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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirty-fifth session

SUMMARY RECORD OF THE 51st MEETING

Held at the Palais Wilson, Geneva,  
on Monday, 21 November 2005, at 3 p.m.

Chairperson: Ms. BONOAN-DANDAN

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

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

Adoption of a draft general comment on article 15, paragraph 1 (c), of the Covenant  
(continued) (E/C.12/2004/5/Rev.1)

1. The CHAIRPERSON invited Committee members to resume their consideration of the draft general comment on article 15, paragraph 1 (c), of the Covenant (E/C.12/2004/5/Rev.1), begun at the previous meeting.

Paragraph 55

2. Mr. RIEDEL suggested replacing the word “tribunals” at the end of the first sentence, by the words “judicial and administrative bodies”, which was the usual formulation used by the Committee.

3. Paragraph 55, as amended, was adopted.

Paragraph 56

4. Mr. KOLOSOV said that, while it might be appropriate for the Committee to instruct national bodies on the nature of the remedies they provided, as it did in the second part of the paragraph, it would not be appropriate in respect of international bodies. He therefore suggested replacing the words “at both national and international levels” by the words “at the national level”.

5. Mr. SADI said he felt there were too many qualifications attached to the remedies. He suggested amending the second sentence to read simply: “Such remedies must be fair and not unduly delayed.”

6. Mr. RIEDEL said he agreed with Mr. Kolosov. The paragraph had originally been drafted on the recommendation of an expert in the field. However, he could now see that it would be better to remove the reference to international bodies.

7. He did not agree with Mr. Sadi’s suggestion, however. Such specifications were important.

8. Mr. ATANGANA wondered whether remedies could be described as “fair and equitable”. Surely it was the outcomes that must be fair and equitable?

9. Mr. TEXIER said he agreed with Mr. Atangana and suggested deleting the words “must be fair and reasonable”. Remedies needed to be uncomplicated and not too costly or lengthy.

10. Mr. PILLAY suggested replacing the words “an opportunity for review” by the words “the right to have those proceedings reviewed”.

11. Mr. RIEDEL said the words “of final administrative decisions” should be deleted. He read out the paragraph as amended:

“Authors who are victims of a violation of the protected moral and material interests resulting from their scientific, literary or artistic productions should consequently have access to effective administrative, judicial or other appropriate remedies at the national level. Such remedies should not be unreasonably complicated or costly, or entail unreasonable time limits or unwarranted delays. Parties to legal proceedings should have the right to have those proceedings reviewed by a judicial or other competent authority.”

12. Paragraph 56, as amended, was adopted.

#### Paragraph 57

13. Mr. TEXIER said he found the paragraph unclear. What exactly was meant by “address violations”, given that the bodies referred to all operated on different levels?

14. Mr. RIEDEL said the paragraph conflated two ideas, the second of which in fact had more to do with accountability. He suggested separating the two sentences into two discrete paragraphs.

15. Mr. KOLOSOV suggested inserting the words “or satisfaction” after the word “compensation”. Violations of such rights did not always have purely financial implications; they sometimes had more to do with honour or reputation.

16. Mr. RIEDEL read out paragraph 57, as amended:

“57. All victims of violations of the rights protected under article 15, paragraph 1 (c), should be entitled to adequate compensation or satisfaction.

57 bis. National ombudspersons and human rights commissions, where they exist, and professional associations of authors or similar institutions should address violations of article 15, paragraph 1 (c).”

17. Paragraph 57, as amended, was adopted.

#### Paragraphs 62-64

18. Mr. RIEDEL drew Committee members’ attention to the fact that the order of paragraphs 62-64 had been reversed in the revised version, following a suggestion from the representative of the World Intellectual Property Organization (WIPO). The original numbering had been retained for the moment, however.

