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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirty-eighth session

SUMMARY RECORD OF THE 2nd MEETING

Held at the Palais Wilson, Geneva,  
on Monday, 30 April 2007, at 3 p.m.

Chairperson: Mr. TEXIER

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The meeting was called to order at 3.05 p.m.

RELATIONS WITH UNITED NATIONS ORGANS AND OTHER TREATY BODIES  
(agenda item 6) (continued)

1. Mr. MAGAZZENI (Coordinator of the National Institutions Unit, Office of the High Commissioner for Human Rights) said that national human rights institutions had an essential role to play in the work of the treaty bodies. In March 2007, during the nineteenth session of the Annual Meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, the High Commissioner for Human Rights had also said she was convinced that those institutions were the best relay mechanism at country level for the application of international human rights norms. It was therefore of the utmost importance that the treaty bodies should emphasize, during their dialogue with States parties, the importance of having national institutions that fully complied with the Paris Principles and, especially, that were independent. Those institutions could be instrumental in strengthening judicial institutions and reforming the law as a whole, particularly by monitoring the application of good-governance standards. He therefore called on the Committee to consider drawing States' attention to the importance of involving national institutions to work in association in a national process of that kind. Those institutions were also privileged partners for the treaty bodies, particularly in countries emerging from conflict, where they could promote the implementation of efficient mechanisms for transitional justice and national reconciliation.
2. The Office of the High Commissioner for Human Rights, entrusted in 2006 with a leadership role within the United Nations system regarding national human rights institutions, intended to continue to further the establishment and strengthening of national institutions in accordance with the Paris Principles, endorsing governmental endeavours to that effect, in addition to closely monitoring compliance with the Paris Principles in order to build those institutions' capacity to work effectively, including for the protection of economic, social and cultural rights.
3. The Office of the High Commissioner had held a number of regional and international workshops on the rights that came within the Committee's purview, such as: the workshop on national human rights institutions and the right to education, held in Honduras in September 2005, which gave rise to the creation of a plan of action for national institutions to promote and protect the right to education in Latin American countries more effectively; and the fifth Conference of African National Human Rights Institutions, which was held in Nigeria in November 2005 and had focused primarily on national institutions' role in promoting and protecting economic, social and cultural rights. There were also the Round Table on National Institutions Implementing Economic, Social and Cultural Rights, held in India from 29 November to 1 December 2005, and the session of the International Coordinating Committee of National Human Rights Institutions, organized in 2006, which focused on migration and migrants' economic, social and cultural rights. National institutions were to meet in Nicaragua in May 2007 to discuss the right to education.
4. The handbook, Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions, was available in English, French and Spanish. The Office of the High Commissioner was also endeavouring to enhance synergies between the United Nations and national institutions, whose role was further legitimized by the Paris Principles. In its view,

national institutions should encourage States to ratify international instruments and contribute to the reports they submitted to the United Nations organs or committees. The Office of the High Commissioner therefore, could not but express its satisfaction at the Committee's general comment No. 10, which set out in detail the role of national institutions in the protection of economic, social and cultural rights, thereby acknowledging the crucial role those institutions could play in promoting the indivisibility and interdependence of all human rights.

5. He encouraged the members of the Committee to study the conclusions of the International Round Table on the Role of National Human Rights Institutions and Treaty Bodies (HRI/MC/2007/3, document distributed in the meeting room in English only), held in November 2006 in Berlin, which brought together representatives of national institutions and members of various treaty bodies. The document suggested means of possible cooperation between the national institutions and the treaty bodies and made recommendations to those bodies, which were to be examined in greater detail in June 2007 at the Meeting of Chairpersons of the Human Rights Treaty Bodies. In conclusion, he urged the Committee to accept, whenever possible, supplementary reports prepared by the national institutions and to allow them not only to submit information in writing, but also to make oral presentations during meetings of the Committee prior to consideration of the State party's report.

