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SESSIONAL WORKING GROUP ON THE IMPLEMENTATION OF THE INTERNATIONAL
COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

SUMMARY RECORD OF THE 15th MEETING

Held at Headquarters, New York,
on Tuesday, 22 April 1980, at 3 p.m.

Chairman: Mr. AL-KAISI (Iraq)

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by States parties concerning rights covered by articles 6 to 9 of the Covenant
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The meeting was called to order at 3.45 p.m.

CONSIDERATION OF REPORTS SUBMITTED IN ACCORDANCE WITH COUNCIL RESOLUTION 1988 (LX)
BY STATES PARTIES CONCERNING RIGHTS COVERED BY ARTICLES 6 TO 9 OF THE COVENANT
(continued)

Report of Colombia (E/1978/8/Add.17)

1. Mr. MORALES-SUAREZ (Colombia) said that the provisions of the Constitution of Colombia cited in the report should be construed in conjunction with the country's labour legislation. The Constitution adopted in 1886 had altered very little but a comprehensive body of labour legislation existed which gave effect to its provisions.

2. With respect to article 6 of the Covenant, the Constitution of Colombia stated that work was a social obligation and should therefore enjoy the special protection of the State. However, his country did have an unemployment problem, which had induced many workers to migrate to neighbouring countries where more jobs were available - Venezuela and Ecuador in particular. The Employment and Human Resources Division of the Ministry of Labour and Social Security was striving to create employment in all parts of the country. The Government had established vocational training centres, which had some success, and there was reason to believe that the problem of unemployment would be solved.

3. Referring to article 7, paragraph (a) of the Covenant, he said that a minimum wage applicable to workers, in both the public and private sectors, was determined periodically by the National Wages Council, made up of Government, employers' and workers' representatives. The most recent minimum wage order had come into effect on 1 January 1980. Wages in rural areas tended to be lower than those in urban areas, and the Government was making efforts to ensure that rural wages rose to a satisfactory level. The new minimum monthly wage was 4,500 Colombian pesos for urban workers and 4,200 pesos for rural workers. Those rates provided an adequate standard of living, although the Government hoped that improvements would be possible.

4. Turning to the question of safe and healthy working conditions, he pointed out that State-run enterprises and all firms, employing more than eight persons were subject to inspection and monitoring. They were required to draw up rules for approval by the Ministry of Labour and Social Security.

5. No person, either in a State or private enterprise, was guaranteed special treatment with regard to promotion or advancement. There was, of course, no discrimination on grounds of sex or religious or political beliefs in such matters.

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(Mr. Morales-Suarez, Colombia)

6. All workers were entitled to a day off on Sunday. If any worker was required to work on that day, or on any other legal holiday, he was entitled to twice the normal remuneration, and to a day off in lieu. Every worker was entitled to 15 days of annual leave with pay and to a holiday bonus in addition to his normal salary.

7. He drew attention to the protection given to mothers, both before and after confinement, to the compensation provided in the case of accidents, and to the retirement pension paid to all workers, whether in State or private employment. The retirement pension was payable to men aged 55 or over, and to women aged 50 or over, but some workers were able to retire with a pension after working for a fixed period of years, even if they had not reached retirement age.

8. Referring to article 8 of the Covenant, he said that the right to strike was incorporated in the Constitution, although workers in the public services were not accorded that right. They could, however, negotiate on their conditions of work.

9. The regulations governing the right to social security varied slightly according to the type of employer. The National Social Security Fund was responsible for retirement pensions and redundancy payments, which accrued at the rate of one month's remuneration for each year of service. It also ensured that workers received appropriate medical and hospital services. There was also the Colombian Social Security Institute, to which all private enterprises were affiliated, and to which the State, employers and employees contributed. The Institute was being reformed in order to eliminate bureaucratic procedures which were endangering its effectiveness. Finally, all workers were entitled under the Constitution to social security and medical services.

