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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirty-fifth session

SUMMARY RECORD OF THE 45th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 16 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.

CONSIDERATION OF REPORTS (continued)

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

Second periodic report of the Libyan Arab Jamahiriya (continued)
(E/1990/6/Add.38; E/C.12/Q/LBY/1; E/C.12/1/Add.15; HRI/CORE/1/Add.77)

1. At the invitation of the Chairperson, Ms. Albasha, Mr. Alnami, Mr. Derbi and Mr. Zamouna (Libyan Arab Jamahiriya) took places at the Committee table.

Articles 1-5 of the Covenant (continued)

2. The CHAIRPERSON said that the Committee was particularly concerned about the case of some Bulgarian nurses and a Palestinian doctor working in Libya who had been accused of deliberately injecting children with the HIV virus. According to the media and information from non-governmental organizations (NGOs), they had been forced to confess to the crimes under torture. She wished to know how their case was being addressed, particularly in respect of the provisions of article 2 of the Covenant on non-discrimination against foreign workers.

3. Mr. ALNAMI (Libyan Arab Jamahiriya) said that the case had been initiated in Benghazi, and had come before the district court and the court of appeal. The death sentence that had been handed down was being reviewed by the High Court, pending which proceedings had been suspended. Libyan law applied equally to all residents, irrespective of nationality. Any person accused of committing a crime on Libyan territory was subject to procedures under the Criminal Code. The case in question involved crimes committed against children, and there was substantial evidence available to support the allegations made. The law enforcement officials involved in the case were working solely on the basis of available evidence, and were not influenced by media reports. If the accused were proved innocent, they would be acquitted. The accused had the right to appeal against any sentence handed down, including the death penalty. The alleged torture of the accused nurses and doctor was a strictly legal issue, which must not be politicized.

4. Ms. ALBASHA (Libyan Arab Jamahiriya) said that the judgement of the court of first instance was not final. When persons were alleged to have committed a crime, and evidence could be found to support the accusation, the case was referred to specialized courts for investigation. Under Libyan law, there was a strict prohibition of torture by State officials. The evidence in the case in question had been sufficient for the judge to sentence the accused, but the presumption of innocence would be maintained until a final judgement was made by the High Court. The accused had legal counsel from their own countries as well as from Libya.

5. Women held positions of responsibility in the public sector, including as government deputies. There were over 445 female assistants in the people's committees, and there were a number of women's associations across the country. There were associations for women's and children's rights; the delegation could provide further details of the NGOs dealing with women's

issues referred to in the periodic report. In the private sector, women had the right to set up and manage businesses, and an association for businesswomen had been established. The majority of private schools and universities were managed by women.

6. Libyan legislation complied with the provisions of the Covenant. In one case, involving a clash between national law and the provisions of the Convention on the Rights of the Child, the High Court had ruled that international law was binding on the courts, and took precedence over domestic legislation. The people's committees were responsible for endorsing and ratifying the international instruments signed by the Libyan Arab Jamahiriya.

7. On positive discrimination, she said that women's inheritance rights were guaranteed under sharia law; other legislation prohibited any activities that could deprive a woman of those rights. The law specified that childcare facilities should be established for working mothers, to enable them to work outside the home. Women were entitled to three months' paid maternity leave.

8. Libyan legislation prohibited polygamy, except in very specific circumstances. The Koran did not authorize polygamy in absolute terms, but, rather, stated that it would be permitted on the condition that all of a man's wives were treated equally.

Articles 6-9 of the Covenant

9. Mr. TEXIER said he was disappointed by the lack of information on economic, social and cultural rights in the State party report and the written replies to the Committee's list of issues. He asked whether unemployment was a problem, what percentage of the population of working age was unemployed, whether national or foreign workers were most affected by unemployment, and what measures the Government was taking to address the issue. He wished to know whether there was an informal sector in Libya. He asked whether the minimum wage was set by the Government, whether it was adjusted to take account of inflation and the cost of living, or whether it was established through negotiations between employers' organizations and trade unions, and whether it was sufficient to guarantee a decent standard of living.

10. According to information from the International Labour Organization (ILO), in respect of ILO Convention No. 118 concerning Equality of Treatment of Nationals and Non-Nationals in Social Security, there appeared to be considerable differences between the pensions received by nationals and non-nationals. Non-nationals could reportedly only enter the social security system on a voluntary basis and on condition that an agreement had been concluded with their country of origin. He wished to know whether that was indeed the case. According to ILO, under the Labour Code only Libyan citizens were entitled to join trade unions, which was contrary to the Covenant. ILO had also noted that only one trade union or professional association, which must have over 100 members, was permitted per profession, and that trade unions were not permitted to communicate with their foreign counterparts. A report by the International Confederation of Free Trade Unions had stated that there was no real trade union activity in the Libyan Arab Jamahiriya, and that the right to strike could not be exercised. The delegation should comment. The Government should read the Committee's guidelines on report content before drafting its next periodic report.

