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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-eighth session

SUMMARY RECORD OF THE 8th MEETING

Held at the Palais Wilson, Geneva,

on Thursday, 2 May 2002, at 3 p.m.

Chairperson: Mr. ATANGANA (Vice-Chairperson)

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In the absence of Ms. Bonoan-Dandan, Mr. Atangana, Vice-Chairperson, took the Chair.

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

CONSIDERATION OF REPORTS (agenda item 6) (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of Benin (E/1990/5/Add.48; E/C.12/Q/BEN/1; HRI/CORE/1/Add.85)

The CHAIRPERSON drew the Committee's attention to the written replies by the Government of Benin to the list of issues.

At the invitation of the Chairperson, Mr. Gnonlonfoun (Benin) took a place at the Committee table.

Mr. GNONLONFOUN (Benin), introducing the initial report of Benin, said that the democratically elected Government had an exemplary record in honouring its international commitments, having submitted reports to the Committee on the Rights of the Child and the Committee against Torture in the past two years, and in upholding its 1990 Constitution, having conducted regular, free and transparent elections. He welcomed the opportunity to hear the Committee's comments on what the Government should or should not be doing, as for a democracy to function effectively there must be freedom, transparency and truth.

His Government recognized that it had a duty to ensure that the children of Benin received a good education, its workers were paid a fair wage and human rights were legally protected. All the provisions of the International Covenant on Economic, Social and Cultural Rights were therefore included in Benin's Constitution, to which the African Charter on Human and Peoples' Rights had been annexed. However, despite his country's economic growth since 1994, its structural adjustment programme had created tremendous imbalances in the economy, leading to increases in poverty and unemployment. The Government had reacted by setting up a national commission to promote development and combat poverty and was in the process of finalizing its poverty reduction strategy paper. In addition, in order to attract investors, Benin had joined other members of the West African Economic and Monetary Union in setting up a common market applying a standard tariff rate. His Government believed that regional efforts to attract investment and provide a harmonized legal system for business in West Africa would also encourage investors and thereby contribute to sustainable human development.

His Government devoted about one third of its budget to health care. Malaria was the biggest killer in the country, followed by human

immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS). Education was another of the Government's priorities. Pointing out that the report before the Committee was five years old, he said he would

be happy to provide the Committee with up-to-date information as necessary. The problem was that the warning lights were flashing everywhere at once - action was needed in the economic, social, political and cultural sectors if Benin was to graduate from the group of least developed countries.

Articles 1-5 of the Covenant

Mr. SADI said that the presence of the Minister of Justice, Legislation and Human Rights was in itself proof of how seriously the Government took its commitments under the Covenant. His main concern was the manner in which the Covenant had been incorporated into the Beninese Constitution: he would like to know if the original wording had been included in the Constitution or if the provisions of the Covenant were otherwise reflected in it. He was surprised that there was no case law on the application of the Covenant and wondered if that meant that awareness of its provisions was very limited in Benin. He took note of the Minister's comment on the "warning lights" and recognized that the Government was acting under many constraints, but said there were some steps it could take that required political will rather than huge financial resources. It could, for instance, take action to end discrimination against women or the practice of vidomegon, where children were placed with rich families.

Mr. RIEDEL said the written reply to question 4 in the list of issues, requesting information on the membership and powers of the Benin Commission on Human Rights and its relationship with the Institute for Human Rights and Daily Democracy, was too vague. He would like to know if the Commission took decisions or made recommendations and, if so, what effect they had. He would also like to know to whom the Commission reported, and whether its work was reported and discussed in the press. The Institute appeared to be doing good work in organizing seminars and exchanges, but it was not clear how that work differed from that of the Commission.

With regard to the written reply to question 5, he was pleased to see that human rights had been introduced in training programmes for the police and gendarmerie, but he wondered if they had been or would be introduced into programmes for judges, lawyers and government officials.

Mr. AHMED said that the independent expert on extreme poverty, in her report to the United Nations Commission on Human Rights on the situation in Benin (E/CN.4/2002/55, paras. 79-81), had highlighted the importance of culture in the fight against poverty: education was vital to overcome the handicaps of illiteracy and the use of so many different languages and to counteract the messages of the traditional leaders who had so much influence over the population. Traditional practices, including forced marriages, and other problems such as the arrival of fundamentalist sects from neighbouring countries and the practice of witchcraft, must be tackled head on if progress was to be made.

