



Economic and Social Council

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APR 27 1984

Distr.
GENERAL

E/1984/WG.1/SR.6
24 April 1984

ORIGINAL: ENGLISH

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First regular session, 1984

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

SUMMARY RECORD OF THE 6th MEETING

Held at Headquarters, New York,
on Wednesday, 18 April 1984, at 3 p.m.

Chairman: Mr. BENDIX (Denmark)

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by States parties to the Covenant concerning rights covered by articles 10 to 12
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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED IN ACCORDANCE WITH COUNCIL RESOLUTION 1988 (LX)
BY STATES PARTIES TO THE COVENANT CONCERNING RIGHTS COVERED BY ARTICLES 10 TO 12
(continued)

Report of Canada (continued) (E/1980/6/Add.32)

1. At the invitation of the Chairman, Mr. Rayner, Ms. Swords, Mr. Bergeron, Ms. Page, Mrs. Downie and Mr. Sirois (Canada) took a place at the table.
2. Mr. RAYNER (Canada), replying to the technical questions that had been asked regarding the timing of the report and its size, offered to provide the Secretariat with both the French and English language versions in order to save the Secretariat some of the work involved in the production of the report. The paragraphs would in future be numbered.
3. Virtually all of the experts had touched on the central question of how the implementation of the Covenant was assured in a federal State like Canada, where responsibilities were shared between the Federal Government and the provincial governments. The paramount principle in the ratification of international treaties in Canada was that the concurrence of all provincial and territorial governments had to be sought before ratification; that guaranteed the full commitment of those governments to the implementation of the treaties. The fact that each provincial government had the right to draft its own section of the reports of Canada reinforced that commitment.
4. In addition, there were a number of political mechanisms that allowed each government to compare approaches and keep abreast of developments in Canada's implementation of all the human rights instruments. At least one minister from the federal and each provincial and territorial government had been designated to oversee human rights matters, and those ministers met every two or three years. The ministerial meetings were supported by the federal-provincial-territorial Committee of Officials responsible for human rights, which studied policy questions and carried out research on human rights, and was also charged with bringing to the attention of the ministers perceived areas of weakness in Canada's implementation of the provisions of the Covenant. At the federal level, there was the further mechanism of an interdepartmental committee enabling the Canadian Government to co-ordinate its own positions with the many federal departments and agencies involved. A number of provinces had similar co-ordinating mechanisms.
5. Should a particular province or the Government itself be delinquent in respecting a certain provision of the Covenant, the force of moral suasion and of public pressure could be very effective. At the same time it was recognized that economic, social and cultural rights had to be achieved progressively.
6. Turning to another area of questioning, he said that the Canadian Charter of Rights and Freedoms did recognize and specifically affirm the existing aboriginal

(Mr. Rayner, Canada)

and treaty rights of the aboriginal peoples. That constitutional entrenchment was a major achievement. The Charter also stipulated, however, that the aboriginal rights accepted in principle should be fully defined by means of one or more constitutional conferences between the Prime Ministers of Canada and the provinces and the aboriginal peoples themselves. That process was under way and the most recent constitutional conference had been held the previous month. While the term "aboriginal reserves" might appear discriminatory, the fact was that the so-called reserves formed the land base of the various aboriginal peoples - their land, reserved for their use - and in the current constitutional discussions the aboriginal peoples themselves clearly regarded those land bases as crucial to their constitutional evolution. They were, therefore, an essential means of enabling aboriginal peoples to preserve their way of life and cultural identity.

7. Housing on the Indian reserves was fully subsidized by the Canadian Government, which had at both the federal and provincial levels also continued to develop adequate housing for native people living in off-reserve areas. The next report would provide updated information on the matter.

8. With respect to Canada's relatively new Charter of Rights and Freedoms, the statement (p. 11 of the report) that no government had as yet decided to incorporate into its legislation as such the provisions of the Covenant that fell within its jurisdiction, did not mean that each province was expected to incorporate the Covenant into its legislation, giving the treaty, per se, the force of law. Rather, since each jurisdiction in Canada had accepted the principles and obligations of the Covenant prior to its ratification, each was committed to amending its domestic law as necessary to comply with the Covenant. That was, indeed, one of the areas where progress was reviewed at the periodic ministerial meetings referred to earlier. Regarding the question what was meant by the "reasonable limits" to which rights and freedoms might be subject (p. 13 of the report), such limits must pass the test of being demonstrably justified in a free and democratic society: no mean feat. The real meaning of that provision would not become fully known until it was interpreted by the courts of the land, and it would therefore be a dynamic provision that might, over time, evolve to reflect the evolving nature of Canadian society.

