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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirtieth session

SUMMARY RECORD OF THE 4th MEETING

Held at the Palais Wilson, Geneva,

on Tuesday, 6 May 2003, at 3 p.m.

Chairperson: Ms. BONOAN-DANDAN

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The meeting was called to order at 3 p.m.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 5) (continued)

Reform of the treaty body system (A/57/387; E/CN.4/1997/74; HRI/ICM/2002/3; Background note on the Secretary-General's proposals for reform of the treaty body system (document without a symbol distributed in the conference room in English only))

The CHAIRPERSON invited the Committee to discuss the reform of the treaty body reporting system, as proposed by the Secretary-General of the United Nations. The Committee should respond to a request for comments from the United Nations High Commissioner for Human Rights.

The two main proposals related to: (a) the possible submission of a single consolidated report for all the treaty bodies; and (b) the harmonization and streamlining of current reporting procedures. However, the Committee should not limit itself to a discussion of those two topics. It would be most useful if the Committee could draw up concrete suggestions for the improvement of the treaty body system so that its representatives at the forthcoming Inter-Committee meeting of the human rights treaty bodies and at the annual meeting of Chairpersons of the human rights treaty bodies could put those suggestions forward for discussion.

Mr. MARCHÁN ROMERO said that a system using single reports would be most useful. Clearly, any reform of the reporting system should be aimed at strengthening the United Nations human rights system as a whole, an objective that had become more crucial than ever. In his country, he had supported the establishment of a coordinating body for the preparation of reports for the treaty bodies, since in his experience the fragmentation of reports was not conducive to a good general overview of the situation. The report of the Secretary-General (E/CN.4/1997/74) also pointed to certain weaknesses in the current system, including the chronic failure of many States to submit reports on time. If, instead of submitting separate reports, States concentrated on preparing and updating an improved single, combined document, the result would be a more comprehensive text that would address the needs of each treaty body and cover obligations under each treaty. Such a document could be easily indexed to facilitate its use, and could be

divided into chapters addressing the subjects covered by each of the treaty bodies. The system would not only make it possible for the treaty bodies to issue more coherent concluding observations, thus strengthening the United Nations human rights system, but would also result in enormous savings of personnel and financial resources at the national level.

Mr. GRISSA said that he failed to understand the advantage to be gained by requesting States to submit separate chapters of a single report for each treaty body rather than separate reports. If a single, comprehensive report were submitted, extracting useful information from it would be complicated and difficult for each treaty body. Already, the reports submitted by States parties were often excessively voluminous and turgid, and contained information that was

not relevant. In particular, the periodic reports often repeated the contents of the initial reports, despite the fact that the Committee consistently called for them to focus on changes and recent developments.

The reports were submitted in accordance with provisions of the specific human rights instruments, and it was not for the treaty bodies to alter the reporting procedure in order to save resources, as they did not have the necessary information or capacity to do so. The proposal to move to a reporting system with a single report might be seen as an attempt to deprive the Committee of its resources.

Mr. TEXIER pointed out that human rights bodies other than the treaty bodies, in particular the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights, had recently become significantly less effective, as member States had formed blocs to limit their power and reduce the importance of non-governmental organizations (NGOs) in their deliberations. The treaty bodies' consideration of reports was infinitely less political than the work of the other bodies. While budget problems unquestionably existed, he feared that they were being invoked as a pretext to weaken the treaty bodies too, which would mark a serious further deterioration of United Nations human rights mechanisms. Had the decision already been taken to adopt a reporting system using single reports for all the treaty bodies?

The Secretary-General had made two main proposals. The first called for harmonization of the rules and procedures used by the treaty bodies, and merited support. For example, there was no reason why each Committee should have its own way of dealing with States that did not submit reports, or why some treaty bodies drew up lists of issues and received replies while others did not. The second proposal, which called for single reports, was problematic. For most committees the obligation to report was set out in the corresponding treaty, and a change in reporting policy would lead to legal problems that would be difficult to overcome. In addition, such a change would be impractical.

The Committee should, however, consider changing its procedures for the discussion of reports with States, at least in the case of periodic reports. It was imperative that initial reports should be exhaustive, but it would be useful if the periodic reports that followed focused on issues of particular concern. For example, if a State party significantly reduced its allocations for primary education and introduced school fees, the Committee could request that the next periodic report should focus on that subject.

The CHAIRPERSON said that, as far as she knew, no decision had yet been taken about the reform of the reporting system.

