, and on the laws and regulations governing the enjoyment of the freedom of assembly. Information was also requested on the extent to which the freedom of association, including the right to form trade unions might be limited, and on the extent to which executive action was subject to judicial review,

considering for example the wide powers of the registrar of societies and of the competent Minister in refusing registration of societies or dissolving them. It was asked whether Kenya had a one-party system and, if so, what the impact of that system was on the implementation of articles 18, 19, 21 and 22 of the Covenant.

196. In connection with article 20 of the Covenant, it was asked whether war propaganda was explicitly prohibited by law.

197. As regards articles 23 and 24 of the Covenant, information was requested on the implementation of these articles in Kenya, particularly on the steps taken to ensure equality of rights and responsibilities of spouses and on whether the respective rights of spouses could be upheld by the courts; on the existing arrangements for awarding custody of children to the mother and for the payment of alimony; on whether there were sanctions against adultery and, if so, whether they were stricter for women; on whether polygamy and concubinage were recognized and, if so, what their legal and financial effects were; and on the legal status and inheritance rights of adopted children and of children born out of wedlock.

198. With respect to article 25 of the Covenant, it was noted that the Constitution had made provisions for a strong executive presidency within a democracy and it was asked what checks and balances existed which might act as restraints on executive power and, in particular, how the system might affect compliance with the provisions of this article of the Covenant.

199. In connection with article 27 of the Covenant, it was asked whether there were ethnic, religious or linguistic minorities in Kenya and, if so, whether the tribes which made up the wide diversity of peoples were considered to be ethnic groups and what provisions were made in respect of their right to enjoy their own culture, practice their own religion and use their own language.

200. The Chairman of the Committee suggested that the representative of Kenya should communicate to his Government the fact that the Committee had considered its report but had observed that the report was too brief and incomplete and expressed the hope that a new report would be submitted within a period of six months and that it would include answers to the questions already raised by the Committee.

201. The representative of Kenya promised to communicate that information to his Government.