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Committee on Economic, Social and Cultural Rights

Fifty-first session

Summary record (partial)* of the 49th meeting**

Held at the Palais Wilson, Geneva, on Monday, 18 November 2013, at 10 a.m.

Chairperson: Mr. Kerdoun (Vice-Chairperson)

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Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights (*continued*)

* No summary record was prepared for the rest of the meeting.

** No summary record was prepared for the 47th and 48th meetings.

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The discussion covered in the summary record began at 10.05 a.m.

Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights (agenda item 3) (*continued*)

Austria

1. **Mr. Carniel** (Austrian Ombudsman Board) said that since 1977 the Austrian Ombudsman Board had monitored the public administration of the Federal Government and seven Länder. As an independent constitutional supreme body, the Board was not bound by directives or orders from legislative or executive bodies. Anyone, regardless of his or her nationality, could freely file a complaint of maladministration, particularly if it involved a violation of his or her economic, social and cultural rights or civil and political rights. The Board could also take action *ex officio*.

2. As of 1 July 2012, the Board could also undertake preventive monitoring. Taking on the role of an independent authority in accordance with article 16, paragraph 3, of the Convention on the Rights of Persons with Disabilities, and the role of national preventive mechanism in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Board could make unannounced visits to places of detention as well as facilities and programmes for persons with disabilities. It had set up six independent commissions for that purpose, which had carried out more than 500 visits by the end of October 2013. During their visits, the commission members had the right to view all documentation held by the institution in question and to meet with anyone working or staying there. Following the visit, the commission members drafted a report and made recommendations. In addition, the Board was advised by the Human Rights Advisory Council, whose members were nominated by NGOs and federal ministries. After completing an investigation, the Board could issue an official determination of maladministration and report it to the federal parliament or the Diets. It participated in a weekly programme on Austrian State television where its members held discussions with representatives of public authorities. The Board could also make recommendations to the supreme administrative bodies, make applications to the Constitutional Court, issue statements on bills and draft laws and advise on amendments to or the passing of laws.

3. As for the situation in Austria with regard to economic, social and cultural rights, he drew attention to the following points: the financial assistance provided to people living in poverty varied from one Land to another; in one Land there was a lack of legal certainty for persons with disabilities receiving minimum benefits; the care and nursing allowance had not been adjusted for many years; persons with disabilities who were employed as part of occupational therapy programmes received extremely low remuneration; reception conditions for asylum seekers were inadequate; access to the labour market was extremely restricted for asylum seekers; regulations concerning personal assistance were not uniform throughout the Länder; violations of human rights were committed in retirement and long-term care homes, facilities for persons with disabilities and youth welfare facilities; there was a lack of adequate facilities for patients with chronic mental illness; there was a shortage of places in rehabilitation centres for children and adolescents; and the subtitling and sign language interpretation services offered by public and private television broadcasters were insufficient. Lastly, the Ombudsman Board strongly advocated Austria to sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

4. **Mr. Ribeiro Leão** asked whether the legislation currently in force addressed the problems faced by asylum seekers when seeking employment.