10. Ms. RICO (Spain) said that she understood that a programme of integrated rural development was being implemented by the Colombian Government with the aim of promoting rural industry and improving incomes and working conditions in rural areas, and thereby reducing migration to urban areas. She hoped that the representative of Colombia could give an account of his country's experience with the programme.

11. Mr. SKOTNIKOV (Union of Soviet Socialist Republics) asked the representative of Colombia whether any legislation was envisaged to give practical effect to the right to work, as provided for under the Covenant. With reference to the section of the report relating to article 6, he asked the representative of Colombia to clarify the phrases "the cases envisaged by law" and "except as provided by law" in paragraphs 1 and 2 respectively. Referring to paragraph 8 of the same section, he asked for the provisions of article 64 of the Substantive Labour Code to be explained.

12. Mr. VOLLERS (Federal Republic of Germany) asked whether the minimum wages applicable in rural areas covered agricultural workers. In connexion with

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(Mr. Vollers, Federal Republic of Germany)

article 8, he asked whether trade unions could chose whether to strike or to submit their claim to arbitration, and whether the employer was bound by the arbitral award. Other matters on which he would welcome more information were whether there were other employees, besides public service employees, who were prohibited from striking and whether the salaries of other groups of workers were determined in a particular way. He had noted from the ILO report that trade unions could operate only if approved by the Ministry of Labour, and he wondered whether such approval was concerned only with technicalities or whether a veto could be exercised, and, if so, whether the union concerned had the right of appeal against the Ministry's decision.

13. Finally, he observed that the representative of Colombia had made no reference to unemployment benefits, and requested details of any such benefits that existed in Colombia.

14. Mr. JOHNSON (Ecuador) said that the legal and administrative system in Colombia resembled that of his country in many respects. With regard to the section of the report concerning article 6, he asked how the state body established to organize and control the labour market administered the human resources of the country.

15. Mr. ABDUL-AZIZ (Libyan Arab Jamahiriya) asked, with reference to paragraph 5 of the first section of the report, what measures the State could take in intervening to provide for full employment.

16. Mr. SALMENPERÄ (Finland) asked, with reference to the section of the report dealing with safe and healthy working conditions, what minimum standards had been established in the areas listed in that section of the report. On the subject of working hours, he asked whether there had been any cases in which the Government had ordered reductions in the working day for work that involved a known health risk or was particularly dangerous. Finally, with regard to retirement pensions, he asked whether all of the conditions described in the report had to be met in order to entitle a worker to a pension, and whether a national pension scheme existed.

17. Mr. FUJII (Japan) said that it had been argued that article 2, paragraph 2, of the Covenant should be construed as requiring the provisions of the Covenant to be applied to foreigners. He asked whether foreigners in Colombia enjoyed the protection set forth in article 6 - whether, for example, they could be employed by the Government of Colombia and what limits or criteria applied in such cases.

18. Mr. MAYCOCK (Barbados) asked whether non-unionized workers in Colombia could call a strike, even if unionized workers had reached an agreement with the employer, and whether unionized and non-unionized workers negotiated together with the employer.

19. Mr. SAMSON (International Labour Organisation) said that there was continuous contact between the ILO and the Government of Colombia, which had requested ILO

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assistance in developing employment programmes and policies. The ILO Committee of Experts, noting certain problems in Colombia relating to unemployment and underemployment, especially in the rural and informal urban sectors, had suggested that further information should be supplied on the implementation of measures to improve the situation. With regard to article 7 of the Covenant, the Committee of Experts had asked for information on the activities of the inspection services which monitored the observance of the provisions concerning minimum wages. The Committee had also requested further information on the criteria and procedures adopted for reaching decisions regarding promotions in employment with a view to ensuring that such decisions were based on considerations of seniority and competence. On the subject of safe and healthy working conditions, the Committee of Experts had detected certain problems in the building industry. Information had also been requested on any safety and health regulations relating to particular branches of economic activity and on the practical application of the provisions of the Labour Code requiring the drawing up and approval of health and safety rules for individual undertakings. Finally, information had been requested on measures ensuring safe and healthy working conditions in enterprises employing fewer than 10 workers.