Paragraph 64

19. Mr. SADI suggested amending the paragraph to read:

“While only States parties to the Covenant are held accountable for compliance with its provisions, it is nevertheless recommended that the private business sector, private research institutions and other non-State actors be also made responsible for respecting the right recognized in article 15, paragraph 1 (c), of the Covenant.”

20. Mr. RIEDEL said he could accept the formulation proposed by Mr. Sadi for the first part of the paragraph, which was more elegant than the original, but the second part had been quite carefully drafted in line with previous references to international obligations, and he felt it should be retained.

21. Ms. BRAS GOMES said that in the general comment, the Committee was addressing the national level rather than the international level. The construction “consider the nature of the responsibility” seemed weak and unclear.

22. Mr. RIEDEL proposed rephrasing the recommendation to read “consider the responsibility”.

23. Mr. PILLAY said that there was a link to paragraph 46, which stated that violations could occur through “the direct action of States or by other entities insufficiently regulated by States”, which included private entities, and therefore perhaps a similar construction could be used, such as “should regulate the private sector in order to make it respect the right ...”.

24. Mr. RIEDEL proposed the formulation: “While only States parties to the Covenant are held accountable for compliance with its provisions, they are nevertheless recommended to consider regulating the responsibility resting on the private business sector, private research institutions and other non-State actors to respect the rights recognized in article 15, paragraph 1 (c), of the Covenant.”

25. Paragraph 64, as amended, was adopted.

Paragraph 63

26. Mr. RIEDEL suggested that WTO should come at the end of the list, after WHO, as the key specialized agencies were traditionally given priority, and WTO had a separate position among the international financial organizations.

27. Paragraph 63, as amended, was adopted.

Paragraph 62

28. Mr. RIEDEL said that, in his view, the paragraph could be deleted, but if it was retained, the phrase “the protection and formulation of article 15, paragraph 1 (c)” should be inserted following “in their work concerning” to replace “intellectual property”.

29. The CHAIRPERSON suggested deleting the word “progressive” in the third line.

30. Paragraph 62, as amended, was adopted.

Paragraph 40

31. Mr. RIEDEL said that although the drafting group had reached agreement on that paragraph, he had since noticed a slight problem. In his view, the first part, up to “cultural cooperation”, and the first footnote, should be maintained in the body of the paragraph, but the remainder, up to and including footnote 2, should be incorporated in footnote 1, because the Committee was commenting on binding legal obligations. The general comment had the function of outlining what obligations States parties must fulfil when reporting to the Committee, and future developments could be hinted at in the footnote.

32. Ms. BARAHONA RIERA said she did not agree with the suggestion to incorporate the second part of the paragraph in the footnote, as that would result in a loss of consistency. By placing that part in the footnote, it would become merely informative rather than being a fundamental part of the general comment. The reference to the preservation of biological diversity was not particularly different to the rest of the content of the paragraph. The Committee was not telling States parties how to act in that regard, but simply to take the matter into account. Preserving biological diversity was a subject of concern for the international community and it was important to mention it in the actual body of the paragraph.

33. Mr. MARCHÁN ROMERO said that in 2000, the Committee had, in a cautious but anticipatory manner, mentioned specifically that one sphere of expansion in the area of human rights would be the patenting of biological entities. In his view, it would be possible to accommodate both positions by including the current text up to “biological diversity” in the main body of the paragraph.

34. The CHAIRPERSON said that the phrase “while taking due account ...” was misplaced, and suggested moving it to the beginning of the paragraph, which would then read: “Bearing in mind the different levels of development of States parties, and while taking due account of the need to preserve biological diversity, it is essential ...”.

35. Mr. RIEDEL said that the end of the amended paragraph would read “... development cooperation, technology transfer and scientific and cultural cooperation, while at the same time taking due account of the need to preserve biological diversity”. The first footnote would remain the same, while the second would include a reference to article 8 (j) of the Convention on Biological Diversity, in addition to the reference to the Sub-Commission. He noted that the convention in question was not a human rights convention.

