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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirty-first session

SUMMARY RECORD OF THE 50th MEETING*

Held at the Palais Wilson, Geneva,
on Monday, 24 November 2003, at 10 a.m.

Chairperson: Ms. BONOAN-DANDAN

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* No summary record was issued for the 49th meeting.

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The meeting was called to order at 10.10 a.m.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (continued)

Day of general discussion on article 6 of the Covenant: right to work (E/C.12/2003/7, 8, 9, 10, 11 and 12)

1. The CHAIRPERSON said that the Committee's recent general comments had focused on specific provisions of the Covenant, which were often vague and open to interpretation, with the purpose of providing clarification both for States parties and the Committee members themselves. The Committee's objective was to prepare general comments, with the broadest possible scope, on all the articles of the Covenant. The Committee appreciated the assistance of the various experts in preparing the draft general comment on the right to work (E/C.12/2003/7) and would study all the contributions carefully with a view to reflecting them in the final text.

2. Mr. TEXIER, introducing the draft general comment on the right to work (E/C.12/2003/7), said that he welcomed the fact that after many years the Committee was preparing its first general comment on the social rights enunciated in the Covenant. He hoped that the day of general discussion on the right to work would mark the beginning of a series of general comments on the other social rights contained in articles 7, 8 and 9. The draft general comment was the result of close collaboration with the International Labour Organization (ILO), the work carried out by the working group organized at the previous session by the Friedrich Ebert Foundation, and various experts' written contributions. The draft before the Committee was preliminary, and written contributions would be accepted until April. The Committee hoped to adopt the general comment at its next session.

3. A number of difficulties had arisen during the drafting process, the first of which was the indivisibility of articles 6 to 8 of the Covenant. The right to work was directly linked to the right to just and favourable conditions of work, and to the right to form trade unions and strike. However, as one general comment dealing with all three articles would have been much too long, they had been separated out. Nevertheless, it was understood that the three articles formed a whole, and that article 6 was of value only if complemented by articles 7 and 8.

4. The second problem related to which issues to include under the right to work, as, for example, the prohibition of child labour overlapped with article 10 on the family. The third difficulty related to conceptual problems such as the distinction between formal and informal work, and whether to refer to the self-employed or only to employees. Some of those issues had not yet been resolved.

5. Mr. IWAMOTO (United Nations Educational, Scientific and Cultural Organization) said that the United Nations Educational, Scientific and Cultural Organization (UNESCO) had an important role to play in the realization of the right to work. Pursuant to article 6 of the Covenant, the steps for the realization of the right to work included technical and vocational guidance and training programmes. UNESCO had made significant efforts to provide technical and vocational education and training in all member States in cooperation with ILO, and in 1989 had adopted the Convention on Technical and Vocational Education.

6. The goals fixed in the Framework for Action adopted by the World Education Forum in 2000 emphasized the importance of life skills, which, in addition to literacy, were necessary for people to engage in productive employment. Recent developments in information and communication technology and the forces of globalization were changing the way people worked in some parts of the world, and the relocation of certain industries to countries where labour was less expensive was causing unemployment in developed countries.

7. The concept of a job for life was largely a thing of the past, and people would work in several occupations during their working lives. Therefore they would need to receive training and retraining as old industries became obsolete and new ones emerged. The basic challenge of the globalized economy was the availability of a productive, flexible workforce. Each country would be obliged to enable its citizens to acquire the skills necessary to survive, as the demands of the workplace would leave people without skills unemployed and unemployable. A person's right to work therefore implied that they had a right to receive the training and retraining necessary to engage in productive work in a labour market that was in a constant state of flux.

8. The UNESCO Revised Recommendation concerning Technical and Vocational Education set the standard in the field, and had recently been updated to take into consideration such contemporary issues as information and communication technology and globalization. UNESCO was strengthening its cooperation with ILO, and the Revised Recommendation had been issued together with the ILO Conclusions concerning human resources training and development. UNESCO promoted improved career guidance and counselling, and training in such areas as entrepreneurship and information and communication technology; it also provided States with policy advice regarding the development of national technical and vocational education and training systems. In addition the organization was involved in various projects focusing on access to scientific, technical and vocational education for girls from poor communities, and training for the disadvantaged, such as ex-combatants in post-conflict countries.

