

CANADA

Follow-up

State Reporting - Action by State Party

CESCR E/C.12/1993/SR.26

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Ninth session

SUMMARY RECORD OF THE 26th MEETING

Wednesday, 24 November 1993, at 10 a.m.

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COMMUNICATION FROM THE PERMANENT MISSION OF CANADA

58. The CHAIRPERSON drew attention to a communication dated 6 July 1993 from the Permanent Mission of Canada to the Office of the United Nations at Geneva which had been forwarded to him by the Centre for Human Rights, and read out the pertinent parts of the communication, as follows:

"As a strong supporter of the United Nations Human Rights Treaty monitoring system, we have always encouraged the efforts of the Committee to improve its working methods. In this spirit, Canada agreed to the Committee's decision to entertain informal oral presentations from two Canadian non-governmental organizations, notwithstanding the last-minute character of that decision.

"The Government of Canada understands that an important objective of this new procedure is to enable the Committee to better evaluate non-governmental views and to improve the quality of its dialogue with States parties. This objective does not, however, appear to have been achieved in the present case. The Committee's concluding observations appear rather to reflect uncritical acceptance of certain assertions by the non-governmental organizations, while not taking into account key aspects of the government presentations.

"For example, the Committee noted at pages 3 and 4 of its observations that there seemed to have been no measurable progress in alleviating poverty over the last decade. In its presentation, the Canadian delegation outlined a number of measures which had been taken, including the fact that federal cost sharing for the Canada assistance plan will increase to \$7.3 billion this year, rising at a rate five times greater than for federal program expenditures as a whole. The Committee made no reference to these measures and instead implied that the Government of Canada was unconcerned about the continued existence of poverty in Canada.

"The Committee also said at page 4 that the State party outlined no measure aimed at combating poverty among children. In its presentation, the Canadian delegation outlined in great detail the measures proposed under brighter futures. This is a significant program providing an additional \$2.6 billion over five years aimed at improving conditions for

Canadian children and one which UNICEF has called '... one of the best examples of a national plan of action prepared in the industrial countries'.

"With a view to improving its procedure in light of this experience, the Committee may wish in future to request that non-governmental organizations provide copies of their submissions well in advance of their appearance. This would facilitate the Committee's efforts to assess fully the material before it and enable States parties to provide considered comments (an especially important factor in Canada's case where it must consult as many as twelve provincial and territorial governments on matters addressed in the Covenant). Such an approach would assist the Committee in engaging both non-governmental organizations and States parties in a serious dialogue. Furthermore, a more systematic approach to non-governmental organization participation will become essential as larger numbers of non-governmental organizations express interest in providing views to the Committee.

"The Government of Canada is also concerned about the procedures followed in respect to the release of the Committee's concluding observations. Prominent and extensive reporting on those observations appeared in the Canadian media on 28 May 1993. On the same date, a member of the Committee commented in detail on the contents of those observations in an interview on Canadian national radio. In those circumstances, Canadian officials were compelled to comment publicly on a 'draft' version of the Committee's observations obtained from a Canadian newspaper - a document the status of which it had not had the opportunity to ascertain from United Nations officials.

"On contacting the Centre for Human Rights on 1 June 1993, the Permanent Mission of Canada was advised that, under normal Committee procedures, the concluding observations adopted in private session would not have been made public until a formal copy was communicated to the State party.

"The Permanent Mission of Canada requests that this note be transmitted to the Chairman of the Committee and to the Committee at its next session, and urges the Committee to clarify its procedures regarding publication of its concluding observations on periodic reports submitted by States parties to the Covenant on Economic, Social and Cultural Rights. Canada remains committed to maintaining a full and effective dialogue with the Committee on the fulfilment of its obligations under the Covenant."

59. The communication raised three separate issues, the first being whether the Committee's concluding observations had taken sufficient account of the Canadian Government's submissions. In his view, divergencies of opinion between the Committee and individual Governments were inevitable in some instances. Of the observations referred to in the communication, the first, relating to the alleviation of poverty over the past decade, was very general in nature. The second point, relating to programmes for children, was perhaps a valid one, but it should be borne in mind that the Committee's concluding observations did not purport to be comprehensive and could not be expected to cover all aspects of a problem.

60. The second issue related to the manner in which submissions by non-governmental organizations should be dealt with in the future. While the Committee already made a practice of

requesting non-governmental organizations to make information available in writing wherever possible, a slight amendment of the procedure might perhaps be made by indicating that the written information should be provided as early as possible and that it would be forwarded to Governments as soon as it was received.

