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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-eighth session

SUMMARY RECORD OF THE 12th MEETING

Held at the Palais Wilson, Geneva,

on Monday, 6 May 2002, at 10 a.m.

Chairperson: Ms. BONOAN-DANDAN

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Fourth periodic report of the United Kingdom of Great Britain and Northern Ireland [(E/C.12/4/Add.5, 7 and 8); core document (HRI/CORE/1/Add.5/Rev.2 and Add.62/Rev.1); list of issues (E/C.12/Q/UK/2); written replies of the United Kingdom of Great Britain and Northern Ireland (HR/CESCR/NONE/2002/4)]

1. At the invitation of the Chairperson, the delegation of the United Kingdom of Great Britain and Northern Ireland took places at the Committee table.

2. The CHAIRPERSON welcomed the United Kingdom delegation on behalf of the Committee and invited it to introduce its report.

3. Mr. FIFOOT (United Kingdom) said that the members of the delegation represented 16 jurisdictions: 3 Crown Dependencies, 9 Overseas Territories, the 3 devolved administrations in the United Kingdom and the United Kingdom itself. The Crown Dependencies and the Overseas Territories were self-governing with regard to matters arising under the Covenant, and the devolved administrations in the United Kingdom had wide competence in those matters. The various jurisdictions did not share the same concerns and did not necessarily have the same perceptions as to how to deal with them. Consequently, their legislation and practices differed. Self-government and devolution were designed to enable peoples and administrations to deal with those matters in the light of local circumstances and the needs of their populations.

4. Mr. STEEL (United Kingdom) said that his country had decided to innovate in the consideration of its periodic reports by the Committee, and in its future work with other treaty bodies, by including a number of representatives of the Overseas Territories in its delegation. That practice should give the Committee a better idea of the situation in the Territories, provide the Overseas Territories with an insight into the importance of the human rights treaties for the international community and enable the United Kingdom Government to demonstrate the Territories' commitment to human rights.

5. A number of facts set out in the fourth periodic report would be updated during the Committee's consideration of the report. His delegation looked forward to an open and constructive discussion.

6. The CHAIRPERSON thanked the United Kingdom delegation and invited the members of the Committee to consider the general

information as well as articles 1 to 5 of the Covenant, which were the subject of questions 1 to 8 on the list of issues (E/C.12/Q/UK/2).

7.Mr. MALINVERNI noted that the United Kingdom had ratified the Covenant, as well as the European Social Charter, but that neither of those instruments had been incorporated into domestic law. Moreover, the United Kingdom had not signed the Additional Protocol to the European Social Charter, which made provision for a system of collective complaints, or ratified the revised Social Charter. On the other hand, the European Convention for the Protection of Human Rights and Fundamental Freedoms had recently been made part of British domestic law. Given that an international convention could not have full effect until it was incorporated in the domestic legislation of States parties, he asked why the European Convention and the Covenant were treated differently.

8.With regard to article 2, paragraph 2, of the Covenant, it appeared that the 1976 Race Relations Act had been amended in 2001 and that the immigration services were now much stricter with asylum-seekers from certain regions, notably Kurds, Tamils, Albanians, Somalis, Afghans and Gypsies. What was the reason for that differential treatment?

9.He also inquired why refugees were entitled to social security, while asylum-seekers were not. Whereas family reunification was applicable to refugees, it seemed that some asylum-seekers authorized to stay on British territory on a temporary basis must wait four years before they could send for their families and that, for them, the concept of "family" was interpreted in the strictest sense of the term, i.e. covering only the spouse and children. Why was there such a difference of treatment?

10.Mr. PILLAY asked why the United Kingdom, which had ratified the Covenant in 1976, considered the rights embodied in it to be mere principles or programmatic objectives rather than legal obligations. Whereas certain economic, social and cultural rights could be invoked in court if they derived from European law, the rights set out in the Covenant still could not be directly invoked as such.