There were no statistics available on violence against women and wife-beating, but such practices were known to occur and the police and judiciary seemed reluctant to intervene in what they saw as purely domestic disputes. Traditional practices such as vidomegon inflicted

hardship on children, particularly on the daughters of poor rural families. Those problems could only be resolved by education, and the nationwide campaign run by the Ministry of Justice to alert parents to the risks of vidomegon was a welcome step in the right direction.

Mr. MALINVERNI said that he presumed that article 11 of the Covenant, on an adequate standard of living, had been incorporated into Beninese legislation and asked if it was therefore guaranteed by the Constitution and if it could be invoked directly in domestic courts. He also asked if the Government had integrated a human rights perspective into its poverty reduction strategy paper. He would like to know if the delegation agreed with the independent expert's conclusion that decentralization could be an important factor in improving the country's economic situation and reducing poverty and, lastly, what measures the Government was taking to try to stem the brain drain, which was depriving Benin of the skills and workers it needed for its future development.

Mr. WIMER ZAMBRANO said he believed the percentage of the population of Benin that actually spoke the official language, French, was very low and he was concerned that language barriers arising from the use of multiple languages - 18, apparently, in education and the media alone - might be one of the causes of discrimination in Benin. He would like to know how the Government coped with the administrative and legal problems arising from the use of so many languages and what effect those problems had on its decisions in the field of human rights in particular.

The Committee would be grateful for information on the advancement of women in Benin. He would like to focus on the rights theoretically enjoyed by women under the Civil Code and those they enjoyed in reality; for example, it was clear that women were traditionally not allowed to inherit, even though no legislation prohibited them from doing so.

Mr. HUNT noted that the independent expert on extreme poverty had sent a letter to the President of Benin in August 2001 suggesting that human rights should be integrated into the poverty reduction strategy paper being finalized by the Government. To do so could help Benin in its dealings with the international financial institutions, as it could argue that, as part of its strategy, it must respect its international obligations in respect of the economic, social and cultural rights of its own citizens. He would like to know if the State party had acted on the independent expert's suggestion. He also asked for details on the current status of Benin's national plan of action on human rights, developed in response to the 1993 Vienna Declaration and Programme of Action.

Mr. KOLOSOV said that he was extremely concerned about the situation of children in Benin, in particular with regard to child labour, early and forced marriage and sexual exploitation. The State party had submitted reports to both the Committee on the Rights of the Child (CRC/C/3/Add.52) and the Committee against Torture (CAT/C/21/Add.3); it would be useful to know whether the Government had acted upon the recommendations of those Committees and what progress had been achieved.

Mr. GRISSA said that he had visited Benin seven years previously in order to assist with the preparation of the report. While he had seen no evidence of discrimination against particular ethnic and religious groups, he had been struck by the fact that communications in Benin were poor, particularly during the rainy season, when communication was practically impossible. Farmers were unable to take their goods to market, children were unable to attend school and patients were unable to reach hospitals. Certain ethnic groups were completely segregated because of physical barriers, which represented a form of discrimination. The reporting State should indicate what measures had been taken to improve the situation; until the country developed an adequate system of communication, it could not expect to see durable economic

and social development. He would be particularly interested to know how the different ethnic groups communicated with each other, as language differences constituted another barrier to development.

Mr. PILLAY said that he had been disappointed by the short replies given by the State party to the Committee's list of issues; for example, much more could have been said with regard to questions 3 and 4. He was astonished that there was no specific case law illustrating how economic, social and cultural rights could be directly invoked before the courts. The Constitutional Court had the power to guarantee fundamental human rights and to consider human rights violations, and he had seen reports of cases. If certain Covenant rights, such as the right to education, the right to health and the right of association were guaranteed by the Constitution, why was there no Constitutional provision relating to all economic, social and cultural rights?

The reply given by the State party to question 4 in the list of issues was disappointing. Information should have been provided on the composition and the achievements of the Benin Commission on Human Rights. As far as he understood, its activities so far had extended to holding seminars and supervising elections. Why had it not been more active in promoting economic, social and cultural rights? He wondered whether it was because of financial constraints.

