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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Forty-second session

SUMMARY RECORD (PARTIAL)* OF THE 2nd MEETING

Held at the Palais Wilson, Geneva,
on Monday, 4 May 2009, at 3 p.m.

Chairperson: Mr. MARCHÁN ROMERO

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

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The discussion covered in the summary record began at 3.50 p.m.

**SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF
THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND
CULTURAL RIGHTS**

1. Mr. TROMEL (International Disability Alliance) asked the Committee to ensure that the provisions of its draft general comment on the principle of non-discrimination were in line with the provisions of the Convention on the Rights of Persons with Disabilities. In particular, paragraph 24 of the current draft of the general comment should place additional emphasis on the denial of reasonable accommodation as a form of discrimination on the basis of disability. Given that many countries were currently grappling with that concept, the Committee should seize the opportunity to clarify it. Paragraph 24 should also highlight the fact that discrimination on grounds of disability could affect persons who were perceived as having a disability, people who were associated with persons with disabilities, and persons who had had a disability in the past.
2. The Convention clearly prohibited deprivation of liberty and involuntary treatment on grounds of disability. In that context, paragraph 29 should also be revised, since it could be interpreted as encouraging discrimination against people with mental health problems. In particular, the wording “persons that present a danger to him or herself or to others” should be amended. The Committee might wish to consult with the Committee on the Rights of Persons with Disabilities on that subject, and appoint one of its members to monitor the work of that Committee generally.
3. Mr. RIEDEL said that the Committee would be considering the draft general comment at the current session. The latest draft addressed denial of reasonable accommodation and the categories of people affected by discrimination on the basis of disability. The Committee would try to cooperate closely with the Committee on the Rights of Persons with Disabilities in order to ensure a uniform approach where relevant.
4. Ms. ANDIÓN (Center for Reproductive Rights) said that almost a third of maternal deaths in Latin America occurred in Brazil. With over 4,000 deaths a year, Brazil’s maternal mortality rates were considerably higher than those of some less developed countries. Around 90 per cent of those deaths were preventable, yet the maternal mortality rate had not decreased in the past 15 years. Moreover, rates were marked by drastic disparities based on race, socio-economic status, and urban-rural distribution: Afro-Brazilian women, for example, were 50 per cent more likely to die of obstetric causes than white women.
5. She urged the Committee to recommend that the Brazilian Government should take steps to reduce maternal mortality rates by increasing the budget for maternity care, especially in poor and rural regions. The Government should ensure that programmes addressed the accessibility, availability and quality of maternal health services, including by enhancing the referral system and extending the coverage of emergency obstetric services. It should also ensure that effective monitoring and accountability mechanisms were in place, and implement measures to eliminate the significant inequalities confronting Afro-Brazilian and low-income women in their access to quality maternity care.

6. Mr. CABRERA (O'Neill Institute for National and Global Health Law) said that, while the Brazilian Government had implemented some tobacco control policies, it was not fully complying with its obligations to protect and realize the right to health in respect of tobacco control. Significant steps had been taken to reduce the risk tobacco posed to the general population, such as ratification of the World Health Organization (WHO) Framework Convention on Tobacco Control, but there were still serious gaps in protection: it was still acceptable to smoke inside restaurants and bars, for example, which was a health risk to customers and staff. The Brazilian Government estimated that 200,000 people died each year from causes linked to tobacco use, and that seven deaths a day could be attributed to causes connected to passive smoking or second-hand smoke.
7. He called on the Committee to recommend that the Brazilian Government should enact legislation making enclosed environments 100 per cent free of tobacco smoke. He also asked the Committee, in drafting its concluding observations on the report of Brazil, to take into consideration the other recommendations contained in his organization's report.
8. Ms. MOREIRA VAZ DE MELO (Justiça Global, World Organisation Against Torture, National Movement of Street Boys and Girls), referring to the alternative report, prepared by the organizations she represented, said that the criminalization of poverty was a clear and observable phenomenon in Brazil, particularly in urban areas. State and quasi-State actors often identified the poorest members of society as criminal or potentially criminal simply because of their socio-economic status, targeting them for extortion, arbitrary arrest and detention, physical violence or even summary execution. Brazil's poorest and most marginalized communities were at constant risk of being caught up in acts of lethal police violence; the United Nations Special Rapporteur on extrajudicial, summary and arbitrary executions had indicated that the police were responsible for one fifth of killings in Brazil.
9. Illegal but tolerated militias, with close ties to the police, claimed to provide security and protection but in fact exploited poor communities through extortion and by taking over the provision of lucrative basic services.
10. Brazil's prison system, with its overcrowding and its riots, torture, massacres and extortion, was a contributing factor in the criminalization of poverty and the perpetuation of the link between poverty and violence.
11. The police response to women and children victims of violence was inadequate and often itself violent. Women in poor and marginalized communities were often financially dependent on physically abusive partners and, in some regions, were still seen as men's property.
12. Lastly, she said that human rights defenders were often impeded in their legitimate activities by regional authorities.
13. She encouraged the Committee to urge the Brazilian Government to take into consideration the causal links between the failure to respect economic, social and cultural rights, and discrimination and violence.
14. Mr. ANDRIOLI (Via Campesina Brazil) said that Brazil was the world's largest producer of soya, and approximately 60 per cent of its soya production was genetically modified. The use