Mr. RIEDEL said that he opposed the compilation of a single report for use by all treaty bodies, as it would dilute the attention paid to important issues that required discussion. While in theory it might be appealing as an easier and less costly alternative, in practice it would be very counterproductive because it would provide an opportunity for Governments to evade important issues. On the other hand, the proposal to make better use of core reports was certainly constructive. There was currently too much repetition in the reports to the various

treaty bodies - repetition that could be avoided by more frequent updating of and reference to the core reports. For their part, many Committee members, himself included, often failed to seek basic information in the core reports.

The United Nations was, understandably, under considerable pressure to reform the reporting system and the work of the treaty bodies. It was not enough for the Committee to reject one approach because it was counterproductive. It must formulate constructive new proposals. A procedure should be adopted to concentrate on follow-up, for example by devoting a short time at the beginning of each country discussion to a review of the previous concluding observations and the action taken in response to them. Such a discussion could be led by the country rapporteur. Some States had complained that they had had to present reports to four or five treaty bodies in the space of a year or two, and that they therefore had repeatedly been confronted with the same questions. Repetition could be useful as a form of pressure for change, but not if it resulted from a lack of coordination. The treaty bodies should stagger their consideration of the reports of a given State, or should at least limit the number of times per year a single State should be called upon to present reports. Discussions of periodic reports should be more focused, and the treaty bodies should do more to highlight best practices.

Mr. MALINVERNI said he believed that combining six reports in a single report would make little sense if the six committees were not also merged into a single body. He appreciated Mr. Marchán Romero's arguments, but felt it was important to distinguish between upstream and downstream consequences: while States parties would undoubtedly have an interest in producing a single report, since that would simplify their work, he could not see what interest the Committee might have in receiving a report which included information on States' implementation of other instruments. Such a report would probably be even more voluminous than those already submitted, yet at the same time less precise and detailed in respect of any given instrument.

Thus, although he was not fully persuaded by the legal objections raised by Mr. Texier - they were not insurmountable and it would be entirely feasible to have a single report - and while it might be that serious consideration should be given to merging all six committees into a single full-time body monitoring States' observance of human rights overall, he believed that such a development still lay in the future. His preference was for the maintenance of the status quo.

Mr. ATANGANA said that, in his view, States that already found it difficult to submit separate reports on time or even at all would

be most discouraged if they were required to report on all their human rights activities in a single document. Furthermore, it was not clear that a single report would be simply a collation of the six separate reports: there would need to be at least one common section containing a general summary and overall conclusions on the implementation of the various instruments. That would complicate the task unduly. He too favoured maintaining the status quo.

Mr. SADI said that, as long as there were separate treaty bodies, there should be separate reports. States parties reported on specific sets of rights for each instrument and even where the same rights were involved, they required different treatment under different instruments.

Ms. BRAS GOMES said the fact that there was a range of human rights instruments showed that there were specific groups that required special protection in order to be able to exercise their human rights, and it was important for States to spell out the way in which they guaranteed such special protection. It was not possible to do that in a single report, at least not in the form in which reports were currently prepared.

There was certainly a problem of overlap among the various committees. Despite the differences between those bodies that monitored the rights of specific groups and the Committee on Economic, Social and Cultural Rights, whose role was more one of mainstreaming economic, social and cultural rights for all, States tended to provide homogeneous information to all the committees rather than information tailored to the specific mandate of each body. In that regard, Mr. Marchán Romero's suggestion of a single report would undoubtedly oblige States to adopt a more coherent, integrated approach to human rights, inter alia by establishing a national body responsible for implementing and reporting on human rights in general. Moreover, that would reflect the principle of the indivisibility of human rights. However, as Mr. Malinverni had pointed out, that would require a single report, a single set of concluding observations and a single committee; in view of the existing difficulties of collaborating with other committees, she wondered just how easy it would be for such a body to function.

Even though there might be a certain amount of added value in a single report, she felt it would not be possible, using such an approach, to adequately deal with the issues involved in guaranteeing special protection to specific groups.

Mr. PILLAY said it would be feasible to establish a single committee made up of experts in different areas, provided there was a need for a global, integrated approach to human rights; that was the best way to monitor them. The single report would then go to the various experts in turn. The choice appeared to be between that or separate committees.

There might, however, be a compromise position whereby the common human rights core document submitted by States parties could be expanded to deal in detail with points that were of interest to all the treaty monitoring bodies - for example, non-discrimination or the status of international instruments in domestic law - and a further, specific report could be submitted to each individual committee.