6. Ms. BARAHONA RIERA said that during a meeting of ombudsmen from various Latin American countries that she had attended in Colombia, she had been able to observe that some national institutions feared that to participate in the preparation of State party reports might undermine their independence. She wished to know whether the Coordinator of the National Institutions Unit had an opinion on the matter and whether it had been discussed at the Berlin Round Table.

7. Mr. RIEDEL observed that at times, States parties presenting their reports had included representatives of national institutions in their delegation, which had given rise to some bizarre situations. National institutions, now stronger because better organized, ought to have their own role, separate both from the Government's and that of the non-governmental organizations (NGOs). The Committee would do well to think about the prominence they should be accorded in future, in view of their very specific and extremely valuable knowledge of the reality on the ground and of the need to preserve their total independence.

8. Ms. BONOAN-DANDAN pointed out that fostering closer links with national institutions had been one of the Committee's long-standing goals, but that the real question lay in the practicalities. Asking them to participate in the dialogue with the State party's delegation would breach the Paris Principles, whereas consultations prior to the presentation of the report would perhaps be more appropriate. It would be helpful if the Coordinator of the National Institutions Unit could provide guidance on the subject.

9. Ms. BRAS GOMES said it was also her understanding that those institutions would be more favourably disposed towards consultations with the pre-sessional working group than participating in the dialogue with States parties, even if nothing was stated to that effect in the conclusions of the Berlin Round Table.

10. Mr. ABDEL-MONEIM expressed surprise that the document had been circulated at a stage when it was yet to be considered at the Meeting of Chairpersons of Human Rights Treaty Bodies and clearly needed to be supplemented; for example, the list of participating national institutions was not even included.

11. Mr. MAGAZZENI (Coordinator of the National Institutions Unit, Office of the High Commissioner for Human Rights) confirmed that the document in question had been distributed for information only and would be considered by the Meeting of Chairpersons of Human Rights Treaty Bodies in June 2007. In his opinion, it was a significant document that advocated more coordinated working methods and could signal the beginning of a more structured dialogue between treaty bodies and national institutions. A first step could be to urge national institutions to seek accreditation to the International Coordinating Committee of National Human Rights Institutions - an earnest of their independence and a sine qua non for participation in the consideration of States parties' reports.

12. Summarizing an exchange of views between Mr. RIEDEL, Ms. BARAHONA RIERA, Mr. KOLOSOV, Ms. BONOAN-DANDAN, Mr. ABDEL-MONEIM and himself, the CHAIRPERSON said that at its November 2007 session the Committee would undertake a comprehensive study of the conclusions of the International Round Table on the Role of National Human Rights Institutions and Treaty Bodies, which would meanwhile be considered by the Meeting of Chairpersons of Human Rights Treaty Bodies, and that it would send a letter for the attention of the next Round Table informing it of its position on the various proposals contained in that document.

13. Mr. DASGUPTA expressed his regret at the wording used in the document in question ("should" rather than "are invited to"), which showed a lack of respect for the national human rights institutions; he took particular issue with paragraphs 3, 6 and 11 (pp. 2, 3 and 5). Stressing that some proposals (para. 11, p. 5) merited the Committee's approval, provided that they were further discussed beforehand, he sought clarification as to the document's origin and status.

14. Mr. RZEPLINSKI, associating himself with Mr. Kolosov's remarks, pointed out that national human rights institutions were under no obligation to the Committee and should be used simply as a source of additional and independent information. Moreover, it was regrettable that the Committee should be required to discuss a text that had just been distributed during the meeting.

15. Mr. MAGAZZENI (Coordinator of the National Institutions Unit, Office of the High Commissioner for Human Rights) said that the information and documents requested would be made available to the Committee. While States parties' reports to the Committee were the responsibility of the State party and its Government, the State party, as well as the Committee, must have access to other sources of information. With regard to the financing of national institutions, it often came out of the State budget precisely in order to protect their independence. Lastly, he explained that the document, which had been distributed to Committee members for their information only, would be the subject of further discussions, particularly during the Meeting of Chairpersons of Human Rights Treaty Bodies from 18 to 22 June 2007, and that any contribution from the Committee, through its Chairperson, would be welcome.