of genetically modified organisms in Brazilian agriculture had increased hunger and left numerous rural dwellers landless and in poor health. It had also contaminated water and soil, rendering those resources useless to small farmers. It therefore constituted a serious violation of economic, social and cultural rights.

15. He called on the Committee to urge the Government of Brazil to ban the use of genetically modified organisms in agriculture and restore small farmers' access to traditional seeds, their right to own land, and their right to farm without contamination from spraying and from neighbouring lands where genetically modified organisms were used.

16. Mr. CARBONARI (National Human Rights Movement), speaking on behalf of several NGOs, said that, although the inequalities highlighted in the Committee's concluding observations on Brazil's initial report (E/C.12/1/Add.87) had been slightly reduced, 10 per cent of the population still held around 75 per cent of the country's wealth. The Government had increased the minimum wage, introduced social security and cash transfer programmes and made efforts to reduce poverty and bring more families into the cycle of consumption, but the results of those efforts were still insufficient.

17. Large-scale development projects under the Government's growth acceleration programme (PAC) had had an adverse effect on populations and the environment. The emphasis on control of inflation and deregulation of the economy had resulted in a drastic reduction in social expenditure. In 2006, for example, public spending on debt interest repayments had far exceeded expenditure on health, education, public safety and citizen's rights. The poorest populations were thus penalized.

18. Ms. RODRIGUEZ (Proceso de Articulación y Diálogo) said that the most vulnerable groups in Brazil suffered great inequality, particularly in the north and north-east of the country and rural and periurban areas. Most victims of violence were young black men living in large cities and, according to the Organization of Ibero-American States for Education, Science and Culture, more young people died from gunshot wounds in Brazil than anywhere else in the world. Various sources highlighted the vulnerable situation of the black population in Brazil: the majority of the poorest 10 per cent of the country's population were black; black women earned significantly less than men on average; and in 2008 a high proportion of those considered to be living in poverty had been indigenous or black. The country's black population faced high infant mortality and a high education drop-out rate.

19. As to indigenous people, she said that their land was often still not registered to them. They bore the brunt of the consequences of large-scale development projects in agribusiness and mining and were daily confronted with persecution, threats and violence and the invasion and degradation of their land. They were often confined to reduced areas or roadside settlements.

20. With regard to health care, she said that, in 2008 there had been complaints of corruption and misuse of funds by the National Health Foundation, and preliminary data indicated a rise in the number of deaths due to a lack of health care.

21. Ms. WERNECK (Plataforma Brasileira de Direitos Humanos Econômicos, Sociais, Culturais e Ambientais) said that civil society in Brazil hoped that the State party would shortly ratify the Optional Protocol to the Covenant.

22. There was a significant gap between regulatory provisions and the implementation of public policy guaranteeing human rights. Although it had not ignored the recommendations made by international bodies, the State party had not applied them comprehensively and effectively. The Committee's concluding observations on Brazil's initial report, for example, had not been translated or published, which made them difficult to monitor and less effective.

23. Brazil's Human Rights Agenda was poorly coordinated and could not be fully effective, for it addressed only complaints of violations and the implementation of public programmes that had little social impact. Brazil had made no headway on resolving the institutional challenges to guaranteeing human rights or implementing the proposed national human rights programme.

24. Mr. RECH (Parceiros de Misereor no Brasil) noted that the instruments of direct democracy provided for under the Constitution, such as plebiscites, referendums and popular initiatives, were rarely used in Brazil. Little public oversight was possible through the official policy-monitoring councils and the few human rights councils that existed were generally part of the apparatus of government. Civil society would like to see greater transparency and more information on public bodies, and particularly on the State budget.

