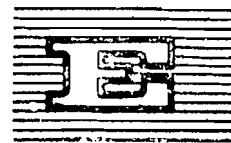


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SESSIONAL WORKING GROUP ON THE IMPLEMENTATION OF THE INTERNATIONAL
COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

SUMMARY RECORD OF THE 20th MEETING

Held at Headquarters, New York,
on Friday, 25 April 1980, at 10.30 a.m.

Chairman: Mr. NAGY (Hungary):

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Consideration of the reports submitted in accordance with Council resolution
1988 (LX) by States Parties concerning rights covered by articles 6 to 9 of the
Covenant (continued)

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The meeting was called to order at 10.50 a.m.

CONSIDERATION OF THE REPORTS SUBMITTED IN ACCORDANCE WITH COUNCIL RESOLUTION 1988 (LX) BY STATES PARTIES CONCERNING RIGHTS COVERED BY ARTICLES 6 TO 9 OF THE COVENANT (continued)

Report of Spain (E/1978/8/Add.26)

1. Mrs. JIMENEZ-BUITRAGUEÑO (Observer for Spain) said that as a result of the democratization process that had been taking place in Spain in recent years, the new Spanish Constitution had been adopted in December 1978, and under it the rights covered by the Covenant had received greater protection than previously. Two aspects of particular importance were the lowering of the age of majority from 23 to 18 years; and recognition of full equality between men and women which had had the immediate effect of opening up numerous professional opportunities to women. Moreover, for the first time it had been laid down that family responsibilities were to be shared equally between husband and wife. The question of survivors' pensions for widowers was currently under consideration.
2. The question of trade union rights and freedoms was covered in the Constitution. Workers had the right to work, the right to take up employment of their own choosing, the right to form trade unions and the right to strike. The importance of full employment and vocational training was also stressed. New basic labour legislation was currently under consideration.
3. On a parallel with the process of democratization, Spain was undergoing a process of decentralization. In March 1980 the Boletín Oficial del Estado had made reference to highly complex legal difficulties that were being encountered in connexion with that second process. The Ministry of Labour had delegated a number of its responsibilities to autonomous institutions dealing with such questions as employment, social studies, leisure and arbitration.
4. Spain's social security legislation was in keeping with the provisions of the Covenant, and the regulations in that respect exceeded the minimum standards required by the International Labour Organisation (ILO). Further labour regulations were under consideration. Important questions in that connexion were regulation of such matters as special labour situations, training contracts, part-time work, fixed-term contracts, geographic mobility and working conditions. An important decree had been issued in April 1980 to enforce regulations on working conditions.
5. Mr. SALMIENPERÄ (Finland) said that it was clear from the report that in recent years development in the field of the protection of human rights had been very rapid in Spain.
6. With regard to the entitlement of any worker responsible for the care of certain categories of persons to a reduction of at least one third in his or her working day, referred to on page 4 of the report, he wished to know what Spain's experience was in that respect. He wondered, in particular, whether the reduction in the working day led to employment discrimination against the workers in question.

(Mr. Salmenperä, Finland)

7. He requested clarification about the statement on page 19 that in 1976 the number of unemployed workers had reached an estimated total of 553,789, and the indication in the first table on page 53 that the average number of recipients of unemployment benefits per month in 1976 was listed as 246,750 persons, since it appeared that almost 50 per cent of the unemployed persons in 1976 had not received benefits.

8. Mr. ABDUL-AZIZ (Libyan Arab Jamahiriya) said that the report before the Working Group demonstrated the importance that the Spanish Government attached to improving the situation of the workers in that country.

9. With regard to the reference on page 3 to the legal age of admission to employment, he asked whether there was any legislation covering the employment of persons below the age of 16, if such employment existed in Spain. He also requested information about the entitlement of aliens to social security benefits; he assumed that the nationalities listed on page 6 received preferential treatment.

10. Mr. AL-KAISI (Iraq) said that it was clear that Spain had achieved much in the field of human rights. He requested further information concerning efforts made by the Spanish Government in recent years to improve conditions for Spanish migrant workers.

