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Committee on Economic, Social and Cultural Rights Sixty-second session

Summary record (partial)* of the 71st meeting**

Held at the Palais des Nations, Geneva, on Tuesday, 3 October 2017, at 10 a.m.

Chair: Ms. Bras Gomes

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- * No summary record was prepared for the rest of the meeting.
** No summary records were issued for the 68th to 70th meetings.

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The meeting was called to order at 10.05 a.m.

Miscellaneous matters

Informal meeting with States

1. **The Chair** said that the idea behind holding informal meetings with States was principally to provide an opportunity for States parties to highlight problems and ask questions as part of their ongoing dialogue with the Committee. At the same time, it was an opportunity for the Committee to provide an update on its work. In that regard, the Committee would focus on three areas at the current meeting: reporting procedures, general comments and workload.
2. A meeting had been held in 2016 with States parties whose reports were overdue to discuss specific difficulties and gauge the impact of capacity-building efforts. As a result of that meeting, Bangladesh, the Central African Republic and the Niger had all subsequently submitted their initial reports, and two other States parties were in the process of finalizing their reports and would submit them soon.
3. The Committee regularly reviewed its working methods to ensure that they remained aligned with any new circumstances. On a positive note, the Committee had cleared its backlog and resolved the matter of the long delays between the submission of reports and their examination by the Committee. The procedure of using lists of issues prior to reporting had recently been introduced and was available to States parties that had already completed three reporting cycles. Bulgaria, New Zealand and Spain had agreed to prepare their reports using the new procedure; the first reports prepared under the new procedure would thus be considered by the Committee in March 2018.
4. While it was regrettable that the Optional Protocol had attracted few ratifications in some regions, she was confident that the process was gaining momentum and that States would recognize that ratification was a crucial step in strengthening the protection of economic, social and cultural rights. The Committee noted that some countries intended to wait for the Committee to issue its first sets of Views before proceeding with ratification.
5. **Mr. Uprimny** said that since the entry into force of the Optional Protocol, the Committee had formally registered 22 communications, not counting those that had been rejected as clearly lacking grounds for admissibility. Twelve of the registered communications had subsequently been declared inadmissible on various grounds, most notably *ratione temporis* inasmuch as the facts of the violation had occurred prior to the entry into force of the Optional Protocol for the State concerned. Two cases had been withdrawn at the petitioner's request. The Committee had determined three communications to be admissible and had examined their merits; in two of those cases, it had found that rights under the Covenant had been violated. Five communications were pending, with a decision on one of the them expected by the end of the current session. Although the Committee had thus far not examined a large number of communications, it had already demonstrated its capacity to find a balance between the protection of rights enshrined in the Covenant and the duties of States, as expressed in a growing body of reasonable and robust jurisprudence, including on procedural aspects of the Optional Protocol. Moreover, in determining the inadmissibility of 12 cases, the Committee had established its understanding of various legal concepts as well as the scope of its recommendations and follow-up steps to be taken in the event that it found a Covenant right had been violated. He therefore invited States parties to study the Views adopted and to consider ratifying the Optional Protocol. Finally, he pointed out that, owing to budget constraints and the additional costs entailed by activities relating to the Optional Protocol, the secretariat was unable to handle more than two communications during each intersessional period.
6. **The Chair** said she was concerned that further budget cuts might lead to another backlog. That would both defeat the purpose of General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system and have negative repercussions for the work of the Committee, for the treaty body system in general and, ultimately, for rights holders.