Mr. MARTYNOV said that, according to the background note on the Secretary-General's proposals for reform of the treaty body system, none of the treaty bodies appeared to be in favour of the idea of a single report. States parties had indicated their position in General Assembly resolution 57/300, which, while supporting a more streamlined approach, made no mention of a single report. In his view, it would be better for Committee members to turn their attention to the question of streamlining and coordination.

If the framework suggested by Mr. Pillay were adopted, for example, States parties could be requested to address only three areas in their periodic reports: the follow-up to the concluding observations; any new issues that might have come to light since the publication of those observations; and anything States themselves wished to highlight.

Mr. CEAUSU said that, as an expert body, the Committee had a duty to find a practical solution that would alleviate States parties' task and the financial burden borne by the United Nations. The first thing to do was to coordinate the work of the various committees and eliminate duplication. Where there was an overlap between mandates, the committees concerned could be allocated primary and subsidiary responsibility for monitoring the areas in question.

It was also important to rationalize the Committee's own work, in particular with regard to the structure of periodic reports. The concluding observations should contain more specific instructions about what should be covered in the next report, and States parties should act on those observations. Periodic reports should also provide fresh statistics and report on any new legislation, while giving detailed responses to concerns raised by the Committee on the basis of media or NGO reports. Consideration should be given to abolishing the list of issues. Six months was very little time in which to prepare what was effectively a second report. The structure of the core document could also be improved and States parties could be asked to update it every 5 or 10 years.

Mr. TIRADO MEJIA agreed that a single report would not present any advantages.

Mr. TEXIER said duplication among the treaty monitoring bodies was inevitable, given the overlap of rights, but States did not need to repeat themselves. If a State had already reported to another committee, the relevant parts of its report could be made available to other concerned committees in summary form or as extracts.

Mr. MARCHAN ROMERO said that, in practice, the single report already existed, insofar as each State party had sole responsibility for accounting to the treaty-monitoring bodies for its implementation of human rights instruments. The picture given, however, was a partial and fractured one, rather like a series of disjointed snapshots over time. His own approach, like that of General Assembly resolution 57/300, was based on respect for the specific competence of each committee. What needed to be merged were the functions of the various reports, so as to facilitate better oversight of human rights by those international and national organs that had an interest in States' behaviour in relation to their obligations under the various instruments. He would, however, defer to the consensus within the Committee, whether or not it was in line with his own view.

Mr. RIEDEL said the reference in General Assembly resolution 57/300 to the mandates of the treaty bodies served as a reminder to

the committees to exercise restraint, but no more than that: it did not mean they were expected to make radical changes in their methods of work.

There were currently some 120 experts who were members of the treaty monitoring bodies as a whole. That figure could be cut to around 40, along the lines of the European Court of Human Rights, but he believed that in the foreseeable future there was no chance of States parties in the General Assembly agreeing to such a drastic reduction.

Ms. BARAHONA RIERA said that the single report was only one of the options put forward in the background note on the Secretary-General's proposals for reform of the treaty body system. The important thing to bear in mind was that, from the point of view of both States

parties and the treaty bodies, a thematic approach in one form or another was essential. Each State party would no doubt focus on the thematic areas of greatest interest to it and of particular relevance to a given treaty body.

The CHAIRPERSON observed that the general view appeared to be in favour of maintaining the status quo, although suggestions had been made for some quite drastic changes in the Committee's working methods. She suggested that the secretariat should draft a summary of the Committee's discussion for approval by the Bureau and adoption by the Committee prior to submission to the United Nations High Commissioner for Human Rights.

Mr. SINGH (United Nations Educational, Scientific and Cultural Organization (UNESCO)) said that his organization had already begun considering ways to streamline monitoring and reporting procedures in its Committee on Conventions and Recommendations, whose task was to examine the implementation of UNESCO legal instruments, most of which related to education. It was concerned about the low number of States that submitted reports and had identified problems in the areas of technical assistance and the reporting cycle, which was such that all reports were received at the same time and were considered by the Committee in summary form only. In its efforts to find solutions to those problems, the Committee was acutely conscious of the need to ensure complementarity with the work of the United Nations treaty bodies, particularly the Committee on Economic, Social and Cultural Rights, and to reduce the reporting burden on States parties. Among the measures being considered by UNESCO were proposals to make sure that States parties were aware of texts such as the Committee's General Comment No. 13, and to reduce the reporting burden on States by suggesting they could avoid duplication of work by simply making reference to information that had already been provided to the various treaty bodies. New ways of achieving complementarity could be explored within the framework of the joint expert group on the right to education established jointly by UNESCO and the Committee.