9. In answer to the question on regional disparities and the significance of equalization payments (p. 40 of the report) he said that it was a long-standing policy in Canada to encourage the economic and social development of each distinctive region and the system of equalization payments was a means to that end. The five general regions - Atlantic, Québec, Ontario, Prairies and Pacific - did not all have comparable income levels. The equalization payments, through a series of complex arrangements, redistributed some of the revenues of the richer provinces to those with fewer resources, in order to ensure parity in social and public services provided throughout the country. The principle of correcting the essentially economic regional disparities was so vital that it had been entrenched in the Constitution Act of 1982. Further details on the subject would be included in the report on articles 6 to 9 of the Covenant.

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(Mr. Rayner, Canada)

10. The Constitution Act of 1982 was not the first national Constitution in the history of Canada: Canada's first Constitution as a nation had been the British North America Act of 1867. The word "challenges" would better describe, in contemporary Canada, what the Soviet expert had called the "problems" of Canada with regard to its political structure as a federal State.

11. Questions had been raised concerning the extent to which non-nationals were guaranteed the rights covered by articles 10 to 12. Non-nationals who were permanent residents with immigrant status enjoyed the same rights as Canadian citizens. Temporary residents received services according to their particular situation and needs. Future reports would elaborate on the matter.

12. Ms. SWORDS (Canada), in response to questions regarding the treatment of juvenile offenders in Canada, pointed out that the Juvenile Delinquents Act mentioned in the report had been replaced by the Young Offenders Act, which attempted to deal comprehensively with the special needs of young persons who committed criminal offences and recognized that their punishment should not in all cases be the same as that of adults. Special youth courts had been established, and only in the most serious criminal offences could a case involving a young person over 14 years of age be transferred to an ordinary criminal court. Every effort was made to find alternative dispositions to detention and, if juvenile offenders were sentenced to detention, they had to be held apart from adults. A young person was defined by law as a person over 12 and under 18, but the provinces could lower the upper limit to 16 or 17 years.

13. The Canadian Human Rights Commission had been established in 1977 by the federal Canadian Human Rights Act which had been designed to implement the principle of equal opportunity for all, regardless of their status. It prohibited discrimination in a wide variety of areas relevant to the Covenant. The Commission was responsible for carrying out studies on human rights, reviewing federal legislation from the point of view of consistency with the principle of equality before the law, and making recommendations to the Government for the further promotion of human rights. It also was empowered to receive complaints from individuals or groups alleging discrimination, and could appoint a human rights tribunal to inquire into the complaints; decisions of the tribunal were subject to judicial review by a court. The complaint procedure was not restricted to residents of Canada. The Canadian Human Rights Commission generally dealt with matters covered by the federal Government; all provinces had their own human rights commissions.

14. Mr. BERGERON (Canada) said that the first provincial human rights commission had been established in 1963. Although the mandate of the provincial commissions could vary, they all had the power to investigate charges of discrimination.

15. The Québec Human Rights Commission was responsible for promoting the principles contained in the Québec Charter of Rights and Freedoms, which set forth fundamental rights such as the rights to life, integrity, equality and freedom of expression and of association as well as political, judicial, economic and social

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(Mr. Bergeron, Canada)

rights. It could investigate charges not only of discrimination but also of exploitation of the disabled and the elderly and was also charged with educating the public, doing research on all the rights and freedoms under the Charter and studying possible amendments of the legislation of Québec to be recommended to the provincial government. Articles 1 to 38 of the Québec Charter superseded any other law of Québec and alleged violations of those articles could be submitted directly to the courts.

16. Ms. PAGE (Canada), responding to questions regarding employment, said that Canada's second report under articles 6 to 9 of the Covenant would provide the current statistics on unemployment together with information on the comprehensive measures being undertaken by all governments in Canada to relieve unemployment on a number of fronts. Those measures included job creation programmes in local communities in the various regions of the country, with particular emphasis on youth, women, native peoples and disabled persons.