36. Mr. PILLAY said he did not agree with the Chairperson’s suggestion to move the phrase “while taking due account ...”, as it was while facilitating and promoting development that account must be taken of the need to preserve biological diversity.

37. Paragraph 40, as amended, was adopted.

38. The CHAIRPERSON invited the Committee to adopt its draft general comment on article 15, paragraph 1 (c), of the Covenant.

39. The draft general comment was adopted.

The meeting was suspended at 4.20 p.m. and resumed at 4.30 p.m.

Adoption of a draft general comment on article 6 of the Covenant  
(E/C.12/2003/7/Rev.1; E/C.12/35/CRP.2)

40. Mr. TEXIER recalled that paragraphs 1 to 23, and paragraphs 31 to 39, had already been adopted. His proposed amendments (E/C.12/35/CRP.2) to the remaining paragraphs were before the Committee.

Paragraphs 24 and 25

41. The CHAIRPERSON invited the Committee to consider the text of merged paragraphs 24 and 25 as contained in document E/C.12/35/CRP.2.

42. Mr. MALINVERNI said that the placement of the protection and promotion of employment at the centre of national policy came within the purview of the obligation to respect and the obligation to fulfil, as well as the obligation to protect.

43. Mr. TEXIER proposed the deletion of the words “places the protection and promotion of employment at the centre of national policy, and”.

44. Mr. MALINVERNI, supported by Mr. PILLAY, said that the issue of forced labour should be mentioned under the obligation to respect, rather than the obligation to protect. He suggested deleting the last sentence of the merged paragraph, since it was not specific to the obligations to respect, protect and fulfil.

45. Mr. TEXIER agreed that the words “It includes the responsibility of States to prohibit forced or compulsory labour” could be moved to the first part of the paragraph, under the obligation to respect. He thought the final sentence of the paragraph relevant to the right to fulfil, but he could accept its deletion.

46. Ms. BRAS GOMES proposed moving the final sentence of paragraph 24 to paragraph 29, on the legal obligation to fulfil.

47. The CHAIRPERSON said that merged paragraphs 24 and 25 constituted a general introduction to the obligations to respect, protect and fulfil. She proposed suspending the discussion, pending adoption of the paragraphs on the specificities of those obligations.

48. It was so decided.

Paragraph 26

49. Mr. TEXIER drew attention to his proposal to add a footnote.

50. Mr. RIEDEL expressed concern that clear examples of specific legal obligations had not been included in the draft text.

51. Mr. RIEDEL proposed the deletion of the words “on a voluntary basis”.

52. Mr. TEXIER said that since the issue of detainees' right to work had long been a subject of discussion in the International Labour Organization (ILO), and since it had been established that detainees had the right to work, but could not be obliged to do so, the words "on a voluntary basis" should remain in the text.

53. Mr. RIEDEL proposed adding a footnote after the words "prisoners or detainees", to read "if offered on a voluntary basis".

54. The CHAIRPERSON supported that proposal. The words "to decent work" should be removed from the end of the first sentence and inserted after the words "limiting equal access for all persons".

55. Mr. MALINVERNI noted that there was a mention of forced labour earlier in the draft general comment, as well as under specific legal obligations in paragraph 26; the earlier reference should be deleted.

56. Ms. BRAS GOMES pointed out that the problem of forced labour was caused by States, rather than third parties. It was not related to the obligation to protect, which involved third parties, and the words "and respect therefor by non-State actors" should therefore be deleted.

57. The CHAIRPERSON accepted that suggestion. Reference to non-State actors could be inserted into the paragraph on the obligation to protect.

58. Paragraph 26, as amended, was adopted.

#### Paragraph 27

59. Mr. TEXIER said that since paragraph 27 repeated information contained in paragraph 18, it should be deleted.

60. Mr. RIEDEL said that the prevention of child labour was an important example of the obligation to respect, and should be included in the section on specific legal obligations.