11.Mr. RIEDEL noted that not all the Overseas Territories had a chapter on human rights in their constitutions but that an update was being prepared in that connection, and he asked whether it was planned to incorporate such a chapter in the various constitutions and, if so, which rights it would cover. The United Kingdom had made a considerable effort to ensure that the obligations stemming from its accession to the international human rights instruments were written into the legislation of the Overseas Territories, but the situation would be clearer and easier to manage if a chapter on human rights covering those obligations was incorporated in the various constitutions.

12.Mr. AHMED was pleased that the United Kingdom delegation included representatives of the Overseas Territories, but wondered whether they had to report to the Home Office. Could the Overseas Territories be represented directly in official international meetings in the future?

13.Mr. CEAUSU, referring to paragraph 2.18 of the report of the State party (E/C.12/4/Add.8) and the establishment of the Northern Ireland Human Rights Commission, sought further information on the Commission's make-up, how its members were appointed and its powers, particularly as concerned the consideration of individual complaints.

14.Mr. WIMER ZAMBRANO asked how negotiations were progressing between the United Kingdom and Argentina on the Falkland Islands and between the United Kingdom and Spain on the definitive status of Gibraltar. Also, a number of non-governmental organizations had alleged that there was institutional racism in the police and in prisons. That appeared to be common knowledge, especially in Gibraltar, the Cayman Islands and the Turks and Caicos Islands. He enquired whether there were any programmes explicitly designed to combat such discrimination, which was very serious since it was being practised by members of the police force.

15.Mr. HUNT asked whether the United Kingdom planned to adopt a national human rights plan of action in accordance with the Declaration and Programme of Action of the World Conference on Human Rights, held in Vienna in 1993. Noting that the United Kingdom had recently established a human rights body for Northern Ireland, he enquired whether it was envisaged to set up such a body at national level. Given that human rights were interdependent and indivisible and that there were considerable social injustices between the Northern Ireland communities, would the Bill of Rights being drawn up for Northern Ireland include economic, social and cultural rights? He also asked whether there were any mechanisms to ensure that the Covenant was taken duly into account in policy-making, especially in the areas of housing and health care. The United Kingdom had an export credit guarantee mechanism to cover risks associated with transactions abroad. Did that mechanism take into consideration the State party's obligations under the Covenant?

16.Mr. SADI, noting that the number of refugees and asylum-seekers in the United Kingdom continued to grow, asked whether the Government had undertaken any studies to estimate the economic and social cost of that phenomenon. Would it not be in the United Kingdom's interest to step up its efforts to prevent the influx of refugees by investing heavily in their countries of origin? It emerged from the report that British society was becoming increasingly multicultural. He would like to know whether multiculturalism had produced positive results for the United Kingdom.

17.Mr. GRISSA asked what the status of the Overseas Territories was with regard to the European Union. Were they members? Did the European Convention on Human Rights apply to them? The Overseas Territories had their own courts, but in the event of an appeal, could their nationals bring their case before the judicial body of last resort, namely, the House of Lords? If so, were they entitled to legal aid?

18.Mr. KOLOSOV sought further information on the 2001 amendments to the 1976 Race Relations Act. He noted that the amended legislation made the process of applying for asylum much more complicated and gave rise in practice to new forms of discrimination against certain asylum-seekers. As for human rights education programmes, he would like to know what job categories they targeted, whether judges and members of the police took part and whether the programmes expressly covered the International Covenants on Human Rights.

19.Mr. MALINVERNI, noting that the United Kingdom did not have any general law guaranteeing the principle of human equality, asked whether the Government intended to adopt a basic provision embodying the principle of equality in and before the law.

20.Mr. RIEDEL, referring to the written reply to question 6 on the list of issues (E/C.12/Q/UK/2), asked what had been the concrete results of measures taken following the racial disturbances in 2001 and how the situation had evolved in the municipalities affected by racial conflict.