11. Mr. FUJII (Japan), referring to the information relating to implementation of article 7 (d) of the Covenant, requested further details about the implementation of the regulations on remuneration for public holidays, particularly where part-time work and workers in small enterprises were concerned. He asked whether small enterprises found it difficult to pay wages for public holidays, and whether the Government subsidized them in that respect. He also wished to know whether employers were penalized if they violated the labour legislation.

12. Mr. SKOTNIKOV (Union of Soviet Socialist Republics), referring to the restrictive policies adopted by a number of host countries which received Spanish workers, asked what measures the Government of Spain had taken on either a bilateral or a multilateral basis to solve that problem. He also requested specific figures with regard to trends in the level of unemployment in Spain, including the general trend in unemployment following Spain's accession to the Covenant.

13. Mr. MAYCOCK (Barbados), noting the statement on page 5 of the report that it had never been necessary to take measures against racial discrimination because of Spain's ethnic unity, asked whether there was any form of protection for aliens in Spain, especially for those who did not fit into the country's ethnic pattern.

14. With regard to the statement on page 28 that the number of hours of overtime might not exceed two hours a day or 120 hours a year, he asked whether those restrictions applied even in cases where a worker was willing to work longer hours.

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15. Mr. SAMSON (International Labour Organisation) said that the process of change in Spain was reflected in the third report of the International Labour Organisation (ILO) (E/1980/35).

16. With regard to article 6 of the Covenant, he drew attention to the comments made by the Committee of Experts concerning the employment situation in Spain.

17. With regard to the implementation of article 7, and in connexion with the question of the criteria and procedures adopted for reaching decisions regarding promotion in employment in the private sector, it was appropriate to refer to the second report of the ILO (E/1979/33). He also drew attention to the comments made by the Committee of Experts concerning the implementation of a number of ILO conventions relating to safe and healthy working conditions.

18. In connexion with article 8, the Committee of Experts had requested information concerning certain temporary restrictions relating to wage clauses in collective agreements and to the right to strike in certain situations.

19. With regard to article 9, the Committee of Experts had recognized that the general reform of the social security system had led to institutional changes but had felt that information on the results of the current reorganization of that system would be desirable.

20. Mrs. JIMENEZ-BUITRAGUENO (Observer for Spain), replying to the first question raised by the representative of Finland, said that no study had been conducted on the scheme under which any worker responsible for the care of certain categories of persons was entitled to a reduction in his or her working day. Although the Spanish family was still very traditional, attitudes were changing, and among student couples, for example, it was becoming more common for husband and wife to share family responsibilities. Recently, her Government had taken a number of steps to protect unemployed young people, particularly women with family responsibilities. The basic legislation in that respect took such problems into account and established appropriate priorities. With regard to the second question asked by the representative of Finland concerning unemployment benefits, the situation had improved, and the number of persons receiving such benefits was approaching 60 to 65 per cent.

21. In connexion with the first question raised by the representative of the Libyan Arab Jamahiriya, Spain did not allow the employment of persons below the age of 16, and employers who employed persons below that age were subject to heavy fines. There were incentives for employers and new forms of employment contracts designed to guarantee employment for young people between the ages of 16 and 18. With regard to the question of the employment of aliens in Spain, there was unfortunately an imbalance on the labour market. There was a lack of qualified personnel in some cases, and a number of companies employed aliens; nevertheless, it was considered that new employment opportunities should be set aside for Spanish nationals. Unemployment benefits were the same for both Spaniards and aliens. The question of unemployment benefits was covered by bilateral agreements. In the past there had been different treatment for Spaniards and aliens, but such discrimination had virtually disappeared.

(Mrs. Jimenez-Buitragueño, Observer, Spain)

22. In relation to the question asked by the representative of Iraq about migrant workers, there were some emigrant workers who adapted very well to their countries of emigration and returned to Spain only on vacation; others came back with illusions about the Spanish democratic system, which was still in the early stages; there were also many problems which could not all be solved at once. Returning emigrants were entitled to the same unemployment benefits as other Spanish workers, even if they had not contributed to unemployment insurance schemes.

23. With regard to the questions asked by the representative of Japan, she said that, under the labour legislation, public holidays and rest days were paid; there was a fixed number of holidays per year, and other holidays had to be made up in compensatory time. The minimum number of paid holidays was 23 days a year. Workers under 18 or over 60 years of age were entitled to one month's paid holidays a year. The violation of the labour legislation was, of course, penalized in accordance with the seriousness of the violation.