9. Mr. SIEGEL (University of Nevada) said that the Committee's general comment must emphasize the relationship between the right to work and anti-poverty measures, as there was a tendency to examine the right to work only in the context of industrialized countries. The ILO Employment Policy Recommendation, which related the right to work to development, trade and technology, would be a good starting point for such an approach.

10. A unique element of the right to work was that it overlapped with civil liberties and civil rights that were justiciable and formed part of the criminal justice system. Concepts such as forced labour and child labour would have to be incorporated into the draft. States parties to the Covenant were, in fact, obliged to use their criminal and civil justice systems against forced labour and child labour. Such issues had already been reflected in international criminal justice instruments; the Rome Statute of the International Criminal Court, for example, directly referred to slavery, and there was a clear connection between particular economic and social rights and the main body of civil and political rights referred to in the Statute.

11. The concept of full employment should be included in the draft, as the right to work had little significance if full employment was not taken seriously. There were several other major policy areas to be developed in relation to the right to work, including macroeconomic and microeconomic policies, and a range of social policies such as education, health, social insurance and training. Countries needed to address the right to work systematically and in the broadest possible way, with the focus on the medium and long term.

12. The Committee's work on structural obstacles had typically referred to events, such as the 1997 financial crisis in Asia. However, structural obstacles lay not only in specific events, but in broader global and national developments. Such issues as corruption, failures in democratization, misuse of economic assistance and debt policies were structural obstacles that were the responsibility of States themselves. The draft should emphasize that the majority of structural obstacles were not valid excuses and should not be accepted.

13. Although the World Trade Organization (WTO), the World Bank and the International Monetary Fund claimed to deal only with economic issues, recent involvement in such areas as democratization highlighted a growing commitment to human rights. WTO had an inherent responsibility for work conditions in relation to trade, and the issue of accountability in relation to decent work would inevitably arise in future. Regardless of the specific roles of the international financial institutions, the 148 States parties to the Covenant should be held responsible for their actions within WTO, IMF and the World Bank, and for influencing policies in relation to the right to work. Under International Labour Organization and the Organisation for Economic Cooperation and Development (OECD) guidelines, even States that had not ratified the Covenant were responsible for key areas of implementation.

14. Mr. SADI asked to what extent the right to work depended on and was linked to the right to education and training.

15. Mr. CEAUSU said that only those who had broad professional skills would have a range of job opportunities available to them. He stressed the importance of the right to technical and vocational training, which must correspond to the wishes and abilities of the individual concerned and the objective conditions in his or her country. In its general comment, the Committee should emphasize the importance of the UNESCO Convention on Technical and Vocational Education and the need to ensure equal access to such training.

16. Ms. BARAHONA RIERA asked how full employment could be achieved in countries which faced a lack of foreign investment and other serious problems.

17. Mr. KERDOUN asked whether IMF, the World Bank, ILO or the State concerned was responsible for ensuring full employment.

18. Mr. SADI asked whether Mr. Siegel believed that, at least in the short and medium term, the market economy would not allow implementation of the right to work as there was no intent to create job opportunities.

19. Ms. BRAS GOMES asked what could be done to ensure that international financial institutions attached greater importance to the right to work in the context of poverty reduction strategies and made its implementation a major goal under sustainable political, economic and social policies.

20. Ms. IYER said that Mr. Siegel had downplayed the impact of globalization on the ability of States to implement the right to work.

21. The CHAIRPERSON reiterated the important role of education and vocational training for implementation of the right to work. The Committee's role in involving international financial institutions in the implementation of the right to work should be emphasized.

22. Mr. IWAMOTO (United Nations Educational, Scientific and Cultural Organization) said that rapidly changing technology and the constantly growing demand for knowledge made lifelong learning necessary. Thus, the right to work and the right to education were closely linked, necessitating closer cooperation between UNESCO and ILO.

23. Mr. SIEGEL (University of Nevada) said that the Committee and ILO must promote the concept of full employment and recognize that achieving full employment was the major goal in the context of social and economic rights.