16. Ms. BREINES (United Nations Educational, Scientific and Cultural Organization (UNESCO)), having stressed the importance of close United Nations cooperation with its specialized agencies, the Bretton Woods institutions and national authorities in the context of its new reform, referred to the national commissions for UNESCO located in various countries. She then referred to the meeting to be held on 7 and 8 June 2007 in Amsterdam on the issue of the right to enjoy the benefits of scientific progress and its applications (art. 15, para. 1 (b) of the Covenant) and, inviting the members of the Committee to take part, talked about organizing, at the same time as the November 2007 session of either the Committee or the Human Rights Council, a parallel event at which she would introduce three major UNESCO conventions, namely the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972), the Convention for the Safeguarding of the Intangible Cultural Heritage (2003) and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005).

17. Turning to the right to education, she drew the Committee's attention to: the UNESCO report entitled "Education under attack" on targeted political and military violence against education staff, students, teachers, union and government officials, and educational institutions; the workshop held on 14 and 15 December 2006 in Brazil on the challenges and perspectives for law and education, which demonstrated a need for a regulatory framework in the face of the rapid growth of private universities in Brazil; and the intergovernmental meeting held in March 2007 in Buenos Aires on progress in the development of the Regional Project for Education in Latin America and the Caribbean, where the participants had felt that it was absolutely essential to safeguard education as a public good and to step up activities to eradicate poverty, which had resulted in the Buenos Aires Declaration. In addition, the twenty-second session of the Standing Conference of European Ministers of Education had been held on 4 and 5 May 2007 in Istanbul (Turkey), and a CD-ROM on the regulatory framework governing the right to education had been given to the secretariat of the Committee.

18. At the one hundred and seventy-sixth session of the Executive Board of UNESCO, the Committee on Conventions and Recommendations had discussed guidelines for monitoring the implementation of UNESCO conventions and considered the Director-General's report on the ninth session of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel. Moreover, UNESCO regularly sent the Committee the reports of its member States on the application of the Convention against Discrimination in Education (1960) and suggested that they could be useful in the context of draft general comment No. 19 on the principle of non-discrimination. Lastly, the National Education Forum held in February 2007 in Benin, with UNESCO assistance, had spurred the Beninese Government's endeavours to attain primary education for all as a fundamental right.

19. Mr. KERDOUN asked for an explanation of how the national commissions for UNESCO worked; the Algerian National Commission appeared to be withholding information. Recalling the existence of two ministries for national education in Algeria - one for primary and secondary education, the other for higher education -, he asked whether the Algerian National Commission worked with the latter.

20. Mr. RIEDEL said that since the Committee was currently working on the right to take part in cultural life (article 15, paragraph 1 (a) of the Covenant), a task that would take some time, it would be premature to focus on the right to enjoy the benefits of scientific progress and its applications (para. 1 (b)).
21. Ms. BRAS GOMES requested that the text of the Buenos Aires Declaration should be submitted; given the soaring privatization of education, it would enable the Committee to remind ministers of education that they had recognized education as a public good.
22. Mr. ABDEL-MONEIM stressed that the UNESCO consultations on implementing the Convention against Discrimination in Education were relevant not only to draft general comment No. 19, but also to general comments Nos. 11 and 13, which deserved to be reviewed in the light of the new forms of discrimination that had emerged in education. He would like to be informed of the outcome of those consultations, along with the current status of ratifications of the Convention and any related reservations.
23. Ms. BREINES (UNESCO) explained that the national commissions, a product of the International Commission for Intellectual Cooperation, the forerunner of UNESCO, were established by the national authorities. While UNESCO supplied them with any information that they requested and put its expertise and training at their disposal, it was the Governments of the countries concerned that determined which ministry was responsible for them and their degree of independence. She regretted the fact that the Algerian National Commission did not disseminate information as it ought and suggested that scant resources might explain it. She would pass on Mr. Riedel's message to UNESCO Headquarters about the meeting on the right to enjoy the benefits of scientific progress and its applications, and confirmed that the text of the Buenos Aires Declaration had been dispatched to the secretariat of the Committee. Lastly, noting Mr. Abdel-Moneim's interest in the consultations currently being held, she undertook to send the Committee the status of ratifications of the Convention, which was regrettably unsatisfactory.

