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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Forty-second session

SUMMARY RECORD OF THE 4th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 5 May 2009, at 3 p.m.

Chairperson: Mr. MARCHÁN ROMERO

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

CONSIDERATION OF REPORTS:

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

Fourth periodic report of Australia (continued) (E/C.12/AUS/4, HRI/CORE/AUS/2007, E/C.12/AUS/Q/4 and Add.1)

1. At the invitation of the Chairperson, the members of the delegation of Australia resumed their places at the Committee table.

Articles 6 to 9 of the Covenant (continued)

2. The CHAIRPERSON invited Committee members to put their remaining questions to the delegation.

3. Ms. BRAS GOMES said that her questions were based on the Committee's interpretation of the right to social security in its general comment No. 19. It seemed that the right to social security was not enforceable or universal in Australia. Certain vulnerable groups, including asylum-seekers, were excluded from protection and the mutual obligation requirements had a negative impact on such groups. For example, up to 100 per cent of a parent's welfare payment could be quarantined if their child did not attend school, while vouchers to purchase food from designated providers could make it impossible to obtain basic goods.

4. According to NGO reports, recent amendments to the law would provide greater flexibility regarding penalties, but the conditionality would remain. Yet there were other ways of ensuring that people did not become dependent on benefits, and a number of suggestions had been put forward with regard to conditionality, including the idea of quarantining welfare payments on a voluntary basis, only as a child protection measure and subject to independent review. She asked the delegation to comment on that suggestion.

5. The written replies to the list of issues (E/C.12/AUS/Q/4/Add.1) referred to numerous measures to protect indigenous families and children, which involved substantial resource allocations. That made her wonder why it was still necessary to impose conditions on welfare payments.

6. If all the children living in the territories were to go to school, would there be enough schools and teachers? Was adequate counselling and support provided to families?

7. According to the Government's written replies, the income support system had to give greater assistance to those with additional costs, and she asked how effective the superannuation system had been in increasing social security for older persons and whether there was a minimum pension that ensured an acceptable standard of living. Unemployment benefits, whether for a single person or families, provided an income well below the poverty line.

8. Regarding paid parental leave, she asked whether the Government was planning to accept the Productivity Commission's proposal of 18 weeks' post-natal leave to be shared between

eligible parents, with an additional two weeks' paternity leave reserved for the father or same-sex partner. If so, would it be included in the 2009 budget? The proposal would make it easier to reconcile working life and family life, and would help women stay in the labour market, which was important in times of economic crisis.

9. Mr. ABDEL-MONEIM asked how much the Government had contributed annually to social security during the period covered by the report. With regard to the right to work, he would have preferred the heading "reducing unemployment" given in the State party's core document (HRI/CORE/AUS/2007) to have read "increasing employment". The two were not synonymous and reflected different statistical approaches. He questioned the assumption that there was an automatic link between promoting economic growth and reducing unemployment and said that that area of policy needed to be revised.

10. He welcomed the provision of absolute figures, not just percentages, on the number of jobs created, but the reduction in unemployment was actually quite modest, as it had taken place over a period of 10 years. That raised the question, how effective was the policy?

11. While the minimum wage itself was not necessarily low, he asked whether the 2005 increase had matched inflation and price increases. The core document used the concept of "equity" in relation to pay, but that was not the same as the "fair wages and equal remuneration for work of equal value", stipulated in article 7 of the Covenant.

12. According to the core document, more than 80 per cent of taxpayers faced a marginal income tax rate of 30 per cent or less, and he wondered what proportion of them were paying 30 per cent. He questioned whether the changes to the tax system would really mitigate income inequality, as claimed in the written replies to the list of issues.

13. Lastly, he said that, according to Oxfam Australia and the Castan Centre for Human Rights Law at Monash University, certain companies had been dumping waste.

14. Ms. MILLAR (Australia) said that the Government was holding a consultation process on the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), and other ILO conventions, bringing together the states and territories, and social partners such as employer organizations and trade unions.