7. **Mr. Mancisidor de la Fuente** said that the Committee had been working for two years towards the adoption of a general comment on the right to science. At the current session, it had examined a preliminary draft version that took a number of ideas into account, notably the references to science contained in article 15 of the Covenant — specifically paragraphs 1 (b), 2, 3 and 4 — and article 27 of the Universal Declaration of Human Rights. Based on those provisions, the Committee had prepared a draft that addressed topics such as access to the material applications and benefits of science and to scientific knowledge; participation in science and in decision-making on science and technology policies; the steps that States parties should take for the conservation, development and diffusion of science; the freedom indispensable for scientific research and possible limitations on that freedom; and the nature of the international cooperation mentioned in article 15 (4) of the Covenant. Work on the draft would continue during the Committee's sixty-third session with a view to holding a general discussion in the latter part of 2018. States parties were encouraged to monitor the process, to study the draft general comment when it became available, to participate in the general discussion and to undertake their own initiatives in respect of the human right to science.

8. **The Chair** said that once the draft had been approved on first reading in the Committee, it would be published on the Committee's website so that States parties could hold consultations and submit relevant comments. The Committee would take those comments into account before proceeding to work on the second draft.

9. **Ms. Zolotova** (Russian Federation) said it was regrettable that interpretation was available only in English, French and Spanish, considering that State party briefings organized by other Committees were serviced in all six official languages. By limiting the number of languages in which services were provided, General Assembly resolution 68/268 had had a negative impact on the work of the Committee and its interactive dialogue with States parties. In that regard, she wondered how the Committee was able to properly discuss concluding observations when documents were only available in English, as that might lead to the exclusion of some experts from the drafting exercise. Experts were elected to represent different languages, regions, cultures and legal systems and therefore they should be able to contribute to drafting discussions on an equal footing. At the next review of the functioning of the treaty body system, the Russian Federation would advocate the reinstatement of interpreting and translation services in all six languages.

10. The Committee's review of implementation of the Covenant by the Russian Federation had raised a number of questions from the perspective of the State party. First, she wished to know how the Committee assembled its country task forces and assigned experts to particular countries. The task force for the Russian Federation, for instance, had not included any Russian speakers or experts on the region; as a result, it had seemed that the questions raised during the dialogue were not attuned to the situation in the country. For instance, the Committee had repeatedly requested information that had already been provided by the State party in the untranslated statistical annexes to the report. She would also welcome clarification of the respective roles of the task force and the country rapporteur in the drafting of concluding observations.

11. Representatives of the Russian Federation, having appeared before various treaty bodies, had the impression that they were often asked the same questions by different Committees, regardless of the respective treaty's scope or mandate. For example, the Committee had asked about a comprehensive anti-discrimination law, which she considered fell within the mandate of the Committee on the Elimination of Racial Discrimination. Such questions were unhelpful to the State party, which had come prepared to report on its progress, achievements and difficulties in implementing the Covenant, rather than other international treaties that had their own monitoring bodies. Similarly, the Committee had posed questions about climate change, which ought to be addressed under the United Nations Framework Convention on Climate Change, and about the Sustainable Development Goals. While discussion of those issues was not in itself objectionable, she considered that when viewed in the context of the overall treaty body system, it amounted to a duplication of efforts. Instead, questions should be fine-tuned to address States parties' specific obligations under the Covenant. Furthermore, the fact that treaty bodies increasingly were addressing issues outside their mandate risked worsening the situation in

terms of resources, as that trend had not been considered by the Member States as part of their review of the treaty body system prior to the adoption of General Assembly resolution 68/268.

12. Another concern was that delegations had the impression that the treaty bodies regarded the information provided by non-governmental organizations (NGOs) and other stakeholders as more reliable than the information contained in State party reports. That impression was reflected as well in concluding observations. She wished to point out that the NGOs that had participated in the interactive dialogue were in many instances large, well-funded international organizations, while grass-roots NGOs from the State party had been prevented from attending because of financial constraints and, in some cases, because the host country had denied them entry visas.

13. **The Chair** said that the Committee regretted that, pursuant to General Assembly resolution 68/268, it had been able to select only three working languages for its meetings. The Chief of the Human Rights Treaties Branch of the Office of the United Nations High Commissioner for Human Rights (OHCHR) would provide further explanation in that regard later in the meeting.