5. **Mr. Marchán Romero** asked how many complaints the Ombudsman Board had received thus far, particularly those involving violations of economic, social and cultural rights.
6. **Mr. Schrijver** asked whether the Ombudsman Board had sent its list of recommendations to the Austrian Government and whether it had informed the Government of its position in support of ratification of the Optional Protocol.
7. **Ms. Shin** asked Mr. Carniel for his suggestions on ways of remedying the discrepancies between the Länder, and whether the consideration of the initial report of Austria to the Committee on the Rights of Persons with Disabilities, which had taken place in September 2013, had already brought some progress in terms of the rights of persons with disabilities.
8. **Mr. Carniel** (Austrian Ombudsman Board) said that working groups had been established in several federal ministries following the consideration of that report; their work had not yet produced any tangible results. The sharing of responsibilities between the Länder and the federal authorities was sometimes governed by treaties signed by the authorities concerned. The Board had issued a more comprehensive list of its recommendations and intended to raise the issue of ratification of the Optional Protocol during the consideration of the fourth periodic report of Austria to the Committee on Economic, Social and Cultural Rights. In 2012, it had received approximately 16,000 complaints.
9. Asylum seekers did not have access to the labour market until three months after their arrival, and even then only for seasonal agricultural employment. They were not allowed to work for more than six weeks, and a portion of their wages was deducted from their asylum benefits, which was hardly an incentive for them to work, especially since they lost their right to those benefits and must renew their asylum application if they earned above a certain level of income. The Board was currently raising that very politically sensitive issue in its discussions with the Ministry of Labour.
10. **Mr. Marchán Romero** said that he was surprised by the large number of complaints received and asked Mr. Carniel to further explain how the Board operated and what criteria it used to determine the admissibility of complaints.
11. **Mr. Carniel** (Austrian Ombudsman Board) explained that a complaint could be lodged with the Board once all legal remedies had been exhausted. The Board's human and financial resources were sufficient; it employed 70 staff members, of whom 40 were members of the six independent commissions and 30 were members of the Human Rights Advisory Council.
12. **Ms. Sterzinger** (FIAN International) said that the Covenant was still not embodied in the Constitution and was therefore not directly applicable. Unfortunately, the Ombudsman Board could not be considered a national human rights institution, despite the role it played and in particular its new responsibilities relating to the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, given that the three Ombudsmen were elected by the National Council and the candidates were appointed by the country's three leading political parties. She hoped that the Committee would recommend that Austria should involve civil society organizations in the process of appointing the Ombudsmen.
13. Noting that asylum seekers remained one of the most vulnerable groups in the country, she asked the Committee to recommend that Austria should take all the necessary measures to guarantee asylum seekers their right to an adequate standard of living, allow

them access to the labour market and grant them minimum security benefits if they could not find work immediately.

14. **Ms. Skokan** (FIAN International) asked the Committee to recommend that the Government of Austria should develop a national action plan, based on the holistic concept of the right to food and nutrition and in line with the Food and Agriculture Organization of the United Nations (FAO) Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, in order to counteract the sharp increase in the demand for food assistance in Austria.

15. **Mr. Mair** (Active Unemployed) said that from 2000 to 2010 the number of sanctions imposed by the Austrian national employment agency had increased from 230 to 405 per 1,000 unemployed persons. As from 2005, unemployed persons who received unemployment benefits must accept any “reasonable” job offered to them, even if it was not in line with their qualifications. Moreover, they were not allowed to negotiate their working conditions. The right to freely chosen work was therefore not respected, and the situation was harmful to the mental health of unemployed persons. The constant psychological stress created by the threat of sanctions was a form of structural violence and a violation of the right to health and the dignity of those concerned.

16. **Ms. Klaffenböck** (FIAN International and WSK Rechte Forum) said that, in 2012, the State party’s total official development assistance had equalled only 0.28 per cent of its gross national income, not 0.7 per cent as the Government claimed. In addition, experts had questioned the effectiveness of the assistance, criticizing the fragmentation of competencies and the lack of a geographical focus in international cooperation policies. Those policies were not aimed at promoting gender equality or equal opportunities for persons with disabilities. The Committee members might wish to ask the delegation of Austria what steps the State had taken to establish a development strategy that was consistent with its human rights obligations. They might also wish to ask what measures Austria had taken to develop effective instruments for human rights monitoring and to make use of those instruments in its official development assistance projects and programmes.

17. **Ms. Lüst** (Aktion GEN-Klage) said that the introduction of genetically modified organisms in food production and agriculture undermined the economic, social and cultural rights of consumers and made farmers dependent on the agribusiness industry. She asked the Committee to support the concerns and demands put forward by the Government of Austria regarding the proposed amendments to the European Union regulations on seeds. Her organization urged the Government to prohibit the importation of genetically modified soya for animal feed, require clear labelling of products containing genetically modified organisms, hold agribusiness legally responsible for all effects of genetically modified organisms on soil and health, and to plants and animals from patents. She asked the Committee members to present those concerns to the delegation of Austria.

18. **Mr. Faissner** (Aktion GEN-Klage) asked the Committee members to remind the delegation that the people of Austria had the right to healthy food and that neither the European Union nor the United States of America had the right to force the country to accept genetically modified organisms.

19. **Mr. Ribeiro Leão** asked whether the deterioration in people’s living conditions was linked to the general impoverishment brought on by the crisis, or whether it was the result of insufficient action taken by the Government.

20. **Mr. Schrijver** asked what percentage of Austrian official development assistance was provided through bilateral cooperation and what percentage was provided through multilateral cooperation.

21. **Ms. Bras Gomes** enquired about the duration of unemployment benefits.