It was laudable that free legal aid was provided to those in need. However, it was regrettable that indigent people did not take advantage of such provisions. Efforts should be made to educate people about the services available to them. Lastly, the answers provided by the State party in its replies were very vague.

Mr. GNOLONFOUN (Benin) said that the high level of his delegation illustrated his Government's commitment to human rights. While the African Charter on Human and People's Rights was the only international human rights instrument specifically mentioned in Benin's Constitution, the economic, social and cultural rights enshrined in the Covenant were an integral part of the Constitution. In its preamble, the Constitution reaffirmed the State's commitment to democracy and human rights, as defined in the Charter of the United Nations and the Universal Declaration of Human Rights. Any acts deemed to be in violation of human rights could be referred to the Constitutional Court, which made its decisions on the basis of the rights enshrined in the African Charter on Human and People's Rights and other international instruments.

In reply to question 3 in the list of issues, his Government had indicated that there was no relevant case law illustrating that the provisions of the Covenant as such could be directly invoked before the courts. However, there had been cases where the economic, social and cultural rights enshrined in the Constitution had been invoked separately before the courts.

There was a clear political will to stamp out harmful traditional practices such as female genital mutilation. It was recognized that circumcisers had to be offered another source of income. Therefore, non-governmental organizations (NGOs) were providing small credits to circumcisers and other women involved in illegal practices to enable them to take up another profession.

The term vidomegon was used to describe the practice of sending children away from home to live with wealthier families, to give them a better start in life. It was a traditional custom, formerly motivated by family and social solidarity. Many people in high-ranking positions in Benin had been vidomegons, including himself. Unfortunately, the practice had become commercialized; children were now seen by their parents as a potential source of income. The Government recognized the need to address the root cause of the phenomenon by introducing an anti-poverty policy. It also intended to discourage parents from having large families if they were unable to provide for all their children. However, it was important to underline that it did not wish to prevent people from having children; therefore, instead of introducing a family planning policy, which might have negative connotations, it would introduce a policy encouraging people to assume their parental responsibilities.

It had been deemed necessary during the single-party regime to establish an independent body to oversee the implementation of human rights. Consequently, the Benin Commission on Human Rights had been established in 1990, pursuant to the African Charter on Human and People's Rights. However, the Government at the time had felt threatened and had prevented the Commission from operating. It had not been re-established until 1996. Its role was to receive complaints of human rights violations and to report to the Government. In practice it was financially dependent on Benin's partners for development; since funding had dried up, it had been paralysed. It had requested funding under the State budget; however, he was concerned that that could result in the Commission's becoming answerable to the State. Discussions were currently being held on private funding so that the Commission would retain its independence.

His Government had invited the African Commission on Human and Peoples' Rights to send a visiting mission to Benin in order to see for itself the human rights situation in the country. He urged the Committee to do the same, because it was impossible to cover all aspects of the issue in a written or oral statement. Often, the situation on the ground was so self-evident that the Government neglected to mention certain elements.

On the issue of languages, he said that there were approximately 50 ethnic groups in Benin and some 70 dialects. French was the official spoken language, but all citizens had the right to express themselves in their own language. Different ethnic groups from the same region could usually understand each other, despite having different dialects. Many people spoke several languages, which also facilitated communication. Interpreting services were available in courts and in administrative proceedings.

With regard to inheritance, he said that, traditionally, women had not enjoyed the same inheritance rights as men. However, practices

were changing. Today family councils were held to discuss the distribution of property. The courts were currently swamped by cases of women claiming their inheritance rights. An individual and family code was currently being discussed in the National Assembly.

The Constitution provided for decentralization of power, and a number of laws had already been adopted to allow the process to start. However, before the elections in December 2002 a lot of work needed to be done to educate people about the consequences of decentralization, as it was felt that people were not yet ready to accept such a change.

The Government recognized that the brain drain was a serious problem. Allegedly, there were as many Beninese doctors in Paris as there were in Benin. Therefore, it was working with the International Organization for Migration (IOM) to adopt a programme that would allow Beninese professionals to return to Benin and enjoy the same privileges that they had enjoyed abroad.