25. The social progress of recent years had been the result of protest and lobbying. Yet leaders of social movements had been increasingly criminalized and subjected to slander, persecution and prosecution, and even murdered. There was a clear strategy to legitimize such criminalization through the courts and in the legislature. At the same time, the National Programme on the Protection of Human Rights Defenders had no clear terms of reference and few resources to combat the process of criminalization.

26. Ms. BRAS GOMES asked why NGO representatives believed that work done under social welfare programmes was not effective.

27. Mr. SADI asked for the views of NGO representatives on why economic, social and cultural problems persisted. He wondered why the Government had adopted such a lax position on the question of tobacco. He asked whether genetically modified products were exported and whether they were labelled accordingly. Lastly, he asked whether, in the light of the recent fall in oil prices, biofuel production was still a problem.

28. Mr. DASGUPTA asked for disaggregated data on maternal mortality rates, by region or income bracket, for example.

29. Mr. TEXIER asked whether the Zero Hunger programme had produced any positive changes.

30. Mr. ABDEL-MONEIM asked what NGO representatives thought about the claim, often made by Governments in economies in transition, such as Brazil, that they were constrained by international financial institutions to apply certain policies.

31. Mr. CARBONARI (National Human Rights Movement) said that the Zero Hunger programme, which had become the "Bolsa Familia" cash transfer programme, had certainly helped lift a significant proportion of the population out of poverty, but structural problems, such as the lack of land and housing reform, meant that poverty was not being alleviated quickly enough.

32. Ms. ANDIÓN (Center for Reproductive Rights) said that, according to a World Bank study, Brazil's maternal mortality rates were three to ten times higher than those of countries with comparable GDP. Rates were highest in the north and north-east regions. By comparison, countries such as Peru and Guatemala had significantly reduced their maternal mortality rates.
33. Mr. ANDRIOLI (Via Campesina Brazil) said that soya was exported for use as animal feed, largely to China and Europe. European legislation allowed genetically modified soya and maize to be used as animal feed but the derivative products of those animals, such as milk, meat and eggs, were not labelled as genetically modified. Consequently, European consumers could not verify the origins of such products.
34. Mr. RECH (Parceiros de Misereor no Brasil) said that when small farmers stopped growing food in order to grow biofuels, there was less food available. Biofuel production destroyed the environment, thereby putting the future of small-scale agriculture at risk. It was increasingly difficult to assess the benefits of using biofuels instead of petrol.
35. Mr. CABRERA (Georgetown University) explained that there were two main issues in relation to the lack of tobacco regulation in Brazil. Firstly, as in other countries, there was internal pressure from the tobacco industry and, secondly, the tobacco growers' lobby strongly influenced tobacco control legislation. Notwithstanding Brazil's ratification of the WHO Framework Convention, little had been done to enforce or develop domestic legislation.
36. Mr. SCHOKMAN (Human Rights Law Resource Centre) said that his delegation represented all the civil society organizations responsible for the NGO report entitled "Freedom Respect Equality Dignity: Action", that had been submitted to the Committee in April 2008, and for the subsequent addendum containing updates to that report, which had been submitted for the current session of the Committee. He drew the attention of Committee members to the Executive Summary, that had been circulated in the meeting room (<http://www.hrlrc.org.au/files/icescr-ngo-report-executive-summary-may-2009.pdf>).
37. The Australian Government elected in November 2007 was moving to re-engage with human rights at the international, regional and domestic levels.
38. Yet despite many positive developments, NGOs were extremely concerned that action in a number of areas seemed to consist primarily of policy changes, as opposed to legislation. The Australian Constitution, for example, still contained a provision that was over 100 years old permitting discrimination against Aboriginal people. In addition, no changes had been made to immigration legislation, meaning that asylum-seekers lacked access to many basic rights, including health and labour rights.
39. The Australian Human Rights Commission had no formal role in relation to the oversight of economic, social and cultural rights, and its recommendations and findings were not binding. It had also suffered severe funding cuts, which compromised its work.
40. Lastly, the terms of reference of the National Human Rights Consultation currently being undertaken by the Government did not include economic, social and cultural rights.

41. It was a matter of great concern that Australia remained without comprehensive legal protection of human rights at the national level. Covenant rights were not directly enforceable under Australian law and there was a notable lack of effective remedies for human rights violations. Without concrete legislative action, the protection of economic, social and cultural rights in Australia would remain vulnerable.