14. **Ms. Ekholm** (Finland) said that the Government of Finland appreciated the dialogue it had engaged in with the Committee and had found that the concluding observations would be helpful in strengthening human rights in her country. She welcomed the updated procedure for following up on concluding observations and asked whether the Committee planned to expand the simplified reporting procedure to States parties other than those that had already submitted three periodic reports.

15. **Ms. Anderson** (Canada), agreeing with the representative of the Russian Federation that treaty bodies sometimes asked the same questions, said that she would like to know how the Committees worked together to address overlapping issues and whether formal or informal mechanisms were in place to ensure that questions were closely linked to the subject matter of the respective treaties.

16. **Mr. De Schutter** said that overlap in the questions asked by the different treaty bodies was unavoidable because the treaties had all emerged from the Universal Declaration of Human Rights and many treaty provisions had similar or identical wording. Committee members systematically read the documentation of other treaty bodies and of the special procedures mandate holders of the Human Rights Council and sought to act in a manner that was consistent with other parts of the United Nations human rights machinery. As a side effect of those efforts to ensure coherence and avoid contradiction, it was not surprising that some repetition occurred.

17. Although climate change was not addressed directly under the Covenant, various United Nations reports had underscored its direct impact on a wide range of economic, social and cultural rights. With regard to the Sustainable Development Goals, the Committee believed that it was important to remind States of the commitments they had undertaken, just as it expected development agencies to take into account human rights. Unlike other treaty bodies, the Committee had a specific role in assessing resource mobilization, the structure of taxation systems and States' choices in terms of spending on education, health, housing and vocational training, all of which were rights covered by the Covenant.

18. Concerning the treatment of the reports submitted by States parties and by NGOs, he said that State party reports provided a detailed picture of the overall situation in the country, focusing on the legislative and regulatory framework and human rights indicators; NGO reports, for their part, described specific events affecting particular groups and focused on the practices of the authorities. The two types of report therefore had different but complementary functions and the Committee took a balanced approach in assessing the information they each contained. It would be difficult to hold a fully informed dialogue without input from NGOs.

19. **Mr. Sadi**, recalling that it had not been the Committee that had decided the cuts to language-related servicing, said that he would be gratified if the problem were to be rectified by the General Assembly. In his view, the duplication and overlap stemmed from

the indivisible and interrelated nature of human rights. States parties needed to address the problem, but he did not know how: a proposal for a unified treaty body that had been advanced by a previous United Nations High Commissioner for Human Rights had been rejected due to the work that would be entailed in revisiting and renegotiating the treaties. He agreed with Mr. De Schutter that climate change was an overarching issue that touched upon many of the human rights protected by the Covenant. Scientific evidence overwhelmingly suggested that climate change had contributed to such events as the recent hurricanes, which had clearly affected people's rights.

20. **Mr. Kedzia** said that the Committee needed to specialize in its approach in order to avoid replicating work carried out elsewhere in the United Nations system, but it also recognized that all human rights were interdependent and interrelated, as set out in the Vienna Declaration and Programme of Action. Therefore, any analysis of Covenant rights that ignored separate but related rights would be imperfect. He was grateful to the States parties for their comments, which would help the Committee in determining the best way forward.

21. On the question of information provided by civil society, having recourse to a variety of sources was beneficial to all parties. It was not uncommon for delegations to state during the constructive dialogue that they had received new information. The Committee was not uncritical and did its best to verify the information it received; in the event of uncertainty, it did not jump to conclusions but rather asked the State party to comment. Civil society played a key role in implementing the Committee's concluding observations, which were intended to be taken forward at the country level with the engagement of all actors. It was unacceptable that some Russian NGOs had been unable to attend the session because of visa issues; such problems should be referred to the secretariat so that they could be prevented in future.

22. On language matters, he recalled that the Committee had recently discussed the concluding observations on the report of a State party in Spanish. English and French translations had been provided, together with interpreting, such that no Committee member had been excluded. He was pleased to learn that the Russian Federation would recommend the reinstatement of full language servicing for the treaty bodies and he hoped that other Governments would follow suit.