15. On the question of counter-terrorism, she said that the Government had put in place a strong legal framework to combat terrorism, one that contained safeguards to protect human rights. Further information on counter-terrorism would be provided in writing.

16. Mr. O'BRIEN (Australia) said that the preamble to Australia's free trade agreements recorded the resolve of the respective Governments to encourage a closer economic partnership that would bring economic and social benefits, create new employment opportunities and improve living standards for their peoples. The free trade agreements with the United States of America and with Chile also contained provisions on labour standards. Australia's free trade agreements were consistent with its commitments under the Covenant.

17. Ms. CHIN (Australia), referring to the issue of equal employment opportunities for vulnerable groups, said that the Government had invested in a new, integrated programme called

Job Services Australia, to be launched in July 2009, which would allow greater flexibility in meeting the needs of jobseekers, especially those in disadvantaged groups, and enable them to find sustainable employment. The programme would connect jobseekers with skill development opportunities and forge links with employers to ensure that the needs of the labour market were being met. There were also initiatives for specific groups, including indigenous Australians, of whom an additional 100,000 would need to be in employment by 2016 to meet the Government's targets.

18. With regard to women as a disadvantaged group, the Fair Work Act included provisions to help low-paid workers and their employers benefit from collective bargaining. The Act contained national employment standards, providing for more flexible working arrangements for parents of school-age children or children under 18 with disabilities, doubling the duration of unpaid parental leave and prohibiting employers from taking discriminatory action against an employee. The Act also extended the provisions on equal remuneration for work of equal value.

19. Mr. MATTHEWS (Australia) said that over the next four years the Government would be strengthening measures to help humanitarian entrants and migrants, including migrants with a lower level of education, gain the English language skills required to enter the workforce.

20. Much of the criticism of the treatment of asylum-seekers focused on the rule whereby those who had been in Australia for 45 days or more in the 12 months before they applied for a protection visa were not permitted to work, which was seen as making asylum-seekers dependent on community groups, as they were also barred from health-care benefits and welfare. The rule affected about one third of protection visa applicants. The Government recognized that the rule was arbitrary and ineffective. It was considering options for access to work for protection visa applicants and had held consultations in that regard. The Department of Immigration and Citizenship had developed a set of public policy principles that reflected relevant international obligations and imposed reasonable expectations on clients.

21. Ms. MILLAR (Australia) said that disaggregated statistics on unemployment would be sent to the Committee as soon as possible. On the question of unfair dismissal, she said that the impact of the Fair Work Act in that regard would be monitored.

22. Ms. CHIN (Australia), replying to the question on the right to strike, said that collective bargaining at the enterprise level was at the heart of the Fair Work Act and from January 2010, all agreements would be subject to scrutiny in the light of the national labour standards. Employees would be able to take protected industrial action to support or advance claims during the collective bargaining period, subject to mandatory secret ballot. The rate of industrial disputes was higher than in previous years because a number of collective agreements were up for renewal.

The meeting was suspended at 3.45 p.m. and resumed at 3.55 p.m.

23. Mr. INNIS (Australia) said that the social security system was enforceable in the same way as every other item of legislation in Australia, and those covered by it had enforceable rights. There were two criteria for eligibility for social security, namely, residency, and income and

assets. For new arrivals there was generally a two-year waiting period to be eligible for certain payments, but there was no waiting period for family payments, which were designed to ensure that people could look after their children.

24. Mr. MATTHEWS (Australia) said that refugees and humanitarian visa holders could obtain immediate access to benefits for themselves and their immediate family and that all migrants had access to health care under Medicare. Asylum-seekers did not meet the social security eligibility requirement of permanent residency, but they could access the publicly funded Asylum Seeker Assistance Scheme.

25. The Australian Government also had a community care pilot programme that provided support to vulnerable immigration clients, including asylum-seekers, pending determination of their case. Its key objectives included ensuring that cases were managed in a timely, fair and reasonable manner while immigration outcomes were being determined, and offering support to clients in exceptional circumstances. The programme involved the Australian Red Cross, the International Organization for Migration and the Immigration Advice and Application Assistance Scheme.