SUBSTANTIVE ISSUES ARISING ON THE IMPLEMENTATION OF THE  
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS  
(agenda item 4)

Documents submitted by non-governmental organizations

24. Ms. WOLF (FIAN International and Rights and Democracy) informed the Committee of the preliminary results of the study on the right to food in Nepal undertaken by the two organizations she represented (document distributed in the meeting room in English only), and that scant access to land was one of the major causes of the country's lack of food security. Discrimination, mainly against indigenous groups (57 per cent of the population), the "untouchables" caste (Dalits) and women, was another significant obstacle to the exercise of the right to food. She recommended that the Committee should closely follow the development of that right within the country's new constitutional context, that it should ask the Nepalese Government to disseminate widely the FAO voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security, and urge it to

take a number of measures - land reform, a participatory agricultural policy that solved problems of access and distribution, food distribution to reach the most vulnerable, programmes to combat caste discrimination, investigations of cases of discrimination against Doms and of threats to the Musahar communities in the Terai.

25. Mr. GAUTAM (Rural Reconstruction Nepal) said that Nepal was undergoing a process of transition from an autocratic to a democratic regime, and the huge political leap had not yet yielded all the expected results (an economic growth rate of only 3.4 per cent in 2005/06, instead of the 4.5 per cent anticipated): enormous poverty still prevailed in the country; ethnic minorities continued to be excluded; and the flouting of human rights, particularly economic, social and cultural rights, continued to aggravate the population's living conditions.

26. For centuries Nepalese society had been the scene of discrimination based particularly on belonging to the "untouchables" caste, sex or even ethnic or geographic origin. Women, Dalits and Janajatis belonged to the most disadvantaged groups in terms of enjoyment of economic, social and cultural rights, because the Government had failed to create the conditions for their satisfaction of their basic needs in the areas of food, housing, clothing, education, security or health.

27. Equality between men and women was a subject of debate but was far from being the real state of affairs in Nepal. Women, who comprised the majority of the population, were grossly underrepresented at the socio-economic and political levels, and legal and political initiatives launched to make equality a reality were few and far between. Unemployment among persons with disabilities remained high and they were subject to various forms of discrimination, while disabled women were victims of double discrimination.

28. Child labour was prohibited by law, but in practice, children engaged in dangerous work in factories, mines and in the construction industry, as well as in transport, farming, plantations or even catering. Even worse, some were employed as child soldiers, particularly by the Communist Party of Nepal (Maoist).

29. The armed insurrection had had devastating effects on education. Nearly 350 students had died and many who had been displaced had been unable to return to the educational system in their host region for socio-economic and cultural reasons. Poverty was another reason for non-attendance at school, since parents who enrolled their children in school deprived themselves of an additional source of income.

30. The decade-long conflict was rooted in socio-economic and cultural inequalities as a result of the Government's inability to enforce the rights under the Covenant, including the right to development. Low wages, limited access to paid employment, and particular groups' stranglehold on productive resources had seriously hampered human development and prevented the most disadvantaged from accessing the labour market, which had particularly encouraged young people's flight from the countryside.

31. Even if they were implemented, the transitional Government's initiatives would not suffice to meet even the fundamental needs of persons marginalized for centuries and severely affected by the armed conflict, which meant that the realization of economic, social and cultural rights might remain wishful thinking.

32. Its commitments notwithstanding, Nepal had been incapable of posting the slightest progress in protecting and promoting the human rights enshrined in international law, particularly those set forth in the Covenant. It had not made the budget provisions necessary for realizing economic, social and cultural rights and had been unable to respond to its population's fundamental needs in that area.