Mr. RIEDEL said that in order to hold a constructive dialogue, the delegation should provide concise answers to the Committee's specific questions. If the delegation was unable to give a satisfactory answer immediately, it should endeavour to provide one at a later date.

Mr. HUNT noted that the Committee had sent the State party a letter requesting that the delegation should include a person familiar with the drafting of the poverty reduction strategy paper, which was of great importance to the implementation of the rights covered by the Covenant. Had the process been a participatory one, especially in the drawing up of macroeconomic policies?

Mr. MARCHÁN ROMERO, noting the large number of languages spoken in Benin, asked whether the Government was making any effort to preserve languages threatened with extinction.

Mr. GRISSA said that one of the legacies of the colonial period had been a lack of appropriate communication and transport infrastructure. He asked what steps were being taken to improve the physical integration of the country, a factor of particular importance to economic and social development.

Mr. GNONLONFOUN (Benin) acknowledged that the Government had been informed of the Committee's wish that it should include in the delegation a person who had taken part in the drafting of the poverty reduction strategy paper. That document was still in preparation. A first draft had been submitted to the country's development partners, and their comments were currently being integrated before the next version was submitted to the local prefectures and departments for comment by grass-roots organizations and communities. The Government had considered it premature to send an expert before the drafting of the paper was completed.

Sixty-four languages were spoken in Benin. It would be impossible for each to be used in the media. The Government therefore selected for use certain languages representative of the various regions, based on their relative importance, for example in trade. While some languages were threatened with extinction as the number of people who spoke them declined, in many cases they were closely related to other languages which survived. Events were held to promote local cultures and languages. Indeed, under the Constitution the Government was obliged to promote local culture.

It was possible to travel from Cotonou to Malanville on the border with Niger without leaving paved roads. The only major thoroughfare that remained unpaved was a 104-kilometre stretch leading from Natitingou to the border with Burkina Faso. The main communications problems facing the country were related to the telephone system, as some regions still had no regular phone service.

Mr. SADI asked whether it would be advisable as part of the effort of nation-building to designate a single local language as the national language.

Mr. GNONLONFOUN (Benin) said that an attempt had been made to do just that during the revolution, and that it had failed. In the current context, any Government that tried to designate a single national language would face grave consequences, possibly including civil war. Under the Constitution, the official language spoken by all was French, and efforts must be made to promote and develop local languages, including through the use of literacy campaigns. Throughout history, when nations had imposed a single language, they had generally done so over a period of centuries.

Articles 6 and 9 of the Covenant

Mr. CEAUSU said that according to the International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations, an Act of 1962 on freedom of the press provided for imprisonment involving compulsory labour, apparently in violation of the Abolition of Forced Labour Convention, 1957 (No. 105). Such a provision would also be at variance with article 6 of the Covenant, which established the right to gain a living by work freely chosen or accepted. An Act on audiovisual communications had been adopted in 1997. It had not repealed the 1962 Act, but in the event of conflicting provisions the 1997 Act would reportedly prevail. However, even the 1997 Act provided for compulsory labour for seditious utterances and for causing offence to the President of the Republic. The Merchant Marine Code of 1968 punished certain breaches of discipline by imprisonment involving compulsory labour.

The proportion of women employees in the public sector was reportedly just 25 per cent. In that regard, did the Government intend to take any steps to improve implementation of the Equal Remuneration Convention, 1951 (No. 100)? According to ILO, the obligation of trade unions to register with the Ministry of the Interior was at variance with the provisions of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). The Merchant Marine Code prohibited seafarers from organizing unions and striking, apparently in violation of the same instrument. A government ordinance of 1969 restricted the right to strike in the private and public sectors when the interruption of service would harm the economy and the higher interests of the nation. A bill to amend that law was reportedly under consideration. Had it been adopted, and did it modify the provisions in question? It was extremely important for the country to bring its labour legislation into line with its international commitments.

Mr. SADI said that although the Labour Code prohibited child labour, the practice of hiring small children as servants was still widespread. While he understood that such children brought in valuable resources to their families in an extremely difficult economic

situation, the State party was under an obligation progressively to address such issues. Had the Government undertaken any efforts to change attitudes towards child labour? He noted that the institution of a minimum wage was apparently insufficient, as some 55 per cent of the urban population lived on less than half a dollar a day.