24. In his opinion, States sometimes failed to take employment seriously. That was the case, for example, when a Government had no strategy for upgrading the technical and general education level of its workforce or when it allowed unemployment rates to rise to extremely high levels. Responsibility for ensuring full employment lay with the State concerned, and States must be held accountable. A lack of foreign investment did not free States from responsibility. States must take steps, inter alia, to review their trade policies and resource management. International financial institutions and donor States also had a significant role to play.

25. The market economy, although not a problem in itself, was characterized by transitional instability and the risk of a race to the bottom. He stressed the need to focus on that instability and take special care when making decisions concerning, inter alia, investment and trade.

26. He acknowledged the steps taken by the Committee to engage international financial institutions in the implementation of the right to work and called upon it to continue its efforts in that regard.

27. Globalization had had a positive impact on the right to work, in particular in India and China. It was important to even out the effects of globalization and find a strategy for preventing the benefits of foreign direct investment from being limited to a few countries. Globalization as such could not be used as an explanation of the failure of States to assume their responsibilities in full.

28. Mr. MRATCHKOV (Sofia Institute of Legal Sciences) said that the right to work had evolved over the years and required an interpretation which corresponded to modern social and economic realities. The Committee should stress the evolving nature of the right to work in its general comment and identify new elements in the normative body of the Covenant.

29. The right to work had a social dimension. The Committee should mention that exercise of the right contributed not only to the development of the individual, but also to that of society at both the national and international levels. The economic nature of the right to work must also be explained. The right to work was the basis for the development of industry, agriculture and other sectors of the economy.

30. Referring to paragraph 2 of article 6 of the Covenant, he said that the term "safeguard", implied not only recognition of the need to implement the right to work but also an obligation to do so. States must adopt adequate measures to ensure full implementation of the right to work.

31. A subject which had been of great concern to him for many years was the justiciability of the right to work, the legal framework for which must be given greater importance. To address the question at the national level, States must be under a stricter positive and negative obligation to ensure implementation of the right. But whereas the justiciability of the right to work was more or less recognized at the national level, that was not the case at the international level. The right to work as a social right within the meaning of the Covenant did not enjoy the same degree of protection as rights enshrined in the International Covenant on Civil and Political Rights. It was a right which merely offered a certain possibility to act in a particular economic and social situation. It was that aspect of the justiciability of the right to work which the Committee must promote.

32. Informal employment was a universal problem. It was not solely the problem of workers who did not have a contract, but manifested itself in many different forms. In his own country, for example, employers concluded so-called civil contracts which, although legal, enabled them to avoid compliance with legislation on the right to work. Hence the need to address the problem of the various forms of clandestine employment, which constituted a violation of the right to work under article 6 of the Covenant.

33. Mr. SAIDOV (National Human Rights Centre of the Republic of Uzbekistan) proposed inserting in the draft general comment a reference to the 2000 Charter of Fundamental Rights of the European Union, the 1981 Universal Islamic Declaration of Human Rights and the 1998 International Labour Organization Declaration on Fundamental Principles and Rights at Work. It would also be useful to make mention of the general comments of other United Nations treaty bodies which addressed the right to work, such as the Human Rights Committee, the Committee on the Elimination of Discrimination against Women and the Committee on the Elimination of Racial Discrimination. The case law of the European Court of Human Rights should also be cited.

34. Mr. Texier had rightly pointed out in his paper that the Covenant's definition of the right to work and the obligations incumbent on States parties were incomplete (E/C.12/2003/7, para. 7) and that labour was one of the keys to the exercise of other rights (para. 1). Freely chosen work should be regarded as an inalienable human right and fundamental freedom.

35. Traditionally, an artificial distinction had been made between so-called first- and second-generation rights, with the result that the right to work had been classified as a positive right. A person without a livelihood was clearly deprived of his rights. The right to work was the cornerstone of other economic rights, and other individual rights, and could not be regarded as a secondary right.

36. Thus, the right to work, which in the past had been applied only under national legal systems, had become an essential element in the protection of labour rights the world over as a universal and natural right.