17. It was difficult to say what effect unemployment had on the standard of living of a family. It should be said, however, that there was a strong sense of community which fostered co-operation and care among Canadians as was demonstrated at the municipal level through the activities of churches and the diverse community service organizations. In addition Canadians received unemployment insurance through their governments.

18. Mrs. DOWNIE (Canada), addressing the questions regarding social security and health benefits, said that maternity benefits under the Unemployment Insurance Act might be discriminatory and that the Government had amended the legislation in June 1983 to provide more equitable treatment of all women. As required by law positions were held for women who left on maternity leave except where a post had become redundant, in which case the woman became eligible for unemployment benefits until suitably placed in a new post. Women employed in the public sector had the same right to maternity benefits as those in the private sector, although the latter were governed by provincial legislation and the former by federal legislation. The benefits were similar except for the fact that public servants could take up to six months of maternity leave.

19. Concerning the question whether the requirements for the deduction of child-care costs under the Income Tax Act might not be discriminatory, she was pleased to indicate that the Government had amended the Act in 1983 to allow for either parent to deduct child-care costs. Husbands as well as wives were eligible for survivors' benefits. All families in Canada with children under 18 received family allowances. The Child Tax Credit, on the other hand, was an additional benefit paid to all families except those in the upper-income range. Canadian families were considered poor by the Government statistical agency if they spent more than 58.5 per cent of their incomes on basic necessities; the Government had established certain social security measures for them to cushion the impact of rising prices. They included the Child Tax Credit, the Guaranteed Income Supplement for elderly Canadians, subsidized housing, free drugs and free dental care.

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(Mrs. Downie, Canada)

20. As to the question whether the size of hospitals affected obstetrical care she said that while the larger hospitals undoubtedly provided a wider range of obstetrical care, particularly in the case of high-risk pregnancies, it could be argued that smaller hospitals offered more personal care. The matter was still under discussion in Canada, with some provinces moving towards smaller hospitals and others opting for larger complexes. Finally, she said that the most recent statistics indicated that in 1978/79 approximately 20 per cent of hospital beds had been allocated for psychiatric care.

21. Mr. SIROIS (Canada) said that under the Divorce Act a divorce could be obtained through the courts. That Act was to be amended in order to make its provisions more flexible. In the case of mutual consent a divorce could be obtained without court proceedings. Under the provincial laws parents were obliged to provide for the needs of children under the age of 18; in certain cases, for instance where a child was handicapped, that parental obligation did not cease when the child turned 18.

22. The report showed that numerous programmes had been set up by the federal and provincial governments to provide Canadians with access to housing. The Canada Mortgage and Housing Corporation in collaboration with the provincial governments provided assistance for the construction of housing, particularly for low-income families and other disadvantaged groups such as the elderly. The number of homeless persons was very small. Municipalities and social agencies maintained shelters for such persons in order to provide them with temporary lodgings until their housing problems were solved. In recent years rent control legislation had been adopted and rent supervision agencies had been established in order to protect the rights of tenants, particularly, low-income tenants in urban areas.

23. Mr. RAYNER (Canada) said that his Government would carefully consider the observations made and would provide further information in reply to the questions raised in its next report.

24. Mr. Rayner, Ms. Swords, Mr. Bergeron, Ms. Page, Mrs. Downie and Mr. Sirois (Canada) withdrew.

25. The CHAIRMAN said that the Working Group had concluded its consideration of the report of Canada (E/1980/6/Add.32).

Report of the Netherlands (continued) (E/1980/6/Add.33)

26. Mr. SVIRIDOV (Union of Soviet Socialist Republics) said that the information provided in the report of the Netherlands and in the introductory statement by the representative of that country showed that the Government had taken certain measures to carry out its obligations under the Covenant. Nevertheless, further measures were necessary to ensure the full implementation of the Covenant. The report itself provided information on measures adopted only until the end of 1979. He would appreciate additional information on measures adopted up to 1984.