42. Given these deficiencies, it would be useful if the Committee could make a recommendation for Australia to sign and ratify the Optional Protocol to the Covenant and make a declaration recognizing the competence of the Committee under article 11 of the Optional Protocol.

43. Australia's anti-discrimination legislation was very limited, admitting only four grounds - sex, race, age and disability. The NGOs urged the Committee to make a recommendation for equality legislation that covered all the grounds for discrimination specified in article 2 of the Covenant.

44. In that context, he recalled that the Racial Discrimination Act was no longer in operation, one result of the extraordinary legislative measures introduced in the wake of the "Little Children are Sacred" report on child sexual abuse in indigenous communities. The recommendation contained in that report had not been implemented and he asked the Committee to recommend their implementation.

45. Turning to article 3 of the Covenant, he drew Committee members' attention to the continuing underrepresentation of Australian women in many areas of public and political life, the existence of a significant gender gap in wages, the lack of any paid parental leave scheme and the very poor childcare services. In addition, there were still appalling levels of violence against women.

46. Many positive steps on labour rights had been taken by the new Government, but many employees, particularly in small businesses, did not have protection against unfair dismissal. There were also restrictions on the right to strike and the right to freedom of association, especially in the construction industry.

47. Ms. PETTITT (National Association of Community Legal Centres and Kingsford Legal Centre) said that limited progress had been made on the issues raised in the Committee's concluding observations on Australia's third periodic report (E/C.12/1/Add.50).

48. With regard to social security, she said that payments were insufficient to guarantee an adequate standard of living. Moreover, the provision of social security was conditional on meeting certain "mutual obligation" requirements: failure to meet those obligations three times in any 12-month period meant suspension of payment for 8 weeks, which experience had shown could lead to homelessness.

49. In terms of the rights of families and children, areas of particular concern were the absence of accessible and affordable childcare and the prohibition in Australian law on formal recognition of same-sex couples, notwithstanding amendments to laws that had previously discriminated against same-sex couples.

50. Three key issues relating to the right to an adequate standard of living were the extent of poverty, homelessness, and the situation of people with disabilities. There had been no response by the Australian Government to the recommendations made in 2006 by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (A/HRC/4/18/Add.2) and the NGOs called on the Committee to urge the Australian Government to implement those recommendations.

51. Turning to the right to health, she said that mental health services were significantly under-resourced. There were widespread problems with access to mental health services, quality of care and adequate accommodation.

52. Indigenous Australians, women in particular, continued to experience higher rates of ill-health and death than non-indigenous Australians. While the Government had recently committed to improving indigenous health outcomes, indigenous children continued to fare worse on many health indicators than non-indigenous children.

53. The number of prisoners with mental health problems continued to increase, but without a proportionate increase in resources. Mental health care in prisons was manifestly inadequate. There were high rates of injecting drug use and sexually transmitted infections among prisoners, yet most Australian prisons had not developed effective harm minimization strategies.

54. On the right to education, she said that the Government's spending on early childhood education was the lowest in the developed world. As a result, children from non-English-speaking backgrounds or low-income families, indigenous children and those with additional needs were less likely to attend early childhood education, which had implications for the realization of economic, social and cultural rights. Indigenous children and young people had lower levels of access to all stages of education. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), over 100 languages in Australia were endangered and a new policy in the Northern Territory requiring the first four hours of teaching of every school day to be conducted in English could put indigenous languages at further risk.

55. Mr. MALEZER (Foundation for Aboriginal and Islander Research Action) said that Australia's periodic report (E/C.12/AUS/4) had been compiled and submitted without consulting the Aboriginal or Torres Strait Islander people and was deficient in several respects. It did not, for example, adequately identify and address the issues relating to Aboriginal people and it was misleading as to the extent of discrimination by the State party against Aboriginal people.

56. He asked the Committee to address five specific issues: the need for constitutional, legislative and structural guarantees to promote and protect the human rights of Aboriginal people; the acknowledgement of Aboriginal people's right to maintain their distinct and diverse culture and measures to develop that right; fair and independent procedures for the recognition of Aboriginal people's ownership and control of their lands and resources, and for recognition of other property rights, including intellectual property; the development of Aboriginal capacity to control their own institutions and decision-making procedures; and control of Aboriginal children's education, youth training and delivery of programmes and services to the Aboriginal people in accordance with their social and cultural values and methods.