21.Mr. FIFOOT (United Kingdom) said that his Government was determined to comply with its obligations under the International Covenant on Economic, Social and Cultural Rights, but considered that the rights enshrined therein were not justiciable and that it was not for British judges to interpret the provisions of the Covenant. Unlike the European Convention on Human Rights, whose provisions were very specific, the Covenant was primarily concerned with more general commitments. In order to promote the economic, social and cultural rights of the population, the United Kingdom had chosen to adopt a wide range of specific laws which could of course be invoked in court. It took the same approach with respect to the principle of human equality, namely, it preferred to adopt specific, concrete laws on racial equality, gender equality, etc., rather than enshrining the principle of absolute equality in a general law. Likewise, it had no intention of implementing a national plan of action for human rights or of establishing a national human rights commission for Great Britain. As it had attempted to show in its report (E/C.12/4/Add.8), the United Kingdom preferred to target its action by adopting sectoral programmes.

22.With regard to the Northern Ireland Human Rights Commission referred to by Mr. Ceausu, it was responsible for considering human rights problems in that region and advising the Government on measures to be taken to remedy them. It was completely independent and was empowered to conduct investigations, but not to hear individual complaints. The Commission had recently produced a paper on measures which the Government should take to promote economic, social and cultural rights in Northern Ireland. The United Kingdom did not have any mechanisms for ensuring the effective implementation of the Covenant, but senior officials and decision-makers were perfectly aware of the State party's obligations under the Covenant and other international human rights instruments. As for the export credit guarantee mechanism, he said that he could not provide information at the current time on its functioning, but that all public bodies involved in economic cooperation or foreign aid saw to it that their activities helped promote human rights in the recipient countries.

23.Replying to the questions on refugees, he said that the United Kingdom was facing a massive influx of asylum-seekers and illegal immigrants, which was why the criteria for obtaining refugee status had become more stringent. On the suggestion to prevent the influx of refugees by investing in their countries of origin, he pointed out that, in most cases, it was the regime in power and not the absence of investment in the country that caused people to flee.

24.With regard to multiculturalism, it was fair to say that, by and large, the various communities lived together harmoniously. Unfortunately, there had been a trend towards ghettoization, and tensions existed, as could be seen from the intercommunal riots which had broken out in Southampton and Preston in 2001, although those disturbances had been much less severe than those which had erupted in a number of northern cities in the early 1980s and where efforts had since been made to provide recreational activities or evening classes for young people and to involve community leaders in projects for the benefit of all members of the various communities. In several regions of the country, particularly Northern Ireland, human rights education programmes promoted understanding about and respect for the various communities living in the United Kingdom. Police officers took human rights training courses, although such courses focused primarily on the European Convention on Human Rights. Physicians did not receive training on human rights as such, but on medical ethics.

25.Mr. STEEL (United Kingdom) said, with regard to the Covenant's incorporation in the Overseas Territories' constitutions, that four Territories, namely the British Virgin Islands, Cayman Islands, St. Helena and Pitcairn Island, had not yet taken measures to do so. In the case of Pitcairn Island, the question did not really arise, since the population numbered only 44 inhabitants. The legislation applicable in that Territory was the basic law, which was in line with that in force in the United Kingdom. The three other Territories were currently reviewing their constitutions with a view to updating them and incorporating a chapter on human rights. The amended texts of their respective constitutions, once drawn up, would be submitted for public approval and then presented to the United Kingdom Government.

26.As to whether Territories that had drafted a bill of rights envisaged including in it two chapters, one on civil and political rights and one on economic, social and cultural rights, as recommended by the Committee, the intention was to mainly include provisions on civil and political rights, since economic, social and cultural rights were not viewed as justiciable. There were no plans to include a provision recognizing all the human rights instruments. Certain conventions, however, such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child, had already been incorporated by special act into the legislation of most Territories.

27.Replying to questions about self-determination, he said that the Overseas Territories came under the Foreign and Commonwealth Office and Crown Dependencies under the Lord Chancellor's Office. With regard to the Falkland Islands, the United Kingdom and Argentina had not yet entered into negotiations and adhered to their respective positions, but that did not prevent them from cooperating in many spheres. As for Gibraltar, negotiations were under way with Spain, but the outcome remained uncertain. In any case, as the United Kingdom had reiterated since 1969, no agreement would be concluded without the consent of the Government and people of Gibraltar. Gibraltar was the only Overseas Territory to be part of the European Union.