23. **Ms. Liebenberg** said that States parties had overall responded positively to the Committee's newly adopted procedure on follow-up to concluding observations. Under the procedure, which was conceived as a continuation of the constructive dialogue and was integrated into the reporting cycle, States parties were asked to report within 18 months on three urgent issues identified in the concluding observations. It was hoped that States parties would fully engage in making the procedure as dynamic and as successful as possible.

24. **Mr. Abdel-Moneim** said that the Committee, although it was an independent body, should be open and responsive to the observations of States parties. He fully shared the concerns that had been raised, some of which were the result of the implementation of General Assembly resolution 68/268. It was up to the States parties to examine whether the Committee's work had progressed as they had envisaged when adopting that resolution. Given that they had the diplomatic capacity to renegotiate the resolution, they should consider how it might best be implemented in a manner conducive to respect for and promotion of human rights.

25. **Mr. Windfuhr** said that the country task forces had been introduced to enhance the Committee's specialization in its interactive dialogue with Governments. Dividing the Covenant into four parts, with experts assigned to each part, made for a more structured discussion. The task forces endeavoured to read all of the information submitted by States parties and NGOs; they met in advance of the dialogue and prepared questions pertaining to the respective sections of the Covenant. During the dialogue, follow-up questions might be asked by any member of the Committee. The task forces might also be consulted on the initial draft of the concluding observations, which was prepared by the country rapporteur and the secretariat, before it was considered paragraph by paragraph for adoption by the Committee as a whole.

26. **Mr. Uprimny**, responding to the concerns raised about the scope of the Covenant, said that the human rights treaties were living documents whose meaning was not fixed and they should be interpreted according to the specific circumstances. The Committee was within its mandate to ask questions about any phenomena that might affect the enjoyment of economic, social and cultural rights. Furthermore, Committee members might read the concluding observations of other treaty bodies and still decide to ask similar questions if they thought the issues at hand were particularly important. Some issues, such as non-discrimination, were cross-cutting and relevant to all human rights treaties. Questions based on information submitted by NGOs did not imply any assumption on the part of the Committee that the State party was in the wrong; rather, they were intended to give the delegation the opportunity to comment.

27. **Mr. Salama** (Chief, Human Rights Treaties Branch, OHCHR) said that he was grateful to States for their interest and their input. Part of the challenge of securing funding for the treaty bodies lay in the fact that the knowledge was located in Geneva but decisions were taken in New York. General Assembly resolution 68/268 had been adopted on an experimental basis to create savings that could be invested in additional meeting time and resources to eliminate the existing backlog. The collateral damage in relation to language servicing might not be lasting, inasmuch as the implementation of the resolution was to be reviewed by 2020. He recognized that the treaty body experts and the States parties were suffering under the current arrangements, but he believed that change was possible and necessary. In that regard, it was imperative that the Committee, the States parties and OHCHR should work together to find a solution.

28. **The Chair** said that, in order to fully assess the implementation of the Covenant by a State party, the Committee had to take into account such cross-cutting issues as non-discrimination and gender equality.

29. As times changed and the world evolved, the Committee regularly reviewed its interpretation of the Covenant, without exceeding its mandate. It had decided, for example, to discuss unpaid work and the rights of self-employed workers in its general comment No. 23 on the right to just and favourable conditions of work, even though those issues were not explicitly mentioned in article 7 of the Covenant.

30. The country task forces had been set up in order to streamline the Committee's preparation for its interactive dialogue with States parties and to ensure that Committee members' questions took up not more than one third of each meeting with a delegation. Suggestions were welcome regarding any further procedural improvements that could be made to enable the Committee to fulfil its mandate more effectively.

31. As to expanding the use of the new simplified reporting procedure, once the experience with the three States parties scheduled for review under that procedure had been assessed, the Committee would decide whether to make it available to other States parties.