26. Mr. INNIS (Australia) said that Australia's basic social security system was entirely taxpayer funded: there was no contributory element. In addition to the statutory payments for which application could be made through the Centrelink agency - whose decision was subject to appeal - there were other payments that acted as a second safety net for those without access to the primary payment. One was a one-off crisis payment made in extreme circumstances such as domestic violence or natural disaster, and another was a special benefit, payable to those suffering financial hardship who, for reasons beyond their control, were unable to support themselves or their dependants. People subject to the two-year waiting period often claimed the special benefit.

27. Very few payments in the Australian social security system had mutual obligations attached to them. With the exception of income management and quarantining, the only payment with formal mutual obligations was unemployment benefit. There were, however, certain exemptions that meant an unemployment benefit recipient might not be subject to mutual obligations. The mutual obligation framework still provided for a period of exclusion, although the system was designed in such a way as to help people avoid that situation.

28. Ms. CHIN (Australia) said that concerns over the potentially punitive effect of the exclusion period on vulnerable groups had been taken into account in the new compliance system. The new system would retain the eight-week non-payment penalty for persistent and serious non-compliance but with two key differences: instead of an automatic increase in the penalty following a third failure to comply, an assessment would be made to ensure that the individuals concerned were receiving appropriate help; and any jobseeker subject to the penalty could get their payments reinstated by undertaking a compliance activity or other appropriate activity for about 25 hours a week for eight weeks. Jobseekers who were unable to undertake a compliance activity but were experiencing severe financial hardship could also get their payments reinstated.

29. Mr. INNIS (Australia) said that in the Northern Territory, where income management applied, school resources had traditionally been under-utilized. Efforts were being made in

cooperation with the Northern Territory Government, to ensure that demand for education services was met, as the success of the policy depended on ensuring that children received an appropriate education.

30. After careful consideration of the question of voluntary income quarantining, the Government had decided to continue with broad-based income management in the Northern Territory, although the policy would be kept under active review. Legislation was to be introduced to align income management with the Racial Discrimination Act. Legislation had already been passed to make income management decisions subject to the same review processes as other social security decisions.

31. Social security payments were indexed to prices, while a subset of payments was benchmarked against wages. Payments were adjusted in accordance with the higher of those two indicators.

32. Supplementary payments and concessions were also available to older persons and persons with disabilities and those on income support who faced extra costs. The report on the pension review had been completed and another review was underway on the broad interaction between the tax and income support systems. Several issues relating to the impact on different groups were being considered as part of the latter review. The report was due at the end of 2009.

33. In Australia, the age pension was provided to men over 65 and women over 63½, although the age for women was gradually being brought into line with men's retirement age. The pension was subject to an income test and an assets test, both of which were very generous. In addition, Australia had a compulsory superannuation system in which 9 per cent of wages were paid into a personal pensions savings account to supplement the pension. In the very long term, the proportion of retirement income from superannuation was expected to increase, but the pension was currently the main retirement payment.

34. Unemployment benefit was set lower than pension payments because it was designed to be a temporary payment. Those who were permanently unable to work, unemployed people with children, and single parents could generally claim other kinds of payments, which were set at a higher rate.

35. The Government and was giving active consideration to the issue of paid parental leave.

36. Australia's reports had given a stronger emphasis to unemployment than employment, but the Government thought both were important indicators. Australia had performed very strongly in comparison with other countries in terms of employment. Part of the reason for that was strong economic growth and economic settings that encouraged growth. Economic growth would not automatically result in new jobs, experience in Australia showed that the economy needed to grow by more than 2 per cent a year to start creating new jobs. His Department strongly believed that one of its obligations in terms of the right to employment and housing, among others, was to ensure that people had access to jobs with incomes that grew, and that was driven by economic growth.