20. With regard to article 8 of the Covenant, the Committee of Experts had reported a number of restrictions on the exercise of the rights recognized by the article. Some cases involving the principle of freedom of association had been submitted to the Committee on Freedom of Association and recommendations had been made to the Government on having measures to suspend trade union organizations brought within the competence of the judicial authorities rather than the administrative authorities. Finally, with regard to article 9 of the Covenant, the Committee of Experts had noted certain gaps in the coverage in the Colombian social security system as a result of which certain geographic areas, in particular rural ones, were insufficiently covered. Information had been requested concerning new measures to reorganize the social security scheme and extend its coverage, especially to new groups of the population.

21. Mr. MORALES-SUAREZ (Colombia), replying to questions asked by members of the Working Group, said that population growth was a serious problem in his country; it aggravated the employment situation and led to migration of the labour force, both to urban areas of Colombia and abroad. The Development and Labour Ministries tried to deal with the problem in situ, by establishing training centres for rural workers and new local industries in rural areas, often involving handicrafts. The Colombian authorities were working with their counterparts in Ecuador on the problem of migration and the establishment of work centres, so as to avoid the adverse effects of heavy migration of Colombian workers to Ecuador.

22. In reply to the question asked by the representative of the Soviet Union, he said that the limits to the freedom of work and choice of occupation described in paragraphs 1 and 3 of the section of his country's report dealing with article 6

(Mr. Morales-Suarez, Colombia)

of the Covenant related to the certification required for such professions as doctors, lawyers and accountants and so forth: the aim was to ensure that practitioners in those professions were fully qualified. Such a limitation on the freedom to engage in the profession of one's choice was normal. With regard to protection against arbitrary termination of employment, he said that if just cause for termination could not be shown, the worker was entitled to compensation. Workers in the private sector could bring their case before a labour tribunal. Under the new constitutional reform a labour jurisdiction had been added to the traditional civil and criminal jurisdictions, so that a functioning system of labour judges and courts existed. Arbitrary dismissal was, of course, not allowed but the usual grounds for dismissal were recognized as justified, such as prolonged unauthorized absence, misconduct or incompetence. In any event, the employer had to account for his decision, as such cases were generally reviewed by the appropriate authorities.

23. In reply to the representative of the Federal Republic of Germany, he said that workers could indeed choose between going on strike and submitting their dispute to arbitration; their decision was made by secret ballot. If they did choose arbitration, the decision of the arbitral tribunal was binding on all parties. The same representative had also asked about regulations and requirements for government approval of trade unions. Those requirements were largely of a procedural nature and did not constitute obstacles to the formation of trade unions. He knew of no case of the Government refusing to allow the formation of a trade union. A further question asked by the representative of the Federal Republic of Germany concerned unemployment benefits. When a worker's contract of employment ended, his employer was obliged to pay a termination allowance equivalent to one month's salary for each year of service, provided the worker had been employed for three months or more. A worker who was discharged for incompetence was also entitled to the allowance. Workers who had served a single employer for 20 years were entitled to be paid a retirement pension by him. The state itself did not provide unemployment benefits.

24. On the general subject of what plans Colombia had for improving the status of workers, which had been mentioned by the Spanish representative, he said that the main emphasis in his Government's programme was on training. The idea was to give people an opportunity to learn a trade and enter the work force.

25. Replying to the representative of Finland, who had asked about the shortening of the work day, he said that shorter work days were prescribed in certain cases - for example, they applied to railway workers and people working in an unhealthy environment. That representative had also requested information regarding the conditions governing retirement. The qualifying age for payment of pensions was 55 for men and 50 for women, and the qualifying period of employment prior to retirement was 20 years. Those who qualified were entitled to a retirement pension equivalent to 75 per cent of their final year's remuneration, whether they were government ministers or janitors. Accordingly, there was no official scale of retirement benefits.