(Mr. Sviridov, USSR)

27. The report showed that there was a very serious housing shortage in the Netherlands. He inquired whether specific articles of the revised Constitution related to articles 10 to 12 of the Covenant. Did the new Constitution specifically provide for the right to housing? If it did not, what was the reason? What measures were taken by the Government to prevent discrimination by landlords against potential tenants? What was the percentage of unoccupied dwellings in the Netherlands and what measures were being taken to reduce that percentage?

28. According to paragraph 83 squatters could be forcibly evicted by the police. What was the percentage of squatters in relation to the overall population? Were they resettled by the police or did they remain shelterless? What measures were being taken to eliminate discrimination against foreigners, minority groups and gypsies in the field of housing?

29. The problem of discrimination against women seemed to continue to exist in the Netherlands. Did the Government intend to take measures to ensure that marriage was entered into with the free consent of the intending spouses in accordance with article 10 of the Covenant? Were there plans to amend the Civil Code to eliminate the need for parental consent in certain cases? What was the legal status of foreign women who had been divorced from Netherlands nationals? Could they remain in the country and were they able to obtain housing on their own?

30. What was the level of unemployment in absolute terms and what was the percentage of unemployment among young people, women and foreign workers? It was clear from Part Two of the report that the legal system protecting the rights of the residents of the Netherlands Antilles was far inferior to that of the Netherlands. Why was the standard of living so much lower in the Netherlands Antilles and why were the rights of citizens of the Antilles not guaranteed to the same extent as the rights of residents of the Netherlands.

31. Mrs. JIMENEZ BUTRAGUEÑO (Spain) said that more statistical information should be provided in order to enable the Working Group to compare the situation in the Netherlands with that in the Netherlands Antilles. According to paragraph 124 of the report, which dealt with compulsory insurance under the Health Insurance Funds Act, the insurant's wife was also covered, with no extra charge, unless she was herself in paid employment. That seemed to imply that there was discrimination against husbands who would not be covered in a similar way if their wives were employed. She inquired whether there was discrimination in that regard and, if so, whether the situation would be corrected. Paragraph 46 of the report indicated that some exceptions were permitted to the prohibition on children and young people working during the period of compulsory education and that children might assist in light work. She inquired under what circumstances such exceptions were permitted and what the term "light work" implied?

32. Mr. JATIVA (Ecuador) requested an explanation of the phrase "except on reasonable and objective grounds" in paragraph 8 of the report. Further information would also be appreciated with regard to the functioning of the

(Mr. Jativa, Ecuador)

international nurseries referred to in paragraph 21 of the report. What results had been achieved thus far and what difficulties had been encountered? Referring to paragraph 157 of the report, he inquired why education had not been made compulsory. Lastly, with regard to article 10 of the Covenant, he asked whether there were legal provisions regulating common-law unions. What was the legal status of the children of such unions with regard to inheritance and in cases in which the parents were separated?

33. The CHAIRMAN, speaking as expert from Denmark, asked whether the percentage of new dwellings intended for foreign workers referred to in paragraph 67 related to subsidized housing or to total new housing. If the latter was the case were immigrants and minority groups accorded rent reductions. He associated himself with the comments made by the experts from France and Bulgaria regarding the toy libraries and expressed the hope that account would be taken in future of the need for clarity in reports.

Report of India (E/1980/6/Add.34)

34. Mr. MALIK (India), introducing the report, said that India was a land of many creeds, cultures, customs and languages bound together by tradition and tolerance; the mainstay of Indian society was the family. The bulk of the population lived in villages which functioned as democratic units. During the colonial period rural India had become progressively impoverished due to attempts to encourage displacement of indigenous crafts and industries and the inequitable distribution of land and wealth. India's struggle for independence had been a struggle not only for self-determination but also for social welfare and social reform. Since independence efforts had been made to achieve economic growth with greater equity and social justice.

35. In order to meet the objective of social and economic justice for all citizens, a programme of economic and social development had been launched through a series of five-year plans. The emphasis of social welfare planning had gradually shifted away from basic preventive and rehabilitative services to activities designed to help families, groups and communities cope with social problems arising from changing social conditions. Proper integration of welfare and development services formed the crux of the new approach. Efforts were also being made to integrate social and economic aspects in planning for weaker sections, particularly women and children. Welfare services were being promoted - taking the family as a unit of development - and integrated with programmes of employment and economic development. Efforts were also being made to provide basic health services to families. Those efforts had been supplemented by the National Programme of Minimum Needs which was designed for the poorer sections.