37. The minimum wage had just changed under the new legislation. When looking at the minimum wage in Australia, it was important to take account of the applicable tax rates and any benefits received by people earning that wage.

38. Over the previous 10 years, three factors had influenced actual incomes: economic growth and growth in the value of assets; increases in a range of payments, such as family payments; and adjustments in the income tax rates to lower the tax burden.

39. On the question of tax rates, he pointed out that the figure of 80 per cent did not refer to those paying 30 per cent income tax but to those who faced a maximum 30 per cent rate of marginal income tax.

40. Ms. CHIN (Australia) said that an independent body known as Fair Work Australia was to be established under the Fair Work Act to ensure fair minimum wages, including for junior employees, trainees and employees with disabilities. The Act also provided for national industry- or occupation-specific pay awards, including minimum wages and overtime rates. To ensure that national awards continued to provide protection for workers, Fair Work Australia would conduct four-yearly reviews and minimum wages would be reviewed annually. If justified, there was also some scope for minimum wages to be adjusted other than during the annual review, and Fair Work Australia would also set a minimum wage for those not covered by other awards.

41. Mr. ABDEL-MONEIM said that the decline in unemployment from 8.2 to 4.9 per cent over 10 years was not sufficient to indicate whether the State party's employment policy was effective or not. The economic crisis might prompt Australia to reconsider its assumption that economic growth and increased employment were linked. In addition, he noted that a country with a robust economy would be held all the more accountable for its guarantee of economic, social and cultural rights.

42. With regard to social security, the State party might consider giving relief to persons with low and medium incomes by raising the tax threshold while extending social security coverage.

43. Mr. TEXIER asked how the State party had followed up on the complaint on restrictions on the right to freedom of association submitted to the International Labour Organization by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU).

44. The requirement for at least 50 per cent of workers to vote on a strike and for 50 per cent of those voting to vote in favour, for a strike to be legal, seemed excessive.

45. He would like to know whether any prisons in Australia continued to use forced labour.

46. Ms. CHIN (Australia) said that the recent changes to the law on wrongful dismissal would double the number of employees in Australia eligible to make claims. Employees in enterprises with less than 100 employees had previously not been able to bring complaints of wrongful dismissal. Now they could under certain conditions, but small enterprises were given longer to deal with wrongful dismissal claims because they were less flexible than larger businesses. The legislation should not discourage small businesses from employing persons from vulnerable groups.

47. Mr. RIEDEL encouraged the State party to provide disaggregated data in its fifth periodic report for each year covered by the reporting period. He asked for details of progress made in ensuring access to mental health services, in particular for Aboriginals and their children, prisoners and asylum-seekers being held in detention centres. He also asked for information on improvements in the overall health care of prisoners, and on the results of the “Building a Healthy, Active Australia” programme and the National HIV/AIDS Strategy 2004-2008. He suggested that the State party should provide information on hospital waiting lists in its next report.

48. Although the matter had not been raised by the Committee in its list of issues (E/C.12/AUS/Q/4), the Committee would appreciate information on how the State party intended to guarantee the right to water, particularly in the critical Murray-Darling Basin.

49. Mr. PILLAY asked whether the State party had established an official poverty line, as recommended by the Committee in its concluding observations on the State party’s third periodic report (E/C.12/1/Add.50), and whether it had a comprehensive poverty reduction strategy in accordance with the statement adopted by the Committee on 4 May 2001, on poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10).

50. He asked how the Government of Australia ensured the rights of the homeless and what steps had been taken to prevent discrimination on the grounds of homelessness. He enquired whether the Government had taken measures to ensure adequate housing for indigenous peoples in Australia, in particular children, and whether it had adopted a general strategy to protect tenants from forced eviction and arbitrary rent increases.

51. Mr. ZHAN Daode said that, in his opinion, the Australian Government was handling the current financial and economic crisis well, and was taking positive steps to promote the enjoyment of economic, social and cultural rights despite the difficult circumstances. He asked for statistics on the scale of domestic violence and on the number of homeless people in the State party.