57. He said that the situation of Aboriginal people had deteriorated since the State had first submitted a report to the Committee and he asked what was being done, as part of the treaty body reporting process, to eliminate discrimination against Australia's Aboriginal people.

58. Mr. KERDOUN asked whether NGOs had participated in the drafting of the Government's report. If so, had they raised the problems they had highlighted with the Government in an attempt to find a solution?

59. Mr. SADI requested confirmation that Australian federal law covered only four grounds of discrimination.

60. Mr. SCHOKMAN (Human Rights Law Resource Center) said that the State party report had been prepared by the previous Government, which had not consulted NGOs, and indeed had offered NGOs few opportunities for participation generally. The current Government was conducting consultations on its forthcoming report to the Committee on the Elimination of Discrimination against Women.

61. He confirmed that only four categories of discrimination were covered by Australian legislation: race, sex, age and disability. Other categories of discrimination had been mentioned in the NGO reports precisely because they were not covered.

62. Although the Committee had not previously considered the issue of climate change, he asked members to study the information submitted and put questions on the subject to the Government delegation.

63. Ms. GOODMAN (3D Trade-Human Rights-Equitable Economy) drew the Committee's attention to a land deal that was being negotiated between the Cambodian Government and Kuwait. The deal was part of a rapidly accelerating and worrying trend whereby Governments were acquiring land in other countries in order to secure their own future food supplies, and it could adversely affect Covenant rights, in particular the right to food. Under the Covenant and domestic law, land concessions were subject to public consultation but, according to reports, people in the area concerned had not been informed of the negotiations. In addition, the Cambodian Parliament had passed legislation to protect Kuwait's investments that could make it difficult for the Government to adopt measures to fulfil its commitments under the Covenant. She encouraged the Committee to ask the Cambodian Government how it planned to consult all stakeholders and assess the impact of the land deal, particularly on vulnerable groups.

64. Mr. PRED (Bridges Across Borders Southeast Asia), speaking on behalf of the Cambodia Land and Housing Working Group, said that, while some Cambodians had prospered since peace and stability had been restored, many others had seen their enjoyment of economic, social and cultural rights deteriorate. The rapid introduction of a market economy, in the absence of the rule of law or a functioning independent judicial system, had attracted unscrupulous private investors, whose commercial interests had been protected by the State at the expense of the public interest.

65. The ruling elite had enriched themselves by selling off the country's resources. Large grants of land, known as "economic land concessions", had been made to private companies for agro-industrial development, with devastating consequences for those who depended on land and forest resources. Despite legal requirements, local communities were generally not consulted

before such concessions were granted, environmental and social impact assessments were not carried out and compensation and resettlement solutions were not worked out. Even when the regulations were followed, the legal framework had proved inadequate.

66. Successive Special Representatives of the Secretary-General on the situation of human rights in Cambodia had expressed concern about the impact of economic land concessions on the human rights and livelihoods of rural communities. Reports indicated an alarming erosion of the right to food as a result of forced displacement, reduced access to subsistence farming and the destruction of natural resources. Hunger and malnutrition were widespread. The Government's development model had had a particularly detrimental effect on indigenous populations and those who attempted to defend their rights were often harassed and intimidated.

67. Ms. BUGALSKI (Centre on Housing Rights and Evictions) said that the Cambodian Government had failed to protect or realize the right to adequate housing, as interpreted by the Committee in its general comments Nos. 4 and 7.

68. The Government's commitment to upgrading settlements of the urban poor and ensuring security of tenure appeared to have been abandoned in the face of rapid urban development spurred by an influx of foreign investment. The State party report (E/C.12/KHM/1) mentioned four sites that had been chosen for land-sharing projects, but since the submission of the report many residents had received eviction notices, had been forcibly evicted, or had been convicted on spurious charges for advocating their rights to fair compensation, in order to make way for the commercial development of those sites.

69. Evictions and forcible confiscation of land were one of Cambodia's most pervasive human rights problems. The Government denied that such evictions took place, but the evidence was overwhelming and the rate and scale of evictions had increased in recent years. The instigators of forced evictions included well-connected private individuals, domestic and foreign companies, and government authorities, while the victims were often the most vulnerable households. Cambodia urgently needed a comprehensive legal framework to govern land expropriation and evictions, one that would enable the State to meet its obligations under the Covenant.

The meeting rose at 6 p.m.