37. The Committee's concluding observations on States parties pointed to many forms of discrimination in the workplace, to the extent that discrimination deprived working people of freedom of choice, it undermined the prohibition of forced labour.

38. The draft general comment should contain a reference to factors and conditions that resulted in discrimination in employment. Such discrimination could be linked to race, colour, sex, religion, political opinion, ethnic or social origin, family responsibilities, marital status, participation in trade unions and their activities, age, or incapacity. For example, setting any limitation or granting privileges in labour relations that were unrelated to the quality and results of a person's work was inadmissible and discriminatory. In some States labour legislation explicitly prohibited discrimination based on language, property status, official position or place of residence. Uzbekistan's Labour Code prohibited discrimination on the basis of participation in trade unions or any other public association.

39. Discrimination in the workplace could occur in the public or private sector, and might relate to terms of employment and promotion, working conditions, access to health care, occupational safety and the well-being of workers, job regulations, participation in collective bargaining or wage rates. The general comment should contain a reference to the characteristic features of discrimination, as set out in ILO Convention No. 111 concerning Discrimination in respect of Employment and Occupation.

40. Mr. Texier had rightly stressed the core obligations of States parties to the Covenant. States parties also had core obligations under ILO Convention No. 111: States parties undertook to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, which they would do by methods appropriate to national conditions and practice. The goal was formulated in such a manner that its achievement in the near future was virtually impossible. Thus, ILO Convention No. 111 did not oblige States parties to introduce compulsory legislative measures to achieve the ultimate goal of eliminating discrimination, but gave preference to educational initiatives. Further, its obligations pertained to areas of national jurisdiction only.

41. With regard to chapter V of the draft general comment, on violations of the obligations under article 6 of the Covenant, it would be useful to have a general reference to the main reasons for such violations. As the Committee's various concluding observations on non-compliance with article 6 of the Covenant showed, such reasons included deficient national labour legislation, the failure of government bodies and trade unions to perform their tasks properly, the ineffectiveness of measures to ensure a timely response to violations, the lack of preventive measures, the ineffectiveness of incentives, guarantees and benefits for workers, ineffective fiscal policy, and low levels of economic development.

42. He endorsed the recommendations on the implementation of article 6 and suggested adding a provision to the effect that the code of conduct (para. 36) should be disseminated among employers, trade unions, employment agencies and government bodies so as to make it clear what activities might be undertaken to ensure equal opportunities for workers and eliminate discrimination. It would also be useful to specify educational and awareness-raising measures.

43. The conclusion of a general comment on article 6 of the Covenant would be instrumental in achieving a uniform understanding and interpretation of States parties' obligation with regard to the right to work.

44. Mr. MALINVERNI, noting that Mr. Mratchkov had drawn a distinction between the justiciability of the right to work under domestic law and under international law, asked whether he could give any specific examples, apart from forced labour and other classic cases, of obligations stemming from the right to work. According to Mr. Mratchkov, the right to work under national law was generally recognized as being justiciable, whereas it was disputed under international law. In his own view, however, the justiciability of a right depended on its legal nature and not on whether the right was national or international, unless justiciability meant that protection mechanisms existed in domestic law but not yet in international law, a premise he did not endorse. Justiciability was inherent in the legal nature of a right and did not depend on mechanisms to ensure its implementation.

45. Regarding the individual and societal aspects of employment, he asked whether, in Mr. Mratchkov's view, the right to work was an individual right, a collective right or both.

46. Mr. SADI asked whether Mr. Mratchkov thought that all the components of article 6 were justiciable, including, for example, recognition by States parties of the right to work. He also wondered how the right to freely chosen work could be justiciable: after all, people living in poverty did not accept a job freely, but because they had no other choice.

47. Mr. KERDOUN said, with regard to the problem of informal employment in the context of justiciability, that it was important to distinguish between two cases. In one, both employer and employee were in the informal sector, neither being legally registered. In such cases, there could be no justiciability. In the other, the employer was legally registered, but employed a number of persons without declaring them. In many countries justiciability existed in such a case, in that the employee could institute legal proceedings to demand compensation.