The CHAIRPERSON observed that the Committee had thus concluded its discussion on treaty body reform.

RELATIONS WITH UNITED NATIONS ORGANS AND OTHER TREATY BODIES (agenda item 8)

Mr. ZIEGLER (Special Rapporteur on the right to food of the Commission on Human Rights) spoke about his recent mission to Brazil (E/CN.4/2003/54 and Add.1), where he had, among other things, studied the obstacles to the implementation of the right to water in the light of the Committee's General Comment No. 15. He said that when the Committee considered Brazil's periodic report later in the current session, it would be confronted with the same difficulty he had encountered, namely, how to take account of the radically new political climate in the country following the presidential election in October 2002. The election of the new President, Luiz Inácio Lula da Silva, heralded a major change of direction after years of neoliberal government. He had made economic, social and cultural rights, and particularly the right to food, the central plank of his programme. When the time came to consider Brazil's periodic report, therefore, the Committee would have little to gain by criticizing the measures taken by the previous Government, but should rather support the efforts of the new one.

The number of people going hungry in Brazil had been estimated at 22 million by the previous Government, but new estimates doubled that figure. The President had announced a programme to completely eradicate hunger, the "Programa Fome Zero", and would be announcing a worldwide campaign to combat hunger at a meeting to be held in parallel with the forthcoming summit of the leading industrialized countries, the G-8 summit, in Evian, France.

The Programa Fome Zero consisted of a comprehensive set of measures to address structural issues, such as agrarian reform, issues related directly to the realization of the right to food, and local policies for distributing emergency food aid. Brazil was the first country in the world to have a special ministry dedicated to combating hunger and implementing the right to food; that ministry would be coordinating the efforts of the 22 ministries involved in the programme. However, the programme faced two major problems: first, Brazil had a crushing external debt to service (debt-servicing had accounted for over half of its gross domestic product in 2002); and, second, while the democratic legitimacy and determination of the new Government were undeniable, the party headed by the President did not have a majority in Congress. The President would not be able to implement his vision without the help of the international community, which must persuade IMF to accept a unilateral debt moratorium. Otherwise, the Brazilian Government, which had paid IMF more in debt-servicing payments in 2002 than it had spent on health and education combined, would simply be unable to fund its programme to eradicate hunger. It was time for the international community to declare that the right to food was a human right and hence took precedence over a State's contractual obligations. At the same time, opposition in Congress to the President's programme was inevitable: the implementation of programmes to combat hunger in Brazil was based on "registers of those in need" compiled in the past by local feudal oligarchies, who had used their position to consolidate their own power. The Government was proposing to have those registers compiled in future by the federal authorities. The Committee should seize the historic opportunity that presented itself to support the Brazilian Government's efforts to implement the right to food.

Mr. KERDOUN asked why the Special Rapporteur had singled out Brazil for his study on the right to food, when hunger was rife in other parts of the world too, particularly in Africa. He would like to know from which sources the Special Rapporteur drew his information on hunger around the world; the most obvious sources, such as UNDP's Human Development Report, tended to provide information about poverty rather than starvation as such. He would also like to know how the right to food was actually implemented in different countries, particularly in their domestic legislation. On the question of a debt moratorium, in the current debate on how

best to deal with the huge debts accumulated by developing countries since the 1970s, economists tended to favour debt reduction on the grounds that contractual obligations could not be just set aside. However, some jurists and philosophers believed that external debt should be cancelled altogether, arguing that there had been a radical change in circumstances and that future generations should not necessarily be bound by obligations entered into by previous generations.

Mr. GRISSA, observing that the global lendable resources of IMF amounted only to US\$ 100 billion, asked why the Special Rapporteur had said that Brazil had to repay US\$ 350 billion in debt servicing to IMF.

Mr. CEAUSU wondered what had become of the US\$ 350 billion lent to Brazil. If the money had gone to enrich productive enterprises in the country, they should be able to repay the loans.