28.With regard to the adoption of anti-discrimination legislation in the Overseas Territories, that had already been done in Montserrat and the British Virgin Islands, while in the Turks and Caicos Islands such legislation was still at the drafting stage.

29.Regarding the jurisdiction that heard appeals from citizens of the Overseas Territories, the competent courts for such matters were the local courts of appeal or, if necessary, the Judicial Committee of the Privy Council in London. Legal aid was provided for persons lacking the means to pay for a lawyer.

30.Mr. FIFOOT (United Kingdom) said that there was nothing to prevent Crown Dependencies from becoming independent if they so wished; it was simply a question of taking the initiative.

31.The differing views on the incorporation of the Covenant into domestic law were explained by the fact that a text, in order to be incorporated into British domestic law, should not be open to interpretation. Some aspects of the Covenant, however, were not entirely unequivocal.

32.Mr. SADI, supported by Mr. PILLAY, countered that the wording of certain rights in the Covenant, including those relating to discrimination and gender equality, was completely unambiguous. In any case, any ambiguities were broadly commented on and interpreted by the Committee in its General Comments. He asked whether, in view of those Comments, the State party might review its position and consider at least some of the rights enshrined in the Covenant as justiciable.

33.Mr. MALINVERNI associated himself with the previous statement and also refuted the argument invoked by the State party's delegation concerning ratification of future Additional Protocol No. 12 to the European Convention on Human Rights, to the effect that there were no exceptions to the principle of equality. That text would not, in fact, provide for exceptions. If any exceptions did exist, however, they would be a matter of jurisprudence. Moreover, the fact that the ruling by the European Committee on Social Rights that Portugal had violated the Additional Protocol to the European Social Charter provided for a collective claims system showed that social rights could be justiciable. There was nothing, therefore, to prevent the Covenant from also being invoked in court proceedings.

34.Mr. PILLAY said it was understandable that judges appointed to sit on the tribunals of Overseas Territories might be perceived as not being independent, since the ministries that appointed them were the ones whose policies those tribunals had to examine.

35.Mr. HUNT asked whether there were any sectoral action plans for human rights, since the Government deemed it unnecessary to adopt a national plan of action. He noted that many Commonwealth countries had established a national human rights commission and asked why the United Kingdom had no intention of doing likewise. Recalling that the Commission on Human Rights had stressed the importance of taking the Covenant into account in the decision-making process, he suggested that civil servants should receive training about the Covenant and other international instruments. He would welcome the delegation's view on that suggestion.

36.Mr. FIFOOT (United Kingdom) said that, although the Covenant as a whole could not be invoked before the courts, the economic, social and cultural rights enshrined therein were still justiciable and were, in fact, the subject of specific laws under domestic legislation. While the Committee's General Comments were intended to guide States in implementing the Covenant, they were in no way binding. The United Kingdom, therefore, felt that it had fulfilled its obligations under the Covenant and would not accept any charge of having evaded them. The fact that judges in the Overseas Territories were appointed by the Foreign and Commonwealth Office had in no way influenced the independence of the judiciary, which also would not be compromised by the appointment of tribunal chairmen by that Office.

37.He confirmed that there was no national plan of action for human rights, but added that the Government had established far-reaching sectoral plans in such areas as health and education. The United Kingdom had set up a multitude of commissions to study various human rights issues, in areas as varied as racial equality, equality of opportunity, data protection or mental health. Northern Ireland, had a Human Rights Commission, a sentencing review commission and several ombudsmen operating at local level in such spheres as health and retirement pension payment problems. The United Kingdom had no current plans to set up a national human rights commission. Several human rights training programmes had been set up for civil servants and judges and were based on the 1998 Human Rights Act and the European Convention on Human Rights.

38.Mr. ROBERTS (United Kingdom) said that the Lord Chancellor's Office was responsible for relations with Crown Dependencies and for liaison between the latter and other ministries, particularly the Foreign and Commonwealth Office. Speaking for the Guernsey authorities, he said that they were entirely satisfied with their cooperation with the United Kingdom authorities.