36. In addition, in January 1982 a revised 20-point plan had been introduced to improve living conditions for the less privileged sections of the populations and to secure a general increase in productivity. It emphasized programmes designed to ameliorate the economic and social conditions of the poor and less privileged. Accordingly, there were plans to allot housing sites to, and expand construction assistance programmes for, rural families, to improve slums and to augment primary

(Mr. Malik, India)

health care facilities. In order to increase overall productivity the plan emphasized the need inter alia for increased production of oil seeds and pulses. It also envisaged expansion of the public distribution system in order to make available essential commodities at reasonable prices.

37. Progress in a country such as India depended on the full involvement of all the people. A Central Social Welfare Board had been created with the specific objective of promoting voluntary effort and providing resources for voluntary organizations of which there were several thousand. There were also State social welfare advisory boards. The National Institute of Public Co-operation and Child Development had been set up in 1966 to encourage participation in programmes to promote voluntary action, to train voluntary workers and to evaluate various aspects of voluntary action.

38. As a result, primarily, of the increasing amounts of resources committed to development activities, India had done much to modernize and increase the self-reliance of its economy. However, many problems still remained. The deterioration in multilateral economic co-operation and the injection of non-economic factors and political considerations into the functioning of multilateral economic institutions had not made the Government's task any easier.

39. Mr. KANEKO (Japan) asked how the caste system operated and how it affected the implementation of articles 10 to 12 of the Covenant. He believed the Government was seeking to eradicate the system. Referring to paragraphs 4 and 5 of the report, he asked whether marriage was entered into with the free consent of the parties as required by article 10. Were many children compelled to work during the period of compulsory schooling? If so what steps was the Government envisaging?

40. Mr. SVIRIDOV (Union of Soviet Socialist Republics) noted that the negative effects of the colonial administration were still being felt; however, the Government certainly seemed to be taking the measures it was obligated to take under articles 10 to 12. He noted the active role India was taking in the establishment of the new international economic order and in the implementation of the International Development Strategy for the Third United Nations Development Decade. He was particularly pleased to see from paragraph 191 that the recommendations of the International Conference on Primary Health Care were being implemented.

41. Referring to paragraph 5 he asked why the grounds for divorce and judicial separation had been liberalized. With reference to paragraph 20 (xiii) he asked how gifted children were identified.

42. Mr. KORDS (German Democratic Republic), referring to the 20-point plan, asked what had been achieved so far and what were the prospects for the future. It would also be interesting to hear what measures the Government had taken to promote family planning, what problems it had encountered, what had been achieved so far and what were the prospects for the future.

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43. Mr. TEXIER noted that the human rights situation in a developed country could not be measured in the same way as in a developing country. However, he had been surprised at the number of questions asked in respect of the report of the Netherlands.

44. With respect to paragraph 5 he asked how the consent of a prospective bride was obtained and formulated and whether men and women were treated equally when it came to seeking their consent to marriage. Referring to paragraph 8 he asked why the age of marriage for girls was different from that for boys. He would welcome more information regarding the crèches referred to in paragraph 13 and regarding maternity leave for working mothers. It would also be interesting to hear what role the judiciary had played in contributing to the progressive improvement in the status of women as noted in paragraph 14.

45. Did the ban on the employment of children under 14 in hazardous or heavy work mentioned in paragraph 20 (x) mean that children could engage in other types of work? Referring to paragraph 20 (vii), he noted that while the colonial administration had certainly curbed India's development, the social system had also contributed thereto. What was the Government doing to eradicate the caste system?

46. He said that the scheme described in paragraph 46 to provide crèches for working and ailing women's children was commendable; it would be interesting to know more about the central Social Welfare Board which was responsible for its implementation.

47. He had been struck by the figure of nearly 48 per cent for malnutrition given in paragraph 47. However, it was clear from the programmes to reform agriculture that India was making considerable efforts to overcome that problem. Paragraph 100 indicated that the available food supply in the country was estimated to provide sufficient calories and protein to meet daily requirements. As the report gave only average per capita figures for the population as a whole, he would appreciate more information about the considerable variation in availability and consumption said to be observed among different regions and even among different socio-economic groups within a region.