22. **Ms. Sterzinger** (FIAN International) said that the growing poverty in Austria was mainly a result of the crisis. The poverty rate had risen by 20 per cent from 2005 to 2010, and 6.5 per cent of the population, or more than 500,000 people, now lived in poverty. Inequalities had become more pronounced, and a fairer tax system was needed to bring about a better redistribution of income and to better combat poverty.

23. **Mr. Mair** (Active Unemployed) explained that the duration of unemployment benefits was unlimited but that the amount of the benefits was not price indexed; it was lowered if the income earned by the unemployed person's spouse exceeded a certain threshold.

24. **Ms. Klaffenböck** (FIAN International and WSK Rechte Forum) said that the amount of Austrian official development assistance provided through bilateral cooperation had stood at 350 million euros in 2011, compared with 450 million euros for multilateral cooperation. Also, while bilateral projects and programmes included effective tools for considering human rights aspects, monitoring and follow-up procedures were still lacking.

25. **Ms. Salamonsen** (Norwegian NGO Forum for Human Rights) said that the Covenant had been invoked only three times before the Norwegian Supreme Court, which had held that rights or duties could not be derived directly from the provisions of the Covenant. Certain organizations had reported cases of discrimination against Roma migrants. The municipality of Oslo had acknowledged the existence of ethnic discrimination. The measures provided for in the Action Plan against Poverty had not been implemented. Due to a lack of resources, the reform of the legal aid scheme had not been carried out, and migrants' right to health was restricted. Social housing was insufficient, and the waiting time was too long. In the health sector and in prisons, the State had not taken the necessary measures to ensure the availability of professional interpreters. The information provided by Norway on the mental health care offered to inmates was insufficient, especially as it seemed that only half of the prisoners who requested mental health-care services received treatment. Norway had not answered the Committee's request for information about measures taken to preserve and promote the traditional means of livelihood of the Sami people. Lastly, restrictions on family reunification had become even tighter, and the subsistence requirement was more stringent than before.

26. **Ms. Aamodt** (Legal Advice for Women) said that it was essential for women from ethnic or minority communities to obtain accessible, understandable and relevant information on their rights in order for them to integrate in Norwegian society. Programmes should be developed that would enable those women to improve their knowledge of the Norwegian language and culture.

27. **Ms. Orefellen** (We Shall Overcome) pointed out to the Committee that, under Norwegian law, persons suffering from mental disorders could be placed in psychiatric hospitals against their will. Without due process of law, such a deprivation of liberty constituted discrimination based on disability and ran counter to the Convention on the Rights of Persons with Disabilities, to which Norway was a party. In addition, health legislation authorized the use of questionable medical practices that amounted to ill-treatment, such as forced electroshock, forced drugging, restraint measures and solitary confinement. Her organization proposed that the Committee should ask the State party how it planned to ensure that persons with disabilities would not be subjected to discriminatory and coercive practices, such as electroshock and the forced administration of neuroleptic drugs, and should urge the State party to repeal the legal provisions authorizing the use of such measures.

28. **Ms. Skree** (We Shall Overcome), after describing the treatment she had undergone against her will in a psychiatric hospital, proposed that the Committee should urge the State

party to ensure access to health care based on free and informed consent, both in law and in practice.

29. **Ms. Kjaeret** (FIAN International and the Norwegian Forum for Environment and Development) expressed concern about the fact that the Norwegian Government Pension Fund, administered by Norges Bank Investment Management, contributed to human rights violations in India, Guatemala and elsewhere by financing the activities of companies operating in those countries. She invited the Committee members to refer to the reports prepared by the organizations she represented, which described the projects in question, namely, the planned construction by Posco of a steel plant in Odisha, India, which would lead to the displacement of more than 20,000 people, and the start of operations at the Marlin gold mine in Guatemala in 2005 by Goldcorp, despite the opposition of 98 per cent of the 500,000 Maya consulted, who were suffering from serious health problems due to the resulting pollution. In both cases, opponents of the projects had met with severe violence, including killings. On behalf of the organizations she represented, she suggested that the Committee should ask the delegation of Norway what measures the State party planned to take in the two above-mentioned cases to comply with its extraterritorial obligations under the Covenant and to improve transparency in the management of the Norwegian Government Pension Fund.