61. The CHAIRPERSON proposed suspending the discussion on paragraph 27 in order for it to be redrafted.

62. It was so decided.

#### Paragraph 28

63. Mr. RIEDEL said that "the implementation by the State of technical and vocational education plans to facilitate access to employment, as well as plans to counter unemployment" seemed to him to be an example not of the obligation to protect but of the obligation to fulfil. The word "lastly" should be deleted from the last sentence of the paragraph.

64. Mr. KERDOUN said that the text contained in the footnote was too long.

65. Mr. TEXIER said that although the full texts of the references had been included in the footnotes for the benefit of the Committee, the footnotes published in the adopted general comment would not cite the relevant text but would simply provide the appropriate reference.

66. Mr. MALINVERNI said that the example contained in the penultimate sentence of paragraph 28 was not an obligation to protect, but an obligation to fulfil.

67. Mr. KOLOSOV agreed that implementation of education plans to facilitate access to employment was an obligation to fulfil, but said that child labour belonged in the paragraph on the obligation to protect; he referred to the first line of paragraph 27, which stated that child labour was “protected” by article 10 of the Covenant.

68. Mr. RIEDEL said that the words “protected by article 10” meant “enshrined in article 10”; in order to avoid confusion, the word “protected” in the first line of paragraph 27 should be replaced by the word “recognized”. As there were few examples of the obligation to protect, he proposed that the last sentence of paragraph 26 should be moved to or repeated in paragraph 28, where it could serve as an example of the obligation to protect. The final two sentences of paragraph 28, however, were examples of the obligation to fulfil, and should be amended to read “Further, the obligation to fulfil includes ...”, and moved to paragraph 29.

69. The CHAIRPERSON said that when account was taken of the proposed amendments to the paragraph set out in document E/C.12/35/CRP.2 and of the proposed deletions, paragraph 28 would read:

“Obligations to protect include, inter alia, the duties of States to adopt legislation or to take other measures ensuring equal access to work and training and to ensure that privatization measures do not undermine workers’ rights”.

70. Paragraph 28, as amended, was adopted.

#### Paragraph 29

71. Mr. KERDOUN proposed that paragraph 29 should be amended to read: “The obligation to fulfil requires States parties, inter alia, to give central recognition to the right to work in national political and legal systems by way of legislative implementation.” The text in square brackets should be deleted.

72. Mr. RIEDEL agreed that the text in square brackets should be omitted. Instead, the two sentences removed from the end of paragraph 28 should be included as examples of the obligation to fulfil. The word “lastly” should be deleted.

73. Mr. MALINVERNI said that the sentence that incorporated a citation from ILO Convention No. 122 was particularly important, and should perhaps therefore feature at the beginning of the paragraph.

74. Mr. RIEDEL said that the deletions and additions that had been made to the paragraph made Mr. Malinverni’s proposal unnecessary.



75. The CHAIRPERSON supported the amendment of paragraph 29 to take into account the proposals by Mr. Kerdoun and Mr. Riedel. She suggested that action on the paragraph should be taken in conjunction with paragraph 30.

#### Paragraph 30

76. Mr. MALINVERNI said that the obligation to facilitate was a component of the obligation to fulfil; if there was to be a paragraph on the obligation to facilitate, there should also be a paragraph on the obligation to promote.

77. The CHAIRPERSON said that the obligation to promote was covered by paragraph 30. She proposed that the obligations to facilitate and to promote should not be separated into two paragraphs, but that there should be a single paragraph beginning: “The obligation to fulfil includes the obligations to promote and to facilitate the right to work.” The word “promote” should be in italics.