33. Ms. BONOAN-DANDAN regretted that the report by FIAN International and Rights and Democracy had only reached the members of the Committee on the day before the State party's second periodic report was to be considered, which did not allow members to make use of the valuable information it contained.

34. Mr. SADI, having seen for himself the scale of poverty in Nepal, concentrated in urban areas, in addition to the problems relating to food and access to water and health care, asked whether the establishment of a more stable democracy was likely to help improve the situation.

35. Mr. KOLOSOV said he was inclined to think that the proposal by FIAN International and Rights and Democracy report that the Committee, in its concluding observations, should call on the State party to carry out genuine land reform fell somewhat outside the Committee's sphere of competence. He pointed out that, according to article 1 of the Covenant, all peoples had the right of self-determination, and freely determined their political status and freely pursued their economic, social and cultural development.

36. Ms. BRAS GOMES asked whether as part of its fact-finding mission, FIAN International had addressed the question of the FAO voluntary guidelines at its seminar on the right to food.

37. She also wished to know whether there was any sign of a change in political will in Nepal and particularly whether there was any hope of the Government framing and implementing policies in favour of women and Dalits.

38. Ms. WOLF (FIAN International and Rights and Democracy) explained that the fact-finding mission in Nepal had taken place two weeks earlier and that it would have been difficult to submit the report earlier. Poverty was far from concentrated in urban areas; according to the statistics she had, 95 per cent of persons suffering from malnutrition and hunger lived in the countryside, but that was still no reason to halt activities in urban areas.

39. She was uncertain whether by calling on the State party to introduce land reform the Committee would run counter to the principle of the right to self-determination. Nor did she think that land redistribution would violate the Nepalese Constitution.

40. Mr. GAUTAM (Rural Reconstruction Nepal) said that the centuries-old autocratic regime had always been supportive of landowners. The advent of democracy should have afforded the worst-off and landless members of society access to available resources, but since April 2006, the Government had quite clearly prioritized urban areas in its activities. That explained the palpable sense of frustration felt by the sectors of the population whose economic, social and cultural rights were still not guaranteed.

41. It was imperative for the Government to implement a pro-poor policy based particularly on the redistribution of land to the people. That was the only way of bridging the economic divide separating the various social groups in Nepal. In addition, United Nations treaty bodies often requested a State party to undertake substantive reforms.

42. Mr. ZHAN, recalling the close links between peace, development and respect for human rights, said that if the Nepalese Government wished to attract the foreign investment required for economic growth, it should begin by restoring peace to the country. It would be preferable, in his view, to avoid using the term “Maoist” in the name of the Communist Party of Nepal.

43. Mr. GAUTAM (Rural Reconstruction Nepal) fully endorsed Mr. Zhan’s view that peace, development and respect for human rights went hand in hand. He also explained that the “Communist Party of Nepal (Maoist)” was the official designation of the Communist Party both in the Constitution and in official documents, which was why it had been used in the parallel report submitted to the Committee.

44. Ms. DOMMEN (3D) said that 3D-Trade-Human Rights-Equitable Economy lobbied for the trade regulations to be devised and enforced so as to foster an equitable economy. The association was convinced that the Committee had a major role to play in making sure that trade negotiations, provisions and agreements helped to promote, rather than undermine, the realization of human rights. It had to be recognized that numerous trade policies had adverse effects on vulnerable groups, that the new intellectual property rules increasingly hindered seed exchanges among small farmers and that access to medicines was obstructed by trade agreements among big companies in the industrialized nations. Given that countries had scant interest in the impact of their trade policy, it would be useful for the Committee to broach that topic systematically in meetings at which States parties’ reports were considered. In addition, she proposed that the Committee put three principal questions to delegations: what measures their country had taken to ensure that those responsible for trade policies were aware of their obligations under the Covenant? What measures had been taken to assess the impact of trade agreements currently being negotiated, particularly on vulnerable groups? Had their country requested the assistance of the Office of the High Commissioner for Human Rights in order to build its capacity to participate in trade negotiations or to implement trade agreements in a manner consistent with human rights?