24. On the question raised by the representative of the Soviet Union, statistics on unemployment could be obtained if he so wished. In that connexion, she noted that there were more returning emigrants than new immigrants and that those individuals were entitled to unemployment insurance on the same terms as other workers.

25. Replying to the questions raised by the representative of Barbados, she said that racial discrimination had never existed in Spain. As to the recent legislation on working hours, a maximum of two hours overtime a day, 15 hours a month and 120 hours a year could be worked, and supplementary hours were paid at over-time rates under collective or individual contracts, the rate had to be at least 75 per cent more than regular pay. The trade unions and the Government were trying to reduce the amount of overtime worked in order to provide employment for more workers.

26. Mr. FUJII (Japan) asked whether the provisions under article 7 (d) of the Covenant applied to part-time workers and, if so, in what way they were applied.

27. Mrs. JIMENEZ-BUITRAGUEÑO (Observer for Spain) said that part-time work was a new formula and was not yet fully regulated. It was intended primarily for individuals with family responsibilities, and it also helped to provide more employment. Holidays for part-time workers were paid in proportion to their salaries.

Report of Jamaica (E/1978/8/Add.27)

28. Mr. BARTLETT (Observer for Jamaica) said that Jamaica had participated actively in the negotiations which had led to the adoption of the International Covenants on Human Rights and it had ratified the International Covenant on Economic, Social and Cultural Rights in an early stage. Jamaica believed that human rights were indivisible and that the separation reflected in the fact that there were two Covenants was artificial. In the United Nations and in other forums Jamaica had supported and initiated action designed to guarantee and promote respect for human

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(Mr. Bartlett, Observer, Jamaica)

rights and if it had focused more on economic, social and cultural rights it was because of its awareness that in many societies those rights were not accorded the same importance as civil and political rights.

29. In connexion with articles 1 to 5 of the Covenant, Jamaica, as a country which zealously guarded its right to self-determination in the political, economic, social and cultural fields, firmly supported the right of all peoples to self-determination and to dispose freely of their wealth and resources. With reference to article 2, the Government had taken measures aimed at overcoming the critical economic difficulties which prevented the full realization of the provisions of the Covenant, including the right to work. Some of those measures were described on pages 2 and 3 of the report. In addition, Jamaica's support for the achievement of the new international economic order reflected its concern that the development efforts of the third world should not continue to be impeded by the existing unjust world order. In relation to article 3, Jamaica fully supported the equality of men and women, and it had participated actively in the drafting and adoption of the Convention on the Elimination of All Forms of Discrimination against Women and was currently considering an early ratification of that Convention. Jamaica respected the principles contained in articles 4 and 5.

30. The report described the legislation, the administrative and institutional structures and the policies which had been created up to 1979 in Jamaica to give practical expression to Jamaica's commitment to democracy, its defence of human rights and its promotion of economic development within the context of an egalitarian society. Jamaica had a long history of colonial dependence, and in the late 1940s and 1950s efforts had been made by the Jamaican administration to lessen that dependence and diversify the economy. There had been great economic growth during the 1960s and a flourishing export sector had developed. Nevertheless, the benefits of development had not been evenly distributed, and the lot of the masses had not improved to the extent that might have been expected. The current Government had been elected in 1972 on the basis of its policy of change and during the 1970s it had worked to create an egalitarian society in order to spread the benefits of economic development throughout society. Free education had been introduced for the first time; adult education had become a major government programme and other training programmes had been developed, all with the aim of equipping citizens to exercise the right to work. Policies had been implemented to provide additional employment opportunities, for example, land reform had been introduced to make available previously unused or under-utilized land to farmers. Legislation had been enacted in the interests of the workers, including the Employment (Termination and Redundancy Payments) Act, 1974, the Labour Relations and Industrial Disputes Act of 1975, the Employment (Equal Pay for Men and Women) Act of 1975, special orders under the Minimum Wage Act which for the first time provided a minimum wage for certain categories of workers, and the Maternity Leave Act, 1979, under which women who had accumulated 52 weeks of service were entitled to maternity leave benefits such as 11 weeks' maternity leave, 8 of which were on full pay.