32. **Mr. Nuño García** (Spain) said that he shared the concerns raised by the representative of the Russian Federation regarding the working languages of the Committee. He hoped that the decision taken in that regard would be revisited.

33. His Government remained committed to its cooperation with the Committee, although it had been surprised to see its sixth periodic report initially rejected on the grounds that formatting changes were required.

34. Welcoming the information provided on the draft general comment on the right to science, he enquired whether the preparatory discussions would cover issues relating to specific vulnerable groups, such as the use of science to improve accessibility for persons with disabilities.

35. **Ms. Zolotova** (Russian Federation) said that, as the Committee updated its interpretation of the Covenant, it imposed on States parties new obligations that were not set forth in the Covenant and had not been agreed to by States parties. For that reason, general comments drafted by the Committee should be submitted to the States parties for adoption.

36. **Mr. Islam** (Bangladesh), noting that the standard reporting procedure, which consisted of several stages, enabled States parties to prepare effectively for a focused dialogue with the Committee and that it was important to consult States parties before making changes to the Committee's working methods, said that he would like further information on the transition to a simplified reporting procedure.

37. **The Chair** said that the simplified reporting procedure had been offered to just three States parties so far, all of which had already submitted several periodic reports under the standard reporting procedure.

38. In the case of Bangladesh, which had submitted its initial report after the established date, the Committee had decided not to draw up a list of issues as there was little time left before the dates set for the interactive dialogue. During the review scheduled to take place in March 2018, the delegation of Bangladesh would have ample time to provide updated information over the course of three meetings with the Committee.

39. It was important to bear in mind that the Committee's general comments offered guidance to States without imposing new obligations. They were not the type of document that could or should be submitted for negotiation among States parties. Indeed, it would be very difficult to organize intergovernmental negotiations of that kind.

40. **Mr. Uprimny** said that approaching the Covenant as a living document could simply mean taking into account new facts and circumstances when interpreting it. A more progressive approach would be to consider that the very meaning of the Covenant had changed over time, as mentalities and practices had evolved around the world. For example, article 2 (2) of the Covenant made no reference to discrimination on the basis of disability, but it was widely interpreted by States parties to include that form of discrimination, because global awareness of the rights of persons with disabilities had increased since the Covenant had been adopted. In that sense, the obligations established in the Covenant had, themselves, evolved over time.

41. **Mr. Mancisidor de la Fuente** said that the drafting of the general comment on the right to science had been informed by consultations held with academics, scientists and representatives of public institutions and NGOs in countries such as Chile, Denmark and Italy. The Committee was also working with other United Nations mechanisms and experts, including the Special Rapporteur on the rights of persons with disabilities, to ensure that key issues concerning vulnerable groups were fully addressed in the draft. Among those issues were the participation of women in science and the right of persons with disabilities to benefit from scientific applications and to have access to scientific information.

42. **Mr. Kedzia** said that it was common practice for judicial bodies, such as international courts, to treat legal texts as living documents. In its concluding observations, the Committee invited States parties to consider its general comments but did not impose an obligation on them to do so.

43. **Mr. Abdel-Moneim** said that the process of drafting a general comment usually involved consultations with all stakeholders, including States parties. It was not easy to determine the extent to which general comments should expand upon the obligations set out in the Covenant. It was important to exercise caution in that regard, although there was no doubt that the scope of the rights enshrined in the Covenant had changed over time.

44. **Mr. Abashidze** said that, in order to strengthen its relationship with States parties and ensure that its advice was heeded, the Committee should avoid referring to "soft law", such as General Assembly resolutions, as the legal basis for its recommendations, particularly in cases where the State party concerned had not voted in favour of the resolution that was being invoked.

45. **The Chair** said that the Committee's aim was to engage in constructive dialogue with the States parties. It was aware of the difficulties faced by the States parties and hoped that the States parties were, in turn, aware of the constraints facing the Committee.

The discussion covered in the summary record ended at 12.10 p.m.