Mr. ZIEGLER (Special Rapporteur on the right to food of the Commission on Human Rights), replying to the questions raised, recalled that his mandate was to elaborate concepts and consider ways of realizing the right to food; in addition to submitting an annual report to the Commission and the General Assembly, he undertook country missions. His missions during the year had been to Bangladesh, the Niger and Brazil, and there would be another soon to the Occupied Palestinian Territories reflecting an appropriate geographical balance. Brazil had been chosen because it was the most complex of the Latin American countries. He had drawn on statistics provided in FAO's World Food Report which showed that, in real terms, hunger had increased worldwide in the past year, even though global agricultural production would be able to feed double the amount of the hungry. Clearly, the problem was not inevitable, but was created by the current world order.

Regardless of the number of creditors involved, it was IMF which negotiated the debt terms and oversaw a country's debt servicing. The new Government in Brazil could not possibly service its current debt if it wanted to do something to end hunger: in order to avoid following the disastrous examples of Peru and Argentina, it had to obtain a debt suspension, moratorium or rescheduling. It was true that a debt of over US\$ 350 billion was enormous: the military dictatorship in Brazil had been largely responsible for it, because of its corruption and because it had accepted the debt terms imposed upon it under pressure from the United States. Successive Governments had allowed the Brazilian debt to increase further. The current Government, however, now wanted to take Brazil's powerful economy in hand on its own terms, but it needed international help to deal with the inherited debt.

Mr. LOPEZ (Secretariat), reporting on progress in drafting voluntary international guidelines on the right to food, said that the FAO Intergovernmental Working Group established to elaborate the guidelines had held its first meeting in March 2003, when over 130 Governments and many NGOs had exchanged views on what the guidelines should contain. He and other OHCHR staff had assisted FAO in servicing the Working Group, and were trying to ensure that other bodies, like the Committee, would become involved in the process. An OHCHR document, drawn up after consultation with experts from the Committee and other United Nations bodies, had been submitted at the first meeting, with suggestions on the form of the guidelines. The Bureau of the Working Group was now scheduled to draw up a first draft of the guidelines and circulate them in June to Governments and international organizations. The Working Group would hold a second meeting in September in order to conduct negotiations on the draft guidelines. The aim was to produce a policy instrument that would help States implement the right to food, and to assist FAO in incorporating the right to food more specifically within its activities, as indeed it wished to do.

Mr. RIEDEL said that the High Commissioner would be expecting the Committee to comment on the useful preliminary work done by the Working Group and on the positions of FAO and the Bureau of the Working Group. Thus far, the focus had been on producing a policy instrument, not another general comment or convention. The Committee might wish eventually to make a further statement on the right to food as a follow-up to its General Comment No. 12 and as a prelude to revising it. Just as WHO had mainstreamed human rights issues and in the process devised important benchmarks on the right to water, FAO as well should routinely address the heretofore neglected human rights component, including the right to food. There was a great deal of convergence in the work done by the two agencies, and after the draft guidelines were circulated, the Committee should try to discern some best practices, perhaps assigning specific Committee members to the task. The voluntary aspect of the guidelines should not be overemphasized and the Committee's focus should be to achieve active realization of human rights.

Mr. WINDFUHR (Foodfirst and Information Network (FIAN)) said that his organization had undertaken many activities in order to involve NGOs and civil society in the formulation of the guidelines; he offered to give the Committee a document containing ideas proposed by over 140 NGOs prior to the first Working Group meeting.

The formulation of the guidelines was of particular interest to the Committee because it was the first time that an economic, social or cultural right had been made the subject of an intergovernmental meeting and of negotiations among so many Governments. It was a real political event, which offered an opportunity to the Committee, FAO and OHCHR, and from which Governments would learn much.

At the Working Group's first meeting civil society organizations had expressed broad support for the Committee's General Comments Nos. 12 and 15, although certain Governments, notably the United States, still challenged some of the Committee's positions. The issue of the enforcement of rights had, surprisingly, been raised by Canada and the United Kingdom, even though they were parties to the Covenant. The United Kingdom argument had been that progressive rights were not enforceable, whereas General Comment No. 12 maintained that they were. Brazil was likely to agree that such rights were legally enforceable, but would be precluded from acting by the current indebtedness. The related issue of international obligations in the era of globalization had, in fact, been brought up by NGOs in the Working Group with many references also to the Committee's General Comment No. 15 on the right to water and State party obligations in that area.

It was important to view the guidelines as not simply voluntary, but as practical rules for the implementation of the right to food by Governments, especially the States parties to the Covenant. It was a matter of political will and a rights-based approach. FIAN believed that the Committee should participate in the next Working Group meetings in order to share its accumulated knowledge in the field, and that it would be desirable for the Committee to draft a general comment on international obligations.

The meeting rose at 5.45 p.m.