Mr. GRISSA expressed surprise at the high proportion of women in the workforce and the large number of children employed in agriculture. He posited that men in certain parts of Benin, as in some other African countries, including his own, perhaps considered work degrading. In his country, Tunisia, children had previously been employed quite extensively, but a law on compulsory education was strictly applied, and any child over five now attended school. It was difficult to consider the minimum wage and other labour standards as extremely relevant indicators when less than 5 per cent of the workforce was engaged in the modern sector.

Mr. MALINVERNI asked whether the Government had taken any measures to reduce unemployment among young people and among workers dismissed as a result of privatization. The vast majority of workers were engaged in the informal sector and had no social protection or insurance. What steps were being taken to extend social protection to them?

Mr. RIEDEL, in connection with article 7, said he was puzzled by the written reply to question 16 in the list of issues. What the Committee needed to know was why the Occupational Safety and Health Commission and the Hygiene and Safety Committee were still not in operation. Nor had the relevant information been provided on the number, composition and functions of the labour tribunals. The information should be included in Benin's second periodic report. With regard to article 8, when did the authorities intend to put into effect the law, which had been adopted but not promulgated, referred to in the written reply to question 17? Under article 9, what action was being taken to ensure that all nine requirements for ratification of ILO Convention No. 102 concerning Minimum Standards of Social Security were met? Since ILO was prepared to offer its assistance, he hoped that the detailed statistics on benefits, as requested in the list of issues, would be provided in the country's second periodic report.

Mr. KOLOSOV said he saw a paradox in the high rate of youth unemployment on the one hand, and the use of child labour on the other. Evidently, child labour was less expensive and therefore more attractive to the private sector. That should be rectified, however, since young people should be employed and children should attend school. Laws on compulsory schooling to the age of 15, introduced in some African countries, had had the effect of releasing jobs for unemployed young people. It was important to fight corruption in the private sector; one way of so doing was to ensure that child workers received the same wage as adults. In the area of health and hygiene, technical and scientific progress and new modes of production had made the many laws adopted in the 1950s obsolete, so that new approaches to health and safety in the workplace were called for. Were there plans to upgrade those instruments in the light of the new realities? Would the Occupational Safety and Health Commission to be created in the Ministry of Labour cover the entire country?

Mr. CEAUSU asked how many workplaces the country's 79 labour inspectors covered, with what frequency, and whether they had the power to ensure that life-threatening work was halted.

Mr. PILLAY pointed out that the Labour Code of Benin not only prohibited work by children under 14 in any enterprise, and discrimination based on sex, but also guaranteed equal pay for equal work. Another article provided that the disabled should not be discriminated

against in labour-related matters and even provided tax incentives for the employment of persons with disabilities. Yet the reality on the ground was very different. Women did not receive equal pay for equal work and did not enjoy equal access to the public and the formal private sector. Constituting 52 per cent of the population, women occupied only 25 per cent of positions in the public sector and a derisory 10 per cent in the formal private sector. The disabled were also discriminated against. What, therefore, was being done to bridge the gap between legislation and reality?

Mr. GNONLONFOUN (Benin) said that article 10 of the Constitution conferred on everyone the right to culture. Article 11 provided that all communities comprising the Beninese nation were free to use their spoken and written language and develop their own culture while respecting that of others, and that it was the duty of the State to promote the development of national languages of communication. He asked Mr. Ceausu to provide the source for his remarks on compulsory labour.

Mr. CEAUSU said that the report submitted by ILO to the Committee (E/C.12/2002/SA/1, para. 10) referred, in connection with article 6 of the Covenant and ILO Convention No. 105, to "Act No. 60-12 of 30 June 1962 on the freedom of the press which provided for imprisonment involving compulsory labour for various acts or activities related to the right of expression."

Mr. GNONLONFOUN (Benin) said that the Code of Criminal Procedure spoke of "travaux forcés" (hard labour), which was not the same thing as compulsory labour. There had perhaps been an error of translation. He would be surprised if the Code of Criminal Procedure were to talk about compulsory labour for ordinary convicts. During the revolution he had twice been imprisoned as a journalist, under that same law, and subjected to "travaux forcés".