48. Ms. BRAS GOMES agreed that there was a social dimension to the right to work, especially as treated in international instruments. But the multifunctional aspect of the right to work did not seem to be that relevant to States, particularly in times of financial constraint, when the link between the right to work and social development became more tenuous. She asked what could be done to strengthen the understanding that human rights and social development were two sides of the same coin.

49. Ms. BARAHONA RIERA said that the right to work had been referred to as the right of the individual, who in working contributed to the development of society. That aspect needed to be further clarified and included in the draft general comment. In Western culture, the right to work was regarded as an inherent individual right.

50. She stressed the importance of Mr. Saidov's enumeration of the various forms that discrimination at the workplace could take and noted that it was often difficult to identify such phenomena.

51. The concept of accessibility introduced in Mr. Texier's paper could be expanded upon to take into account different forms of discrimination. One novel aspect of his work had been his conclusion that States had an obligation to take positive measures to ensure the right to work. She was also pleased that the draft general comment had focused on the definition of decent work and the question of a worker's physical and mental integrity, which included the problem of sexual and psychological harassment.

52. Mr. MARCHÁN ROMERO said that Mr. Mratchkov had stressed the social dimension of work, at both the national and international levels. Given the indivisibility of all rights, a link needed to be established between the right to work and the right to development, because the effective exercise of the right to work was greatly neglected in developing countries, where many were employed outside the formal sector and were in danger of social exclusion.

53. All rights under the Covenant were justiciable, justiciability being inherent in all rights. He asked Mr. Mratchkov whether, in his opinion, the right to work itself, in addition to rights associated with working conditions, was justiciable.

54. The right to work must include the right to full employment. But the right not to be unfairly deprived of employment also depended on decisions by States parties, such as those relating to restructuring efforts, privatization measures and initiatives to prune bureaucracies, as well as on other factors, such as economic difficulties, which might limit the rights of workers.

55. Mr. RIEDEL said that the serious problem of the informal sector, an issue that invariably arose in discussion of periodic reports, must be addressed in the context of articles 6 to 8 of the Covenant. In drafting the general comment he wondered whether the informal sector should be included under article 6.2 as an obligation of States parties or whether it would be better to address it in detail under article 7 (a) (i) with regard to fair wages. Perhaps it should be included in both places.

56. With regard to the mention in the general comment of specific legal obligations, he requested additional, compelling examples of States parties' obligations to protect the right to work. The general comment should be explicit on the issues of accountability, redress of grievances and remedies; the recently established intersessional open-ended working group on the draft optional protocol to the Covenant would most likely request the Committee's opinion of whether article 6 should be subject to an individual or collective complaint procedure. He requested the experts' views on the matter.

57. Mr. GRISSA said that he was surprised by the suggestion that consideration should be given to making the right to work justiciable, since it would place great pressure on States parties, some of which did not have sufficient resources to guarantee the right to work. Article 6 of the Covenant called for States parties to recognize the right to work, not to provide the work itself. He wondered how justiciability could be reconciled with limited budgets.

58. Mr. MRATCHKOV (Sofia Institute of Legal Sciences) said that, at the national level, the justiciability of the right to work referred to the ability to bring before the courts cases involving non-compliance with the terms of a formal labour contract concluded between an employer and an employee.

59. At the international level, cases involving non-observance of the rights contained in the Covenant, including the right to work, could not be brought before an international court. Rather, all international instruments, including the Covenant, left it to States parties to decide whether to give effect to such rights under their domestic legislation.

60. Economic, social and cultural rights did not enjoy the same degree of international protection as civil and political rights. In the European context, for example, economic, social and cultural rights did not fall within the purview of the European Court of Human Rights, but civil and political rights did. There was currently much debate over whether economic, social and cultural rights should also be placed under the Court's jurisdiction. A complaint procedure existed that allowed the Human Rights Committee to monitor compliance with the International Covenant on Civil and Political Rights, but no similar procedure existed for the International Covenant on Economic, Social and Cultural Rights. Although the distinction between the two sets of rights was artificial and outdated, existing legal structures continued to reflect it.