48. With regard to the right to housing, the report showed that India had made great efforts to control rents and introduce social housing schemes. The Rent Control Act was described in paragraph 127 as one of the important regulatory measures and he would like more details about how the controls were implemented by the various state governments.

49. Concerning the right to physical and mental health, the report was objective in showing difficulties encountered as well as the progress achieved in immunization programmes, prophylaxis and general health care. He was interested in the central Councils of Health and Family Welfare mentioned in paragraph 153 and would like more information about how they were run and whether they simply acted as advisers to the Government or had a more important political role.

50. Mrs. JIMENEZ BUTRAGUEÑO (Spain) said that she was particularly interested in the situation of women as reflected in paragraphs 14 and 15 of the report. Further information could perhaps be given about the status of women in the family, in

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(Mrs. Jimenez Butragueño, Spain)

society and at the work-place, as well as about any changes in that regard which had occurred in recent years. According to paragraph 14 the judiciary in India had contributed to improving the status of women and she would like more information about what its interpretation of relevant statutes and laws had achieved. Paragraph 15 referred to an adult education programme for women aimed inter alia at making both men and women more conscious of their rights and responsibilities. She would like more details about the programme, which she felt was a very interesting one.

51. The wording of the 1973 Code of Criminal Procedure cited in paragraph 31 did not make it clear whether children under the age of 16 years were actually liable to the death penalty or to imprisonment for life and she would welcome clarification of that point. She would also like further information about the Children's (Pledging of Labour) Act of 1933, mentioned in paragraph 42, and clarification of the legal position concerning the employment of children as described in the first sentence of that paragraph.

52. Mr. MITREV (Bulgaria) said that paragraphs 50 and 51 pointed to major structural changes which the Government had undertaken in land distribution and agricultural reform to bring about greater social and economic justice. Given the enormity of the task, those efforts were indeed commendable.

53. He had been very impressed by government policies with regard to children. The national policy for children adopted in 1974 was of great interest and he would like more information about the kind of administrative machinery provided to supervise and control its implementation. That subject was dealt with, for example, in paragraphs 13, 22 and 46, but he would be grateful for a more comprehensive picture covering all aspects of the policy. He would also be grateful for more information about the overall policies of the Indian Government to ensure equality between men and women in India. What had been the rationale behind the decision, outlined in paragraph 8, to raise the age of marriage for both girls and boys? Simply raising the age limit for girls would automatically have ensured equality for the sexes.

54. The CHAIRMAN, speaking as the expert from Denmark, said it was worth noting that all the legislation, apart from the Constitution, referred to in the introductory part of the report seemed to derive from the time before the Covenant was ratified. The same applied to a number of laws concerning the protection of the family.

55. According to paragraph 16 in rural areas few mothers availed themselves of the antenatal health supervision services. What was the reason? With regard to the protection of children and young persons, he welcomed the provision mentioned in paragraph 20 (xii) that children should be given priority for protection and relief in times of distress or natural calamity.

56. Referring to the credit facilities mentioned in paragraph 55 he said that it would be interesting to hear more about those credits and to know whether they were provided for women as well as men involved in farming activities.

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(The Chairman)

57. With regard to paragraph 95, dealing with the policy to improve post-harvest handling and storage, he would be grateful for some figures covering the period after 1969-1970 when the scheme to save grain had been introduced, and for at least a percentage figure showing the quantity of grain and other crops which had been lost because of agricultural pests. The public distribution system for food described in paragraph 99 was meant to stabilize consumer prices for food grains. How was that being achieved? Had a rationing system been necessary?

58. According to paragraph 151, most rents had continued to rise largely because tenants were unwilling to go to court. Was it not possible that lack of housing or the risk that, if a tenant went to court, the house he rented would not be properly maintained by the landlord were also contributory factors? It would be interesting to know what was being done to strike a balance between the interests of landlords and tenants. Finally, he would welcome more details about the Water Act mentioned in paragraphs 173 and 177 and how successful it had been in solving the enormous water quality problem faced by India.

The meeting rose at 6 p.m.