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(Mr. Morales-Suarez, Colombia)

26. In reply to the question asked by the Japanese representative, he was happy to say that there was no discrimination against foreigners in Colombia. Colombia was a mestizo country, and nationals and foreigners of any race or religion were guaranteed the right to work. Furthermore, the Constitution stipulated that foreigners in Colombia enjoyed the same civil rights as nationals. There was likewise no discrimination against women.

27. The representative of Barbados had asked whether non-unionized workers had the right to strike. The answer was no.

28. Mr. VOLLERS (Federal Republic of Germany) said that he wished to place on record his satisfaction at the replies given by the representative of Colombia to his questions.

Report of Sweden (E/1978/8/Add.5)

29. Ms. CARSON (Sweden) said that Sweden had been one of the earliest States to ratify the Covenant and that the report under consideration was its second. The report was self-explanatory and she would mention only a few aspects on which there had been new developments.

30. The statement in section II, paragraph 4, of the report that there was no specific law in Sweden against discrimination on grounds of sex was no longer true; she was happy to report that a law on the subject had entered into force on 1 January 1980. It provided for equality between men and women in working life and covered rights for persons who were not members of trade unions. Labour in Sweden was highly unionized, but it was felt that non-unionized workers should also be covered. A special agency (ombudsman) had been set up to deal with complaints regarding implementation of the new legislation.

31. The new Act on Working Environment referred to in section IV of the report had entered into force on 1 July 1978.

32. Mr. FUJII (Japan) remarked that the rights enumerated in the Covenant should be held to be applicable to foreigners. He would like to know what the views of the Swedish Government were on that matter.

33. Mr. ABDUL-AZIZ (Libyan Arab Jamahiriya) asked for an explanation of the reasons for the Swedish reservation on article 7, paragraph (d), of the Covenant.

34. Mr. SALMENPERÄ (Finland) asked to what extent an employer was free to refuse to grant a working contract to a person who was obviously the best qualified for a given position. He was particularly concerned with the need to avoid discrimination.

35. Mr. VOLLERS (Federal Republic of Germany) said that the Swedish report was particularly valuable because it reflected the situation in a society which had been able to combine social security and freedom of the individual, not only in theory but also in practice. The report demonstrated how the community could enhance an individual's life. His questions were mainly concerned with technicalities.

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(Mr. Vollers, Federal Republic
of Germany)

36. In section II of the report, reference was made to section 15 of the Swedish Constitution, which stated that no law or other regulation might imply that a citizen was treated unfavourably, because he, by reason of his race, colour or ethnical origin, belonged to a minority. He asked whether that meant that in some cases members of the majority might be discriminated against. In some countries, measures to redress injustices to minorities had the effect of giving them rights superior to those of others. He would like to know what the views of the Swedish Government were on that question of principle.

37. He had noted that in Sweden there were no restrictions on the formation of trade unions. He asked whether the general feeling was that new trade unions might still be necessary or that there were already enough, and whether any new unions had been formed in recent years or recent decades.

38. In section VI of the report, reference was made to widow's pension and child pension. He asked whether in Sweden a widower could not receive a pension if his wife, who had been the breadwinner, died.

39. The ILO report (E/1978/27) mentioned that non-nationals had access to employment in the public service with the exception of certain posts. Since the issue of non-nationals in public positions was the subject of much discussion in his country, he would like to know more about the situation in Sweden, and specifically which areas of public service were open to non-nationals and which were not.

40. Ms. RICO (Spain), said that Sweden provided a model for many European and non-European countries. Her delegation had therefore been quite surprised to learn that the Swedish Government had entered a reservation to article 7, paragraph (d), of the Covenant, regarding remuneration for public holidays. She would like to know why the Government had taken that position.

41. Mr. SVIRIDOV (Union of Soviet Socialist Republics) observed that the introduction to the Swedish report contained the following statement: "The community shall, in particular, secure the right to work ...". It was surely the State which guaranteed the right to work, and he was curious about the Swedish Constitution's use of the word "community" rather than "State".