39.Mr. KOLOSOV recalled that, in the context of the United Nations Decade for Human Rights Education 1995-2004, the training of health workers was required to stress not only ethics but also human rights education. Since the United Kingdom Government had written into law equality of opportunity but not equality of all citizens before the law, he asked how it intended to safeguard the rights of the most vulnerable people and those in need of special protection.

40.Mr. HUNT asked whether there were plans to include in the human rights training for senior civil servants and judges, which was currently based on the 1998 Human Rights Act and the European Convention on Human Rights, a module on the other international human rights treaties to which the United Kingdom had acceded.

41.Mr. FIFOOT (United Kingdom) said that his Government was currently working on the drafting of a specific bill to combat employment discrimination on grounds of age, sexual orientation or religion. In its view, it was not essential to enact a general law in that regard.

42.In preparing programmes in their spheres of action, members of the competent ministries took account of the provisions of the international conventions to which the United Kingdom was a party, such as the Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination. Moreover, members of the Foreign and Commonwealth Office and the Lord Chancellor's Office had received training on the principles of international human rights treaties.

Articles 6 to 9 of the Covenant

43.Mr. KOLOSOV noted that the unemployment rate varied considerably according to the level of development of the country's different regions. He asked whether the Government envisaged taking measures to remedy that situation. With regard to article 6, he felt that the right to work for young persons aged 18 to 24 years was undermined by the fact that they sometimes had to wait two

years to receive vocational training, which delayed their entry to the labour market. He asked what the Government intended to do about that situation.

44. It appeared that women of Bangladeshi or Pakistani origin were subject to discrimination on the labour market. What was the Government doing to tackle that problem? Also, did it intend to issue work permits for asylum-seekers?

45. Mr. CEAUSU, referring to the table in paragraph 6.03 of the report (E/C.12/4/Add.8), asked who was classified as “economically inactive”, since unemployed persons were classified as the “economically active”. He also asked why, in the New Deal for work programme, only people who had been receiving unemployment benefit for six months or more were eligible for some training programmes. On the same subject, he would like to know the monthly amount paid in unemployment benefit and whether it varied according to objective criteria such as age, marital status or number of dependants. Could the delegation provide statistics on the employment situation of persons belonging to racial minorities and immigrants? What was the percentage unemployment rate among such minorities?

46. According to reliable sources, 5.6 million people had insecure jobs, working either part-time or at home. What means did the authorities have of ensuring that employers respected the right of such people to fair and favourable working conditions, such as, equal treatment, minimum wage, time off and social security coverage in the event of illness? In 1998-1999, 1,500 wage earners had filed lawsuits invoking the principle of equal pay. How many such lawsuits had been successful? Although self-employed workers accounted for roughly 15 per cent of the country’s economically active population, they accounted for 25 per cent of victims of fatal industrial accidents. Did the authorities envisage taking steps to improve protection for such workers with regard to workplace safety?

47. He deplored the fact that workers could opt out of provisions restricting working hours and that the right to time off and provisions restricting night work could be waived under collective agreements concluded with the union or with staff. According to the report, the right to time off and provisions restricting night work could be suspended under various circumstances. What were those circumstances and for how long could such a suspension by the authorities, which was a step backwards in the enjoyment of acquired rights, be maintained?

48. The 1999 regulations on unfair dismissal had reduced from two years to one the length of service required in order to be protected from unfair dismissal, in other words, without the employer being required to put the reasons for dismissal in writing. What remedies were available to an employee to contest dismissal during the first year of service? Although the 1999 Employment Relations Act had restored some of the trade-union rights abolished between 1980 and 1993, it seemed that some provisions still prohibited trade unions from staging a protest or going out on strike as a protest or gesture of solidarity. Was it true that the Government had said that it had no intention of legalizing such action?

49. Mr. RIEDEL welcomed the measures and action plans adopted by the Government for disabled persons, particularly with regard to work. At the same time, he regretted the lack of disaggregated data on the employment situation of disabled persons. How many such persons were looking for work? In what way had the programmes in question improved access to employment for such persons? He invited the State party to prepare benchmarks to enable the impact of the measures taken, and overall trends in the employment of disabled persons, to be evaluated.

The meeting rose at 1 p.m.