45. Mr. SADI, having noted Ms. Dommen’s comments with interest, pointed out that the Committee often raised such questions with States parties. Moreover, countries were often aware of the adverse effects of their trade policy but did nothing to correct it.

46. Mr. KOLOSOV said that the States parties that were members of the World Trade Organization (WTO) needed to honour their numerous commitments under the trade agreements they had entered into, yet did not have the technical capacity to bring their legislation into line with those trade agreements or with international human rights instruments. It was difficult to assess the impact of WTO agreements at the national level.

47. Ms. BARAHONA RIERA said she shared the concerns expressed by 3D, particularly with regard to the impact of trade policies on vulnerable groups. That being so, things were more complicated than they appeared and the situation varied markedly from one country to another.

48. Mr. ABDEL-MONEIM said that serious thought should be given to who gained and who lost from free trade. In his opinion, the poorest people benefited the least from trade liberalization. Also, international human rights rules should prevail over international trade law.

49. Ms. BONOAN-DANDAN pointed out that the Committee was one of the treaty bodies that had done most to make countries aware of the impact of trade on human rights. For example, the pre-sessional working group had held a seminar on trade and human rights in November 2006.

50. Ms. DOMMEN (3D) said she realized that countries could not go back on the commitments that they had already made in terms of trade agreements, but that they should seek to limit the adverse effects of future trade agreements and to ensure that human rights were given higher priority in negotiations currently in hand.

51. Mr. McCARTHY (World Organisation Against Torture - OMCT) said that OMCT comprised more than 280 national organizations against torture in some 90 countries. Convinced of the need to combat poverty and socio-economic inequalities in order to eradicate torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment, OMCT had implemented a new programme centred on respect for and promotion of economic, social and cultural rights, with the following objectives: to identify violations of economic rights by particular economic actors, to report to the United Nations treaty bodies on the situation of economic, social and cultural rights and to emphasize the direct links between the exercise of economic rights and violence in all its forms (not only torture, but also domestic violence).

52. Mr. CAHN (Centre on Housing Rights and Evictions) welcomed the Committee's tireless endeavours in promoting the justiciability of economic, social and cultural rights at the international level and urged it to systematically ask States parties, during consideration of their reports, to indicate their position regarding the adoption of an optional protocol to the Covenant.

53. Mr. RIEDEL paid tribute to the national and international NGOs that had been pressing for years for the adoption of an optional protocol to the Covenant, which would enable individuals to complain to the Committee concerning any violation of the Covenant's provisions. He referred to the fact that in its resolution 1/3, the Human Rights Council had decided to extend by two years the mandate of the Open-ended Working Group on the optional protocol to the Covenant.

54. Mr. SADI welcomed the activities undertaken by OMCT to highlight the close links between poverty, torture and other forms of violence. In that connection, violence, particularly domestic violence, was widespread, even in industrialized countries; poverty was not the sole determining factor.

55. Ms. WILSON said that domestic violence and spousal abuse were closely linked to educational level and encouraged OMCT to address in its research the links between violence and access to education.

56. Mr. ABDEL-MONEIM said it would be worthwhile for OMCT to indicate the specific links between poverty, violence, torture and non-compliance with the various articles of the Covenant.

57. Mr. McCARTHY (OMCT), noting Mr. Abdel-Moneim's suggestion with interest, said that OMCT realized that poverty was not the sole factor accounting for domestic violence but was nevertheless convinced that it played a primary role. Accordingly, in industrialized countries such as Sweden, it had been ascertained that a reduction in public aid exacerbated social exclusion and domestic violence.

58. The CHAIRPERSON thanked all the NGOs and those who had participated in the discussion and trusted that the Committee would have the opportunity to return to some key issues as the thirty-eighth session progressed.

The meeting rose at 6 p.m.