11. Ms. BRAS GOMES asked what the difference between insurance pensions and social security pensions was, and who the recipients of those pensions were. She wished to know whether it was indeed the case that only Libyan citizens were guaranteed the right to social security, while non-nationals were merely afforded “protection”. She wished to know how the social security fund was financed. She asked under what circumstances entitlement to a social security pension could be rescinded, and how many people had been deprived of a pension over the past three years. She wondered whether basic pensions and family allowances were increased to reflect inflation, and whether there was a minimum pension level. She wished to know whether the qualifying period for pensions was the same for nationals and non-nationals. Despite the fact that the Libyan Arab Jamahiriya was party to ILO Convention No. 118, which set out clear rules on the transfer of pension contributions abroad, the Committee had been informed that Libyan domestic legislation provided that pensions could only be transferred to countries with which reciprocal agreements had been concluded. She wished to know if that was indeed the case.

12. Mr. RZEPLINKSI wished to know the number of unemployed people in the Libyan Arab Jamahiriya, how those figures were produced, and by what body. He also wished to know in detail about the benefits, entitlements and obligations of unemployed persons, and for how long unemployment benefits could be received. He asked how many foreign workers there were in the Libyan Arab Jamahiriya and why the Libyan Arab Jamahiriya was obliged to import workers, given that unemployment in the country was reported to be as high as 30 per cent. He also asked the delegation to comment on the low level of public-sector wages and on the phenomenon of Libyans taking second jobs to make ends meet. He wished to know why it was deemed necessary for the Government to approve collective agreements in the private sector and asked what happened in the event that the Government did not approve a collective agreement.

13. Mr. DERBI (Libyan Arab Jamahiriya) said that the reason that the Social Security Act did not guarantee the right to social security of non-nationals was that it was not mandatory for all categories of foreign workers to contribute to the Libyan social security scheme. Although his Government had considered the exemption offered to freelance foreign workers to be an advantage and not a disadvantage, the ILO Committee of Experts had taken another view. The Government was reviewing its position in the light of the ILO recommendations in that regard. Retirement and sickness benefits were payable to all persons, including non-nationals, who had contributed to the Libyan social security scheme. Refugees and stateless persons did not have special status in that regard. In 2003, there had been 16,000 non-Libyan workers officially enrolled in the Libyan social security scheme.

14. Every company or factory in the private sector had a body to which all employees belonged, which met to discuss issues relating to the enterprise. However, those bodies were not to be confused with trade unions. Under the relevant Libyan legislation, trade unions had the right to establish national confederations, which had the right to join Arab international confederations: the comments of the ILO Committee on the Application of Standards had referred to laws that had been repealed. Unemployment in the Libyan Arab Jamahiriya was not 30 per cent, but, as in all countries, varied according to the state of the economy. Unemployed people were defined as those without employment who were seeking work. As higher education in the Libyan Arab Jamahiriya was free, the country produced more university graduates than

could be absorbed by the labour market. A State programme for building roads and housing would create jobs. The Libyan Arab Jamahiriya was obliged to recruit specialist workers from abroad because there was a lack of qualified personnel in certain sectors, such as medicine. The Government was encouraging students to enter the professions concerned in order that the country's dependency on foreign expertise might be reduced in future.

15. Wage levels in the public sector were determined by legislation. In the private sector, minimum wages rose and fell in accordance with fluctuations in the labour market. The presence of migrant workers sometimes had the effect of reducing salaries, because they were prepared to accept lower salaries than Libyan nationals. However, wages under employment contracts that had been concluded via a job centre were determined by the law. Labour inspectors carried out visits in accordance with the relevant ILO convention. Foreign workers were permitted to join trade unions, but were not permitted to stand for office, on the ground of the disruption that would be caused if a migrant worker chose to leave the country while he or she held a trade union office. However, the Government was considering changing that situation.

16. Mr. TEXIER said that he did not have the impression that he had learned a great deal from the delegation's answers. He wished to know the rate of unemployment in the country and how the minimum wage related to the cost of living. He urged the State party to provide detailed statistical information in its third periodic report, or before. He asked whether it was correct that section 127 (2) of the Labour Code prohibited trade unions from having any connection or direct or indirect relationship with any foreign trade union and noted that any such prohibition would be contrary to the provisions of the Covenant.