78. Mr. RIEDEL said that it was not clear to him what specifically the Committee was asking States to do in relation to their obligation to promote: he did not see how asking States to take effective measures to increase the resources allocated to reducing the unemployment rate could be considered to be an example of the obligation to promote rather than the obligation to facilitate. The obligation to fulfil had three dimensions: the obligation to provide, the obligation to facilitate, and the obligation to promote. The distinction between the three components of the obligation to fulfil had been introduced because the obligation to fulfil (provide) could be prohibitively costly, whereas even less developed States could meet their obligation to fulfil (promote).

79. The CHAIRPERSON said that the requirement that States should undertake actions that created, maintained and restored the right to work of the population did not seem to her to be an example of the right to promote. She suggested that the third sentence should be amended to read: “The obligation to promote the right to work requires States to undertake education or information programmes that instil public awareness of the right to work.”

80. Mr. RIEDEL supported the Chairperson’s proposal. He proposed that the sentence contained in square brackets should be omitted, as it referred to a different issue.

81. Ms. BRAS GOMES agreed that paragraphs 29 and 30 should be merged, in order to make it clear that the obligation to facilitate and the obligation to promote were components of the obligation to fulfil.

82. The CHAIRPERSON said that the distinction could be made clear in the merged paragraph by the use of brackets; the merged paragraph would thus refer to the obligation to “fulfil (provide)”, “fulfil (facilitate)” and “fulfil (promote)”.

83. Mr. TEXIER proposed that the last sentence of paragraph 30, which was in square brackets, should be retained.

84. The CHAIRPERSON said that the sentence referred to by Mr. Texier would be moved to a more appropriate paragraph. She took it that the Committee wished to merge paragraph 29 with paragraph 30, as amended, and adopt a single paragraph.

85. Paragraphs 29 and 30, as amended, were adopted.

86. The CHAIRPERSON recalled that the Committee had already adopted paragraphs 31 to 39.

Paragraph 40

87. The CHAIRPERSON drew the attention of the Committee to the proposed amendments to paragraph 40 set out in document E/C.12/35/CRP.2.

88. Paragraph 40, as amended, was adopted.

Paragraph 41

89. The CHAIRPERSON drew the attention of the Committee to the proposed amendments to paragraph 41 set out in document E/C.12/35/CRP.2.

90. Mr. MALINVERNI said that the words “may constitute” should be replaced by “constitutes”. He proposed that the Committee should use the formulation used in the general comment adopted at its 50th meeting (E/C.12/2005/SR.50).

91. Ms. BRAS GOMES asked for clarification as to the rationale behind the proposal to replace the words “is proactive” by “on employment policy”.

92. Mr. TEXIER said that the intention had been to differentiate between legislation and the policies that might be implemented. He accepted Mr. Malinverni’s proposal to use the same formulation as in previous general comments, but said that the examples should be retained.

93. Mr. RIEDEL read out the relevant formulation, which he noted the Committee had also used in its general comments Nos. 14 on the right to health (E/C.12/2000/4) and 15 on the right to water (E/C.12/2002/11).

94. Mr. PILLAY said that the wording of the paragraph would need to be redrafted in order to incorporate the examples read out by Mr. Riedel.

95. The CHAIRPERSON said that she took it that the Committee wished to defer the adoption of paragraph 41 to allow the text to be redrafted.

96. It was so decided.

Paragraph 42

97. Paragraph 42 was adopted.

Paragraph 43

98. Mr. RIEDEL proposed that the paragraph on violations of the obligation to fulfil should use the same structure as has been used in the paragraph on legal obligations.

99. Ms. BRAS GOMES said that she did not think it necessary to amend the structure of the paragraph on violations of the obligation to fulfil.

100. The CHAIRPERSON suggested that the Committee postpone the adoption of the paragraph in order that it might be revisited in the light of the amendments made to the paragraphs on the obligation to fulfil.

101. It was so decided.

Paragraph 44

102. The CHAIRPERSON drew the attention of the Committee to the proposed amendments to paragraph 44 set out in E/C.12/35/CRP.2.

103. Paragraph 44, as amended, was adopted.

The meeting rose at 6 p.m.