(Mr. Bartlett, Observer, Jamaica)

31. Despite the heavy strains on the national budget, the Government relentlessly pursued its goal of social justice. During the 1970s Jamaica's economy had been buffeted by inflation, sharp increases in oil prices and crises in the international monetary system. In addition, the brain-drain had accelerated and many of the more affluent Jamaicans, including professionals, had migrated to developed countries; that exodus had been accompanied by an illegal outflow of currency. By 1977 Jamaica had had a severe foreign exchange crisis and it had made agreements with the International Monetary Fund in 1977 and 1978 calling for extensive devaluations, sharp increases in the cost of imported goods, severe restrictions on budgetary expenditure and the relaxation of price controls. The sudden and savage adjustment of the economy had been made at tremendous social expense, and the severe economic crisis which Jamaica was still experiencing had resulted in great setbacks to the Government's efforts. The Government's priorities in its efforts to stimulate economic recovery and maximize employment opportunities included measures to promote the local production of food, ensure the necessary foreign exchange for export industries, expand the bauxite and tourism industries, monitor prices and prevent leakages of foreign exchange.

32. Ms. RICO (Spain), referring to the information on the Overseas Employment Service on page 6 of the report, asked how the Jamaican Government guaranteed the rights of workers who were provided with employment overseas and ensured that their working conditions were no less favourable than those prevailing in the receiving countries.

33. Mr. AL-KAISI (Iraq) noted that on page 18 of the report it was stated that labour legislation in Jamaica was silent with respect to the right of trade unions to federate and also that, although labour legislation did not expressly provide for a right to strike, it had been recognized that trade unions exercised that right in the legitimate pursuit of their interests; he asked how it was possible for trade unions to exercise the legitimate right to strike if there was no provision for their right to federate.

34. Mr. ABDUL-AZIZ (Libyan Arab Jamahiriya) said that the report showed the efforts that were being made by the Jamaican Government to improve the situation of the workers and enable them to enjoy the right to work and the right to favourable conditions of work. He associated himself with the question asked by the representative of Spain.

35. Mr. SALMENPERÄ (Finland) asked whether there had been any improvement in the level of unemployment in Jamaica since the report had been prepared, and what the coverage and amounts of unemployment benefits were.

36. Mr. VOLLERS (Federal Republic of Germany) said that the information provided in the report was relatively up to date, and the Jamaican Government had made great efforts to provide information not only about its achievements but also about the problems encountered. He requested further information about the Overseas Employment Service; he asked how many people had been sent overseas by the Service; how long they stayed abroad, on average; how the selection was made; whether the Service prescribed minimum wages and working conditions when it sent workers abroad; and whether any significant problems had been encountered.

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37. Mr. FUJII (Japan) said that the report indicated that the Jamaican Government was making good progress in implementing the rights covered by articles 6 to 9 of the Covenant. He asked whether the Jamaican Government had encountered any particular difficulties affecting the degree of fulfilment of its obligations under the Covenant.

38. Mr. MAYCOCK (Barbados) asked what progress had been made in promoting worker participation, mentioned on page 2 of the report, and whether the efforts had extended to the public sector as well as the private sector. In connexion with the information provided on statutory regulations, on page 13, he asked whether the information on workers' remuneration which was being assembled by the Pay Monitoring and Research Unit had become available. The report mentioned, on page 16, that under the Women (Employment of) Act, women could not work at night except in certain trades; he asked which trades those were. Page 25 of the report referred to family allowances; he asked what amounts of allowances were payable.

39. Mr. SANSON (International Labour Organisation) drew attention to the comments concerning Jamaica in the third report of the ILO (E/1980/35). The Committee of Experts had referred to the difficulties encountered by the Jamaican Government in pursuing its employment policy and to the high level of unemployment, particularly among women and young people and had requested further information on the steps taken by the Government to remedy that situation, and the results achieved. It was clear that such measures could achieve only a gradual improvement in the situation, but the Covenant did provide for the progressive implementation of the rights it established. In view of Jamaica's ratification of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee of Experts had asked for information on the practical steps taken to ensure the participation of women in vocational training, and on the remedies available to a person who considered he had been subject to discriminatory practices.