17. Ms. BRAS GOMES said that she had not received answers to any of her questions, which she reiterated.

18. Mr. DERBI (Libyan Arab Jamahiriya) said that section 127 (2) of the Labour Code had been repealed.

19. Mr. TEXIER asked the delegation to indicate when the law had been repealed, and to provide the Committee with the text of the new law.

20. Mr. DERBI (Libyan Arab Jamahiriya) said that the relevant section of the Labour Code had been repealed in 1998 and that he would submit the text of the new law to the Committee, in Arabic.

21. Mr. ALNAMI (Libyan Arab Jamahiriya) said that people were not entitled to the basic pension if they had other funds at their disposal, or refused to undertake training or education when they were able to do so. Those who had a small income received a subsidy in order to raise their income to the level of the basic pension. The monetary value of the basic pension varied depending on the recipient's profession or line of work and qualifications, and how long he or she had worked for.

22. Social security was guaranteed to all nationals and non-nationals resident in the Libyan Arab Jamahiriya provided they had paid their contributions in accordance with the law.

Articles 10-12 of the Covenant

23. Mr. KOLOSOV said that some years ago there had been 1,500 of the local bodies known as mahalla around the country. He would like to know what role they played in Libyan society. Did they have any judicial or political functions and what impact did they have on people's everyday lives?

24. Mr. PILLAY said he was perturbed by the State party's assertion that no sector of the population could be described as poor (E/1990/6/Add.38, para. 61) and he wondered whether it was because the State party did not consider there were any poor people living in the country that it did not answer the Committee's questions on that subject. He would have thought it an easy matter to establish the percentage of people living in poverty and he would appreciate an answer to question 20 in the list of issues. He would like to know whether the State party had put a poverty reduction plan in place and whether it incorporated economic, social and cultural rights, in line with the statement on poverty issued by the Committee in 2001 (E/C.12/2001/10).

25. He would also appreciate an answer to question 25, on the ratios of medical personnel to population, which the State party had also failed to answer.

26. He was equally perturbed at the description of the housing situation in the State party, which was apparently unproblematic (E/1990/6/Add.38, para. 74 et seq.). Could it really be true that there were no homeless in the Libyan Arab Jamahiriya? The State party had itself informed the Committee that foreign workers, for example, earned less than the minimum wage - that must surely cause such workers housing problems. Paragraph 83 of the report referred to illegal construction of housing. Recalling the Committee's general comment No. 7, on forced eviction in the context of the right to adequate housing, he said he would like to know whether the State party resorted to evictions where housing had been constructed illegally.

27. Recalling the Committee's general comment No. 15, on the right to water, he said the Committee had received reports that, despite the fact that water was being pumped at great expense from the east to the north of the country, it was being denied to the Berber population living in certain parts of the north. He wondered whether that information was correct.

28. Mr. MALINVERNI said he found it surprising, given the importance of article 11 of the Covenant, that the four very precise questions put by the Committee in the list of issues had received no response. He said no country could claim to have no one living in poverty and that in any case the State party had not defined "poor" by setting a poverty line. Would there be no poor people among migrant workers or refugees?

29. On the question of housing, he too wondered whether there were really no homeless in the Libyan Arab Jamahiriya - did all migrant workers, for example, have a roof over their heads? He asked how many homeless there were in percentage terms and what measures the State party was taking to solve the problem.

30. Mr. RIEDEL said the State party's initial report had been extremely detailed and the one under consideration was very disappointing by comparison. Most of the statistical data did not cover the relevant reporting period, for example: he would appreciate more data from 2001 onwards.