61. The third issue related to procedures followed with regard to the release of the Committee's concluding observations. There, the Canadian Government certainly had a point. In the first place, he regretted having to say that the Centre for Human Rights had misinformed the Permanent Mission of Canada by saying that, under normal Committee procedures, the concluding observations adopted in private session would not have been made public until a formal copy was communicated to the State party. It was a matter of simple logic that when the Committee adopted its concluding observations in public session, the document containing those observations became a public document and had to be released forthwith.

62. On the final Friday of the eighth session he had specifically asked the Secretariat to prepare letters to go to each Permanent Mission in relation to which concluding observations had been adopted and to send those letters out by fax that day. The letters had been ready and signed at about noon on Friday, 28 May 1993 but he regretted having to say that no fax had gone out until the following Tuesday, 1 May 1993. The Centre for Human Rights had thus failed to carry out the clear instructions he had given, and he had now indicated that such instructions had to be followed in future. It was inappropriate that member States should not receive at the earliest possible moment the concluding observations adopted in their respect. The fax was by now a well-established method of communication and there was no reason why the Centre for Human Rights should be reluctant to use it.

63. It was true that the Committee's comments had given rise to extensive debate in the Canadian media. The Prime Minister of Canada had answered questions in Parliament relating to the concluding observations, and the matter had assumed quite significant proportions. The Committee itself had received letters from various organizations congratulating it on its handling of the Canadian report. Under the circumstances, it was inevitable that the matter should have been a somewhat sensitive one for the Canadian Government. His own view, which he had expressed in public session at the World Conference on Human Rights, was that the true purpose of the dialogue which took place in the Committee was to stimulate national discussion of important issues rather than to hand down judgements. From that point of view, the discussion which had taken place in Canada was the most appropriate achievement that the Committee could hope for and, moreover, one that reflected very well on the Canadian Government. In essence, he felt that the letter should be regarded as highly positive.

64. Mr. GRISSA said that the Canadian Government's letter referred to contact with the media by one member of the Committee. He questioned whether it was right for individual members to have such contacts.

65. Mr. TEXIER said he thought that the letter could be viewed in a very positive light; it would be a matter of pride for the Committee if all States parties took its findings so seriously. The Committee should reply to the letter, at the same time drawing some conclusions about its procedures and taking steps to amend them somewhat if necessary. The allotment of a half day, at

the current session, for discussion with non-governmental organizations was a positive step, but it was essential to find the right procedure in order to ensure not only that an NGO had an opportunity to comment orally on the latest developments but also that the State party's representatives had a reasonable chance to respond.

66. With regard to the Committee's concluding observations, it might seem unfortunate that the press obtained them before the Government concerned. As far as the Committee was concerned, however, its findings, once issued, were in the public domain - a point which should perhaps be stressed to the State party.

67. There might indeed be substance in some of the criticisms voiced in the letter. Perhaps, therefore, the Committee, in its reply, could give some assurances and explanations in that regard, and in future be more rigorous in preparing its findings.

68. Mr. ALVAREZ VITA said that he viewed the Canadian Government's letter as a positive response, showing that the Government, unlike those of some countries, took an interest in the Committee's work and views. He was not sure whether the statements to the media by a Committee member had been made before or after the Committee had published its concluding observations. In any case, although the latter were drafted in closed session, the procedure was not intended to have the degree of confidentiality found, for example, in the Commission on Human Rights proceedings under Economic and Social Council resolution 1503 (XLVIII). He did not think, therefore, that the Committee was as blameworthy as had seemingly been suggested. What had happened in the case of Canada was surely part of the price a State could expect to pay for being a party to the Covenant.

69. With regard to the communication of concluding observations, it might be as well not to rely too much on modern telecommunications. Perhaps the Committee could inform a State party when the relevant concluding observations were to be published; the Government could then arrange, probably through its Permanent Mission at Geneva, to learn those observations as soon as they were made known. It would also be useful for the Committee to hold press conferences, since greater media coverage would benefit not only the Committee but those States parties that strove to collaborate with it, as well as sanctioning those that did not.

70. The CHAIRPERSON, referring to the last-mentioned point, said that the action recently decided upon by the Committee with regard to countries failing to report on time had been effective, to judge from the reports that had arrived during the current session.

71. Mr. SIMMA said that, as the Committee member referred to in the Canadian Government's letter, he disagreed with Mr. Grissa about speaking to the media. Committee members should be in a position to answer media questions, as he had done when approached - he himself had not sought any publicity. His only misgivings about what had occurred stemmed from the fact that the journalists' questions were evidently based on a text inexplicably different from that issued by the Committee.

72. With regard to the points raised in the letter, he agreed that the Committee should endeavour to obtain NGOs' submissions as far in advance as possible, in order that the Government concerned

could consider them and respond in good time.