40. The Committee of Experts had noted Jamaica's ratification of the Equal Remuneration Convention, 1951 (No. 100) and had asked about the practical implementation of the legislation in that regard and requested information on the measures taken to abolish the distinctions established in certain minimum wage orders which had provided for rates differing according to sex. It had also indicated that additional information would be desirable on the criteria governing promotion in the private sector in Jamaica.

41. On the subject of working conditions, the Committee of Experts had asked a number of questions about the protection of workers against accidents and work-related diseases, and had requested additional information on the steps taken to ensure safe and healthy working conditions in agriculture and in inland, air and maritime transport. In addition, it had indicated that additional information would be desirable on overtime practices so as to ensure that the total hours worked conformed to the limits envisaged under the Covenant.

42. With regard to article 8 of the Covenant, the Committee of Experts had referred to a number of matters it had raised in connexion with the Freedom of Association and Protection of the Right to Organize Convention. Those matters

included the list of essential services in which the right to strike was limited, the extent of the powers bestowed on the Minister of Labour in 1978 to impose compulsory arbitration and the restrictions imposed on collective bargaining in 1978.

43. In relation to social security, the Committee of Experts had noted that some contingencies were not covered under the Jamaican system; however, the Jamaican representative had indicated that provision was now made for maternity benefits.

44. Mr. BARTLETT (Observer for Jamaica), replying to the points raised, said that there were a number of agencies responsible for protecting the rights of Jamaican migrant workers and that such workers benefited considerably from the opportunity to work abroad. Jamaican Embassies, High Commission and Consulates played a vital role by notifying the Government of any abuses reported to them so that the employer in question could be contacted and the abuses corrected. A regional organization, the British West Indies Central Labour Organization, was responsible for maintaining liaison with workers in foreign countries and the Jamaican agencies concerned: it had a permanent office in Washington, D.C. with responsibility for Jamaican workers in the United States. Officials and government ministers visited places at which Jamaicans were employed to ensure that the workers' rights were respected. Jamaicans could be very vocal about any mistreatment, and would be certain to give maximum publicity to any abuse.

45. Since the submission of the Jamaican report no further official statistics had been produced on the level of unemployment in the country, and none would be published for several months to come. In his personal view, it was likely that the situation had deteriorated since the submission of the report. The Jamaican economy was not capable of bearing the costs of an unemployment benefits scheme.

46. Jamaica had no particular difficulty in implementing the Covenant as far as its philosophy or its will to comply with the Covenant were concerned; the only difficulties it had encountered were, as he had indicated, economic problems.

47. Finally, he assured the representative of ILO that the points he had raised would be brought to the attention of the competent authorities and that the necessary responses would be submitted to the organisation as soon as possible.

48. Mr. ROBINSON (Observer for Jamaica), replying to the question raised by the representative of Iraq, said that under the Jamaican Constitution every person was entitled to associate freely with other people and to form or belong to a trade union of his choice. It logically followed, even if there was no specific provision to that effect, that trade unions could associate into federations or form confederations with other trade unions. He did not consider that there was any intrinsic connexion between the right to form federations and the right to strike. The right to strike was not expressly provided for in the law or Constitution of Jamaica and in certain industries the law had introduced the concept of an unlawful industrial dispute: in such industries - those providing essential services - disputes were permissible only under certain clearly defined circumstances. Although it might be deduced that a "right to strike" existed in other industries,

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(Mr. Robinson, Observer, Jamaica)

he would be cautious about identifying it as such, particularly since the matter had yet to be tested before the Jamaican courts. Under an Act of 1975, the Minister of Labour had the power to issue instructions to those involved in a dispute which, although not affecting essential services, was likely to prove seriously detrimental to the public good; if the persons concerned failed to comply with those instructions, the dispute could be declared unlawful. So far it had not been necessary to exercise those powers.

49. The Women (Employment of) Act to which the representative of Barbados had referred could be considered a relic from Jamaica's colonial days. The Minister of Labour had issued orders under which women could work at night in a number of different areas of industrial life, and the Act had declined markedly in importance since the introduction of legislation requiring that men and women should receive equal pay for essentially similar work.

50. The other questions asked by members of the Working Group would have to be referred back to the Jamaican authorities, and replies would be provided at a later stage.

The meeting rose at 12.50 p.m.