31. He commended the State party's recognition of the close link between the environment and health (E/19960/6/Add.38, para. 92). He wondered, however, what had happened in the period since the promulgation of the 1982 Environmental Protection Act and the 1984 Public Hygiene Act.
32. Referring to paragraph 93 of the report, he said he would appreciate a more detailed breakdown of the information on health and safety at work and asked the delegation to explain the fall in the ratio of health professionals to inhabitants between 1999 and 2001.
33. Referring to paragraphs 105 to 111 of the report, he said he found it extraordinary that the State party should require people to produce health certificates showing that they were free of infectious diseases, including HIV/AIDS. The State party was fortunate to have no more than 500 cases of HIV/AIDS; however, he would like the delegation to clarify what period that figure related to. He would also like to know what success the centre for infectious diseases had had in curbing the spread of HIV/AIDS and if the delegation could report any interim results of the Health Awareness programme.
34. Turning to question 25 in the list of issues, he noted that the figures on medical personnel coverage dated from 2001 and he wondered what the current ratios were. He would also appreciate an answer to question 26.
35. Mr. RZEPLINSKI, referring to the tables on pages 24 and 25 of the report, asked if the delegation could explain the fall in the number of hospital beds between 1999 and 2001; and why the relevant tables gave different data for the same years in that regard. He also wondered why the number of doctors had fallen between 1999 and 2000, as shown in the table on staffing levels in health institutions. He wondered if the delegation could explain the sudden change in the numbers of nurses in 1999 as compared with 1998 and 2000.
36. All countries had an obligation to provide access to adequate mental health services. He wondered what the situation was in the Libyan Arab Jamahiriya: in particular, he would like to know how many patients there were in psychiatric or similar institutions; on what grounds a person could be committed to such an institution and whether such committal was subject to judicial supervision; and how many deaths had occurred in such institutions in recent years.
37. Mr. SADI said the divorce and marriage rates given in the Government's written replies to question 18 in the list of issues seemed too low to be realistic.
38. He wondered how it was possible for a victimized party in a marriage to obtain a divorce if divorce was contingent on obtaining the other party's consent.
39. He asked whether a Libyan woman married to a non-Libyan could pass on her citizenship in the same way as a Libyan man in the same situation could.
40. He wondered whether marital rape was an offence under Libyan law. He would also like to know the age of sexual consent, a point which was of relevance to the issue of marriageable age and to the definition of statutory rape.

41. Lastly, he would welcome some information on the case of certain Bulgarian nurses who had reportedly been accused of transmitting HIV/AIDS to large numbers of children. How far had the case progressed and what degree of responsibility had the nurses actually had in the matter?

42. Ms. GHOSE, referring to the written reply to question 17, asked how the notion of “family duties” was defined, and how “dereliction” of those duties could be considered a criminal offence. Did “abuse of family members” imply domestic violence? In that context, she wondered whether the State party had noted any increase in domestic violence as prosperity increased and women’s status improved. She wondered what counselling or protection was provided to women victims of domestic violence.

43. According to some reports the female population of the Libyan Arab Jamahiriya was declining. She wondered whether such reports were correct and what the current ratio of men to women in the country was.

44. Similarly, maternal mortality rates were reported to be on the rise and she wondered whether that information was correct.

45. She asked what happened where one party in a marriage refused to consent to a divorce. Would the divorce be granted or not? Was it possible for someone to apply to the courts for a divorce on the grounds of ill-treatment, for example?

46. Turning to article 12, she said she found it astonishing that everyone was required to be able to prove that they were free of infectious diseases (E/1990/6/Add.38, para. 108). Did that apply to everyone without exception and under all circumstances? What was the purpose of such a requirement? Similarly, she wondered at the relevance of the link made between the incidence of malaria and HIV/AIDS and illegal immigration. No one caught HIV/AIDS by entering the country illegally. In that context, she said the Joint United Nations Programme on HIV/AIDS (UNAIDS) had reported that there had been an 80 per cent increase in the incidence of HIV/AIDS in the Libyan Arab Jamahiriya over the past four years, and that 90 per cent of that increase had been due to intravenous drug abuse. If that was true, it would imply that the State party had a drugs problem and she would like to know what it was doing to deal with it.

47. Mr. MARTYNOV asked what impact the far-reaching programme of privatization of State enterprises was having on the employees of those enterprises. How did it affect their wage levels and living standards? He also wondered if privatization had had any impact on the ownership of rural agricultural property.

48. Mr. DERBI (Libyan Arab Jamahiriya) said the mahalla had been replaced by the people’s congresses and committees [Core doc and report, *passim*], which had taken over certain of the functions and powers of the mahalla, notably with regard to dispute settlement.

49. Divorce applications were submitted to the people’s committee, and if no reconciliation was possible, the case was referred to the courts. Divorce proceedings could be initiated by either of the two spouses, even if they were not in agreement, or their representatives. Divorce was a right under sharia law, but a husband must declare before a judge that he was divorcing his wife. The issue of divorce was not left solely to the discretion of the two spouses, and in some

cases the courts put forward a proposal for reconciliation. The judge could appoint two of the couple's relatives to act as mediators and establish the reasons for the conflict. If reconciliation was not possible, the courts granted the divorce.