52. Ms. BONOAN-DANDAN said that, while the significant level of Government spending on the prevention of domestic violence was laudable, it would be useful to learn how much was specifically allocated to indigenous families. The Committee would appreciate any information available on the results of the programmes to prevent domestic violence that had been adopted in 2006 and 2007 and on any difficulties that had been encountered.

53. While the notion of poverty had evolved since the Committee had recommended that the State party should set a poverty line, poverty and human rights violations remained intimately linked. It would therefore be useful to know how the State party assessed progress in its poverty reduction programmes in the apparent absence of a poverty line.

54. She would appreciate further explanation of the State party’s approach to the right to food and the level of food security, particularly among rural communities and in the territories. She asked whether the right to food was being observed in all its dimensions, and how that was monitored.

55. Mr. ATANGANA asked for an update on legislation on domestic violence. Had any specific legislation been adopted, or was it in the pipeline?
56. The Committee would welcome additional details on measures taken to prevent domestic violence, particularly in view of the large amounts being spent. Details of any research programmes and their results would also be appreciated.
57. He asked what steps the State party had taken to stop trafficking in persons.
58. Ms. BRAS GOMES asked whether the State party planned to ratify the ILO Social Security (Minimum Standards) Convention (No. 102).
59. The Committee welcomed the State party's ratification of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, and its creation of a Department of Climate Change. In that regard, she asked what steps the Government was taking to prevent the adverse effects of adaptation and mitigation measures, particularly on Aboriginal people. The delegation should indicate what mechanisms were in place to guarantee consultation and ensure that Aboriginal people could exercise their right to an informed decision on issues affecting them directly. She would appreciate further information on what measures were being taken to harness the potential of traditional knowledge, culture, land management and conservation practices, which were essential to the development of culture-based economies.
60. Mr. SADI asked for further information on the State party's sterilization policy. He questioned the wisdom of using the term "intellectually disabled" people in that connection, since many people could be regarded as intellectually disabled. He asked what criteria were applied in the event of sterilization, and whether persons who might be considered mentally retarded were forcibly sterilized. He also wished to know who determined which persons should be sterilized.
61. He asked whether there was a two-tier health system in the State party, providing different levels of service to indigenous and non-indigenous people. If not, he wished to know how the different expenditures indicated in the core document could be explained.
62. Ms. MILLAR (Australia) said that, with regard to the CEPU complaint of February 2009, ILO had suspended consideration of the complaint pending rectification of an irregularity. Consideration had resumed at the end of March 2009 and the Government was currently preparing its response.
63. Mr. KERDOUN asked why preschool education was not available to all children of preschool age. It would be useful to have updated statistics on the number of children in preschool education. The Committee would be interested to learn whether human rights in general, and economic, social and cultural rights in particular, formed part of the curriculum at the primary, secondary and tertiary levels.
64. He would appreciate additional information on educational provision for indigenous people, including on the teaching of indigenous languages. Given that schools and universities

were an ideal environment in which to promote integration, it would be useful to know whether the State party was developing any policies to make use of the education system to promote the integration of indigenous people into society.

65. Mr. SADI asked whether the concentration of indigenous students in some localities resulted in them attending schools where most or all students were indigenous. He would also like to know what provision was made for teaching minority languages and religions to students from minority backgrounds.

66. Mr. KOLOSOV asked how religious education was organized and taught in schools.

67. The CHAIRPERSON, speaking as a member of the Committee, asked how the State party ensured that all members of society enjoyed the right to take part in cultural life. In a society as economically and culturally rich as Australia's, it would be interesting to learn how that right was guaranteed for the poor and for people living in rural areas.

68. Given that there was no recognition of collective property in the State party, he wondered whether that was applied to intellectual property. He wished to know whether the State party had any mechanism to enable indigenous people to manage their resources, knowledge, science and discoveries as intellectual property.

The meeting rose at 6 p.m.