73. In his view, the criticism about the Committee's implied view of poverty in Canada could be refuted; indeed, although the Government, in its letter, referred to a number of measures taken, it did not thereby deny the continued existence of poverty in Canada. If the Committee was objective in its findings, it could not be responsible for the inference put on them by others.

74. He did feel, however, as the Country Rapporteur concerned, that the point about the Committee's procedure in handling submissions by non-governmental organizations might be valid. Perhaps the procedure could have been more balanced; but he would not comment further for the present.

75. Mr. ALVAREZ VITA said that at no time had he intended to imply that Mr. Simma, when speaking to the media, had been seeking publicity.

76. Mr. BADAWI said that he was not clear about the suggestions regarding the procedure for dealing with NGOs' submissions, since an NGO, even if it had made an early written submission, might wish to comment later in reaction to events occurring after the State party's report had been submitted. The question was how, if it did so, the Government concerned could be enabled to make a timely response.

77. The CHAIRPERSON said that, as he saw it, non-governmental organizations should be asked to provide their submissions in writing well in advance, but should not thereby be precluded from making additional oral submissions.

78. Mr. WIMER ZAMBRANO said he thought that Mr. Simma's contact with the media amounted to welcome publicity for the Committee's work. In that regard, it was right that the Committee should be providing information as well as receiving it. He thought it important for the Committee to have a well-established procedure for involving NGOs; the non-governmental organization had become a respected institution and should not be simply regarded as some form of subversive body. At the same time, the Committee must be circumspect in dealing with the submissions received, in order not to prejudice the standing of its own findings.

79. Mr. KOUZNETSOV said he shared the view that Mr. Simma's contact with the media had done the Committee a good service. He also felt that the tone of the letter in question was more positive than negative. The Committee must, of course, avoid dramatizing matters, and do everything to avoid misunderstandings, if respect for the Organization's human rights mechanisms was to be maintained and promoted. As he saw it, the Committee could take two specific steps. Firstly, it could look again at ways to improve its procedures, without prejudice to rule 69, paragraphs 1 and 2, of its rules of procedure. Secondly, the Committee should recognize that its members themselves, as independent experts, could rightly determine the nature of information received pursuant to rule 69, paragraph 3, of the rules of procedure and its relevance to implementation of the Covenant. Those points should perhaps be stressed at the Committee's next meeting with Canadian Government representatives.

80. A related matter of crucial importance concerned the point at which it could be taken that a

Government had been informed of the Committee's concluding observations. In that regard, he shared the misgivings expressed about reliance on modern telecommunications and the comments on how to convey the requisite information, if done through the State party's permanent mission, at that point the Committee could take it that the Government had been duly informed; There should be no restriction on contact by individual members with the media, with the possible proviso that there should be no such contact until the relevant permanent mission had been informed of any Committee findings.

81. In any case, the Committee's reply to the Canadian Government should be in measured terms, clearly stating its interpretation of the matters referred to.

82. Mrs. JIMENEZ BUTRAGUEÑO agreed that press conferences were very useful, and supported the idea that the Committee should resume the practice of holding them.

83. Mr. GRISSA said that it was right to give wide publicity to the Committee's findings but that it would be wrong for any members to become a party to a State's internal political debate, with the obvious risks of exploitation for propaganda purposes and a resultant lack of confidence and collaboration on the part of Governments. Perhaps it would help if the Committee's deliberations on its concluding observations took place in public session.

84. Mr. SIMMA assured the Committee that at no point did he take sides in an election debate. It should be stressed that the Committee had not singled out the Canadian Government's record; the situation was that Canada was the first State party, among the industrialized countries, to have its report considered under the Committee's revised and firmer procedures, whose effect would also have to be taken into account, of course, when considering the reports submitted by New Zealand and Germany.

85. Mr. WIMER ZAMBRANO said that, in general, it might help if there was a clear understanding that pronouncements by the Chairperson were made on behalf of the Committee as a whole, but that its members spoke as individuals.

86. The CHAIRPERSON said it was noticeable that the findings of United Nations human rights bodies were always welcomed by opposition groups but never by Governments. He felt that, in general, it was a good thing to have wider exposure of the Committee's findings and explanations of its work. He took it that the Committee could agree on three conclusions. Firstly, a reply must be sent to the Canadian Government, and he undertook to draft a letter accordingly. Secondly, there was a consensus about the appropriate role of individual members vis-à-vis the press. Thirdly, some minor elements of the Committee's procedures needed to be clarified, and he would put some suggestions to the Committee on that matter in due course.

The meeting rose at 1.10 p.m.