50. The Penal Code contained provisions on conjugal and family obligations, the treatment of family and children, domestic rape, crimes against family members, and abduction of children. The law took into account violent acts committed by either the husband or the wife against a family member. If a husband beat his wife or children, the wife had the right to take the case directly to the courts. There were numerous laws protecting women against domestic violence. The problem of domestic violence was not widespread, and was therefore not a major cause for concern for the Government. There was one centre for battered women, but it was not necessary to have a network of shelters. When acts of violence did occur and the victim felt unsafe, the Government was obliged to guarantee decent accommodation for her and her family.

51. Health certificates stating that a person had no infectious diseases were a requirement of the visa application process for European countries. The certificate was also a requirement for children progressing from primary to secondary school and for new university students. It was not intended to deprive sick children of the right to education, as education was compulsory and the Government was obliged to provide educational services to all regardless of health, but rather to allow preventive measures to be taken.

52. As to the increase in the AIDS rate and drug abuse, the United Nations Office on Drugs and Crime was satisfied with the measures being taken by the Government to combat the phenomenon. The figures cited by Committee members did not reflect the actual situation, as drug abuse was not a serious problem in the country, although drugs were imported from neighbouring countries. A centre had been established for people suffering from drug-related illnesses and campaigns had been undertaken to raise public awareness.

53. Mr. ZAMOUNA (Libyan Arab Jamahiriya) said that the Government had been making efforts to ensure that there were sufficient numbers of qualified doctors and nurses, primarily by opening four new faculties of medicine covering a large number of specializations.

54. In early 2005, the Government had established a standing body to oversee housing construction, and ensure the provision of affordable housing. Those who could not pay in full could apply for loans and pay in instalments. It should be noted that the majority of citizens owned their own houses rather than renting. As to housing for immigrants, there were legal provisions regulating the rental sector.

55. The problem of water shortages, particularly of drinking water, had been resolved by creating an artificial river to bring water from the south of the country to the north. The third and final phase of that project was currently being implemented.

56. The fact that the divorce rate had dropped should be considered a positive development rather than a cause for concern, and did not need to be justified.

57. Ms. ALBASHA (Libyan Arab Jamahiriya) said that there was no discrimination against rural areas in terms of the distribution of wealth and resources or the right to

development. Roads had been constructed to link all regions, and the number of hospital and schools in each region was proportionate to the population. Rural regions were not isolated and had access to modern technology.

58. There appeared to be a degree of confusion with regard to housing. Makeshift housing did not exist. If a comparison was made with the housing situation in the 1970s, it was clear that considerable progress had been made. The State ensured the provision of electricity and water in rural and urban areas: 99.7 per cent of households had electricity and 94 per cent had sewage services.

59. The laws on the protection of agricultural land and flora and fauna ensured that agricultural land would not be directly affected by privatization. The Government was addressing the negative aspects of privatization by acquiring shares in companies to ensure the livelihoods of the people working there.

60. The Committee had referred to the 1986 law on the environment and the right to health. However, the report stated that new legislation had been enacted in 2001 which referred explicitly to the preservation of the environment and made the link between the right to health and the environment. A law had been enacted on the production and use of genetically modified organisms, with a focus on the health of the individual.

61. Regarding family life, under the law, family and conjugal obligations must be respected. If a man left his wife for longer than the four months allowed under sharia, the wife could apply for divorce. There were penalties for husbands who failed to pay alimony and support their families. As Libya was an Islamic country, extramarital sexual relations were not permitted. The age for marriage had been set at 20 years for both men and women, in the light of the negative effects of early marriage, and exceptions were only allowed if approved by the court on valid grounds.

62. Mr. DERBI (Libyan Arab Jamahiriya) said that the law provided for both collective and individual employment contracts. In the case of collective bargaining, if contracts were to have the force of law they must be registered with the Ministry of Employment. The Government was a neutral party which monitored collective bargaining without intervening. Collective agreements should not contravene private agreements or be detrimental to the rights of other individuals.

63. The Labour Code stipulated that an advisory council, comprising ministries, trade union representatives and employers' organizations, should propose general policies and determine salaries and the minimum wage. In determining wage levels, the general cost of living and benefits, such as housing and family allowances, were taken into account. It should also be noted that the Government subsidized basic foodstuffs and that education and health care were free.

64. Mr. KOLOSOV requested clarification of whether the mahalla still existed, as it appeared that under a recent reform, people's congresses and committees had been established to replace them. If that was the case, paragraph 6 of the report, which referred the Committee to the initial report, was misleading, as it did not provide any information on such reforms.

The meeting rose at 6 p.m.