Regarding remuneration, in the public sector men and women received the same pay for equal work, although there might be disparities with regard to bonuses and indemnities. In the private sector pay was based on collective bargaining. With regard to trade union freedoms, he could not say whether registration still existed. The practice of registration of associations and trade unions observed during the revolution had perhaps continued; however, he would provide the Committee with the information in writing.

The prohibition of the right to strike and join a trade union, contained in the Merchant Marine Code, was probably connected with the specific nature of the job; he would determine whether that prohibition had been maintained in the new bill under preparation. It was true that Ordinance 69/14 restricted the right to strike: as a result of the proliferation of coups d'état, followed by strikes in the country, successive presidents had restricted the right to strike. A bill had been prepared but had not been promulgated, having been deemed unconstitutional by the Constitutional Court, it would therefore need to be revised.

While 79 labour inspectors might appear to be a paltry number to Committee members, they sufficed for Benin's undeveloped

industrial infrastructure. The civil service had been depleted by the 10-year ban on new recruitment during the country's structural adjustment

programme, coupled with the voluntary departure of many serving officers. However, it had been decided that, beginning with the 2002 budget, each retirement would be offset by one recruitment. In any event, the labour inspectors had real authority, and firms breaching labour regulations were sanctioned and even closed down after adequate notification.

The Labour Code prohibited the employment of children under 14. That said, a head of family who was a fisherman or worked in the fields was expected to take his children along in order to pass on his knowledge. That was not considered compulsory labour, unlike work by children in industry. Children did not work in large industrial firms, but only in small cottage industries. Labour inspectors had discovered cases of child exploitation in Cotonou, and the employers had been prosecuted and convicted. But it also transpired that parents sometimes placed their children as apprentices in such firms; although apprenticeship was governed by certain rules, they could be difficult to enforce. Not only were children working in such firms inadequately paid, they were often required to pay apprenticeship fees.

Many women were successful small-scale entrepreneurs, who up and down the coast sold cloth and other commodities from Asia and elsewhere; they did, however, coexist alongside extremely poor women. Also, women intellectuals sometimes preferred to leave medicine or engineering for the more lucrative field of business. A stallholder might take her own daughter to assist her in the market, which was considered educational; what was frowned upon was the exploitation of other people's children. The increasingly high rate of unemployment in Benin was due in the main to lay-offs during the restructuring; it also affected new graduates who, unable to find work in a less than flexible labour market, swelled the ranks of the unemployed. At the same time, the more competent constituted a brain drain.

Benin was attempting to negotiate the launching of enterprises with the International Organization for Migration with scant success. The truth was that the Beninese were not habituated to an entrepreneurial culture, preferring immediate profit to long-term endeavour. While the Government was attempting to encourage start-up businesses, and mutual societies provided loans, a lack of knowledge of money management hampered such efforts. The country had also received assistance from the United States and France in the provision of business training.

Concerning the comment that the majority of persons worked in the informal sector without social protection, he said he did not fully understand the term "informal sector". A banana vendor or a woman selling produce in the Cotonou market certainly did not receive social security. The more literate among them possibly joined a mutual society. The authorities were working on a social security project with ILO, but it was not yet ready. Microfinancing was available through mutual societies, but many people were unwilling to make contributions from which others might benefit as well. Lastly, the Labour Code provided for the establishment of a national Hygiene and Safety Committee, which would oversee matters in the various enterprises, but no enabling legislation had yet been passed.

Despite the existence of the Labour Code its rules were not enforced. The Beninese court system was not like that of France. It had a single court comprising several chambers, of which the social chamber dealt with labour law. It was presided over by a judge, assisted by magistrates, a clerk and other staff, and advisers representing employers and employees alike. Regarding the right to strike, the Constitutional Court had decided that the new bill, which also dealt with social security, needed to be revised by the National Assembly; the Minister of Labour was obviously reluctant to seek ratification of a text that could not be enforced. Employers did not wish to make social security contributions and, while the authorities could collect contributions from employees, it had no mechanism for extracting them from employers.

The meeting rose at 6 p.m.