61. The right to work was an individual right, as provided for under article 6 of the Covenant, which referred to it as the right of everyone. The collective aspect of the right to work had to do with the fact that when individual rights were violated on a large scale, individual interests were not the only ones jeopardized, those of society were as well.

62. There were many ways in which informal employment hindered the enjoyment of the right to work. Most common was the use of business or service contracts to disguise an employment relationship. Part of the problem lay in the lack of supervision of such contracts; however, legislation had been enacted in some countries to prohibit disguised employment relationships.

63. Some rights were more suited to being protected by the courts; others were not formulated precisely enough for cases involving non-compliance to be settled in court. While protection existed for both kinds of right, the distinction between them affected international jurisprudence in that those rights that could be enforced by a court were more directly and effectively justiciable than those overseen solely by international monitoring bodies.

64. With respect to article 6 of the Covenant, paragraph 1 established the aims of the article and paragraph 2 described the means by which those aims should be achieved. Article 2 of the Covenant stipulated that States parties should undertake steps with a view to achieving progressively the full realization of the rights. Thus, the right to work was an ideal to which individuals could aspire, not an immediately attainable objective.

65. Mr. SAIDOV said that the right to work should be seen as a human right that was fundamental to the enjoyment of other human rights. Freely chosen work was essential because it was a major factor in determining an individual's way of life. Work also provided the main source of income upon which an individual's existence depended. The right to work comprised

three elements: the right to the opportunity to gain a living by working; the right to freely chosen work without discrimination; and the right to protection against arbitrary dismissal by employers.

66. In drafting the general comment, it was important to draw on the general comments of other United Nations treaty bodies, such as general comment No. 18 on non-discrimination of the Human Rights Committee and general comment No. 16 on unpaid women workers in rural and urban family enterprises of the Committee on the Elimination of Discrimination against Women.

67. Mr. SIEGEL (University of Nevada) said that the right to work should be broken down into its more and less judiciable elements. Work that was not freely chosen, such as slavery, forced labour, child labour or trafficking, was justiciable. Rights relating to job security and arbitrary dismissals were also justiciable, but required more effort to enforce. The right to full employment, which was at the core of the right to work, was a right that should be monitored by the Committee, rather than the courts. Where violations of the right to work involved the inability of the Government to provide full employment, protection should be provided through international norms, and infractions should be handled through sanctions applied by a treaty body.

68. The Committee often took great pains to educate, rather than admonish States parties with regard to violations of Covenant provisions. However, when a system to protect rights was not used, it lost its effectiveness. Therefore, when States parties violated a provision of the Covenant, the Committee should clearly say so.

69. When an acquired right, such as the right to notice in the context of lay-offs, was eliminated or rendered meaningless, it was important to draw attention to it as a retrogressive step. Another example of retrogression was taking anti-discrimination protection away from a category of the population that had previously acquired it, such as women.

70. Ms. THOMAS (International Labour Organization) said that the International Labour Conference had recently held a general discussion on the informal economy, during which a number of conclusions had been reached on the rights and protection of workers. The Committee might find the contents and language of some of those conclusions useful in drafting the general comment.

71. Several years previously, the International Labour Conference had unsuccessfully attempted to adopt an instrument on the protection of contract workers, including those in disguised employment relationships and those towards whom employers assumed no responsibility because they were not recognized as being in employment relationships. But there had been no agreement on how to protect such workers or acknowledgement by some member States that such workers even existed. However, since then, a general discussion had led to agreement on what constituted an employment relationship and a disguised employment relationship, and what was considered self-employment and therefore outside the protection of labour laws. Many aspects of the contract labour issue had been covered in the informal economy discussion held the previous year. The Committee might find the results of that meeting useful in formulating its general comment.

72. She fully endorsed the comments made on the justiciability of the right to work. The right to work was usually seen as justiciable in terms of the impediments to it, for which ample legislation existed in almost every country. The International Labour Organization, in its Convention No. 122 concerning Employment Policy, had required implementation of the right to work not through legislation but through government policy, which could be monitored through workers' and employers' complaints concerning the State's obligations, rather than through legal enforcement of the individual right to work.

The meeting rose at 1 p.m.