30. The report of FIAN Norway referred to investments made by the Opplysningsvesenets Fund, using Norwegian capital, in a tree plantation company in Mozambique known as Chikweti that violated the rights of the local people. The Committee might also wish to bring up that issue with the delegation and urge the Government of Norway to establish effective remedy mechanisms for victims of violations of the State's extraterritorial obligations. For several years Norwegian civil society had been calling, in vain, for the appointment of an ombudsman on corporate social responsibility. Those calls had gone unanswered, despite the commitment made to that effect by the State party in 2009 during the first cycle of the universal periodic review. The reform of the national human rights institution could provide an opportunity to establish a strong and independent national human rights commission with a mandate that included conducting assessments of the State's compliance with its extraterritorial obligations and, in the event of a violation, conducting the necessary follow-up. Lastly, the Committee might wish to ask the delegation of Norway what measures the State had taken to ensure compliance with its Covenant obligations in the context of its international development cooperation.

31. **Mr. Ribeiro Leão** asked whether persons who believed that their economic, social or cultural rights had been violated were entitled to legal aid.

32. **Mr. Sadi** said that he had trouble understanding how a country that allowed its citizens to be involuntarily placed in psychiatric hospitals and treated with heavy drugs without their consent could be ranked first in the results of a Gallup poll on happiness throughout the world.

33. **Mr. Dasgupta** asked what criteria FIAN International used to determine whether the overall environmental effect of a given project funded by the Norwegian Government Pension Fund was harmful. He wished to know whether FIAN International expected the Fund to ask the authorities of the State concerned to conduct an environmental impact study, conduct one itself, or base its decision about whether or not to invest on the opinion of FIAN International.

34. **Mr. Kedzia** said that, if the Norwegian Supreme Court considered the economic, social and cultural rights set out in the Covenant as too "vague" to be applied directly, it could refer to the Committee's general comments, which provided a legal interpretation. He

requested further information about the more stringent criteria adopted for decisions on family reunification.

35. **Mr. Marchán Romero** asked whether the increase in the number of acts of domestic violence was due to an upsurge in such acts or to an increased willingness to file complaints.

36. **Ms. Bras Gomes** wondered why there was a shortage of qualified translators in such a highly developed country where languages were taught in universities. She asked whether the State party would be prepared to make use of translators working for NGOs, for example, to translate the government agency websites. She wished to know the current status of the debate on whether to ratify the Optional Protocol to the Covenant.

37. **Ms. Shin** asked who was competent to decide that an individual's state of mental health justified placing him or her in a psychiatric institution against his or her will, and whether such placements had ever led to abuse.

38. **Ms. Salamonsen** (Norwegian NGO Forum for Human Rights) said that it was very important that Norway should adopt national legislation enacting the Covenant rights in national law, thereby making them enforceable.

39. **Ms. Aakre** (Norwegian NGO Forum for Human Rights) said that, according to the new criteria used when deciding on applications for family reunification, applicants must guarantee that they would earn above a certain wage threshold in the coming years. In addition, persons who had received social benefits in the previous 12 months were disqualified from applying for family reunification for a period of one year, unless an exemption was made "in exceptional cases", which was done only under very specific conditions that were not well known.

40. **Ms. Orefellen** (We Shall Overcome) said that decisions to place persons suffering from mental disorders in psychiatric hospitals must be taken by a member of the medical profession.

41. **Ms. Kjaeret** (FIAN International and the Norwegian Forum for Environment and Development) said that the State held ownership of the Norwegian Government Pension Fund and that, as such, the Government would be entitled to issue specific instructions on the management of the Fund by Norges Bank Investment Management. The cases previously described — the gold mine in Guatemala and the steel plant in India — were cause for concern and had already been the subject of recommendations by United Nations special rapporteurs, who had reported human rights violations in both cases. When a company financed by the Fund violated human rights, and particularly economic, social and cultural rights, the Norges Bank Investment Management should remove the company concerned from its list of clients, thereby setting a good example for investment funds. Civil society was disappointed by the attitude of the Norwegian Government, which did not seem willing to open a national debate on the issue of ratifying the Optional Protocol to the Covenant. It would therefore be useful if the Committee raised that issue with the delegation of Norway.

42. **Ms. Trzcinska** (NGO Forum – Legal Advice for Women) said that the increase in the number of acts of domestic violence was due to an increase in the number of cases reported rather than an upsurge in such acts. She was concerned by the fact that NGOs offering counselling services to abusive men did not receive any government funding.

The discussion covered in the summary record ended at noon.