42. The Swedish representative had mentioned the recently enacted legislation prohibiting discrimination on grounds of sex, which provided for equality between men and women in productive activities. He asked how the law treated persons outside the productive sphere and whether there was legislation prohibiting discrimination on grounds of sex in their case.

43. The report stated that there was no legislation on minimum wages and that wages on the Swedish labour market were determined through free negotiations for collective agreements. He realized that the national agreements covered the vast majority of workers, but he would like to know how minimum wages were determined for those not covered by national agreements. He would also welcome information on the level of unemployment and any measures being taken to eliminate unemployment.

44. Mr. SAMSON (International Labour Organisation) said that the only question left pending by the Committee of Experts that had a bearing on the Covenant had been the question of the proposed legislation against discrimination on grounds of sex, which had since come into force.

45. Since 1978 Sweden had ratified the ILO Holidays with Pay Convention (Revised) 1970 (No. 132), agreeing to provide a minimum of five weeks' holidays with pay. Since that time it had also ratified the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), the Labour Administration Convention, 1978 (No. 150) and the Labour Relations (Public Service) Convention, 1978 (No. 151).

46. Ms. CARSON (Sweden), in reply to the question asked by the representative of Japan about non-national workers, said that the only difference between the treatment of citizens and that of migrant workers was that the latter were entitled to 240 hours of education in the Swedish language. She was not sure that she had the answer to the question asked by the representatives of the Libyan Arab Jamahiriya and Spain about the Swedish reservation on article 7, paragraph (d), of the Covenant for reasons connected with remuneration for public holidays, but she did know that trade union negotiations were being conducted on that question. A more detailed answer could perhaps be provided in writing.

47. The representative of Finland had asked whether, in the recruitment process, it was possible, on the grounds of sex, to give preference to a candidate less qualified than others. It might well be that collective agreements in the private and public sectors embodying the prohibition of sex-based discrimination allowed for a certain degree of preferential treatment with a view to redressing past imbalances. Similarly, in reply to the question asked by the representative of the Federal Republic of Germany about preferential treatment for minority groups, she said that special measures in favour of such groups could also be used to correct inequities.

48. It was true that no new trade unions had been established for several years. There was a high degree of unionization in Sweden and a tendency towards increasing centralization. Moreover, it was natural for employees to join established unions, although that was a purely voluntary process.

49. There had been a long debate in Sweden on the question of a widower's pension. The goal of gainful employment and economic independence for all was extremely important for Swedes, and it seemed unlikely that legislation to provide a widower's pension would be adopted in the near future.

50. The question asked by the representative of the USSR about the use of the word "community" rather than "State" in the article of the Constitution cited in the introduction to her country's report involved a question of language as well as a constitutional question. The community could be entrusted with the task of securing the right to work, lodgings and education, and the word "community" could also mean "municipality".

(Ms. Carson, Sweden)

51. In reply to further questions asked by that representative, she said that it was possible for people to engage in activities outside the productive sectors, and the legislation made no distinctions among categories of workers in that respect. Sweden was reluctant to institute minimum-wage provisions because minimum wages had a tendency to become maximum wages. Approximately 1.8 per cent of the labour force was unemployed. Measures to eliminate unemployment included retraining, as well as government subsidies to encourage the creation of employment in certain low-employment regions: at least 40 per cent of those recruited had to be women for the employer to qualify for the government subsidy. An investment fund scheme had also been set up to generate employment in times of recession. By keeping its profits on deposit for five years, a company could receive a tax reduction, the proceeds of which could then be used for new investments and to provide more employment.

52. Mr. VOLLERS (Federal Republic of Germany) and Mr. FUJII (Japan) inquired about restrictions on the employment of non-nationals in the public service.

53. Ms. CARSON (Sweden) said that, with very few exceptions, non-nationals could be employed in the public sector by either the State or municipalities.

54. Mr. NORDENFELT (Sweden) added that non-nationals could not serve in the military, the police force or the foreign service. They could not be elected to Parliament and could not hold office in the Government. No such restrictions applied to naturalized Swedes.

The meeting rose at 6 p.m.